



Non-government Schools (Loans Guarantee) Act 1977

Act No. 106 of 1977 as amended

This compilation was prepared on 14 November 2000
taking into account amendments up to Act No. 141 of 1987

The text of any of those amendments not in force
on that date is appended in the Notes section

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Notes to the *Non-government Schools (Loans Guarantee) Act* 1977

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An Act to authorize the giving of guarantees on behalf of the Commonwealth in respect of certain loans made to non-government schools in the States, and for purposes related thereto

1 Short title [see Note 1]

This Act may be cited as the *Non-government Schools (Loans Guarantee) Act 1977*.

2 Commencement [see Note 1]

This Act shall come into operation on the day on which it receives the Royal Assent.

3 Interpretation

In this Act, unless the contrary intention appears:

approved project, in relation to a non-government school, means a building project of that school that is approved under section 4.

building includes part of a building.

building project includes:

- (a) the purchase of land, with or without buildings;
- (b) the planning, erection, alteration or extension of a building or other facilities;
- (c) the development or preparation of land for building or other purposes;
- (d) the installation of water, electricity, sewerage or other services; and
- (e) the provision of furniture or equipment for a building or other facility.

Commonwealth Education Minister means the Minister.

guarantee means a guarantee in accordance with section 5.

non-government school means a school in a State that is not conducted, or proposed to be conducted, by or on behalf of the Government of the State, but does not include a school conducted, or proposed to be conducted, for the profit, direct or indirect, of an individual or individuals.

school includes a proposed school, or an institution or proposed institution similar to a school, but does not include:

- (a) a school or institution at which education is provided at a standard (however described) that is pre-school standard only or a proposed school or institution at which it is proposed that education be provided at a standard (however described) that is pre-school standard only; or
- (b) where the State Education Minister for a State notifies the Commonwealth Education Minister that a school or institution in the State that is specified in the notice is not recognized by the State Education Minister as a school and the Commonwealth Education Minister does not approve the school or institution as a school for the purposes of this definition—that school or institution.

school authority, in relation to a non-government school, means a body corporate, trustee or other person empowered to borrow moneys for the purposes of the school.

State Education Minister, in relation to a State, means the Minister of State for the State who is responsible, or principally responsible, for the administration of matters relating to primary education and secondary education in the State.

4 Approval of building projects

- (1) Subject to this section, the Minister may approve a building project of a non-government school for the purposes of this Act.
- (2) In considering an application for approval under subsection (1), the Minister shall have regard to all the circumstances of the case and, in particular, to the contribution that the building project will make to education in Australia.
- (3) A project shall not be approved under subsection (1) if the sole or principal object, or one of the principal objects, of the project is:

- (a) to provide housing or other residential accommodation for teaching or other staff; or
- (b) to provide facilities for use, wholly or principally, for or in relation to religious worship.

5 Guarantees

- (1) Subject to subsection (2), the Treasurer may, on behalf of the Commonwealth, give to a person a guarantee of:
 - (a) the due payment of:
 - (i) the whole or a specified part of the repayments of principal moneys required to be made under an agreement for the loan of moneys by the person to the school authority of a non-government school, being principal moneys required, in whole or in part, for the purpose of expenditure on an approved project of the school; and
 - (ii) the whole or a specified part of any interest required to be paid under the agreement on those principal moneys; or
 - (b) the due payment of the whole or a specified part of the repayments of principal moneys of the kind referred to in subparagraph (a)(i).
- (2) The Treasurer shall not give a guarantee under this section in relation to an agreement of the kind referred to in subparagraph (1)(a)(i) unless the Minister has certified that:
 - (a) he considers that the terms and conditions of the agreement are satisfactory;
 - (b) he is satisfied that, in the absence of the guarantee, the school authority would not be able to obtain a loan of moneys, or to obtain a loan of moneys on satisfactory terms and conditions, for the purpose of expenditure on the approved project in relation to which the guarantee is to be given; and
 - (c) he considers that there will not be made available to the school authority, out of moneys provided, or to be provided, by the Commonwealth to the State in which the school is situated under any Act that provides for the granting of financial assistance to the States, or to the States and the

Northern Territory, for or in relation to schools, moneys that will be expended in the payment of:

- (i) any part of the repayments of the principal moneys, or of the part of the repayments of principal moneys, as the case may be, in relation to which the guarantee is to be given; or
 - (ii) if the guarantee is also to be given in relation to the payment of interest, any part of the payments of interest, or of the part of the payments of interest, as the case may be, in relation to which the guarantee is to be given.
- (3) A guarantee under this section shall apply only in relation to principal moneys required by the school authority for the purpose of expenditure on the approved project in relation to which the guarantee is given and, if the guarantee is to apply in relation to the payment of interest, interest on such moneys.

7 Limit of guarantees

- (1) Guarantees given after the commencement of this Act and not later than 31 December 1977 shall not guarantee the repayment of amounts exceeding in the aggregate \$10,000,000.
- (2) Guarantees given in any year commencing after 31 December 1977 shall not guarantee the repayment of amounts exceeding in the aggregate \$10,000,000 or such higher amount as is prescribed in respect of that year.
- (3) In this section, **year** means a period of 12 months commencing on 1 January.

8 Recovery of any moneys paid by Commonwealth under a guarantee

- (1) If, under a guarantee, the Commonwealth repays any moneys lent to a school authority or pays any interest owing on such moneys, the school authority is liable to pay to the Commonwealth an amount equal to the amount of those moneys or that interest, as the case may be, and the amount so payable may be recovered as a

debt due to the Commonwealth by action in a court of competent jurisdiction.

- (2) Subsection (1) does not limit any rights of the Commonwealth, under any other Act or a law of a State or Territory or at common law or in equity, against any school authority or other person in relation to any guarantee, including rights to, or rights to the assignment of, mortgages or other securities given to secure the repayment of the loan in respect of which the guarantee was given.

9 Delegation by Treasurer

- (1) The Treasurer may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to the Minister or another person his powers under section 5.
- (2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Treasurer.
- (3) A delegation under this section does not prevent the exercise of a power by the Treasurer.

10 Delegation by Minister

- (1) The Minister may, either generally or as otherwise provided by the instrument of delegation, by writing signed by the Minister, delegate to the person occupying a specified office in the Department all or any of the Minister's powers under sections 4 and 5.
- (2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Minister.
- (3) A delegation under this section does not prevent the exercise of the power by the Minister.

11 Validity of guarantees

The validity of a guarantee purporting to have been given in pursuance of this Act shall not be called in question in any legal

proceedings on the ground that the guarantee was not given in accordance with the provisions of this Act.

12 Annual report by Minister

- (1) The Minister shall, as soon as practicable after 31 December 1978 and after each 31 December thereafter, cause a report containing particulars of the guarantees that have been given during the year ending on that date, and of any payments made during that year under any guarantee, to be laid before each House of the Parliament.
- (2) The first report by the Minister shall relate to the period commencing on the date of commencement of this Act and ending on 31 December 1978.

13 Regulations

The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Table of Acts**Notes to the *Non-government Schools (Loans Guarantee) Act 1977*****Note 1**

The *Non-government Schools (Loans Guarantee) Act 1977* as shown in this compilation comprises Act No. 106, 1977 amended as indicated in the Tables below.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Non-government Schools (Loans Guarantee) Act 1977</i>	106, 1977	19 Oct 1977	19 Oct 1977	
<i>Statute Law Revision Act 1981</i>	61, 1981	12 June 1981	S. 117: Royal Assent (a)	—
<i>Non-government Schools (Loans Guarantee) Amendment Act 1981</i>	161, 1981	19 Nov 1981	19 Nov 1981	S. 4(2)
<i>Statute Law (Miscellaneous Provisions) Act 1987</i>	141, 1987	18 Dec 1987	S. 3: Royal Assent (b)	S. 5(1)

Act Notes

- (a) The *Non-government Schools (Loans Guarantee) Act 1977* was amended by section 117 only of the *Statute Law Revision Act 1981*, subsection 2(1) of which provides as follows:
 - (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.
- (b) The *Non-government Schools (Loans Guarantee) Act 1977* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act 1987*, subsection 2(1) of which provides as follows:
 - (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.

Table of Amendments

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 3.....	am. Nos. 61 and 161, 1981; No. 141, 1987
S. 4.....	am. No. 61, 1981; No. 141, 1987
S. 5.....	rs. No. 161, 1981
S. 6.....	rep. No. 161, 1981
S. 8.....	am. No. 161, 1981
S. 10.....	am. No. 61, 1981 rs. No. 141, 1987