

EXPLANATORY STATEMENT

Select Legislative Instrument No. 188, 2014

Australian Education Act 2013

Australian Education Amendment (2014 Measures No. 1) Regulation 2014

Authority

Subsection 130(1) of the *Australian Education Act 2013* (the Act) empowers the Governor-General to make regulations prescribing matters required or permitted by the Act to be prescribed by the regulations, or necessary or convenient to be prescribed for carrying out or giving effect to the Act. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Legislative background

The Act is the principal legislation by which the Australian Government provides Commonwealth financial assistance for schools.

The *Australian Education Regulation 2013* (the Principal Regulation) contains a number of provisions to ensure the correct calculation and indexation of Commonwealth financial assistance for schools, and for the effective and efficient administration of that financial assistance.

The Act and Principal Regulation commenced on 1 January 2014.

Purpose and operation

Financial assistance under the Act is provided to states and territories for distribution to approved authorities for government and non-government schools, block grant authorities, capital grants authorities and non-government representative bodies. Entities approved to receive Commonwealth financial assistance under the Act, including states and territories in their capacity as approved authorities for government schools, must meet and maintain the conditions of approval outlined in the Act.

The Principal Regulation prescribes a range of matters concerning:

- the interpretation of provisions in the Act
- conditions of grants of Commonwealth financial assistance to states and territories under the Act
- matters relevant to Commonwealth financial assistance for participating schools, including matters relevant to the calculation of that financial assistance
- matters relevant to the provision of special circumstances funding under the Act
- matters relevant to the basic requirements of approval for approved authorities, block grant authorities, capital grants authorities and non-government representative bodies
- matters relevant to the ongoing requirements of approval for approved authorities, block grant authorities, capital grants authorities and non-government representative bodies

- matters relevant to the ongoing policy requirements of approval for approved authorities
- matters relevant to actions the Minister may take for failure to comply with the Act or the Principal Regulation
- other matters relevant to carrying out or giving effect to the Act.

The purpose of the *Australian Education Amendment (2014 Measures No. 1) Regulation 2014* (Amendment Regulation) is to reflect amendments made to the Act by the *Australian Education Amendment Act 2014* (Amendment Act), enhance, and correct errors with regard to, ongoing requirements of approval for approved authorities, block grant authorities and non-government representative bodies, and to ensure that the calculation of Commonwealth financial assistance under the Act occurs correctly.

In addition, the Amendment Regulation prescribes circumstances for the purposes of section 69A of the Act, in order to enable Commonwealth financial assistance to be provided for the Australian Government's Indigenous Boarding Initiative and the National School for Travelling Show Children.

The Amendment Regulation makes the following changes to the Principal Regulation:

- corrects a spelling error in paragraphs 6(a) and (c) of the Principal Regulation
- extends the period of effect of the existing definition of student with disability beyond 2014 in subsection 16(2) of the Principal Regulation. This ensures base funding for students with disability is calculated on existing state and territory based definitions until the Nationally Consistent Collection of Data on School Students with Disability (NCCD) is fully implemented
- provides for the future indexation of capital funding under the Act by prescribing the indexes of building prices and wages costs the Minister must have regard to for the purposes of paragraph 68(4)(a) and (b) of the Act
- ensures that approved authorities for schools and non-government representative bodies spend, or commit to spend, interest earned on Commonwealth financial assistance in the same way as the financial assistance. This continues a requirement from previous funding arrangements and ensures all funding is used for the purpose for which it is granted
- requires that block grant authorities must comply with written directions of the Minister in relation to how capital funding is spent, or committed to be spent, and provide that block grant authorities must use capital funding in relation to a school for which the block grant authority is approved under the Act.
- continues a requirement from previous funding arrangements that requires block grant authorities to comply with written directions of the Minister in relation to how recovered capital funding is spent, or committed to be spent, and provides that block grant authorities must use such recovered capital funding for a school for which the block grant authority is approved under the Act
- ensures that non-government representative bodies, from 2015, spend, or commit to spend, Commonwealth financial assistance in the calendar year in which it is paid
- enables the Minister to determine the day by which the financial acquittal certificate (required under section 34 of the Principal Regulation) for financial assistance provided under the Act for a year must be provided by an authority or body. This is to ensure appropriate acquittal documentation is received in a timely manner in the event of a school or body closing
- makes clear that record keeping requirements for approved authorities for non-government schools include records of capital expenditure in relation to land and buildings, and extends

to records of expenditure by contractors and sub-contractors in relation to that capital expenditure

- adjusts the levels of education that constitute primary education and secondary education in Queensland and Western Australia to bring the Principal Regulation into line with changes made to education levels in those states
- provides that the Commonwealth can collect information from approved authorities for government and non-government schools for the purposes of the Nationally Consistent Collection of Data on School Students with Disability (NCCD). The Commonwealth, in partnership with all State and Territory Governments, is implementing the NCCD to ensure a nationally consistent approach to information concerning the population of 'students with disability'
- prescribes the circumstances that the Minister must be satisfied about when determining an amount of financial assistance for a school for a year under section 69A of the Act (funding in prescribed circumstances). The Amendment Regulation prescribes the eligibility criteria and payment methodology for the Australian Government's Indigenous Boarding Initiative announced in the 2014-15 Budget. The Amendment Regulation also prescribes the eligibility criteria and payment amounts to the NSW Government, in respect of the Dubbo School for Distance Education, to support students enrolled at the Dubbo School for Distance Education and attending the National School for Travelling Show Children
- ensures that the amendment made to section 27 of the Act in 2014 is reflected in sections 12 and 13 of the Principal Regulation

Regulation Impact Statement

The Office of Best Practice Regulation (OBPR) has advised that no Regulatory Impact Statement is required for the Indigenous Boarding Initiative, National School for Travelling Show Children or other measures (OBPR ID 17331, 17337 and 17733).

Commencement

- Sections 1 to 4 of the Amendment Regulation commence the day after the Amendment Regulation is registered on the Federal Register of Legislative Instruments
- Schedules 1, 3 and 4 to the Amendment Regulation commence the day after the Amendment Regulation is registered on the Federal Register of Legislative Instruments
- Schedule 2 to the Amendment Regulation commences on 1 January 2015

Consultation

The Minister has consulted with the Ministerial Council as required by subsection 130(5) 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 Amendment (2014 Measures No. 1) Regulation 2014

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 Amendment (2014 Measures No.1) Regulation 2014* (the Amendment Regulation) amends the *Australian Education Regulation 2013* (the Principal Regulation) to:

- correct a spelling error in paragraphs 6(a) and (c) of the Principal Regulation
- extend the period of effect of the existing definition of student with disability beyond 2014 in subsection 16(2) of the Principal Regulation. This ensures that base funding for students with disability is calculated on existing state and territory based definitions until the Nationally Consistent Collection of Data on School Students with Disability (NCCD) is fully implemented.
- provide for the future indexation of capital funding under the *Australian Education Act 2013* (the Act) by prescribing the indexes of building prices and wages costs the Minister must have regard to for the purposes of paragraph 68(4)(a) and (b) of the Act
- ensure that approved authorities for schools and non-government representative bodies spend, or commit to spend, interest earned on Commonwealth financial assistance in the same way as the financial assistance. This continues a requirement from previous funding arrangements and ensures all funding is used for the purpose for which it is granted
- require that block grant authorities must comply with written directions of the Minister in relation to how capital funding is spent, or committed to be spent, and provide that block grant authorities must use capital funding in relation to a school for which the block grant authority is approved under the Act.
- continues a requirement from previous funding arrangements that requires block grant authorities to comply with written directions of the Minister in relation to how recovered capital funding is spent, or committed to be spent, and provide that block grant authorities must use such recovered capital funding for a school for which the block grant authority is approved under the Act.
- Ensure that non-government representative bodies, from 2015, spend, or commit to spend, Commonwealth financial assistance in the calendar year in which it is paid.
- enable the Minister to determine the day by which the financial acquittal certificate (required under section 34 of the Principal Regulation) for financial assistance provided under the Act for a year must be provided by an authority or body. This is to ensure appropriate acquittal documentation is received in a timely manner in the event of a school or body closing
- make clear that record keeping requirements for approved authorities for non-government schools include records of capital expenditure in relation to land and buildings, and extends to records of expenditure by contractors and sub-contractors in relation to that capital expenditure

- adjust the levels of education that constitute primary education and secondary education in Queensland and Western Australia to bring the Principal Regulation into line with changes made to education levels in those states
- provide that the Commonwealth can collect information from approved authorities for government and non-government schools for the purposes of the NCCD. The Commonwealth, in partnership with all State and Territory Governments, is implementing the NCCD to ensure a nationally consistent approach to information concerning the population of ‘students with disability’
- prescribe circumstances the Minister must be satisfied about when determining an amount of financial assistance for a school for a year under section 69A of the Act (funding in prescribed circumstances). The Amendment Regulation prescribes the eligibility criteria and payment methodology for the Australian Government’s Indigenous Boarding Initiative announced in the 2014-15 Budget. The Amendment Regulation also prescribes the eligibility criteria and payment amounts to the NSW Government, in respect of the Dubbo School for Distance Education, to support students enrolled at the Dubbo School for Distance Education and attending the National School for Travelling Show Children
- ensure that the amendment made to section 27 of the Act in 2014 is reflected in sections 12 and 13 of the Principal Regulation.

Human rights implications

The *Australian Education Amendment (2014 Measures No. 1) Regulation 2014* (the Amendment Regulation) engages the following human rights:

- the elimination of racial discrimination – Articles 2, 1(4) and 5 (e)(v) of the *Convention on the Elimination of all forms of Racial Discrimination*
- the rights of persons with disabilities – Articles 9 and 24 of the *Convention on the Rights of Persons with Disabilities*
- the right to education – Article 13 of the *International Covenant on Economic, Social and Cultural Rights*, Articles 28 and 29 of the *Convention on the Rights of the Child*.
- the right to privacy - Article 17 of the *International Covenant on Civil and Political Rights*, Article 16 of the *Convention on the Rights of the Child*, Article 22 of the *Convention on the Rights of Persons with Disabilities*

Elimination of all forms of racial discrimination

The Amendment Regulation engages Articles 2, 1(4) and 5(e)(v) of the *Convention on the Elimination of all forms of Racial Discrimination* (CERD). Australia has obligations to eliminate all forms of racial discrimination under Article 2 of the CERD. However, not all treatment that differentiates between individuals will amount to discrimination. Article 1(4) of the CERD provides that, where special measures are taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals in the equal enjoyment of their human rights, those measures will not amount to racial discrimination. In addition to the fundamental obligations set out in Article 2 of the CERD, State Parties also undertake to eliminate racial discrimination in all its forms and to guarantee the enjoyment of a number of rights, in particular, relevant to the measures in the Amendment Regulation, the right to education and training in Article 5(e)(v).

The Amendment Regulation gives effect to the Australian Government’s Indigenous Boarding Initiative (the Initiative) announced in the 2014-15 Budget by prescribing the circumstances in which payment for eligible boarding schools can be made pursuant to section 69A of the Act.

This Initiative recognises the increased cost schools face in relation to providing educational outcomes for Aboriginal and Torres Strait Islander boarding students from remote or very remote areas in Australia. This is a special measure, as it is designed to benefit and ensure the improved educational attainment of Aboriginal and Torres Strait Islander students in circumstances where those students are from remote or very remote areas of Australia, and are required to board in order to obtain equal access to education.

The Amendment Regulation promotes the elimination of all forms of racial discrimination.

Rights of Persons with Disabilities

The Amendment Regulation engages Articles 9 and 24 of the *Convention on the Rights of Persons with Disabilities*. Article 9 recognises the right of persons with disabilities to participate fully in all aspects of life, and Article 24 recognises the right of persons with disabilities to an inclusive education.

Subsection 16(2) of the Principal Regulation is amended to provide for the extension of the period of effect of the current definition of student with disability. The Australian Government, in partnership with all State and Territory Governments, is implementing the NCCD. It is intended that once sufficiently robust, the NCCD will provide a nationally consistent understanding of the population of ‘students with disability’ for the purposes of the Act and the Principal Regulation. As it will take further time for the data collected through the NCCD to be robust and fit for this purpose, this amendment ensures that students with disability will continue to be supported to participate fully in their education. Until the data collected through the NCCD is of sufficient quality, it is necessary to continue to base funding for students with disability on existing state and territory based definitions.

The Amendment Regulation will also support the collection of NCCD data by providing for the provision of certain information to the Department from approved authorities for government and non-government schools for the purposes of the NCCD, an initiative agreed to by the Ministerial Council (that is, all State and Territory Government Ministers for Education and the Commonwealth Minister for Education). The Amendment Regulation ensures that any information provided by approved authorities for schools for the purposes of the NCCD must not explicitly identify a student.

The Amendment Regulation promotes the rights of persons with disabilities.

Right to Education

The Amendment Regulation engages the right to education in Article 13 of the *International Covenant on Economic, Social and Cultural Rights*. Article 13 recognises the right of everyone to education, which is directed towards the full development of the human personality and the sense of its dignity and to enable all persons to participate effectively in society. It also recognises the liberty of parents and guardians to choose non-government schools for their children, provided those schools conform to the minimum educational standards set out by the Australian Government. The right to education for children is also found in Articles 28 and 29 of the *Convention on the Rights of the Child*.

The Amendment Regulation engages the right to education. The application of section 69A of the Act will allow the Australian Government to support the National School for Travelling Show

Children. This measure enhances the right to education by supporting travelling show students' access to education.

The application of section 69A of the Act will also allow support of the Australian Government's Indigenous Boarding Initiative announced in the 2014-15 Budget. This measure recognises the increased cost schools face in relation to providing educational outcomes for Aboriginal and Torres Strait Islander boarding students from remote or very remote areas in Australia and provides additional funding support for these students when they are required to board in order to obtain an education. This measure enhances the right to education by supporting Aboriginal and Torres Strait Islander boarding students from remote or very remote areas access to education.

The Amendment Regulation will make a positive contribution to promoting the right to education for students at Australian schools. As a whole, the Amendment Regulation engages and promotes the right to education by providing additional funding to assist with improving educational outcomes for students attending both government and non-government primary and secondary schools, including Indigenous students, students educationally disadvantaged because of geographic isolation or itinerant lifestyle, and students with disabilities.

The Amendment Regulation engages the right to education by ensuring Commonwealth funding entitlements are calculated correctly and that any interest earned on financial assistance is spent, or committed to be spent, in the same way as the financial assistance.

The Amendment Regulation promotes the right to education.

Right to Privacy

The Amendment Regulation also engages the right to privacy protected in Article 17 of the *International Covenant on Civil and Political Rights*. It provides that no one shall be subject to arbitrary or unlawful interference with their privacy. It also engages Article 16 of the *Convention on the Rights of the Child*, which provides that no child shall be subjected to arbitrary or unlawful interference with his or her privacy, as well as Article 22 of the *Convention on the Rights of Persons with Disabilities* which similarly provides for the protection of privacy concerning persons with disabilities.

The Amendment Regulation provides for the provision to the Department of certain information from approved authorities for government and non-government schools for the purposes of the NCCD. It is noted that subsection 58A(3) specifically ensures that the information provided must not explicitly identify a student, that is, it is de-identified. It is therefore expected to be unlikely that any information provided to the Department for the purposes of the NCCD will be personal information as defined in the *Privacy Act 1988*, similar to other information already provided under the Act and the Principal Regulation (for example, school census data). In addition to this, the information provided is intended to be used to inform the future calculation of funding entitlements under the Act and to provide a consistent set of data on students with disability across Australia.

Once information is provided to the Department for the purposes of the NCCD, it will come under the definition of 'protected information' in the Act. Pursuant to paragraph 125(1)(a) of the Act, the Minister may make a record of, or use, protected information for the purposes set out in subsection 65(1) of the Principal Regulation and may disclose protected information to the organisations, for the purposes, set out in subsection 65(2) of the Principal Regulation. This will ensure that information provided for the purposes of the NCCD may be used by delegated officers in the Department for the purposes of policy development in relation to the NCCD, and that information

will be treated in a similar manner to other information already provided under the Act and the Principal Regulation (for example, school census data).

As such, this measure does not place any limitations on a person's right to privacy and is compatible with the right to privacy.

The Amendment Regulation is compatible with the right to privacy

Conclusion

The Amendment Regulation is compatible with human rights because it advances the protection of human rights.

Detailed explanation of the Amendment Regulation provisions

Section 1 – Name of Amendment Regulation

This section provides that the title of the Amendment Regulation is the *Australian Education Amendment (2014 Measures No. 1) Regulation 2014*.

Section 2 – Commencement

This section provides for the commencement of the various provisions of the Amendment Regulation. With the exception of Schedule 2 to the Amendment Regulation, the provisions commence on the day after the Amendment Regulation is registered on the Federal Register of Legislative Instruments.

Schedule 2 to the Amendment Regulation will commence on 1 January 2015. That Schedule amends the levels of education for Queensland and Western Australia, which are moving Year 7 from primary education to secondary education from the start of the 2015 school year.

Section 3 – Authority

This section provides that the Amendment Regulation is made under the *Australian Education Act 2013*.

Section 4 – Schedule(s)

This section provides that each instrument that is specified in a Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the instrument has effect according to its terms.

Schedule 1 – Amendments commencing day after registration

Item 1 corrects the spelling error in paragraphs 6(a) and (c) of the Principal Regulation by replacing the adjective ‘dependent’ with the noun ‘dependant’.

Item 2 ensures that the definition of ‘student with disability’ in subsection 16(2) of the Principal Regulation continues to apply after 2014. The Australian Government, in partnership with all State and Territory Governments, is implementing a Nationally Consistent Collection of Data on School Students with Disability (NCCD). A proposed outcome of the NCCD is to ensure a nationally consistent approach to understanding the population of ‘students with disability’ for the purposes of the Act and the Principal Regulation. Whilst all schools are expected to participate in the NCCD in 2015, it will take further time to ensure that the data collected through the NCCD is robust and fit for purpose. Therefore, until the data collected through the NCCD is of sufficient quality, it is necessary to continue to base funding for students with disability on existing state and territory based definitions.

Item 3 prescribes the indexes of building prices and wage costs for the purposes of paragraphs 68(4)(a) and (b) of the Act, and inserts two division headings in Part 4 of the Principal Regulation, ‘Division 1 - Capital Funding’ and ‘Division 2 – Special circumstances funding’. These headings reflect the separation of each kind of funding dealt with under Part 4.

Subsection 67(2) of the Act empowers the Minister to determine amounts of financial assistance for block grant authorities for capital expenditure on non-government schools. The annual amount of financial assistance that may be determined under subsection 67(2) is capped by section 68 of the Act, termed the ‘base assistance amount’ for the year.

For each year after 2014, one of the methods by which the base assistance amount is set is provided under subparagraph 68(1)(b)(i) of the Act, that is, the amount worked out under subsection 68(2) of the Act. Subsection 68(2) provides a formula for the base assistance amount for a year, by taking the base assistance amount for the previous year and multiplying that amount by an indexation percentage.

Paragraph 68(3)(b) of the Act provides that the regulations may prescribe an indexation percentage for the purposes of the formula in subsection 68(2) of the Act. However, subsection 68(4) provides that before the Governor-General makes regulations for the purposes of paragraph 68(3)(b), the Minister must consider changes in an index of building prices prescribed by the regulations and an index of wage costs prescribed by the regulations. This item prescribes those indexes.

It is intended that the Principal Regulation will be amended in future to set out the indexation rate provided for by subsection 68(3)(b) of the Act for future years.

Item 4 ensures that the same requirements which apply to approved authorities in relation to spending, or committing to spend, Commonwealth financial assistance that is payable under Divisions 2 or 5 of Part 3 of the Act or Part 4 of the Act (recurrent funding), apply to approved authorities in relation to spending, or committing to spend, any interest earned on that financial assistance. This item continues an arrangement from previous legislation and ensures that an approved authority must spend, or commit to spend, interest that it earns on recurrent funding in accordance with section 29 of the Principal Regulation.

Item 5 ensures that a block grant authority must spend, or commit to spend, financial assistance that is payable under Division 2 of Part 5 of the Act (capital funding) in accordance with any written directions of the Minister and for the purpose of capital expenditure relating to the provision of school education 'at a school for which the block grant authority is approved under the Act'.

Currently, prior to the Minister making a determination under subsection 67(2) of the Act for capital funding to be made payable for a block grant authority, the Minister must be satisfied that the capital funding is required for capital expenditure by the block grant authority in relation to a school which the block grant authority is approved for under the Act.

However, there was no corresponding requirement under subsection 30(1) of the Principal Regulation for a block grant authority to spend, or commit to spend, the capital funding in relation to a school which the block grant authority is approved for under the Act. This is an oversight and is inconsistent with previous Commonwealth requirements regarding capital funding for block grant authorities.

This item also ensures that the Minister can provide directions to block grant authorities in relation to how capital funding must be spent, or committed to be spent, and related matters including the manner in which block grant authorities enter into funding agreements with approved authorities for non-government schools.

Item 6 ensures that a block grant authority must spend, or commit to spend, financial assistance that is paid to the block grant authority under Division 2 of Part 5 of the Act (capital funding) and which is recovered from savings on capital expenditure, or capital expenditure that has not proceeded, on a school that the block grant authority is approved for under the Act and in accordance with any written directions of the Minister. This ensures capital funding recovered by a block grant authority

is reallocated as capital funding to a school the block grant authority is approved for under the Act, and is consistent with the requirements imposed in relation to capital funding under subsection 30(1) of the Principal Regulation.

Item 7 amends subsection 30(5) of the Principal Regulation to provide that Ministerial directions given under subsections 30(1) and (3A) as set out in **items 5 and 6** are not legislative instruments. This is for clarification only, as such directions would not be legislative instruments as defined in section 5 of the *Legislative Instruments Act 2003*.

Item 8 is a consequential amendment arising from **item 9**.

Item 9 ensures that financial assistance payable under Division 4 of Part 5 of the Act to non-government representative bodies must be spent, or committed to be spent, in the year in which it is paid (except for financial assistance paid for 2014 which must be spent by the end of 2015).

This item also ensures that any interest earned on that financial assistance must be spent, or committed to be spent, in the same way as the financial assistance.

Item 10 is a consequential amendment arising from **items 4 and 9** and ensures that approved authorities and non-government representative bodies state, in the certificate provided to the Secretary under section 34 of the Principal Regulation for a year, whether interest earned on financial assistance has been spent, or committed to be spent, in accordance with subsection 29(8) or 31(4), as the case requires.

Item 11 ensures that the Minister can determine the day by which the certificate required under section 34 of the Principal Regulation must be provided by an authority or body. This ensures, for example, that the Minister can require the certificate earlier than 30 June where an adverse event occurs in relation to a school, or the approved authority for the school, such as the school closing or the approved authority ceasing to operate.

Item 12 makes clear that record keeping requirements for approved authorities for non-government schools include records of capital expenditure in relation to land and buildings, and extends to records of expenditure by contractors and sub-contractors in relation to that capital expenditure. This remedies a situation of inconclusive audit results where approved authorities for non-government schools have adopted a narrow interpretation of record keeping for capital expenditure and consequently not been able to demonstrate value for money.

Item 13 inserts application and transitional provisions into the Principal Regulation to clarify that the new requirements relating to use and expenditure of funding inserted by various items of Schedule 1 to the Amendment Regulation operate prospectively. Use or expenditure inconsistent with the new requirements that occurred prior to the commencement of the Amendment Regulation will not be in breach of those requirements.

The new subsection 67(1) ensures that **items 5 to 8** apply to Commonwealth financial assistance that has not been spent, or committed to be spent, at the commencement of Schedule 1 to the Amendment Regulation.

The new subsection 67(2) that **item 4** and subsection 31(4) as inserted by **item 9** apply to interest earned on Commonwealth financial assistance that has not been spent, or committed to be spent, at the commencement of Schedule 1 to the Amendment Regulation.

Finally, new subsection 67(3) ensures that **item 12** applies to capital expenditure that occurs after the commencement of Schedule 1 to the Amendment Regulation.

Schedule 2 – Amendments commencing 1 January 2015

Items 1 to 5 ensure that the levels of education that constitute primary education and secondary education in Queensland and Western Australia as specified in the Principal Regulation reflect the levels of education that constitute primary education and secondary education set by those jurisdictions.

From 1 January 2015, Queensland and Western Australia will have set the same levels of education that constitute primary education and secondary education as are currently set in New South Wales, Victoria, Tasmania, the Australian Capital Territory and the Northern Territory. In short, from 2015, primary education in all jurisdictions other than South Australia will end at Year 6, and secondary education in all jurisdictions other than South Australia will start at Year 7. These items therefore ensure that the Principal Regulation remains consistent with state and territory determinations as to what levels of education constitute primary education and secondary education in the state or territory.

Schedule 3 – Amendments for the collection of data on students who are persons with a disability

The purpose of the amendments made by Schedule 3 is to provide legislative authority for the Commonwealth to collect information from approved authorities for both government and non-government schools for the purposes of the Nationally Consistent Collection of Data on School Students with Disability (NCCD), an initiative agreed to by the Ministerial Council, comprising all State and Territory Government Ministers for Education and the Commonwealth Minister for Education.

The Ministerial Council is jointly progressing with the Commonwealth the implementation of the NCCD and it is intended that the Ministerial Council will continue to be the authorising body for the NCCD, including the Ministerial Council disability guidelines for the NCCD. Consistent with established practice for the NCCD, the guidelines will be developed collaboratively by the Commonwealth, State and Territory Governments and non-government education authorities, and approved by the Ministerial Council.

Item 1 inserts the definition of ‘Ministerial Council disability guidelines for the year’ (which means the guidelines for the NCCD as approved by the Ministerial Council for the year) for the purposes of new subsection 52(3A) and new section 58A. Note that the Ministerial Council disability guidelines for the NCCD are incorporated by reference as they are in force for any given year (that is, as in force from time to time). Regulations made under the Act are able to incorporate non-legislative instruments as in force from time to time, notwithstanding subsection 14(2) of the *Legislative Instruments Act 2003*: see subsection 130(4) of the Act.

Item 2 ensures that subsection 52(1) of the Principal Regulation incorporates new section 58A within its operation.

Item 3 inserts new subsection (3A) in section 52 of the Principal Regulation. Subsection 52(3A) ensures that the information provided by approved authorities under section 58A must be given to the Department, or a person determined by the Minister, and by a day and in a way determined by

the Minister. This ensures that the Minister has sufficient flexibility to ensure that the day by which information is to be provided for the purposes of the NCCD, and the way that information is to be provided, accords with the Ministerial Council disability guidelines for the NCCD and maintains consistent information collection each year. New subsection 52(3B) ensures that the Minister must have regard to the Ministerial Council disability guidelines when making any determination under subsection 52(3A).

Item 4 inserts new section 58A in the Principal Regulation. Section 58A provides the reporting requirements for approved authorities for both government and non-government schools for the purposes of the NCCD. Subsection 58A(1) ensures that the students that approved authorities are required to provide information on are those students falling within the class of students set out in the Ministerial Council disability guidelines for the NCCD and which are within the same cohort of students reported on for a school's census.

Subsection 58A(2) sets out the kinds of student information required to be reported by approved authorities, which includes information set out in the Ministerial Council disability guidelines for the NCCD. Paragraph 58A(2)(e) reflects the fact that a determination by the Minister under this paragraph is a legislative instrument.

Subsection 58A(3) ensures that any information provided by approved authorities must not explicitly identify a student.

Subsection 58A(4) sets out necessary definitions for the operation of section 58A.

Schedule 4 – Amendments relating to amendments to the Act

Part 1 – Amendments relating to prescribed circumstances

Items 1 to 3 ensure that Commonwealth financial assistance is able to be made payable for a school for a year in prescribed circumstances for the purposes of section 69A of the Act.

Section 69A in Division 3 of Part 5 of the Act provides for the establishment of funding programs for schools by regulation under the Act, and provides the necessary authority for the Commonwealth to make payments for those programs to states and territories for eligible schools.

Subsection 69A(1) of the Act enables the Minister to determine an amount of financial assistance for a school for a year if the Minister is satisfied prescribed circumstances apply in relation to the school for that year.

In order to ensure appropriate Parliamentary oversight, the details of each program needs to be set out in regulations made under section 130 of the Act. These details can include:

- the program's year or years of operation
- the eligibility criteria or preconditions for funding (the 'prescribed circumstances' for subsection 69A(1))
- matters that the Minister may or must take into account in making a funding determination under subsection 69A(1)
- the amount of funding that may be paid for a school for a year (whether a fixed amount, a capped amount, or an amount worked out by formula) (see subsections 69A(2) and (3))

- the total amount of funding available for the program for a year (which can be a fixed amount, a capped amount, or an amount worked out by formula – including, for demand-driven programs, the sum of amounts payable for each eligible school) (see subsection 69A(4)).

Item 1 provides a definition of ‘boarding Aboriginal and Torres Strait Islander student’ for the purposes of new section 25A.

Item 2 amends the heading at Part 4 of the Principal Regulation to reflect the change to the equivalent heading for Part 5 of the Act made by the Amendment Act.

Item 3 establishes two funding programs for schools for the purposes of section 69A of the Act, the ‘Indigenous boarders at non-government schools’ (the Australian Government’s Indigenous Boarding Initiative in the 2014-15 Budget) and the ‘national school for travelling show children’.

Indigenous boarders at non-government schools - 2014

New section 25A specifies one set of prescribed circumstances for a school for 2014 for the purposes of subsection 69A(1) of the Act (the relevant school), i.e. eligibility criteria for an approved authority for a school to receive funding under section 69A of the Act. These are:

- that the school is a non-government school; and
- the number of boarding Aboriginal and Torres Strait Islander students at the school for 2014 is at least:
51; or
50% of the number of students who board at the school.

In determining the amount that is payable to an approved authority for a relevant school for 2014 under subsection 69A(1) of the Act, the Minister must comply with new sections 25B and 25C.

New subsections 25B(1) and (2) provide the formula for the maximum amount that is payable to an approved authority for a relevant school for 2014 for the purposes of paragraph 69A(2)(b) of the Act. This is worked out as 40% of the Commonwealth’s proportion of the approved authority’s total Aboriginal and Torres Strait Islander loading for 2014, as worked out under section 37 of the Act.

New subsection 25B(3) ensures that the total of the amounts determined by the Minister for 2014 for all relevant schools must not exceed the amount that is the sum of all the maximum amounts worked out under subsection 25B(1) for 2014 for all relevant schools.

New section 25C provides matters that the Minister must have regard to when making a determination under subsection 69A(1) of the Act for a relevant school for 2014. Specifically, for a relevant school whose approved authority is in transition (i.e. recurrent funding for the approved authority is worked out under Division 5 of Part 3 of the Act and therefore section 37 of the Act does not apply to the relevant school), the Minister must have regard to the amount the Minister is satisfied would be attributable to the Aboriginal and Torres Strait Islander loading for the relevant school for 2014 if section 37 of the Act were to apply to the school.

The collective effect of sections 25B and 25C is that the amount that may be determined as payable under subsection 69A(1) of the Act for each relevant school for 2014, should represent 40% of the

Commonwealth's proportion of the amount the Minister is satisfied would be attributable to the Aboriginal and Torres Strait Islander loading for the relevant school for 2014.

New section 25D ensures that similar requirements as apply to an approved authority under section 29 of the Principal Regulation in relation to recurrent funding apply in relation to financial assistance that is made payable under section 69A of the Act in relation to the Indigenous boarders at non-government schools. In addition, subsection 25D(1) enables the Minister to direct that the financial assistance must be spent, or committed to be spent, by the approved authority on the relevant school and for purposes related to the provision of school education.

New subsection 25D(4) provides that a direction given under subsection 25D(1) is not a legislative instrument. This subsection is included to assist readers, as such a direction is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003* in any case.

National school for travelling show children – 2015 and 2016

The purpose of sections 25E to 25G is to ensure that Commonwealth financial assistance, additional to that ordinarily payable as recurrent funding under the Act, is able to be paid to New South Wales to support the school education of students enrolled at the Dubbo School of Distance Education who are part of the travelling show circuit.

The maximum amount of additional Commonwealth financial assistance that will be provided to New South Wales for the Dubbo School of Distance Education in each of 2015 and 2016 is \$100,000 (see section 25F).

New section 25G ensures that similar requirements as apply to the New South Wales Government, in its capacity as an approved authority for government schools, under section 29 of the Principal Regulation in relation to recurrent funding apply in relation to financial assistance that is made payable under section 69A of the Act in relation to the National School for Travelling Show Children. In addition, subsection 25G(1) enables the Minister to direct that the financial assistance must be spent, or committed to be spent, by the New South Wales Government on the Dubbo School of Distance Education and for purposes related to the provision of school education for travelling show children.

New subsection 25G(4) provides that a direction given under subsection 25G(1) is not a legislative instrument. Subsection 25G(4) is included to assist readers, as such a direction is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003* in any case.

Items 4 and 5 are consequential amendments arising from **items 1 to 3**. In particular, **item 5** ensures that financial assistance that is payable under section 69A of the Act for a year is covered in the certificate provided by an approved authority to the Secretary under section 34 of the Principal Regulation for the year.

Part 2 - Amendments relating to total entitlements

Items 6 to 11 ensure that the amendment in 2014 to section 27 of the Act (pro-rating of recurrent funding) is reflected in the operation of sections 12 and 13 of the Principal Regulation. Sections 12 and 13 specify how the total entitlement for a participating school, or an approved authority for a participating school (whichever is applicable), is to be determined under section 26 of the Act when section 27 of the Act applies, for example, when a school does not operate for the full year

and, therefore, no student receives primary education or secondary education at the school during a part of the year.

Items 8 and 11 ensure that where an approved authority is approved for more than one participating school under the Act, and that authority's total entitlement is to be determined in accordance with section 12 or 13 of the Principal Regulation, this is only done in relation to the specific school for which the approved authority is approved and which (for example) did not operate for the full year.