



Submission to the

Education and Employment Legislation Committee

on the Australian Education Amendment

(Direct Measure of Income) Bill 2020 (Provisions)

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Introduction

The Australian Education Union (AEU) represents over 189,000 teachers and support staff employed in the public primary, secondary, early childhood and TAFE sectors throughout Australia. We welcome the opportunity to submit our response on the Australian Education Amendment (Direct Measure of Income) Bill 2020 (The Bill) to the Education and Employment Legislation Committee.

Australia has one of the most inequitable education systems in the world

The current situation with regard to the funding of school education is untenable. For decades it has been widely recognised that Australia's school funding is among the most inequitable in the world. This Bill only serves to further increase inequity through the continuation of funding arrangements characterised by ad hoc political accommodations and continues to fail to take account of the actual needs of Australian schools, students and school communities.

Recent years have seen the Commonwealth Government continually prioritise the appeasement of the Independent and Catholic school lobbies over the maintenance of the provisions of the *Australian Education Act 2013*.

The final arrangements under the *Australian Education Amendment Act 2017* entailed a reduction of \$17 billion from the previous agreed funding arrangements. This was largely directed at public schools, while non-government schools' share of funding dramatically increased.

The effect of the additional funding changes in this Bill is that a large number of private schools will continue to receive more government funding than similar public schools at both the school and per capita level. An ABC analysis of My School data showed that prior to the introduction of the *Australian Education Amendment Act 2017* a significant number of private schools already received more government funding than similar public schools. In 2016, 35% of Australia's private schools received more public funding than the average similar public school, a seven fold increase from 5% in 2009, and 85% of private schools received more public funding than *any* similar public school, an increase from 58% in 2009. The analysis showed that among private schools that receive more government funding than public schools, on a per capita basis, the median gap between private and public grew by 76% between 2009 and 2016 – to \$970 per student.¹

The \$3.4 billion of additional private school sector funding over ten years from 2020 included as part of the Australian Education Amendment (Direct Measure of Income) Bill 2020 (The Bill), coupled with the euphemistically named \$1.2 billion "Choice and Affordability Fund", both announced in September 2018, demonstrate that the Government's current funding priorities are neither needs based nor sector blind.

The failure to honour signed National Education Reform Agreements (NERA) that states and territories had made with the Commonwealth has resulted in public schools not receiving \$1.9 billion of funds that were expected under these agreements in 2018 and 2019. This was the first part of an estimated \$14 billion of funds previously promised to public schools over

¹Inga Ting, Ri Liu and Nathanael Scott, *Counting the Cost of the Education Revolution*, 2018, retrieved from <https://www.abc.net.au/news/2018-11-22/counting-the-cost-of-the-education-revolution/10495756>

the next decade that will now, under the new National School Reform Agreement and bilateral agreements, not be provided. Further, the Commonwealth Government's insistence on an arbitrary 20% of SRS cap on Commonwealth funding to public schools and the tens of billions of dollars that public schools will now not receive due to the implementation of the five year NRSAs provide yet more evidence of the entrenched unequal distribution of resources in Australian schools.

Only 1% of public schools will reach the full SRS by 2023

Changes to state and federal funding of schools announced in a series of bi-lateral National School Reform Agreements (NSRAs) signed between the various state governments and the Commonwealth in late 2018 and early 2019 further entrench funding inequality. The result of these agreements, which entrench a 20% of SRS cap on Commonwealth funding to public schools, is that only 1.3% of public schools will meet the Schooling Resource Standard (SRS) from combined State/Territory and Commonwealth Government contributions by 2023 compared to over 90% of private schools.²

The Commonwealth Government must redress its current imbalanced approach to the funding of the school sectors. In addition, steps must be taken to ensure the public interest and public expectations of fairness are reflected in this Bill. This is also in keeping with the findings of the Australian National Audit Office (ANAO) on DET schools funding arrangements under the Turnbull Government:

*The arrangements established by the Department of Education and Training to monitor the impact of Australian Government school funding do not provide a sufficient level of assurance that funding has been used in accordance with the legislative framework, in particular the requirement for funding to be distributed on the basis of need.*³

This finding is consistent with the observations on current funding policy made above, namely, that current Commonwealth Government policy in federal education funding is not consistent with the principle of need. The government's 20% cap on commonwealth funding of public schools will ensure that a tiny minority will reach 100% of SRS by 2023, whereas the inverse applies for private schools – the Commonwealth Government's promise to deliver 80% of SRS to private schools by 2023 will mean that the vast majority of private schools in Australia will exceed 100% of SRS in the next four years. This Bill, if enacted in its current form, will greatly increase the risk that funding will not be distributed in accordance with the *Act's* requirement of distribution on the basis of need.

This Bill further entrenches school funding inequity

This submission will demonstrate these changes are neither fair nor fiscally responsible, give the Commonwealth unprecedented control over school funding arrangements without legislative oversight and that the proposed methodology for the calculation of parental Capacity to Pay (CTC) does not make use of the best and most accurate available data and will not serve to improve equity in the funding of Australian schools. This Bill deepens the existing inequity between school systems and, through the introduction of the potential for

² AEU internal analysis of NSRA bi-lateral agreements 2018-19, retrieved from <https://www.education.gov.au/national-school-reform-agreement-0>

³ ANAO Report No.18 2017–18; Monitoring the Impact of Australian Government School Funding, p. 8

funding changes through regulation, provides the Commonwealth with a blank cheque to provide additional funds to non-government schools entirely at the Minister's discretion and provides access to billions of dollars in additional funding to a tiny number of schools for a wide variety of potential uses without providing any clarity on how this funding will be dispensed..

It has been estimated that under the changes proposed by this Bill, in total 59 non-government schools will be worse off and 810 will be better off.⁴ But the Bill is very short on details of how this additional \$3.4 billion will be distributed.

The allocated \$3.4 billion to cushion as little as 59 private schools from the effects of this change certainly seems a huge overestimation of its impact on this small number of schools who will lose funding as a result.

This begs the question of why the Commonwealth Government needs to put aside \$3.4 billion to cushion only 59 schools from these changes, so soon after implementing measures to ensure that 99% of public schools will not reach the full SRS?

This is certainly not a sector blind nor a needs-based approach.

The criteria for access to transitional funds are not clearly stated

This Bill appears to apply similarly vague and arbitrary criteria for access to the \$3.4 billion transition fund as the Commonwealth does for access to the \$1.2 billion "Choice and Affordability Fund." The government's own very recently published guidance shows that the Choice and Affordability fund is able to be used for a myriad of ill-defined purposes:

*"The Fund will provide the non-government sector with a flexible means of driving other government priorities, including supporting parental choice and affordability, assisting schools during the transition to the new DMI, assisting schools in regional and remote areas and in drought affected areas, enhancing student wellbeing and supporting initiatives and lifting outcomes in underperforming schools."*⁵

Furthermore, the Choice and Affordability fund guidelines allow the state and territory based Non-government representative bodies (NGRBs) under the National Catholic Education Commission and the Independent Schools Council of Australia to invest funds in any way they like as long as they are spent before 2029. This is clearly not a legitimate transition fund or transition strategy, but another measure designed to ensure that the status quo of unequal finding and the protection of special interests is continued. As noted by Perter Goss, of the Grattan Institute, the guidelines for the Choice and Affordability Fund are "the opposite of how transition funding normally works".

⁴ Joanne Ryan MP, Commonwealth of Australia 2020, *Parliamentary debates: House of Representatives: official Hansard*, 4 March, 2020.

⁵ Retrieved from <https://docs-edu.govcms.gov.au/node/53286>

He goes on to state that:

*"The fact that schools and sectors can bank some of this money for a rainy day undercuts the argument that it's genuine transition funding....Not only does this fund increase each year with indexation, but the fact that schools and systems can bank the money for later on suggests that they're really not focusing on how to transition to the new model but trying to stay with the old status quo."*⁶

The proposed methodology for the calculation of the Direct Measure of Income (DMI) does not capture true income or true parental Capacity to Contribute

The Bill repeatedly refers to “personal income tax data collected by the Australian Taxation Office” and chooses not to specify the exact data it will be using to calculate Capacity to Contribute (CTC). The technical papers⁷ refer to Adjusted Taxable Income (ATI) but ATI is not mentioned anywhere in the proposed legislation and can therefore be changed by regulation.

This sets an extremely dangerous precedent for the determination of school funding in Australia.

The Department of Education and Training Direct Measure of Capacity to Contribute Technical Working Group stated in their Communiqué from their second meeting that both Adjusted Taxable Income (ATI) and Total Income (TI) would be appropriate measures to include in CTC and concluded that “further analysis will be undertaken to fully consider both options.”⁸ However, ATI was included in the methodology without this further analysis being made publicly available.

The technical papers for the DMI reveal a stepped calculation methodology to capture low income earners who are not captured by tax data or when one parent is linked through the Multi-Agency Data Integration Project (MADIP)⁹ and the other is not linked due to low income. The stepped calculation includes Pensioner Concession Card or Health Care Card information, gross income from Pay as You Go (PAYG) returns if gross income is greater than zero and previous year’s tax returns.

It is telling that the methodology includes these targeted measures to capture low income earners but includes no measure whatsoever to capture those who engage in tax minimisation strategies or who are earning (often substantial) income as beneficiaries of trusts or company directorships or shareholdings.

⁶ Koziol, Michael, *\$1.2 billion private school ‘choice fund’ can be used as investment nest egg*, The Sydney Morning Herald, 2020, retrieve from <https://www.smh.com.au/national/1-2-billion-private-school-choice-fund-can-be-used-as-investment-nest-egg-20200305-p547as.html>

⁷ Retrieved from <https://docs-edu.govcms.gov.au/node/53286>

⁸ Retrieved from <https://docs.education.gov.au/node/52281>

⁹ Retrieved from <https://www.abs.gov.au/websitedbs/D3310114.nsf/home/Statistical+Data+Integration+-+MADIP+data+and+legislation>

As stated by the National School Resourcing Board (NSRB) in their review of the SES measure:

“The Board considers total income a better measure for determining capacity to contribute than available alternatives, such as taxable income. While taxable income is slightly lower than total income for most taxpayers due to deductions, these deductions can be very significant for some taxpayers.”¹⁰ As noted in a number of the submissions, using taxable income would benefit people who use tax minimisation strategies.”¹¹

The AEU contends that the proposed measure for calculating CTC and thus the DMI could be made substantially more accurate by making greater use of the data linking allowed by this Bill through MADIP.¹² This data would also easily allow access to ATO data on whether parents are beneficiaries of Trusts and/or company directors or shareholders. This data should be included in the DMI if it is to be a true measure of available income and capacity to pay.

The AEU reasons that it would cost comparatively very little to gather more targeted information that would result in a truer reflection of the income of relevant parents. Therefore we suggest that the proposal in the bill goes further than simply counting “personal income tax data collected by the Australian Taxation Office” (whether ATI or TI) towards CTC. The bill should include the reporting of the income of both private companies and trust estates where the couple has sufficient control or sufficient benefit in the investment vehicle adjusted for income that was reported in the couple’s ATI.

This could be done by adding to the couple’s ATI to TI to the adjusted investment vehicle income of these investment vehicles to arrive at a family group’s Total Assessed Income for the purpose of the CTC.

The AEU’s proposed formula would be that:

Trust income should be reported and included in the CTC calculation where:

- a. Where one or both parents are an appointor or trustee of a target trust,
- b. Where one or both parents are a director or shareholder of a company that in turn is the trustee of the target trust,
- c. Through a chain of trusts and companies the ultimate economic ownership of a target trust is held by the parents.

¹⁰ Ey, C. (2015) *How much income tax do we really pay? An analysis of 2011–12 individual income tax data*, Parliamentary Library Research Paper Series, 2014-15, Australian Government: Canberra, p. 7.

¹¹ National School Resourcing Board, *Review of the socio-economic status score methodology: final report*, 2018, p.31

¹² Retrieved from <https://www.abs.gov.au/websitedbs/D3310114.nsf/home/Statistical+Data+Integration+-+MADIP+data+and+legislation>

Similarly, income from company directorships or shareholdings should be included in CTC where:

- a. Where one or both parents are the director or shareholder of the target company,
- b. Where one or both parents are a director or shareholder of a company that in turn is the trustee of a trust that is the shareholder of the target company;
- c. Through a chain of trusts and companies the ultimate economic ownership of a target company is by one of both parents.

Income is one part of a family's actual capacity to contribute to schooling costs, and the other significant and important component is wealth. The *National School Resourcing Board SES review Final Report* left the door open to including parental assets if data can be accurately collected (which it couldn't at the time of the review). This point was argued by The Catholic Education Commission of Victoria argued in their original submission to the NSRB review:

*'Ideally, the means test of families would be as accurate as possible in measuring the financial means of families to fund the education of each of their children. It should include both family income and family wealth, and take into account family size.'*¹³

The AEU argues that additional work has been done through MADIP to improve data linkages and we firmly believe that all possible steps should be taken to include wealth in the calculation of CTC, and that the inclusion of trust income and income derived from company directorships and shareholdings would significantly improve the CTC calculation proposed by this Bill.

Furthermore, the Bill makes no allowance for the amassed resources and wealth of any particular school in terms of the equipment purchases, alumni fund raising, parental donations or trust funds and endowment funds held by the school – all of which are reported annually and available for inclusion in the CTC.

It also makes no account for the increasing phenomenon of non-government schools reallocating a significant portion of their recurrent income to capital projects. It is clear from data listed on the *My School* website that many private schools, including some of the wealthiest in the country, are largely using income from fees for operating costs, which allows them to divert recurrent income from government to fund extravagant building projects.

Nationally, over \$1 billion in recurrent income meant for operating costs was allocated to capital works by Catholic and independent schools in 2017. This Bill in its current form allows the transitional funds to be reallocated in this way.

¹³ *Catholic Education Commission of Victoria*, cited in *National School Resourcing Board*, *Op. cit.* p.32.

The Bill gives the Commonwealth and Minister unprecedented powers to change school funding without having to pass legislation

As outlined above, this Bill sets a very dangerous precedent in which the Minister has almost total discretion to change the DMI, and thus school funding allocations entirely at their own discretion. It also allows the Commonwealth to use regulation rather than requiring legislation to change the entire method of calculating CTC scores, and allows the Commonwealth to change its funding share without having to consult Parliament.

For example, the Explanatory Memorandum for the Bill says that it will:

- *enable the Regulation to prescribe a new method for calculating a non-government school's CTC score by reference to a direct measure of income of a school community;*
- *enable the Regulation to alter the way in which the Commonwealth share for a non-government school is calculated, and alter the period over which that transition occurs, in order to manage any adverse financial impacts arising from the change in CTC score methodology¹⁴*

And in all cases, the Bill in its current form ensures that the Minister has total discretion to:

“depart from the methodology prescribed by the Regulation if satisfied that a determination in accordance with the Regulation would result in a CTC score that does not accurately reflect the capacity of the persons responsible for students at the school to contribute financially to the operation of the school.”¹⁵

Conclusion

The above provisions amount to the Commonwealth being able to proscribe a new method for calculating CTC, alter the transition period for the DMI and to arbitrarily change funding arrangements for private schools without having to submit to legislative scrutiny.

In short, the Bill provides the Commonwealth and the Education Minister with a blank cheque to alter school funding arrangements as they see fit, whenever they want to.

The AEU strongly urges the committee to recommend that the Direct Measure of Income methodology is revisited to include the full range of ATO, ASIC and MADIP data that could lead to the development of a more accurate measure of CTC that includes either total income or ATI.

We also urge the Committee to recommend that the income measure to be used to determine CTC (either total income or ATI) is specified in the text of the Bill.

¹⁴ Australian Education Amendment (Direct Measure of Income Bill) 2020, Explanatory Memorandum, p. 3

¹⁵ Australian Education Amendment (Direct Measure of Income Bill) 2020, Explanatory Memorandum, p. 16

In addition to the above, the AEU strongly urges the committee to consider the inclusion of the following data in the CTC calculation:

- **Parents who are beneficiaries of trusts, company for directorships and shareholdings**
- **Parental assets included in the above trusts or companies**
- **School wealth including expenditure on equipment**
- **School income through alumni fund raising, trust funds and endowment funds and parental donations**
- **The prevalence of the reallocation of recurrent funding to capital projects by schools**

Furthermore, the AEU believes that the Bill in its current form provides unprecedented scope for the CTC, the transition period and the government's contribution to non-government schools to be altered through regulation alone, and allows the Minister complete discretion to ignore the CTC if she/he so wishes.

We strongly urge the Committee to recommend that these provisions are removed from the Bill, and replaced with a requirement for any deviation from an improved DMI measure to be made through legislation.