

EXPLANATORY STATEMENT

Select Legislative Instrument 2009 No. 132

Subject - *Schools Assistance Act 2008*

Schools Assistance Regulations 2009

Background

The *Schools Assistance Act 2008* (the Act) provides for Commonwealth financial assistance to the States and Territories for non-government schools for 2009 to 2012.

Authority

Section 174 of the Act provides that the Governor-General may make regulations prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act. Sections 17, 18, 19, 20, 21 and 22 of the Act refer to requirements that may be specified in regulations in relation to national school performance and transparency requirements for non-government schools for program years 2009 to 2012.

These regulations relate to sections 17, 18, 20 and 21. Regulations in relation to sections 19 and 22 will be made at a later date.

Purpose and operation

The purpose of the *Schools Assistance Regulations 2009* (the Regulations) is to specify the performance and transparency requirements in accordance with relevant sections of the Act. The Regulations give effect to the data collection and reporting requirements in the National Education Agreement agreed by COAG, including the national assessments and performance measures set out in the *MCEETYA Measurement Framework for National Key Performance Measures*.

The regulations under Part 2 specify national student assessments, regulations under Part 3 specify performance information for national reports on the outcomes of schooling, regulations under Part 5 specify requirements for student reports to parents, and regulations under Part 6 specify information relating to schools to be published by schools, in accordance with relevant sections of the Act. Regulation 7 specifies the base assistance funding amount for 2009 for literacy, numeracy and special learning needs.

Consultation

The Department of Education, Employment and Workplace Relations (DEEWR) consulted with stakeholders from the non-government school sector in relation to the funding agreements under the Act for the 2009 to 2012 funding period. An exposure

draft of the proposed Regulations was provided electronically to stakeholders on 30 April 2009, and stakeholders were given until 22 May 2009 to provide comment. DEEWR held an additional face-to-face meeting with representatives from the National Catholic Education Commission and the Independent Schools Council of Australia on 22 May 2009 to discuss the draft Regulations.

Consultation was not considered necessary to undertake on regulation 7 as stakeholders were advised of their respective funding entitlements for 2009 prior to implementation of funding arrangements. (see Background to provisions below for explanation of funding arrangement).

Commencement

The Regulations commenced on 1 January 2009. Parts 1 and 7 were taken to have applied on and after 1 January 2009. The remainder of the Regulations are taken to have applied on and after the day on which the Regulations were registered on the Federal Register of Legislative Instruments.

Retrospective commencement of the Regulations was required because the requirements under the Act commenced on 1 January 2009.

The retrospective commencement of the Regulations does not infringe subsection 12(2) of the *Legislative Instruments Act 2003* because the Regulations are beneficial in nature and do not affect the rights of a person (other than the Commonwealth) as at the date of registration so as to disadvantage that person. Nor do the Regulations impose any liabilities on any person (other than the Commonwealth) in respect of anything done or omitted to be done before the date of registration.

Background to the provisions

Commonwealth financial assistance, to both government and non-government schools from 2009 onwards, includes a set of reporting requirements which focus on ensuring good reporting to government, parents and the community. The performance information and reporting requirements on non-government schools contained in the Act reflect those required of government schools under the National Education Agreement (NEA) which forms part of the new Intergovernmental Agreement on Federal Financial Relations, taking effect from 2009. Most of these requirements build on the reporting and accountability measures of previous years, which are already familiar to schools, but eliminate many input reporting requirements, focussing on information for the following outcomes:

National testing – all schools are required to participate in national assessments, including the annual NAPLAN full-cohort literacy and numeracy tests and less frequent national and international sample assessments;

National reporting – all schools and school system authorities will participate in preparing national reports on the outcomes of schooling, enabling reporting to the community on progress towards the Educational Goals for Young Australians and against the COAG outcomes and targets;

Nationally comparable individual school information – schools will be required to provide certain agreed nationally-comparable information about their school, to be made publicly available by the Australian Curriculum, Assessment and Reporting Authority (ACARA);

Reporting to parents – student reports to parents will use plain language, give an accurate assessment of progress, and include assessment of achievement against national standards and be relative to the student’s peer group;

Publication of information relating to schools (school annual reports) – schools must publish, for parents and the community, an annual report which includes contextual information about the school, key outcomes, information on parent, student and teacher satisfaction, and income.

The need for regulations under the Act was flagged during passage through Parliament of the Schools Assistance Bill 2008 in October-November 2008. Broad content of the intended regulations was outlined in the *Administrative Guidelines: Commonwealth Programs for Non-government Schools, 2009 to 2012*, available since February 2009.

The Regulations apply only to non-government schools. As outlined in the explanatory note at regulation 1.3, they give effect to data collection and reporting requirements in the NEA between the States and Territories and the Commonwealth; that is, they extend to non-government schools the performance reporting and transparency obligations on government schools already agreed between governments, as contained in the NEA.

Part 4 of the Regulations currently contains no provisions. It is proposed that regulations relating to requirements of individual school information, for the purposes of section 19 of the Act, will be made and inserted in Part 4 at a later date.

Details of the Regulations

Part 1 – Preliminary

Regulation 1.1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Schools Assistance Regulations 2009*.

Regulation 1.2 – Commencement

This regulation provides that the Regulations commenced on 1 January 2009.

Regulation 1.3 – Application

This regulation provides that Part 1 and Part 7 applied on and after 1 January 2009, and Parts 2, 3, 5 and 6 and Schedule 1 commenced on the day after the Regulations were registered on the Federal Register of Legislative Instruments.

A Note explains that these Regulations give effect to the data collection and reporting requirements in the National Education Agreement, and that the MCEETYA Measurement Framework for National Key Performance Measures sets out measures, assessments and data collections applying to both government and non-government schools. It also explains that some of this data may be derived from sources other than schools, such as survey collections.

Regulation 1.4 – Definitions

This regulation defines ‘Act’ as the *Schools Assistance Act 2008*; ‘Catholic schools’ as Catholic systemic schools and Catholic non-systemic schools; ‘COAG’ as the Council of Australian Governments; ‘ICT’ as Information and Communications Technology; ‘language conventions’ as spelling, grammar and punctuation; ‘MCEETYA’ as the Ministerial Council on Education, Employment, Training and Youth Affairs; ‘NAP’ as the National Assessment Program; ‘NAPLAN’ as the National Assessment Program - Literacy and Numeracy; ‘PISA’ as the Programme for International Student Assessment; and ‘TIMSS’ as the Trends in International Mathematics and Science Study.

Part 2 Funding agreements – national student assessments

Regulation 2 – Funding agreements - national student assessments

Section 17 of the Act requires all relevant authorities for non-government schools and school systems to ensure that the national student assessments, specified in the Regulations as applying to their school or schools, are carried out no later than a date or dates determined by the Minister and as prescribed by the regulations.

Regulation 2.1 prescribes the national student assessments. These are assessments that have been agreed by MCEETYA and are specified in the MCEETYA Measurement Framework for National Key Performance Measures. These assessments will be familiar to government and non-government schools. NAPLAN assessments have been in place since 2008, the NAP sample assessments since 2003, the PISA sample assessments since 2000 and TIMSS sample assessments since the 1990s.

Subregulation 2.1(1) prescribes two kinds of assessments: (a) annual assessments for all students in Years 3, 5, 7 and 9 – that is, the NAPLAN assessments in reading, writing, language conventions and numeracy; and (b) three- or four-yearly assessments for students selected for sample studies – that is, the NAP assessments in science, civics and citizenship, and ICT; the PISA assessments in reading, mathematical and scientific literacy; and the TIMSS assessments in mathematics and science. Subregulation 2.1(2) provides that each assessment is prescribed for the years specified in the table for that assessment.

Part 3 Funding agreements – national reports on the outcomes of schooling

Section 18 of the Act requires all non-government school authorities to participate in preparing national reports on the outcomes of schooling; to provide, for those reports, the performance information specified in the regulations; and to do these things by a date determined by the Minister or in time to allow publication of the reports within one year of the end of the program year. The national reports on schooling, which

relate to both government and non-government schools, enable public reporting on progress towards the national goals for schooling and on the targets and performance measures agreed by COAG.

Regulation 3.1 – Performance information

Regulation 3.1 specifies that the performance information required of non-government schools under section 18 of the Act is prescribed in Schedule 1 (see below). The performance information comprises measures of the percentages of students reaching particular standards, or participating in particular activities, in the areas of literacy, numeracy, science, civics and citizenship, ICT literacy, vocational education and training in schools and student attendance.

Regulation 3.2 – Performance information – student characteristics

Subregulation 3.2(1) specifies that the performance information for certain items in Schedule 1 is to be disaggregated by the student characteristics of sex, Indigenous status, socio-economic background, language background, geographic background and disability. This enables comprehensive comparative reporting on the progress being made by student sub-populations.

Subregulation 3.3(2) sets out that the characteristics of sex, Indigenous status, socio-economic background and language background are as described in the *2009 Data Standards Manual – Student Background Characteristics*, published by MCEETYA, and provides a weblink from which the publication can be accessed. The background characteristic of geographic location is as approved by MCEETYA in July 2001. A national definition for “student disability” has yet to be settled, and a Note to Subregulation 3.2(1) indicates that it is expected that the relevant definition will be prescribed at a later date.

Regulation 3.3 – Performance information – measures for student attendance

Subregulation 3.3(1) sets out that the performance information for performance measures in Division 1 of Part 7 of Schedule 1, covering student attendance in non-government schools, is to be disaggregated by the characteristics of school sector, school grade, sex, and Indigenous status. Similar requirements apply to government schools under the NEA.

Subregulations 3.3(2) and (3) respectively define, for the purposes of subregulation 3.3(1), “school sector” as Catholic schools and other non-government schools; “school grade” as all ungraded primary school students, all ungraded secondary school students and each of Years 1 to 10. Subregulation 3.3(4) sets out that the characteristics of sex and Indigenous status are as described in the *2009 Data Standards Manual – Student Background Characteristics*, published by MCEETYA, and provides a weblink from which the publication can be accessed.

Regulation 3.4 – Reporting periods

Regulation 3.4 provides that the Minister may determine a period to which a report containing performance information specified in Schedule 1 must relate.

Part 5 Funding agreements – reporting to parents etc.

Regulation 5.1 – Student reports

Regulation 5.1 specifies requirements for non-government schools in relation to student reports to be given to parents, in accordance with section 20 of the Act. Subsection 20(3) of the Act deals with student reports and provides that such a report complies with section 20 if it meets, among other things, any other requirements specified in the regulations, and that the report is given to each person responsible for the student in a way, and with the frequency prescribed by the regulations.

Subregulation 5.1(1) provides that a report about a student’s achievement must include, for subjects studied, an assessment against achievement levels defined by the education authority labelled A to E (or equivalent) and that the assessment be clearly defined against specific learning standards. Subregulation 5.1(2) provides that the Minister may approve a different form of student report for the purposes of regulation 5. Subregulation 5.1(3) provides that a report must be provided at least twice a year.

A Note under this subregulation states that the *Privacy Act 1988* and the related Information Privacy Principles should be consulted to ensure that information reported does not interfere with an individual’s privacy.

Part 6 Funding agreements – publication by schools of information relating to schools

Regulation 6.1 – Information relating to schools

Regulation 6 prescribes certain information relating to schools which schools are required to make publicly available in accordance with section 21 of the Act. Section 21 requires that the information specified in the regulations relating to the school for a program year must be publicly available within 6 months after the end of the program year, and that the information is to be made publicly available in the way (if any) specified in the regulations.

Subregulation 6.1(1) sets out that the information relating to schools that must be made available for each year is: contextual information about the school, teacher standards and qualifications, workforce composition, student attendance at the school, senior secondary outcomes, student outcomes in standardised national literacy and numeracy testing, parent, student and teacher satisfaction with the school, post-school destinations, and school income broken down by funding source.

Note 1 under this subregulation states that under subsection 21(1) of the Act, the information must relate to the school for a program year. Note 2 states that under subsection 24(1A) of the Act, a funding agreement must not require a report to include any information that would identify a particular donor as a funding source of any non-government school or body. Note 3 states that it is expected that the definition of “school income broken down by funding source” for paragraph (i) will be prescribed at a later date.

Subregulation 6.1(2) provides that the Minister may approve a different form of information for this regulation. Subregulation 6.1(3) provides that the information in subregulations (1) and (2) is the minimum information required and does not prevent

a school making other information available. Subregulation 6.1(4) provides that, for subsection 21(2) of the Act, a school must make the information publicly available on the Internet and make arrangements to provide the information, on request, to a person who is responsible for a student and who is unable to access the Internet.

A Note under this subregulation states that the *Privacy Act 1988* and the related Information Privacy Principles should be consulted to ensure that information reported does not interfere with an individual's privacy.

Part 7 Grants for targeted expenditure – literacy, numeracy and special learning needs

Regulation 7.1 – School grant amounts

Subsection 98(2) of the Act provides that regulations may specify the base assistance amount for a program year for grants for literacy and numeracy, and special learning needs. Regulation 7.1 provides that, for subsection 98(2) of the Act, the base assistance amount for the 2009 program year is \$146 258 955. This regulation has the effect of increasing the funding amount specified in the Act by \$3,883,955, to correct an error in the funding amount for 2009 under section 98 of the Act.

Schedule 1 Performance information

This Schedule specifies the performance information to be provided by non-government schools under regulation 3.1. These reporting requirements also apply to government schools under the terms of the NEA. The measures are summarised below.

Part 1 – Measures for English literacy

Item 101 prescribes the percentage of students in each of years 3, 5, 7 and 9 at each level of proficiency in the NAPLAN assessment in each of reading, writing and language conventions (that is spelling, grammar and punctuation), including specific reference to the national minimum standards; and Item 102 prescribes the percentage of students achieving at or above the standard in the Programme for International Student Assessment (PISA) reading literacy assessment for 2009 and 2012.

Part 2 – Measures for numeracy and mathematics

Item 201 prescribes the percentage of students in years 3, 5, 7 and 9 at each level of proficiency in the NAPLAN assessment in numeracy including specific reference to the national minimum standards; Item 202 prescribes the percentage of students achieving at or above the standard in the PISA mathematical literacy assessment for 2009 and 2012; and Items 203 and 204 prescribe respectively, the percentage of students achieving at or above the standards in the year 4 and the year 8 mathematics assessments of the Trends in International Mathematics and Science Study (TIMSS) for 2010.

Part 3 – Measures for science

Item 301 prescribes the percentage of students achieving at or above the standard in science literacy in the National Assessment Program (NAP) science literacy assessment for year 6, for 2009 and 2012; Item 302 the percentage of students achieving at or above the standard in the PISA scientific literacy assessment for 2009 and 2012; and Items 303 and 304 prescribe the percentages of students achieving at or above the standards in the year 4 and the year 8 TIMSS science assessments for 2010.

Part 4 – Measures for civics and citizenship

Items 401 and 403 prescribe the percentage of students achieving at or above the standards in civic knowledge and understanding in the NAP civics and citizenship assessment for year 6 and year 10, for 2010. Items 402 and 404 specify the percentage of students achieving at or above the standards in citizenship participation skills and civic values in the NAP civics and citizenship assessments for year 6 and year 10, for 2010.

Part 5 – Measures for ICT literacy

Items 501 and 502 prescribe the percentage of students achieving at or above the standards in the NAP ICT literacy assessment for year 6 and year 10, for 2011.

Part 6 – Measures for vocational education and training in schools

Item 601 prescribes the participation measure of school students undertaking vocational education and training (with new apprenticeships and traineeships disaggregated) as part of their senior secondary school certificate in a calendar year as a proportion of all school students undertaking a senior secondary school certificate in that year. Item 602 specifies the attainment measure of school students enrolled in a senior secondary school certificate in a calendar year who have completed at least one vocational education and training unit of competency/module, as a proportion of all school students undertaking a senior secondary school certificate in that year.

Part 7 – Measures for student attendance

Division 1 of Part 7 outlines the information to be provided as part of a report for the purposes of regulation 3.4. Item 701 specifies the number of actual student days during the period to which a report relates as a percentage of the number of possible student days during that period.

Item 702 defines, for Item 701, “actual student days”, “possible student days” and “student”.

A Note to Item 702 provides that, for the purposes of regulation 3.4, the Minister may determine the period to which the information must relate.