

## **EXPLANATORY STATEMENT**

*Australian Education Act 2013*

*Australian Education Amendment (2017 Measures No. 2) Regulations 2017*

### **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. Subsection 130(5) of the Act requires the Minister to consult the Ministerial Council (the Council of Australian Governments Education Council) prior to the Governor-General making regulations for the purposes of 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 Regulations) 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 Regulations commenced on 1 January 2014.

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 Regulations prescribe 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 schools, including matters relevant to the calculation of that financial assistance
- matters relevant to the provision of prescribed circumstances funding under the Act
- matters relevant to the basic requirements of approval for approved authorities, block grant authorities, and non-government representative bodies
- matters relevant to the ongoing requirements of approval for approved authorities, block grant 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, and
- other matters relevant to carrying out or giving effect to the Act.

### **Purpose and operation of amendments**

The *Australian Education Amendment Act 2017* (the Amendment Act) will amend the Act with effect from 1 January 2018, to give effect to the Australian Government's reforms of Commonwealth schools funding arrangements. The *Australian Education Amendment (2017 Measures No. 2) Regulations 2017* (the Amendment Regulations) will amend the Principal Regulations from 1 January 2018, principally as a consequence of the amendments to the Act and to implement the Australian Government's *Quality Schools* package. In particular, the Amendment Regulations will:

- provide disability loading percentages for the purposes of the students with disability loading in the Act
- provide for financial assistance payable under section 69A of the Act (funding in prescribed circumstances) and section 69B of the Act (transition adjustment funding), including the repeal of measures which have ceased or will cease at the end of 2017
- re-make school census requirements that are being removed from the Act
- set the ongoing requirements that authorities and bodies formerly approved under the Act must continue to meet
- tighten the purposes for which Commonwealth financial assistance may be spent
- amend data reporting requirements to align with current agreed reporting processes for schools
- repeal provisions of the Principal Regulations made redundant by the repeal of provisions of the Act, and
- make other technical amendments to the Principal Regulations as a consequence of the above (e.g. repeal of, or amendment to, definitions).

The Amendment Regulations will help ensure the implementation of the Australian Government's *Quality Schools* package, through assisting in achieving the calculation of Commonwealth schools funding on a consistent, transparent and sector-blind basis, where the needs of students (and in particular students with disability) are integral.

### **Regulation Impact Statement**

The Regulatory Impact Statement (RIS) for the changes to Commonwealth financial assistance for schools is included in the Explanatory Memorandum to the *Australian Education Amendment Bill 2017*, which can be found at [www.legislation.gov.au](http://www.legislation.gov.au). The Amendment Regulations would have a minor impact at most, relating to administration of transition adjustment funding for non-government schools and minor additional requirements on non-government representative bodies. The Office of Best Practice Regulation has agreed that a RIS is not required for the amendments to the Principal Regulations (OBPR ID 19792).

## **Commencement**

Sections 1 to 4 of the Amendment Regulations commence on the day after it is registered on the Federal Register of Legislation. The amendments to the Principal Regulations, contained in Schedule 1 to the Amendment Regulations, will commence on 1 January 2018.

## **Consultation**

Pursuant to subsection 130(5) of the Act, between July and September 2017, the Minister consulted with the Ministerial Council by seeking feedback on two exposure drafts of the Amendment Regulations. The National Catholic Education Commission (NCEC) and the Independent Schools Council of Australia (ISCA) were also consulted as part of the exposure draft process.

All States and Territories, as well as NCEC and ISCA, provided feedback. Each response was considered by the Australian Government and informed the iterative development of the Amendment Regulations.

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

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*  
*Australian Education Amendment (2017 Measures No. 2) Regulations 2017*

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 (2017 Measures No. 2) Regulations 2017* (the Amendment Regulations) amends the *Australian Education Regulation 2013* (the Principal Regulations) to:

- provide disability loading percentages for the purposes of the students with disability loading in the *Australian Education Act 2013* (the Act)
- provide for financial assistance payable under section 69A of the Act (funding in prescribed circumstances) and section 69B of the Act (transition adjustment funding), including the repeal of measures which have ceased or will cease at the end of 2017
- re-make school census requirements that are being removed from the Act
- set the ongoing requirements that authorities and bodies formerly approved under the Act must continue to meet
- tighten the purposes for which Commonwealth financial assistance may be spent
- amend data reporting requirements to align with current agreed reporting processes for schools, and
- repeal provisions of the Principal Regulations made redundant by the repeal of provisions of the Act, including technical amendments to the Principal Regulations as a consequence of the above (e.g. repeal of, or amendment to, definitions).

### **Human rights implications**

The Amendment Regulations engage the following human rights:

- the right to education – Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and Articles 28 and 29 of the *Convention on the Rights of the Child* (CRC)
- the rights of persons with disabilities – Articles 9 and 24 of the *Convention on the Rights of Persons with Disabilities* (CRPD), and
- the right to privacy – Article 17 of the *International Covenant on Civil and Political Rights* (ICCPR) and Article 16 of the CRC.

#### *Right to education*

The Amendment Regulations engage the right to education in Article 13 of the ICESCR. 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 CRC.

The Amendment Regulations make consequential amendments, arising from amendments to the Act by the *Australian Education Amendment Act 2017*, which will remove historically-based inequities in Commonwealth funding for school education, and will ensure all government and all non-government schools receive a consistent share of Commonwealth funding by 2028. This consistent funding approach emphasises the needs of each student, increases opportunities for quality education and promotes the right to education.

This measure is compatible with the right to education.

#### *Right of persons with disabilities*

The Amendment Regulations engage Articles 9 and 24 of the CRPD. 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.

The Amendment Regulations will help ensure schools are appropriately resourced to provide school education to students with disability, better targeting funding to students' need. The Amendment Regulations amend the definition of student with disability to align it with the *Nationally Consistent Collection of Data on School Students with Disability* (NCCD). A key aspect of the NCCD is determining the number of students who are being provided with 'a reasonable adjustment to access education because of disability' and recording the level of that adjustment. Using this improved data will allow school funding to more effectively provide for students with disability and promote their right to fully participate in education.

The Amendment Regulations prescribe disability loading percentages by level of educational adjustment identified in the NCCD and level of education to allow for funding to be provided at different rates based on students' need. Calculating student with disability loadings by reference to disability loading percentages will help ensure that funding more accurately reflects the needs of the students at that particular school, and can grow along with recurrent funding. This approach also recognises that students with disability have the right to an inclusive education. Disability loading percentages apply based on the level of education and the required adjustment, not the type of school.

This measure is compatible with the rights of persons with disabilities, and will promote the right of persons with disabilities to participate in education.

#### *Right to privacy*

The right to privacy is set out in Article 17 of the ICCPR and Article 16 of the CRC.

The Amendment Regulations amend the Principal Regulations to rename 'protected information' as 'school education information' and permit the Minister to use or disclose school education information for the additional purpose of the National School Resourcing Board.

The term 'protected information' caused some confusion among stakeholders, so the Act was amended to change the term to 'school education information'. This terminology change is reflected in the Amendment Regulations.

The Amendment Regulations also specify that school education information can be disclosed to the National School Resourcing Board, which is necessary to enable that Board to fulfil its functions under the Act.

For National Assessment Program (NAP) annual assessments in reading, writing, language conventions and numeracy, approved authorities will be required to provide information specified in the Australian Curriculum Assessment and Reporting Authority (ACARA)'s NAPLAN Online Data Extract Dictionary to ACARA.

The other information to be provided to ACARA about students that are required to undertake the relevant NAP assessments has been made clearer – that being NAP student results and the information specified in ACARA’s Data Standards Manual: Student Background Characteristics.

Although the Amendment Regulations broaden the scope of the permissible disclosure of information obtained under the Act, the right to privacy is protected as the scope of the information which can be disclosed and the parties to whom it can be disclosed is narrow.

These amendments do not unreasonably impact the applicability of privacy requirements on information obtained under the Act or Principal Regulations, and does not unreasonably impact on the right to privacy contained in Article 17 of the ICCPR or Article 16 of the CRC.

This measure is compatible with the right to privacy.

## **Conclusion**

The Amendment Regulations are compatible with human rights because they advance the protection of human rights.

**Simon Birmingham**  
**Minister for Education and Training**

## **Detailed explanation of the Amendment Regulations provisions**

### Section 1 – Name of Amendment Regulations

This section provides that the title of the Amendment Regulations is the *Australian Education Amendment (2017 Measures No. 2) Regulations 2017*.

### Section 2 – Commencement

This section provides that the provisions of the Amendment Regulations commence as follows:

- Sections 1 to 4 – the day after the Amendment Regulations are registered, and
- Schedule 1 – 1 January 2018.

### Section 3 – Authority

This section provides that the *Australian Education Amendment (2017 Measures No. 2) Regulations 2017* are made under the *Australian Education Act 2013*.

### Section 4 – Schedule(s)

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

### Schedule 1 – Amendments

**Items 1-9** are consequential amendments arising from amendments to the Act by the Amendment Act and amendments to the Principal Regulations by the Amendment Regulations. The items remove definitions of terms which are now redundant or will be defined in the Act and inserts definitions of terms used in new provisions in the Principal Regulations.

**Items 1-5** remove the definitions of *5 national reform directions*, *approved system arrangement*, *approved system authority*, *Australian Professional Standard for Principals* and *boarding Aboriginal and Torres Strait Islander students* in subsection 4(1) of the Principal Regulations.

**Item 6** inserts definitions for *census day*, *census day enrolment*, *census reference period* and *Ministerial Council disability guidelines*, in subsection 4(1) of the Principal Regulations. Ministerial Council disability guidelines mean the guidelines for the Nationally Consistent Collection of Data on School Students with Disability (NCCD) approved by the Ministerial Council for the year.

The Ministerial Council disability guidelines are incorporated in the Principal Regulations pursuant to the regulation making power contained in section 130 of the Act. In particular, in reliance on subsection 130(4), which provides that despite the operation of the *Legislation Act 2003*, the Principal Regulations may provide in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in any other instrument or other writing as in force or existing from time to time.

The Ministerial Council disability guidelines must be approved by the Ministerial Council each year, as has occurred each year since 2015. Once approved, the Ministerial Council disability

guidelines (also known as the Guidelines for the Nationally Consistent Collection of Data on School Students with Disability) are made freely available on the Department's website (<http://www.education.gov.au>).

The purpose of the Ministerial Council disability guidelines is to:

- set threshold requirements for which students at a school must be included in the NCCD;
- set additional data categories (if any) that must be reported about those students, in addition to what is already specified in subsection 58A(2) of the Principal Regulations; and
- define the terms 'category of disability' and 'levels of adjustment' for the purposes of the NCCD.

Accordingly, the Ministerial Council disability guidelines provide additional context around the requirements for the NCCD each year, and enable elements of the NCCD to have input from the Ministerial Council each year.

**Item 7** repeals the existing definition of Ministerial Council disability guidelines in subsection 4(1) of the Principal Regulations.

**Item 8** inserts the definitions of *NAPLAN Online Data Extract Dictionary*, *National Schools Statistics Collection*, *Non-Government Reform Support Fund Guidelines*, *NSSC Collection Manual* and *student with disability* in subsection 4(1) of the Principal Regulations. *Student with disability* for a year means a student about whom information must be provided, as specified in the Ministerial Council disability guidelines for the year.

**Item 9** removes section 5 of the Principal Regulations which outlines the meanings of *approved system arrangement* and *approved system authority*, the former being redundant, and the latter now being defined in subsection 78(6) of the Act. Section 5 of the Principal Regulations will provide for the Minister to determine a non-government school's *census day* – the section relevantly replicates the current section 7 of the Act, which is repealed by item 121 of Schedule 3 to the Amendment Act on 1 January 2018. Section 5 of the Principal Regulations will also define the school's *census reference period* by reference to its census day. The insertion of section 5 in the Principal Regulations is to broadly replicate provisions previously contained in the Act which were removed by the Amendment Act.

**Item 10** updates the definition of *overseas student* in section 6 of the Principal Regulations by replacing the outdated reference to the *Higher Education Funding Act 1988* with the *Higher Education Support Act 2003*.

**Item 11** inserts sections 9A and 9B in the Principal Regulations relating to *census day enrolment* which prescribe the method for identifying the number of students at a school for the purposes of calculating that school's recurrent funding. The insertion of these provisions in the Principal Regulations follows the removal of related provisions from the Act by the Amendment Act.

Section 9A provides that the *census day enrolment* for government schools is the number of students who are included in the National School Statistics Collection. This reflects the current practice of government schools in relation to census returns.

Section 9B provides that the *census day enrolment* for non-government schools is the number of students who are enrolled as at the census day at the school, have a regular pattern of attendance at school, and meet the minimum census reference period attendance requirement at a location for the



school. This largely replicates the provisions which were previously contained in the Act and primarily reflects the current practice of non-government schools in relation to census returns.

From 2018, Commonwealth school funding is calculated at the individual school level in both the government and non-government sectors. These amendments ensure that the department receives accurate census information at the school level (not information that is aggregated or proportioned across a number of schools) which is necessary to calculate individual school funding.

**Item 12** replaces the pro-rating provisions (sections 12, 13 and 13A) in the Principal Regulations which are used to determine a school's recurrent funding entitlement where, in essence, a school starts or ceases operating part way through the school year. These amendments simplify the current pro-rating provisions which are unnecessarily complex, and also enable the Minister to assess each case on its individual merits.

In determining a school's pro-rated entitlement, the Minister must have regard to:

- the proportion of the school year during which the school was providing education or was entitled to financial assistance
- the time during the school year when the school began or ceased to provide education or be entitled to financial assistance, and
- in the case of a school that has ceased to provide education or be entitled to financial assistance – the amount of any financial assistance that has already been paid to the school for the year.

**Item 13** updates the name of Part 3 of the Principal Regulations from 'Recurrent funding for participating schools' to simply 'Recurrent funding for schools'. This is a consequential amendment arising from amendments to the Act by the Amendment Act which remove the concepts of 'participating' and 'non-participating' schools.

**Item 14** repeals section 15 of the Principal Regulations, which provides for the method of determining a school's *Commonwealth share*. This is a consequential amendment arising from amendments to the Act by the Amendment Act which change the meaning of the concept of Commonwealth share and provide for it to be calculated under the Act. This means section 15 of the Principal Regulations is redundant.

**Items 15-17** remove the definition of *student with disability* in subsection 16(2) of the Principal Regulations and renumber and rename the remaining section 16 to reflect the content which remains (that is, an unaltered definition of *Aboriginal and Torres Strait Islander student*).

A revised definition of *student with disability* is included in subsection 4(1) of the Principal Regulations as outlined in **Item 8**. The definition of *student with disability* is better placed in the definitions section. The changes to the definition align it with the student with disability loading which is based on the NCCD.

**Item 18** repeals section 17 in the Principal Regulations which outlines a disability loading percentage and replaces it with new sections 17 and 17A. Section 17 prescribes disability loading percentages by level of educational adjustment and level of education for the purposes of amended subsection 36(5) of the Act. Section 17A provides that the number of students with disability at a school by each level of adjustment for the purposes of subsection 36(6) of the Act is the number counted by that school in the NCCD.

Section 36 of the Act provides how to calculate the student with disability (SWD) loading for a school for a year, as a component of the school's annual recurrent funding. The SWD loading is calculated with reference to SRS funding amounts, the disability loading percentages and the number of students with disability receiving certain levels of educational adjustment (supplementary, substantial and extensive) at the school for the year.

Calculating SWD loadings by reference to disability loading percentages, amongst other things, will help ensure that funding for students with disability for a particular school more accurately reflects the needs of the students at that school.

For the first time, the SWD loading will be calculated on the basis of the actual level of educational adjustment provided to students with disability at schools. That is, the SWD loading will reflect and support efforts undertaken by schools to support their students with disability to access and participate in school education on the same basis as other students.

The NCCD collects a range of information about the number of students with disability in schools and the educational adjustments they receive. The requirement for approved authorities to provide data for the NCCD is set out in sections 52 and 58A of the Principal Regulations. Akin to the school census requirements, to enable the Commonwealth to accurately calculate SWD loadings for individual schools, the department must receive accurate NCCD information at the school level.

**Items 19-20** amend the headings in subsections 18(1) and (2) of the Principal Regulations to reflect that the 'low socioeconomic status student loading' in the Act has been renamed the 'socio-educational disadvantage loading'. The method of calculating the loading has not changed. The loading has been renamed to more accurately reflect the nature of the loading.

**Item 21** amends the note in subsection 18(4) of the Principal Regulations relating to the definition of *total ACARA students for the school for the year* by removing reference to section 17 of the Act. This is a consequential amendment arising from amendments to the Act by the Amendment Act which removed section 17.

**Item 22** repeals Subdivision A, Division 2, Part 3 of the Principal Regulations which relates to the determining of SES scores by legislative instrument. This is a consequential amendment arising from amendments to the Act by the Amendment Act which removed the ability for the Minister to determine SES scores via legislative instrument. **Item 23** repeals the heading for Subdivision B because the heading is unnecessary given the removal of Subdivision A.

**Item 24** updates terminology from 'receives distance education' to 'is a distance education student' in subsection 21(1) of the Principal Regulations. This is a consequential amendment arising from amendments to the Act by the Amendment Act which change terminology.

**Item 25** inserts new subsections (5) and (6) in section 23 of the Principal Regulations, which will help ensure that the way in which SES scores for individual schools will be calculated for 2018 reflect school sector expectations. The new subsections provide that the average SES dimension scores for schools for 2018 (as used in the formula for working out SES scores in subsection (1)) are worked out under subsection 23(3) using data from the 2011 ABS Census of Housing and Population for the Statistical Areas Level 1 to which the residential addresses of persons responsible for students are assigned.

To implement the new Commonwealth school funding arrangements arising from the Amendment Act and the Amendment Regulations, a starting Commonwealth share needs to be established for each school. In 2017 each school in 21 school systems has an SES score that is the same as every other school in the system (known as a ‘system weighted average SES score’). For 2018, system weighted average SES scores for these schools will be replaced with individual school SES scores.

However, rather than using information from the 2016 ABS Census of Population and Housing and the residential addresses for students collected in 2017, the SES scores for schools for 2018 will be calculated using 2011 ABS Census data and the most recent statement of addresses for the school for the years 2012-2016 (or if none are available, then the 2017 collection). The reason for using this data to calculate 2018 SES scores is to ensure equitable treatment of the schools that previously had system weighted average SES scores with those that did not. It is anticipated that the Australian Government will request the National School Resourcing Board (established under section 128 of the Act) to review the SES score methodology and report with recommendations during 2018.

**Item 26** replaces references in section 24B of the Principal Regulations to paragraphs 68(4)(a) and (b) of the Act with paragraph 68(4)(a) as the matters in those two paragraphs were consolidated into paragraph 68(4)(a) of the Act by the Amendment Act.

**Item 27** repeals the provisions in Division 3 of Part 4 of the Principal Regulations which provide for funding in prescribed circumstances and replaces it with section 25A which provides for funding in prescribed circumstances in accordance with Schedule 1.

Schedule 1 provides for financial assistance payable under section 69A of the Act (funding in prescribed circumstances) and section 69B of the Act (transition adjustment funding). Further details are outlined in **item 67**.

These amendments also repeal prescribed circumstances funding for the following measures which have ceased or will cease at the end of 2017: Indigenous boarders at non-government schools, national school for travelling show children, and additional support for students with disability (the latter is replaced by changes to the SWD loading).

**Item 28** removes a reference to Part 4 of the Act and the word ‘participating’ from a reference to Part 3 of the Act in subsection 29(1) of the Principal Regulations. This is a consequential amendment arising from amendments to the Act by the Amendment Act which remove the concepts of ‘participating’ and ‘non-participating’. Further to this, this item inserts the words ‘at a school for which the approved authority is approved’, which will, for the complete avoidance of doubt, make clear that an approved authority must use recurrent funding provided by the Commonwealth only on providing school education at its schools.

**Items 29-30** amend section 31 of the Principal Regulations which relates to the use of financial assistance by non-government representative bodies (NGRBs). **Item 29** amends subsection 31(1) of the Principal Regulations to require NGRBs to spend, or commit to spend, financial assistance in accordance with the Non-Government Reform Support Fund Guidelines. This is in addition to the existing requirement to spend funding for the purpose of supporting school education. The Australian Government has undertaken targeted consultation with NGRBs on the Non-Government Reform Support Fund Guidelines, and has considered feedback from NGRBs in the continuing development of the Guidelines. The Non-Government Reform Support Fund Guidelines will be publically available from 2018.

**Item 30** amends subsections 31(2) and (3) of the Principal Regulations which set out the timeframe in which NGRBs must spend or commit to spend funding. The new subsections retain the current default requirement for NGRBs to spend or commit funds in the year in which the financial assistance is paid but provide the Minister with the discretion to determine a different period. This allows the Minister flexibility to determine a different period when the default period is not appropriate. These amendments improve consistency and accountability in relation to the use of NGRB funding.

**Items 31-32** amend section 36 of the Principal Regulations to remove repealed section references and substitute new section references. These are consequential amendments arising from amendments to the Act by the Amendment Act and amendments to the Principal Regulations by the Amendment Regulations.

**Item 33** repeals Part 5, Division 3, Subdivision A of the Principal Regulations. This is a consequential amendment arising from amendments to the Act by the Amendment Act which removed paragraph 77(2)(a) of the Act which required an approved authority to have in place processes and procedures for enhancing principal and teacher performance and professional development in accordance with the regulations. These matters are more appropriately included in national and bilateral agreements on school education reform.

**Item 34** amends data reporting requirements outlined in section 43 of the Principal Regulations in relation to the National Assessment Program (NAP).

For NAP annual assessments in reading, writing, language conventions and numeracy, approved authorities will be required to provide the information specified in ACARA's NAPLAN Online Data Extract Dictionary to the Australian Curriculum, Assessment and Reporting Authority (ACARA). It has also been made clearer the information to be provided to ACARA about students that are required to undertake the NAP assessments conducted by ACARA, including NAP student results and the information specified in ACARA's Data Standards Manual – Student Background Characteristics. These amendments further assist with the national roll out of NAPLAN Online.

**Items 35-36** amend section 46 of the Principal Regulations to differentiate the requirements relating to the provision of school census information for government and non-government schools. The amendments allow for current practices in relation to the provision of census information to the Australian Government to continue.

**Items 37-40** removes repealed section references and updates terminology in section 48 of the Principal Regulations which outlines the information about students in government schools that must be included in a census return. These are consequential amendments arising from amendments to the Act by the Amendment Act and amendments to the Principal Regulations by the Amendment Regulations.

**Items 41-44** makes similar amendments to those discussed immediately above in section 50 of the Principal Regulations which outlines the information about students in non-government schools that must be included in a census return. These are consequential amendments arising from amendments to the Act by the Amendment Act and amendments to the Principal Regulations by the Amendment Regulations.

**Item 45** inserts a new paragraph (f) into section 56 of the Principal Regulations, which outlines the information about a school's students that must be provided to ACARA, to include any information that is specified in the Data Standards Manual: Student Background Characteristics, but not so as to

explicitly identify any student. The amendment in **item 45** aligns with amendments to the NAP in **item 34**. This amendment broadly ensures that data currently required to be provided under the current operation of subsection 43(3) of the Principal Regulations, is not removed through the refined operation of subsection 43(3) due to the amendments made by **item 34** and its renewed focus on NAP assessments conducted by ACARA.

**Items 46-53** amend section 58A of the Principal Regulations which outlines the information about students with disability that must be provided to the department, or a person determined by the Minister, under section 52 of the Principal Regulations. These amendments align section 58A with the school census requirements and extend the reporting requirement for students with disability to include all locations of a school as well as overseas students, students' year level and part-time student information.

These amendments enable the department to collect information needed to calculate the SWD loading component of school recurrent funding, improve data quality assurance and provide the Australian Government with data about overseas students with disability (to be included in the NCCD for information purposes and to allow overseas students to be separately identified and excluded from Commonwealth funding calculations). These amendments are essential to ensure that the Australian Government can calculate, from 2018, the SWD loading set out under section 36 of the Act.

**Item 54** repeals Part 5, Division 3, Subdivision I which outlines needs based funding arrangements, as these requirements are now set out in subsections 78(3), (4) and (5) of the Act. These are consequential amendments arising from amendments to the Act made by the Amendment Act.

**Item 55** inserts section 62A in the Principal Regulations, which prescribes requirements on approved authorities, block grant authorities and NGRBs that continue to apply if the authority or body is no longer approved under the Act. These requirements are specified for the purposes of section 96A of the Act, inserted into the Act by the Amendment Act, which provides that former approved authorities or bodies must meet the continuing requirements prescribed in the regulations. These continuing requirements are those set out in Division 2 of Part 5 of the Principal Regulations (ongoing policy and funding requirements for authorities and bodies) but:

- section 40 (requirement to keep Minister informed) is excluded, and
- section 36 (requirement relating to reporting on financial assistance and financial operations), subsections 37(1), (2) and (4) (requirement to keep records) and section 38 (requirement for approved authorities or bodies for non-government schools to prepare and audit financial statements) are modified so they only apply in relation to a year in which the authority or body spent, or committed to spend, financial assistance under the Act.

These amendments increase accountability and support action against non-compliant authorities or bodies funded under the Act, by prescribing certain requirements that continue to apply even if the authority or body is no longer approved.

**Items 56-61** amend section 65 of the Principal Regulations which provides for using and disclosing school education information by renaming 'protected information' as 'school education information' and permitting the Minister to use or disclose school education information for the additional purpose of the National School Resourcing Board.

The term ‘protected information’ caused some confusion among stakeholders so amendments were made to the Act by the Amendment Act to change the terminology to ‘school education information’. The Amendment Regulations will also change terminology in the Principal Regulations from ‘protected information’ to ‘school education information’. These amendments do not impact the applicability of privacy requirements on information obtained under the Act or Principal Regulations.

The disclosure of school education information to the National School Resourcing Board is necessary to enable that Board to fulfil its functions under section 128 of the Act. Although such disclosure would be for the purposes of the Act (covered by paragraph 65(1)(a)), **item 58** inserts a new paragraph 65(1)(aa) that clarifies that such disclosures are authorised by law.

**Items 62-64** remove provisions and notes relating to implementation plans in section 66 of the Principal Regulations which provides for the giving of notice by the Minister in relation to certain decisions. This is a consequential amendment arising from amendments to the Act by the Amendment Act which removed the concept of an implementation plan.

**Items 65-66** update headings and references from ‘protected information’ to ‘school education information’ in section 68 of the Principal Regulations which deals with the application of provisions in the *Australian Education Amendment (2015 Measures No. 1) Regulation 2015*. These are consequential amendments arising from **items 56-61**.

**Item 67** inserts section 71 in the Principal Regulations which is a savings provision that ensures that the Principal Regulations, as in force before 2018, continue to have effect for the purposes of financial assistance for years prior to 2018. Section 71 provides that:

- Subdivision C of Division 3 of Part 4 of the Principal Regulations (funding in prescribed circumstances for students who are persons with a disability) continues to have effect for the purposes of determinations by the Minister in relation to 2016 or 2017, and
- the Principal Regulations, as in force immediately before the commencement of section 71, continue to apply in relation to financial assistance for years before 2018.

It is often the case that decisions and determinations in relation to a particular calendar year occur after the end of that year, because of the timing of certain data collections or delays in receipt of information necessary to make those determinations. Section 71 ensures that, where a determination needs to be made in 2018 (or later) that relates to financial assistance for an earlier year (including for students with disability), the Principal Regulations as in force before 2018 will apply.

**Item 68** inserts Schedule 1 – Funding in prescribed circumstances and Schedule 2 – Per student amounts for 2017 for certain schools in the Principal Regulations.

#### *Schedule 1, Part 1 – Additional support for Northern Territory government schools*

Part 1 of Schedule 1 provides that the Minister may determine, under section 69B of the Act<sup>1</sup>, additional funding amounts for government schools located in the Northern Territory in a transition

---

<sup>1</sup> Section 69B of the Act empowers the Minister to determine an amount of funding for a transitioning school for a year between 2018 and 2027 (inclusive) in the circumstances set out in the regulations. Funding under section 69B must be appropriated annually.

year (2018 to 2027 inclusive), if the Northern Territory Government has entered into an arrangement with the Minister relating to the use of the funding.

Funding must be spent for the purpose of supporting school education and in accordance with any conditions outlined in the arrangement between the Minister and the Northern Territory Government. Unless otherwise directed by the Minister in writing, funding (and any interest earned on it) must be spent or committed to be spent in the year in which it is paid. Funding is limited by annual appropriations (which will be set out on a financial year basis in the department's Portfolio Budget Statements) and a legislated total cap of \$78.453 million over 10 years.

This amendment provides for additional support for Northern Territory government schools to support the transition to the new funding arrangement by 2028. The additional funding is anticipated to be, primarily, used to assist in the implementation of evidence-based school education initiatives in Northern Territory government schools, to help assist vulnerable and disadvantaged students in those schools. The detailed arrangements for the use of the funding will be agreed as part of bilateral negotiations between the Australian Government and the Northern Territory Government, under which it is also anticipated that yearly amounts of funding are to be identified.

#### *Schedule 1, Part 2 – Transition and adjustment funding for non-government schools*

Part 2 of Schedule 1 provides for supplementary funding that the Australian Government is making available to approved authorities for non-systemic non-government schools, to assist them in managing the financial impacts of transition from the existing recurrent funding arrangement to the new arrangements. This supplementary funding is discretionary and will be limited by the Principal Regulations.

#### *Division 1 – Transition assistance for low growth non-government schools for 2018*

This Division provides that the Minister may determine, under section 69A of the Act<sup>2</sup>, additional funding amounts for non-government schools in 2018 that meet the following criteria:

- the school is a non-government school
- the school's approved authority is not an approved system authority, and
- the school's Commonwealth share for that year is greater than 80%.

These criteria allow the Minister a reasonable amount of discretion to consider providing adjustment funding for certain non-government schools, in order to assist those schools who experience low growth or funding reductions in 2018 under the new funding arrangements.

Funding must be spent in the same way as recurrent funding, and in accordance with any directions given by the Minister. Unless otherwise directed by the Minister, funding (and any interest earned on it) must be spent or committed to be spent before 2028. This extended period allows approved authorities greater flexibility to manage the transition of their schools to a consistent Commonwealth funding share.

Funding is to be provided in 2018 only under this measure, and capped at the school level. The most the Minister can determine for a particular school for a year will be the difference between:

---

<sup>2</sup> Section 69A of the Act empowers the Minister to determine an amount of funding for a school in the circumstances set out in the Act. Funding under section 69A is supported by the standing appropriation in section 126 of the Act.

- the school’s total recurrent funding for 2018 (as calculated under section 32 of the Act), and
- the per student amount for the school for 2017 indexed by 3%, multiplied by the number of students at the school for 2018.

The per student amount for a school for 2017 is either the amount set out in Schedule 2 for the school, or (if the school isn’t specified in Schedule 2) the 2017 recurrent funding for the school’s approved authority (worked out under subsection 35B(3) of the Act) divided by the number of students at the schools of the approved authority for 2017.

The Australian Government committed to provide additional funding to certain non-government schools with low or negative funding growth between 2017 and 2018 that become financially vulnerable and require additional assistance during their transition to a consistent Commonwealth funding share.

Non-government schools that are part of an approved system authority (which has its own needs-based funding arrangement) are not eligible for this funding, on the basis that such approved authorities are able to redistribute financial assistance available to the authority to support schools during the transition period.

#### *Division 2 – National Adjustment Assistance Fund*

This Division provides that the Minister may determine, under section 69B of the Act, additional funding amounts for non-government schools in the transition years 2019 to 2027 inclusive that meet the following criteria:

- the school is a non-government school
- the school’s approved authority is not an approved system authority, and
- the school’s per student amount for the year must be less than:
  - the school’s per student amount for 2017, or
  - the school’s per student amount for the previous year.

These criteria allow the Minister to provide adjustment funding for non-government schools for the years 2019 to 2027 inclusive, which have a per student reduction at any time during their transition to a consistent Commonwealth funding share. This funding will be application based.

Funding must be spent in the same way as recurrent funding, and in accordance with any directions given by the Minister. Unless otherwise directed by the Minister, funding (and any interest earned on it) must be spent or committed to be spent before 2028. This extended period allows approved authorities greater flexibility to manage the transition of their schools to a consistent Commonwealth funding share.

Funding is limited by annual appropriations (which will be set out on a financial year basis in the department’s Portfolio Budget Statements) with a legislated cap of \$39.9 million for 2019-27 inclusive. A school level funding cap will also apply. The most the Minister can determine for a particular school for a year will be the difference between:



- the school's total recurrent funding for the relevant year (as calculated under section 32 of the Act), and
- the highest per student amount for the school for the years from 2017 to the year immediately prior to the relevant year (inclusive), multiplied by the number of students at the school for the relevant year.

The Minister may have regard to the National Adjustment Assistance Fund Guidelines, as in force from time to time, when determining the amount of financial assistance that is payable for a school. These Guidelines will be publically available during 2018.

The Australian Government committed to provide additional funding to non-government schools with low or negative funding growth and that require additional assistance to adjust to a consistent Commonwealth funding share.

Non-government schools that are part of an approved system authority (which has its own needs-based funding arrangement) are not eligible for this funding, on the basis that such approved authorities are able to redistribute financial assistance available to the authority to support schools during the transition period.

*Schedule 1, Part 3 – Adjustment assistance for ACT non-government schools*

Part 3 of Schedule 1 provides for supplementary funding for certain non-government schools located in the Australian Capital Territory (ACT), which have historically received additional funding in order to assist with what are particular disadvantage characteristics in the ACT. This discretionary, and limited, supplementary funding will assist a smooth transition for these schools to the new Commonwealth schools funding arrangements.

This Part provides that the Minister may determine, under section 69B of the Act, additional funding amounts for non-government schools located in the ACT in a transition year (2018 to 2027 inclusive).

Funding must be spent in the same way as recurrent funding, and in accordance with any directions given by the Minister. Unless otherwise directed by the Minister, funding (and any interest earned on it) must be spent or committed to be spent before 2028. This extended period allows approved authorities greater flexibility to manage the transition of their schools to a consistent Commonwealth funding share.

Funding is limited by annual appropriations (which will be set out on a financial year basis in the department's Portfolio Budget Statements) and a legislated total cap of \$46.07 million for the transition years (2018 to 2027 inclusive) taken together.

*Schedule 1, Part 4 – Transition assistance for system weighted average SES schools for 2018*

Part 4 of Schedule 1 provides for supplementary funding for 2018 for approved system authorities for non-government schools, that had their SES scores determined under the *Australian Education (SES Scores) Determination 2013* ('system-weighted average SES scores') in 2017.

As noted in relation to **item 25** above, these system-weighted average SES scores are being replaced in 2018 with SES scores determined for each individual school under the Principal Regulations. To the extent that the change in SES scores for these schools results in the approved

system authority receiving less funding for 2018, than what it would have received for 2018 if the system-weighted average SES scores were maintained, the Minister will be able to provide supplementary funding for the schools under section 69A of the Act in accordance with this Part of Schedule 1.

Funding is to be provided in 2018 only and capped at the school level. The most the Minister can determine for a particular school will be the difference between:

- the recurrent funding for the school for 2018 (as calculated under section 32 of the Act), and
- the recurrent funding for the school for 2018 if that amount was calculated using the SES score for the school in 2017.

Funding must be spent in the same way as recurrent funding, and in accordance with any directions given by the Minister. Unless otherwise directed by the Minister, funding (and any interest earned on it) must be spent or committed to be spent before 2028. This extended period allows approved system authorities greater flexibility to manage the transition of their schools to the consistent Commonwealth funding share.

From 2018, Commonwealth schools funding arrangements are based on starting Commonwealth shares. A starting Commonwealth share will be established for schools who are part of systems whose 2017 SES scores are based on a system weighted average (see **item 25**).

This amendment reflects the Australian Government's commitment to retain the value of the current system-weighted average SES score arrangements for systemic schools for 2018 while the National School Resourcing Board reviews the SES score methodology.

#### *Schedule 2 – Per-student amounts for 2017 for certain schools*

Schedule 2 sets out the per student amounts for 2017 for certain schools, for the purposes of Divisions 1 and 2 of Part 2 to the Schedule to the Principal Regulations.

This amendment is to establish the per student amounts for schools whose approved authority is approved for more than one school, but which does not have its own need-based funding arrangement (i.e. is not an approved system authority). This is for the purposes of establishing whether these schools meet the prescribed circumstances relating to adjustment funding for non-government schools set out in Part 2 of Schedule 1. This amendment will also provide a per-student amount for one school that began operating late in 2017, so that its per-student amount can reflect what it would have been had the school been open for the whole of 2017, and not pro-rated.

The per student amounts have been calculated by dividing the recurrent funding amount attracted by the relevant school for 2017 by the number of full-time equivalent students at the school for 2017.