

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument No. 140, 2015**

*Australian Education Act 2013*

*Australian Education Amendment (2015 Measures No. 1) Regulation 2015*

#### **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 and prescribed 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 (2015 Measures No. 1) Regulation 2015* (Amendment Regulation) is to provide for capital funding indexation for block grant authorities, extend amounts payable to approved authorities for non-government schools for the Indigenous Boarding Initiative for 2015 and 2016, and to ensure regulatory certainty for approved authorities and schools.

The Amendment Regulation changes the Principal Regulation to:

- provide an indexation percentage for capital funding for block grant authorities
- amend prescribed circumstances funding to include amounts payable to approved authorities for non-government schools for the Indigenous Boarding Initiative for 2015 and 2016
- update the definition of student attendance rate to align with Education Ministerial Council decisions (Ministerial Council)
- ensure data provided by the Australian Curriculum, Assessment and Reporting Authority can be used in the way intended for the calculation of certain recurrent funding loadings under the Act
- clarify that information collected under the Act can be used and disclosed for certain purposes
- ensure national student assessments align with decisions of the Ministerial Council
- allow for flexibility in the way the pro-rating provisions are used when a school closes and re-opens within the same year
- remove the definition of ‘participating non-government schools’ because all non-government schools are ‘participating schools’ under the Act
- correct a cross-reference in the definition of ‘reporting period’
- further clarify the requirement that each State and Territory must have in place an arrangement in respect of each approved authority, block grant authority and non-government representative body to whom the State or Territory may pay an amount of financial assistance under the Act, to facilitate the recovery of financial assistance in the event of non-compliance with the Act or an overpayment under the Act
- further clarify the matters the Minister may have regard to when considering the ‘fit and proper person’ requirement under the Act and the purpose to which approved authorities may spend, or commit to spend, recurrent funding provided under the Act
- ensure all government school approved authorities have the same financial reporting requirements under the Act and simplify financial reporting requirements for approved authorities for non-government schools
- enable block grant authorities to have extended time in which to spend, or commit to spend, capital funding.

## **Regulation Impact Statement**

The Office of Best Practice Regulation (OBPR) has agreed a Regulatory Impact Statement is not required for the amendments to the Principal Regulation (OBPR ID 19350).

## **Commencement**

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

## **Consultation**

The Minister has consulted with the Ministerial Council on the Amendment Regulation as required by subsection 130(5) of the Act. Several of the amendments to the Principal Regulation implement decisions that have been made by the Ministerial Council.

Amendments relating to the recovery of financial assistance paid under the Act have been made in response to requests by the States and Territories to assist them to meet their requirements under the Act and Principal Regulation to have appropriate recovery arrangements in place.

The Act also specifies that, before the Governor-General makes regulations for the purposes of section 77 of the Act, the Minister must have regard to any relevant arrangement of approved authorities for government schools. These relevant arrangements are the National Education Reform Agreement (for New South Wales, South Australia and the Australian Capital Territory) and the National Education Agreement (for Western Australia, Queensland, Tasmania, Victoria and the Northern Territory). The Minister has had regard to these arrangements, and the Amendment Regulation is not inconsistent with these arrangements.

## **Statement of Compatibility with Human Rights**

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

*Australian Education Amendment (2015 Measures No. 1) Regulation 2015*

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 (2015 Measures No.1) Regulation 2015* (the Amendment Regulation) amends the *Australian Education Regulation 2013* (the Principal Regulation) to:

- provide an indexation percentage for capital funding for block grant authorities
- amend prescribed circumstances funding to include amounts payable to approved authorities for non-government schools for the Indigenous Boarding Initiative for 2015 and 2016
- update the definition of student attendance rate to align with Education Ministerial Council (Ministerial Council) decisions
- ensure data provided by the Australian Curriculum, Assessment and Reporting Authority (ACARA) can be used in the way intended for the calculation of certain recurrent funding loadings under the Act
- clarify that information collected under the Act can be used and disclosed for certain purposes
- ensure national student assessments align with decisions of the Ministerial Council
- allow for flexibility in the way the pro-rating provisions are used when a school closes and re-opens within the same year
- remove the definition of ‘participating non-government schools’ because all non-government schools are ‘participating schools’ under the Act
- correct a cross-reference in the definition of “reporting period”
- further clarify the requirement that each State and Territory must have in place an arrangement in respect of each approved authority, block grant authority and non-government representative body to whom the State or Territory may pay an amount of financial assistance under the Act, to facilitate the recovery of financial assistance in the event of non-compliance with the Act or an overpayment under the Act
- further clarify the matters the Minister may have regard to when considering the ‘fit and proper person’ requirement under the Act and the purpose to which approved authorities may spend, or commit to spend, recurrent funding provided under the Act
- ensure all government school approved authorities have the same financial reporting requirements under the Act and simplify financial reporting requirements for approved authorities for non-government schools
- enable block grant authorities to have extended time in which to spend, or commit to spend, capital funding.

## Human rights implications

The Amendment Regulation engages the following human rights:

- the right to education – Article 13 of the *International Covenant on Economic, Social and Cultural Rights* and Articles 28 and 29 of the *Convention on the Rights of the Child*
- 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* (CERD)
- the right to privacy – Article 17 of the *International Covenant on Civil and Political Rights*, and Article 16 of the *Convention on the Rights of the Child*.

### *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 contains a range of measures which engage and promote the right to education. The Amendment Regulation removes the distinction between ‘participating’ and ‘non-participating’ government schools to ensure that all government schools are treated in the same way under the Act in relation to their financial reporting requirements, as the Australian Government, in line with its commitments, now calculates the funding entitlements of all government schools in the same way under the Act. This measure is compatible with the right to education.

The Amendment Regulation also provides for an indexation percentage to be applied in respect of capital funding for block grant authorities. This will result in increased capital funding being available for block grant authorities to use in providing support for capital projects for non-government schools. This measure is compatible with the right to education and promotes the right to education.

The Amendment Regulation will also enable updates of definitions, and student assessment and performance measures, to align with Ministerial Council decisions to support national monitoring of school and student performance to inform future policy development to support improved student outcomes.

The Amendment Regulation is compatible with the right to education.

### *Elimination of all forms of racial discrimination*

The Amendment Regulation engages Articles 2, 1(4) and 5(e)(v) of the 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 commitment to extend its Indigenous Boarding Initiative (the Initiative), first announced in the 2014-15 Budget, by prescribing the circumstances in which payment for eligible non-government schools can be made pursuant to section 69A of the Act and extending eligibility to the Initiative for the 2015 and 2016 calendar years.

The Initiative recognises the increased cost non-government 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.

#### *Right to privacy*

The right to privacy is set out in Article 17 of the *International Covenant on Civil and Political Rights*, and 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.

The Act permits the Minister to use and disclose information that has been obtained under or for the purposes of the Act in accordance with the regulations, and to publish such information *other than* personal information (within the meaning of the *Privacy Act 1988*). The Act does not "protect" information, in that it is not intended to prohibit the lawful use or disclosure of information obtained under or for the purposes of the Act.

The Amendment Regulation amends subsection 65(2) of the Principal Regulation, so that the Minister may disclose information obtained under or for the purposes of the Act to State and Territory education authorities for the purposes of their functions (e.g. the registration of non-government schools, compliance with State or Territory based education laws and school financial reporting). The Amendment Regulation further amends subsection 65(1) of the Principal Regulation, to clarify the capacity for the Minister to use and disclose information that has been obtained under or for the purposes of the Act, in order that the purposes for which the Minister may use information are the same purposes for which the Minister may disclose such information.

Importantly, it is unlikely that any information to be used or disclosed under the Act will be, in and of itself, personal information for the purposes of the *Privacy Act 1988*. The Australian Government does not require the personal information of students to be reported under either the Act or the Principal Regulation. In addition, most information reporting requirements under the Principal Regulation specifically require that the information to be reported does not explicitly identify a student (see for example, subsections 48(4), 50(4), and 58A(3)). It is therefore unlikely that information used or disclosed by the Minister under the Act would be personal information.

The Amendment Regulation further clarifies that section 65 of the Principal Regulation does not limit the lawful use or disclosure of protected information obtained under the Act.

To the extent that the right to privacy is engaged, this change to the Principal Regulation to clarify the disclosure of information obtained under or for the purposes of the Act does not impact adversely on the right to privacy contained in Article 17 of the *International Covenant on Civil and Political Rights*, or Article 16 of the *Convention on the Rights of the Child*.

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 *Australian Education Amendment (2015 Measures No. 1) Regulation 2015* (Amendment Regulation) provisions**

### Section 1 – Name

This section provides that the title of the Amendment Regulation is the *Australian Education Amendment (2015 Measures No. 1) Regulation 2015*.

### Section 2 – Commencement

This section provides for the commencement of the various provisions of the Amendment Regulation. The provisions of the Amendment Regulation commence on the day after it is registered on the Federal Register of Legislative Instruments.

### Section 3 – Authority

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

### Section 4 – Schedules

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

**Item 1** updates the website address information in the note to the definition of *Data Standards Manual: Student Background Characteristics* in subsection 4(1) of the Principal Regulation.

**Item 2** removes the definition of ‘participating non-government school’ in subsection 4(1) of the *Australian Education Regulation 2013* (**the Principal Regulation**). Under the *Australian Education Act 2013* (**the Act**), only certain government schools are non-participating and all non-government schools are participating. Therefore, the definition of ‘participating non-government school’ in the Principal Regulation is unnecessary. **Items 38 to 41** are consequential amendments arising from this item.

**Item 3** replaces an incorrect clause reference in the definition of ‘reporting period’ in subsection 4(1) of the Principal Regulation. The correct clause reference is subsection 52(4) of the Principal Regulation.

**Item 4** amends paragraph 4(2)(b) of the Principal Regulation by replacing the words ‘the entire’ with the words ‘any part of the’ in relation to enrolled students taken into account for the purposes of a school’s attendance rate. The amendment is necessary so that the definition of **attendance rate** in the Principal Regulation applies to all students who are full-time students for any part of the relevant reporting period. The amendment ensures the definition of **attendance rate** is consistent with government data collections as agreed through the Ministerial Council.



**Item 5** replaces subsection 11(2) of the Principal Regulation in order to provide clarity that the arrangement a State or Territory has with each relevant approved authority, block grant authority and non-government representative body must be in force and can be a statutory arrangement or contractual. This amendment shifts the emphasis in subsection 11(2) from requiring the making of the arrangement with an approved authority etc, to ensuring that the arrangement is in force. This is because the arrangement could be a provision in State or Territory law, which would not be an arrangement made ‘with’ an approved authority etc. **Item 6** is a consequential amendment arising from **item 5**.

**Item 8** inserts new section 13A in the Principal Regulation. Under section 27 of the Act, the total entitlement of a participating school or an approved authority for a participating school (as the case requires) for a year is to be determined in accordance with the Principal Regulation in certain circumstances. Sections 12 and 13 of the Principal Regulation then set out how the total entitlement is to be so determined in certain circumstances.

Section 12 applies where the participating school begins to provide primary or secondary education during the year (for example, the school opens for the first time), or the participating school becomes entitled to financial assistance under Part 3 of the Act during the year.

Section 13 applies where the participating school ceases to provide primary or secondary education during the year (for example, the school closes during the year), or the participating school ceases to become entitled to financial assistance under Part 3 of the Act during the year (for example, the approval of its approved authority is revoked).

However, an issue arose under the operation of sections 12 and 13 where a participating school ceased to provide primary or secondary education during the year *and* then began to provide primary or secondary education during a later part of the same year (that is, the school closed and then re-opened). This caused an inconsistency to arise in relation to the operation of sections 12 and 13, with possible adverse outcomes arising. For example, if a participating school both closed and then re-opened after the first Friday in August of a year, section 13 of the Principal Regulation provides that the full amount of financial assistance is to be determined in relation to that school for the year, whereas section 12 provides that no amount of financial assistance is to be determined in relation to that school for the year.

New section 13A will ensure that in such circumstances, or in other special circumstances that may arise which may mean that both sections 12 and 13 of the Principal Regulation apply to a participating school in the same year, the Minister can determine an amount of financial assistance in relation to the participating school that ensures no adverse outcomes arise. For example, where a participating school both closes and re-opens in the same year, the financial assistance that is payable in relation to that school will be able to reflect the total number of days in the year that school provided primary or secondary education. In addition, new paragraph 13A(2)(b) will ensure that the Minister cannot determine an amount of financial assistance that is more than the full amount of financial assistance for the participating school as calculated under the Act. **Item 7** is a consequential amendment arising from **item 8**, as section 13A will need to operate instead of section 12 or 13 as the case requires.

**Item 9** replaces sections 18 and 19 of the Principal Regulation with a new section 18, in order to refine the method used to calculate the number of students at a school for a year in quartiles 1 and 2 for the purposes of the school’s low socioeconomic status student loading in section 38 of the Act (see subsections 38(4) and 38(7) of the Act).

In addition, this **item** refines the method for working out the number of students at a school for a year who have low English proficiency for the purposes of the school's low English proficiency loading in section 39 of the Act (see subsection 39(2) of the Act). These amendments do not have a financial impact on the recurrent funding amounts received by approved authorities.

Under the previous operation of sections 18 and 19 of the Principal Regulation, the number of students in either quartiles 1 and 2, or who have low English proficiency, was referenced to the number of students at the school that the Australian Curriculum, Assessment and Reporting Authority (ACARA) identified as being in either quartile 1 or 2, or who have low English proficiency.

However, as the number of students that ACARA records for a school may be different to that which the school reports to the Australian Government for the purposes of the school's census (and which is used in recurrent funding calculations), primarily due to differences in reporting methods, the different times of the year at which that reporting occurs and fluctuations in school enrolments, the previous operation of sections 18 and 19 of the Principal Regulation may not accurately reflect the number of students in quartiles 1 and 2, and those who have low English proficiency.

In order to ensure consistency between the number of students ACARA records for a school, and the number used by the Australian Government for recurrent funding calculations as provided in a school's census, the percentage of students that ACARA identifies as being in quartiles 1 and 2, and who have low English proficiency, is to be multiplied with the total number of students at the school reported in the school's census. This will ensure that the number of students used in sections 38 and 39 of the Act reflects the proportion of students at the school in quartiles 1 or 2, or who have low English proficiency, as identified by ACARA.

This **item** also updates the method by which ACARA identifies a student as being in quartile 1 or quartile 2, in the definitions provided in new subsection 18(4).

**Item 10** provides the indexation percentage for 2015 for the purposes of subsection 68(3) of the Act. The indexation percentage is the percentage that is multiplied by the total amount available for capital funding for block grant authorities (base assistance amount) for the previous year, in order to provide the base assistance amount for the current year. For 2015, the base assistance amount will therefore be the 2014 base assistance amount multiplied by 102.30%.

**Items 11 to 21** extends the operation of the prescribed circumstances funding for Indigenous boarders at non-government schools to include 2015 and 2016, as announced in the Government's Budget for 2015-16. The amendments made to sections 25A, 25B and 25C of the Principal Regulation through these items is to ensure that these sections include the years 2015 and 2016 and not only 2014.

**Items 22 and 23** replace paragraphs 28(1)(a) and (b), and paragraphs 28(2)(a) and (b), of the Principal Regulation respectively to clarify and simplify some of the non-exhaustive matters that the Minister may have regard to when considering whether a person (that is, an approved authority, block grant authority, or non-government representative body) satisfies the fit and proper person requirement in the Act. These items simplify the language used in these paragraphs to make clear that it is the experience and expertise of the person, and key individuals of the person, the person's governance arrangements and the person's record of financial management that the Minister may, in conjunction with any other relevant matters, have regard to when considering the fit and proper person requirement.

In addition, **item 23** inserts a new paragraph 28(2)(aa) in the Principal Regulation to ensure that it is clear that the Minister may have regard to the existence of a debt recovery arrangement with the relevant State or Territory in relation to financial assistance payable under the Act, which may be relevant where a State or Territory pursues non-statutory arrangements and the person refuses outright to enter such arrangements.

**Item 24** replaces paragraph 29(2)(g) of the Principal Regulation to clarify for approved authorities that spending, or committing to spend, recurrent funding for the purpose of providing school education includes the approved authority's administrative costs in relation to complying with the Act and the Regulation. For example, costs associated with a school's census, record keeping or other reporting requirements.

**Item 25** replaces subsection 30(2) of the Principal Regulation and enables the Minister to determine a longer period of time within which a block grant authority must spend, or commit to spend, capital funding provided to the block grant authority under the Act. This will enable the Minister to extend the time available to a block grant authority beyond the year in which the capital funding is paid to the block grant authority, for example, where a capital project requires additional planning and which has meant that capital funding allocated to that project is not able to be spent, or committed to be spent, in the year in which it is paid. **Item 26** is a consequential amendment arising from **item 25**, to ensure consistency of wording between the two subsections.

**Item 27** replaces paragraph 35(1)(b) of the Principal Regulation and inserts new paragraphs 35(1)(c), (d) and (e). These amendments ensure there is consistency in the reporting of Commonwealth financial assistance allocated by States and Territories to government schools. These amendments ensure that each State and Territory must report:

- how much Commonwealth financial assistance it allocated to each of its government schools
- how much Commonwealth financial assistance (if any) it did not allocate to any of its government schools (e.g. used for the administrative costs of the State education department)
- if the State or Territory is a participating State or Territory, how each amount allocated to each government school was determined in accordance with the State or Territory's needs-based funding arrangement (a requirement under subsection 78(3) of the Act and section 61 of the Principal Regulation)
- if the State or Territory is a non-participating State or Territory, how each amount allocated to each government school was determined, including whether the State or Territory allocated Commonwealth financial assistance to each government school using a per student, or base, amount, and whether additional amounts were provided targeting areas of additional need, and, if so, those amounts.

These amendments ensure that the Australian Government is provided with greater clarity on how Commonwealth financial assistance is used by States and Territories for their government schools.

**Items 28 to 30** repeal paragraph 36(1)(b) of the Principal Regulation and insert new paragraphs 36(1)(f) and (g), in order to simplify and clarify the reporting requirements for approved authorities for non-government schools, and provide added transparency on how Commonwealth financial assistance is used by such authorities. These amendments ensure that approved authorities for non-government schools are:

- no longer required to report back to the Australian Government loadings that the Australian Government is aware of already, as was the case under the previous operation of paragraph 36(1)(b) if they are an approved authority that is not an approved system authority
- required to report how much Commonwealth financial assistance (if any) it did not allocate to any of its schools (e.g. used for the administrative costs of the approved authority itself)
- if the authority is approved for more than one school, required to report how each amount allocated to each of its schools was determined in accordance with its needs-based funding arrangement (a requirement under subsection 78(3) of the Act and section 61 of the Regulation), noting that this was (for approved system authorities) a pre-existing requirement under paragraph 36(1)(b) of the Regulation.

**Item 31** amends the national assessment programme sample testing in science literacy to once every 3 years beginning in 2015, instead of only in 2015. This aligns the science literacy sample assessment with other assessments in the three-year cycle for domestic sample assessments (civics and citizenship, and ICT literacy) agreed by the Ministerial Council. **Item 43** is a consequential amendment arising from this item.

**Items 32 to 37** extend the information reporting requirements for a school's census for participating government schools to include non-participating government schools. That is, the same sections of the Principal Regulation that deal with what must be included in a school's census (see sections 46-48) apply to all government schools. This ensures that the Australian Government is provided with the same categories of information regarding students at each government school in Australia, regardless of whether that school is a participating or non-participating government school, and assists in ensuring that non-participating States and Territories can have Commonwealth financial assistance calculated under the Act in a similar fashion to participating States and Territories in line with Australian Government funding commitments.

**Item 42** repeals section 51 of the Principal Regulation, now that the same information reporting requirements for a school's census apply to both participating and non-participating government schools this section is no longer required in the Principal Regulation.

**Item 44** amends table item 7 at section 53 of the Principal Regulation to ensure the performance measure for student attendance is in line with decisions agreed to by the Ministerial Council.

**Item 45** inserts a note at the end of subsection 60(1) of the Principal Regulation to clarify that the requirement in section 60 of the Principal Regulation to make certain information publically available can be met if the approved authority has already made the relevant information publically available for another purpose and which complies with subsection 60(3) of the Principal Regulation.

**Items 46 to 49** amend section 65 of the Principal Regulation to clarify the capacity for the Minister to use and disclose information that has been obtained under or for the purposes of the Act. These amendments make it clear that the purposes for which the Minister may use information are the same purposes for which the Minister may disclose such information.

In addition, **item 48** will ensure that the Minister may disclose information obtained under or for the purposes of the Act to State and Territory education authorities for the purposes of their functions (e.g. the registration of non-government schools, compliance with State or Territory based education laws and school financial reporting).

Importantly, it is unlikely that any protected information to be disclosed will be, in and of itself, personal information for the purposes of the *Privacy Act 1988*. The Australian Government does not require the personal information of students to be reported under either the Act or the Principal Regulation. In addition, most information reporting requirements under the Principal Regulation specifically require that the information to be reported does not explicitly identify a student (see for example, subsections 48(4), 50(4), and 58A(3)). It is therefore unlikely that information disclosed by the Minister under the Act would be personal information.

**Item 49** inserts new subsection 65(4) for clarity, to reflect that section 65 of the Principal Regulation does not limit any other lawful use or disclosure of information obtained under or for the purposes of the Act. That is, section 125 of the Act and section 65 of the Regulation provide statutory authority for specified uses and disclosures of information collected under or for the purposes of the Act, but they do not preclude other lawful and appropriate uses and disclosures.

**Item 50** amends the reference to subsection 110(1) in section 66 of the Principal Regulation (giving notices to persons of proposed decisions). In summary, section 66, amongst other things, imposes a ‘show cause’ notice requirement for a proposed decision by the Minister relating to non-compliance (for example, misuse of Commonwealth financial assistance) where there is a relevant person for that decision, that is, the decision is internally reviewable and reviewable by the Administrative Appeals Tribunal (AAT) upon application by the person. However, only two decisions under subsection 110(1) of the Act have a relevant person, that is, a decision under paragraphs 110(1)(a) (repayment decision) or 110(1)(b) (reduce future financial assistance decision). A decision under paragraph 110(1)(c) does not have a relevant person and is not reviewable either internally or by the AAT. To ensure that the operation of section 66 of the Principal Regulation is clear and reflects the operation of the Act, this item ensures that paragraph 66(1)(c) references the non-compliance decisions to which it relates, that is, paragraphs 110(1)(a) and 110(1)(b). Of course, any proposed decision under 110(1)(c) is subject to normal principles of natural justice and procedural fairness, as are all administrative decisions.

**Item 51** inserts an application provision for the amendments made by the Amendment Regulation. Broadly, each amendment will apply from the commencement time, which is the date the Amendment Regulation commences, or to decisions that have yet to be made in relation to the 2015 year. The amendments to sections 29 and 30 of the Principal Regulation (how recurrent financial assistance is to be spent) referred to in new subsections 68(5) and (6) will apply to financial assistance already paid under the Act, however these amendments are beneficial to the recipients of the financial assistance.