

## **Explanatory Statement**

### ***Australian Education (Financial Assistance for Non-participating States and Territories) Determination 2016***

#### **Summary**

The *Australian Education (Financial Assistance for Non-participating States and Territories) Determination 2016* (Determination) is made by the Minister for Education and Training under subsections 65(3) and (7) of the *Australian Education Act 2013* (Act).

The purpose of the Determination is to define the total amount of 2015 recurrent school funding entitlement for non-participating schools for the purposes of the Act, and to define the split of that amount between the non-participating States and Territories.

#### **Background**

The Act provides for (amongst other things) Commonwealth recurrent funding for “participating schools” and “non-participating schools”. Participating schools are all non-government schools, and government schools of “participating States and Territories”; non-participating schools are government schools of States and Territories that are not participating States and Territories.

The *Australian Education (Participating States and Territories) Determination 2014*, made under subsection 14(2) of the Act, determined the participating States and Territories as New South Wales, South Australia and the Australian Capital Territory. All other States and Territories are therefore non-participating States and Territories.

Recurrent funding for participating schools is calculated as set out in Part 3 of the Act, which provides for needs based funding (consisting of a base amount per student for a school plus loadings for educational disadvantage) and associated transitional arrangements.

Recurrent funding amounts for non-participating schools are set out in Part 4 of the Act. Essentially, Part 4 provides for the calculation of a total amount payable for all non-participating schools by multiplying the amount payable for non-participating schools in the previous year by an indexation factor determined by the Minister. These funding arrangements are consistent with the previous arrangements for government schools under the *Federal Financial Relations Act 2009*.

Paragraph 65(2)(b) of the Act provides that, for any year other than 2014, the total amount of recurrent funding payable to non-participating States and Territories for non-participating schools located in those States or Territories, is the total amount payable for the previous year for those States and Territories, indexed in the manner determined by the Minister by legislative instrument made under subsection 65(3). The determination under subsection 65(3) must include a statement of the total amount for 2015.

Subsection 65(7) of the Act then empowers the Minister to determine, by legislative instrument, the manner in which the amount under subsection 65(2) is to be split between the non-participating States and Territories.

## **Operation of determination**

The Determination:

1. sets out the manner in which the total amount payable for 2014 for non-participating States and Territories under Part 4 of the Act is indexed to produce the total amount payable to non-participating States and Territories for non-participating schools for 2015 (section 4);
2. sets out that total amount (section 5); and
3. sets out how the total amount is split between the non-participating States and Territories (section 6).

The Determination gives effect to the commitment by the Australian Government to pay Commonwealth schools funding to States and Territories on the same basis, irrespective of whether they are participating or non-participating under the Act. That is, the total amount payable to non-participating States and Territories for 2015, and the amount for each non-participating State and Territory, are the same as they would have been had the amounts been calculated under Part 3 of the Act (recurrent funding for participating schools).

## **Consultation**

There was extensive consultation with representatives of State and Territory education authorities in the lead up to the preparation of the Act. Consultation included significant negotiation on funding matters, including specifically on the requirements under the Act for a State or Territory to be funded as a participating State or Territory under Part 3, or as a non-participating State or Territory under Part 4. The Determination gives effect to the outcome of that consultation.

The annual entitlement for government schools is calculated on the basis of government school student information reported by States and Territories. Consultation occurs with States and Territories throughout the relevant year on both the accuracy of this data and the funding calculations that will occur as a result.

## **Regulatory Impact Statement**

This Determination does not require a Regulatory Impact Statement (RIS) or a Business Cost Calculator Figure. The Determination gives effect to a policy already enacted through the Act, and is simply the mechanism to give effect to that policy.

## **Authority**

Subsections 65(3) and (7) of the Act.

## **Explanation of Provisions**

### **Sections 1 and 2**

Sections 1 and 2 of the Determination are formal provisions setting out the name and date of commencement of the Determination.

### **Section 3**

Section 3 of the Determination defines the term “the Act” for the purposes of the Determination.

#### **Section 4**

Section 4 of the Determination provides that the manner of indexing the total amount payable for the previous year for non-participating States and Territories under Part 4 of the Act is by multiplying that amount by 1.12999928392238. This indexation factor ensures that the non-participating States and Territories receive as much Commonwealth funding for their schools as if they had been participating States and Territories.

#### **Section 5**

Section 5 of the Determination sets out the total amount payable under Part 4 of the Act to non-participating States and Territories for 2015, as \$3,342,951,952.

#### **Section 6**

Section 6 of the Determination sets out how the total amount mentioned in section 5 is to be split amongst the non-participating States and Territories, as follows:

<b>Item</b>	<b>Non-participating State or Territory</b>	<b>Amount:</b>
1	Victoria	\$1,303,297,220
2	Queensland	\$1,204,971,607
3	Western Australia	\$537,184,733
4	Tasmania	\$158,140,840
5	Northern Territory	\$139,357,552

## Statement of Compatibility with Human Rights

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

### ***Australian Education (Financial Assistance for Non-participating States and Territories) Determination 2016***

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* (Act) provides for (amongst other things) Commonwealth recurrent funding for “participating schools” and “non-participating schools”. Participating schools are all non-government schools, and government schools of “participating States and Territories”; non-participating schools are government schools of States and Territories that are not participating States and Territories.

The *Australian Education (Participating States and Territories) Determination 2014*, made under subsection 14(2) of the Act, determined the participating States and Territories as New South Wales, South Australia and the Australian Capital Territory. All other States and Territories are therefore non-participating States and Territories.

Recurrent funding for participating schools is calculated as set out in Part 3 of the Act, which provides for needs based funding (consisting of a base amount per student for a school plus loadings for educational disadvantage) and associated transitional arrangements.

Recurrent funding amounts for non-participating schools are set out in Part 4 of the Act. Essentially, Part 4 provides for the calculation of a total amount payable for all non-participating schools by multiplying the amount payable for non-participating schools in the previous year by an indexation factor determined by the Minister. These funding arrangements are consistent with the previous arrangements for Commonwealth funding of government schools under the *Federal Financial Relations Act 2009* (FFR Act).

The *Australian Education (Financial Assistance for Non-participating States and Territories) Determination 2016* (Determination) is made under Part 4 of the Act, and:

1. sets out the manner in which the total amount payable for 2014 for non-participating States and Territories under Part 4 of the Act is indexed to produce the total amount payable to non-participating States and Territories for non-participating schools for 2015 (section 4);
2. sets out that total amount (section 5); and
3. sets out how the total amount is split between the non-participating States and Territories (section 6).

The Determination gives effect to the commitment by the Australian Government to pay Commonwealth schools funding to States and Territories on the same basis, irrespective of whether they are participating or non-participating under the Act. That is, the total amount payable to non-participating States and Territories for 2015, and the amount for each non-participating State and Territory, are the same as they would have been had the amounts be calculated under Part 3 of the Act (recurrent funding for participating schools).

## Human rights implications

The instrument engages the following human rights, which are discussed in more detail below:

- the right to education - Article 13 of the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*;
- the right to education of school aged children with disability under Article 24 of the *United Nations Convention on the Rights of Persons with Disability (UNCRPD)*; and
- the right to equality and non-discrimination in, amongst other international human rights treaties, Articles 2 and 26 of the *International Covenant on Civil and Political Rights (ICCPR)*, Article 2(2) of the ICESCR and Article 2 on the *Convention on the Rights of the Child (CRC)*.

### *Right to Education*

The instrument engages the right to education, set out in Article 13 of the ICESCR and the rights to education of school-aged children with disability set out in Article 24 of the UNCRPD. The right to education recognises the important personal, societal, economic and intellectual benefits of education. It requires education be available, safe, and appropriately resourced, dependent on the needs of the child. The rights of school-aged children with disability recognises that children with disability should not be excluded from quality, free primary and secondary education on the basis of disability, that they can access such education on an equal basis with others in the community in which they live and that they receive the support required, within the general education system, to facilitate their effective education.

This legislative instrument engages and promotes the right to education by providing recurrent school funding to non-participating States and Territories in accordance with the Act. This instrument facilitates the targeting of resourcing to schools to assist them in providing appropriately resourced education to all school-aged students.

This legislative instrument is compatible with the right to education.

### *Right to Equality and Non-Discrimination*

The instrument engages the right to equality and non-discrimination which is found throughout the 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 confirms that all people are equal and deserving of the same respect. It recognises that people may need to be treated differently in order to achieve equality, for example, by targeting disadvantage.

This legislative instrument engages and promotes the right to equality and non-discrimination by qualifying schools in non-participating States and Territories to be eligible for funding in accordance with funding entitlements provided for in Part 3 of the Act. This enables comparable access to recurrent funding for non-participating States and Territories as

participating States and Territories, thereby increasing equity in access for all school-aged children to school education.

The legislative instrument is therefore compatible with the right to equality and non-discrimination.

**Conclusion**

This legislative instrument is compatible with human rights and specifically promotes the human rights to education, equality and non-discrimination.

**Simon Birmingham**

**Minister for Education and Training**