



**Department of Education, Employment and
Workplace Relation's Submission to the House of
Representatives Standing Committee on
Education and Employment Inquiry into the
Australian Education (Consequential and
Transitional Provisions) Bill 2012**

Table of Contents

Introduction and Summary	3
The proposed Australian Education Act 2013	4
Amendment to the <i>Federal Financial Relations Act 2009</i> and associated transitional provisions	16
Amendment to the <i>Schools Assistance Act 2008</i>	18
Schedule 2 - Transitional provisions	19

Introduction and Summary

1.2 The Department of Education, Employment and Workplace Relations (the Department) welcomes the opportunity to make a written submission to the House of Representatives Standing Committee on Education and Employment inquiry into the Australian Education (Consequential and Transitional Provisions) Bill 2013 (the Bill).

1.3 The Bill amends certain Commonwealth laws and contains transitional arrangements consequential to the enactment of the proposed Australian Education Act 2013. It supports the Government's national school education reform agenda which will enshrine in law a national approach to funding school education that ensures that schools are funded according to the needs of their students. The reform also links school funding to key school reform directions that will provide the basis for achieving the goals that:

- Australian schooling provides a high quality and equitable education for all students
- Australia be placed in the top five countries internationally in reading, mathematics and science by 2025
- Australia be considered to be a high quality and high equity schooling system by international standards by 2025.

1.4 The Bill amends the *Federal Financial Relations Act 2009* and the *Schools Assistance Act 2008* to enable Commonwealth recurrent and capital funding for all Australian schools, including funding for schools participating in the reform arrangements and government schools in states and territories choosing not to participate to be exclusively appropriated under the proposed Australian Education Act 2013 from 1 January 2014.

1.5 The Bill also contains transitional provisions relating to certain requirements under the proposed Australian Education Act 2013 in order to ensure a smooth transition and to reduce the administrative burden on schools and government associated with moving to the new arrangements.

The proposed Australian Education Act 2013

2.1 Under the proposed Australian Education Act 2013, all recurrent Commonwealth funding for participating schools will be delivered through fair and transparent needs-based arrangements, providing new investment to support reforms that will help to improve each student's achievements at school. For participating schools, additional investment will support the evidence-based reforms in the National Plan for School Improvement that are focused on quality teaching, quality learning, transparency and accountability, meeting student need and empowering school leadership.

2.2 For the first time participating government and non-government schools will be funded on a consistent basis, with a new Schooling Resource Standard (SRS) for all recurrent funding to participating schools. The states and territories and non-government approved authorities with more than one participating school will implement needs-based funding models approved by the Commonwealth as consistent with the SRS, but will be able to tailor their models to best address local needs. Funding for disadvantage, through loadings, will be fully publicly funded for both government and non-government schools and students. Families choosing non-government schools will still contribute to the base cost of funding their school, consistent with current arrangements.

2.3 The new funding arrangements fundamentally change the way resources are provided by better linking funding to each student's needs. These reforms deliver transparent funding allocations for all schools and sectors.

2.4 The proposed Australian Education Act provides financial assistance to states and territories for government and non-government schools from 2014 and beyond. Commonwealth financial assistance is provided to states in accordance with section 96 of the Constitution, and to Territories in reliance on section 122 of the Constitution. It replaces provisions in the *Federal Financial Relations Act 2009* which authorised funding to states and territories for government schools and supersedes the *Schools Assistance Act 2008*, which authorised recurrent funding for non-government schools for 2008 to 2013.

2.5 The proposed Act sets out the Commonwealth's commitment to an Australian education system with high expectations for every student, regardless of background, the type of school they go to, or the barriers they face to educational attainment. It also shows the Commonwealth's commitment to a system that delivers the support to make these high expectations achievable.

Recipients of funding

2.6 The proposed Australian Education Act provides for funding for both participating schools and non-participating schools. A participating school is a non-government school, or a government school of a participating state or territory. A non-participating school is a government school of a non-participating state or territory. The Minister will determine the participating states and territories, which will be those states and territories that are party to the National Education Reform Agreement and have a signed bilateral agreement with the Commonwealth.

2.7 Under the proposed Australian Education Act, recurrent funding for schools is provided to the approved authority for the school. For government schools the approved authority is the state or territory and for a non-government school, the approved authority

is a body corporate that is approved by the Minister for the school. An individual school may be its own approved authority or an approved authority may govern or administer a group of schools. An approved authority is approved in relation to the schools, locations and levels of education specified in its approval.

2.8 Funding under the proposed Australian Education Act is also able to be provided to block grant authorities, capital grants authorities, and non-government representative bodies. Block grant authorities are bodies corporate approved by the Minister to receive grants of financial assistance for capital expenditure by non-government schools. Funding for capital expenditure by schools generally can also be provided to capital grants authorities, which include states and territories, block grants authorities, and the approved authorities for the schools themselves.

Commonwealth share of additional funding

2.9 States and territories are the primary funders of government schools within their jurisdictions and negotiations are taking place to have states and territories contribute one third of the additional funding required for all schools to reach the SRS, with the remaining two thirds of the additional funding to be provided by the Commonwealth.

Conditions on grants to states and territories

2.10 The proposed Australian Education Act imposes several conditions on the grants of financial assistance to states and territories. These include the requirement for states and territories to implement agreed national policy initiatives relating to school education in accordance with regulations. Other conditions are the requirement to give financial assistance provided to the state or territory to the relevant approved authority, capital grants authority, block grant authority, or non-government representative body, and to comply with regulations relating to recovery of overpayments from approved authorities for non-government schools. National policy initiatives are outlined including addressing Aboriginal and Torres Strait Islander educational disadvantage and supporting work of national education institutions such as the Australian Curriculum, Assessment and Reporting Authority, the Australian Institute for Teaching and School Leadership, and Education Services Australia.

Schooling Resource Standard

2.11 The proposed Australian Education Act outlines how financial assistance for participating schools is calculated. Financial assistance for participating schools is payable each year, based on a formula that produces the Commonwealth share of a total amount of public funding. This financial assistance is supported by the standing appropriation in the proposed Act (clause 126).

2.12 All participating schools are entitled to a base amount of funding for every student. Students and schools who need extra support will also receive additional loadings. The base amount and most of the loadings are worked out by reference to an amount per student. There is a different per student amount for primary and secondary students. For 2014 the per student base amount is \$9,271 for a primary student and \$12,193 for a secondary student. A combined school will receive funding for each student that is the average of the primary and secondary student amounts, weighted by the respective proportions of primary and secondary students at the school. The SRS amount is indexed annually by 3.6%.

2.13 The base amount for a school for a year reflects the number of students at the school for the year, the SRS funding amount for the year for a student at the school and the

capacity of the school's community (parents and other carers of students at the school) to contribute financially to the school. The capacity to contribute component does not apply to government schools, special and special assistance schools, sole provider schools (that is, schools in remote locations at a distance of more than 25 kilometers from another school) and schools with a majority of Aboriginal and Torres Strait Islander students.

Capacity to contribute

2.14 The proposed Australian Education Act sets out the details of calculating the 'capacity to contribute percentage' for non-government schools – that is, the proportion of the SRS that will be publicly funded based on its socio-economic status (SES) score. The proposed Act sets out a range of SES scores with corresponding capacity to contribute percentages for primary and secondary schools. The Minister must determine a school's SES score, and can do so either by legislative instrument to determine a score for a group of schools or by administrative decision to determine a score for an individual school.

2.15 Distance education students at non-government schools will attract a set, lower proportion of the base per student amount that recognises the different levels of support appropriate to those students. Loadings will still be 100% publicly funded for distance education students.

Loadings

2.16 The proposed Australian Education Act provides for six loadings for schools' recurrent funding, and set out how these loadings are calculated. Schools can receive additional funding through loadings for:

- students with disability
- Aboriginal and Torres Strait Islander students
- students with a low socioeconomic status – for every student in the bottom half of socio-economic backgrounds
- students who have low English proficiency
- schools that are not in major cities – ranging from 10% for schools in regional areas to 80% to very remote schools
- schools that are not large schools (size loading).

2.17 The loadings (except the size loading) are a percentage of the relevant per student funding amount multiplied by the number of students at a school that qualify for that loading. The loading for students with disability will be introduced once nationally consistent data on these students is available and a robust loading is developed in 2015. Until then, an interim loading will be used as prescribed in regulations. For the size loading, small schools, and very small schools in very remote areas with a certain number of students, are entitled to the maximum size loading while large schools are not entitled to any size loading. All other schools are entitled to a proportion of the maximum size loading. The proposed Australian Education Act also provides for some details for calculating these loadings to be specified in regulations.

Transitioning to the new funding arrangements

2.18 Transition arrangements will apply to move schools and approved authorities towards their SRS entitlement over time.

2.19 The transitional funding arrangements rely on comparing the current funding outcomes for school authorities with the funding outcomes under the new SRS funding

arrangements, and over a period of time adjusting the funding amounts from the current amounts until they reach the new SRS funding amounts. The comparison is done on an amount-per-student basis, to ensure changes in enrolments over the transition period are taken into account.

2.20 Approved authorities whose old per student amount for 2014 (i.e. the amount under current funding arrangements) is less than their new per student amount for 2014 (i.e. the amount under the SRS funding formulas) will receive additional funding over time to move them towards the SRS amount by 2019.

2.21 Approved authorities whose old per student amount for 2013 (plus 3%) is more than their new per student amount for 2014 will continue to attract the old per student amount, plus indexation of 3% per annum until their new per student amount catches up with their publicly funded SRS amount. This guarantees that even schools that are currently funded at more than the SRS will continue to attract their current funding (on a per-student basis), indexed by 3% per annum.

2.22 A transitional provision applies for special schools and special assistance schools for 2014 to ensure that the approved authority for those schools is paid at least the old per student amount for 2014 for their students.

2.23 Transitional funding is supported by the standing appropriation in the proposed Australian Education Act. While the proposed Act doesn't specifically detail amounts of funding to be received in the transitional period, it defines the entitlements and makes it clear that the minister, in making any funding determination, must calculate that entitlement in accordance with the legislation having regard to all relevant arrangements. The proposed Act provides a greater degree of certainty and accountability for Commonwealth funding decisions than current arrangements under the *Schools Assistance Act 2008*.

Capital funding, special circumstances funding, non-government representative bodies

2.24 The current capital grants program for non-government schools is maintained under the proposed Australian Education Act. The proposed Act provides for a capped amount to be paid to block grant authorities every year. That amount is indexed in keeping with current arrangements. This funding is supported by the standing appropriation in the proposed Act.

2.25 The proposed Australian Education Act also provides for capital funding to be paid to capital grants authorities. This enables capital grants programs to be rolled out in future, as determined by government. The proposed Act does not provide an appropriation for these capital grants, which must be set out in the Budget and supported by annual appropriations.

2.26 The Minister may also determine that financial assistance is payable for a school in special circumstances. This maintains the current arrangements for short-term emergency assistance. Special circumstances funding is appropriated under annual appropriations.

2.27 The proposed Australian Education Act also empowers the Minister to determine financial assistance to be paid to a non-government representative body that represents the interests of non-government schools. The amount available would be provided by annual appropriation.

Non-participating jurisdictions

2.28 The proposed Australian Education Act sets out funding for non-participating schools which are government schools in states and territories that have not signed the National

Education Reform Agreement. Funding is worked out by reference to the amount that the state or territory received during 2013 under the *Federal Financial Relations Act 2009*. Consistent with arrangements under that Act, the amount for a non-participating jurisdiction is indexed each year by the Minister, and split among the non-participating jurisdictions, having regard to the Intergovernmental Agreement on Federal Financial Relations.

2.29 Whether or not a state or territory is a participating jurisdiction, that state is nonetheless required to continue implementing a range of policies as a consequence of its obligations under the National Education Agreement and the overarching framework of the Intergovernmental Agreement on Federal Financial Relations.

2.30 The National Education Agreement lays out objectives, outcomes and targets which underpin agreement between the Commonwealth and states and territories to lift educational outcomes. The specified roles of the parties to the National Education Agreement and their shared responsibilities make clear the requirement to work together to enable improved performance in the nationally agreed outcomes and objectives.

2.31 In the National Education Agreement and the Intergovernmental Agreement on Federal Financial Relations it is left to states and territories to determine how to allocate resources. These documents are not prescriptive about allocating funding to address student need. It is clear in the National Education Agreement, however, that the parties agree to use their resources and the Commonwealth's to address student need and to achieve the outcomes, objectives and targets specified in the National Education Agreement relating to student need. The difference under the National Education Reform Agreement is that there will be an agreed, transparent method of calculating how to direct resources, at the individual school level.

2.32 Below are extracts from the National Education Agreement and the Intergovernmental Agreement on Federal Financial Relations, highlighting the obligations that continue for any non-participating states, in three selected areas.

2.33 Funding to address student need:

- “The States and Territories are required to spend each National Specific Purpose Payment ... in the service sector relevant to the payment — for example, the National Schools Specific Purpose Payment must be expended in the Schools sector — but they will have full budget flexibility to allocate funds within that sector as they see fit to achieve any mutually agreed objectives for that sector.” (Intergovernmental Agreement on Federal Financial Relations Schedule D Para D17).
- Paragraph 18(a) of the National Education Agreement provides that the Commonwealth undertakes responsibility for “allocating funding to States and Territories to support improved service delivery and reform to meet nationally agreed outcomes and to achieve the national objective, including for students with particular needs”.
- In relation to school level reporting states and territories agreed that “access to timely and robust performance information is crucial so that Governments can improve student outcomes by directing assistance and additional resources to areas of need”. (National Education Agreement Para 31(c)).

2.34 Provision of extra support to be made for children that need it:

- States and territories agreed to the outcome that “all children are engaged in and benefiting from schooling” and that “schooling promotes the social inclusion and reduces the educational disadvantage of children, especially Indigenous children”. (National Education Agreement Paragraphs 12 and 13).
- States and territories committed to addressing the issue of social inclusion, including responding to Indigenous disadvantage. (National Education Agreement Paragraph 2).
- States and territories agreed to undertake responsibility for ensuring that all school aged children are given the opportunity to enrol in a safe and supportive school that provides a quality education, including where students have particular needs. (National Education Agreement Paragraph 19(a)).
- States and territories agreed to the Performance Reporting Framework (National Education Agreement Paragraph 21) which governs the collection and publication of student and school data for the following three purposes:
 - a. accountability to students, parents, carers and community;
 - b. public accountability in support of COAG outcomes and targets; and
 - c. providing an evidence base to support future policy reforms and system improvements including the aim of better directed resources.
- The Performance Reporting Framework agreed to by states and territories includes reporting against the performance indicator “Literacy and numeracy achievement of Year 3, 5, 7 and 9 Indigenous and low SES students in national testing”. (National Education Agreement Paragraph 21 (table)).
- The forward work plan of the National Education Agreement (Schedule B) lists policy and reform directions that were agreed as part of the National Education Agreement. They include:
 - a. Integrated strategies for low SES schools
 - b. Providing support to children with additional needs. This includes policy actions that best focus on ensuring that all students with additional needs have the support they require to engage in and benefit from schooling. These students include those with disabilities, Indigenous students, and new arrivals with a non-English speaking background.
- States and territories committed to report on the number of students who are provided with additional support, specifically students with a disability and students from non-English speaking backgrounds (including newly arrived migrants and refugees), disaggregated by school sector. (National Education Agreement Paragraph 30).

2.35 Supporting students to finish school to Year 12:

- States and territories agreed to the outcome that “young people make a successful transition from school to work and further study” and the COAG target to “Lift the Year 12 or equivalent attainment rate to 90 per cent by 2020”. (National Education Agreement Paragraphs 12 and 13).
- The Performance Reporting Framework (National Education Agreement Paragraph 21 (table)) agreed to by states and territories includes reporting against the following performance indicators:
 - a. The proportion of the 19 year old Indigenous and low SES population having attained at least a Year 12 Certificate or equivalent or Australia Qualifications Framework (AQF) Certificate II.
 - b. The proportion of the 19 year old population having attained at least a Year 12 or equivalent or Australia Qualifications Framework Certificate II.

Non-government schools in non-participating jurisdictions

2.36 The Commonwealth is committed to new needs-based funding arrangements and these will be enshrined under the proposed Australian Education Act when it is passed. The Commonwealth has indicated that the current funding model is broken and therefore the Australian Education Bill does not retain the current SES funding arrangements for non-government schools as an alternative approach. In other words, all non-government schools are participating schools.

2.37 Given the Commonwealth is the primary public funder of non-government schools, it will still contribute the Commonwealth’s ‘share’ of the additional funding required to move these non-government schools in non-participating jurisdictions towards the SRS by 2019.

2.38 If a state does not participate in the new arrangements, non-government schools in that state will not receive the state’s share of additional funding.

Approval of approved authorities

2.39 The proposed Australian Education Act provides the Minister with the power to approve (or not approve) approved authorities to receive Commonwealth funding. This approval is based on the authority meeting basic and ongoing requirements for approval, as set out in the proposed Act (and regulations).

Basic requirements for funding

2.40 All approved authorities are required to meet basic, or threshold requirements in order to receive funding. These requirements apply to all approved authorities of government and non-government schools as well as non-participating schools. The proposed Act includes a provision that recognises state and territory governments as satisfying the basic requirements automatically.

2.41 The basic requirements to be met include:

- not conducting schools for profit
- being financially viable
- being a body corporate (non-government) or body politic (government)
- being a fit and proper person.

2.42 The body corporate requirement applies to all non-government approved authorities and reasonable transition arrangements will be in place for any approved authority that needs to become incorporated. The fit and proper person requirement ensures that approved authorities (and specific personnel within the approved authority) are of good character and have, or have access to, requisite skills to support delivery of high-quality education outcomes and proper management of the school.

Ongoing policy requirements

2.43 The proposed Australian Education Act sets out ongoing policy requirements, to be met by all approved authorities, in order to receive funding. Ongoing policy requirements apply to all government and non-government schools, and apply to participating and non-participating schools.

2.44 Ongoing policy requirements for an approved authority are to:

- enhance teacher and principal performance and professional development at the schools
- implement the national curriculum (Australian Curriculum or equivalent);
- participate in the national assessment program
- have a school improvement framework, and ensure that each school develops, implements, publishes and reviews a school improvement plan
- comply with relevant disability discrimination laws of the Commonwealth, a state or territory
- provide information as required by the regulations.

2.45 Information requirements that will be included in regulations include arrangements related to the school census, national data collection, to conducting research on school and school education, approved authority implementation plans or school improvement plans, the administration and operation of a school, student reports to parents and publicly available information about a school.

Ongoing funding requirements

2.46 The proposed Australian Education Act sets out ongoing funding requirements for approved authorities:

- that the approved authority deals, in accordance with the regulations, with financial assistance that is payable under the Act (for example, that recurrent funding is spent on school education)
- that the authority complies with monitoring and compliance requirements prescribed by the regulations relating to the authority's compliance with the Act (including conditions of its approval) and its implementation plan.

2.47 Further, approved authorities for more than one participating school must:

- distribute all financial assistance (from the Act or a state or territory) in accordance with a needs-based funding arrangement
- comply with Part 7 of the Act (requirements relating to implementation plans).

Implementation Plans

2.48 Approved authorities for more than one participating school must have an implementation plan, which meets the requirements set out in Part 7 of the proposed Australian Education Act. Implementation plans explain how the approved authority intends

to implement the education reforms and must set out activities, programs and initiatives, including implementation milestones and timelines and mechanisms for measuring progress. Approved authorities must review plans and evaluate progress, and the implementation plan (and reports of reviews) must be published.

2.49 For approved authorities for more than one school that currently are not approved systems and who will continue to allow the schools they are accountable for to operate as independent schools, it is anticipated that the implementation plan required under Part 7 of the Act would primarily consist of the improvement plans for the schools concerned. Financial accountability obligations and responsibility to ensure that the basic and ongoing requirements for approved authorities under Division 2 of Part 6 of the Act would rest with the authority.

2.50 The proposed Australian Education Act also provides the Minister with a residual power to give approved authorities directions in relation to their implementation plans, for example, where an approved authority is not undertaking the activities it has committed to. In deciding whether to give such a direction the Minister must have regard to any relevant education agreement that the approved authority is a party to such as the National Education Reform Agreement or the National Education Agreement.

Distribution of Funding

2.51 Funding for approved authorities will be determined in accordance with the proposed Australian Education Act. The proposed Act defines within it the entitlements and makes it clear that the Minister, in making any funding determination, must calculate that entitlement in accordance with the legislation having regard to all relevant arrangements.

2.52 Approved authorities for more than one school that currently are not approved systems must distribute all financial assistance received in accordance with the entitlements of the individual schools. Approved authorities for more than one school that currently are approved systems (approved system authorities) must distribute all financial assistance received through a state or territory in accordance with a needs based funding arrangement that complies with any requirements prescribed by the regulations (section 78 (3)(a)). Non-government school systems (like the Catholic system) will be required to sign a Memorandum of Understanding with the Commonwealth that outlines the needs-based funding model they will use to distribute funding to their schools and describe how education reforms will be implemented across their schools.

2.53 Participating states and territories will be required to have implementation plans and distribute both the Commonwealth funding and their own funding using a needs based funding arrangement under section 78 (3)(a) of the proposed Australian Education Act.

2.54 Section 78(3)(a) of the proposed Act and section 51 of the regulations establish the requirement that the approved authority (state or territory) or approved system authority distribute all financial assistance provided under the funding model to schools in accordance with a 'needs-based funding arrangement'. The regulations specify that this arrangement must be consistent with the following principles:

- An amount per student representing the recurrent resources required to educate a student with minimal educational disadvantage
- An amount per student for non-government schools should recognise the capacity of the School's community to contribute financially to the school
- Additional loadings to be provided to students and schools with additional needs in order to support student achievement including for: students with disability;

Aboriginal and Torres Strait Islander students; students with low socio economic status; students who have low English proficiency; location of schools and size of schools.

2.55 The regulations will require that any alternative needs-based funding model must be agreed between the approved authorities (state or territory) or approved system authorities and the Commonwealth in order for the approved authority to distribute funding.

2.56 The principles under Section 51 of the regulations state that funding formulas should be publicly available and transparent to allow the amount of financial assistance provided to a school to be calculated and this will apply to all schools both government and non-government.

2.57 So for approved authorities (state or territory) or approved system authorities, there is no requirement to distribute the funds exactly as allocated to schools by the model, but the authority must distribute in a way that is transparent and consistent with the principles of the SRS funding model and that this information be published.

Review of decisions

2.58 The proposed Australian Education Act provides for enhanced review mechanisms compared to previous schools funding legislation. The proposed Act provides for statutory mechanisms for the review of specified administrative decisions including a system of internal review by the department, as well as external, independent review by the Commonwealth Administrative Appeals Tribunal.

2.59 More specifically, the proposed Act will provide for review of decisions of the Minister and the Minister's delegates under the Act, including decisions in relation to recurrent funding and SES scores.

2.60 The Act provides for a two-step review process:

- An approved authority that disagrees with a reviewable decision made by a Ministerial delegate can seek an internal review of the decision. The Secretary must arrange for the decision to be reviewed by another Ministerial delegate ('internal reviewer') who was not involved in the original decision.
- An approved authority that disagrees with a reviewable decision made by an internal reviewer, or by the Minister or Secretary personally, can seek review of the decision by the Commonwealth Administrative Appeals Tribunal.

Failure to comply or overpayment

2.61 The proposed Australian Education Act gives the Minister the power to take action if a state or territory, approved authority, block grant authority, capital grants authority or non-government representative body fails to comply with the specified provisions of the proposed Act, or does not repay an amount that it owes to the Commonwealth. In those circumstances, the Minister may require a state or territory to pay an amount, may reduce an amount that would otherwise be payable to the state or territory under this Act or may delay a payment. (These provisions are similar to provisions for current schools funding legislation.)

Requirement for states and territories to distribute funding to non-government schools

2.62 The proposed Act requires that funding for government and non-government schools be paid by the Commonwealth to the state or territory government, and that the state or

territory government then distribute those funds. This is the current practice and this practice was continued as legal advice confirmed that this was appropriate having regard to the constitution, in particular sections 96 (states) and 122 (territories).

2.63 As part of the payment process for non-government schools, state or territory jurisdictions are provided with documentation that informs them how much funding has to be passed on the respective Approved Authorities.

2.64 Under the current arrangements, the timeframes for passing on of funding to non-government schools varies by jurisdiction. Sections 108 and 110 of the proposed Act provide a clear indication of the Commonwealth's intent that the funding be passed on as soon as practicable and gives the Commonwealth the power to ensure that this is done.

Regulations

2.65 The proposed Australian Education Act allows for the making of regulations similar to previous schools funding legislation. Due to the more comprehensive nature of the proposed Act and the fact that it consolidates requirements previously found in the Administrative Guidelines for the *Schools Assistance Act 2008* and funding agreements under that Act, regulations under the Bill will be all-encompassing as compared with the Schools Assistance Regulations 2009. The regulations provide a mechanism for amending elements of the calculation of funding and prescribe detail regarding the approval conditions, consolidating requirements previously found elsewhere such as the Guidelines and funding agreements.

2.66 Because the proposed Australian Education Act is part of a nation-wide school education and funding reform agenda, to be implemented in conjunction with states and territories and supported by intergovernmental agreements, the Standing Council on School Education and Early Childhood will have a role in reviewing regulations made for the Act. Consequently, before the Governor-General makes regulations for the Act, the Minister is obliged to consult the Standing Council on them.

Proposed Australian Education Act Regulations

2.67 Draft Regulations for the proposed Australian Education Act have been prepared to assist stakeholders to understand the broad operation of the proposed Act despite there being no requirement for consultation with the Ministerial Council in relation to these regulations as they are to be made before 1 January 2014 (see Item 12 of the Schedule 2 – Transitional Provisions' section of this document).

2.68 Consultations on the development of the draft regulations have commenced with key education stakeholders. The consultations will progress as the amended Australian Education Bill 2012 is considered by the Federal Parliament. Once finalised and the Australian Education Bill has become law, the Regulations are anticipated to be made by the Governor-General and tabled in Parliament in the lead up to the new arrangements commencing from 1 January 2014.

2.69 The draft regulations largely carry over existing arrangements under the Schools Assistance Act or put into effect aspects of the schools funding model that have been agreed through negotiations. Requirements to support agreed national and school-level reporting will be a key component of the consultation process.

Increased accountability and transparency

2.70 There is currently limited transparency in relation to how systems and state and territories distribute funding. A key element of the National Plan for School Improvement is a commitment by recipients of Commonwealth funding to greater transparency and accountability, including the publication of more information about school funding and results. This change is not new but substantially builds on past initiatives to increase transparency and accountability, including through:

- enshrining the commitment to greater transparency and accountability as part of the National Plan for School Improvement, including the publication of more information about school funding and results
- appropriating recurrent funding for all participating schools – both government and non-government school sectors – in the one place rather than across two pieces of legislation (*Schools Assistance Act 2008* and the *Federal Financial Relations Act 2009*)
- setting out the broad reform directions of Australian schooling through inclusion of a preamble and details objects of the legislation such as the objective of schooling and national goals and targets where this was not provided under the previous legislation
- making the legislation ongoing providing transparency and certainty of arrangements in the long term beyond a fixed four year period
- requiring participating states and territories and Approved Authorities with more than one school to provide an implementation plan that outlines how they will implement and progress national reforms in line with the National Plan for School Improvement
- requiring the implementation plan set out activities, programs and initiatives and how these contribute to the objects, outcomes and reform directions; implement milestones and timelines; performance indicators to measure progress and evaluation mechanisms; when the plan commences; and any other matters prescribed in regulations
- requiring Approved Authorities of more than one school to have governance, management and review mechanisms for its implementation plan, and publish and provide information and reports in connection with its implementation plan
- setting out actions the Minister can take with a state or territory for failure to meet funding conditions such as requiring a state or territory to repay an amount, reduce an amount that would otherwise be payable or delay a payment
- no longer having individual funding agreements with non-government education authorities but rather having the requirements of these agreements spelt out publically in the legislation and regulations
- requiring Approved Authorities to provide information for the purposes of a national program to collect data on schools and school education; information for the purposes of conducting research on schools and school education; information relating to any implementation plan of the authority or a school improvement plan for a school
- by requiring Approved Authorities for more than one school participating in the National Plan for School Improvement to introduce their own needs-based funding approach, using the same loading categories as the Commonwealth's model and to disclose funding formulas that may not have been subject to public scrutiny in the past.

Amendment to the *Federal Financial Relations Act 2009* and associated transitional provisions

3.1 The Australian Government has agreed that Commonwealth recurrent funding for all Australian schools, including funding for schools participating in the reform arrangements ('participating schools') and government schools in any states and territories choosing not to participate ('non-participating schools'), will be provided under the proposed Australian Education Act 2013 from 1 January 2014.

3.2 Commonwealth recurrent funding to states and territories for government school expenditure (the so-called national specific purpose payment for schools) and associated administration of school systems is currently provided under section 11 of the *Federal Financial Relations Act 2009*. The funding is determined on a financial year basis, indexed and apportioned between the states (which, for the purposes of the Act, include the Australian Capital Territory and the Northern Territory) by determination by the Treasurer under subsection 11(4) and (5) of that Act.

3.3 The estimated financial year payment, based on the latest available estimates of relevant growth parameters, is paid to the state in advance under section 19 of that Act. By convention, and consistent with the Intergovernmental Agreement on Federal Financial Relations, these payments are made in monthly instalments. The Minister makes a final determination after the end of the financial year, when final parameter values as at 30 June of that year are known. If there is a difference between the estimated and final determined outcome for the financial year, a balancing adjustment (positive or negative) is made in the subsequent financial year.

3.4 The Bill will repeal section 11 of the *Federal Financial Relations Act 2009* to cease national specific purpose payments for government schools under that Act and therefore allowing recurrent funding for all Australian schools to be appropriated exclusively under the Australian Education Act 2013 (once enacted) from 1 January 2014.

3.5 The Bill contains transitional provisions that enable a smooth transition for appropriation and management of national specific purpose payments for non-participating schools from a financial year (under the *Federal Financial Relations Act 2009*) to a calendar year (under the proposed Australian Education Act 2013).

3.6 The transitional provisions also allow the repealed section 11 of the *Federal Financial Relations Act 2009* to continue to apply for the 2013-14 financial year but reduce the total amount of financial assistance for schools payable under that section to half that which would normally be paid, to arrive at an amount payable for the six months from 1 July 2013 to 31 December 2013 (as determined by the Treasurer after the end of the 2013-14 financial year).

3.7 This ensures there is no doubling-up of the payment of national specific purpose payments for schools and the payment of financial assistance under the proposed Australian Education Act 2013.

3.8 The provisions also allow the Treasurer to:

- a. continue to determine the manner in which the financial assistance payable under the *Federal Financial Relations Act 2009* for the period 1 July 2013 to 31 December 2013 is indexed and divided between the states;
- b. continue to make payments in 2014-15 to make up a shortfall to a state if that state has been underpaid under that section.

3.9 The provisions also ensure that the correct amount is used in the calculation at Part 4 of the proposed Australian Education Act 2013 of the amount payable for national specific purpose payments for non-participating schools from 1 January 2014 (by ensuring that the calculation refers to the total amount that would have been payable for the 2013-14 financial year under section 11 of the *Federal Financial Relations Act 2009*, and not half that amount).

3.10 The Bill also repeals section 15 of the *Federal Financial Relations Act 2009*, which deals with the total amount of financial assistance for the 2008-09 financial year, as this section is now spent. Notes at subsections 12(3), 13(3) and 14(3) referring to section 15 are also repealed.

Amendment to the *Schools Assistance Act 2008*

4.1 Currently, funding for capital purposes for non-government schools is appropriated under the *Schools Assistance Act 2008* until 31 December 2014.

4.2 From 1 January 2014, funding for capital purposes for non-government schools will be appropriated exclusively under the proposed Schools Assistance Act 2013.

4.3 The Bill amends the *Schools Assistance Act 2008* to cease calendar year funding for capital purposes under that Act from the end of the 2013 calendar year by removing reference to the 2014 program year. This ensures there will be no duplication of Australian Government appropriation for this purpose.

Schedule 2 - Transitional provisions

5.1 Schedule 2 of the Bill contains transitional provisions relating to certain requirements under the proposed Australian Education Act 2013 in order to ensure a smooth transition and reduce the administrative burden for schools and government associated with moving to the new arrangements. The provisions are explained below.

Item 2: Approvals for existing approved authorities for schools

5.2 To avoid a situation where existing approved authorities need to reapply for approval under the proposed Australian Education Act 2013, each approved authority for non-government school systems and non-systemic schools approved under the *Schools Assistance Act 2008* as at 31 December 2013 is taken to be an approved authority under the Australian Education Act 2013 on and after 1 January 2014.

5.3 Under section 79 of the proposed Australian Education Act 2013, an approved authority is approved only for a school that is specified in the approval, a location of the school that is specified in the approval, and a level of education at that location that is specified in the approval.

5.4 Consequently, this item also clarifies the things taken to be specified in an approval deemed to have been made under this item, being:

- each approved school for which the authority is taken to be approved
- each location that, on 31 December 2013, was approved for each such school
- each level of education that, on 31 December 2013, was approved for each such location.

Item 3: Timing for the requirement for an approved authority to be a body corporate

5.5 Under the proposed Australian Education Act 2013, one of the basic requirements for approval of an approved authority is that a non-government body applying for approval is a body corporate. This is consistent with the requirement for approved authorities for non-systemic schools under the *Schools Assistance Act 2008*, but is a new legal requirement for approved authorities for systemic schools. This item suspends the requirement to allow those approved authorities that are not body corporates on 31 December 2013 until 31 December 2014 to make the necessary arrangements to comply with the body corporate requirement.

5.6 If an approved authority under the *Schools Assistance Act 2008* becomes an approved authority as a result of Item 2 of Schedule 2 of the Bill (relating to approvals for existing approved authorities for schools) and becomes a body corporate before 1 January 2015, then that body corporate will be taken to be the new approved authority. This ensures that the incorporation of the approved authority (which may create a new legal entity) does not impact on the approved authority's rights and obligations under the new Act, including its funding under the transitional funding provisions (Division 5 of Part 3 of the new Act).

Item 4: Applications for approved authorities not dealt with by 31 December 2013

5.7 If a body has applied for approval as an approved authority under the *Schools Assistance Act 2008*, but a decision on the application has not been made by 31 December 2013, that application is taken to have been made under the proposed Australian Education Act 2013, and is dealt with under the provisions of the new Act (including, for example, the ability for the Department to seek further information from the applicant about matters that may need to be addressed under the new Act).

5.8 However, despite section 73(6) of the Australian Education Act 2013 (which allows an approval of an approved authority to come into force earlier than the day the approval is given), approvals in relation to this item may not come into force before 1 January 2014.

Item 5: Approval of approved authorities for government schools

5.9 For the purposes of the proposed Australian Education Act 2013, the Minister is taken to have approved a state or territory to be the approved authority for government schools located in the state or territory.

5.10 The approval under this item is deemed to be in force on and after 1 January 2014.

5.11 This item also clarifies the things taken to be specified in an approval of an approved authority for government schools that is taken to have been made under this item, being:

- each school for which the authority is taken to be approved
- each location that, on 31 December 2013, was approved by the state or territory for each government school
- each level of education that, on 31 December 2013, was approved by the state or territory for each location.

Item 6: Approval of block grant authorities

5.12 The Minister is taken to have approved those block grant authorities who were approved under *the Schools Assistance Act 2008* as at 31 December 2013 for the purposes of the proposed Australian Education Act 2013.

5.13 The approval is taken to be in force on or after 1 January 2014.

5.14 Section 86 of the proposed Australian Education Act 2013 provides that an approval of a block grant authority is limited to the schools specified in the approval (including specification by reference to their approved authority). Consequently, a block grant authority approved under item 6 is taken to be approved for those schools in relation to which the body is, on 31 December 2013, a block grant authority under the *Schools Assistance Act 2008*.

Item 7: No notice of decision required for approvals made under the Bill

5.15 Despite section 119 of the proposed Australian Education Act 2013 (which requires written notification of a reviewable decision to be given to the relevant person for a reviewable decision), there is no requirement to notify of approvals taken to be in force under Schedule 2 of the Bill.

5.16 This item is for clarification only; as the deeming of approvals under Schedule 2 are not actually decisions under the new Australian Education Act 2013, as there are no “decisions” being made that would trigger the requirement to provide notice under section 119 of that Act.

5.17 However, the Department intends to write to all current approved authorities and block grant authorities before 1 January 2014 to advise them of the effect of the transitional provisions and, in the case of approved authorities, provide provisional advice as to their funding entitlement for which they will be approved from 1 January 2014.

Item 8: Variation or revocation of deemed approvals

5.18 This item clarifies that approvals taken to be in force under Schedule 2 of the Bill can be varied or revoked under the provisions of the proposed Australian Education Act 2013 as if they had been granted under that Act.

5.19 This item is for clarification only. The deemed approvals made by Schedule 2 are, for all legal purposes, approvals under the proposed Australian Education Act 2013, and that Act applies in the ordinary way to those approvals. However, since the approvals under Schedule 2 are automatically granted by operation of law, their granting to approved authorities and block grant authorities does not imply that the Minister is satisfied those authorities actually satisfy all of the approval criteria in the proposed Australian Education Act 2013.

5.20 This means that, even though an approved authority under the *Schools Assistance Act 2008* on 31 December 2013 will automatically become an approved authority under the proposed Australian Education Act 2013 on 1 January 2014 (item 2), that does not prevent the Minister taking action against that approved authority under the new Act from 1 January because he or she considers the authority not to be a “fit and proper person”, for example.

Item 9: Implementation plans and school improvement plans

5.21 This item provides timeframes in relation to requirements regarding school improvement plans and implementation plans.

5.22 An approved authority for more than one participating school must comply with Part 7 (implementation plans) of the proposed Australian Education Act 2013 on and from 1 January 2014.

5.23 An approved authority for a school must have a school improvement framework and a school improvement plan for the school on and from 1 January 2015.

Item 10: 2013 census day for a majority Aboriginal and Torres Strait Islander school

5.24 This item relates to the definition of ‘majority Aboriginal and Torres Strait Islander school’ in section 8 of the proposed Australian Education Act 2013, which in part is defined by reference to the percentage of Aboriginal or Torres Strait Islander students that are receiving education at the school on the school’s census day for the previous year.

5.25 For the purposes of the definition in the principal Act, a school’s census day for 2013 is the census day for the school for 2013 under the *Schools Assistance Act 2008*.

Item 11: Determination of a school's SES score

5.26 Determinations of a school's SES score in force under the *Schools Assistance Act 2008* as at 31 December 2013 are taken to have been made under the proposed Australian Education Act 2013 and be in force under that Act on and after 1 January 2014.

5.27 Determinations deemed to be made in relation to this item are not reviewable.

5.28 This item does not prevent the Minister from making a new determination of a school's SES score under section 52 of the proposed Australian Education Act 2013.

5.29 This item is intended to operate as a fall-back only. The Department has already calculated the SES scores for 2014 and onwards in accordance with established practice, however for clarity will issue new SES determinations under section 52 of the new Act prior to 1 January 2014. (This can be done prior to the commencement of the new Act under section 4 of the *Acts Interpretation Act 1901*).

Item 12 Regulations

5.30 Before 1 January 2015, regulations made under section 130 of the proposed Australian Education Act may modify the operation of that Act as is necessary or convenient to deal with transitional arrangements.

5.31 While section 130 of the Australian Education Act requires consultation with the Ministerial Council in respect of regulations made under the Act, consultation is not required in relation to regulations made before 1 January 2014.