

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2012 No. 223**

Issued by the authority of the Minister for School Education, Early Childhood and Youth

*Schools Assistance Act 2008*

*Schools Assistance Amendment Regulation 2012 (No. 1)*

#### **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 2013 for recurrent expenditure and targeted expenditure and for 2009 to 2014 for capital expenditure.

#### **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.

#### **Purpose and operation**

The *Schools Assistance Amendment Regulation 2012 (No. 1)* (the Regulation) amends the *Schools Assistance Regulations 2009* (the Principal Regulations) for the following purposes:

- to supplement funding for all programs of financial assistance under the Act for the 2012 program year (defined in the Act as a calendar year) for primary and secondary education under sections 36, 67, 69, 85 and 101 of the Act;
- increase the base assistance amounts in respect of two programs under the Act for the 2013 program year, for which the Minister may authorise payments to the States. Specifically, both the *Education in Country Areas* and *Literacy, numeracy and special learning needs* programs will have their base assistance amount increased. The base assistance amount is the maximum amount of funding which the Minister may authorise payment for in relation to these programs;
- revise references to reflect the new Ministerial Council known as the Standing Council on School Education and Early Childhood (SCSEEC);
- amend the national school performance and reporting requirements, including national student assessments, national reports on the outcomes of schooling and individual school information authorised by the Ministerial Council;
- prescribe the national curriculum authorised by the Ministerial Council, or an alternative curriculum assessed by the Australian Curriculum Assessment and Reporting Authority as delivering comparable outcomes for students, and prescribe the associated implementation timetable.

## Supplementation funding

Overall, the Regulation provides an estimated \$287.7 million of additional funding to non-government schools for the 2012 calendar year.

Supplementation to funding occurs through indexation to recurrent and targeted expenditure for non-government schools in line with the changes in the Average Government School Costs (AGSC), published by the Ministerial Council (which is currently known as the Standing Council on School Education and Early Childhood (SCSEEC)).

Subsection 36(3) of the Act (which refers to recurrent expenditure) and subsection 101(4) (which refers to targeted expenditure) both provide that, before the Governor-General makes regulations for the purposes of subsection 36(2) (specifying the amounts for the Average Government School Recurrent Costs (AGSRC)) and subsection 101(2) (specifying a number to be the targeted expenditure supplementation number for a program year) respectively, the Minister must consider changes in the figures of the AGSC. The Minister has considered changes in these figures.

Under paragraphs 36(1)(a)(ii) and 36(1)(b)(ii) of the Act, the Principal Regulations may specify the AGSRC for primary and secondary education respectively, for a program year. AGSRC is the average recurrent cost of educating a primary student or a secondary student in a government school. It is based on recurrent government schools expenditure data maintained by the Ministerial Council. The AGSRC was first implemented in 1993 and was designed to ensure that Australian non-government school recurrent funding is indexed for real cost increases faced by the government school sector. The Regulation sets out the increased AGSRC amounts for primary and secondary education for the 2012 program year.

Subsection 85(4) of the Act provides that before the Governor-General makes regulations for the purposes of subsection 85(2) (specifying a number to be the capital expenditure supplementation number for a program year), the Minister must consider changes in indices of building prices and wage costs specified in the Principal Regulations. The Minister has considered changes in indexation covering building prices and wage costs.

Supplementation for capital expenditure for 2012 has been calculated by applying movements of the index number for the previous calendar year in Index Number 3020 *Non-Residential Building Construction Australia* published by the Australian Bureau of Statistics in Table 15, Selected output of division E construction, subdivision and class index numbers of the Time Series Spreadsheets in the *6427.0 - Producer Price Indexes, Australia*. The index is a fixed weight composite index of building prices and wage costs produced by the Australian Bureau of Statistics and covers non-residential new construction using a component cost method, as close as possible to market prices, which reflect labour, material, plant input costs, and subcontractors' margin. The *6427.0 Producer Price Indexes, Australia* is available at <http://www.abs.gov.au>, by inserting '6427' in the search field on the front page. For the 2012 program year, the index moved from 157.2 in December 2010 to 159.6 in December 2011, a 1.527 per cent increase. The Regulation sets out the **base assistance amount** for the 2012 program year and the **capital expenditure supplementation number** for the 2012 program year.

Under subsection 67(3) of the Act, the Principal Regulations may specify a greater amount of 'assistance amount per student' for the purposes of supplementary assistance for Indigenous primary students at non-remote school campuses and remote and very remote school

campuses for the program year (pursuant to paragraphs 67(1)(b) and 67(2)(b) respectively). The Regulation sets out an increased amount of Indigenous supplementary assistance for Indigenous primary students at both non-remote school campuses and remote and very remote school campuses for the 2012 program year.

Subsection 67(1A) of the Act provides that the Principal Regulations may specify an additional amount of assistance for an Indigenous student from a remote or very remote area who is receiving primary education at a non-remote school campus. For subsection 67(1A) of the Act, the Regulation sets out an additional amount of assistance in relation to an Indigenous student who is:

- a) from a remote area or very remote area; and
- b) receiving primary education as a boarding student at a non-remote campus of a boarding school that has more than 50 Indigenous boarding students from remote Indigenous communities on the schools census day in the program year.

Under subsection 69(3) of the Act, the Principal Regulations may specify a greater amount of 'assistance amount per student' for the purposes of supplementary assistance for Indigenous secondary students at non-remote school campuses and remote and very remote school campuses for the program year (pursuant to paragraphs 69(1)(b) and 69(2)(b) respectively). The Regulation sets out an additional amount of Indigenous supplementary assistance for Indigenous secondary students at both non-remote school campuses and remote and very remote school campuses for the 2012 program year.

Subsection 69(1A) of the Act provides that the Principal Regulations may specify an additional amount of assistance for an Indigenous student from a remote or very remote area who is receiving secondary education at a non-remote school campus. For subsection 69(1A) of the Act, the Regulation sets out an additional amount of assistance in relation to an Indigenous student who is:

- a) from a remote or very remote area; and
- b) receiving secondary education as a boarding student at a non-remote campus of a boarding school that has more than 50 Indigenous boarding students from remote Indigenous communities on the schools census day in the program year.

Paragraph 99(b) of the Act provides that the Principal Regulations may specify a guarantee amount for literacy, numeracy and special learning needs (LNSLN) for a program year. The funding guarantee relates to the school grants component of the allocative mechanism for LNSLN. The Regulation sets out a reduced guarantee amount for literacy, numeracy and special learning needs for the 2012 program year due to the increase in the LNSLN schools grants amount for 2012.

#### Increased base assistance amounts for the 2013 program year for two targeted programs

Subsection 88(3) of the Act provides that the Principal Regulations may specify an amount to be the **base assistance amount** for a program year for education in country areas. The Regulation increases the base assistance amount for the 2013 program year for education in country areas.

Subsection 98(2) of the Act provides that the Principal Regulations may specify an amount to be the **base assistance amount** for a program year for literacy, numeracy and special learning needs—school grants amounts. The Regulation increases the base assistance amount for the 2013 program year for literacy, numeracy and special learning needs.

The increase in the base assistance amounts for the Country Areas Program (CAP) and the LNSLN Program provides for the transfer of five geographically isolated schools in the Northern Territory from the government to the non-government school sector. Additional CAP and LNSLN funding is required for these schools for the 2013 program year as a result of the extension of the Act until the end of 2013. CAP funding assists geographically isolated students and LNSLN funding assists the most disadvantaged students associated with a range of factors, including students with disabilities or learning difficulties, language backgrounds other than English, Aboriginal or Torres Strait Islander background, low socioeconomic background or geographical isolation.

#### Title of the Ministerial Council

The Regulation reflects the new Ministerial Council of Commonwealth, State and Territory ministers, established on 18 January 2012 under the auspices of the Council of Australian Governments and responsible for school education. The new Ministerial Council is known as the Standing Council on School Education and Early Childhood (SCSEEC) and was previously known as the Ministerial Council for Education, Early Childhood Development and Youth Affairs (MCEECDYA). MCEECDYA was established on 1 July 2009 and took over the schools education functions of the former Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA).

#### National school performance and reporting requirements

The Regulation makes amendments to the national student assessments prescribed in Part 2 of the Principal Regulations. With the extension of the Act until the end of 2013 for recurrent and targeted expenditure, it is necessary to mandate that certain national assessments are conducted in 2013. Further, an additional student assessment is to be carried out in 2013; the International Computer and Information Literacy Study (ICILS). ICILS is an international assessment of students in year 8 in computer and information literacy conducted by the International Association for the Evaluation of Education Achievement. The Ministerial Council agreed on 14 October 2011 that schools across Australia would participate in ICILS in 2013.

Part 2 of the Principal Regulations refers to the *Measurement Framework for National Key Performance Measures*. The Australian Curriculum, Assessment and Reporting Authority (ACARA) is the independent authority responsible for, among other things, a national assessment program and has developed and published a new version of the framework entitled the *Measurement Framework for Schooling in Australia*. The current framework defines the national key performance measures, specifies the data sources for these measures and outlines the reporting cycle for 2010 to 2015. It has been approved by the Ministerial Council and is published by ACARA at

[http://www.acara.edu.au/verve/resources/Measurement\\_Framework\\_for\\_Schooling\\_in\\_Australia\\_2010.pdf](http://www.acara.edu.au/verve/resources/Measurement_Framework_for_Schooling_in_Australia_2010.pdf)

The Regulation reflects the current *Measurement Framework for Schooling in Australia* and prescribes the updated performance measures.

Part 3 of the Principal Regulations refers to the *2009 Data Standards Manual – Student Background Characteristics*, published by MCEETYA. The Regulation reflects the replacement of this Manual by the *2010 Data Standards Manual – Student Background*

*Characteristics*, published by the Ministerial Council and available at [http://www.mceecdya.edu.au/mceecdya/data\\_standards\\_manual\\_2010,30011.html](http://www.mceecdya.edu.au/mceecdya/data_standards_manual_2010,30011.html)

Part 3 of the Principal Regulations prescribes the specified performance information in Schedule 1. The Regulation reflects the current *Measurement Framework for Schooling in Australia* as outlined above. These changes are consistent with the requirements for government schools specified in the National Education Agreement which requires that schools, systems and governments continue to adhere to the requirements of the Measurement Framework.

Part 4 of the Principal Regulations refers to the provision of information for an individual school. At a meeting in July 2011, the Ministerial Council endorsed additional outcomes information about an individual school. Ministers endorsed two new Vocational Education and Training (VET) measures to be reported on the *My School* website to replace the existing VET measure at Part 4.4(3)(b) of the Principal Regulations. The Regulation replaces the existing measure (*the number of students attaining qualifications in vocational education and training*) with the following:

- *the number of course enrolments and qualifications completed for students undertaking vocational education and training by qualification level and (if available) industry area; and*
- *the number of students undertaking school-based Apprenticeships and Traineeships.*

### National curriculum

Subsection 22(1) of the Act provides that funding agreements for non-systemic schools or approved schools systems must require the relevant authority for the school or system to ensure that schools implement the national curriculum prescribed by the Principal Regulations.

Subsection 22(2) of the Act provides that, despite subsection 14(2) of the *Legislative Instruments Act 2003*, regulations made under section 22 may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force from time to time. As explained in the Explanatory Memorandum for the *Schools Assistance Amendment Act 2011* (which inserted the current version of section 22 into the Act), this allows for future additions and revisions to the national curriculum as a result of the phased approach to its development and the iterative nature of curriculum development.

Development of the national curriculum is undertaken by ACARA under the direction of Education Ministers in accordance with the *Australian Curriculum, Assessment and Reporting Authority Act 2008*. The curriculum, once developed by ACARA, is endorsed by Ministers for implementation. The Regulation prescribes as the national curriculum:

1. the Australian Curriculum authorised by the Ministerial Council from time to time and which is published on the Australian Curriculum website at <http://www.australiancurriculum.edu.au/> and
2. alternative curriculum frameworks submitted to ACARA for recognition as delivering comparable outcomes for students as for those who are taught the Australian Curriculum and published on ACARA's recognition register at [http://www.acara.edu.au/curriculum/recognition\\_register.html](http://www.acara.edu.au/curriculum/recognition_register.html)

Due to the phased development of the Australian Curriculum, the Regulation also provides implementation timeframes by which the Australian Curriculum is to be implemented. The implementation timeframes are prescribed as those agreed by the Ministerial Council or by the same time the Australian Curriculum is implemented in government schools in the same jurisdiction, whichever is later. The Regulation provides a more certain legal framework for the non-government sector in which to implement the Australian Curriculum and provides greater administrative efficiency for prescribing the phased introduction of the Australian Curriculum.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

### **Consultation**

The Department of Education, Employment and Workplace Relations (DEEWR) consulted with the National Catholic Education Commission (NCEC), the Independent Schools Council of Australia (ISCA) and Christian Schools Australia in relation to the amendments to the Australian Curriculum.

Consultation was not undertaken by DEEWR in relation to the national school performance and reporting requirements because the amendments pertain to measures already known to the non-government sector through prior agreement by education ministers.

Consultation was not undertaken on supplementation of funding for the 2012 program year as the Regulation confers an overall benefit upon the relevant stakeholders for recurrent, capital and targeted funding.

### **Commencement**

The Regulation commences the day after it is registered on the Federal Register of Legislative Instruments.

### **Details of the Regulation:**

#### **Section 1 – Name of Regulation**

This section provides that the title of the Regulation is the *Schools Assistance Amendment Regulation 2012 (No. 1)*.

#### **Section 2 – Commencement**

This section provides that the Regulation commences on the day after it is registered on the Federal Register of Legislative Instruments.

#### **Section 3 – Amendment of *Schools Assistance Regulations 2009***

This section provides that the Principal Regulations are amended as set out in Schedule 1.

## **Schedule 1 – Amendments**

### **Item [1] – Subregulation 1.3(2), note**

Item [1] substitutes the note in subregulation 1.3(2).

Regulation 1.3 prescribes the application of the Principal Regulations; the note to subregulation 1.3(2) merely indicates that the Principal Regulations give effect to certain data collection and reporting requirements. The title and publisher of those reporting requirements have changed since the note to subregulation 1.3(2) was made. Accordingly, item [1] substitutes the note with a new note reflecting the changed name and publisher of the relevant documents.

### **Items [2] and [3] – Regulation 1.4**

Items [2] and [3] insert two new items into the Definitions at regulation 1.4.

The first new item [2] defines ACARA as the Australian Curriculum, Assessment and Reporting Authority and the second new item [3] defines ICILS as the International Computer and Information Literacy Study.

### **Items [4], [5] and [6] – Regulation 1.4**

Item [6] inserts a new item and note into the Definitions at regulation 1.4.

The new item defines the Ministerial Council as meaning the Council of Commonwealth, State and Territory Ministers, as it exists from time to time, with responsibility for school education.

The definition notes that the current Ministerial Council is known as the Standing Council on School Education and Early Childhood (SCSEEC), which was established on 18 January 2012, and took over the schools education functions of the former Ministerial Council for Education, Early Childhood Development and Youth Affairs (MCEECDYA). MCEECDYA was established on 1 July 2009 and took over the schools education functions of the former Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA).

The new term “Ministerial Council” is used in the Principal Regulations in substitution for the existing terms “MCEECDYA” and “MCEETYA”. Accordingly, items [4] and [5] repeal the now-redundant definitions for “MCEECDYA” and “MCEETYA”.

### **Item [7] – Regulation 1.4, definition of NAP, note**

Item [7] substitutes the note under the definition of NAP (National Assessment Program).

The substituted note refers to the revised and renamed *Measurement Framework for Schooling in Australia*, approved by the Ministerial Council and published on ACARA’s website.

### **Item [8] – Regulation 2.1**

Item [8] substitutes regulation 2.1.

Regulation 2.1 prescribes, for the purposes of section 17 of the Act, the national student assessments. New regulation 2.1 reflects the update to the *Measurement Framework for Schooling in Australia* and that the framework is now developed and published by ACARA on its website.

With the extension of the Act until the end of 2013 for recurrent and targeted expenditure, it is necessary to mandate that certain national student assessments are conducted in 2013. Accordingly, item [8] adds 2013 as an assessment year for items 1 and 2 in Table 1 and items 9 and 10 in Table 2. Further, the International Computer and Information Literacy Study (ICILS) assessment for year 8 students is added as item 14 to Table 2 for 2013.

#### **Items [9] and [10] – Paragraph 3.2(2)(a) and Subregulation 3.3(4)**

Items [9] and [10] substitute references to the *2009 Data Standards Manual – Student Background Characteristics* published by MCEETYA with the revised *2010 Data Standards Manual–Student Background Characteristics* published by the Ministerial Council, and effective from December 2010.

Regulations 3.2 and 3.3 prescribe the performance information relating to student characteristics and measures for student attendance respectively. The Data Standards Manual was revised in 2010.

#### **Item [11] – Paragraph 4.4 (3)(b)**

Subsection 19(1) of the Act provides that a funding agreement for a non-government school must include a requirement that the relevant authority for the school must provide a report to the Minister containing prescribed information about the school. Part 4 of the Principal Regulations prescribes the information that relevant authorities of non-government schools must provide the Minister under their funding agreements. Regulation 4.4 of the Principal Regulations sets out the information that relevant authorities must report on in relation to student outcomes.

In July 2011, the Ministerial Council considered and endorsed an expansion to the kinds of student outcome-related information that schools should report on to provide better data about vocational education, apprenticeships and traineeships being undertaken by secondary students. This information was first reported on the *My School* website (<http://www.myschool.edu.au>) in February 2012. Item [11] gives effect to that decision by substituting the current paragraph 4.4(3)(b) for new paragraphs (b) and (ba). These new paragraphs have the effect of requiring relevant authorities of non-government secondary schools to report on the number of course enrolments and qualifications completed for students undertaking vocational education and training by qualification level and (if available) industry area; and the number of students undertaking school-based Apprenticeships and Traineeships.

#### **Item [12] – Subregulation 6.1(1), note 3**

Item [12] removes Note 3 under subregulation 6.1(1) to maintain consistency for non-government schools with the requirements for government schools as specified in the National Education Agreement.

#### **Item [13] – after Part 6**

Subsection 22(1) of the Act requires funding agreements for non-government schools to include a requirement that the relevant authorities for the schools implement the national curriculum prescribed by the regulations, in accordance with the regulations. Subsection 22(2) of the Act allows regulations prescribing the national curriculum to make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.



Item [13] inserts a new Part 6A after Part 6 in the Principal Regulations, to prescribe the national curriculum for the purposes of subsection 22(1) of the Act.

New regulation 6A.1 prescribes, as the national curriculum, the Australian Curriculum authorised by the Ministerial Council from time to time. Alternatively, a school can adopt as its national curriculum an alternative curriculum framework assessed by ACARA as allowing comparable outcomes for students to the Australian Curriculum and published on ACARA's recognition register.

New subregulation 6A.1(2) requires that the national curriculum be implemented by the relevant authority of a non-government school by the later of the date it is implemented in government schools in the same jurisdiction as the non-government school, or the date authorised by the Ministerial Council.

#### **Item [14] – Regulation 7.1, table, after item 3**

Item [14] inserts a new item into the table in regulation 7.1 after item 3.

Regulation 7.1 prescribes, for the purposes of subsection 36(1) of the Act, changes to the Average Government Schools Recurrent Costs (AGSRC).

New table item 4 sets out \$10,057 and \$12,445 as the AGSRC amounts for Primary education and Secondary education respectively, for the 2012 program year.

#### **Item [15] – Regulation 7.2, table, after item 3**

Item [15] inserts a new item into the table in regulation 7.2 after item 3.

Regulation 7.2 deals with primary education funding amounts for Indigenous supplementary assistance. Regulation 7.2 prescribes, for the purposes of subsection 67(3) of the Act, changes to the assistance amount for each Indigenous primary student at non-remote school campuses, and remote and very remote school campuses, respectively.

New table item 4 sets out \$2002 as the assistance amount for each Indigenous primary student at a non-remote school campus and \$4816 as the assistance amount for each Indigenous primary student at a remote and very remote school campus for the 2012 program year.

#### **Item [16] – Regulation 7.2A, table, after item 1**

Item [16] inserts a new item in the table in regulation 7.2A after item 1.

Regulation 7.2A deals with additional Indigenous supplementary assistance for primary education at a non-remote school campus that is a boarding school. The regulation specifies the assistance amount for an Indigenous student receiving primary education as a boarding student at a non-remote campus of a boarding school that has more than 50 Indigenous boarding students from remote or very remote areas on the school census day. New table item 2 provides that, for subsection 67(1A) of the Act, the additional assistance amount is \$2814 for the 2012 program year for each eligible Indigenous primary student from a remote area or a very remote area.

#### **Item [17] – Regulation 7.3, table, after item 3**

Item [17] inserts a new item into the table in regulation 7.3 after item 3.

Regulation 7.3 deals with secondary education funding amounts for Indigenous supplementary assistance. Regulation 7.3 prescribes, for the purposes of subsection 69(3) of

the Act, changes to the assistance amount for each Indigenous secondary student attending a non-remote school campus (column 3 of new table item 4) or a remote or very remote school campus (column 4 of new table item 4).

New table item 4 sets out \$2784 as the assistance amount for each Indigenous secondary student at a non-remote school campus and \$5443 as the assistance amount for each Indigenous secondary student at a remote or very remote school campus for the 2012 program year.

#### **Item [18] – Regulation 7.3A, table, after item 1**

Item [18] inserts a new item 2 in the table in regulation 7.3A after item 1.

Regulation 7.3A deals with additional Indigenous supplementary assistance for secondary education at a non-remote school campus that is a boarding school. The regulation specifies the assistance amount for an Indigenous student receiving secondary education as a boarding student at a non-remote campus of a boarding school that has more than 50 Indigenous boarding students from remote or very remote areas on the school census day.

New table item 2 provides that, for subsection 69(1A) of the Act, the additional assistance amount is \$2659 for the 2012 program year for each eligible Indigenous secondary student from a remote area or a very remote area.

#### **Items [19] and [20] – Subregulation 8.1(1) and subregulation 8.1(2), table, after item 3**

Subsection 84(1) of the Act provides authority for the Minister to make grants of financial assistance to States and Territories for capital expenditure by non-government schools. The maximum total amount of these grants in any particular program (i.e. calendar) year is determined by a formula set out in subsection 84(2) of the Act; the maximum total amount of grants is the factor of the *base assistance amount* and the *capital expenditure supplementation number*.

Subsection 84(3) of the Act permits the base assistance amount to be prescribed by regulation. Subsection 85(2) of the Act permits the capital expenditure supplementation number to be set by regulation. Part 8 (regulation 8.1) of the Principal Regulations prescribes both the base assistance amount and the capital expenditure supplementation number. Subregulation 8.1(1) sets out the base assistance amount for 2011, and subregulation 8.1(2) sets out the capital expenditure supplementation number for 2009, 2010 and 2011.

Item [19] has the effect of prescribing a base assistance amount for 2012 of \$131,814,000 (the base assistance amount for 2011 remains at \$128,712,000). Item [20] has the effect of prescribing a capital expenditure supplementation number for 2012 of 1.01527.

The net effect of these two changes is that the maximum total amount of grants of financial assistance to States that the Minister may determine under subsection 84(1) of the Act for 2012 is \$133,827,000 (i.e. 131,814,000 x 1.01527, rounded to nearest \$1,000 in accordance with subsection 84(4) of the Act). By comparison, the maximum total amount of grants of financial assistance for 2011 was \$131,814,000 (i.e. \$128,712,000 x 1.0241, rounded to the nearest \$1,000).

Subsection 85(4) of the Act provides that, before the Governor-General makes regulations prescribing the capital expenditure supplementation number (i.e. item [20]), the Minister must consider changes in the index of building prices specified in the regulations and the

index of wage costs specified in the regulations. The indexes are set out in subregulation 8.1(3) of the Principal Regulations. The Minister has considered changes in these indexes.

**Item [21] – Part 9, before regulation 9.1**

Item [21] inserts a new regulation 9.1A before regulation 9.1.

Subsection 88(3) of the Act provides that the regulations may specify an amount to be the *base assistance amount* for a program year for education in country areas. Regulation 9.1A provides that, for subsection 88(3) of the Act, the *base assistance amount* for education in country areas for the 2013 program year is \$6,479,000.

**Items [22] – Regulation 9.1 and regulation 9.2, table, after item 3**

Subsection 97(1) of the Act provides authority for the Minister to make grants of financial assistance to States and Territories for non-government schools, to improve the learning outcomes of students who are educationally disadvantaged. The maximum total amount of these grants in any particular program (i.e. calendar) year is determined by a formula set out in subsection 97(2) of the Act; the maximum total amount of grants is the sum of the amount worked out under section 98 (school grants amount) and the amount worked out under section 99 (school guarantee amount).

Subsection 98(1) of the Act provides for a formula to work out the school grants amount for the purposes of subsection 97(2). The schools grant amount is the factor of the *base assistance amount* for a program year and the *targeted expenditure supplementation number* for the program year. Subsection 98(2) of the Act permits the *base assistance amount* to be prescribed in regulations. Subsection 101(2) of the Act permits the *targeted expenditure supplementation number* to be prescribed in regulations (as to which, see item [24]).

Item [22] substitutes regulation 9.1 with a new regulation 9.1, including a table that sets out the base assistance amounts for the 2009 and 2013 program years.

Regulation 9.1 provides that, for the purposes of subsection 98(2) of the Act, the *base assistance amount* for literacy, numeracy and special learning needs–schools grants amount for the 2013 program year is \$175,287,827.

**Item [23] – Regulation 9.2, table, after item 3**

Item [23] inserts a new item 4 in the table in regulation 9.2 after item 3.

Section 99 of the Act permits the school guarantee amount to be prescribed in regulations.

Regulation 9.2 of the Principal Regulations prescribes, for paragraph 99(b) of the Act, the school guarantee amounts for 2009 (\$1,867,513), 2010 (\$1,327,627) and 2011 (\$834,785). The effect of item [23] is to amend regulation 9.2 to prescribe a new guarantee amount for 2012 of \$382,000.

**Item [24] – Regulation 9.3, table, after item 3**

Part 9 of the Act provides authority for the Minister to make grants of financial assistance to States and Territories for non-government schools, for targeted assistance (i.e. financial assistance for specific purposes to address identified areas of need). The provisions in Part 9 of the Act provide for maximum grant amounts for each program year to be calculated by reference to formulas set out in those provisions. Many of those formulas include a factor

called the *targeted expenditure supplementation number* – see, for example, the description of item [22] above.

The targeted expenditure supplementation number is essentially an indexation factor, which is designed to reflect the increase in the cost over time of providing school education in a government school – the “Average Government School Costs” (AGSC).

Subsection 101(2) of the Act permits the targeted expenditure supplementation number to be prescribed in regulations. Regulation 9.3 of the Principal Regulations prescribes the targeted expenditure supplementation number for 2009, 2010 and 2011.

The effect of item [24] is to amend regulation 9.3 to include a targeted expenditure supplementation number for 2012 of 1.029.

Subsection 101(4) of the Act provides that, before the Governor-General makes regulations prescribing the targeted expenditure supplementation number, the Minister must consider changes in the figures for the AGSC, as published by the Ministerial Council. The Minister has considered these changes.

The following summary specifies the sum of the amounts and the respective estimated additional funding for the 2012 program year for each targeted program.

In accordance with subsection 87(2) of the Act, the sum of the amounts paid to the States for the 2012 program year for short term emergency assistance must not exceed \$1,265,000 and provides an estimated additional funding of \$36,000 for the 2012 program year.

In accordance with subsection 88(2) of the Act, the sum of the amounts paid to the States for the 2012 program year for education in country areas must not exceed \$6,278,000 and provides an estimated additional funding of \$177,000 for the 2012 program year.

In accordance with subsection 91(1) of the Act, the sum of the grant amounts paid to the States for the 2012 program year for languages education must not exceed \$14,762,000 and provides an estimated additional funding of \$416,000 for the 2012 program year.

In accordance with subsection 94(2) of the Act, the assistance amount per student for teaching English to eligible new arrivals for the 2012 program year is \$6,927 and provides an additional \$196 per student.

In accordance with subsection 95(2) of the Act, the assistance amount per student for teaching English to eligible humanitarian new arrivals for the 2012 program year is \$13,851 and provides an additional \$391 per student.

In accordance with subsection 96(3) of the Act, the assistance amount per student with disabilities for literacy, numeracy and special learning needs for the 2012 program year is \$1,023 and provides an additional \$29 per student.

In accordance with subsection 98(1) of the Act, the school grants amount for literacy, numeracy and special learning needs for the 2012 program year is \$175,047,433 and provides an estimated additional funding of \$4,933,310 for the 2012 program year.

#### **Item [25] – Schedule 1, item 102**

Item [25] substitutes item 102 in Part 1 of Schedule 1 with new item 101A and revised item 102. Item 101A is a subheading called ‘NAPLAN mean scale scores for reading and writing’. Item 102 is the percentage of students achieving at or above the proficient standard

(Level 3) in the Program for International Student Assessment (PISA) reading literacy assessment for 2012.

Part 1 of Schedule 1 to the Principal Regulations prescribes, for the purposes of regulation 3.1 (performance information for the purpose of paragraph 18(1)(c) of the Act) the measures for English literacy.

#### **Item [26] – Schedule 1, item 202**

Item [26] substitutes item 202 in Part 2 of Schedule 1 with new item 201A and revised item 202. Item 201A is a subheading called ‘NAPLAN mean scale scores for numeracy’. Item 202 is the percentage of students achieving at or above the proficient standard (Level 3) in the PISA mathematical literacy assessment for 2012.

Part 2 of Schedule 1 to the Principal Regulations prescribes, for the purposes of regulation 3.1 (performance information for the purpose of paragraph 18(1)(c) of the Act), the measures for numeracy and mathematics.

#### **Item [27] – Schedule 1, items 301 and 302**

Item [27] substitutes items 301 and 302 in Part 3 of Schedule 1 with revised items 301 and 302 to reflect the new references in the *Measurement Framework for Schooling in Australia* to the proficient standard (Level 3.2) in the NAP science literacy, and to the proficient standard (Level 3) in the PISA scientific literacy.

Part 3 of Schedule 1 to the Principal Regulations prescribes, for the purposes of regulation 3.1 (performance information for the purpose of paragraph 18(1)(c) of the Act), the measures for science.

#### **Item [28] – Schedule 1, Part 4**

Item [28] substitutes Part 4 of Schedule 1 with items 401 and 402 to reflect the requirements in the *Measurement Framework for Schooling in Australia* for civics and citizenship. Item 401 is the percentage of students achieving at or above the proficient standard (Level 2) in civics and citizenship in the NAP civics and citizenship assessment, year 6, for 2013. Item 402 is the percentage of students achieving at or above the proficient standard (Level 3) in civics and citizenship in the NAP civics and citizenship assessment, year 10, for 2013.

Part 4 of Schedule 1 to the Principal Regulations prescribes, for the purposes of regulation 3.1 (performance information for the purpose of paragraph 18(1)(c) of the Act), the measures for civics and citizenship.

#### **Item [29] – Schedule 1, items 601 and 602**

Item [29] substitutes items 601 and 602 with a new item 601 in Part 6 of Schedule 1. New item 601 is the proportion of the population aged 15 to 19 years who in the program year successfully completed at least one Unit of Competency as part of a vocational education and training qualification at Australian Qualification Framework Certificate II level or above.

Part 6 of Schedule 1 to the Principal Regulations prescribes, for the purposes of regulation 3.1 (performance information for the purpose of paragraph 18(1)(c) of the Act), the measures for vocational education and training in schools.

**Item [30] – Schedule 1, Part 7, heading**

Item [30] substitutes the heading for Part 7 of Schedule 1 to the Principal Regulations to be Measures for student participation.

**Item [31] – Schedule 1, item 701**

Item [31] substitutes item 701 in Part 7 of Schedule 1 to the Principal Regulations. New item 701 is the number of actual full-time student days attended by full-time students in Years 1 to 10 as a percentage of the total number of possible student days attended over the period. New item 701A is the proportion of children aged 6 to 15 years who are enrolled in school. New item 701B is the apparent retention rates from year 7 or 8 to year 10 and year 12. New item 701C is the proportion of students participating in NAPLAN for years 3, 5, 7, 9 for reading, writing and numeracy.

Part 7 of Schedule 1 to the Principal Regulations prescribes, for the purposes of regulation 3.1 (performance information for the purpose of paragraph 18(1)(c) of the Act), the measures for student participation.

**Item [32] – Further amendments**

Item [32] prescribes further minor technical amendments to the Principal Regulations, to reflect changes in technical terminology (e.g. from “standard” to “proficient standard (intermediate)”) or updates in published documents (e.g. from 2009 to 2010) referred to in the regulations.

## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

### *Schools Assistance Amendment Regulation 2012 (No. 1)*

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### **Overview of the Legislative Instrument**

The Legislative Instrument amends the *Schools Assistance Regulations 2009* (the Principal Regulations) for the following purposes:

- supplementing funding for the 2012 program year for primary and secondary education under sections 36, 67, 69, 85 and 101 of the Act;
- increasing the base assistance amounts for the education in country areas and the Literacy, Numeracy and Special Learning Needs–schools grants amount for the 2013 program year;
- amending the national school performance and reporting requirements, including national student assessments, national reports on the outcomes of schooling and individual school information authorised by the Ministerial Council;
- prescribing the national curriculum authorised by the Ministerial Council, or an alternative curriculum assessed by the Australian Curriculum Assessment and Reporting Authority as delivering comparable outcomes for students and prescribing the associated implementation timetable.

The Instrument also makes technical amendments to the Principal Regulations which do not have any substantive change to the law, including:

- revising references to reflect the new Ministerial Council known as the Standing Council on School Education and Early Childhood.

### **Human rights implications**

#### *Right to education for children*

The Legislative Instrument engages the right to education in Article 13 of the International Covenant on Economic, Social and Cultural Rights. Article 13 recognises the right of everyone to education which is directed towards the full development of the human personality and the sense of its dignity and to enable all persons to participate effectively in society. It also recognises the liberty of parents and guardians to choose non-government schools for their children, provided those schools confirm to the minimum educational standards set out by the Australian Government.

The right to education for children is also found in Articles 28 and 29 of the Convention on the Rights of the Child. Items 14 to 24 of the Instrument provide additional funding in support of improving educational outcomes for students attending non-government primary and secondary schools.

The Legislative Instrument also engages Articles 9 and 24 of the Convention on the Rights of Persons with Disabilities. Article 9 recognises the right of persons with disabilities to participate fully in all aspects of life, including education. Article 24 specifically recognises the right of persons with disabilities to an inclusive education. The additional recurrent, capital and targeted funding prescribed by this Instrument supports the improvement and accessibility of school facilities for eligible students with disabilities, and supports those students to facilitate their effective education.

As a whole, the Legislative Instrument engages and promotes the right to education of children and the rights of persons with disabilities by providing additional funding to assist with improving educational outcomes for students attending non-government primary and secondary schools, including Indigenous students, students educationally disadvantaged because of geographic isolation and students with disabilities.

## **Conclusion**

This Instrument is compatible with human rights because it advances the protection of human rights.

**The Hon Peter Garrett AM MP**

**Minister for School Education, Early Childhood and Youth**