

EXPLANATORY STATEMENT

Australian Education Act 2013

Australian Education Amendment (2018 Measures No. 3) Regulations 2018

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, and have regard to any relevant decisions of, the Ministerial Council (the Council of Australian Governments Education Council) prior to the Governor-General making a regulation for the purposes of subsection 22(1), section 22A, and section 78 of the Act if it will affect an approved authority for a government school.

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.

Under the Act, Commonwealth financial assistance is provided to states and territories for distribution to approved authorities for government and non-government schools, block grant authorities for non-government schools (in order to provide capital funding for schools), and non-government representative bodies for non-government schools. 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 *Australian Education Regulation 2013* (the Principal Regulation) contains a number of provisions to ensure the correct calculation, indexation and setting of Commonwealth financial assistance for schools, and for the effective and efficient administration of that assistance.

The Act and Principal Regulation commenced on 1 January 2014.

Purpose and operation of amendments

The *Australian Education Amendment Act 2017* (the Amendment Act) amended 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 (2018 Measures No. 3) Regulations 2018* (the Amendment Regulation) amends the Principal Regulation, as a consequence of the amendments to the Act and the Australian Government's *Quality Schools* package. Further, its purpose is to introduce measures for 2019 announced in the Australian

Government's response to the National School Resourcing Board's (the Board) *Review of the socio-economic status score methodology* (the Review) (<https://www.education.gov.au/review-socio-economic-status-ses-score-methodology>), to improve the operation of financial assurance and monitoring provisions, and to make minor corrections.

More specifically, the Amendment Regulation prescribes the 2019 and 2020 Schooling Resource Standard (SRS) indexation factor, which will increase SRS funding amounts and certain loadings by 3.56 per cent in 2019 and 2020 in accordance with the Australian Government's commitments. The SRS funding amount is an amount set for a primary and secondary student, which is modified by a school's number of students and capacity to contribute, and used to calculate a school's base amount of funding. See below for more discussion on capacity to contribute.

The Amendment Regulation also prescribes the starting State-Territory shares for 2018 and each later year for both government schools and non-government schools. Starting State-Territory shares must be prescribed in 2018 to give effect to the intent of the Act. These starting State-Territory shares enable a default State-Territory contribution amount for government and non-government schools in that state or territory to be calculated in accordance with section 22A of the Act. If the State or Territory's school education reform agreement (the agreement a state or territory must enter into under paragraph 22(2)(b) of the Act) specifies a State-Territory share for a year, the share specified in the agreement will set the State-Territory contribution amount for the year (under subsections 22A(3) and 22A(4) of the Act).

The Amendment Regulation also sets out what the certificate in section 34 of the Principal Regulation must include for approved authorities, block grant authorities and non-government representative bodies. This amendment strengthens assurance that Commonwealth funding is being spent appropriately, including identifying funding received in a previous year or committed to be spent in a future year, and formalises current practice regarding the form acquittal certificates must take. This amendment commences in 2019, and applies in relation to 2019 and each later year.

The amendments contained in the Amendment Regulation update the financial reporting requirements under section 35 of the Principal Regulation for approved authorities, block grant authorities and non-government representative bodies that receive Commonwealth financial assistance under the Act. This is to ensure appropriate accountability for Commonwealth funding provided under the Act. For an approved authority for a government school, certificates must be prepared and certified by the Auditor-General of the State or Territory, an independent third party agreed to by the Minister, the authority's Chief Executive Officer or the authority's Chief Financial Officer. For approved authorities of non-government schools, block grant authorities and non-government representative bodies, certificates must be prepared by a qualified accountant who is independent from the authority or body. This amendment also serves to address comments made by the Australian National Audit Office in its report *Monitoring the Impact of Australian Government School Funding* (<https://www.anao.gov.au/work/performance-audit/measuring-impact-australian-government-school-funding>).

The Amendment Regulation also inserts new financial reporting provisions into the Principal Regulation to enable financial reporting to be tailored to the specific context of each of the relevant prescribed circumstances, and ensuring the department responsible for administering the Act (currently the Department of Education and Training) (the department) has adequate oversight of funding while not requiring authorities to provide redundant information.

Currently, the Principal Regulation provides that an approved authority, block grant authority or non-government representative body must allow an authorised person access to records relating to

the authority or body's compliance with the Act and the Principal Regulation, and the financial administration of the authority or body or the school. The Amendment Regulation inserts an additional requirement for authorities and bodies for non-government schools to provide the Minister or an authorised person with these records or information as requested by the Minister or authorised person. The amendments ensure the department can make relevant inquiries of non-government schools in relation to their authority or body's ongoing compliance with the Act and Principal Regulation, and to provide enhanced authority for government to perform ongoing compliance activity each year.

The Board recently completed a review into the existing methodology for calculating socio-economic status (SES) scores for schools. For most non-government schools, the base amount of funding for a school is discounted by the capacity to contribute percentage, which is calculated with reference to the SES score of the school. The capacity to contribute percentage estimates the school community's anticipated capacity to financially contribute towards the school's operating costs. One of the Board's recommendations was that the SES scores for schools should be calculated based on a direct measure of the income of the persons responsible for students in schools (for example, parents and guardians). The Australian Government agreed to this recommendation, with implementation to be phased in over three years from 2020, with approved authorities for schools able to commence in 2020, 2021 or 2022 depending on their own circumstances.

The Amendment Regulation provides necessary interim measures in 2019 to support the implementation of the Australian Government's response to the Review. In particular, the Amendment Regulation enables the provision of additional financial assistance for 2019 for non-government schools, in three additional prescribed circumstances:

- adjustment funding for low-growth non-government schools for 2019
- additional financial assistance for non-government schools of approved system authorities (system weighted benefit) for 2019
- additional financial assistance for non-government schools (2016 census data arrangements) for 2019.

The Amendment Regulation also updates Schedule 3 of the Principal Regulation to recognise additional schools in South Australia that deliver year 7 as secondary education, and amends Schedules 2 and 4 to update the lists of certain schools and their respective per-student amounts for 2017 and starting Commonwealth shares as a result of a school closing, changing its name, ceasing to be part of an approved system authority, or providing updated information.

The Amendment Regulation repeals national policy initiatives previously prescribed in the Principal Regulation and the School Funding Reform Principles (the Principles), which is due to expire on 31 December 2018. As per section 22 of the Act, states and territories were required to implement these national policy initiatives and were required to be a party to and implement the Principles, as a condition of receiving financial assistance under the Act. The repeal of section 10 is necessary to ensure the currency of the Principal Regulation. The Principles were prescribed for the 2018 year only. National policy initiatives for the period from 2019 to 2023 will appear in the new national agreement relating to school education reform, and any new national policy initiatives agreed by Ministerial Council will be recognised as conditions of Commonwealth funding under subsections 22(1) and 77(2A) of the Act. This amendment commences in 2019, and applies in relation to 2019 and each later year.

The Amendment Regulation also provides for minor amendments to correct errors and correct cross-references to the Act.

Regulation Impact Statement (RIS)

The Office of Best Practice Regulation has agreed a RIS is not required for the Amendment Regulation (OBPR ID 24347).

Commencement

Sections 1 to 4 and Schedule 1 of the Amendment Regulation commence on the day after it is registered on the Federal Register of Legislation. Schedule 2 of the Amendment Regulation commence on 1 January 2019.

Consultation

Pursuant to subsection 130(5) of the Act, the Minister has consulted with and had regard to relevant decisions of the Ministerial Council.

The Australian Government commenced the consultation of the Ministerial Council in relation to several of the amendments contained in the Amendment Regulation in mid-2017. Following this, it was agreed to delay making any amendments not required for the 2018 school year until September 2018, to align with the timeframe for the development of the new school education reform agreements.

Consistent with this commitment, the Australian Government provided an exposure draft of several of the amendments to the Schools Policy Group in May 2018, and to the Australian Education Senior Officials Committee in October 2018, both of which support the Ministerial Council. These exposure drafts were also provided to the National Catholic Education Commission and the Independent Schools Council of Australia, who are the peak representative bodies for the non-government school sector.

With the development of the proposed new school education reform agreements nearing completion, the Minister then provided an exposure draft to the Ministerial Council in October 2018.

All feedback on the exposure drafts was considered and informed the iterative development of the Amendment Regulation. The consultation process also provided an opportunity for the Australian Government to clarify the purpose and operation of the proposed amendments.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*
Australian Education Amendment (2018 Measures No. 3) Regulations 2018

The Australian Education Amendment (2018 Measures No. 3) Regulations 2018 (Amendment Regulation) 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

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

Under the Act, Commonwealth financial assistance is provided to states and territories for distribution to approved authorities for government and non-government schools, block grant authorities for non-government schools (in order to provide capital funding for schools), and non-government representative bodies for non-government schools. 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 *Australian Education Regulation 2013* (the Principal Regulation) contains a number of provisions to ensure the correct calculation, indexation and setting 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.

The purpose of the *Australian Education Amendment (2018 Measures No. 3) Regulations 2018* (the Amendment Regulation) is to amend the Principal Regulation, as a consequence of the amendments to the Act and the Australian Government's *Quality Schools* package, and to introduce measures for 2019 announced in the Australian Government's response to the National School Resourcing Board's (the Board) *Review of the socio-economic status score methodology* (the Review) (<https://www.education.gov.au/review-socio-economic-status-ses-score-methodology>). It also includes amendments to improve the operation of the Principal Regulation, particularly in relation to financial assurance and monitoring, and makes minor amendments to correct errors, cross references and figures.

More specifically, the Amendment Regulation prescribes the 2019 and 2020 Schooling Resource Standard (SRS) indexation factor, which will have the effect of increasing SRS funding amounts and certain loadings by 3.56 per cent for both 2019 and 2020 in accordance with the Australian Government's commitments. The SRS funding amount is an amount set for a primary and secondary student, which is modified by a school's number of students and capacity to contribute, and used to calculate a school's base amount of funding. See below for more discussion on capacity to contribute.

The Amendment Regulation also prescribes the starting State-Territory shares for 2018 and each later year for both government schools and non-government schools. Starting State-Territory shares must be prescribed in 2018 to give effect to the intent of the Act. These starting State-Territory shares enable a default State-Territory contribution amount for government and non-

government schools in that state or territory to be calculated in accordance with section 22A of the Act. If the State or Territory's school education reform agreement (the agreement a state or territory must enter into under paragraph 22(2)(b) of the Act) specifies a State-Territory share for a year, the share specified in the agreement will set the State-Territory contribution amount for the year (under subsections 22A(3) and 22A(4) of the Act).

The Amendment Regulation also sets out what the certificate in section 34 of the Principal Regulation must include for approved authorities, block grant authorities and non-government representative bodies. This amendment strengthens assurance that Commonwealth funding is being spent appropriately, including identifying funding received in a previous year or committed to be spent in a future year, and formalises current practice regarding the form acquittal certificates must take. This amendment commences in 2019, and applies in relation to 2019 and each later year.

The amendments contained in the Amendment Regulation update the financial reporting requirements under section 35 of the Principal Regulation for approved authorities, block grant authorities and non-government representative bodies that receive Commonwealth financial assistance under the Act. This is to ensure appropriate accountability for Commonwealth funding provided under the Act. For an approved authority for a government school, certificates must be prepared and certified by the Auditor-General of the State or Territory, an independent third party agreed to by the Minister, the authority's Chief Executive Officer or the authority's Chief Financial Officer. For approved authorities of non-government schools, block grant authorities and non-government representative bodies, certificates must be prepared by a qualified accountant who is independent from the authority or body. This amendment also serves to address comments made by the Australian National Audit Office in its report *Monitoring the Impact of Australian Government School Funding* (<https://www.anao.gov.au/work/performance-audit/measuring-impact-australian-government-school-funding>).

The Amendment Regulation also inserts new financial reporting provisions into the Principal Regulation to enable financial reporting to be tailored to the specific context of each of the relevant prescribed circumstances, and ensuring the department responsible for administering the Act (currently the Department of Education and Training) (the department) has adequate oversight of funding while not requiring authorities to provide redundant information.

Currently, the Principal Regulation provides that an approved authority, block grant authority or non-government representative body must allow an authorised person access to records relating to the authority or body's compliance with the Act and the Principal Regulation, and the financial administration of the authority or body or the school. The Amendment Regulation inserts an additional requirement for bodies and authorities for non-government schools to provide the Minister or an authorised person with these records and information as requested by the Minister or authorised person. The amendments ensure the department can make relevant inquiries of non-government schools in relation to their authority or body's ongoing compliance with the Act and Principal Regulation, and to provide enhanced authority for the Australian Government to perform ongoing compliance activity each year.

The Board recently completed a review into the existing methodology for calculating socio-economic status (SES) scores for schools. For most non-government schools, the base amount of funding for a school is discounted by the capacity to contribute percentage, which is calculated with reference to the SES score of the school. The capacity to contribute percentage estimates the school community's anticipated capacity to financially contribute towards the school's operating costs. One of the Board's recommendations was that the SES scores for schools should be calculated based on a direct measure of the income of the persons responsible for students in

schools (for example, parents and guardians). The Australian Government agreed to this recommendation, with implementation to be phased in over three years from 2020, with approved authorities for schools able to commence in 2020, 2021 or 2022 depending on their own circumstances.

The Amendment Regulation provides necessary interim measures in 2019 to support the implementation of the Australian Government's response to the Review. In particular, the Amendment Regulation enables the provision of additional financial assistance for 2019 for non-government schools, in three additional prescribed circumstances:

- adjustment funding for low-growth non-government schools for 2019
- additional financial assistance for non-government schools of approved system authorities (system weighted benefit) for 2019
- additional financial assistance for non-government schools (2016 census data arrangements) for 2019.

The Amendment Regulation also updates Schedule 3 of the Principal Regulation to recognise additional schools in South Australia that deliver year 7 as secondary education, and amends Schedules 2 and 4 to update the lists of certain schools and their respective per-student amounts for 2017 and starting Commonwealth shares as a result of a school closing, changing its name, ceasing to be part of an approved system authority, or providing updated information.

The Amendment Regulation repeals the national policy initiatives previously prescribed in the Principal Regulation and the School Funding Reform Principles, which issue to expire on 31 December 2018. As per section 22 of the Act, states and territories were required to implement these national policy initiatives and were required to be a party to and implement the School Funding Reform Principles, as a condition of receiving financial assistance under the Act. The repeal of section 10 is necessary to ensure the currency of the Principal Regulation. The School Funding Reform Principles were prescribed for the 2018 year only. National policy initiatives for the period from 2019 to 2023 will appear in the new national agreement relating to school education reform, and any new national policy initiatives agreed by Ministerial Council will be recognised as conditions of Commonwealth funding under subsections 22(1) and 77(2A) of the Act. This amendment commences in 2019, and applies in relation to 2019 and each later year.

The Amendment Regulation also provides for minor amendments to correct errors and correct cross-references to the Act.

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* (ICESCR), and Articles 28 and 29 of the *Convention on the Rights of the Child* (UNCRC); and
- the right to privacy – Articles 17 and 24(1) of the *International Covenant on Civil and Political Rights* (ICCPR), and Article 16 of the UNCRC.

Right to Education

The Amendment Regulation engages 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's education, provided those schools conform to minimum educational standards. The right to education for children is also found in Articles 28 and 29 of the UNCRC.

The Amendment Regulation promotes the right to education by:

- prescribing the Schooling Resource Standard (SRS) indexation factor for 2019 and 2020, which increases the amount of funding per student;
- prescribing starting State-Territory shares to enable the default State-Territory contribution amount requirements for government and non-government schools to be calculated under the Act, ensuring each state and territory contributes their share of public funding as a condition of receiving Commonwealth financial assistance under the Act;
- providing additional financial assistance for prescribed circumstances, as an interim measure to support schools in 2019.

These measures promote the right to education by ensuring that Commonwealth financial assistance for government and non-government schools increases in real terms over the next 2 years and that each state and territory contributes their share of public funding as a condition of receiving Commonwealth financial assistance under the Act. These measures also ensure additional financial assistance may be provided for non-government schools in certain prescribed circumstances, as an interim measure to provide financial certainty for non-government schools in 2019.

The Amendment Regulation also contains provisions to update and improve the financial reporting and acquittal requirements for authorities and bodies that receive Commonwealth financial assistance under the Act. These measures are compatible with, and promote the right to education, by helping to ensure that Commonwealth funding for school education is used for its intended purposes through enforcing compliance with accountability requirements set out in the Act and Principal Regulation.

The measures in the Amendment Regulation are compatible with the right to education and promote the right to education.

Right to Privacy

The Amendment Regulation engages the right to privacy in Article 17 of the ICCPR as it authorises the collection of information relating to an approved authority, block grant authority or non-government representative body for a non-government school's compliance with the Act and Principal Regulation, and the authority or school's financial administration. This information could potentially include personal information about students and persons responsible for students.

Article 17 of the ICCPR recognises a person's right to protection against unlawful or arbitrary interference with their privacy and family, and provides that persons have the right to protection of the law against such interference. 'Privacy' is understood to comprise freedom from unwarranted and unreasonable intrusions into activities that society recognises as falling within the sphere of individual autonomy. The right to privacy for children is also found in Article 24(1) of the ICCPR, and Article 16 of the UNCRC.

In order for interference with privacy not to be arbitrary, the interference with privacy must be in accordance with the provisions, aims and objectives of the ICCPR, and should be reasonable in the particular circumstances. Reasonableness, in this context, incorporates notions of proportionality to the end sought and necessity in the circumstances. The limitation on privacy must also be

authorised under domestic law, which should be precise and not give decision-maker too much discretion in authorising interferences with privacy.

The purpose of collecting information or records from a block grant authority, non-government representative body or an approved authority for a non-government school is to promote ongoing compliance with the Act and Principal Regulation, and to enable the Australian Government to make appropriate inquiries of these authorities and bodies in relation to their financial administration and their ongoing compliance with the Act and Principal Regulation. These amendments are reasonable, justifiable and proportionate as they enable the department to make relevant inquiries of these authorities and bodies in relation to their ongoing compliance with the Act and Regulation, and places an obligation on the relevant bodies to comply with those requirements.

This measure is directed towards ensuring the proper and efficient administration of the Act and Principal Regulation, and any limitations to the right to privacy are reasonable, necessary and proportionate in achieving legitimate policy objectives.

Conclusion

The Amendment Regulation is compatible with human rights because it promotes the right to education under the ICESCR and the UNCRC and any potential limitations to the right to privacy are reasonable, necessary and proportionate in achieving legitimate policy objectives.

Dan Tehan
Minister for Education

Detailed explanation of the Amendment Regulation provisions

Section 1 – Name of Amendment Regulation

This section provides that the title of the Amendment Regulation is the *Australian Education Amendment (2018 Measures No. 3) Regulations 2018*.

Section 2 – Commencement

This section provides for the commencement of the provisions of the Amendment Regulation. The provisions of the Amendment Regulation commence as follows:

- sections 1 to 4 and anything in the Amendment Regulation not elsewhere covered by this section – the day after the Amendment Regulation is registered;
- schedule 1 – the day after the Amendment Regulation is registered; and
- schedule 2 – 1 January 2019.

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 commencing day after registration

Item 1 prescribes that for the purposes of subsection 11A(5) of the Act, the School Resource Standard (SRS) indexation factor for 2019 and 2020 is 1.0356. Section 11A of the Act sets out the formula for calculating the SRS indexation factor to be used for indexing SRS funding amounts (contained in section 34 of the Act) and certain loadings. Subsection 11A(5) of the Act allows the Principal Regulation to set the SRS indexation factor for a year instead. This amendment prescribes the indexation factor for the purposes of subsection 11A(5).

Item 2 inserts new section 10A into the Principal Regulation, to prescribe the starting State-Territory shares as a percentage for 2018 and each later year for government schools and non-government schools in the specified states and territories, in accordance with subsection 22A(3) of the Act. The prescribed starting State-Territory shares are to be used to calculate the State-Territory share for a year in accordance with subsections 22A(3) and (4) of the Act, unless the State or Territory's school education reform agreement specifies the State-Territory share.

Starting State-Territory shares have been determined based on information provided by states and territories.

A State or Territory's school education reform agreement is the agreement with the Commonwealth that paragraph 22(2)(b) of the Act requires a State or Territory to be a party to as a condition of financial assistance under the Act. If the State or Territory's school education reform agreement specifies a State-Territory share for a year, the share specified in the agreement will set

the State or Territory's funding obligation for the year instead of the default, as referred to in subsections 22A(3), (4) and (6) of the Act.

Item 3 repeals the note under section 16A of the Principal Regulation, as a result of the amendments in Items 44-66 below.

Item 4 repeals the note under subsection 23(4) of the Principal Regulation. **Item 7** places this note in its correct place at the end of section 23 (see **Item 7** below).

Item 5 amends the heading of subsection 23(5) of the Principal Regulation to extend the socio-economic status (SES) score provisions in place for 2018, to 2019 as an interim measure pending implementation of the Government's response to the Board's Review.

Item 6 amends subsection 23(5) of the Principal Regulation to extend the provisions for working out an average SES dimension score for a school for 2018, to 2019.

Item 7 repeals the note under section 23 of the Principal Regulation and replaces it with the equivalent information regarding the location of the information about the 2011 Census of Population and Housing with reference to 2018. The 2011 Census of Population and Housing is publicly available on the Australian Bureau of Statistics website (<http://www.abs.gov.au>). As per subsection 23(6) of the Principal Regulation, the 2011 Census of Population and Housing is used to calculate a school's average SES dimension score in accordance with the formula in subsection 23(1). **Item 7** also inserts a note to state that section 23 does not apply to a school if the Minister is satisfied that determining the school's SES score in accordance with section 23 would result in an SES score that does not accurately reflect the general socioeconomic circumstances of the persons responsible for students at the school. This note was previously placed under subsection 23(4) (see **Item 4** above).

Item 8 amends subsection 34(2) of the Principal Regulation to ensure that the certificate prepared under that subsection must also be certified in accordance with the requirements of that subsection.

Item 9 repeals subparagraph 34(2)(a)(ii) of the Principal Regulation and replaces it with new subparagraphs 34(2)(a)(ii), (iii) and (iv). New subparagraphs 34(2)(a)(ii), (iii) and (iv) provide that the certificate given under subsection 34(1) for an approved authority for a government school located in a State or Territory must be prepared and certified by (if not by the Auditor-General of the State or Territory):

- an independent third party agreed to by the Minister;
- the Chief Executive Officer (however described) of the approved authority; or
- the Chief Financial Officer (however described) of the approved authority.

Item 10 amends paragraph 34(2)(b) of the Principal Regulation to require that a qualified accountant who prepares and certifies the certificate under subsection 34(2) must be independent from the approved authority, block grant authority or non-government representative body.

Items 11 and 12 update the cross-references to sections of the Principal Regulation in paragraph 34(3)(a).

Item 13 amends paragraph 35(1)(b) of the Principal Regulation to refer to each school rather than each of the schools.

Item 14 amends paragraph 35(1)(ba) of the Principal Regulation to refer to Schedule 1 rather than section 25H.

Item 15 amends paragraph 35(1)(c) of the Principal Regulation to refer to each school rather than each participating government school.

Item 16 repeals paragraph 35(1)(d) of the Principal Regulation.

Item 17 amends the note in subsection 35(1) of the Principal Regulation to refer to subsection 78(3) of the Act instead of section 61 of the Principal Regulation and paragraph 78(3)(a) of the Act.

Item 18 inserts new subsection 35(1A) into the Principal Regulation to provide that unless the Minister requests, in writing, that the approved authority include the information mentioned in paragraph 35(1)(ba) of the Principal Regulation in its report given under subsection 35(1), the approved authority is not required to do so. The information is - for each school, the amount of financial assistance paid in accordance with the Act and allocated by the authority to the school because the circumstances mentioned in Schedule 1 applied in relation to the school for the year.

Item 19 repeals paragraph 35(2)(b) of the Principal Regulation and replaces it with new paragraphs 35(2)(b), (c) and (d). New paragraphs 35(2)(b), (c) and (d) provide that the report given under subsection 35(1) must be prepared (if not by the Auditor-General of the State or Territory) by:

- an independent third party agreed to by the Minister;
- the Chief Executive Officer (however described) of the approved authority; or
- the Chief Financial Officer (however described) of the approved authority.

Item 20 inserts new subsection 36(1A) into the Principal Regulation to provide that unless the Minister requests, in writing, that the approved authority include the information mentioned in paragraph 36(1)(fa) of the Principal Regulation in its report given under subsection 36(1), the approved authority is not required to do so. The information is – for each school of an approved system authority, the amount of financial assistance paid in accordance with the Act and allocated by the authority to the school because the circumstances mentioned in Schedule 1 applied in relation to the school for the year.

Item 21 inserts new section 39A into the Principal Regulation to require a block grant authority, non-government representative body or an approved authority for a non-government school to provide information or records requested by the Minister or authorised person that relate to:

- the authority or body's compliance with the Act and the Principal Regulation;
- the financial administration of the authority or body;
- the financial administration of the school.

Item 21 also requires the information or records be provided in the manner, and by the day, specified by the Minister or the authorised person. Section 39 of the Act currently provides for access to these records; however, the amendment will clarify operational practices by enabling the Minister to require that such information or records be provided, and placing an obligation on block grant authorities, non-government representative bodies and approved authorities for non-government schools to comply with these requirements. These amendments will provide capacity for the department to more appropriately make any relevant inquiry of non-government schools in

relation to the authority or body's ongoing compliance with the Act and Regulation, and to provide enhanced authority for the Australian Government to perform ongoing compliance activity each year.

Item 22 inserts new section 73 into the Principal Regulation to clarify that:

- the amendments made by **Items 8, 9, 10 and 13 to 20** of Schedule 1 apply in relation to 2018 and each later year;
- the amendments made by **Items 11 and 12** of Schedule 1 apply in relation to 2018; and
- the amendments made by **Items 23 and 27** of Schedule 1 apply in relation to financial assistance whether it is paid to an approved authority before, at or after the Schedule commences.

Item 23 amends paragraph 6(3)(a) of Schedule 1 of the Principal Regulation which prescribes the time period by which additional financial assistance for low-growth non-government schools for 2018 must be spent or committed to be spent. The amendment changes the time period from before 2028 or as otherwise directed by the Minister, to before 31 December 2022 or as otherwise directed by the Minister.

Item 24 repeals Division 2 of Part 2 of Schedule 1 of the Principal Regulation and replaces it with a new Division 2 to provide for adjustment funding for low-growth non-government schools for 2019.

Division 2 – Adjustment funding for low-growth non-government schools for 2019

New Division 2 is one of three interim measures to support schools in 2019, prior to the implementation of the direct income measure of capacity to contribute from 2020 onwards, as per the Australian Government's response to the Board's Review. For most non-government schools, the base amount of funding for a school is discounted by the capacity to contribute percentage, which is calculated with reference to the SES score of the school. The capacity to contribute percentage estimates the school community's anticipated capacity to financially contribute towards the school's operating costs. One of the Board's recommendations was that the SES scores for schools should be calculated based on a direct measure of the income of the persons responsible for students in schools (for example, parents and guardians). The Australian Government agreed to this recommendation, with implementation to be phased in over three years from 2020, with approved authorities for schools able to commence in 2020, 2021 or 2022 depending on their own circumstances.

New Division 2 will enable additional funding to be provided in 2019 to low-growth non-government schools that are not part of an approved system authority, as an interim measure prior to the implementation of the direct income measure of capacity to contribute. This amendment supports the Australian Government's objective of ensuring that in 2019 approved authorities for schools that meet the prescribed circumstances receive a minimum of 3 per cent funding growth above 2018 recurrent funding.

Section 69A of the Act provides for funding in prescribed circumstances. The Minister may, in writing, determine an amount of financial assistance that is payable under section 69A of the Act to a State or Territory for a school for a year if the Minister is satisfied that prescribed circumstances apply in relation to the school for that year.

New clause 7 of Schedule 1 sets out the circumstances for a school for 2019 that the Minister must be satisfied apply for this additional financial assistance under subsection 69A(1) of the Act for 2019. The circumstances are:

- the school is a non-government school; and
- subsection 78(6) of the Act does not apply to the approved authority for the school for that year.

New clause 8 of Schedule 1 prescribes the total of the amounts determined by the Minister under subsection 69A(1) for the purposes of paragraph 69A(4)(a) of the Act for 2019 in relation to these circumstances mentioned above, to be \$8.84 million. As per paragraph 69A(4)(a) of the Act, the amounts that the Minister determines under subsection 69A(1) for 2019 in relation to the circumstances mentioned above must not exceed this total.

New clause 9 of Schedule 1 prescribes the matters to which the Minister may have regard being the total amount, if any, of financial assistance payable for the school in the circumstances mentioned in clause 20 (see **Item 28** below). Accordingly, in making a decision under subsection 69A(1) of the Act about the amount of financial assistance that is payable for a school in the circumstances mentioned in clause 7 (Adjustment funding for low-growth non-government schools for 2019), the Minister may have regard to the total amount, if any, of financial assistance payable for the school in the circumstances mentioned in clause 20 (Additional financial assistance for non-government schools (2016 census data arrangements)) for 2019.

New subclause 10(1) of Schedule 1 provides that the purpose for which the funding is spent or committed to be spent is for the purpose of providing school education at a school for which the authority is approved, and in accordance with any written directions given by the Minister.

New subclause 10(2) of Schedule 1 provides that subsections 29(2) and (3) of the Principal Regulation has effect as if a reference in those subsections to subsection 29(1) of the Principal Regulation includes a reference to subclause 10(1).

New subclause 10(3) of Schedule 1 provides that the financial assistance mentioned in subclause 10(1) must be spent or committed to be spent before 31 December 2022 or otherwise directed by the Minister.

New subclause 10(4) of Schedule 1 provides that for the purposes of paragraphs 10(1)(b) and 10(3)(b), the Minister may give written directions to an approved authority.

New subclause 10(5) of Schedule 1 provides that any interest earned on the financial assistance mentioned in subclause 10(1) must be spent, or committed to be spent, in the same way as the financial assistance.

Item 25 amends clause 12 of Schedule 1 of the Principal Regulation to provide that the total of the amounts determined by the Minister for ACT non-government schools is \$46.073 million rather than \$46.07 million.

Item 26 amends subclause 16(1) of Schedule 1 of the Principal Regulation to refer to subsection 69A(1) rather than subsection 69B(1).

Item 27 amends paragraph 16(3)(a) of Schedule 1 of the Principal Regulation to refer to 31 December 2022 rather than before 2028.

Item 28 inserts new Part 5 to Schedule 1 of the Principal Regulation to provide for additional financial assistance for non-government schools.

Division 1 – Additional financial assistance for non-government schools of approved system authorities (system weighted benefit) for 2019

Item 28 inserts new Division 1 of Part 5 of Schedule 1 to the Principal Regulation to provide for additional financial assistance for non-government schools of approved system authorities (system weighted benefit) for 2019.

New Division 1 is one of three interim measures to support schools in 2019, prior to the implementation of the direct income measure of capacity to contribute from 2020 onwards, as per the Australian Government's response to the Board's Review. In particular, new Division 1 will enable the provision of additional financial assistance to approved system authorities for non-government schools with their own needs based funding arrangement whose Commonwealth funding is transitioning to 80 per cent of the SRS. This supports the Australian Government's objective of providing the additional assistance the authority would have received if, instead of individual SES scores for each school, the most beneficial of a system weighted average SES score were applied for all the schools in a system using 2011 or 2016 Census of Population and Housing census data.

Section 69A of the Act provides for funding in prescribed circumstances. The Minister may, in writing, determine an amount of financial assistance that is payable under section 69A of the Act to a State or Territory for a school for a year if the Minister is satisfied that prescribed circumstances apply in relation to the school for that year.

New clause 17 of Schedule 1 sets out the circumstances for a school for 2019 that the Minister must be satisfied apply for this additional financial assistance under subsection 69A(1) of the Act for 2019. The circumstances are:

- the school is a non-government school; and
- subsection 78(6) of the Act applies to the approved authority for the school for that year; and
- the school's Commonwealth share for that year is more or less than 80%.

New clause 18 of Schedule 1 prescribes the total of the amounts determined by the Minister under subsection 69A(1) for the purposes of paragraph 69A(4)(a) of the Act for 2019 in relation to these circumstances mentioned above, to be \$82.74 million. As per paragraph 69A(4)(a) of the Act, the amounts that the Minister determines under subsection 69A(1) for 2019 in relation to the circumstances mentioned above must not exceed this total.

New subclause 19(1) of Schedule 1 sets out, for the purposes of paragraph 78(2)(a) of the Act, that an approved authority for a school must spend, or commit to spend, financial assistance that is payable for the school under subsection 69A(1) of the Act, in the circumstances mentioned in clause 17, for the purpose of providing school education at a school for which the authority is approved, and in accordance with any written directions given by the Minister.

New subclause 19(2) of Schedule 1 provides that subsections 29(2) and (3) of the Principal Regulation has effect as if a reference in those subsections to subsection 29(1) of the Principal Regulation includes a reference to subclause 19(1).

New subclause 19(3) of Schedule 1 provides that the financial assistance in subclause 19(1) must be spent, or committed to be spent before 31 December 2022 or as otherwise directed in writing by the Minister.

New subclause 19(4) of Schedule 1 provides that the Minister may give written directions to an approved authority for the purposes of paragraphs 19(1)(b) and 19(3)(b).

New subclause 19(5) of Schedule 1 provides that any interest earned on the financial assistance mentioned in subclause 19(1) must be spent, or committed to be spent, in the same way as the financial assistance.

Division 2 – Additional financial assistance for non-government schools (2016 census data arrangements) for 2019

New Division 2 of Part 5 of Schedule 1 is one of three interim measures to support schools in 2019, prior to the implementation of the direct income measure of capacity to contribute from 2020 onwards, as per the Australian Government's response to the Board's Review. In particular, the new Division 2 will enable additional financial assistance to be provided to approved authorities for non-government schools. The provision of this financial assistance supports the Australian Government's objective of providing the additional assistance the authority would have received, if any, if an SES score were determined for each school for 2019 using the 2016 Census of Population and Housing.

Section 69A of the Act provides for funding in prescribed circumstances. The Minister may, in writing, determine an amount of financial assistance that is payable under section 69A of the Act to a State or Territory for a school for a year if the Minister is satisfied that prescribed circumstances apply in relation to the school for that year.

New clause 20 of Schedule 1 provides that, for the purposes of subsection 69A of the Act, the circumstance for a school for 2019 is that the school is a non-government school.

New clause 21 of Schedule 1 prescribes the total of the amounts determined by the Minister under subsection 69A(1) for the purposes of paragraph 69A(4)(a) of the Act for 2019 in relation to the circumstances mentioned above, to be \$79.28 million. As per paragraph 69A(4)(a) of the Act, the amounts that the Minister determines under subsection 69A(1) for 2019 in relation to the circumstances mentioned above must not exceed this total.

New subclause 22(1) of Schedule 1 sets out, for the purposes of paragraph 78(2)(a) of the Act, that an approved authority for a school must spend, or commit to spend, financial assistance that is payable for the school under subsection 69A(1) of the Act, in the circumstances mentioned in clause 20, for the purpose of providing school education at a school for which the authority is approved and in accordance with any written directions given by the Minister.

New subclause 22(2) of Schedule 1 provides that subsections 29(2) and (3) of the Principal Regulation has effect as if a reference in those subsections to subsection 29(1) of the Principal Regulation includes a reference to subclause 22(1) of Division 1.

New subclause 22(3) of Schedule 1 provides that the financial assistance in subclause 22(1) must be spent, or committed to be spent, before 31 December 2022 or as otherwise directed in writing by the Minister.

New subclause 22(4) of Schedule 1 provides that the Minister may give written directions to an approved authority for the purposes of paragraphs 22(1)(b) and 22(3)(b).

New subclause 22(5) of Schedule 1 provides that any interest earned on the financial assistance mentioned in subclause 22(1) must be spent, or committed to be spent, in the same way as the financial assistance.

Items 29-41 amends Schedule 2 to the Principal Regulation to make amendments to per student amounts for 2017 as a result of approved authorities for the relevant schools providing updated student enrolment data for 2017, as well as other minor corrections.

Items 42-43 amends Schedule 3 to the Principal Regulation to insert additional schools in South Australia that the Australian Government recognises as delivering year 7 as secondary education. Currently, under subsection 7(2) of the Principal Regulation, for the purposes of section 15 of the Act, the levels of education that constitute secondary education for schools in South Australia are years 8 to 12, unless specified in the table in clause 1 of Schedule 3.

Items 44-66 amends Schedule 4 to the Principal Regulation to make amendments arising from schools closing, changing name, ceasing to be part of an approved system authority, and approved authorities for the relevant schools providing updated student enrolment data for 2017.

Items 67-68 would amend the notes at the end of Schedule 4 to the Principal Regulation, as a result of the amendments in **Items 44-66**.

Schedule 2 – Amendments commencing 1 January 2019

Item 1 repeals section 10 of the Principal Regulation which set out the national policy initiatives for school education that States and Territories were required to implement in order to receive financial assistance, and prescribed the School Funding Reform Principles for the 2018 year. The repeal of section 10 is necessary to ensure the currency of the Principal Regulation. National policy initiatives for the period from 2019 to 2023 will appear in the national agreement relating to school education reform. Where the Ministerial Council agrees new national policy initiatives, these will become conditions of Commonwealth funding under subsections 22(1) and 77(2A) of the Act. The School Funding Reform Principles were prescribed for the 2018 year only.

Item 2 repeals subsection 34(3) of the Principal Regulation, and replaces it with new paragraphs 34(3)(a), 34(3)(b) and 34(3)(c).

New paragraphs 34(3)(a) and 34(3)(b) specify the content of the acquittal certificate.

New paragraph 34(3)(a) provides that for an approved authority, the certificate must state:

- the amount of financial assistance paid to the authority in accordance with the Act in the year that has been spent in accordance with section 29 or a provision of Schedule 1 (as the case requires); and
- the amount of financial assistance paid to the authority in accordance with the Act in the year that has been committed to be spent in accordance with section 29 or a provision of Schedule 1 (as the case requires); and
- whether interest earned on financial assistance paid to the authority in accordance with the Act has been spent or committed to be spent, in the year in accordance with section 29 or a provision of Schedule 1 (as the case requires); and
- the amount of financial assistance paid to the authority in accordance with the Act in a previous year that has been spent, or committed to be spent, in the year in accordance with section 29 or a provision of Schedule 1 (as the case requires), including any amounts of such financial assistance committed in a previous year but spent in the current year.

New paragraph 34(3)(b) provides that for a block grant authority or non-government representative body, the certificate must state:

- the amount of financial assistance paid to the authority or body in accordance with the Act in the year that has been spent, or committed to be spent, in accordance with section 30 or 31 (as the case requires); and
- whether interest earned on financial assistance paid to the authority or body in accordance with the Act has been spent, or committed to be spent, in the year in accordance with section 30 or 31 (as the case requires).

Item 2 also adds a requirement, under paragraph 34(3)(c), for the certificate to be given in a way or ways (if any) determined by the Minister.

Item 3 clarifies that the amendments made by **Item 2** apply in relation to 2019 and each later year.