COALITION SENATORS’
DISSENTING REPORT

Introduction

1.1 Coalition senators fully support the right of allustralians to a quality education as a birth right, and believe that its provision is essential to the future prosperity of our nation. However, Australia simply has not kept pace with the rest of the world in driving improvement in education, and as a consequence it is clear that we are at risk of failing the educational needs of future generations of school students. In this context, Coalition senators are all too aware of the importance of meaningful and effective reform to the Australian education system.

1.2 Coalition senators are open to considering the reforms contained in the bills which are the current focus of this inquiry. However, the process (or lack of it) that has been forced upon the Parliament by the Government means that proper scrutiny and review has been made literally impossible, and for that reason the bills cannot be supported.

Conduct of this inquiry

1.3 After gagging debate on the Australian Education Bill in the House of Representatives after less than two hours, and after allowing fewer than 24 hours to review 70 pages of detailed amendments before forcing the bills through, on 18 June 2013 Labor allowed the referral of these two bills to this committee for inquiry and report by 20 August 2013. That reporting date was agreed between members of the Senate Selection of Bills Committee, and more importantly, endorsed by the Senate. Coalition Senators believe that this time frame would have been adequate for the proper examination of the complex provisions contained in the bills, including allowing submitters adequate time to compose their submissions, as well as for the conduct of at least one public hearing. At this point, Coalition senators issue the simple reminder that these bills would see the expenditure of over $100 billion in Commonwealth funds over the forward estimates.

1.4 In spite of this, on the same day that the bill was referred the Government-dominated committee used its numbers to change the reporting date to 24 June 2013, only four business days hence, and called for submissions by 21 June 2013, which was only three business days away. This decision makes a mockery of the Senate committee inquiry process. Stakeholders have been given only three days to prepare submissions and the committee has had no time to hold public hearings.

1.5 While the government makes much of the inquiry undertaken by the House Standing Committee on Education and Employment, it forgets to mention that the substantive bill was not referred to that committee, the report of which deals only with
the Australian Education (Consequential and Transitional Provisions) Bill 2013, and in any case was provided with only two weeks to consider the provisions of that bill.1

1.6 The limited time granted to consider these bills constrains almost completely the ability of this committee to consider evidence provided by submitters and to test the claims made by the government about the operation of bill. The real risk is that blunders and mistakes buried in the provisions will not be discovered by the Parliament until it is too late to fix them.

Initial inquiry into the Education Bill 2013

1.7 When the Australian Education Bill was first referred to this committee in November 2012 it was a mere seven pages of aspiration with no detail. Nevertheless, the committee was given four months to inquire into its provisions and tabled its report in March 2013. Even this period was considered insufficient given the range of issues and stakeholder concerns. Coalition Senators in a dissenting report highlighted concerns with that bill, chief among these was its lack of detail. Particular concerns included:

- Questions about the type of indexation to be used and the impact this would have on independent schools;
- How loadings, which account for variable disadvantage, are calculated;
- The lack of certainty for schools planning their 2014 budgets;
- Additional costs to schools to meet the data collection requirements; and
- The need to establish a 'citizenship entitlement' to quality education.

1.8 The government’s amendments to the bill finally provide some detail on the funding model for schools. Coalition senators are pleased that the government has finally provided detail that was previously so sorely lacking. It is more than ironic, then, that while the detail is now available, the time to examine it has been stolen away by Government senators on this committee, against the wishes of the Senate and in flagrant disregard of good parliamentary practice.

Issues arising from the majority report

1.9 Various matters raised in the majority report deserve comment.

1.10 Early in its report, the majority discussed the urgent need to pass the bills so schools have planning certainty. This fails to link the passing of the bill to agreement from the states and territories, which is crucial for its success. Only ACT, NSW and South Australia have signed up the reforms thus far.

1.11 The report also mentions that the committee previously conducted a 'lengthy' inquiry into the bill when it was introduced last year. We would question what ‘lengthy’ means, given that the bill at that point was only seven pages long, containing very little detail. Even though four months was allowed to consider the bill in its

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earlier form, this bill affects so many people and organisations, this was not considered adequate time. Wide ranging changes such as those contained in the Australian Education Bill need to be considered in depth and with adequate time for those affected to have their voices heard and for the senate committee fully consider the bill.

1.12 Submissions were received from 32 individuals and there was a public hearing on 1 March 2013. The report was tabled 13 March 2013.

1.13 At paragraph 1.23, the committee report discussed the impact of unnecessary regulatory burdens on schools. However there is no mention of Regulatory Impact Statements. The Australian Government and the Council of Australian Governments (COAG) both require that a Regulation Impact Statement (RIS) be prepared for significant regulatory proposals. If this bill does not equal significant regulatory proposals, then Coalition senators ask what does?

1.14 At 1.27, the report argues that to give effect to the bill, amendments have to be made to the Federal Financial Relations Act 2009 relating to Commonwealth national specific purpose payments to states and territories for schools. This measure bypasses the states and increases the power of Canberra. Yet again we see the Federal government seeking to gain further control over the states and territories.

Issues raised by submitters

1.15 In spite of the absurd timeframes imposed, submitters to the inquiry raised many matters that are of concern to Coalition senators. There has not been time to address them all in detail. Some are discussed below, while others are listed toward the end of this dissenting report.

Complexity and lack of clarity

1.16 This was perhaps the most consistent theme running through submissions. It is clear that, despite the large number of detailed provisions contained in the bill, schools looking at projections of what they might receive in additional funding by 2019 are still completely in the dark over what they will receive next year and the year after.

1.17 The Independent Schools Council of Australia was typical of many submitters in their contention that:

The timing of the passage of these pieces of legislation is critical for non-government schools, as current Commonwealth Government funding arrangements expire at the end of 2013. The current lack of certainty regarding future government funding is making it very difficult for schools to undertake critical financial and administrative planning…The transition arrangements for independent schools from the current funding model to the ‘Gonski’ funding arrangements are highly complex and opaque. This level of complexity means it is very difficult for individual independent schools to understand the implications for their school or to responsibly plan for both the short and longer terms.2

2 Independent Schools Council of Australia, Submission 3, p. 4.
1.18 The complexity also extended to indexation, a matter of great concern to many submitters:

The complexity of transition arrangement relates not only to the entitlements of individual schools but also to the levels of indexation for schools. The levels of indexation schools will receive are very much dependent on the particular circumstances of individual schools and the interplay between their levels of Commonwealth and state or territory funding and the relationship between their current entitlement and the schooling resource standard.3

1.19 Criticism of lack of clarity came also from state governments. The Queensland Government pointed out a plethora of detailed examples of lack of clarity, the following being but one of them:

The Bill sets out a complex set of authorities and relationships, which is compounded when overlaid with participating and non−participating status. In parts, the Bill switches between concepts of 'participating schools' and 'participating states and territories'.4

1.20 Criticisms over lack of clarity extended to seemingly every aspect of the legislation, from major matters such as use of the term 'participating', through to the unclear definition of full-time and part-time students, and 'schools as opposed to campuses'.5

1.21 The Government should release the year by year figures for the next three years where Commonwealth education funding actually goes backwards in every state and territory. While the government frequently claims that it is committed to adequate funding for education across Australia, this is difficult to reconcile with the fact that it has projected cuts to education of $325 million over the next four years.

Lack of completeness

1.22 Shockingly, it appears that the Department of Education, Employment and Workplace Relations has been unable to finalise individual school funding calculations, or decide what data is to be used in making some of these calculations. The Australian Parents Council noted that in some instances this work is a 'guesstimate'.6 This makes the measures contained in the bills very high-risk to implement in 2014, potentially subject to large cost blow-outs or budget variations due to incomplete work costings. It is also expected that many non-government schools may attempt to appeal their 2014 estimates, given the data is so rubbery. The

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3 Independent Schools Council of Australia, Submission 3, p. 7.
5 See, for example, Christian Schools Australia, Submission 5, p. 2. See also, for example, Catholic Education Office of Western Australia, Submission 9, p. 1; National Parents Council, Submission 16, p. 2.
6 Australian Parents Council, Submission 16, p. 4.
revelations contained in the submission from the Australian Parents Council are worth quoting at length:

The proposed funding model is untested, but the inclusion of its technical aspects within the Bill instead of within its accompanying Regulations will mean that any anomalies that are discovered will be inordinately difficult to correct. Due process would have seen the views of the National Audit office sought re the new model and its review and amending during the years ahead.

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Concerns have been raised about the reliability of some of the data that determines the operation of the funding model. We have been told that for some purposes 2010 data will be used and for others 2011 data is favoured. DEEWR and many other stakeholders have openly commented that some of the data sources are not sufficient and needing development. The phased approach to data collection and review is over 6 years and so the model in each year will have iterations that affect schools and students. These again are untested and the many negative ramifications mean the onus will revert back onto non-government school parents to make up any resulting funding shortfalls through school fees.

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We are also unsure of the possible effects that may result from the rolling in of National Partnership funding into the SRS. Might individual schools appear to gain money but in fact lose with the targeted programs being removed? Also, might some schools be discriminated against on the basis of whether they received National Partnership funding in 2011 as opposed to 2012, resulting in their overall funding amount being inflated in comparison to schools where the reverse may have occurred?

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There appears to be some question as to how schools deemed to be above their School Resourcing Standard (SRS) will have their 2013 funding calculated to identify their 3 per cent indexation rate (to be applied to their funding for 2014). We have been told this will be ‘based on 2011 data’ plus an estimate of the average government school recurrent cost plus what appears to be a ‘guesstimate’ of what their states or territory might contribute.7

Lack of consultation

1.23 A number of submitters informed the committee that they had been cut out of consultations on the development of the detail contained in the amended bill, detail which is critical to whether the bills gain support. The Australian Association of Christian Schools, for example, pointed out that the Government sought to consult with a body which lacked the authority to act on behalf of all independent schools:

7 Australian Parents Council, Submission 16, p. 4.
AACS (and all other peak bodies in the independent non-government school sector other than ISCA) have been cut out of discussions and consultation processes by the confidentiality agreement that was demanded from ISCA on the assumption that ISCA was a legitimate representative of independent non-government schools – an assumption that is totally invalid. ISCA has no authority to negotiate or agree to anything on behalf of individual schools or systems in the independent school sector. It is our understanding that ISCA has made that point clear to the government…In what can only be described as a totally unsatisfactory, non-transparent and secretive process, decisions have been made that have huge financial and operational implications for our schools – many of which are not at all favourable to our schools.\(^8\)

**Breaches in previous undertakings by the Commonwealth**

1.24 Coalition senators were alarmed to hear that the Commonwealth had breached its previous undertakings to state governments in respect of the reach of the reforms and the extent to which they represent a shift in responsibilities from states and territories to the Commonwealth. The Tasmanian Government, which Coalition senators note is a Labor government, submitted that:

> The Bill, as drafted, ignores the roles and responsibilities as agrees, providing the Commonwealth with the ability to impose prescriptive policy and operational requirements on schools systems and schools (both government and non-government) that participating jurisdictions must implement as a condition of any Commonwealth financial assistance for schooling…The Bill also goes beyond the National Education Reform Agreement, and the existing National Education Agreement (NEA) by requiring States and territories not signing up to the NERA to implement the national policy initiatives and ongoing policy requirements as a condition of accepting ongoing Commonwealth funding for schooling under the NEA. This arrangement has never been previously discussed by the Commonwealth with Tasmania.\(^9\)

1.25 Coalition senators also note indications from the Victorian Government that it may challenge the constitutional validity of the bills on the basis that they are unduly wide and intrusive, and would have an unprecedented impact on federal-state relations.\(^10\) The potential disruption from a constitutional problem at this late stage is enormous. Such a threat should have been resolved well before now, but the Government’s insistence on ramming through the measure has obviously involved cutting important corners.

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8 Australian Association of Christian Schools, Submission 1, p. 2. See also, for example, Christian Schools Australia, Submission 5, p. 2; Australian Parents Council, Submission 16, p. 1.

9 Tasmanian Government, Submission 12, p. 2.

**Timing**

1.26 Numerous submitters pointed out the implications of the government's mismanagement of timeframes for the legislation on the practical operation of their schools, with some potentially facing closure:

> The notice being given to schools to enable them to undertake their financial and administrative planning and to enable them to give adequate notice to parents re 2014 fees; to honour terms of contractual agreements with staff; to exercise due diligence in relation to loan conditions, etc. is seriously inadequate in the case of the non-government schools sector. This type of planning that needs to be undertaken in non-government schools prior to notifications to parents and staff requires substantial lead time. For schools that have little or no surplus to cover unforeseen circumstances (ie a new set of rules), there is a genuine risk that some may face closure.\(^{11}\)

1.27 There are significant indications that the government's mismanagement of this process has resulted in a flawed bill:

> While the amended Bill provides significantly more detail than previously, there still remain significant levels of detail which have not been included in the Bill. Some of the lack of detail can be attributed to the fact that the Bill has been drafted to accommodate that the deadline for states and territories to sign up to the ‘Gonski funding model’ (30 June) is after the last possible date for the passage of the Bill in the current Parliament on 27 June 2013. This means that the Bill cannot include details of the agreements negotiated between the Commonwealth and state and territory jurisdictions.\(^{12}\)

**School autonomy**

1.28 Many submitters expressed concern at what they saw as the bills' infringement on individual autonomy of schools and school systems. The Association of Heads of Independent Schools of Australia was alarmed that:

> With requirements for such things as school improvement plans, principal and teacher performance and development processes devolved to regulations, it is difficult for AHISA to ascertain how onerous or prescriptive these requirements are to be. Additionally, AHISA cannot judge whether any such requirements will have the effect of limiting the capacity for principals to exercise empowered school leadership which makes decisions based upon a thorough knowledge of schools, students and their communities, and what will work best in a particular setting. Accordingly, AHISA cannot be satisfied that such requirements may not be overly bureaucratic, centralised and have the effect of stifling initiative,

\(^{11}\) Australian Association of Christian Schools, *Submission 1*, p. 3. See also, for example, Independent Schools Council of Australia, *Submission 4*, p. 6.

\(^{12}\) Independent Schools Council of Australia, *Submission 4*, p. 5.
creativity and the development of best practice at a school level. This is a matter of particular concern for AHISA.\textsuperscript{13}

\textbf{Inappropriate delegation of power}

1.29 Coalition senators are deeply concerned by the inappropriate delegation of legislative power in the Consequential and Transitional Provisions Bill, following its examination by the Senate Standing Committee for the Scrutiny of Bills, which reported that:

\textquotedblleft[Schedule 2, item 12]\ldots provides that before 1 January 2015 regulations may be made to prescribe modifications to the Australian Education Act 2013 that are necessary to deal with transitional matters. Subitem 12(3) provides that the requirement to consult the Ministerial Council under subsection 130(5) of the Australian Education Act 2013 does not apply in relation to regulations made before 1 January 2014.\textsuperscript{14}\textquotedblright

1.30 The Scrutiny Committee observed that where power is given to a Minister to amend legislation, justification should be provided in the Explanatory Memorandum. However, no explanation has been provided in this instance.

1.31 This provision further entrenches the inappropriate expansion of the federal Minister’s powers, and releases the Minister of the obligation to consult with the Ministerial Council. It is important to remember that education is a state responsibility, and the Ministerial Council has representatives from each state and territory. It is preposterous to release the Minister from his or her obligation to consult with states and territories. Further, this provision circumvents the important oversight role of Parliament as it gives the Minister unfettered discretion to amend the legislation. Unfortunately this provision is further proof that the Labor government is doing all it can to avoid legislative oversight and accountability, and has little respect for the important role that the states and territories play in developing education policy and reform.

\textbf{Students with Disability}

1.32 Coalition Senators are concerned about the lack of consideration in the bills to students with disability in Australia’s educational system.

1.33 According to a submission from Children with Disability Australia (CDA) there is nothing specific in the Bill or the Regulations that creates concrete expectations for education systems to deliver fully on the NDS, or Australia’s obligations as a signatory to the United Nation Convention on the Rights of People with Disabilities (Article 24), Convention on the Rights of the Child (Articles 2, 23, 28 & 29).\textsuperscript{15}

\textsuperscript{13} The Association of Heads of Independent Schools of Australia, \textit{Submission 8}, p. 4.

\textsuperscript{14} Senate Standing Committee for the Scrutiny of Bills, \textit{Alert Digest No. 6 of 2013}, 19 June 2013, p. 7.

\textsuperscript{15} CDA, \textit{Submission 13}, p. 5.
1.34 Under the proposed legislation students with disability appear to be at a distinct disadvantage in the reform process, with work on the disability loading and associated policy running one year behind the rest of the reforms. While new models of funding in all other areas of education commence in 2014, the proposed funding model for students with disability will commence in the 2015 school year. According to CDA this delay poses a significant risk to achieving the required reform outcomes for students with disability:

Because of the practical uncertainty about how the disability funding model is going to be developed, CDA believes it is imperative that both the Bill and the Regulations are strengthened at the outset to clearly state the reform outcomes, educational practice expectations and accountability requirements for education systems for students with disability. It is absolutely critical that students with disability are not left behind in this reform as a consequence of cross jurisdictional inertia.\(^\text{16}\)

Evidence arising from the References Committee's hearing into NAPLAN

1.35 Coalition senators note that evidence relevant to this inquiry was taken at the References committee's hearing into NAPLAN on 21 June 2013 in Melbourne. The committee hearing raised the issue of different testing measures and their ability to give a true picture of educational outcomes.

**GAVRIELATOS, Mr Angelo, Federal President, Australian Education Union**

We have argued—and there is a lot of international evidence that shows this, and constant reference to PISA by politicians and others attests this—that sample testing cannot give you information and data that goes to the question of 'the health' of your education system.\(^\text{17}\)

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**HART, Mr Norm, President Australian Primary Principals Association**

(Re: publication of NAPLAN results on a website)

The fact that the data is published in a way that allows for league tables to be formed, I think, is abhorrent.

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I think they are just so wrong that they should be stopped because a high NAPLAN score does not equal high efficiency. It does not equal high quality.

…

I think NAPLAN could well be used along with some other markers of school quality, effectiveness and educational achievement.\(^\text{18}\)


\(^\text{17}\) Mr Angelo Gavrielatos, *Proof Committee Hansard*, 21 June 2013, p. 15.

Question: With the current funding model under discussion at a federal level, do you have any concern that measurement tools like NAPLAN, and NAPLAN specifically, will be used within the new funding model?

Mr Watt: We would be very concerned if, for example, the tests are actually supposed to be diagnostic.

The success that we should really be looking for is the individual success of kids. These snapshots give us a general idea. The success of individual kids is much broader, as I referred to earlier, than literacy and numeracy. We want to create kids who are fantastic artists or great musicians; kids who have an incredible capacity to sketch, to sing or to dance or to be a geographer or to be an economist or whatever. So, whilst the literacy and numeracy is part of that, there is a much broader set of measures that should be going on, and that is about individual success and the capacity of people to contribute to their own life but also to the life of the broader community.

PISA gives us a snapshot of how we are going generally. We have got take other things into context. Our view would be that we can do a test like that nationally, which gives us a general picture of how we are heading. That would be a way of ensuring there is some level of accountability for how those dollars are being expended.19

Other matters raised by submitters

1.36 Many other matters were raised by submitters, each of which deserves detailed consideration and response from the Government. These include:

- Cost of data collection20

- Transitional arrangements for non-government schools in non-participating states21

- Inequity and lack of transparency between states (particularly in relation to the impact on non-government schools)22

- Unreliability of data underlying modelling23

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20 Australian Association of Christian Schools, *Submission 1*, p. 2.

21 Australian Association of Christian Schools, *Submission 1*, p. 3; Independent Schools Queensland, *Submission 10*, p. 3.

The unprecedented expansion of the Federal Minister's powers

Problems with indexation, particularly concerns that indexation is based on untested assumptions

Overly rigid funding formula

Lack of direct provision for students undertaking distance education

Problems with the loadings arrangements for students with a disability.

Conclusion

The Coalition is a strong supporter of government, non-government and independent schools. Coalition senators are all too aware of the importance of meaningful and effective reform to the Australian education system, but are not willing to endorse such wholesale (and very big ticket) changes without scrutiny. It would seem that the need to govern prudently, carefully and with due consideration is a foreign concept to this Government.

Labor is rushing these bills through the Parliament without proper consideration of their impact on schools, families or students. Whereas the bill, when it was first examined by this committee, covered only 4 pages and contained so little detail that the committee's evaluation of it was seriously hampered, the bill was at least subject to a four month inquiry. The detail has at last been developed, and the amended bill (not to mention its accompanying consequential provisions bill) has been transformed into documents totalling 130 pages, including 71 pages of amendments. While the Senate sensibly allowed the committee around eight weeks to conduct its inquiry, Labor used its numbers on the day the bills were referred to garrote the inquiry process, insisting on submissions being lodged within 3 days, ruling out any public hearing, and forcing an absurd reporting date 4 business days from referral. The cynicism and contempt for stakeholders demonstrated by the Government in taking these actions is truly shocking, and deserves nothing short of complete and utter condemnation.

23 Australian Association of Christian Schools, Submission 1, p. 3; Independent Schools Council of Australia, Submission 4, p. 7; Association of Heads of Independent Schools of Australia, Submission 8, p. 3; Australian Parents Council, Submission 16, 4.


25 Australian Association of Christian Schools, Submission 1, p. 3; Queensland Government, Submission 3, p. 2; Independent Schools Council of Australia, Submission 4, p. 7; Independent Schools Queensland, Submission 9, p. 3; Australian Parents Council, Submission 16, 4.

26 Australian Association of Christian Schools, Submission 1, p. 2.

27 Isolated Children's Parents' Association of Australia, Submission 2.

28 Children with Disability Australia, Submission 13.
1.39 If the new education funding model expressed in these bills is the panacea that Labor claims it is, it is not clear to the Coalition why the government is hiding from proper Parliamentary scrutiny. The approach taken by Labor is not a measured or responsible way to run a government or manage education policy across Australia.

1.40 This point was not lost on submitters, many of whom criticised the timeframes they were subject to.29 The Catholic Education Office of Western Australia submitted that:

A sound policy and legislative regime would not force these Bills through parliament without first correcting the obvious flaws and a proper discourse with those required to implement the legislation. We are legislating for enduring change and improvement in our schools and impacting the lives of millions of young Australians. They deserve their parliamentary representatives to reject Bills until they have been appropriately amended.30

**Recommendation 1**

1.41 Coalition Senators recommend that the bills not proceed, pending detailed examination in the 44th Parliament.

**Senator Chris Back**
Deputy Chair

**Senator Bridget McKenzie**