



Australian Education Amendment Act 2014

No. 120, 2014

**An Act to amend the *Australian Education Act 2013*,
and for other purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedules.....	2
Schedule 1—Amendments commencing on the day after Royal Assent		3
Part 1—Amendments		3
<i>Australian Education Act 2013</i>		3
<i>Australian Education (Consequential and Transitional Provisions) Act 2013</i>		10
Part 2—Application provisions		11
Schedule 2—Amendments commencing on 1 January 2014		12
<i>Australian Education Act 2013</i>		12



Australian Education Amendment Act 2014

No. 120, 2014

**An Act to amend the *Australian Education Act 2013*,
and for other purposes**

[Assented to 26 November 2014]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Australian Education Amendment Act 2014*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	26 November 2014
2. Schedule 1	The day after this Act receives the Royal Assent.	27 November 2014
3. Schedule 2	1 January 2014.	1 January 2014

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments commencing on the day after Royal Assent

Part 1—Amendments

Australian Education Act 2013

1 Section 4

Omit:

The Minister can also determine funding for schools in special circumstances, and funding for non-government representative bodies for non-government schools.

substitute:

The Minister can determine funding for schools in special circumstances or if the Minister is satisfied that prescribed circumstances apply in relation to schools. The Minister can also determine funding for non-government representative bodies for non-government schools.

2 Section 4

Omit:

The Minister may require an amount to be repaid, reduce an amount that would otherwise be payable, or delay making a payment, if an amount is owed to the Commonwealth under this Act (or other similar Acts) or there is a failure to comply with a requirement of this Act.

substitute:

The Minister may require an amount to be repaid, reduce an amount that would otherwise be payable, or delay making a payment, if an amount is owed to the Commonwealth under this

Act (or other similar Acts) or there is a failure to comply with particular requirements.

3 Subsection 9(6) (heading)

Repeal the heading, substitute:

Other funding for schools

4 Paragraph 9(6)(a)

Omit “section 29”, substitute “paragraph 29(1)(a)”.

5 After subsection 9(6)

Insert:

(6A) A payment is an *overpayment* under this Act if:

- (a) the Commonwealth makes the payment to a State or Territory for a school for a year as a result of a determination made under paragraph 29(1)(aa); and
- (b) the total of the amount of the payment, and any previous payments made, as a result of the determination, to the State or Territory for the school for the year, exceeds the amount determined for the school for the year under section 69A.

6 Paragraph 21(e)

Omit “special circumstances funding”, substitute “other funding for schools”.

7 Paragraph 23(1)(d)

Omit “special circumstances funding”, substitute “other funding for schools”.

8 Section 29 (heading)

Repeal the heading, substitute:

29 Minister to determine timing and amounts of other funding for schools

9 Paragraph 29(1)(a)

Omit “Division 3 of Part 5”, substitute “section 69”.

10 After paragraph 29(1)(a)

Insert:

- (aa) an amount or amounts of payments of financial assistance that have been determined under section 69A (funding in prescribed circumstances) to be payable to a State or Territory for a year for a school that is located in the State or Territory; and

11 Paragraph 29(1)(b)

Omit “paragraph (a)”, substitute “paragraphs (a) and (aa)”.

12 Part 5 (heading)

Repeal the heading, substitute:

Part 5—Capital and other funding

13 Section 66

Omit:

The Minister may also determine that financial assistance is payable for a school in special circumstances.

substitute:

The Minister may also determine that financial assistance is payable for a school in special circumstances or if the Minister is satisfied that prescribed circumstances apply in relation to the school.

14 Paragraph 68(1)(a)

Repeal the paragraph, substitute:

- (a) for 2014—\$134,496,000 (the *base assistance amount*); and

15 Subparagraph 68(1)(b)(i)

After “amount”, insert “for the year”.

16 Subsection 68(2)

Omit “amount is”, substitute “amount for a year is”.

17 Division 3 of Part 5 (heading)

Repeal the heading, substitute:

Division 3—Other funding for schools

18 Subsection 69(1)

Omit “Division”, substitute “section”.

19 At the end of Division 3 of Part 5

Add:

69A Funding in prescribed circumstances

- (1) The Minister may, in writing, determine an amount of financial assistance that is payable under this section to a State or Territory for a school for a year if the Minister is satisfied that prescribed circumstances apply in relation to the school for that year.

Note 1: The regulations may prescribe matters that the Minister may or must have regard to in making a decision under this subsection (see paragraph 130(2)(b)).

Note 2: Financial assistance provided under this section is appropriated by section 126.

- (2) The regulations may do either or both of the following:
- (a) prescribe an amount payable for a school for a year under a determination under subsection (1) or prescribe a method for working out that amount;
 - (b) prescribe a maximum amount that is payable for a school for a year under a determination under subsection (1) or prescribe a method for working out that maximum amount.
- (3) The regulations may prescribe different amounts, or different methods for working out amounts, for different circumstances.
- (4) The total of the amounts that the Minister determines under subsection (1) for a year in relation to particular prescribed circumstances must not exceed the amount:
- (a) prescribed by the regulations; or
 - (b) worked out in accordance with a method prescribed by the regulations.

(5) A determination under subsection (1) is not a legislative instrument.

20 Paragraph 78(2)(a)

Omit “capital and special circumstances funding”, substitute “capital funding and other funding for schools”.

21 Part 8 (heading)

Repeal the heading, substitute:

**Part 8—Taking action for non-compliance and
requiring amounts to be repaid**

22 Section 107

Omit “with this Act”, substitute “with particular requirements”.

23 Division 2 of Part 8 (heading)

Repeal the heading, substitute:

**Division 2—Taking action for non-compliance and
requiring amounts to be repaid**

24 Section 108 (heading)

Repeal the heading, substitute:

108 Application of Division for non-compliance

25 At the end of section 108

Add:

; (g) an approved authority or block grant authority for one or more schools located in the State or Territory is not complying, or has not complied, with a requirement included in a funding agreement in accordance with Division 3 of Part 3 of the *Schools Assistance Act 2008* that applies or applied to the authority.

26 At the end of subparagraph 109(3)(a)(ii)

Add “or a funding agreement under that Act”.

27 At the end of subparagraph 109(3)(a)(iii)

Add “or a section 30 agreement (within the meaning of that Act)”.

28 At the end of subparagraph 109(3)(a)(iv)

Add “or a section 18 agreement (within the meaning of that Act)”.

29 Paragraph 111(3)(f)

Omit “special circumstances funding”, substitute “other funding for schools”.

30 At the end of section 112

Add:

- (5) If the recoverable payment was purportedly made in accordance with a determination made under paragraph 29(1)(aa), then section 126 applies as if the recoverable payment were made in accordance with the determination.

31 Subsection 118(1) (table item 3, column 1)

Omit “or 5”.

32 Subsection 118(1) (after table item 3)

Insert:

3A	To determine a total entitlement for an approved authority for a year if the amount of financial assistance to which the determination relates is payable under Division 5 of Part 3	Subsection 26(4)	The approved authority
----	--	------------------	------------------------

33 Subsection 118(1) (table item 8, column 1)

After “in force”, insert “(other than in accordance with an application by the authority)”.

34 Subsection 118(1) (table item 11, column 1)

After “revokes the approval”, insert “and that is not in accordance with an application by the authority”.

35 Subsection 118(1) (table item 14, column 1)

After “in force”, insert “(other than in accordance with an application by the authority)”.

36 Subsection 118(1) (table item 17, column 1)

After “revokes the approval”, insert “and that is not in accordance with an application by the authority”.

37 Subsection 118(1) (table item 20, column 1)

After “in force”, insert “(other than in accordance with an application by the body)”.

38 Subsection 118(1) (table item 23, column 1)

After “revokes the approval”, insert “and that is not in accordance with an application by the body”.

39 Subsection 118(1) (table item 25)

Repeal the item, substitute:

25	To determine that a State or Territory pay to the Commonwealth a specified amount	Paragraph 110(1)(a)	The State or Territory
25A	To determine that a State or Territory pay to the Commonwealth a specified amount	Paragraph 110(1)(a)	The approved authority, capital grants authority, block grant authority or non-government representative body (or former such authority or body) whose interests are affected by the determination

40 Subsection 118(1) (table item 26, column 2)

Omit “Section 110”, substitute “Paragraph 110(1)(b)”.

41 Subsection 118(1) (table item 27, column 2)

Omit “Section 110”, substitute “Paragraph 110(1)(b)”.

42 At the end of section 126 (before the note)

Add:

; or (c) paragraph 29(1)(aa) (funding in prescribed circumstances).

43 Section 126 (note)

After “paragraph 28(1)(b)”, insert “or 29(1)(aa)”.

Australian Education (Consequential and Transitional Provisions) Act 2013

44 Subitem 9(2) of Schedule 2

Omit “1 January 2015”, substitute “1 January 2016 or such later date as the Minister specifies by legislative instrument made before 1 January 2016”.

Part 2—Application provisions

45 Application of amendment—item 25 of this Schedule

The amendment made by item 25 of this Schedule applies in relation to a failure to comply with a requirement that occurs before, on or after the day this item commences.

46 Application of amendments—items 26 to 28 of this Schedule

The amendments made by items 26 to 28 of this Schedule apply in relation to an amount that is paid before, on or after the day this item commences.

Schedule 2—Amendments commencing on 1 January 2014

Australian Education Act 2013

1 Section 4

Omit:

A special transitional rule also applies for special schools and special assistance schools for 2014.

substitute:

A special transitional rule also applies for special schools and special assistance schools.

2 Section 6

Insert:

new approved authority has the meaning given by paragraph 63A(1)(b).

new Commonwealth per student amount has the meaning given by subsection 58(6).

3 Section 6 (definition of *old Commonwealth per student amount*)

Repeal the definition, substitute:

old Commonwealth per student amount: an approved authority's *old Commonwealth per student amount* is:

- (a) if section 59 applies in relation to the approved authority:
 - (i) for 2014—the amount determined by the Minister under paragraph 58(1)(b) for the authority; and
 - (ii) for any other year—the authority's old Commonwealth per student amount for the year, as indexed under subsection 60(2); and
- (b) if section 61 applies in relation to the approved authority:

- (i) for 2013—the amount determined by the Minister under paragraph 58(1)(c) for the authority; and
- (ii) for any other year—the authority’s old Commonwealth per student amount for the year, as indexed under subsection 61(3); and
- (c) if section 62 applies in relation to the approved authority:
 - (i) for 2013—the amount determined by the Minister under paragraph 58(1)(c) for the authority; and
 - (ii) for any other year—the authority’s old Commonwealth per student amount for the year, as indexed under subsection 62(2A).

4 Section 6 (definition of *old per student amount*)

Repeal the definition, substitute:

old per student amount: an approved authority’s ***old per student amount*** for 2013 or 2014 is the amount determined by the Minister under paragraph 58(1)(a) for the authority for that year.

5 Section 6

Insert:

transition school has the meaning given by paragraph 63A(1)(a).

6 At the end of subsection 12(1)

Add:

Note: In some circumstances, section 27 may affect a participating school’s total entitlement.

7 At the end of subsection 12(2)

Add:

Note: In some circumstances, section 27 may affect an approved authority’s total entitlement.

8 Subsection 13(1) (table items 1 and 2)

Repeal the items, substitute:

1	a <i>major city school</i>	1, or less than 1.
2	an <i>inner regional school</i>	more than 1, and less than 2.4.

9 Subsection 27(1)

Omit all the words from and including “An amount” to and including “for a year if”, substitute “The total entitlement for a participating school, or an approved authority for a participating school, for a year is to be determined under section 26 in accordance with the regulations if”.

10 Section 31

Omit:

Approved authorities whose old per student amount for 2014 is less than their new per student amount for 2014 will move to the new per student amount over a period of time. Approved authorities whose old per student amount for 2013, increased by 3%, is more than their new per student amount for 2014 will continue to receive the old per student amount, plus indexation, until their new per student amount catches up.

substitute:

Approved authorities whose old per student amount for 2014 is less than their new per student amount for 2014 will move to the amount worked out using the formula over a period of time. Approved authorities whose old per student amount for 2013, increased by 3%, is more than their new per student amount for 2014 will continue to receive the Commonwealth’s share of the old per student amount, plus indexation, until the amount worked out using the formula catches up.

11 Section 31

Omit:

A special transitional rule 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 those students.

substitute:

A special transitional rule applies for special schools and special assistance schools to ensure that the approved authority for those schools is paid at least the Commonwealth's share of the old per student amount for those students.

12 Before section 57

Insert:

Subdivision A—Funding for approved authorities that were approved authorities on 1 January 2014

13 Section 57 (heading)

Repeal the heading, substitute:

57 Application of this Subdivision

14 Subsection 57(1)

Omit "Division", substitute "Subdivision".

15 At the end of subsection 57(1)

Add:

Note: Section 63B affects the application of this Subdivision in relation to certain approved authorities.

16 Subsection 57(2)

Omit "Division", substitute "Subdivision".

17 At the end of subsection 58(1)

Add:

; and (c) if section 61 or 62 applies in relation to the approved authority—an old Commonwealth per student amount for 2013.

18 Subsection 58(5)

Omit "In working out", substitute "For the purposes of subsection (4), in working out".

19 At the end of section 58

Add:

- (6) The *new Commonwealth per student amount*, for a year, for an approved authority in relation to which section 61 or 62 applies is worked out using the following formula:

$$\frac{\text{The total amount worked out for the year under section 32 for all schools for which the approved authority is approved in that year}}{\text{The total number of students for the year at all schools for which the approved authority is approved in that year}}$$

Note: To work out the number of students at a school for a year, see sections 16 and 17.

20 Subsections 59(2) and (3)

Omit “Division”, substitute “Subdivision”.

21 Subsection 61(2) (heading)

Repeal the heading, substitute:

Old Commonwealth per student amount payable

22 Subsection 61(2)

Omit “Division”, substitute “Subdivision”.

23 Subsection 61(2) (formula)

Repeal the formula (not including the note), substitute:

$$\frac{\text{The approved authority's old Commonwealth per student amount for the year}}{\text{The total number of students for the year at all schools for which the approved authority is approved in that year}}$$

24 Subsection 61(3)

After “The old”, insert “Commonwealth”.

25 Subsection 61(3)

Omit “after 2014”, substitute “(from and including 2014)”.

26 Subsection 61(3) (formula)

Repeal the formula, substitute:

The approved authority's old Commonwealth
per student amount for the previous year \times 103%

27 Subsection 61(4)

Before "per student" (wherever occurring), insert "Commonwealth".

28 Section 62 (heading)

Repeal the heading, substitute:

62 Transitional recurrent funding for special schools and special assistance schools

29 Subsections 62(2) (heading)

Repeal the heading, substitute:

Old Commonwealth per student amount payable

30 Subsection 62(2)

Omit "Division", substitute "Subdivision".

31 Subsection 62(2)

Omit "for 2014", substitute "for a year (subject to subsection (2C))".

32 Subsection 62(2) (formula)

Repeal the formula, substitute:

The approved authority's
old Commonwealth per
student amount for the year \times The total number
of students
for the year at all schools
for which the approved
authority is approved
in that year

Note: To work out the number of students at a school for a year, see sections 16 and 17.

33 After subsection 62(2)

Insert:

- (2A) The old Commonwealth per student amount for a year (from and including 2014) is indexed as follows:

The approved authority's
old Commonwealth per student amount for the previous year \times The indexation percentage

- (2B) The *indexation percentage* is:

- (a) 103%; or
- (b) if the regulations prescribe a higher percentage for the purposes of this paragraph—that higher percentage.

- (2C) Subsection (2) ceases to apply to the approved authority for a year once the approved authority's new Commonwealth per student amount for the year is equal to or more than the approved authority's old Commonwealth per student amount for that year.

34 Subsection 62(3)

Omit “for 2015 and each later year”, substitute “for the year referred to in subsection (2C) and each later year”.

35 At the end of Division 5 of Part 3

Add:

Subdivision B—Funding for approved authorities if there is a change in the approved authority for a participating school

63A Transitional recurrent funding for a participating school whose approved authority changes after 1 January 2014

- (1) This section applies if:
- (a) on 1 January 2014, a participating school (the *transition school*) was specified in the approval of an approved authority (the *old approved authority*); and
 - (b) after 1 January 2014, the transition school is specified in the approval of another approved authority (the *new approved authority*); and
 - (c) before the transition school was so specified, Subdivision A of this Division applied in relation to the old approved authority in relation to the transition school.
-

Note: The new approved authority may be approved on or after 1 January 2014.

Ministerial determination of amount of financial assistance

- (2) The Minister may determine, in writing, an amount of financial assistance that is payable under this section to a State or Territory for the new approved authority for the transition school for a year.

Note: The regulations may prescribe matters that the Minister may or must have regard to in making a decision under this subsection (see paragraph 130(2)(b)).

- (3) A determination under subsection (2) is not a legislative instrument.

When amounts are worked out under section 32

- (4) The amount of financial assistance that is payable under this Part to a State or Territory for the new approved authority's transition school is worked out under section 32 for a year if:
- (a) no determination is in force under subsection (2) of this section in relation to the school for the year; and
 - (b) Subdivision A of this Division does not apply in relation to the new approved authority in relation to the school.

63B Application of Subdivision A of this Division to the new approved authority

- (1) This section applies if:
- (a) a determination under subsection 63A(2) is in force in relation to a new approved authority for a transition school for a year; and
 - (b) immediately before the new approved authority became the approved authority for the transition school, Subdivision A of this Division applied in relation to the authority for one or more other participating schools for a year.
- (2) Despite anything else in this Act, the following continue to apply in relation to the new approved authority for those other participating schools for the year to which the determination relates as if the transition school were not specified in the authority's approval:

Schedule 2 Amendments commencing on 1 January 2014

- (a) Subdivision A of this Division;
 - (b) any other provisions that relate to that Subdivision.
-

*[Minister's second reading speech made in—
House of Representatives on 25 September 2014
Senate on 28 October 2014]*

(202/14)
