

NON-GOVERNMENT SCHOOLS (LOANS GUARANTEE) ACT 1977

No. 106 of 1977

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.

BE IT ENACTED by the Queen, and the Senate and House of Representatives of the Commonwealth of Australia, as follows:

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| Short title | 1. This Act may be cited as the <i>Non-government Schools (Loans Guarantee) Act 1977</i> . ¹ |
| Commence-
ment | 2. This Act shall come into operation on the day on which it receives the Royal Assent. ¹ |
| Interpret-
ation | <p>3. In this Act, unless the contrary intention appears—</p> <p>“approved project”, in relation to a non-government school, means a building project of that school that is approved under section 4;</p> <p>“building” includes part of a building;</p> <p>“building project” includes—</p> <ul style="list-style-type: none">(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; <p>“Commonwealth Education Minister” means the Minister;</p> <p>“guarantee” means a guarantee in accordance with section 5;</p> <p>“non-government school” means a school in a State that is not conducted by or on behalf of the Government of the State, but does not include a school conducted for the profit, direct or indirect, of an individual or individuals;</p> |

“school” includes an institution similar to a school, but does not include—

- (a) a school or institution at which education is provided at pre-school or kindergarten 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. (1) Subject to this section, the Schools Commission may approve a building project of a non-government school for the purposes of this Act. Approval of building projects

(2) In considering an application for approval under sub-section (1), the Commission 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 sub-section (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. (1) The Treasurer, on the recommendation of the Minister, may, on behalf of the Commonwealth, give to a person a guarantee of the due payment of 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. Guarantees

(2) 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 referred to in sub-section (1).

Recom-
mendation
by Minister
to Treasurer

6. (1) In this section, “loan agreement” means an agreement referred to in section 5.

(2) The Minister shall not recommend to the Treasurer the giving of a guarantee under section 5 in relation to a loan agreement unless—

- (a) the Minister considers that the terms and conditions of the loan agreement are satisfactory; and
- (b) the Minister is satisfied that 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 referred to in section 5 except on the condition that the due payment of the repayments of the principal moneys so lent would be the subject of a guarantee under that section.

(3) Where the Minister considers that there will 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, moneys that may be expended in the payment of the whole or a part of the repayments of principal moneys required to be made under the loan agreement, the Minister shall not recommend the giving of a guarantee under section 5 in relation to those principal moneys or that part of those principal moneys, as the case may be.

Limit of
guarantees

7. (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.

Recovery of
any money
expended by
Common-
wealth

8. (1) If, under a guarantee, the Commonwealth repays any moneys lent to a school authority, the school authority is liable to pay to the Commonwealth an amount equal to the amount of those moneys and the amount so payable may be recovered as a debt due to the Commonwealth by action in a court of competent jurisdiction.

(2) Sub-section (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. (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. Delegation
by Treasurer

(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. (1) The Schools Commission may, by resolution, either generally or as otherwise provided by the resolution, delegate to a full-time member of the Schools Commission its powers under section 4. Delegation
by Schools
Com-
mission

(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 Schools Commission.

(3) A delegation of a power under this section—

- (a) may be revoked by resolution by the Schools Commission (whether or not constituted by the persons constituting the Schools Commission at the time the power was delegated);
- (b) does not prevent the exercise of the power by the Schools Commission; and
- (c) continues in force notwithstanding a change in the membership of the Schools Commission.

(4) Section 34A of the *Acts Interpretation Act* 1901 applies in relation to a delegation under this section as if the Schools Commission were a person.

(5) A certificate signed by the Chairman of the Schools Commission stating any matter with respect to a delegation of a power under this section is *prima facie* evidence of that matter.

(6) A document purporting to be a certificate mentioned in subsection (5) shall, unless the contrary is established, be deemed to be such a certificate and to have been duly given.

(7) In this section—

“Chairman”, in relation to the Schools Commission, includes an acting Chairman of the Schools Commission;

“full-time member”, in relation to the Schools Commission, includes an acting member of the Schools Commission who is, under a term of his appointment as an acting member, required to give the whole of his time to the duties of his office as an acting member.

**Validity of
guarantees**

11. 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.

**Annual
report by
Minister**

12. (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.

Regulations

13. 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.

NOTE

1. Act No. 106, 1977; assented to 19 October 1977.