

## **EXPLANATORY STATEMENT**

*Australian Education Act 2013*

*Australian Education Amendment (2020 Measures No. 1) Regulations 2020*

### **Authority**

The *Australian Education Amendment (2020 Measures No. 1) Regulations 2020* (**Amendment Regulations**) amend the *Australian Education Regulation 2013* (**Principal Regulation**) and are made under subsection 130(1) of the *Australian Education Act 2013* (**the Act**), construed in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*.

Subsection 130(1) of 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 33(3) of the Acts Interpretation Act provides that, where an Act confers a power to make, grant or issue an 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 came into effect on 1 January 2014, and is the principal legislation for the provision of Australian Government funding for schooling. Under section 33 of the Act, one of the factors in calculating the base amount of annual recurrent funding for a school is the school's capacity to contribute percentage. The higher a school's capacity to contribute percentage, the lower its base amount of annual recurrent funding, and conversely, the lower a school's capacity to contribute percentage, the higher its base amount of annual recurrent funding.

In accordance with subsection 54(1) of the Act, the capacity to contribute percentage of government, special, special assistance, majority Aboriginal and Torres Strait Islander, and sole provider non-government schools is zero. For most non-government schools, however, the table in subsection 54(3) of the Act sets out the school's capacity to contribute percentage by reference to the school's capacity to contribute (CTC) score.

Under subsection 52(4) of the Act, a school's CTC score must be worked out in accordance with the regulations. One of the purposes of the Amendment Regulations is to change the way in which a school's CTC score is worked out.

These changes to the way in which a non-government school's CTC score is worked out will have an impact on many schools' annual recurrent funding. In order to manage these changes, the Commonwealth shares of those schools will also be adjusted over time.

Under section 32 of the Act, one of the factors in calculating a school's annual recurrent funding is its Commonwealth share. Ordinarily, the Commonwealth share of a non-government school is 80 per cent—see paragraph 35A(b) of the Act. However, under section 35C of the Act, the Commonwealth share for a non-government school for a transition year is the percentage prescribed in, or the percentage worked out in accordance with, the Principal Regulation.

As such, the other principal purpose of the Amendment Regulations is to prescribe the method for working out the Commonwealth share for non-government schools during their transition years.

## Purpose and operation of amendments

The Act was recently amended by the *Australian Education Amendment (Direct Measure of Income) Act 2020 (Direct Measure of Income Act)*. The amendments facilitate the introduction of a new, more accurate direct measure of income methodology (**DMI methodology**) for calculating a school community's capacity to contribute financially to a non-government school and provide additional flexibility for the calculation of a non-government school's Commonwealth share during transition years.

Prior to the amendments to the Act, a school's capacity to contribute percentage was determined by reference to the socioeconomic status (**SES**) score of the school, and the Principal Regulation set out a methodology for working out that SES score. The SES score for a school is based on an averaging of characteristics of all people residing in a certain geographical area, not just families of students attending the school.

In June 2018, the National School Resourcing Board (**the Board**) completed a review into the existing methodology for calculating SES scores for schools, titled *Review of the socio-economic status score methodology*. The Board's final report on the review found that the use of the area-based data under the current method did not always result in an accurate assessment of the capacity of a school's community to contribute financially to the operation of the school. The Board recommended the use of a direct measure of income based on the median income of parents and guardians of students at the school, facilitated by the linkage of personal income data and residential address data collections. The Board recommended continuing existing arrangements for 2019, using updated 2016 ABS Census data. The amendments to the Act and the Principal Regulation give effect to the Australian Government's decision to accept all of the Board's recommendations, including a phased implementation of the new DMI methodology.

The amendments to the Principal Regulation thus replace the previous methodology used to calculate an SES score with the new methodology to calculate a school's CTC score using a DMI methodology, or alternatives that apply to specific circumstances. From 2020 to 2021, non-government schools will have the most financially beneficial CTC score calculated using their 2011 Census SES score, 2016 Census SES score or average DMI score. Over this time period, non-government schools will move to the new DMI methodology when it is most financially beneficial for them to do so. This will allow non-government schools time to plan and adjust to the new measure. All non-government schools will move to the new DMI methodology or the alternative refined area based score methodology in 2022.

To maintain transparency, CTC scores that are determined other than in accordance with the Principal Regulation and the reasons for this will be published on the website of the Department of Education, Skills and Employment (**the department**).

To ensure that non-government schools are not adversely affected financially by these changes the amendments to the Act also enabled the Principal Regulations to set out the Commonwealth share for non-government schools, and adjust the transition pathways of these schools to the nationally consistent Commonwealth share of 80 per cent of the Schooling Resource Standard (**SRS**).

The Explanatory Memorandum accompanying the Australian Education Amendment (Direct Measure of Income) Bill 2020 contains further, more detailed background to the changes and could in 2020 be viewed on the Federal Register of Legislation website (at <https://www.legislation.gov.au/Details/C2020B00023/Explanatory%20Memorandum/Text>).

The Amendment Regulations:

- i. prescribe new transition years and pathways for non-government schools to move to the nationally consistent Commonwealth share of 80 per cent of the SRS for new section 35C of the Act. All existing non-government schools will transition either by 2023 (for those schools with a Commonwealth share below 80 per cent) or 2029 (for those schools with a Commonwealth share above 80 per cent) (Schedule 1);
- ii. prescribe new methods of working out a school's CTC score for subsection 52(1) of the Act based on the DMI methodology, or alternatives based on the 2011 Census SES, 2016 Census SES score and refined area based score and require the Minister to publish CTC scores that are the result of a Ministerial determination that is not in accordance with the Principal Regulation (Schedule 2).

## Regulation Impact Statement (RIS)

The Office of Best Practice Regulation (OBPR) was consulted on the move to the DMI methodology (OBPR ID: 25572) and assessed the regulatory impact as minor. OBPR noted the regulatory impact was previously assessed under OBPR IDs 24215 and 24034 as minor. OBPR stated that the RISs provided meet requirements and no further RIS is required.

## Commencement

The Amendment Regulations commence on the day after they are registered on the Federal Register of Legislation.

## Consultation

The Minister for Education wrote to all state and territory education ministers, the Independent Schools Council of Australia (ISCA), and the National Catholic Education Commission (NCEC) in March 2020 to formally consult on the Amendment Regulations. An Exposure Draft of the Amendment Regulations, Explanatory Document, *Direct Measure of Income Methodology* document and the *Capacity to Contribute Data Validation and Quality Assurance Process* document was provided. At the date of making, the *Direct Measure of Income Methodology* document could be found at <https://docs.education.gov.au/node/53379> and the *Capacity to Contribute Data Validation and Quality Assurance Process* document could be found at <https://docs.education.gov.au/node/53378>.

All feedback received during the consultation period was considered prior to finalising the Amendment Regulations. The NCEC were supportive of the Amendment Regulations. The ISCA requested further information on the definition for small and very small schools. This information has been provided to the ISCA who were advised that the definition of small and very small schools are defined in the Act at subsection 43(1). The Queensland Minister for Education, the Hon Grace Grace MP noted the Amendment Regulations include a new requirement for approved authorities to provide information about non-government distance education and raised concerns that the Principal Regulation was already amended to increase funding for these schools. The proposed

Amendment Regulations do no change funding arrangements for non-government distance education schools. The additional information will be used to inform future school funding policy.

The final DMI methodology in the Amendment Regulations was developed in consultation with the non-government school sector and technical experts from the non-government and government sectors. A Technical Working Group was established in November 2018 and met seven times to discuss the strengths and weaknesses of possible refinements to the direct measure of income. The Technical Working Group consisted of key stakeholders from the NCEC, the ISCA, the Australian Bureau of Statistics (**ABS**), the Australian Taxation Office, and state education representatives from South Australia, New South Wales and Northern Territory, as well as the Department of Education, Skills and Employment.

Broader consultation occurred through a number of different activities, including forums that the department hosted on 25 February 2019, 19 September 2019 and 17 March 2020 to discuss the new measure with a broader range of interested stakeholders such as representatives of parent groups and all system authorities as well as technical consultation with both the NCEC and the ISCA. At the 17 March 2020 meeting an overview was provided of the final policy settings and the intent 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 (2020 Measures No. 1) Regulations 2020*

The *Australian Education Amendment (2020 Measures No. 1) Regulations 2020* (**the Amendment Regulations**) 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 *Australian Education Act 2013* (**the Act**) came into effect on 1 January 2014, and is the principal legislation for the provision of Australian Government funding for schooling. Under section 33 of the Act, one of the factors in calculating the base amount of annual recurrent funding for a school is the school's capacity to contribute percentage. The higher a school's capacity to contribute percentage, the lower its base amount of annual recurrent funding, and conversely, the lower a school's capacity to contribute percentage, the higher its base amount of annual recurrent funding.

In accordance with subsection 54(1) of the Act, the capacity to contribute percentage of government, special, special assistance, majority Aboriginal and Torres Strait Islander, and sole provider non-government schools is zero. For most non-government schools, however, the table in subsection 54(3) of the Act sets out the school's capacity to contribute percentage by reference to the school's capacity to contribute (**CTC**) score.

Under subsection 52(4) of the Act, a school's CTC score must be worked out in accordance with the regulations. One of the purposes of the Amendment Regulations is to change the way in which a school's CTC score is worked out.

These changes to the way in which a non-government school's CTC score is worked out will have an impact on many schools' annual recurrent funding. In order to manage these changes, the Commonwealth shares of those schools will also be adjusted over time.

Under section 32 of the Act, one of the factors in calculating a school's annual recurrent funding is its Commonwealth share. Ordinarily, the Commonwealth share of a non-government school is 80 per cent—see paragraph 35A(b) of the Act. However, under section 35C of the Act, the Commonwealth share for a non-government school for a transition year is the percentage prescribed in, or the percentage worked out in accordance with, the Principal Regulation.

As such, the other principal purpose of the Amendment Regulations is to prescribe the method for working out the Commonwealth share for non-government schools during their transition years.

The Act was recently amended by the *Australian Education Amendment (Direct Measure of Income) Act 2020* (**Direct Measure of Income Act**). The amendments facilitate the introduction of a new, more accurate direct measure of income methodology (**DMI methodology**) for calculating a school community's capacity to contribute financially to a non-government school and provide additional flexibility for the calculation of a non-government school's Commonwealth share during transition years.

Prior to the amendments to the Act, a school's capacity to contribute percentage was determined by reference to the socioeconomic status (**SES**) score of the school, and the Principal Regulation set out

a methodology for working out that SES score. The SES score for a school is based on an averaging of characteristics of all people residing in a certain geographical area, not just families of students attending the school.

In June 2018, the National School Resourcing Board (**the Board**) completed a review into the existing methodology for calculating SES scores for schools, titled *Review of the socio-economic status score methodology*. The Board's final report on the review found that the use of the area-based data under the current method did not always result in an accurate assessment of the capacity of a school's community to contribute financially to the operation of the school. The Board recommended the use of a direct measure of income based on the median income of parents and guardians of students at the school, facilitated by the linkage of personal income data and residential address data collections. The Board recommended continuing existing arrangements for 2019, using updated 2016 ABS Census data. The amendments to the Act and the Principal Regulation give effect to the Australian Government's decision to accept all of the Board's recommendations, including a phased implementation of the new DMI methodology.

The amendments to the Principal Regulation thus replace the previous methodology used to calculate an SES score with the new methodology to calculate a school's CTC score using a DMI methodology, or alternatives that apply to specific circumstances. From 2020 to 2021, non-government schools will have the most financially beneficial CTC score calculated using their 2011 Census SES score, 2016 Census SES score or average DMI score. Over this time period, non-government schools will move to the new DMI methodology when it is most financially beneficial for them to do so. This will allow non-government schools time to plan and adjust to the new measure. All non-government schools will move to the new DMI methodology or the alternative refined area based score methodology in 2022.

To maintain transparency, CTC scores that are determined other than in accordance with the Principal Regulation and the reasons for this will be published on the website of the Department of Education, Skills and Employment (**the department**).

To ensure that non-government schools are not adversely affected financially by these changes the amendments to the Act also enabled the Principal Regulations to set out the Commonwealth share for non-government schools, and adjust the transition pathways of these schools to the nationally consistent Commonwealth share of 80 per cent of the Schooling Resource Standard (SRS).

The Explanatory Memorandum accompanying the Australian Education Amendment (Direct Measure of Income) Bill 2020 contains further, more detailed background to the changes and could in 2020 be viewed on the Federal Register of Legislation website (at <https://www.legislation.gov.au/Details/C2020B00023/Explanatory%20Memorandum/Text>).

The Amendment Regulations:

- i. prescribe new transition years and pathways for non-government schools to move to the nationally consistent Commonwealth share of 80 per cent of the SRS for new section 35C of the Act. All existing non-government schools will transition either by 2023 (for those schools with a Commonwealth share below 80 per cent) or 2029 (for those schools with a Commonwealth share above 80 per cent) (Schedule 1);
- ii. prescribe new methods of working out a school's CTC score for subsection 52(1) of the Act based on the DMI methodology, or alternatives based on the 2011 Census SES, 2016 Census SES score and refined area based score and require the Minister to publish

CTC scores that are the result of a Ministerial determination that is not in accordance with the Principal Regulation (Schedule 2).

## **Human rights implications**

The Amendment Regulations engage the right to education under Article 13 of the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, Articles 28 and 29 of the *Convention on the Rights of the Child (UNCRC)*, and the right to privacy under 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 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. The right to education 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 required under the law. Article 13(2)(d) also contains the right to fundamental education which includes the elements of availability, accessibility, acceptability and adaptability which are common to education in all its forms and at all levels. Article 13(2)(e) further endorses the obligation of States Parties to actively pursue the “development of a system of schools at all levels” and to have an overall developmental strategy for its school system, at all levels, including prioritisation of a development strategy for primary education which is to be implemented with vigour.

The right to education for children is also contained in Articles 28 and 29 of the UNCRC. UNCRC contains similar provisions to article 13 of ICESCR, and also provides that the education of the child shall be directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential.

The Amendment Regulations promote the right to education by providing for a more targeted, more accurate measure of a non-government school community's capacity to contribute to the cost of schooling. This measure promotes the right to education by seeking to implement a fit-for-purpose measure of a school community's capacity to financially contribute to a school, to enable the better targeting of financial support for non-government schools in circumstances where parents and legal guardians may have less capacity to financially contribute to a school. This supports and ensures Australia continues to have functioning educational institutions that are available in sufficient quantity and receive sufficient Commonwealth financial assistance.

These measures also support the liberty of parents and legal guardians to choose non-government schools for their children by ensuring non-government schools receive targeted Commonwealth financial assistance according to a school community's capacity to financially contribute to a school. This will support parents and legal guardians of various socioeconomic backgrounds to select non-government school tuition for their children.

The Amendment Regulations also promote the right to education by providing non-government schools time to adjust to the new direct measure of income so schools can continue to financially plan and ensure Australia can continue to have functioning and well-resourced educational institutions.

The measures in the Amendment Regulations are compatible with the right to education as they promote the right to education.

## **Right to Privacy**

The Amendment Regulations engage the right to privacy in Article 17 of the ICCPR as the DMI methodology will use personal information about students and persons responsible for students (for example, parents and guardians), which will be disclosed to the Australian Bureau of Statistics (**the ABS**) in accordance with the Principal Regulation.

The development of a direct measure of income commenced in 2018. As part of this work, the Australian Government amended the Principal Regulation in 2018 to require the provision of the additional information specified in section 58B to the then Department of Education and Training. This additional information included the name and residential address of each person responsible for students. Two collections of this additional information have occurred (2018 and 2019). Section 21 of the Principal Regulation continued to enable the Minister to request a statement of the residential addresses of students at relevant non-government schools. The statement of residential addresses of students contributes to the calculation of the SES score for a school. The Australian Government department responsible for administering the Act (currently the Department of Education, Skills and Employment) is provided with the residential address of each student at relevant non-government schools.

This information informed the new methods in the Amendment Regulations for the purposes of determining a school's CTC score, including going forward. In particular, for the purposes of determining a school's CTC score using the new DMI methodology, the Principal Regulation is proposed to be amended to expressly authorise the Minister giving school education information to the ABS for the purposes of its assistance in determining a CTC score for a school. In particular, this information would include:

- the residential address of each student at the school
- the name and residential address of each person responsible for the student
- any other school education information that the ABS (acting as the approved Data Integration Authority) might reasonably require to reliably integrate address data with income data enabling the calculation of a direct measure of income score.

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-makers too much discretion in authorising interferences with privacy.

The Amendment Regulations follow extensive consultation with the non-government sector and technical experts following the Australian Government's announcement on 20 September 2018 that it would implement the direct measure of income from 2020. This timeframe was agreed to support

further consultation and consideration of implementation arrangements and technical refinements. The purpose of collecting the additional information about students, and persons responsible for students, and linking it to income data and other information held by the ABS, is to support the implementation of the new direct measure of a school community's capacity to financially contribute to a school. In turn, this will help enable the better targeting of financial support for non- government schools in circumstances where parents and guardians may have less capacity to contribute financially to the school.

Improving the way in which Commonwealth financial assistance for non-government schools is calculated so its allocation may be better targeted to help meet the educational needs of school students, is a legitimate and important social policy objective of the Australian Government. The collection, use and disclosure of personal information required by the Amendment Regulations is the minimum necessary to give effect to the DMI methodology to accurately determine a school community's capacity to contribute.

The Australian Government is confident that appropriate protocols have been put in place to mitigate the risk of identifiable data being used or disclosed without authorisation. There will be safeguards to protect the privacy of individuals, as follows:

- it is proposed that the information may be disclosed to the ABS for linking with personal income tax data collected by the Australian Taxation Office (**ATO**) and ABS Census data, such as through an approved project conducted in accordance with the Multi-Agency Data Integration Project (**MADIP**). The MADIP is a partnership among six Australian Government agencies that brings important national datasets together securely to maximise their value for policy analysis, research, and statistical purposes. Any information to be disclosed to the ABS will be authorised by law under the Principal Regulation.
- the ABS conducts the MADIP in accordance with its mandate to collect, compile, analyse, and disseminate statistics, under the *Australian Bureau of Statistics Act 1975* and the *Census and Statistics Act 1905*. The collection and use of personal information in the MADIP is consistent with applicable legislation such as the *Privacy Act 1988*, including the Australian Privacy Principles. The Australian Government is satisfied that the ABS has sufficient security and data protections in place for the transmission and storage of personal information.
- the information is to be disclosed to the ABS for the sole purpose of undertaking work to support the implementation of the new DMI methodology. Partner agencies to the MADIP will not have access to this information and the ABS will not use this information for unrelated purposes.
- the department will only be able to access de-identified information in the ABS' secure DataLab, through its personnel who have been seconded to the ABS to work on the particular MADIP project. Departmental personnel who have access to the DataLab will be subject to the same rigorous security, privacy, and confidentiality requirements as ABS officials.

The MADIP has been subject to two privacy impact assessments (**PIAs**). The first of these, the *Independent Privacy Impact Assessment (PIA) for the Multi-Agency Data Integration Project (MADIP)*, was undertaken in 2018 and could in 2020 be viewed on the ABS' website (at [https://www.abs.gov.au/websitedbs/D3310114.nsf/4a256353001af3ed4b2562bb00121564/9099c77cb979d558ca258198001b27a0/\\$FILE/MADIP%20iPIA\\_2018.pdf](https://www.abs.gov.au/websitedbs/D3310114.nsf/4a256353001af3ed4b2562bb00121564/9099c77cb979d558ca258198001b27a0/$FILE/MADIP%20iPIA_2018.pdf)).

An updated PIA, the *Privacy Impact Assessment (PIA) Update for the Multi-Agency Data Integration Project (MADIP)*, was undertaken in 2019 and could in 2020 be viewed on ABS' website (at [https://www.abs.gov.au/websitedbs/D3310114.nsf/4a256353001af3ed4b2562bb00121564/9099c77cb979d558ca258198001b27a0/\\$FILE/2019%20MADIP%20PIA%20Update%20-%20PIA%20Report.pdf](https://www.abs.gov.au/websitedbs/D3310114.nsf/4a256353001af3ed4b2562bb00121564/9099c77cb979d558ca258198001b27a0/$FILE/2019%20MADIP%20PIA%20Update%20-%20PIA%20Report.pdf)).

In addition, in 2018 a PIA specific to the collection of the residential addresses of each person responsible for students at the school, and the handling of this information through MADIP, was undertaken. The *2018 Student Residential Address Collection: Additional required information Privacy Impact Assessment* could in 2020 be viewed on the former Department of Education and Training's website (at [https://docs.education.gov.au/system/files/doc/other/final\\_-\\_pia\\_2018\\_residential\\_address\\_collection.pdf](https://docs.education.gov.au/system/files/doc/other/final_-_pia_2018_residential_address_collection.pdf)).

In addition, approved authorities for non-government schools are provided with a privacy notice, that complies with Australian Privacy Principle 5, to distribute to the school community to advise amongst other things, of the information being provided to the department and the purposes for which it is being provided. This notice covers:

- what information is being collected
- the purpose of the collection
- the legislative authority for the collection
- how the information that is collected may be used or disclosed
- how to contact the department for further information regarding privacy.

Any potential impact of the Amendment Regulations on an individual's right to privacy is lawfully enacted, is proportionate and reasonable and not considered arbitrary as it is done to achieve legitimate policy objectives, and any personal information will be securely handled. Finally, the application of the *Privacy Act 1988*, and the department's compliance with it will further ensure any personal information is used, managed and disclosed only in accordance with Australia's privacy laws.

The Amendment Regulations are compatible with and protects the right to privacy.

## **Conclusion**

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

**Dan Tehan**

**Minister for Education**

# 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 (2020 Measures No. 1) Regulations 2020*.

## Section 2 – Commencement

This section provides that the Amendment Regulations commence on the day after they are registered on the Federal Register of Legislation.

## Section 3 – Authority

This section provides that the Amendment Regulations are made under the *Australian Education Act 2013*.

## Section 4 – Schedules

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

## Schedule 1—Commonwealth share for non-government schools for transition years

### *Australian Education Regulation 2013*

**Item 1** inserts definitions used in the Amendment Regulations relevant to working out a non-government school's Commonwealth share for transition years. These include definitions for:

- the 2023 and 2029 transition periods for non-government schools moving towards the nationally consistent Commonwealth share of 80 per cent of the SRS
- the basis of a school's CTC score
- the CTC-adjusted SRS amount for the school;
- first funding year
- notional funding amount
- notional starting share.

**Items 2 and 4** repeal section 16A and Schedule 4 to the Principal Regulations. These provisions prescribed the starting Commonwealth shares for certain schools at an individual school level and were made for the purposes of subsection 35B(2) of the Act, which no longer applies to non-government schools. The amendments to the Principal Regulations made by Schedule 1 will prescribe a new methodology to work out a school's Commonwealth share. All schools will have Commonwealth shares worked out at an individual school level going forward, hence the provisions also no longer serve a purpose from 2020 and onwards.

### **New Division 1A of Part 3—Commonwealth share for non-government schools for transition years for the schools**

**Item 3** inserts a new Division 1A into Part 3 of the Principal Regulation, consisting of sections 19 to 19G inclusive. The new Division will:

- prescribe transition years for non-government schools, for the purposes of paragraph (c) of the definition of *transition year* in section 6 of the Act

- prescribe methods for working out the Commonwealth shares for non-government schools for their transition years, for the purposes of section 35C of the Act.

**Section 19** prescribes the final transition year for non-government schools as either 2023 or 2029, depending on whether the school has a Commonwealth share of 80 per cent in 2023. For non-government schools that have reached the share of 80 per cent in 2023, transition concludes that year. For non-government schools that have a Commonwealth share of greater than 80 per cent in 2023, transition will conclude in 2029. A school that starts receiving Commonwealth funding between 2020 and 2029 will have a Commonwealth share of 80 per cent from its first year of funding under new subsection 19D(2). The final transition year for a school that starts receiving Commonwealth funding between 2022 and 2029 is its first year of funding, after which paragraph 35A(b) of the Act will apply to it.

**Sections 19A, 19B, 19C and 19D** prescribe methods to work out a non-government school's Commonwealth share for different transition years using notional starting shares.

**Section 19E** defines notional starting shares. The purpose of notional starting shares is to reset the Commonwealth shares for non-government schools to smooth out any fluctuations that may otherwise result from a change in methodology and set out a transition pathway to 80 per cent of the SRS. The CTC-adjusted SRS amount and notional funding amount are used to work out a notional starting share and have the meanings given by **sections 19F and 19G** respectively. It should be noted that the notional funding amount for a school may not necessarily reflect the school's financial assistance for the year worked out under Division 2 of Part 3 of the Act.

Section 19A prescribes the transition pathway for non-government schools for certain years using a 2019 notional starting share. The section applies to all non-government schools in 2020, regardless of the basis for calculation of the school's CTC score for 2020. In addition, section 19A applies to certain non-government schools in later years if the basis of the school's CTC score remains the same as for previous years.

If the notional starting share for the non-government school for 2019 is less than or equal to 80 per cent (which is the Commonwealth share for a non-government school under paragraph 35A(b) of the Act), the Commonwealth share for the school for the transition year is the percentage worked out using the following formula:

$$\text{Notional starting share for 2019} + \frac{1}{4} \left( 4 - \frac{\text{2023 transition period}}{\text{period}} \right) \times \left( 0.8 - \text{Notional starting share for 2019} \right)$$

The formula calculates a non-government school's yearly Commonwealth share increment by multiplying these two items:

- The difference between a school's 2019 notional starting share and the target share of 80 per cent of the SRS
- One over four (calculated by reference to a school's 2023 transition period, or the number of years from 2020 to 2023).

The result of the multiplication is then added to the school's 2019 notional starting share to work out the school's 2020 Commonwealth share.

If the notional starting share for the school for 2019 is greater than 80 per cent (which is the Commonwealth share for a non-government school under paragraph 35A(b) of the Act), the Commonwealth share for the school for the transition year is the percentage worked out using the following formula:

$$\text{Notional starting share for 2019} + \frac{1}{10} \left( 10 - \frac{2029 \text{ transition period}}{\text{period}} \right) \times \left( 0.8 - \text{Notional starting share for 2019} \right)$$

The formula calculates a non-government school's yearly Commonwealth share increment by multiplying these two items:

- i. The difference between a school's 2019 notional starting share and the target share of 80 per cent of the SRS
- ii. One over ten (calculated by reference to a school's 2029 transition period, or the number of years from 2020 to 2029).

The result of the multiplication is then added to the school's 2019 notional starting share to work out the school's 2020 Commonwealth share.

The formulae prescribed by sections 19B and 19C use these same principles as described above.

Section 19B prescribes the transition pathway for non-government schools for certain years using a 2020 notional starting share. The section applies to schools that have a CTC score for 2021 that was calculated using a different basis to that which was used to calculate its CTC score for 2020. In addition, this transition pathway applies to a school in 2022 if, in 2021, the basis for calculating the CTC score for that school was different to the basis used to calculate its CTC score in 2020 but, the basis used to calculate its CTC score in 2022 is the same as that used in 2021. Where this is the case, this section will also apply to that school for a transition year that is 2023 or later.

Section 19C prescribes the transition pathway for non-government schools for 2022 or later using a 2021 notional starting share, where the school is covered by neither section 19A nor 19B for the transition year.

Section 19D prescribes the Commonwealth share for new non-government schools that first receive Commonwealth funding in 2020 or later. Subsection (2) provides that the Commonwealth share for these schools is 80 per cent for their first funding year. A new school first receiving funding in 2020 or 2021 may then have its transition pathway reset in 2021, 2022 or later years in accordance with sections 19A, 19B or 19C (whichever is applicable). The note to subsection (3) clarifies that, for a school that first receives funding in 2022 or later, its first funding year is also its last transition year. Those schools will then continue to have a Commonwealth share of 80 per cent for subsequent years due to the application of paragraph 35A(b) of the Act.

Section 19E specifies the formula for working out the notional starting share for non-government schools. The purpose of this section is to define a new notional starting share for transition and to allow all non-government schools to transition at the individual school level, rather than at an approved authority level.

Section 19F defines the CTC-adjusted SRS amount for the non-government school for the year that is used to calculate the notional starting share. It is what 100 per cent of the SRS amount for the

school would be for the year if the SES score or the CTC score for the school in that year was the CTC score of the school for the following year.

Section 19G defines the notional funding amount that is used to calculate the notional starting share. For schools that are not part of an approved system authority, the notional funding amount is simply the school's total entitlement for the year. Under subsection 19G(2) the notional funding amount is worked out differently if: the approved authority for a school in 2019 was also (a) the school's approved authority in 2017, and (b) the school's approved system authority as defined in section 5 of the Principal Regulation as in force immediately before 1 January 2018. If an approved authority would have met this criteria but for changing its legal entity status after 2017, the school's approved authority for 2017 is taken to be the same approved authority for the school in 2019.

## **Schedule 2—CTC score**

### ***Australian Education Regulation 2013***

**Item 1** inserts definitions used in the Amendment Regulations relevant to working out a non-government school's CTC score. These include definitions for:

- 2011 SES score
- 2016 SES score
- average DMI score
- DMI methodology document
- DMI score
- refined area based score.

Item 1 also inserts a note stating that the DMI methodology document could in 2020 be viewed on the department's website. Subsection 130(4) of the Act provides the legislative authority for the DMI methodology document to be incorporated into the Principal Regulation. In particular, subsection 130(4) provides that, despite the operation of the *Legislation Act 2003*, the Principal Regulation 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 DMI methodology document will be made freely available on the department's website. At the date of making this could be found at <https://docs.education.gov.au/node/53379>.

**Item 2** repeals the existing definition of statement of addresses, while **item 3** inserts a new definition of statement of student addresses. This is to differentiate between the residential addresses that schools provide for each person responsible for the student (pursuant to paragraph 58B(2)(a) of the Principal Regulation) and the residential addresses of each student (pursuant to new paragraph 58B(2)(aa) or section 21 as in force before the commencement of the Amendment Regulations). The definition excludes the information related to distance education students as that detail will not inform the calculation of a school's CTC score.

### **New Division 2 of Part 3—CTC score**

**Item 4** repeals Division 2 of Part 3 of the Principal Regulation which was previously used to determine a non-government school's SES score. The item inserts a new Division 2 of Part 3 prescribing the methodology to determine a school's CTC score under subsection 52(1) of the Act.

**Section 21** is made for the purposes of subsection 52(4) of the Act. Subsection 52(4) of the Act requires the Minister to, in making a determination of a non-government school's CTC score under

subsection 52(1), comply with the Principal Regulation (unless the Minister is satisfied doing so would result in a CTC score that does not accurately reflect the capacity of the persons responsible for students at the school to contribute financially to the operation of the school).

The section specifies how a non-government school's CTC score will be worked out in 2020 and 2021, and for 2022 and onwards.

For 2020 and 2021, a non-government school's CTC score may be its 2011 SES score, 2016 SES score, or average DMI score depending on which score is the most financially beneficial score for the school.

For 2022 or later years, a non-government school's CTC score will be its average DMI score or the refined area based score. Under subsection 21(3), the refined area based score may only be used where the Minister is satisfied that using the average DMI score is not reasonably practicable and that at least 95% of student addresses provided by a school can be assigned to the Statistical Area Level 1 (unless it is appropriate to disregard this). The note clarifies the Minister retains their discretion under the Act to determine a CTC score for a non-government school other than in accordance with the Principal Regulation for the reasons mentioned in subsection 52(4) of the Act.

A determination made by the Minister under subsection 52(1) of the Act may be reviewed under Division 3 of Part 9 of the Act. To avoid doubt, a review of this decision may involve a fresh reconsideration of the basis for calculating the non-government school's CTC score. For instance, a decision maker conducting a review would not be precluded from being satisfied that it was reasonably practicable to calculate a school's CTC score using the average DMI score and proceed to do so, even if the original decision maker had reached a different conclusion and used the refined area based score.

**Section 22** provides the meaning of average DMI score, introduces a cap and floor on the movement of average DMI scores for small and very small schools, and includes a method statement for how a DMI score is worked out.

While a three-year rolling average is the preferred approach, given that there are only two years of suitable linked data available to create a CTC score using a DMI methodology for 2020, a two-year average of DMI scores will be used for 2020. This is because the address collection conducted pursuant to section 58B of the Act as in force in relation to 2017 did not contain the names and residential addresses of each person responsible for the student. From 2021 and onwards, three years of linked data will be available and thus three years of DMI scores will be used to calculate the average DMI score.

Subsection 22(3) also describes the cap and floor on the movement of average DMI scores for small schools. Analysis has shown that small and very small schools are likely to experience greater volatility due to the annual changes in the student cohort, even with the application of an average DMI score. To reduce negative impacts on small and very small schools, there will be a cap and floor of two points from 2022 and onwards where the DMI methodology is used.

Subsection 22(4) sets out the method statement for working out a non-government school's DMI score for a year. The method uses the family income for each student, worked out by adding up the annual income of each person responsible for the student for the year, to calculate the median family income for the school. The final step is to standardise and weight the family income for the school.

Further detail on each of these steps is set out in the DMI methodology document published by the department.

**Section 23** is made for the purposes of subparagraph 21(3)(b)(i) and provides the circumstances for use of the refined area based score, and the applicable formula.

There will be instances where it is not reasonably practicable for a school's CTC score to be calculated using the DMI methodology.

Subsection 23(1) provides a non-exhaustive list of circumstances where the Minister may be satisfied that a refined area-based score may be used as the CTC score. Without limitation, this could be due to privacy concerns (often in the case of small schools), or newly established schools, or where data quality is low (for example low coverage where the circumstances of some population groups are not included due to a lack of data, impacting on the accuracy of results).

Paragraph 23(1)(c) specifies one of the circumstances by reference to the *Capacity to Contribute Data Validation and Quality Assurance Process* document published by the department and as in force from time to time. This is accompanied by a note stating that the document could in 2020 be viewed on the department's website. Subsection 130(4) of the Act provides the legislative authority for the document to be incorporated into the Principal Regulation. In particular, subsection 130(4) provides that, despite the operation of the *Legislation Act 2003*, the Principal Regulation 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 document will be made freely available on the department's website. At the date of making this could be found at <https://docs.education.gov.au/node/53378>.

The refined area-based score uses a similar methodology to the SES score, but the calculation focuses on the income dimensions of the Statistical Areas 1 to which student residential addresses are assigned. The method would use the latest ABS Census data available (currently the 2016 ABS Census of Housing and Population) combined with the latest available statement of student addresses, and would apply from 2022 where appropriate.

**Section 24** prescribes the method for calculating 2011 SES scores and 2016 SES scores. The formula in subsection (7) mirrors that for SES scores in the previous subsection 23(1) of the Principal Regulation. The 2011 SES score uses the most recent statement of student addresses between 2012 and 2016, otherwise the oldest statement after 2016. This is to maintain the previous methodology for calculating the capacity to contribute of a school, providing consistency and a period of transition. The 2016 SES score uses the oldest statement of student addresses provided for 2017 or a later year. The 2016 SES score provides an alternative CTC score based on the latest ABS Census data and provides consistency for schools by using the oldest statement of addresses.

**Section 24AAA** states that, if the Minister makes a determination of a CTC score for a school other than in accordance with the Principal Regulation for the reason mentioned in subsection 52(4) of the Act, the Minister must publish, in a way the Minister considers appropriate, the CTC score for the school and reasons for making the determination. The publication must occur within 30 days of making the determination. The purpose of this provision is to maintain transparency of CTC scores that are determined other than in accordance with the Principal Regulation. The required information will be published on the department's website. This provision relies on the power in paragraph 130(1)(b) of the Act to make regulations that are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

**Item 5** repeals subsection 58B(1) of the Principal Regulation, and inserts a new subsection 58B(1) that omits the previous reference to information on distance education students being exempt from inclusion in the information that a school must provide under section 52. Information on distance education students will now be required (see item 6).

**Item 6** inserts new paragraphs in subsection 58B(2) addressing a school's obligation to provide the residential address of each student (prior to these Amendment Regulations, this requirement was set out in section 21 of the Principal Regulation) and whether the student is a distance education student.

**Item 7** inserts a new subsection 65(2A) which makes it clear that the Minister may provide school education information to the ABS for the purposes of its assistance in determining a CTC score for a school. Section 65 of the Principal Regulation is made for the purposes of subsection 125(1) of the Act, which authorises the Minister to use or disclose school education information in accordance with the Principal Regulation. New subsection (2A) is included for the absence of doubt; paragraph 65(2)(b) already authorises the Minister to disclose school education information to the ABS.

This information expected to be disclosed to the ABS for the purposes of determining a CTC score for a school includes the statement of student addresses for the school, to link to information contained within the Multi-Agency Data Integration Project (**MADIP**), such as personal taxation information, to work out the school's median income.

This is the first time that personal taxation information will be used to calculate school funding. This may raise privacy and security concerns for parents and guardians. The school education information used to calculate a DMI score is a product of the MADIP and is contained in a secure environment with protections including strict confidentiality requirements imposed by the *Census and Statistics Act 1905*.

The MADIP has been subject to two privacy impact assessments (**PIAs**). The first of these, the *Independent Privacy Impact Assessment (PIA) for the Multi-Agency Data Integration Project (MADIP)*, was undertaken in 2018 and could in 2020 be viewed on the ABS' website (at [https://www.abs.gov.au/websitedbs/D3310114.nsf/4a256353001af3ed4b2562bb00121564/9099c77cb979d558ca258198001b27a0/\\$FILE/MADIP%20iPIA\\_2018.pdf](https://www.abs.gov.au/websitedbs/D3310114.nsf/4a256353001af3ed4b2562bb00121564/9099c77cb979d558ca258198001b27a0/$FILE/MADIP%20iPIA_2018.pdf)).

An updated PIA, the *Privacy Impact Assessment (PIA) Update for the Multi-Agency Data Integration Project (MADIP)*, was undertaken in 2019 and could in 2020 be viewed on ABS' website (at [https://www.abs.gov.au/websitedbs/D3310114.nsf/4a256353001af3ed4b2562bb00121564/9099c77cb979d558ca258198001b27a0/\\$FILE/2019%20MADIP%20PIA%20Update%20-%20PIA%20Report.pdf](https://www.abs.gov.au/websitedbs/D3310114.nsf/4a256353001af3ed4b2562bb00121564/9099c77cb979d558ca258198001b27a0/$FILE/2019%20MADIP%20PIA%20Update%20-%20PIA%20Report.pdf)).

In addition, in 2018 a PIA specific to the collection of the residential addresses of each person responsible for students at the school, and the handling of this information through MADIP, was undertaken. The *2018 Student Residential Address Collection: Additional required information Privacy Impact Assessment* could in 2020 be viewed on the former Department of Education and Training's website (at [https://docs.education.gov.au/system/files/doc/other/final\\_pia\\_2018\\_residential\\_address\\_collection.pdf](https://docs.education.gov.au/system/files/doc/other/final_pia_2018_residential_address_collection.pdf)).

**Item 8** is an application provision which provides that certain amendments in Schedule 2 of the Principal Regulation related to CTC scores apply to financial assistance for 2020 and each later year.

**Items 9, 10 and 11** add a note at the end of clause 14 and subclauses 15(2) and 15(3) to Schedule 1 of the Principal Regulation to clarify the definition of SES score was defined in the Act as previously in force in relation to 2017. This is to ensure that any payments made under this schedule relate to the definition of SES score at the time, and not the new definition at section 24.