

2013

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

INDIGENOUS EDUCATION (TARGETED ASSISTANCE) AMENDMENT BILL (No. 2) 2013

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Indigenous Affairs,
Senator the Hon Nigel Scullion)

INDIGENOUS EDUCATION (TARGETED ASSISTANCE) AMENDMENT BILL (No. 2) 2013

GENERAL OUTLINE

The Bill amends the *Indigenous Education (Targeted Assistance) Act 2000* (IETA) to enable the Minister to enter into contracts with service providers in respect of 2014 and beyond.

As a result of 2013-14 Budget decisions funding for future non-ABSTUDY payments will be by way of annual appropriation Acts rather than as a special appropriation that would require amending IETA to add further special appropriations. The amendment will make it clear that the Minister can enter into agreements with service providers as currently the Act only refers to funding under the special appropriation non-ABSTUDY payments up until June 2014.

As the non-ABSTUDY funding will be administered as annual appropriations from 1 January 2014 the legislation will be amended to alter the description of funding year to mean payments from 2001, when IETA was enacted, and for later years.

The Bill will allow the Minister to agree to the Department negotiating new contracts from 1 January 2014.

FINANCIAL IMPACT STATEMENT

The Bill will address decisions in the May 2013-14 Budget that moved non-ABSTUDY funding from a special appropriation to an annual appropriation from 30 June 2014.

There is no anticipated financial impact for the Australian Government by moving to an annual allocation for non-ABSTUDY payments from 30 June 2014.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Indigenous Education (Targeted Assistance) Amendment Bill (No. 2) 2013

This Bill is compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill

As a result of decisions made in the 2013-14 Budget, funding for future non-ABSTUDY payments entered into pursuant to the *Indigenous Education (Targeted Assistance) Act 2000* (IETA) is to be provided by way of annual appropriations, rather than by amending IETA to extend funding years under the existing special appropriations.

The Bill would make technical amendments to IETA to make it clear that the Minister can continue to enter into agreements with education providers in respect of 2014 and beyond.

Human rights implications

As the Bill would only make technical amendments to make it clear that the Minister can continue to enter into agreements with education providers in 2014 and beyond, the Bill does not, of itself, engage any human rights.

IETA as a whole does engage the following human rights:

- the right to education – Article 13 of the *International Covenant on Economic, Social and Cultural Rights*
- the right to non-discrimination on the basis of race and special measures – Articles 2 and 1(4) of the *Convention on the Elimination of all forms of Racial Discrimination*
- the right to an adequate standard of living – Article 11 of the *International Covenant on Economic, Social and Cultural Rights*

Right to Education

IETA engages the right to education contained in article 13 of the *International Covenant on Economic, Social and Cultural Rights*.

One of the main objectives of IETA is to ensure equitable and appropriate educational outcomes for Indigenous students, which positively contributes to achieving this aim.

The range of programmes funded under IETA make a positive contribution to promoting the right to education for the Indigenous students concerned.

Right to non-discrimination on the basis of race and special measures

IETA funds programmes that differentiate between individuals or groups on the basis of race, in order to promote the right to education of Indigenous students.

Australia has obligations to eliminate all forms of racial discrimination under Article 2 of the *Convention on the Elimination of All Forms of Racial Discrimination* (CERD). However, not all treatment that differentiates between individuals will amount to discrimination. Article 1(4) of the CERD provides that, where special measures are taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals in the equal enjoyment of their human rights, those measures will not amount to racial discrimination.

IETA funding of programmes that are intended to achieve equality in educational outcomes for Indigenous students is a special measure and is not discriminatory as it is designed to benefit and ensure the improved educational attainment of Indigenous students.

It is widely acknowledged that Aboriginal and Torres Strait Islander students have a lower level of educational engagement, attendance and attainment than non-Indigenous students. For example:

- The proportion of Indigenous 20 to 24 year-olds who had completed year 12 or the equivalent was around half that of non-Indigenous 20 to 24 year-olds in 2008.
- The participation rates in the *National Assessment Program – Literacy and Numeracy* tests were lower for Aboriginal and Torres Strait Islander students than for non-Indigenous students in 2010. For Indigenous students, the rate was lower in remote areas, while, for non-Indigenous students, the rate was similar across remote areas.
- Of Indigenous people aged 15 and older, 34.1 per cent reported year 9 or below as their highest level of schooling in 2008, compared to 16.0 per cent of non-Indigenous people aged 15 and older.
- Around one-third of Indigenous students achieved the minimum proficiency level in international tests for science, mathematics and reading literacy in 2009, compared to around two-thirds of non-Indigenous students.
- Attendance rates of Aboriginal and Torres Strait Islander students are well below those of other students in every jurisdiction and year level. Sustained improvement has not been observed over the last 10 years.

There are a number of Council of Australian Governments (COAG) targets aimed at reducing the gap in education attendance and attainment between Aboriginal and Torres Strait Islander students and non-Indigenous students. The programmes funded under IETA are special measures which are appropriate, necessary and proportionate while also being temporary.

The programmes funded under IETA therefore do not amount to racial discrimination as they are special measures.

Right to an adequate standard of living

To a limited extent, IETA engages the right to an adequate standard of living contained in article 11 of the *International Covenant on Economic, Social and Cultural Rights* and article 27 on the *Rights of the Child* through programmes that assist in improving students' ability to participate in school and learning

Conclusion

The Bill does not engage human rights per se as it would make technical amendments to make it clear that the Minister can continue to enter into agreements with education providers in respect of 2014 and beyond, but IETA as a whole is compatible with human rights as it promotes the right to education, the right to non-discrimination on the basis of race and special measures and, to a limited extent, the right to an adequate standard of living.

NOTES ON INDIVIDUAL CLAUSES

List of abbreviations used

IETA means the *Indigenous Education (Targeted Assistance) Act 2000*

Clause 1 – Short Title

This clause provides that, when the Bill is enacted, it is to be cited as the *Indigenous Education (Targeted Assistance) Amendment Act (No. 2) 2013*.

Clause 2 – Commencement

The table in this clause sets out when provisions in the Bill would commence.

Sections 1 to 3 (and anything else not covered in the table) would commence on the day on which the Bill receives the Royal Assent.

Items 1, 2 and 4 of Schedule 1 would commence on the day after the Bill receives the Royal Assent.

Item 3 of Schedule 1 would commence on 1 July 2014.

Clause 3 – Schedule(s)

This clause provides that each Act referred to in the Schedule to the Act is amended or repealed as set out in the applicable items in the Schedule. In addition, any other item in a Schedule to the Act has effect according to its terms.

SCHEDULE 1 – AMENDMENTS TO IETA

Item 1 – Subsection 3(1)

Subsection 3(1) explains that IETA currently allows the Minister to make an agreement with an education provider, or other body or person, which authorises the making of payments during the 2001 to 2014 calendar years.

Item 1 would amend subsection 3(1) to remove the reference to the 2001 to 2014 calendar years.

There are two different types of agreements that the Minister can make under IETA. One type of agreement relates to ABSTUDY payments and the other to non-ABSTUDY payments.

There is no need for any time limitation for agreements for ABSTUDY payments. This is because there is a standing appropriation for ABSTUDY payments in section 13 which provides that ABSTUDY payments are to be made out of the Consolidated Revenue Fund, which is appropriated accordingly.

The situation is different for agreements relating to non-ABSTUDY payments. This is because there are time limited special appropriations for non-ABSTUDY payments as set out in sections 14, 14A, 14B and 14C as follows:

- section 14: for the period from 1 January 2001 to 30 June 2005
- section 14A: for the period from 1 January 2005 to 30 June 2009
- section 14B: for the period from 1 January 2009 to 30 June 2013
- section 14C: for the period from 1 January 2013 to 30 June 2014

The 18 month special appropriation periods enables agreements to be entered into by the end of a calendar year, with funding under those agreements to be paid to the parties concerned by 30 June of the following year.

As part of the 2013–14 Budget processes, a decision was made that funding for future non-ABSTUDY payments would be by way of annual Appropriations Acts (rather than by amending IETA to add further special appropriations).

It is therefore necessary to amend subsection 3(1) to remove the reference to the 2001 to 2014 calendar years. If this is not done, the Minister will not be able to enter into agreements authorising the making of payments from 1 January 2014 onwards.

Item 2 – Section 4 (definition of funding year)

The term *funding year* in section 4 of IETA is defined as meaning the 2001 calendar year, the 2013 funding year, or any year between (ie 2001 to 2013 inclusive).

Item 2 would amend this definition so that funding year would mean 2001 (when IETA was enacted) or any later calendar year. This amendment is required for the same reason as for Item 1: because of the 2013–14 Budget decision that funding for future non-ABSTUDY payments would be by way of annual Appropriations Acts (rather than by amending IETA to add further special appropriations).

Item 3 – At the end of section 13

Item 3 would insert a note at the end of section 13 to explain that the source of the appropriation for non-ABSTUDY payments will be the annual Appropriation Acts (ie rather than the special appropriations as currently set out in sections 14, 14A, 14B and 14C).

Items 4 and 5 – Sections 14, 14A, 14B, 14C and 15

Items 4 and 5 would repeal sections 14, 14A, 14B, 14C and 15.

Sections 14, 14A and 14B are redundant as they specify appropriations for non-ABSTUDY payments for past periods of time.

Section 14C will likewise be redundant from 1 July 2014 when the non-ABSTUDY payments appropriation for the period from 1 January 2013 to 30 June 2014 expires. Clause 2 provides that the repeal of clause 14C would not commence until 1 July 2014.

Section 15 provides that each of the appropriation provisions in Part 4 of IETA (ie sections 13, 14, 14A, 14B and 14C) operates separately from the other provisions that appropriate money. Section 15 would become redundant once sections 14, 14A, 14B and 14C have been repealed, as there would only be one single appropriation provision in Part 4 (section 13). Clause 2 provides that the repeal of clause 15 would not commence until 1 July 2014.