

## Chapter 2

# Educational Reform and Educational Accountability Legislation and Policy in the US, England and Australia

### The Road to Educational Reform Through Educational Accountability

During the last decades of the twentieth century and the first decade of the twenty-first century, governments in many countries have instituted educational reform, through legislation and policy, in order to improve student outcomes. The reason most often used to advocate for such reform is to provide transparency that taxpayer funds are being used effectively—accountability requires not only accounting for proper expenditure of funding but also student achievement outcomes for all students. The following statements are typical justifications for educational accountability:

US: "... holding schools accountable for student performance is one part of a comprehensive set of interlocking and mutually reinforcing policies." (EdSource 2011)

England: "... a sizeable number of schools... do not provide good value for money" (HCESC 2006, p. 44).

Australia: "The community has a reasonable expectation that the massive public and private investment in school education should lead to appropriate improvements in skill levels and general educational attainment of our young people" (Kemp 1999).

The general consensus is that schools should be

properly accountable to pupils, parents and the taxpayer for the achievement and progress of every child, on the basis of objective and accurate assessments (DfE[UK] 2010a, citing Gove, M., Secretary of State, Department of Education).

International comparative indicators—for example, comparative national performance on international education testing programs such as the Program for International Student Assessment (PISA)—have also influenced the introduction of reform and accountability policies around the world. PISA, run through the Organisation for Economic Co-operation and Development (OECD) Directorate for Education, assesses samples of 15-year-old students from more than 60

countries in reading, mathematics and science (see, e.g., OECD 2010).<sup>1</sup> Countries have considered major changes to education policy on the basis of such outcomes (see, e.g., Tveit 2009). Each of the countries considered in this book has reacted to PISA outcomes, regardless of the quality of its performance:

US: “PISA results show need for high school reform—US 15-year-olds outperformed by other countries in mathematics, problem-solving” (DoE[US] 2004).

England: “PISA slip should put a rocket under our world-class ambitions and drive us to win the education space race” (Gove 2010).

Australia: “While Australia’s education system is in good shape, these results reinforce the need to continue with the reforms that will ensure our students are competitive in the future” (Garrett 2010).

The collection and public reporting of educational outcomes data and implementation of educational accountability reform agendas have also been identified as drivers of educational improvement:

... the OECD has concluded that external accountability is a key driver of improvement in education and particularly important for the least advantaged (DfE[UK] 2010a).

The accountability data collected from schools in the US England and Australia for public reporting include a complex variety of indicators about the nature and structure of a school, for example, the number of qualified teachers, student attendance and school completion rates. However, as a result of reform and accountability policies, each of the jurisdictions of the US, England and Australia has also implemented legislation requiring educational accountability and the systematic assessment and public reporting of student educational achievement. In such legislation, performance expectations are specified. For example, common to each country is a stated (and legislated) expectation that most, if not all, students will attain the expected minimum standards in subject areas that will be assessed for educational accountability purposes.<sup>2</sup> Despite the range of other information provided, system level assessments of student achievement have become the central focus of reported data for educational accountability purposes.

While the educational reform intentions of the US England and Australia are similar, differences in educational and constitutional contexts of these three countries mean that the nature of education and educational accountability legislation, policy and practice is different. The details of these educational and constitutional contexts are useful for understanding these differences and their resultant impact for educational provision and accountability.

*The US Context:* The US Constitution of 1787 does not provide constitutional responsibility for education to the federal government; the absence of a specified

<sup>1</sup> Note, PISA assessments do not include students who are “intellectually or functionally disabled” and cannot “perform in the PISA testing situation” (OECD 2009, p. 65).

<sup>2</sup> No Child Left Behind Act of 2001 (US); 90% of students to reach goals by 2020 (England) (Isaacs 2010, p. 323); “every child leaving primary school should be numerate, and be able to read, write and spell at an appropriate level” (Australia) (DEETYA 1998).

federal responsibility in any area reserves power in that area to the states (Amendment X).<sup>3</sup> Education is an area that is not specified as a federal responsibility in the US Constitution. Education is therefore predominantly the purview of each of the 50 states of the US.

However, education is an expensive service and states are reliant on federal funds to run many programs. The US federal government has increasingly used the “power of the purse” and availability of federal funding programs to promote national education policy agendas. To receive Title 1 funds under the No Child Left Behind Act of 2001 (NCLB) (2002), funds that are essential for state education to function, states must agree: to participate in the federal National Assessment of Educational Progress (NAEP) with common external assessments administered to samples of students in each state to gauge state performance (NCLB 2002, s 1111(c)(2)); to undertake annual assessments of students in Grades 3–8 and once in Grades 10–12 against “challenging” achievement targets (s 1111(b)(3)(C)(vii), s 1111(b)(1)(A)); and to map *Annual Yearly Progress* (AYP)<sup>4</sup> of students against targets (s 1111(b)(2)(B)).

States in the US have undertaken work to develop Common Core State Standards in English and Mathematics for Kindergarten through Grade 12. The inclusion of the term *State* in the initiative is important as the work is identified as a state-led, and not federal, initiative (CCSSO and NGA 2010a).<sup>5</sup> At the time of writing, 86% of US states (43/50) have formally adopted the draft standards (CCSSO and NGA 2010b).

One of the arguments for consistency of standards, in addition to having high and appropriate expectations for all students, is the possibility of pooling resources across US states “to develop a shared set of high-quality tests to better evaluate student progress” for educational accountability purposes (CCSSO and NGA 2010c). Common assessments are currently under development through federal government Race to the Top funding,<sup>6</sup> which will allow greater comparability of school performance across states. While the US federal government is not involved in the development of the common standards and assessments, clearly the power of the purse and issues in comparability of state reporting have created the pressure to move to some nationally coherent curriculum standards.

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<sup>3</sup> Amendment X: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

<sup>4</sup> Annual Yearly Progress (AYP) can be considered the driver of educational accountability in the US. The focus in state and school reporting is not just the absolute achievements of students but the expectation that schools will be able to map the develop of students against grade-level curriculum standards as they progress through schools. Testing occurs at the end of each grade for public elementary and secondary schooling.

<sup>5</sup> The NGA and Council of Chief State School Officers (CCSSO) expressed concern that one governance suggestion for the Standards involved the federal government in the governing structure: “CCSSI is a state-led initiative and needs to remain so.” See <http://www.corestandards.org/articles/9-nga-and-ccsso-comment-on-ccssi-governance-suggestions>.

<sup>6</sup> See <http://www.ets.org/k12/commonassessments>.

*The English context:* In contrast to US state curriculum responsibilities and development, the Education Reform Act 1988 (UK) (Reform Act)<sup>7</sup> in England does establish a national curriculum across schooling for the Early Years Foundation Stage and Key Stages 1–3 (s 4).<sup>8</sup> The National Curriculum comprises both content and assessment expectations.

Content

the core and other foundation subjects

the knowledge, skills and understanding which pupils of different abilities and maturities are expected to have by the end of each key stage (... attainment targets)

the matters, skills and processes which are required to be taught to pupils of different abilities and maturities during each key stage.

Assessment

the arrangements for assessing pupils at or near the end of each key stage for the purpose of ascertaining what they have achieved in relation to the attainments for that stage (s 2(2)).<sup>9</sup>

The governing body of every maintained school in England, that is, a school receiving public funding, is obliged to “enter [its] pupils for prescribed public examinations” (s 117). The mandated national assessments have been modified since the introduction of the Reform Act. By 2010, the major accountability focus was implementation of the national external assessments in English and mathematics at the end of Key Stage 2 (for 7-year-olds) as well as school-based assessments in these and other subject areas of the national curriculum (Isaacs 2010).

*The Australian context:* The place of educational policy in Australia is less clear than in the US and England. While the Australian Government has no specific constitutional responsibility for education,<sup>10</sup> a reserved power to the states for unstated responsibilities is not in the Australian Constitution of 1901 and a doctrine of implicit reserved power is not held. Therefore, in areas such as education, there is an untested ambiguity of who has responsibility, with many policy documents indicating that education is a state and territory<sup>11</sup> policy matter. However,

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<sup>7</sup> The United Kingdom (UK) consists of England, Wales, Scotland and Northern Ireland. While the Education Reform Act 1988 is designated as UK legislation, as noted, education practices and policy in Wales, Scotland and Northern Ireland diverge considerably from practices in England, especially in areas of accountability and assessment practices. The Reform Act specifies England and Wales. However, practice in Wales is also different from that of England. Discussion in this book focuses on English practice within the wider legislative framework.

<sup>8</sup> The Qualifications and Curriculum Development Agency (QCDA) (UK) has national curriculum details (<http://www.qcda.gov.uk/25.aspx>). The change in government in England in 2010 has led to changes in agency structures and the QCDA is closing as part of government educational reforms.

<sup>9</sup> It should be noted that with the change of government in England in 2009, many web sites indicate that changes are occurring. This Act may not be applicable from 2011 on.

<sup>10</sup> Both Australia and the US have written constitutions, a source of difference from England.

<sup>11</sup> Australia is a Commonwealth and federation of six states and two territories, hereafter referred to as states.

as in the US the Australian federal government has used the power of the purse, obtained through Australia's centralized income tax collection that is dispersed to the states through funding provision acts, to legislate considerable centralized control in education policy (Cumming and Mawdsley in press). Thus, national educational accountability legislation has been enacted through such general funding provision acts. Currently, in order to receive Australian federal and state government public funding,<sup>12</sup> available to both government and private schools, including schools with religious affiliations, all school students in Years 3, 5, 7 and 9<sup>13</sup> must participate in annual common national tests known as the National Assessment Program—Literacy and Numeracy (NAPLAN).<sup>14</sup> The provisions acts and new national agreements by the federal minister and ministers for states and territories have also been the source to progress national curriculum development in a number of core subject areas (Schools Assistance Act 2008 (Cth) s 22). However, as such a national curriculum is not yet in place, the national literacy and numeracy tests for accountability purposes are based on nationally agreed minimum expected standards for students at these Year levels (Schools Assistance Act 2008 (Cth) s 17; COAG 2009).

Accountability policies similar to those in existence in the US England and Australia have been developed and legislated in other countries. However, it is clear that these three national governments have policies of educational accountability tied to curriculum content delivery and the reporting of student achievement outcomes. England currently has a national curriculum, Australia has a longstanding state curriculum and is developing a national curriculum, and the US has state-mandated curriculum content,<sup>15</sup> or standards, with developing common state standards. In all three countries, educational accountability legislation focuses on the core learning areas of reading or language arts and mathematics or

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<sup>12</sup> The Australian funding Acts were the Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Act 2004 (Cth) which applied to both government and non-government schools, replaced by the Schools Assistance Act 2008 (Cth), which applies only to non-government schools, and with financial agreements between the federal government and state governments involving educational accountability now in a National Education Agreement of the Council of Australian Governments (COAG 2009). The 2004 act set the clear expectations for all schools for educational accountability testing and reporting. The Schools Assistance Act 2008 (Cth) requires schools to participate in national student assessments as set by regulations (s 17) and to contribute to national reports on outcomes (s 18), including but not limited to the current National Assessment Program—Literacy and Numeracy (NAPLAN) assessments. The COAG National Education Agreement (COAG 2009), as part of the Intergovernmental Agreement on Federal Financial Relations, identifies student performance data on the NAPLAN assessments as performance indicators (Schedule C).

<sup>13</sup> As discussed later, Australian school cohorts are based on social or age-level cohorts, not curriculum level. Hence the term Year level is the official term to describe these groupings.

<sup>14</sup> Known colloquially in schools as NAPALM (in reference to an infamous flammable liquid used in warfare).

<sup>15</sup> The US refers to curriculum as *standards* or statements of curriculum content. Here, standards will be used to refer to levels of achievement or qualities of performance and the term curriculum will be used to refer to the content that it is expected will be taught and learnt in schools.

numeracy, with differential emphasis on science. Of course, the realization of educational accountability goals, and the crux of educational accountability assessment and reporting lie in the educational achievement standards that are set and the performance indicators established for school and student success in meeting these standards. A further issue is the manner in which achievement is assessed. These are the practical issues in implementation of educational accountability legislation and policy for students in general explored in the following section.

## **Translating Legislation and Policy into Practice: Setting National Performance Standards for Educational Accountability**

### *The US*<sup>16</sup>

In the US where the federal government does not have Constitutional power to establish a national curriculum and national curriculum performance standards comparable to national approaches in England and Australia, the No Child Left Behind Act of 2001 (NCLB) (2002), as noted, requires states, in order to receive grants to improve basic programs, to set “challenging academic content standards” (s 1111(b)(1)(A)) for all students (s 1111(b)(1)(B)) and to

demonstrate that [they have] developed [and implemented] a single, statewide State accountability system that will be effective in ensuring that [all education providers] made *adequate yearly progress* [emphasis added] (s 1111(b)(2)(A)(iii)).

Students’ progress in mathematics, reading (or language arts) and science is the primary focus stated in NCLB (s 1111(b)(3)(A)). Under NCLB, US states both set the curriculum performance standards they wish to use and monitor performance improvement against these standards in order to gain federal funding. While NCLB does not mandate the form of assessments to be used for state and school reporting, paper-and-pencil standardized external tests, particularly using multiple choice items, are the most common form of testing due to their ease of administration for large numbers of students. As noted, a goal of the new common state standards has been not only to provide common appropriate standards across states but also to allow development of common test instruments, which are expected to follow similar formats but perhaps with computerized delivery. Testing occurs for each grade level to allow tracking of Adequate Yearly Progress (AYP).

Performance on NCLB-mandated outcomes in the US is reported by each state (e.g., DoE[US] 2008), with school districts also publishing reports for each school

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<sup>16</sup> It is recognized that educational practices across US states are diverse. The focus of discussion in this book is federally mandated requirements on which federal funding to states is contingent.

showing comparative performance with state averages, NCLB expectations, and other districts (NCLB 2002, s 1116(a)(1)(C)). Value-added data on student outcomes may also be reported (see, e.g., Clark School 2010). The key performance indicator is the percentage of students attaining a *proficient* standard in each grade, with reporting also of students at *advanced* levels. Student performance results are high stakes for schools in the US under NCLB. One consequence is that published results may influence parents in school selection for their children. However, most importantly, schools that do not meet their AYP for at least 2 years in a row are placed under a school improvement plan by the local education agency; students enrolled in the school must also be offered the chance to transfer to another school served by the agency (NCLB 2002, s 1116). Failure to meet educational accountability goals for longer than 2 years can lead to changes in governance such as change of principal, conversion to a charter school or privatization (s 1116). Performance in educational accountability testing can also have critical consequences for individual students in the US with several states using student outcomes for grade promotion or retention decisions (Penfield 2010, p. 110), and also for high school graduation certification.

As US states set their own “academically-challenging” curriculum targets and implement state-based assessments to measure these, comparability of state outcomes is difficult (USDE et al. 2007). Certainly “large discrepancies” have been noted in NAEP analyses in the proportions of students achieving proficiency on state curriculum standards compared to NAEP outcomes, differences that could be due to the content standards, the testing procedures, or both (USDE 2007). The major focus for parents and schools is within-state comparisons. However, the increase in comparability available through common state standards and common assessments is likely to increase the high-stakes nature of cross-state NCLB accountability outcomes for state authorities and schools.

## England

In England, common curriculum and public examinations, most notoriously the historical O(rdinary) and A(dvanced) level exams,<sup>17</sup> have been the foundation of England’s educational assessment tradition. Public examinations taken by students who studied selected subjects at O or A levels were externally set and marked by examination authorities, requiring students to produce texts, create essays or solve problems against the common curriculum. By 2010, the educational accountability focus has shifted from a previous focus on the end of secondary school outcomes for students (Key Stage 5) to the national curriculum assessments in English and

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<sup>17</sup> General Certificate of Education (GCE) O (Ordinary) exams taken by students in Year 10 were replaced by the General Certificate of Secondary Education (GCSE) in 1988. GCE A (Advanced) level exams taken at Year 12 remain the gold standard in English education for high school graduation and university entrance and are usually referred to simply as A-levels.

mathematics at the end of Key Stage 2 for 11-year-olds (the end of elementary schooling). Key Stage 2 assessments incorporate both school-based assessments by teachers in several subject areas and standardized external assessments in English and mathematics (Isaacs 2010). The Key Stage 2 external tests are similar to the multiple-choice paper-and-pencil tests of the US and are completed by students under controlled conditions on the same day throughout England.

England in general practices social promotion in schooling, the maintenance of students with age-group peers, as opposed to the grade retention practices common in the US. Therefore, the stated expectation in England is that students in any single year level may be working at different Key Stage levels.<sup>18</sup> The teacher is expected to provide appropriate curriculum and instruction for each student, and standards are set in terms of curriculum outcomes specified with each Stage, and not at grade level. However, external reporting of student outcomes at the end of Key Stage 2 for educational accountability purposes is high stakes for English schools. Results for 11-year-old students achieving the expected outcomes (Level 4) and above for Key Stage 2, similar to the proficient and advanced standards for AYP in the US are publicly reported for the external tests in English and mathematics and the teacher assessments in English, mathematics and science.<sup>19</sup> Student results are aggregated to “indicate the level of attainment of individual pupils and... the level of performance of schools and local authorities in England” (Ofqual 2010, p. 5).

School performance data, published by region by the Department of Education, provide parents, and the media, with the capacity to sort schools’ performance on different performance indicators. “Contextual value-added” scores are provided to show the school effect “eliminating the impact of external factors...” (DfE[UK] 2010b, p. 6).<sup>20</sup> A school’s overall performance is judged on a four-point scale from 1: *Outstanding* to 4: *Inadequate*. Schools at risk may be turned into academies<sup>21</sup>—managed schools similar to US charter schools—or face closure (Education and Inspections Act 2006 [UK] ss 463, 482). In English schools, then, the standardized external tests for Key Stage 2 are high stakes for schools in

<sup>18</sup> Note Key Stage curriculum do not equate to a single grade or year level.

<sup>19</sup> While England also had science testing at Key Stage 2, this was discontinued in 2010 following an expert report showing that while science test scores were improving, the quality of student scientific learning was decreasing (Bevan 2009).

<sup>20</sup> School outcomes using value-added analyses which aim to control for differences in student cohort variables are also published in the US. While not a point of discussion in this paper it should be noted that different value-added analytic techniques exist and the choice of model and variables included in such analyses are critical to reported outcomes. These have been the focus of considerable discussion (see, e.g., Ferrão and Goldstein 2009). See also, e.g., league tables created and published by *The Guardian* <http://www.guardian.co.uk/education/school-tables>.

<sup>21</sup> New academies must agree to maintain broad enrolment patterns for students, including students with disability, although their focus is improved outcomes. The closure of schools and establishment of academies have led to legal challenges by parents in England concerned with possible restriction of student enrolment and exclusion of students with disability (see, e.g., *R(Elphinstone)* 2008).



England. They can also be important for students if they are used by prestigious secondary schools for student selection.

## *Australia*

In Australia, the curriculum has historically been developed at state level. To be accredited as a school and to receive public funding, all schools in a state must implement an approved curriculum. Each state has school-based assessments of the curriculum, with or without some external public examination component in the final year of secondary schooling for student certification with some similarity to the English model. No state system-level assessment of curriculum occurs at any other year level.

Historically, in contrast to the US and England, Australia's educational accountability assessments in literacy and numeracy have been independent of state curriculum expectations. Past practice and the current national literacy and numeracy accountability assessment, NAPLAN, have evolved from agreements by the federal and state ministers of education from the 1989 Hobart Declaration on Schooling (MCEEYTA 1989), and the 1999 Adelaide Declaration on National Goals for the Twenty-First Century (MCEETYA 1999), through the most recent Melbourne Declaration on Education Goals for Young Australians (MCEEYTA 2008). Originally to ensure that basic educational outcomes were being achieved by all students in Australian schools, national statements of *minimum* standards that *all* students were expected to achieve—the Literacy and Numeracy Benchmarks for Years 3, 5, 7 and 9 (Curriculum Corporation 2000)—were developed. State educational accountability performance indicators to meet funding requirements were the percentage of students in the state who met or exceeded these benchmarks (COAG 2009, C-25). Until 2008, the states developed and administered the assessments of student attainment of the literacy and numeracy benchmarks with statistical equating processes used to provide comparable state performance.

The current NAPLAN testing is based on National Statements of Learning for English and mathematics developed by joint agreement of the state ministers in 2005 to inform the development of the national curriculum (Curriculum Corporation 2005). While the statements are jointly agreed by the different states to represent standards commonly present in the states' curriculum, they are not clearly curriculum-based. The process of matching the national statements is backward mapping to the curriculum, and not forward mapping from the curriculum. Work is underway to determine new standards based on the national curriculum that students are expected to achieve by the end of Years 2, 4, 6 and 8 for future implementations of NAPLAN (ACARA n.d.).

Australian schooling, similar to England, operates on a social cohort principle, with the consequent expectation that students in any Year level may be working across a range of curriculum and achievement levels, and that teachers will be teaching and assessing the achievement of diverse student groups (Cumming 2010;

Cumming and Maxwell 2004). The new national curriculum maintains this approach acknowledging that teachers will need to take into account the different rates at which students with “diverse learning needs develop” (ACARA 2010, p. 14). However, implicitly, the national curriculum expectation is that all students in a Year level will be achieving the national literacy and numeracy benchmarks that currently underpin the NAPLAN tests.

NAPLAN tests are paper-and-pencil tests with predominantly multiple-choice format (excluding writing and spelling). NAPLAN outcomes are reported publicly for every Australian school through a federally established web site, MySchool (<http://www.myschool.edu.au>), showing not only the percentage of students meeting the described national minimum standards but also a six-band distribution of test results for a Year level, statistically linked across ten bands overall covering Years 3–9.<sup>22</sup> Value-added analyses are not undertaken but average 2-year student gains are reported.<sup>23</sup> Individual school NAPLAN outcomes are compared with those of *statistically similar schools* across Australia using a formula based on a range of demographic and financial information.

States in Australia have always been sensitive to comparative performance on the literacy and numeracy benchmarks. However, the online publication of NAPLAN performance data has greatly increased the high-stakes nature of NAPLAN outcomes for individual schools. As in the US and England, funding implications on outcomes flow to the states and indirectly to schools, but the manner in which funding is affected is less transparent than in those two countries. NAPLAN outcomes are currently of no consequence for individual students.

## Summary

In summary, legislation in each of the US England and Australia has led to policy and practices implementing and reporting assessments of student achievements in English and mathematics for school educational accountability purposes. While both England and Australia have external testing at a national level, the US must still consider state performance against state goals. Australia appears to have reached the highest level of public comparison of school performance with other schools’ performance. In all three countries, outcomes on a small range of achievement tests drive public perception of school quality.

Despite the quite different curriculum and examination processes in the three countries, results for external standardized tests in English and mathematics (or

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<sup>22</sup> See <http://www.myschool.edu.au> for descriptions of bands and performance levels.

<sup>23</sup> For example, average gains are reported from Year 3 in 2008 to Year 5 in 2010 for students in the school who were in both cohorts at the respective test administrations. It is noted on the MySchool reports (Student Gain) that “students starting with lower scores tend to make greater gains over those starting with higher scores.” Value-added results are mooted also for Australia (Gillard 2010) but have not yet been used nor the model determined.

literacy and numeracy) have become the predominant educational accountability indicator of school, teacher and student success. The predominant assessment format used to enact educational accountability in each of these countries is multiple-choice paper-and-pencil testing.

The focus of this book is the inclusion of students with disability in educational accountability legislation, policy and practice. The assessment approach used for school educational accountability has a major impact on such inclusion. The following chapter explores how educational accountability practices in the US, England and Australia include students with disability, and the impact the predominant form of testing has had on their inclusion.

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