

EXPLANATORY STATEMENT

Select Legislative Instrument 2013 No. 195

Issued by the Authority of the Minister for Education

Australian Education Act 2013

Australian Education Regulation 2013

Purpose and operation

The *Australian Education Act 2013* (the Act) provides Commonwealth financial assistance for schools.

Subsection 130(1) of the Act empowers the Governor-General to make regulations prescribing matters that are required, permitted, necessary or convenient to be prescribed for the purposes of the Act.

The purpose of the *Australian Education Regulation 2013* (the Regulation) is to prescribe a range of matters concerning:

- the interpretation of provisions in the Act;
- conditions of grants of financial assistance to States and Territories under the Act;
- matters relevant to Commonwealth grants of recurrent funding for participating schools;
- matters relevant to Commonwealth grants of recurrent funding for non-participating States and Territories;
- matters relevant to Commonwealth grants of capital funding, special circumstances funding and funding for non-government representative bodies;
- conditions of approval of approved authorities and bodies;
- conditions of approval of approved system authorities;
- ongoing policy requirements for block grant authorities and non-government representative bodies;
- matters relevant to actions Ministers may take for failure to comply with the Act or the Regulation, and to require amounts to be repaid; and
- other miscellaneous matters.

Prior to 2009, both the Government and non-government sectors operated under common legislation. From 2009 to 2013 the requirements were in two pieces of legislation (the *Federal Financial Relations Act 2009* and the *Schools Assistance Act 2008*) and associated agreements (the Intergovernmental Agreement on Federal Financial Relations and the National Education Agreement). While many of the requirements set out in the Regulation are consistent with these previous arrangements, there are nevertheless new requirements.

The Regulation is consistent with other regulatory approval schemes. Most of the requirements set out in the Regulation reflect practice or conditions under the previous framework, most of which have been agreed through the Standing Council on School Education and Early Childhood (SCSEEC or Ministerial Council) as part of joint policy development processes. Generally those requirements that are new have been agreed through

negotiations, or are reflected in the National Education Reform Agreement and, where appropriate, are accompanied by suitable transitional arrangements to ensure approved authorities and schools achieve the expected outcomes.

Further, funding recipients are afforded added protection through the review processes in the Act which are considerably more robust than existing arrangements. Protection is also provided for States and Territories in relation to the Minister's ability to make certain decisions by the inclusion of "show cause" processes. These take the form of a statutory requirement for the Minister to undertake a natural justice process before making certain decisions under the Act.

Together with the Australian Education Act, the Regulation clearly sets out the Minister's powers to make decisions, determinations and give direction in relation to school funding arrangements, improving on previous funding frameworks where the Minister had broad discretions under various guidelines and agreements. A Guide to the Act will explain in plain English how the Act and Regulation works. It will also provide advice to stakeholders on what they need to do to meet their obligations under the Act and Regulation.

The Regulation assists in providing greater levels of certainty and enforceability of obligations under the school reform arrangements than provided by previous arrangements.

Following appropriate consultation, the Regulation is able to be amended in a more timely fashion than the Act to reflect changes agreed over time, allowing flexibility and greater responsiveness.

Details of the Regulation are set out in the [Attachment](#).

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

The Regulation commences on 1 January 2014, consistent with the commencement of the Act for the purpose of the provision of Commonwealth funding from 2014. Making the Regulation now provides certainty for authorities and schools in preparing for the requirements applicable from 2014.

Authority and Preconditions

Subsection 130(1) of the Act empowers the Governor-General to make regulations prescribing matters that are required, permitted, necessary or convenient to be prescribed for the purposes of the Act.

Subsection 130(5) of the Act requires that before the Governor-General makes regulations under the Act, the Minister must consult the Ministerial Council (i.e. the SCSEEC). However, sub-item 12(3) of Schedule 2 to the *Australian Education (Consequential and Transitional Provisions) Act 2013* provides that subsection 130(5) of the Act does not apply in relation to regulations made before 1 January 2014 (such as the Regulation).

Subsection 15(2) of the Act requires that, before the Governor-General makes regulations for the purpose of prescribing levels of education for a State or Territory, the Minister must

have regard to arrangements for providing education at government schools located in the State or Territory.

This requirement affects sections 7, 8 and 9 of the Regulation. The Minister has considered the arrangements for providing education at government schools in every State and Territory in developing those sections. These provisions do not substitute for State and Territory legislation establishing the years of primary and secondary education. Rather, these provisions specify which students can be funded under the Act.

Subsection 22(2) of the Act requires that, before the Governor-General makes regulations for the purpose of imposing funding conditions on States and Territories relating to national policy initiatives, the Minister must have regard to:

- decisions of SCSEEC relating to those initiatives; and
- agreements between the Commonwealth and a State or Territory relating to Commonwealth funding of schools under the Act.

This requirement affects section 10 of the Regulation. In developing that section, the Minister has had regard to relevant decisions of SCSEEC, as well as the National Education Reform Agreement (NERA), bilateral agreements with States and Territories under the NERA, the Intergovernmental Agreement on Federal Financial Relations, and its appended National Education Agreement. The requirements set out in section 10 are mostly initiatives that have been agreed by the Council of Australian Governments and/or SCSEEC as part of joint policy development processes.

Subsection 77(4) of the Act requires that, before the Governor-General makes regulations for the purpose of detailing ongoing policy requirements for approved authorities under section 77, the Minister must have regard to agreements between the Commonwealth and a State or Territory relating to Commonwealth funding of schools under the Act.

This requirement affects Division 3 of Part 5 of the Regulation. In developing that Division, the Minister has had regard to the NERA, bilateral agreements with States and Territories under the NERA, the Intergovernmental Agreement on Federal Financial Relations, and its appended National Education Agreement.

Section 106 of the Act requires that, before the Governor-General makes regulations for the purpose of Part 7 of the Act (relating to implementation plans), the Minister must have regard to agreements between the Commonwealth and approved authorities (including States and Territories) relating to Commonwealth funding of schools under the Act. The Minister has had regard to these agreements.

Consultation

A detailed consultation process for the development of the Regulation was undertaken with stakeholders, including States and Territories, the SCSEEC secretariat and non-government sector. Consultation included an exposure process for the Regulation together with regular meetings with key stakeholders from States, Territories and the non-government sector.

Statement of Compatibility with Human Rights

The Statement of Compatibility with Human Rights appears at the end of this Explanatory Statement.

Details of the Australian Education Regulation 2013

Part 1 – Preliminary

Division 1 - Preliminary

Section 1 Name of regulation

Section 1 provides that the title of the Regulation is the *Australian Education Regulation 2013*.

Section 2 Commencement

Section 2 provides that this Regulation commences on 1 January 2014.

Section 3 Authority

Section 3 provides that the authority that the Regulation is made under is the *Australian Education Act 2013*.

Section 4 Definitions

Section 4 is an interpretative provision which contains definitions of the terms and expressions used in the Regulation.

Section 5 Meanings of *approved system arrangement* and *approved system authority*

Section 5 is an interpretative provision setting out the meaning of ***approved system arrangement*** and ***approved system authority***, relevant for the purposes of determining the capacity of an approved authority to reallocate Commonwealth recurrent funding in accordance with its own needs-based funding model.

The section provides that an approved system arrangement can be made before or after the Regulation commences. The arrangement must be a relevant arrangement (defined in section 6 of the Act), comply with the requirements for needs-based funding arrangements set out in subsection 61(1), and the implementation plan requirements set out in section 99 of the Act. Provided these are met, the Minister may, in writing, determine the arrangement to be an approved system arrangement.

The section provides that the determination by the Minister is not a legislative instrument. This provision is for the sake of clarity and does not affect the legal character of such a determination, which would not be a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Once an approved authority has entered into an approved system arrangement it becomes an approved system authority.

Division 2 – Interpretation

Subdivision A – Overseas students

Section 6 Overseas students

Commonwealth funding under the Act is not provided for overseas students: overseas students are excluded from the definitions of primary students and secondary students, which are the only students who are “counted” for the purposes of the funding formulas in the Act.

The term “overseas student” is defined in section 6 of the Act, and essentially encompasses persons in Australia on student visas. That definition also allows the regulations to include persons in the definition of overseas students, and to exclude persons who would otherwise be overseas students from the definition.

Section 6 of the Regulation sets out the following classes of individuals who are excluded from the definition of overseas student for the purpose of section 6 of the Act (and who therefore attract funding under the Act):

- a dependant of a person receiving a sponsorship or scholarship for the purpose of undertaking a course provided by an institution in Australia specified in Table A or B of subsection (4)(1) of the *Higher Education Funding Act 1998* and is meeting the full cost of the education component of the course;
- a student taking part in a registered Student Exchange Program; and
- a person or dependent of a person receiving a sponsorship or scholarship from the Commonwealth for the purpose of undertaking a course provided in Australia.

Subdivision B – Levels of education

Section 7 Levels of education that constitute primary education for schools other than special schools

Section 7 provides that, with the exception of special schools, for the purpose of being funded under the Act, foundation to year 6 are the levels of education that constitute primary education in New South Wales, Victoria, Tasmania, the Australian Capital Territory and the Northern Territory; and foundation to year 7 constitutes primary education in Queensland, Western Australia and South Australia. (Foundation is the year of schooling immediately before year 1 (as defined in section 4)). Students receiving this level of education will attract the SRS funding amount for primary students.

Section 8 Levels of education that constitute secondary education for schools other than special schools

Section 8 provides that, with the exception of special schools, for the purpose of being funded under the Act, years 7 to 12 are the levels of education that constitute secondary education for New South Wales, Victoria, Tasmania, the Australian Capital Territory and the Northern Territory, and years 8 to 12 constitute secondary education for Queensland, Western Australia and South Australia. Students receiving this level of education will attract the SRS funding amount for secondary students.

Sections 7 and 8 will be adjusted in future having regard to any change of arrangements of the States and Territories.

Section 9 Levels of education that constitute primary education and secondary education for special schools

Section 9 provides that education provided to students aged 4 to 11 (or 4 to 12 for Queensland, Western Australia and South Australia) is primary education, and education provided to students aged 12 to 21 (or 13 to 21 for Queensland, Western Australia and South Australia) is secondary education at special schools. Age has been used to define these levels as not all special schools provide education by year level. This may result in some special schools being characterised as combined schools, for example, where a school provides education predominantly to young students, but also includes a small number of students aged 12 (or 13) or older.

Where special circumstances exist, section 15 of the Act provides that the Minister may determine a different level of education from the level prescribed in the Regulation for a specified special school, special assistance school or student at one of those kinds of school.

Part 2 – Grants of financial assistance to States and Territories

Section 10 Conditions of financial assistance – implementing national policy initiatives relating to school education

Section 10 sets out the national policy initiatives that all States and Territories (whether participating or non-participating) must implement as a condition of receiving grants of financial assistance under the Act.

States and Territories must do the following in relation to all schools located in the State or Territory:

- improve the provision of school education to meet nationally agreed outcomes, objectives and targets including for students with particular needs;
- implement policies and programs to ensure that all children are engaged in and benefit from schooling, including by supporting the most disadvantaged students agreed by the Ministerial Council;
- implement policies and programs to support students to complete education to year 12 (or an equivalent level) and to achieve national agreed outcomes, objectives and targets; and
- take action to collect and provide data in each of the above under nationally agreed performance reporting frameworks to allow governments to identify areas of need and direct resources accordingly.

The nationally agreed outcomes, objective and targets are set out in the National Education Agreement.

A State or Territory must also:

- participate in the governance of and provide financial and other support for the national education institutions (including ACARA, the Australian Institute for Teaching and School Leadership Limited, and Education Services Australia Ltd) to progress the policy directions and implement the national reforms agreed by the Ministerial Council;
- provide effective regulatory oversight of all schools located in the State or Territory to ensure the quality and effectiveness of the provision of school education;
- continue efforts to improve the quality of teachers at schools located in the State or Territory, having regard to nationally agreed professional standards for teachers, and through initiatives agreed by the Ministerial Council for nationally consistent teacher registration and accrediting initial teacher education courses;
- implement the *Aboriginal and Torres Strait Islander Education Action Plan 2010-2014*; and
- develop and implement a new Aboriginal and Torres Strait Islander Education Plan to be in place after the *Aboriginal and Torres Strait Islander Education Action Plan 2010-2014* expires.

The *Aboriginal and Torres Strait Islander Education Action Plan 2010-2014* is also relevant as a document that all approved authorities (including approved authorities of participating

and non-participating schools) must ensure each school has regard to in developing its school improvement plans under paragraph 44(2)(c).

A note is included stating that in 2013 the *Aboriginal and Torres Strait Islander Education Action Plan 2010-2014* was accessible at www.mceecdya.gov.au.

Section 11 Condition of financial assistance – recovering amounts

Under the Act, the Commonwealth pays financial assistance for a non-government school to the State or Territory in which the school is located. In turn, the State or Territory must pass this funding on to the approved authority, block grant authority, or non-government representative body for the non-government school. The Commonwealth will not have a contractual relationship with the authority for a non-government school in relation to financial assistance paid to it by a State or Territory in accordance with the Act, and is unable to recover funds from the authority without the assistance of the relevant State or Territory.

Under paragraph 110(1)(a) of the Act the Minister is able to determine that a State or Territory pay to the Commonwealth a specified amount as a result of a failure to comply with the Act as set out in section 108 of the Act, or because of an overpayment or other debt as set out in section 109 of the Act. Subject to regulations for the purposes of section 24 of the Act, the amount set out in such a determination is a debt due by the State or Territory to the Commonwealth in accordance with subsection 111(1) of the Act.

Section 11 of the Regulation is made the purposes of section 24 of the Act. It provides that where the Minister makes determination under paragraph 110(1)(a) of the Act, the State or Territory must pay the amount by the time specified in the determination.

Where the circumstances giving rise to the issue of the determination by the Minister are the responsibility of the State or Territory (as in the case of an overpayment to a State for its government schools), the State or Territory must make the payment itself.

However, where the circumstances giving rise to the issue of the determination by the Minister are the responsibility of an approved authority, block grant authority, or non-government representative body, in relation to a non-government school, the State or Territory has a couple of other options.

Subsection 11(3) requires that the State or Territory make an arrangement with each approved authority, block grant authority or non-government representative body to whom the State or Territory may pay Commonwealth funding under the Act. The arrangement must provide that if the Minister makes a determination under paragraph 110(1)(a) of the Act as a result of one of the following circumstances in relation to the authority or body:

- non-compliance or a breach under section 108 of the Act;
- an overpayment under subsection 109(1) of the Act;
- a recoverable payment under subsection 109(2) of the Act;
- an unpaid amount under an Act specified in section 109(3) of the Act; or
- a school closure as set out in subsection 109(4) of the Act;

then the amount mentioned in the determination is a debt due to the State or Territory and may be recovered by the State or Territory (or another person on its behalf) in a court.

Subsection 11(4) then provides that the State or Territory has the option of either assigning to the Commonwealth its right to recover the debt (and the Commonwealth must accept any such assignment), or promptly recovering the debt from the authority or body.

If the State or Territory assigns its right to recover the authority's debt to the Commonwealth, the debt may be recovered by the Minister on behalf of the Commonwealth, and the debt due by the State or Territory to the Commonwealth that arises under subsection 11(1) of the Act is taken to be extinguished. This is so whether or not the Commonwealth chooses to exercise the assigned right, or how successful it is in recovering the debt from the non-government authority or body.

Section 12 Pro-rating of recurrent funding— schools that begin to provide education, or become entitled to financial assistance under Part 3 of the Act, in a year

Commonwealth recurrent funding for schools is determined by the Minister under section 25 of the Act. The Commonwealth funding is calculated on a full-year basis. Section 27 of the Act provides for this funding to be calculated on a pro-rata basis in the specified circumstances in accordance with the regulations. The relevant sections of the Regulation for this purpose are sections 12 and 13.

The pro-rata arrangements only apply to recurrent funding payable by the Commonwealth under Part 3 of the Act.

The pro-rata arrangements do not apply to Commonwealth recurrent funding payable to non-participating States and Territories under Part 4 of the Act, as that Commonwealth funding is not calculated by reference to schools. Whether a non-participating State or Territory opens or closes a school part-way through a year makes no difference to the determination of the Commonwealth funding to the State or Territory under Part 4 of the Act.

The pro-rating arrangements also do not apply to Commonwealth capital and special circumstances funding under Part 5 of the Act.

Section 12 provides the method for calculating the amount payable for schools that begin to provide education, or become entitled to financial assistance under Part 3 of the Act, during a year.

If a school starts providing education, or becomes entitled to Commonwealth funding as a participating school, before 1 March in a year, the full amount of Commonwealth recurrent funding is payable in relation to the school for the year.

If a school starts providing education, or becomes entitled to Commonwealth funding as a participating school, after the first Friday in August in a year, no amount of Commonwealth recurrent funding is payable for the year.

A formula is provided that prorates the amount where a school starts providing education, or becomes entitled to Commonwealth funding as a participating school, between 1 March and the first Friday in August.

This is broadly consistent with the pro-rata arrangements for Commonwealth funding of non-government schools during 2009 to 2013.

Section 13 Pro-rating of recurrent funding– schools that cease to provide education, or cease to be entitled to financial assistance under Part 3 of the Act, in a year

Section 13 provides the method for calculating the amount payable for schools that cease to provide education, or that cease to be entitled to financial assistance under Part 3 of the Act (for example, is removed from an approved authority's approval), during a year.

The pro-rata arrangements only apply to recurrent funding payable by the Commonwealth under Part 3 of the Act.

The pro-rata arrangements do not apply to Commonwealth recurrent funding payable to non-participating States and Territories under Part 4 of the Act, as that Commonwealth funding is not calculated by reference to schools. Whether a non-participating State or Territory opens or closes a school part-way through a year makes no difference to the determination of the Commonwealth funding to the State or Territory under Part 4 of the Act.

If a school stops providing education, or ceases to be entitled to financial assistance under Part 3 of the Act, before 1 March in a year, no amount of Commonwealth recurrent funding is payable for the year.

If a school stops providing education or ceases to be entitled to financial assistance under Part 3 of the Act after the first Friday in August in a year, the full amount of Commonwealth recurrent funding is payable in relation to the school for the year.

A formula is provided that prorates the amount where a school stops providing education, or ceases to be entitled to financial assistance under Part 3 of the Act, between 1 March and the first Friday in August.

This is broadly consistent with the pro-rata arrangements for Commonwealth funding of non-government schools during 2009 to 2013.

Part 3 – Recurrent funding for participating schools

This Part contains provisions that relate to the calculation and payment of Commonwealth recurrent funding to participating schools only. Part 4 of the Act sets out the calculation and payment of Commonwealth recurrent funding to non-participating schools.

Division 1 – Matters related to the funding formula

Section 14 ARIA index value

ARIA (Accessibility/Remoteness Index of Australia) is an index that measures relative geographic remoteness of locations in Australia. It is a relevant factor in determining the location and size loadings for a school in Division 3 of Part 3 of the Act. Section 6 of the Act provides that the ARIA index value of a school has the meaning given by the regulations.

Section 14 of the Regulation provides that a school's ARIA index value is the average ARIA+ score for the Statistical Area Level 1 (defined in section 4) in which the school is located.

Note 1 explains that for 2013 the average ARIA+ scores were obtained from the Australian Population and Migration Research Centre.

The ARIA+ score for a school is based on its geographical location and will not change until the Australian Population and Migration Research Centre recalculates these scores after the ABS 2016 Population Census.

The second note draws reference to section 18 of the Act. Where a school has more than one location, the Minister may determine the location of the school for the purposes of working out the school's ARIA index value.

Section 15 Commonwealth share

Under the Act, financial assistance for participating schools is payable each year, based on a formula that produces the Commonwealth share of a total amount of public recurrent funding (section 32 of the Act). (The Commonwealth share is not relevant to the calculation of Commonwealth funding for non-participating schools.)

Section 6 of the Act defines the "Commonwealth share" for a school as the percentage prescribed by, or worked out in accordance with, the regulations.

Section 15 of the Regulation provides for the calculation of the Commonwealth share, generally retaining the previous Commonwealth share of total public recurrent funding paid to the school.

For existing schools, the Commonwealth and State or Territory shares are derived by reference to a baseline (the old per student amount as described in the Act) share as existed prior to the commencement of the Act. New schools have their Commonwealth shares

determined by reference to an average of existing schools within that sector in that State or Territory.

Old Per Student Amount is greater than SRS Funding Amount

For schools that existed prior to the commencement of the Act whose approved authority or approved system authority's old per student amount is greater than the SRS funding amount, such that the authority's previous funding is above the amount calculated under section 32 of the Act, the Commonwealth share will be calculated year by year as a proportion of the indexed old per student amount that was provided by the Commonwealth and the State or Territory respectively.

To calculate the Commonwealth share the Commonwealth and State or Territory old per student amounts from 2013 are indexed year by year until the school is fully transitioned. The indexation rates that apply will be set out in each jurisdiction's Bilateral Agreement with the Commonwealth. Once the yearly Commonwealth and State or Territory total funding has been worked out, the Commonwealth share is derived by dividing the Commonwealth total funding by the total of the Commonwealth plus the State or Territory funding.

Once the school has transitioned to the SRS funding amount, the Commonwealth share that will apply will be the share from the year before the school completed its transition and will apply from that point onward.

Old Per Student Amount is less than the SRS Funding Amount

For schools that existed prior to the commencement of the Act whose approved authority or approved system authority's old per student amount for 2013 is less than the SRS funding amount, such that the school's previous funding is below the amount as calculated under section 32 of the Act, the Commonwealth share will be calculated similarly to the above scenario but will also take into account changes to enrolments and additional contributions from the Commonwealth and States or Territories to transition schools up to the SRS funding amount over a number of years.

The Commonwealth share is therefore the base amounts as per the above scenario but also takes into account changes to enrolments to track baseline amounts such that the recurrent funding amounts from 2013 are expressed on a per student basis then indexed and then multiplied by enrolments year by year until the school is fully transitioned.

However, the Commonwealth and the relevant State or Territory will also provide additional recurrent funding in order to bring schools up to the SRS funding amount. The share of the additional funds will be outlined in the Bilateral Agreement with each jurisdiction.

Approved authorities on 1 January 2014

Due to the transitional provisions in the *Australian Education (Consequential and Transitional Provisions) Act 2013*, there will be a number of approved authorities on 1 January 2014 that include each State and Territory, in relation to its government schools, and

those approved authorities of non-government schools who were approved authorities under the *Schools Assistance Act 2008*.

Subsection (2) provides that if an approved authority is an approved authority for a school on 1 January 2014, the Commonwealth share for the school is the percentage that the Commonwealth provided of the approved authority's old per student amount for the school's final year of old funding.

The final year of old funding is defined in subsection (3) as the year immediately before the year that financial assistance is first worked out for the school under section 32 of the Act (the amount payable for a participating school).

The approved authority's old per student amount is determined by the Minister. For the years 2013 and 2014 this determination must not be inconsistent with any relevant arrangement of the approved authority (paragraph 58(1)(a) of the Act). For later years the Minister must have regard to the authority's old per student amount for 2013 and 2014.

Subsection (5) provides that the Minister may determine a higher percentage to be the Commonwealth share for a school where the transitional provisions of section 59 of the Act applied (old per student amount for 2014 is less than the new per student amount for 2014) or, for a special school or special assistance school, if the Minister is satisfied special circumstances exist.

Approved authorities approved for schools after 1 January 2014

Subsections (6) and (7) provide that the Minister may determine in writing the Commonwealth share for a school whose approved authority is not approved as the approved authority for the school until after 1 January 2014, having regard to the average Commonwealth share for schools in that sector in the State or Territory in which the school is located.

Subsection (8) provides that these determinations by the Minister under this section are not legislative instruments. This provision is for the sake of clarity and does not affect the legal character of the determinations, which would not be legislative instruments within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Section 16 Definitions of kinds of students

Subsection (1) provides the definition of Aboriginal and Torres Strait Islander student which is relevant for the calculation of the loading for Aboriginal and Torres Strait Islander students.

Subsection (2) provides the definition of a student with disability for 2014 which is relevant for the calculation of the loading for students with disability. A student with disability for 2014 is a student who meets the requirements of the State or Territory in which the school is located for financial assistance to be provided in relation to the student as a student with disability. These requirements can be administrative or legislative; provided the student is eligible for financial assistance from the relevant State or Territory, the student is a student with disability for the purposes of the Act.

The Ministerial Council has agreed to the phased implementation of the first annual nationally consistent collection of data about school students with disability from 2013, leading to the participation of all schools across Australia from 2015. It is intended that the Regulation will be updated for 2015 once the new definitions are finalised.

Section 17 Disability loading percentage

Section 17 provides the disability loading percentage for the purposes of the student with disability loading formula at section 36 of the Act. The disability loading percentage for a special school (defined in section 6 of the Act) is 223%, and for any other school is 186%.

These are interim loading percentages, pending the completion of collaborative work by the Australian Government, States and Territory Governments and key non-government education stakeholders, on the development and introduction of a loading to provide for the additional cost of reasonable adjustments for students with disability across school settings.

Section 18 Low socioeconomic status student loading

Section 18 provides that the number of students for a year who are in quartiles 1 and 2 are the number of students identified in writing by the Australian Curriculum, Assessment and Reporting Authority (ACARA) (defined in section 6 of the Act) as being in the Socio-Educational Advantage quartile 1 and 2, respectively. This is relevant to the calculation of a school's low socioeconomic status student loading formula at section 38 of the Act.

A note describes how ACARA identifies a student as being in quartile 1 or 2 and states that in 2013 the *Index of Community Socio-Educational Advantage* was accessible at www.acara.edu.au.

The distribution of students into socio-educational advantage quarters reflects the distribution of socio-educational advantage across the school's population. It is calculated using the parent background information used to calculate Index of Community Socio-Educational Advantage (ICSEA) for the school. For 2014 it will be based on the 2010 data collection.

Note that the methodology used for calculating the *Index of Community Socio-Educational Advantage* is different from the methodology used for calculating the socioeconomic status of the school under section 20.

Section 19 Low English proficiency loading

Section 19 sets out the method of determining the number of students at a school for a year who have low English proficiency for the purposes of calculating the low English proficiency loading under section 39 of the Act. The number of students at a school for a year who have low English proficiency is the number identified in writing by ACARA as disadvantaged language background other than English students. Two notes are included that explain how ACARA currently identifies a student as a disadvantaged language background other than English student.

This measure is being reviewed and it is intended that the Regulation will be updated once a revised measure is agreed.

Division 2 – SES scores

Under section 33 of the Act, a school's base amount of recurrent funding is reduced by a factor called the "capacity to contribute percentage".

The capacity to contribute percentage for government schools, special schools, special assistance schools, majority Aboriginal and Torres Strait Island schools, and sole provider schools is 0% (subsection 54(1) of the Act). (In other words, these schools attract 100 per cent of the funding entitlement calculated).

For other schools, the capacity to contribute percentage varies between 10% and 80%, depending on the schools' SES scores, as set out in the table in subsection 54(3) of the Act and the school's funding entitlement is adjusted accordingly

Section 52 of the Act empowers the Minister to determine a school's SES score. He or she may do so either by legislative instrument (subsection 52(2)) or by administrative decision (subsection 52(3)). Where the Minister determines a school's SES score under subsection 52(3) of the Act, he or she must generally do so in accordance with the regulations (subsection 52(4)).

Subdivision A – Determining SES scores by legislative instrument

Section 20 Determining SES scores by legislative instrument

Section 20 of the Regulation provides that where the Minister is determining the SES score of a school of an approved system authority under subsection 52(2) of the Act (i.e. by legislative instrument), the Minister must have regard to the approved system arrangement of the authority (defined in section 5).

It is anticipated that some approved system arrangements will include an agreed SES score applicable to the schools of the approved system authority, or an agreed methodology for working out an SES score for the schools of the authority. The Minister then makes a determination under subsection 52(2) of the Act of the SES score for all schools of the authority that is consistent with the SES score included in the approved system arrangement.

Note that the measure used for determining a school's SES score is different from that used at section 18 for assessing the low SES student loading.

Subdivision B – Determining SES scores by administrative decision

Section 21 Minister may request residential addresses of students

Section 21 provides that the Minister may request a statement of the residential addresses of students for a school from an approved authority, and may specify when the statement must be given and the form of the statement. The statement must not explicitly identify a student. The approved authority must comply with this request.

The student addresses contribute to the calculation of the SES score for a school.

Section 22 Requirement to assign residential addresses

Section 22 provides that the Secretary must ensure that at least 95% of the residential addresses included in a school's statement of addresses are assigned to the Statistical Areas Level 1 (defined in section 4) in which the addresses are located. This ensures a high level of precision in the derivation of a school's SES score under section 23.

Section 23 SES score – general

Section 23 provides the formula for calculating a school's SES score. The formula utilises the statement of addresses for the school requested by the Minister under section 21 with the capacity for the Minister to also include further residential addresses that the Minister considers should have been included in the statement.

A note is included referencing subsection 52(4) of the Act which provides that the Minister is not required to make a determination in accordance with this section if the Minister is satisfied that the resulting SES score would not accurately reflect the general socioeconomic circumstances of the persons responsible for students at the school.

Section 24 SES score - schools whose approved authority has not complied with subsection 21(1)

Section 24 provides for the Minister to determine a school's SES score without using the formula at section 23 where an approved authority has not complied with section 21, that is, the approved authority has not provided a statement of addresses containing the residential address of each student who receives primary education or secondary education at the school. In these circumstances the Minister must determine an SES score that the Minister considers accurately reflects the general socioeconomic circumstances of the persons responsible for students at the school.

Part 4 – Capital funding, special circumstances funding and funding for non-government representative bodies

Section 25 Special circumstances funding

Payments of Commonwealth capital funding and special assistance funding may be made for both participating and non-participating schools.

The Minister is able to determine an amount of Commonwealth financial assistance for a school where the Minister is satisfied that special circumstances justify the determination under section 69 of the Act. Section 25 of the Regulation sets out the matters that the Minister may have regard to in relation to making this decision.

The Minister may have regard to whether:

- the special circumstances would not have been reasonably foreseeable by a competent approved authority;
- the special circumstances would, or are likely to result in severe financial difficulty requiring the school to cease a large part of its educational activities or lower the quality of education it provides;
- on receipt of special circumstances funding from the Commonwealth the school would be able to resume operating satisfactorily within two years or continue operating until the end of the year;
- having exhausted all other options to remedy the financial situation of the school, there is still a need for the special circumstances funding to address the school's immediate financial difficulties;
- the approved authority for the school has complied with the Act and the Regulation;
- the approved authority proposes to use the special circumstances funding:
 - to pay tax debts to the Commonwealth;
 - to lower the amount of debt the authority owes; or
 - as capital expenditure;
- the approved authority proposes to use the Commonwealth special circumstances funding in relation to the school, and the school has provided education for less than 5 years; and
- the approved authority requires the Commonwealth special circumstances funding due to financial loss resulting from inadequate insurance for capital facilities.

Part 5 – Approved authorities and bodies

Division 1 – Basic requirements for authorities and bodies

Approved authorities

Subsection 73(1) of the Act provides that the Minister may approve a person as an approved authority provided, among other things, that the Minister is satisfied that the person satisfies and will continue to satisfy the basic requirements of approval set out in section 75, including not-for-profit, financial viability and fit and proper person requirements. Matters that the Minister may have regard to are set out in subsection 75(6) of the Act, with further matters set out in the Regulation.

Approved authorities of government schools are taken to satisfy these requirements.

The basic requirements apply to all approved authorities (including approved authorities for participating and non-participating schools).

Block grant authorities

Subsection 83(1) of the Act provides that the Minister may approve a person as a block grant authority provided, among other things, that the Minister is satisfied that the person satisfies and will continue to satisfy the basic requirements of approval set out in section 84, including not-for-profit, financial viability and fit and proper person requirements. Matters that the Minister may have regard to are set out in subsection 84(6) of the Act, with further matters set out in the Regulation.

Non-government representative bodies

Subsection 91(1) of the Act provides that the Minister may approve a person as a non-government representative body provided, among other things, that the Minister is satisfied that the person satisfies and will continue to satisfy the basic requirements of approval set out in section 92, including not-for-profit, financial viability and fit and proper person requirements. Matters that the Minister may have regard to are set out in subsection 92(6) of the Act, with further matters set out in the Regulation.

Section 26 Not-for-profit requirement

Section 26 sets out the matters that the Minister may have regard to for the purposes of the not-for-profit requirements in relation to approving authorities (subsection 75(3) of the Act), approving block grant authorities (subsection 84(3) of the Act), and approving non-government representative bodies (subsection 92(3) of the Act).

Subsection 75(3) of the Act provides that in relation to approved authorities, the Minister must be satisfied that the person does not conduct for profit any school in relation to which the application is made.

Whether a school is considered to operate for profit or not is considered on a case by case basis considering the actual circumstances of the school's financial operations. Critically, school income must be applied for the benefit of the school or schools of the approved authority and not applied for the benefit of the owners of the approved authority or any third party. Approved authorities can be for profit organisations, provided the schools of the authority are not conducted for profit. In contrast block grant authorities and non-government representative bodies must be not-for profit organisations in accordance with subsections 84(3) and 92(3) of the Act.

Section 26 sets out the following matters the Minister may have regard to for the purposes of determining whether the person satisfies these not-for-profit requirements:

- whether the person has not-for-profit status under a Commonwealth, State or Territory law;
- whether the person has financial policies and practices for the schools relevant to the person's application as an approved authority, block grant authority or non-government representative body, and quality of any such policies and practices;
- whether money derived from or relating to a relevant school has been applied for the purposes of the school or for the purposes of the functions of the authority or body, or has been distributed to an owner of the authority or body or any other person; and
- if the person is a body corporate - the requirements in any legislation under which the person is established, or in its constitution.

A note states that a law of the Commonwealth under which a person may have a not-for-profit status is the *Australian Charities and Not-for-Profits Commission Act 2012*.

Section 27 Financial viability requirement

Section 27 sets out the matters that the Minister may have regard to for the purposes of the financial viability requirements in relation to approving authorities (subsection 75(4) of the Act), approving block grant authorities (subsection 84(4) of the Act), and approving non-government representative bodies (subsection 92(4) of the Act). In each case the Minister must be satisfied that the person is financially viable. Subsections 84(6) and 92(6) also list matters the Minister may have regard to in determining whether a block grant authority or a non-government representative body, respectively, is financially viable.

Section 27 provides the following matters that the Minister may have regard to for the purposes of determining whether the person is financially viable:

- whether the person is a body corporate that is being wound up;
- whether the affairs of the person are under any form of external control;
- whether the Minister considers that the liabilities of the person are greater than the person's assets;
- whether the Minister considers that the person is (and is likely to continue for a substantial period to be) unable to pay its debts as and when they fall due for payment; and

- whether an audit conducted in accordance with Commonwealth, State or Territory law is expressed to be qualified or expresses concern about the financial viability of the person.

Section 28 Fit and proper person requirement

Section 28 sets out the matters that the Minister may have regard to for the purposes of determining fit and proper person requirements in relation to approving authorities (subsection 75(5) of the Act), approving block grant authorities (subsection 84(5) of the Act), and approving non-government representative bodies (subsection 92(5) of the Act).

Subsection 28(1) sets out the following matters that the Minister may have regard to for the purposes of determining whether a person is fit and proper to be an approved authority for a school:

- whether the person, or a key individual of the person (defined in section 4) has experience and expertise in administering a school and providing education at a school;
- whether the person has governance arrangements in place including arrangements for managing and supervising the provision of education at the school, and arrangements to ensure compliance with Commonwealth, State and Territory laws relating to the provision of school education; and
- whether the person has debts due to the Commonwealth in relation to the provision of school education.

Subsection 28(2) sets out the following matters that the Minister may have regard to in relation to the fit and proper person requirements for approved authorities, block grant authorities and non-government representative bodies:

- whether the person has governance arrangements in place, including arrangements to receive independent and professional advice in relation to compliance with obligations under the Act;
- whether the person or a key individual of the person has a record of financial management taking into account whether the person or individual has been bankrupt, insolvent or placed under external administration;
- whether the person or key individual has been convicted of, or charged with, an offence, including an offence in relation to children, dishonesty or violence; and
- whether the person or key individual of the person has engaged in a deliberate pattern of immoral or unethical behaviour.

Division 2 – Ongoing policy and funding requirements for authorities and bodies

Subdivision A – Spending, or committing to spend, financial assistance

The ongoing policy and funding requirements apply to all approved authorities (including approved authorities for participating and non-participating schools).

Section 29 Approved authorities

Paragraph 78(2)(a) of the Act provides that one of the ongoing funding requirements for approved authorities is the requirement that the approved authority deals with certain Commonwealth financial assistance payable to an authority under the Act (recurrent funding for participating schools, recurrent funding for non-participating schools, capital and special circumstances funding) in accordance with the regulations.

Subsection 29(1) provides that an approved authority for a school must spend or commit to spend recurrent funding payable under the Act for the purpose of providing school education. Subsection 29(2) sets out a non-exhaustive list of expenditure activities that are considered for the purpose of providing school education.

An approved authority for a school has committed to spend funds if it has entered into a binding agreement for the exchange of a specified quantity of goods or services at a specified price on a specified future date or dates.

Subsection 29(3) provides that financial assistance must not be spent, or committed to be spent as security for a loan, credit or other interest or in relation to litigation (except litigation by a State or Territory to recover a debt from an authority or body as mentioned in paragraph 11(4)(b)).

Subsection 29(4) provides that an approved authority must spend or commit to spend Commonwealth special circumstances funding in accordance with any written directions of the Minister.

Subsections 29(5) and (6) provide that the Minister can make a direction for this purpose, and that the direction is not a legislative instrument. This is for the sake of clarity and does not affect the legal character of the direction, which would not be a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Subsection 29(7) provides that the Commonwealth financial assistance for recurrent funding and special circumstances funding must be spent or committed to be spent in the year (defined in section 7 of the Act as calendar year) in which the financial assistance is paid to the approved authority.

Section 30 Block grant authorities

Paragraph 85(2)(a) of the Act provides that one of the ongoing funding requirements for block grant authorities is the requirement that the block grant authority deals with Commonwealth capital funding payable under the Act in accordance with the regulations.

Subsection 30(1) provides that a block grant authority for a school must spend or commit to spend capital funding payable by the Commonwealth under the Act for the purpose of capital expenditure relating to the provision of school education. (“Capital expenditure” is defined in section 6 of the Act with an inclusive list of expenditure, including the administrative expenses of a capital grants authority in relation to administering other capital expenditure)

Subsection 30(2) provides that this financial assistance must be spent or committed to be spent in the year (defined in section 6 of the Act as calendar year) in which the financial assistance is paid to the block grant authority.

Subsection 30(3) provides that financial assistance paid to a block grant authority and then recovered as a result of savings on capital expenditure or capital expenditure that has not proceeded must be spent or committed to be spent on alternative capital expenditure within one year of the assistance being recovered, or another period determined by the Minister.

Subsection 30(4) provides that the block grant authority may retain interest earned on the Commonwealth capital funding, but the block grant authority must spend or commit to spend the interest on capital expenditure relating to the provision of school education in accordance with any written directions of the Minister. Subsections 30(5) and (6) provide that the Minister can make a direction for this purpose and that the direction is not a legislative instrument. This is for the sake of clarity and does not affect the legal character of the direction, which would not be a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Section 31 Non-government representative bodies

Paragraph 93(2)(b) of the Act provides that one of the ongoing requirements for approval of a non-government representative body is the requirement that the non-government representative body deals with financial assistance for non-government representative bodies payable under the Act in accordance with the regulations.

Section 31 provides that this financial assistance must be spent or committed to be spent for the purpose of supporting school education.

Subdivision B – Monitoring compliance of authorities and bodies

Section 32 Application of this Subdivision

Approved authorities, block grant authorities and non-government representative bodies are all required to comply with requirements prescribed by the regulations in relation to monitoring the authority or body's compliance with the Act in accordance with paragraphs 78(2)(b), 85(2)(b), and 93(2)(c) of the Act, respectively. Section 32 clarifies that this Subdivision sets out the monitoring compliance requirements for this purpose.

Section 33 Minister may appoint authorised persons

Section 33 provides that the Minister may appoint a person as an authorised person if the Minister is satisfied that the person has suitable qualifications or experience. This is relevant for the purposes of section 39 where an authority or body must give an authorised person access to records.

Section 34 Certificate to be given to Secretary

Section 34 provides that a certificate must be provided to the Secretary by an approved authority, block grant authority or non-government representative body for a school relating

to a year. If the approved authority is a State or Territory, the certificate must be prepared by the Auditor-General of the State or Territory, or a person appointed by the State or Territory Minister for the school. In all other cases the certificate must be prepared by a qualified accountant (defined at subsection 34(4), and includes a person approved by the Minister where the Minister is satisfied that the person has relevant qualifications or experience).

The certificate must state whether an amount equal to the sum paid to the authority or body under the Act has been spent or committed to be spent in accordance with sections 29 (approved authorities, broadly, for the purpose of providing school education), 30 (block grant authorities, for the purpose of capital expenditure relating to the provision of school education) and 31 (non-government representative bodies, for the purpose of supporting school education) as relevant; and in relation to block grant authorities, that interest earned on capital funding paid by the Commonwealth under the Act has been spent or committed to be spent in accordance with section 30.

Paragraph 34(3)(b) provides that this certificate must be given to the Secretary on or before 30 June the next year, or on another day allowed by the Minister.

Section 35 Requirement relating to financial assistance and financial operations – government schools

Section 35 provides that an approved authority of a government school (a State or Territory) must give the Secretary a report prepared by the Auditor-General for the State or Territory, or a person appointed by the State or Territory Minister for the school, for each year.

For non-participating government schools the report must contain the total amount of financial assistance paid in accordance with the Act that is allocated by the authority to schools for the year.

The same information is required for participating government schools, and in addition this total amount must be broken down into each school's base amount and loadings, including any loadings in accordance with the authority's approved system arrangement.

Subsection 35(3) provides that the report must be given to the Secretary no later than the day determined by the Minister and in a way determined by the Minister, where the Minister makes such a determination.

Section 36 Requirement relating to financial assistance and financial operations – non-government schools

Subsection 36(1) sets out the requirements for an approved authority, block grant authority or non-government representative body for a non-government school to provide a report to the Secretary for each year. These requirements are identical to those of a participating government school in section 35, with additional requirements set out in paragraphs 36(1)(c) to (e). They continue existing requirements for non-government schools.

Paragraphs 36(1)(c) to (e) provide that the report must include the following statements:

- a statement about how the financial assistance paid in accordance with the Act was used or is intended to be used by the authority or body and the school;
- a statement about whether the authority or body and the school has in place satisfactory internal accounting systems, controls and procedures for records kept by the authority in accordance with section 37 (requirement to keep records);
- a statement about the financial operations of the authority or body and the school including the authority or body's financial viability, funding sources and:
 - recurrent income and expenditure;
 - capital income and expenditure;
 - trading activities;
 - loans for recurrent or capital purposes;
 - assets and liabilities;
 - any other financial information required by the Minister;
 - for approved authorities, refundable enrolment deposits.

Subsection 36(2) provides that the report must also identify any records kept by the authority or body in accordance with section 37 (requirement to keep records), and include a copy of any financial statement and audit document prepared in accordance with section 38 (requirement for authorities or bodies for non-government schools to prepare and audit financial statements).

Subsection 36(3) provides that the report must not include information that would identify a donor as a funding source for the school.

Subsection 36(4) provides that the report must be given to the Secretary no later than the day determined by the Minister and in a way determined by the Minister, where the Minister makes such a determination.

Section 37 Requirement to keep records

Section 37 sets out the records that must be kept by an approved authority, block grant authority and non-government representative body. These records must be identifiably separate from other records that the authority or body may hold for the purposes of other undertakings the authority or body conducts or to which the authority or body is related, and be kept for seven years.

An approved authority of a government school must keep records relating to the authority's compliance with the Act and the Regulation (including records relating to enrolments and attendance rolls at school).

An approved authority of a non-government school must keep records relating to the authority's compliance with the Act and the Regulation (including records relating to enrolments and attendance rolls at school), the financial administration of the authority, and the financial administration of the school. The records must identify all income and expenditure that relates to any financial assistance paid to the authority in accordance with the Act.

A block grant authority or non-government representative body must keep records relating to the body's compliance with the Act and the Regulation, and the financial administration of the authority or body. The records must identify all income and expenditure that relates to any financial assistance paid to the authority in accordance with the Act.

Section 38 Requirement for authorities or bodies for non-government schools to prepare and audit financial statements

Section 38 provides that approved authorities, block grant authorities and non-government representative bodies for non-government schools must prepare financial statements in accordance with Australian Accounting Standards (defined in section 4) that relate to any financial assistance paid in accordance with the Act; and have those statements audited in accordance with Australian Auditing Standards and generally accepted auditing practices.

This section does not apply to approved authorities of government schools.

Section 39 Requirements for access to records and premises

Section 39 sets out the rights of access to records that must be kept by an approved authority, block grant authority and non-government representative body. The authority or body must allow an authorised person full and free access to certain records. The Minister may appoint a person as an authorised person if the Minister is satisfied that the person has suitable qualifications or experience in accordance with section 33.

Subsection 39(2) provides:

- approved authorities of government schools must allow the authorised person full and free access to records relating to the authority's compliance with the Act and the Regulation;
- approved authorities of non-government schools must allow the authorised person full and free access to records relating to the authority's compliance with the Act and the Regulation, records relating to the financial administration of the authority, and records relating to financial administration of the school; and
- block grant authorities and non-government representative bodies must allow the authorised person full and free access to records relating to the authority or body's compliance with the Act and the Regulation, and records relating to the financial administration of the authority or body.

Subsection 39(3) provides that the authority or body must allow the person to take extracts from, and make copies of, the records.

Subsection 39(4) provides that an approved authority, block grant authority or non-government representative body for a non-government school must, for the purposes mentioned in subsections (2) or (3), allow the authorised person to have full and free access to any premises occupied by the authority or body in its capacity as such an authority or body, and in the case of approved authorities for non-government schools, full and free access to the schools to inspect the school and count students at the school.

Subsection 39(5) provides that the authority or body must give or arrange for any help the authorised person requires for the purposes of this provision.

Subsection 39(6) provides that an authority or body is not required to comply with these requirements unless the authorised person gives reasonable notice to the authority or body of access required and that access occurs at reasonable times.

Subsection 39(7) provides that an authorised person must seek and consider the views of the relevant authority or body on any access required by the authorised person under subsection (2) or (4).

Section 40 Requirement to keep Minister informed

Section 40 sets out the changes of circumstances that must be notified to the Minister in writing by an approved authority, block grant authority or non-government representative body for a school. In each case, the authority or body must notify the Minister of any changes to any information in the authority or body's approval under Part 6 of the Act (including basic and ongoing requirements for approval). An authority (other than an approved system authority) or body for a non-government school must also notify the Minister of any changes of key individuals (defined in section 4) of the authority or body. An approved system authority must also notify the Minister of any changes to the person who is the chief executive officer or chief finance officer or who is undertaking the tasks of the chief executive officer or chief finance officer of the authority.

Division 3 - Ongoing policy requirements for approved authorities

Section 77 of the Act sets out a number ongoing policy requirements that must be met by all approved authorities (including approved authorities of participating and non-participating schools) as a condition of approval under section 73 of the Act. In most cases the requirements are linked to detail to be provided in the regulations, these are set out in Division 3.

Subdivision A - Enhancing principal and teacher performance and professional development

Section 41 Enhancing principal and teacher performance and professional development

Section 41 provides that approved authorities must implement the *Australian Teacher Performance and Development Framework* and provide access to ongoing professional development consistent with the *Australian Charter for the Professional Learning of Teachers and School Leaders*. The *Framework* and the *Charter* were endorsed by Education Ministers at the SCSEEC on 3 August 2012. The documents set out what is required to build a comprehensive and effective approach to performance and development culture in Australian schools, recognising that implementation will look different in different school contexts. This requirement is made pursuant to paragraph 77(2)(a) of the Act, which requires an approved authority to have in place processes and procedures for enhancing principal and teacher performance and professional development at the school that are in accordance with the regulations.

Subdivision B - Implementing a curriculum

Section 42 Implementing a curriculum

Section 42 provides that approved authorities must implement the Australian Curriculum that is authorised by the Ministerial Council or another curriculum assessed by ACARA as allowing comparable outcomes to the Australian Curriculum and included on ACARA's Recognition Register.

Subsection 42(2) provides that the curriculum must be fully implemented in the learning areas, and by the times, agreed by the Ministerial Council. In December 2010 the Ministerial Council agreed that jurisdictions would achieve substantial implementation of Foundation to Year 10 Australian Curriculum in English, mathematics, science and history by the end of 2013. As each learning area is agreed by Ministers, it is expected that Ministers will also agree to an implementation timeframe for that learning area.

Full implementation is explained in subsection 42(3) as teaching, assessing and reporting on student achievement, including to parents, using the content, including the cross-curriculum priorities and the general capabilities, and achievement standards in the curriculum.

It is important to note that ACARA's recognition process does not replace State and Territory school registration processes and requirements, which continue to apply.

In relation to reporting, section 59 provides that student achievement must be reported to parents and carers against any available national standards. For schools implementing the Australian Curriculum, it would be expected that schools would report against the Australian Curriculum achievement standards. For schools implementing alternative curriculum it is expected that they would report against achievement standards in the curriculum that was assessed by ACARA as meeting comparable outcomes to the Australian Curriculum.

The requirements in section 42 are made pursuant to paragraph 77(2)(b) of the Act, which requires an approved authority to implement a curriculum at the school in accordance with the regulations.

Subdivision C - National Assessment Program

Section 43 Student assessments

Section 43 provides that approved authorities must ensure that each school continues to participate in the National Assessment Program as per current arrangements, as set out in the Assessments table included in section 43, and other assessments as agreed by the Ministerial Council (a note provides that these other assessments would be outlined on the National Assessment Program website which in 2013 is accessible at www.nap.edu.au).

The Assessments table in section 43 includes each assessment that must be participated in at column 1, the frequency of the assessments at column 2, and the students who must undertake the assessments at column 3. Assessments in items 1-3 of the table (NAP annual assessment in reading, writing and language conventions, NAP annual assessment in

numeracy, NAP annual assessment in science literacy) must be undertaken at all schools. Assessment in the remaining items 4 to 8 are sample assessments that must be undertaken if the school is selected to participate in a sample. Schools are selected using a scientific stratified random sampling design and notified well in advance of the sample assessment by the organisation that has been contracted to conduct the sample assessment.

Subsection 43(2) provides that the assessments must be undertaken with the frequency mentioned in column 2 of the table and no later than a day or days determined by the Minister. A note is included referencing related reporting requirements at section 53.

Subsection 43(3) requires approved authorities to provide data that is collected from enrolment information relating to students undertaking assessments mentioned in the table in subsection (1) and specified in the Data Standards Manual: Student Background Characteristics.

Subsection 43(4) requires the approved authority to participate in all activities associated with the NAP in accordance with any written directions of the Minister. Subsection 43(5) provides that the Minister can make a written direction to an approved authority for this purpose.

Subsection 43(6) provides that the direction is not a legislative instrument. This is for the sake of clarity and does not affect the legal character of the direction, which would not be a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

The student assessment requirements are made pursuant to paragraph 77(2)(c) of the Act, which requires an approved authority to ensure that the schools participate in the national assessment program in accordance with the regulations.

Subdivision D - School improvement planning

These school improvement planning requirements are made pursuant to subparagraph 77(2)(d)(ii) of the Act, which requires an approved authority to ensure that each school develops, implements, publishes and reviews a school improvement plan in accordance with the regulations.

Section 44 School improvement planning

Section 44 sets out the requirements for the school improvement plan that must be developed for each school.

Subsection 44(1) provides that the plan must include contextual information about the school, a description of the process for conducting a self-assessment of the school, information about the school's performance based on the school's self-assessment (having regard to the *National School Improvement Tool*, available at <http://deewr.gov.au/national-school-improvement-tool> or equivalent document (whether or not prepared by the Ministerial Council)) and a description of the process for reviewing the school improvement plan. The plan must focus on strategic planning, including on areas of the school that may be improved.

Subsection 44(2) lists the following items that the approved authority must ensure the school has regard to in developing the school improvement plan:

- the results of the school's self-assessment;
 - this self-assessment should consider how the school has delivered on the stated actions in the school improvement plan and should be undertaken annually;
- how the 5 national reform directions apply to the school;
- strategies that the school might use to raise achievements;
- the *Aboriginal and Torres Strait Islander Education Action Plan 2010-2014*; and
- the *National Safe Schools Framework* or any equivalent document (whether or not prepared by the Ministerial Council).

A note is included stating that in 2013 the *Aboriginal and Torres Strait Islander Education Action Plan 2010-2014* was accessible at www.mceecdya.gov.au, and the *National Safe Schools Framework* was accessible at www.deewr.gov.au.

Subsection 44(3) requires the approved authority to ensure that the school improvement plan is developed in consultation with persons responsible for students at the school and others in the school community.

Subsection 44(4) requires the approved authority to ensure that the school's progress against the school improvement plan is reviewed each year and, if necessary, the plan is updated. Generally, this review would be conducted by the school but can be conducted by the approved authority for the school if preferred. For example, a plan may be updated if a school determines, in consultation with their community, that they should focus attention on a specific aspect of school life to lift student performance. A report must be prepared describing the school's achievements and progress against the plan for the previous year. Both the plan (after development and when updated) and the report must be published promptly in a form readily accessible to the public in accordance with subsection 44(5).

Notes are included to clarify that the plan or report could be published in a school's annual report or on a school's or the approved authority's website, and that information that has been made publicly available for the purposes of this section is not required to be made separately publicly available for the purposes of section 60 if the publication of that information complies with that section.

Section 45 School improvement plans for approved authorities for participating schools other than approved system authorities

Section 45 provides for an additional requirement with respect to a school improvement plan for an approved authority for a participating school (other than an approved system authority). The school improvement plan must also outline how the school level reforms within the National Plan for School Improvement will be implemented at the school.

While approved authorities of more than one participating school are required to have an implementation plan under section 99 of the Act, a note is included to clarify that one or

more school improvement plans may constitute an implementation plan if the plans comply with the requirements set out in section 99 of the Act.

A note is included stating that in 2013 the *National Education Reform Agreement* was accessible at www.betterschools.gov.au.

Subdivision E - Information relating to a school's census

Under paragraphs 77(2)(f) and 77(3)(a) of the Act, approved authorities are required to provide information in accordance with the regulations as part of their ongoing policy requirements. Subdivision E requires an approved authority to provide certain information about a school's census. The census requirements recognise the conduct, under the authority of the Australian Bureau of Statistics (ABS), of an annual census for national statistics. Each jurisdiction carries this out for government schools and supplies the data to the ABS. The Department conducts this on behalf of non-government schools. The requirements in the Act and the Regulation draw on those elements of the statistical census carried out by States and Territories that the Department needs to calculate financial assistance under the Act.

Further information regarding the use of the school census information can be found at section 65 concerning the use and disclosure of protected information.

The data collection requirements for the school census data are also set out in subdivision E.

Section 46 Participating schools—providing information about a school's census

Subsection 46(1) provides that the approved authority of a participating school must provide the Secretary of the Department with information each year relating to the school's census in accordance with this section.

Subsection 46(2) provides that an approved authority for a participating school must provide the relevant information set out in sections 47 - 50. An approved authority for a participating government school must provide the information set out in sections 47 (information about the schools) and 48 (information about students). The information is required to enable the calculation of payments of financial assistance. An approved authority of a participating non-government school must provide the information set out in sections 49 (information about the school) and 50 (information about the students). This information is required to enable the calculation of payments of financial assistance and to provide statistical information to the ABS on behalf of non-government schools.

Subsection 46(3) provides that this information must be provided for each location of the school, and in the form and manner approved by the Secretary. For non-government schools, it is intended that the form and manner will be the online *Census on the Internet* application. For government schools, it is intended that the form and manner be a data file provided by the State or Territory government authority in a format approved by the Secretary.

Subsection 46(4) clarifies that there is no need for an approved authority of more than one school to provide an individual census return for each school; rather, a single census return may include information for each of the schools of the approved authority. However, the

census return must provide census data in a way that allows for the breakdown by individual school.

Subsection 46(5) provides that the census return must be provided to the Secretary no later than 7 days after the school's census day for the year, or if the Secretary allows a longer period, before the end of that period. For example, a longer period may be appropriate to ensure the necessary data has been thoroughly checked. Nevertheless, the data will need to be available at the time the Department needs to make calculations of schools' yearly funding entitlements.

A school's census day is determined by the Minister under section 7 of the Act.

Section 47 Participating government schools—information about the schools

Section 47 provides that the following information about participating government schools must be included in the census return each year:

- the name of each school;
- the street address of each location (or campus) of each school;
- the years of schooling offered by each school;
- whether each school is a primary school, a secondary school or a combined school; and
- whether each school is a special school or special assistance school.

Section 48 Participating government schools—information about a school's students

Section 48 provides that the following information about students receiving primary or secondary education at participating government schools on the schools' census day for a year must be included in a census return for the schools for the year:

- the number of students at each school for the year. A note is included referencing sections 16 and 17 of the Act which sets out the method of calculating the number of students at a school for a year, including how to count part-time students (in practice, government authorities will need to provide full-time equivalent figures that combine the count of full time students and the aggregated fractions of a full time load for part time students);
- for each year of schooling at each school - the number of students at the school in each of the following categories:
 - Aboriginal and Torres Strait Islander students (defined in section 6 of the Act with reference to section 16 of the Regulation);
 - students with disability (defined in section 6 of the Act with reference to section 16 of the Regulation);
 - students receiving distance education (defined in section 6 of the Act with reference to subsection 10(5) of the Act).

Subsection 48(2) provides that for each year of schooling, the number of overseas students and the number of students who hold or are included in a visa in force under the *Migration*

Act 1958 must be included in the census return. An overseas student is taken to be a student for these purposes.

Subsection 48(4) provides that the information must not explicitly identify any student.

Subsection 48(5) provides that where a government school has more than one location (or campus), the data required must be provided for each location of the school, with the exception of data regarding students receiving distance education.

Section 49 Participating non-government school—information about the school

Section 49 provides that the following information about participating non-government schools must be included in the census return each year:

- the name of each school;
- the street address of each location of each school;
- the postal address of the school;
- the school's email address;
- the years of schooling offered by each school;
- whether each school is a primary school, a secondary school or a combined school
- whether the school is a special school or special assistance school; and
- the number of staff at the school in the following categories on the school's census day for the year:
 - teaching staff;
 - staff who are not teaching staff;
 - full-time staff;
 - part-time staff;
 - full-time equivalent (FTE) staff;
 - Aboriginal and Torres Strait Islander staff;
 - if the school is a combined school, FTE staff providing primary education, FTE staff providing secondary education; and
 - if students board at the school, FTE staff with boarding duties and FTE staff without boarding duties.

Section 50 Participating non-government school—information about students

Section 50 provides that the following information about students receiving primary or secondary education at participating non-government schools on the school's census day must be included in the census return each year:

- the number of students at the school for the year, and the number of full-time and part-time students at the school for the year. A note is included referencing sections 16 and 17 of the Act, which sets out the method of calculating the number of students at a school for a year, including how to count part-time students (in practice, government authorities will need to provide full-time equivalent figures that combine the count of full time students and the aggregated fractions of a full time load for part time students);

- for each year of schooling, the number of students by the following characteristics, as specified by the Secretary in writing:
 - age;
 - sex;
 - Aboriginal and Torres Strait Islander students (defined in section 6 of the Act with reference to section 16 of the Regulation);
 - students with disability (defined in section 6 of the Act with reference to section 16 of the Regulation);
 - students receiving distance education (distance education is defined in section 6 of the Act with reference to subsection 10(5) of the Act);
 - students who board.

Subsection 50(2) provides that for each year of schooling, the number of overseas students and the number of students who hold or are included in a visa in force under the *Migration Act 1958* must be included in the census return. An overseas student is taken to be a student for these purposes.

Subsection 50(4) provides that the information must not explicitly identify any student.

Subsection 50(5) provides that where a school has more than one location (or campus), the data required must be provided for each location of the school, with the exception of data regarding students receiving distance education.

Section 51 Non-participating schools—information about students

As an ongoing policy requirement under paragraph 77(2)(f) of the Act, section 51 provides that an approved authority must provide to the Secretary of the Department the following information about students receiving primary or secondary education at non-participating schools as part of their census return for each year:

- the total number of students at the schools for the year, and the number of those students broken down by the number receiving primary and secondary education; and
- the total number of overseas students, and the number of those students broken down by the number receiving primary and secondary education.

A note is included referencing sections 16 and 17 of the Act, which sets out the method of calculating the number of students at a school for a year, including how to count part-time students.

Subsection 51(3) provides that this information must be included in a census return in the form and manner approved by the Secretary.

Subsection 51(4) provides that the census return must be provided to the Secretary no later than 7 days after the school's census day for the year, or if the Secretary allows a longer period, before the end of that period. For example, a longer period may be appropriate to ensure the necessary data has been thoroughly checked. Nevertheless, the data will need to

be available at the time the Department needs to determine the relevant indexation for the non-participating jurisdictions' annual payments under Part 4 of the Act.

A school's census day is determined by the Minister under section 7 of the Act.

Subdivision F—Information for the purposes of a national program to collect data on schools and school education

Under paragraphs 77(2)(f) and 77(3)(b) of the Act, approved authorities are required to provide information in accordance with the regulations as part of their ongoing policy requirements. Subdivision F requires an approved authority to provide certain information for the purposes of a national program to collect data on schools and school education.

These requirements apply to all approved authorities (including approved authorities of participating and non-participating schools).

Section 52 Information for the purposes of a national program to collect data on schools and school education

Section 52 requires an approved authority to provide the information set out in sections 53 (required information – performance measures), 54 (form of information – performance measures), 55 (required information – general information), 56 (required information – information about a school's students) and 57 (required information – secondary schools and combined schools).

These requirements apply to all approved authorities (including approved authorities of participating and non-participating schools).

Subsection 52(2) provides that information mentioned in section 53 must be given to the Minister no later than the day or days determined by the Minister if such a determination has been made, or if no determination has been made, no later than a day that will allow publication of the report within one year after the end of each year. For example, if no determination is made and the information relates to the 2014 calendar year, the information must be provided in time to allow publication of the information in the form of a report before 31 December 2015. The approved authority must also give the information in the way or ways determined by the Minister, if such a determination has been made. The information in section 53 is required for a number of national performance reports.

Subsection 52(3) provides that information mentioned in sections 55 to 57 must be given to ACARA no later than the day or days determined by the ACARA if such a determination has been made, or if no determination has been made, no later than a day that will allow publication of the report within one year after the end of each year. The approved authority must also give the information in the way or ways determined by ACARA, if such a determination has been made. These provisions enable ACARA to receive data files in a way that allows identification of schools. These sections require information for the My School website (www.myschool.edu.au) that is not collected elsewhere.

Subsection 52(4) defines the reporting period as the period determined by the Minister to which the information or a specified class of the information relates. Subsection 52(5)

confirms that this determination is not a legislative instrument. This is for the sake of clarity and does not affect the legal character of the direction, which would not be a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Section 53 Required information—performance measures

Section 53 provides a table that sets out the performance measures for the following categories:

- English literacy (item 1);
- numeracy and mathematics (item 2);
- science (item 3);
- civics and citizenship (item 4);
- ICT literacy (item 5);
- vocational education and training (item 6); and
- student attendance (item 7).

These performance measures relate to the student assessments that must be undertaken in accordance with section 43.

Two notes are included to clarify the reporting of these performance measures. The first refers to the calculation of the attendance rate that is set out at subsection 4(2) and relevant for the performance measure regarding student attendance. The second note is provided for clarity, confirming that an approved authority is not required to provide performance measures in relation to items 4 to 8 of the table in subsection 43(1) unless the school is selected to participate in the sample.

The performance measures listed include, where relevant, the applicable levels of proficiency. Levels of proficiency do not of themselves represent standards of educational proficiency. For any given level of proficiency to be set as a standard, expert advice needs to be considered and agreed by Ministerial Council. In the case of international assessments such as the Programme for International Student Assessment (PISA) the proficiency levels are as agreed by the governing body for the assessment.

For sample assessments, the proficiency level indicated reflects the agreed standard. For example, for the NAP sample science assessment, the level is at or above level 3.2 of the proficient standard. For NAP annual assessments, these are the proficiency level that is the national minimum standard for the relevant assessment. For example, for the Year 3 English Literacy assessments the level is proficiency level 2 and for Year 5 English Literacy assessments the proficiency level is level 4. Revised proficiency standards will be added to the Regulation when the Ministerial Council agrees any changes.

Section 54 Form of information—performance measures

Section 54 sets out those performance measures that must be reported in a format that enables publication to be broken down into specified categories.

In relation to the performance measures listed in:

- paragraphs (a) and (b) of item 1;
- paragraphs (a) and (b) of item 2;
- paragraphs (a) and (c) of item 3;
- item 4; and
- item 5,

of the table in section 53, the specified categories are sex; Aboriginal and Torres Strait Islander students; socioeconomic background; language background; disability; and geographic location.

In relation to performance measures listed in:

- paragraph (d) of item 1;
- paragraphs (d) and (e) of item 2;
- paragraphs (e) and (f) of item 3; and
- item 7,

of the table in section 53, the specified categories are sex; Aboriginal and Torres Strait Islander students; socioeconomic background; geographic location; and either students in each of years 1 to 10, or ungraded primary or secondary students.

The categories of sex, Aboriginal and Torres Strait Islander students, socioeconomic background and language background are as described in the Data Standards Manual: Student Background Characteristics. The geographic location category is as approved by the Ministerial Council at its meeting in July 2001. This is classified according to the MCEECDYA School Geographic Location Classification System. This is based on the locality of individual schools and is used to disaggregate data according to Metropolitan, Provincial, Remote and Very Remote regions.

Section 55 Required information—general information

Section 55 requires that the following information be provided by an approved authority in relation to each school:

- a short statement about the school which may include information listed in paragraph (a);
- whether the school is part of the Catholic school sector, the independent school sector or the government school sector;
- the number of teaching staff at the school during the reporting period including the number of teaching staff and full-time equivalent teaching staff, the positions of teaching staff; and the number of teaching staff at each level of the Australian Professional Standards for Teachers (definitions in relation to teaching staff are those used by the Australian Bureau of Statistics for the National School Statistics Collection);
- the number of staff who are not teaching staff during the reporting period including the number of full-time equivalent non-teaching staff;

- a statement specifying whether students, parents and teachers were satisfied with the school during the reporting period, including (if applicable) data collected using the National School Opinion Survey; and
- a statement of the financial information for the school during the reporting period compliant with the *My School ACARA FDWG 2011 Financial Data Reporting Methodology*. A note provides that in 2013 this document was accessible at www.acara.edu.au.

This information will be used for the purposes of the *My School* website (www.myschool.edu.au).

In 2012, the SCSEEC approved the use of agreed national student and parent survey items (National School Opinion Survey) and made provision for a survey and data collection tool (*School Survey*) that schools could use to collect responses. The National School Opinion Survey can be used by schools to meet the satisfaction statement requirement above in relation to students and parents.

Agreed national teacher survey items are being trialled in 2013.

Section 56 Required information—information about a school’s students

Section 56 requires that the following information regarding students be provided by an approved authority in relation to each school:

- the total number of full-time equivalent students at the school during the reporting period;
- the number of students who have a language background other than English during the reporting period;
- the attendance rate at the school for students at the school during the reporting period (a note refers to the calculation of attendance rate at subsection 4(2));
- the attendance rate broken down by sex, year of schooling, Aboriginal and Torres Strait Islander students; and
- student results from each of the NAP annual assessments at the school, in a manner that does not identify students (see section 43 regarding student assessments).

This information will be used for the purposes of the *My School* website.

Section 57 Required information—secondary schools and combined schools

Section 57 requires that the following information be provided by an approved authority in relation to a secondary or combined school for the reporting period:

- the number of students who:
 - participated in vocational education and training, including: the number enrolled in a vocational education and training course; the number of vocational education and training qualifications that were completed; the level of vocational education and training qualifications that were completed; and

- the industry with which each vocational education and training course enrolled in was associated;
- undertook a school-based apprenticeship;
- undertook a school-based traineeship;
- attained year 12 or an equivalent level (noting related work is being undertaken by ACARA’s Senior Secondary Outcomes Working Group); and
- at the end of their schooling completed a qualification other than year 12 or an equivalent level;
- in relation to those students who ended their schooling during the reporting period:
 - a statement of the tertiary entrance results of students;
 - a statement of the destination of students (an indication of the destination of the students to further education or training, into the workforce or other).

This information will be used for the purposes of the *My School* website.

Section 58 Form of information—information required under sections 55 to 57

Section 58 provides that the Minister may determine by legislative instrument the categories into which the information required under section 55 to 57 is to be broken down. That is, the Minister may determine that the information be provided in a different format to allow disaggregation of data for analysis to assist in the evaluation of school education policies.

Subdivision G—Reports to persons responsible for students at a school

Under paragraphs 77(2)(f) and 77(3)(f) of the Act, approved authorities are required to provide information in accordance with the regulations as part of their ongoing policy requirements. Subdivision G requires an approved authority to provide certain information to persons responsible for students at a school.

This requirement applies to all approved authorities (including approved authorities of participating and non-participating schools).

Section 59 Student reports

Subsection 59(1) provides that an approved authority for a school must provide a report to each person responsible for each student at the school in accordance with this section. For example, this may include providing a report to both parents/carers of the child if the parents/carers are separated.

Subsection (2) provides that the report must be readily understandable to the person responsible for the student. Subsection (3) provides that a report must be provided at least twice a year.

Subsection (4) sets out the information that must be contained in the report for a student who is in years 1 to 10. The report must give an accurate and objective assessment of a student’s progress including an assessment of the student’s achievement. This assessment, for students in years 1 to 10, must be against any available national standards, and relative to the performance of the student’s peer group, and reported as A to E (or equivalent) for each

subject studied, defined against specific learning standards. The peer group for a student will usually be the students in their class, but may in some cases be the students in all the related classes of a system, or for students with special learning needs that cohort for the system. Alternatively, the report must contain information the Minister determines as equivalent to this. Such a determination is not a legislative instrument (and would not be under section 5 of the *Legislative Instruments Act 2003*).

If the Minister has agreed to an alternative arrangement in the past, it is intended that that arrangement would continue.

A note is included to acknowledge that an approved authority for a school may have obligations under the *Privacy Act 1988* in providing this information.

Subdivision H—Making information publically available annually

Under paragraphs 77(2)(f) and 77(3)(g) of the Act, approved authorities are required to provide information in accordance with the regulations as part of their ongoing policy requirements. Subdivision H requires an approved authority to provide certain information to the public about a school.

This requirement applies to all approved authorities (including approved authorities of participating and non-participating schools).

Section 60 Making information publically available annually

Section 60 requires the following information for a school must be publicly available within 6 months after the end of a year (defined in section 6 of the Act as a calendar year):

- contextual information about the school including the characteristics of students at the school;
- teacher standards and qualifications (as mandated in the State or Territory in which the school is located);
- workforce composition, including numbers of staff who identify as Aboriginal or Torres Strait Islander;
- student attendance at the school including the attendance rates for each year of schooling and a description of how non-attendance is managed by the school (a note refers to the calculation of attendance rate at subsection 4(2));
- student results in NAP annual assessments;
- parent, student and teacher satisfaction with the school, including (if applicable) data collected using the National School Opinion Survey (see further information at Section 55 above);
- school income broken down by funding source; and
- where secondary education is provided:
 - senior secondary outcomes, including the percentage of year 12 students undertaking vocational training or training in a trade, and the percentage of year 12 students attaining a year 12 certificate or equivalent vocational education and training qualification; and
 - post-school destinations.

A note clarifies that information that has been made publicly available for the purposes of section 44 is not required to be made separately publicly available for the purposes of this section if the publication of that information complies with this section.

Subsection 60(2) clarifies that an approved authority can make other information publicly available and that this section only sets out the minimum amount of information to be made publicly available.

Subsection 60(3) provides that the information must be made publicly available by placing the information on the internet and where requested, the approved authority must provide this information to a person responsible for a student who does not have access to the internet.

Subdivision I—Needs-based funding arrangements

Paragraph 78(3)(a) of the Act provides that approved authorities for more than one participating school must distribute Commonwealth recurrent funding received under the Act in accordance with a needs-based funding arrangement that complies with requirements prescribed by the regulations. Subdivision I sets out the requirements for such needs-based funding arrangements.

Section 61 Needs-based funding arrangements

Approved system authorities

Subsection 61(1) provides that a needs-based funding arrangement that is part of an approved system arrangement must comply with the following principles:

- an amount per student should be provided that reflects the recurrent resources required to support a student with minimal educational disadvantage to achieve expected educational outcomes;
- 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 should be provided to students and schools with additional needs to support student achievement, including in relation to:
 - students with disability;
 - Aboriginal and Torres Strait Islander students;
 - students with a low socioeconomic status;
 - students who have low English proficiency;
 - schools based on location; and
 - schools based on size;
- a funding model should take account of efficiencies that can be realised while improving educational outcomes;
- a funding model should be publicly available and transparent.

Any funding model aimed at improving educational outcomes may take into account the ability for an approved system authority to achieve these outcomes in a number of different

ways. This may include, as an example, meeting the needs of multiple schools within the authority through the efficiency of a shared delivery of a particular program or service.

A note is included to clarify that a needs-based funding arrangement for an approved system authority must be set out in the authority's approved system arrangement, which can also include other matters.

Subsection 61(2) clarifies that the needs-based funding arrangement may deal with other matters, with a note providing the example of the inclusion of loadings in addition to loadings required in paragraph 61(1)(c).

Non-government schools

Subsection 61(3) provides that an approved authority for non-government school that is not an approved system authority must distribute the following to the school:

- all financial assistance received for the school in accordance with Division 2 of Part 3 of the Act;
- the amount of financial assistance, received by the authority in accordance with Division 5 of Part 3 of the Act, that is determined to be payable for the school by the Minister;
- if the non-government school is located in a participating State or Territory—all recurrent funding received for the school from the State or Territory.

A determination by the Minister referred to above is not a legislative instrument (and would not be under section 5 of the *Legislative Instruments Act 2003*).

Division 4—Ongoing policy requirements for block grant authorities and non-government representative bodies

Section 62 Information to the public about financial assistance

Under paragraphs 85(2)(c) and 93(2)(d) of the Act, block grant authorities and non-government representative bodies are required to provide information in accordance with the regulations as part of their ongoing requirements for approval. Division 4 requires a block grant authority and non-government representative body to provide certain information to the public about financial assistance.

Section 62 provides that a block grant authority or a non-government representative body must publish:

- the amount of financial assistance received under the Act (if any);
- the application of that financial assistance;
- information about the way or manner in which the school applies for financial assistance; and
- how decisions of the authority or body to allocate financial assistance are reviewed.

As is the current practice, block grant authorities are required to provide a process for a school to apply for a capital grant and have in place a formal process to allow for a school to have a decision reviewed. The intention of these regulations is to ensure that block grant authorities have transparent processes in place and are accountable to both the Commonwealth and their member schools for their decisions.

Once a school has been approved for a grant, the block grant authority and the school enter into an agreement that outlines the obligations on both parties and an associated payment schedule. This reflects the current administrative guidelines and will be practically explained in the proposed *Guide to the Australian Education Act*.

A note is included to clarify that this information can be published by placing the information on the internet.

Subsection 62(2) provides that this section sets out the minimum information required to be published and that a block grant authority and non-government representative body can make other information publicly available. A note is included to acknowledge that the authority or body may have obligations under the *Privacy Act 1988* in publishing this information.

Part 6—Actions Minister may take for failure to comply with the Act or this regulation, and to require amounts to be repaid

Section 63 Limits on recovery of overpayments, recoverable payments and other unpaid amounts

Under paragraph 110(1)(a) of the Act, the Minister is able to determine that a State or Territory pay to the Commonwealth a specified amount as a result of a failure to comply with the Act or because of an overpayment or other reason set out in section 109. Section 63 limits the amount that can be determined by the Minister where an approved authority, block grant authority, or non-government representative body has received more funding (whether under the Act or a prior schools' funding Act) than it was entitled to.

This section provides that the determined amount can be no higher than (as relevant):

- the amount by which an overpayment exceeded the amount to which the authority or body was entitled to;
- the amount of the recoverable payment; or
- the amount that remains unpaid in relation to other Acts, as set out in paragraph 109(3)(b) of the Act.

Section 64 Recovering capital funding when a school ceases to provide education

Under paragraph 110(1)(a) of the Act, the Minister is able to determine that a State or Territory pay to the Commonwealth a specified amount where a school that has received Commonwealth capital funding ceases to provide primary or secondary education in accordance with subsection 109(4) of the Act. Subsection 64(1) contains a table that specifies the method for calculating the recoverable amount of Commonwealth capital funding that can be determined by the Minister in these circumstances.

Subsection 64(2) provides that if a school ceases to provide primary or secondary education during the first half of the designated use period specified in column 2 of the table in section 64, the amount determined by the Minister must not exceed the capital funding amount.

Subsection 64(3) provides that if a school ceases to provide primary or secondary education during the second half of the designated use period specified in column 2 of the table in section 64, the amount determined by the Minister must not exceed the amount that remains if, each year in the second half of the designated use period, the capital funding amount were reduced by equal proportions. A note is included to provide an example of how this amount is calculated in practice.

Subsection 64(4) provides that in determining a period for the purposes of subsections 64(2) or (3), the period is rounded to the nearest full year.

Part 7—Miscellaneous

Section 65 Making records of, using or disclosing protected information

Paragraph 125(1)(a) of the Act provides that the Minister may make a record, use and disclose protected information in accordance with the regulations. Protected information is defined under section 6 of the Act as information obtained under or for the purposes of the Act.

Subsection 65(1) specifies the purposes for which the Minister may make a record of or use protected information, which are:

- the purposes of the Act or the Regulation;
- programs administered by the Minister;
- research into matters of relevance to the Department;
- statistical analysis of matters of relevance to the Department;
- policy development; and
- any other purpose determined by the Minister by legislative instrument in accordance with subsection 65(3).

Subsection 65(2) specifies the organisations that the Minister may disclose protected information to, being:

- ACARA for the purposes of its functions;
- Australian Bureau of Statistics for the purposes of its functions;
- the Productivity Commission for the purposes of its functions; and
- any other person determined by the Minister by legislative instrument in accordance with subsection 65(3).

Section 66 Giving notice to persons of proposed decisions

Subsection 66(1) sets out the decisions the Minister may make under the Act which require the provision of a written notice. These are:

- a decision that an approved authority for a government school is not taken to satisfy basic requirements under subsection 76(2);
- a direction in relation to an implementation plan under subsection 105(1) of the Act; and
- a decision to take action under subsection 110(1) of the Act because of a matter mentioned in section 108 of the Act (actions the Minister may take for failure to comply with the Act).

Subsection 66(2) provides that the Minister must provide a written notice containing the terms of the proposed decision and the reasons for the proposed decision, and provide the person with at least 28 days in which to make a submission. A note is included to clarify that a notice issued under this section does not affect any process for resolving matters set out in a relevant arrangement (as defined under section 6 of the Act).

Subsection 66(3) provides that the written notice must be given to the relevant person for the decision, which is defined in section 6 of the Act by reference to section 118 of the Act.

Where the proposed decision is that an approved authority for a government school is not taken to satisfy basic requirements under subsection 76(2) of the Act, the notice must be given to the approved authority.

Subsection 66(4) requires the Minister to have regard to any submission made under this section when making the final decision. A note is included to clarify that the Minister may be required to have regard to other matters referencing subsections 105(3) and 110(4) of the Act.

Statement of Compatibility with Human Rights

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

Australian Education Regulation 2013

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 *Australian Education Act 2013* (the Act) provides Commonwealth financial assistance for schools. Under subsection 130(1) of the Act, the Governor-General may make regulations prescribing matters that are required, permitted, necessary or convenient to be prescribed for the purposes of the Act.

The purpose of the *Australian Education Regulation 2013* (the Regulation) is to prescribe a range of matters concerning:

- the interpretation of provisions in the Act;
- conditions of grants of financial assistance to States and Territories under the Act;
- matter relevant to Commonwealth grants of recurrent funding for participating schools;
- matter relevant to Commonwealth grants of recurrent funding for non-participating States and Territories;
- matters relevant to Commonwealth grants of capital funding, special circumstances funding and funding for non-government representative bodies;
- conditions of approval of approved authorities and bodies;
- conditions of approval of approved system authorities
- ongoing policy requirements for block grant authorities and non-government representative bodies;
- matters relevant to actions Ministers may take for failure to comply with the Act or the Regulation, and to require amounts to be repaid; and
- other miscellaneous matters.

Prior to 2009, both the Government and non-government sectors operated under common legislation. From 2009 to 2013 the requirements were in two pieces of legislation (the *Federal Financial Relations Act 2009* and the *Schools Assistance Act 2008*) and associated agreements (the Intergovernmental Agreement on Federal Financial Relations and the National Education Agreement). While many of the requirements set out in the Regulation are consistent with these previous arrangements, there are nevertheless new requirements.

The Regulation is consistent with other regulatory approval schemes and does not place significant additional requirements on schools. Most of the requirements set out in the Regulation reflect practice or conditions under the previous framework, which have been agreed through the Standing Council on School Education and Early Childhood (SCSEEC or

Ministerial Council). Those requirements that are new have been agreed through negotiations, or are reflected in the National Education Reform Agreement and, where appropriate, are accompanied by suitable transitional arrangements to ensure approved authorities and schools achieve the expected outcomes.

Together with the Act, the Regulation clearly sets out the Minister's powers to make decisions, determinations and give direction in relation to school funding arrangements, improving on previous funding frameworks where the Minister had broad discretions under various guidelines and agreements. The Regulation assists in providing greater levels of certainty and enforceability of obligations under the school reform arrangements than provided by previous arrangements.

Human rights implications

The Regulation engages the following human rights:

- the right to education – Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), Articles 28 and 29 of the *Convention on the Rights of the Child* (CRC), Article 5(e)(v) and 7 of the *Convention on the Elimination of All Forms of Racial Discrimination* (CERD) as well as Article 10 of the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW); and
- the right of equality and non-discrimination – Articles 2 and 26 of the *International Covenant on Civil and Political Rights* (ICCPR), Article 2(2) of the ICESCR and Article 2 of the CRC; and
- the right to freedom of thought, conscience and religion – Article 18 of the ICCPR; and
- the rights of people with disability - Article 24 of the *International Convention on the Rights of Persons with Disabilities* (ICRPD); and
- the right to the enjoyment of just and favourable conditions of work – Article 7 of the ICESCR; and
- the right to reputation – Article 17 ICCPR.

Right to education

The Regulation engages and promotes the right to education. The right to education is contained in Article 13 of the ICESCR, Articles 28 and 29 of the CRC, Article 5(e)(v) and 7 of CERD, Articles 10 of the CEDAW and Article 24 of the CRPD.

The right to education recognises the important personal, societal, economic and intellectual benefits of education. It requires that education be available, safe, and appropriately resourced, dependent on the needs of the child. The United Nations Committee on Economic, Social and Cultural Rights has stated that education should be available, 'accessible to all, especially the most vulnerable groups' without discrimination on any of the prohibited grounds, physically accessible and economically accessible (General Comment 13).

The right to education is promoted through the needs-based system of education funding being supported and given effect to by the Regulation. In particular, section 10 of the Regulation sets out the national policy initiatives that all States and Territories must implement as a condition of receiving grants of financial assistance under the Act. This

requires States and Territories to ensure that all schools located in the State or Territory, improve the provision of school education, implement policy and programs to ensure that all children are engaged in and benefit from schooling, implement policies and programs to support students to complete education to year 12 and to take action to collect and provide data on each of the above requirements under nationally agreed performance reporting frameworks to allow governments to identify areas of need and direct resources accordingly. These policy initiatives set out in the Regulation enhance and promote the right to education.

In addition, the Regulation provides for matters relevant to providing grants for recurrent funding for participating schools (Part 3 of the Regulation), matters relevant to grants for capital funding, special circumstances funding and funding for non-government representative bodies (Part 4 of the Regulation). The Regulation also sets out the conditions of approval of approved authorities which are the entities provided with recurrent funding for the purposes of providing school education (Part 5 of the Regulation). The Regulation also provides for conditions of approval for approved system authorities and block grant authorities which also have responsibilities for distribution of funds relating to school education (Part 5 of the Regulation).

The provisions in the Regulation promote the right to education by providing the necessary framework to give effect to the funding arrangements for school education under the Act.

Rights of equality and non-discrimination

The Regulation also engages the right to equality and non-discrimination. This right is protected in a range of international human rights treaties, including Articles 2 and 26 of the ICCPR, Article 2(2) of the ICESCR and Article 2 of the CRC.

The right to equality and non-discrimination provides that all people are born equal and require the same respect and treatment, regardless of factors such as race, colour, sex, language, religion, political or other opinion, national or social origin, property or birth. The rights recognise that, to achieve equality, it may be necessary to treat people differently, for example, due to age, place of residence within a country or disability.

The right to equality and non-discrimination is promoted within the measures contained in the Regulation. The Regulation sets out the conditions on which financial assistance is provided to States and Territories. Under the Regulation, States and Territories will be required to implement the national policy initiatives for school education as a condition of funding. Amongst the requirements, a State or Territory must ensure that there is an improvement in the provision of school education to meet nationally agreed outcomes, objectives and targets, including for students with particular needs. In addition, policies and programs must be implemented to ensure that all children are engaged in and benefit from schooling which supports the most disadvantaged students. The Regulation also sets out a range of matters in Part 3, Division 1 which are related to the funding formula prescribed in the Act, which will ensure that funding is provided to States and Territories in respect of students through fair, transparent and needs-based arrangements.

The measures in the Regulation have a positive effect in promoting the right to equality and non-discrimination, as the Regulation supports the funding of school education on a needs basis to ensure that all students, regardless of where they live, their socioeconomic

background, social origin, disability, language or disability, to have fair and equitable access to education.

Right to freedom of thought, conscience and religion

The right of people to have freedom of thought, conscience and religion is recognised in Article 18 of the ICCPR.

Nothing in the Regulation is intended to impinge upon this right, as funding is provided to the States and Territories in respect of students through fair, transparent and need-based arrangements that operate irrespective of a student's religion or beliefs.

Rights of people with disability

The rights of people with disability to access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live are set out at Article 24 of the ICRPD.

The Regulation, under the authority of the Act, engages and promotes this right through enabling needs-based funding arrangements for all Australian schools designed to address disadvantage and support the participation and educational outcomes of all school-age children regardless of background, the type of school they attend or the barriers they face to educational attainment.

Under the funding arrangements, all participating schools are entitled to a base amount of Commonwealth funding for every student. Schools which need extra support – those with students with low socioeconomic status, low English proficiency, students with disability, Aboriginal and Torres Strait Islander students and that are in regional to very remote areas and small in size - attract additional funding through loadings. Sections 16 to 19 of the Regulation prescribe the parameters of those loadings; in particular section 17 contains a specific disability loading percentage which is intended to benefit students with a disability.

The Regulation is compatible with the protection of the rights of people with disability as the Regulation provides for additional funding to be provided in respect of students with special needs, in particular students with a disability, in order to improve those students' access to and engagement in education.

Right to the enjoyment of just and favourable conditions of work

The Regulation engages Article 7 of the ICESCR, which recognises the right to just and favourable conditions of work.

While the Commonwealth is not responsible for the training and development of teachers (particularly those already with relevant skills and expertise), it is the Commonwealth's intention to ensure teachers have the necessary skills and support to ensure that they are able to deliver high quality teaching to students, as part of promoting the right to education, and to achieve the Australian Government's goals of high equity and quality education. Specifically, the National Plan for School Improvement requires that the work of teachers will reflect rigorous professional standards and best practice.

Under section 10 of the Regulation, States and Territories are required to implement (or continue to implement) national policy initiatives relating to school education, recognising the regulatory responsibilities of States and Territories for school education. These national policy initiatives include overseeing the State/Territory school education systems, supporting the work of national education institutions, and improving the quality of teachers (including through higher professional standards, better professional development and nationally consistent registration processes). These national policy initiatives are overseen by the Standing Council on School Education and Early Childhood established under the Council of Australian Governments to consider school education matters.

Higher professional standards, demonstrated through appropriate levels of professional knowledge, practice and engagement, will be supported through the framework provided by the Australian Professional Standards for Teachers. The Standards set out a public statement, defining and outlining the work of teachers and teacher quality. This structured guidance describes the recommended professional training and evaluation trajectory. Subsection 10(4) of the Regulation supports the implementation of the Standards to further assist teachers in informing their development of professional learning and guides teachers to be able to better support their students. The additional clarity will provide developmental direction for teachers and will guide qualification for professional registration, providing transparency to a fair, just and favourable work-environment.

The Regulation also requires all approved authorities, including States and Territories for government schools, and authorities for non-government schools, to have processes in place for enhancing principal and teacher performance and professional development, and to implement the curriculum. Section 41 provides that approved authorities must implement the *Australian Teacher Performance and Development Framework* and provide access to ongoing professional development consistent with the *Australian Charter for the Professional Learning of Teachers and School Leaders*. The documents set out what is required to build a comprehensive and effective approach to performance and development culture in Australian schools. These requirements recognise the key importance of enhancing teacher quality in improving student outcomes and as such promote the right to the enjoyment of just and favourable conditions of work.

Right to reputation

Article 17 of the ICCPR provides that no one shall be subject to arbitrary or unlawful interference with their privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

Section 28 of the Regulation sets out the matters the Minister may have regard to in considering whether a person is a “fit and proper person” to be an approved authority under subsection 25(5) of the Act. On the basis that the right to reputation includes the professional and business reputation of a person, section 28 engages the right to reputation.

The requirements for a person to be considered “fit and proper” are not arbitrary but rather are certain and are prescribed in section 28 of the Regulation. The factors to be considered for an approved authority are whether a person has experience and expertise in administering a school and providing education (paragraph 28(1)(a)), whether the person has relevant governance arrangements in place (paragraph 28(1)(b)) and whether the person has debts due

to the Commonwealth in relation to the provision of school education (paragraph 28(1)(c)). In addition there are further matters prescribed in the subsection 28(2) for all authorities and bodies which the Minister may have regard to in determining that a person is “fit and proper”.

The requirements to meet the “fit and proper” person test are necessary to ensure that those involved in the operation of schools and the administration of Commonwealth funds meet certain standards. The requirements specified in the Regulation are proportionate to establishing that a person is “fit and proper” because they are limited, and are focussed on the key considerations relevant to whether a person can carry out with integrity the duties of an approved authority. These considerations include whether a person has a criminal record, has engaged in a deliberate pattern of immoral or unethical behaviour, and has in place arrangements to receive independent and professional advice.

The requirements are necessary to meet the legitimate objective of requiring persons responsible for the administration of schools and school funds to be suitable for carrying out their role with integrity. In addition, there are adequate procedural safeguards in place as any decision to refuse to approve a person as an approved authority for a school, made under subsection 73(1) of the Act, is a reviewable decision.

Therefore to the extent there is any limitation placed on this right, the limitation is necessary and proportionate to achieve a legitimate aim.

Conclusion

The Regulation is compatible with human rights as it promotes the right to education, equality and non-discrimination, the right to freedom of thought, conscience and religion, the rights of people with disability in the context of education, and the right to the enjoyment of just and favourable conditions of work, in the context of school education and teaching as well as being compatible with the right to reputation.

**The Hon Bill Shorten MP
Minister for Education
Minister for Workplace Relations**