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About this compilation

This compilation

This is a compilation of the *Australian Education Act 2013* that shows the text of the law as amended and in force on 1 January 2014 (the *compilation date*).

This compilation was prepared on 2 December 2014.

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on ComLaw (www.comlaw.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on ComLaw for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on ComLaw for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act in relation to school education and reforms relating to school education, and for related purposes

Preamble

The Parliament of Australia acknowledges the following matters.

All students in all schools are entitled to an excellent education, allowing each student to reach his or her full potential so that he or she can succeed, achieve his or her aspirations, and contribute fully to his or her community, now and in the future.

The quality of a student's education should not be limited by where the student lives, the income of his or her family, the school he or she attends, or his or her personal circumstances.

The quality of education should not be limited by a school's location, particularly those schools in regional Australia.

It is essential that the Australian schooling system be of a high quality and be highly equitable in order for young Australians to become successful learners, confident and creative individuals, and active and informed citizens. A high quality and highly equitable Australian schooling system will also create a highly skilled, successful and inclusive workforce, strengthen the economy, and increase productivity, leading to greater prosperity for all.

If Australia is to be a prosperous nation with a high standard of living in the 21st century, the performance of Australia's schools, and school students, must continuously improve, particularly as school performance in countries around the world and in Australia's region is also improving.

It is also essential that Australian schooling provide school students with opportunities to engage with Australia's region. Through this engagement, Australia can maximise economic, cultural and social opportunities during the Asian century.

Section 1

To address these matters, future arrangements will be based on the needs of Australian schools and school students, and on evidence of how to provide an excellent education for school students. These arrangements will build on the *Melbourne Declaration on Educational Goals for Young Australians* (2008), which reaffirmed the importance of national collaboration and promoting high quality schooling for all Australian students, and successful reforms to date.

Schools will also need to adopt the opportunities offered by digital education and new evidence-based methods of teaching and learning.

Strong partnerships across the broader community are necessary to support all school students, including partnerships between teachers, parents, carers and families, not-for-profit and community organisations, and employers.

As Australia's schools are diverse, the Australian Government will recognise the role of the Governments of the States and Territories, non-government education authorities, parents, carers and families, not-for-profit and community organisations, other partners and schools in delivering school education, and work with them to support and lift the performance of schools and school students.

The Parliament of Australia enacts:

Part 1—Preliminary

Division 1—Preliminary

1 Short title

This Act may be cited as the *Australian Education Act 2013*.

2 Commencement

This Act commences on 1 January 2014.

3 Objects of this Act

- (1) The objects of this Act are the following:
- (a) to ensure that the Australian schooling system provides a high quality and highly equitable education for all students by having regard to the following national targets:
 - (i) for Australia to be placed, by 2025, in the top 5 highest performing countries based on the performance of school students in reading, mathematics and science;
 - (ii) for the Australian schooling system to be considered a high quality and highly equitable schooling system by international standards by 2025;
 - (iii) lift the Year 12 (or equivalent) or Certificate II attainment rate to 90% by 2015;
 - (iv) lift the Year 12 (or equivalent) or Certificate III attainment rate to 90% by 2020;
 - (v) at least halve the gap between Aboriginal and Torres Strait Islander students, and other students, in Year 12 or equivalent attainment rates by 2020 from the baseline in 2006;
 - (vi) halve the gap between Aboriginal and Torres Strait Islander students, and other students, in reading, writing and numeracy by 2018 from the baseline in 2008;
 - (b) to acknowledge the matters referred to in the Preamble;
 - (c) to provide a needs-based funding model for schools applied consistently across all schools which includes:
 - (i) a base amount of funding for every student; and
 - (ii) additional loadings for students and schools who need extra support;
 - (d) to implement the National Plan for School Improvement.
- (2) The Commonwealth will work with the governments of the States and Territories, and non-government education authorities, to implement the National Plan for School Improvement set out in the National Education Reform Agreement to meet the objects of this Act by addressing the reform directions set out in subsections (3) to (8).

Section 3

Note: The governments of the States and Territories, and non-government education authorities, that agree to implement the National Plan for School Improvement set out in the National Education Reform Agreement will be provided with financial assistance in accordance with Part 3.

Quality teaching

- (3) All teachers will have the skills, and support they require, to improve their performance over time and to deliver teaching of a high quality to all of their school students. The work of teachers will:
- (a) reflect rigorous professional standards and best practice; and
 - (b) be based on evidence of successful teaching methods.

Quality learning

- (4) Australian schooling will provide a high quality educational experience with an environment and curriculum that supports all school students to reach their full potential.

Empowered school leadership

- (5) Leaders in schools will have the resources, the skills, and greater power, to make decisions and implement strategies at the local level to obtain the best outcomes for their schools and school students.

Transparency and accountability

- (6) Support will be provided to schools to find ways to improve continuously by:
- (a) analysing and applying data on the educational outcomes of school students (including outcomes relating to the academic performance, attendance, behaviour and wellbeing of school students); and
 - (b) making schools more accountable to the community in relation to their performance and the performance of their school students.

- (7) Data collected on schools and school students will:
- (a) be of a higher quality; and
 - (b) contain more detail; and
 - (c) be more consistent; and
 - (d) be more available to the public;
- than data currently collected on schools and school students.

Meeting student need

- (8) Australian schooling will place the highest priority on:
- (a) identifying and addressing the needs of school students, including barriers to learning and wellbeing; and
 - (b) providing additional support to school students who require it.

Note: These reform directions are given effect to by this Act and relevant arrangements.

4 Guide to this Act

This Act provides Commonwealth financial assistance for schools. The financial assistance is provided to States under section 96 of the Constitution, and to Territories under section 122 of the Constitution.

Each school has an approved authority, which is approved by the Minister. For a government school located in a State or Territory, the approved authority is the State or Territory. For a non-government school, the approved authority is a body corporate that is approved by the Minister for the school.

Financial assistance is provided directly to a State or Territory for its government schools. Financial assistance for a non-government school located in a State or Territory is provided to the State or Territory which must give it to the approved authority for the school.

Section 4

The amount of recurrent funding that a school attracts for a year depends on whether the school is a participating school or a non-participating school. A participating school is a non-government school, or a government school of a participating State or Territory. (A participating State or Territory is a State or Territory that is a party to the National Education Reform Agreement and has a bilateral agreement with the Commonwealth in relation to implementing that Agreement.) An approved authority for more than one participating school must develop an implementation plan that explains how the authority intends to implement those reforms.

Financial assistance for participating schools is worked out using the formula in Division 2 of Part 3. The financial assistance consists of a base amount for all schools, plus loadings for schools with students with greater needs. The base amount and most of the loadings are worked out by reference to an amount per student called the SRS funding amount. (SRS is short for schooling resource standard.)

Not all participating schools will attract the amount worked out using the formula immediately. Some schools will move to that amount over a period of time. A special transitional rule also applies for special schools and special assistance schools.

Financial assistance for non-participating schools located in a State or Territory is worked out by reference to the amount the non-participating States and Territories received for 2013 through the national specific purpose payment for schools under the *Federal Financial Relations Act 2009*.

The Minister can determine other kinds of funding for any school under Part 5. The Minister can determine capital funding, which is ultimately provided to capital grants authorities and block grant authorities. The Minister can also determine funding for schools in special circumstances, and funding for non-government representative bodies for non-government schools.

Non-government representative bodies are bodies that represent approved authorities for non-government schools. A block grant authority or non-government representative body is approved by the Minister.

The Minister may require an amount to be repaid, reduce an amount that would otherwise be payable, or delay making a payment, if an amount is owed to the Commonwealth under this Act (or other similar Acts) or there is a failure to comply with a requirement of this Act.

5 Binding the Crown

- (1) This Act binds the Crown in each of its capacities.
- (2) This Act does not make the Crown liable to be prosecuted for an offence.

Division 2—Interpretation

6 Definitions

In this Act:

Aboriginal and Torres Strait Islander loading has the meaning given by subsection 37(1).

Aboriginal and Torres Strait Islander student has the meaning given by the regulations.

amount includes a nil amount.

approved authority for a school means the person that is approved as the approved authority for the school under section 73.

ARIA index value has the meaning given by the regulations.

Note: The Minister may determine the location of a school with more than one location for the purposes of working out the school's ARIA index value (see section 18).

ARIA student number has the meaning given by section 50.

ATSI percentage has the meaning given by subsection 37(2).

base amount has the meaning given by subsections 33(1), (2) and (3).

block grant authority for a school means the person that is approved as the block grant authority for the school under section 83.

capacity to contribute percentage has the meaning given by subsections 54(1), (2) and (3).

capital expenditure includes expenditure relating to any of the following:

- (a) investigating the need for:
 - (i) schools in particular areas; or

- (ii) schools of particular kinds in particular areas; or
- (iii) buildings or other facilities (or parts of buildings or other facilities) or equipment;
- (b) purchasing land, with or without buildings (or parts of buildings);
- (c) planning for the erection, alteration, extension, demolition or refurbishment of a building or other facility (or part of a building or other facility);
- (d) developing or preparing land for building or other purposes;
- (e) erecting, altering, extending, demolishing or refurbishing a building or other facility (or part of a building or other facility);
- (f) installing or upgrading water, electricity or any other services;
- (g) providing equipment, including information technology equipment;
- (h) providing furniture;
- (i) providing library materials or obtaining services and goods for cataloguing a library (or part of a library);
- (j) the administrative expenses of a capital grants authority in relation to administering other capital expenditure;
- (k) any other expenditure prescribed by the regulations for the purposes of this definition.

capital grants authority for a school means:

- (a) the approved authority for the school; and
- (b) if a block grant authority is also approved for the school—the block grant authority; and
- (c) if the school is a non-government school located in a State or Territory—the approved authority for government schools located in that State or Territory.

census day has the meaning given by subsection 7(1).

combined school means a school that provides both primary education and secondary education.

Section 6

Commonwealth share: a *Commonwealth share* for a school is the percentage for the school prescribed by, or worked out in accordance with, the regulations.

departmental official means an official (within the meaning of the *Financial Management and Accountability Act 1997*):

- (a) who is in, or part of, the Department; and
- (b) whose duties consist of, or include, dealing with matters relating to payments of financial assistance to a State or Territory under this Act.

distance education: a student receives *distance education* at a school if the student receives primary education or secondary education by distance education at the school in accordance with subsection 10(5).

government school means a school that is conducted by or on behalf of the government of a State or Territory.

highly equitable: the Australian schooling system is *highly equitable* if there is a limited relationship between a student's socioeconomic status and his or her educational performance, as measured by the Programme for International Student Assessment.

implementation plan means a plan developed for the purposes of Part 7.

inner regional school has the meaning given by subsection 13(1).

internal reviewer has the meaning given by subsection 120(3).

large school has the meaning given by subsection 43(1).

level of education: see section 15.

location loading has the meaning given by subsection 40(1).

location percentage has the meaning given by subsection 40(2).

low English proficiency loading has the meaning given by subsection 39(1).

low socioeconomic status student loading has the meaning given by subsection 38(1).

major city school has the meaning given by subsection 13(1).

majority Aboriginal and Torres Strait Islander school has the meaning given by subsections 8(1) and (2).

maximum lower limit has the meaning given by subsection 43(2).

maximum size loading has the meaning given by subsections 44(1) and (4).

maximum upper limit has the meaning given by subsection 43(3).

medium-sized school has the meaning given by subsection 43(1).

Ministerial Council means the Council of Commonwealth, State and Territory Ministers, as it exists from time to time, with responsibility for school education.

National Education Reform Agreement means the National Education Reform Agreement made between the Commonwealth and New South Wales on 23 April 2013 (and any other State or Territory that becomes a party to the agreement after that day), as in force from time to time.

new approved authority has the meaning given by paragraph 63A(1)(b).

new Commonwealth per student amount has the meaning given by subsection 58(6).

new per student amount has the meaning given by subsection 58(3).

non-government representative body for a non-government school means the person that is approved as the non-government representative body for the school under section 91.

non-government school means a school that is not a government school.

Section 6

non-participating school: a school is a ***non-participating school*** if:

- (a) there is an approved authority for the school; and
- (b) the approved authority is approved in relation to:
 - (i) one or more locations of the school; and
 - (ii) a level of education provided by the school at any of those locations; and
- (c) the school is a government school located in a State or Territory in relation to which no determination is in force under section 14 (Minister to determine participating States and Territories).

non-participating States and Territories means the States and Territories in relation to which no determination is in force under section 14 (Minister to determine participating States and Territories).

old Commonwealth per student amount: an approved authority's ***old Commonwealth per student amount*** is:

- (a) if section 59 applies in relation to the approved authority:
 - (i) for 2014—the amount determined by the Minister under paragraph 58(1)(b) for the authority; and
 - (ii) for any other year—the authority's old Commonwealth per student amount for the year, as indexed under subsection 60(2); and
- (b) if section 61 applies in relation to the approved authority:
 - (i) for 2013—the amount determined by the Minister under paragraph 58(1)(c) for the authority; and
 - (ii) for any other year—the authority's old Commonwealth per student amount for the year, as indexed under subsection 61(3); and
- (c) if section 62 applies in relation to the approved authority:
 - (i) for 2013—the amount determined by the Minister under paragraph 58(1)(c) for the authority; and

- (ii) for any other year—the authority’s old Commonwealth per student amount for the year, as indexed under subsection 62(2A).

old per student amount: an approved authority’s **old per student amount** for 2013 or 2014 is the amount determined by the Minister under paragraph 58(1)(a) for the authority for that year.

outer regional school has the meaning given by subsection 13(1).

overpayment has the meaning given by subsections 9(1) to (7).

overseas student: an **overseas student** is a person:

- (a) to whom one or more of the following subparagraphs apply:
 - (i) the person holds a visa in force under the *Migration Act 1958* that permits the person to travel to Australia for the purpose of undertaking a course provided by a body;
 - (ii) the person is included in such a visa in force under that Act;
 - (iii) the person is prescribed as an overseas student by regulations made for the purposes of this subparagraph; and
- (b) who is not excluded from being an overseas student by regulations made for the purposes of this paragraph.

participating government school means a participating school that is a government school.

participating school: a school is a **participating school** if:

- (a) there is an approved authority for the school; and
- (b) the approved authority is approved in relation to:
 - (i) one or more locations of the school; and
 - (ii) a level of education provided by the school at any of those locations; and
- (c) either:
 - (i) the school is a non-government school; or
 - (ii) the school is a government school located in a State or Territory in relation to which a determination is in force

Section 6

under section 14 (Minister to determine participating States and Territories).

participating State or Territory means a State or Territory that:

- (a) is a party to the National Education Reform Agreement; and
- (b) has a bilateral agreement with the Commonwealth.

personal information has the same meaning as in the *Privacy Act 1988*.

primary education: a person (other than an overseas student) receives **primary education** at a school, and a school provides **primary education**, if the person receives, or the school provides, education at a level that constitutes primary education for the school under section 15.

primary percentage has the meaning given by subsection 45(1).

primary school means a school (other than a combined school) that provides primary education.

primary student at a school means a person receiving primary education at the school (including a part-time student, but excluding an overseas student).

protected information means information obtained under or for the purposes of this Act.

receives, when used in relation to primary education or secondary education, has the meaning given by subsections 10(1) and (5).

recoverable payment has the meaning given by section 11.

relevant arrangement of an approved authority for a school means a written arrangement between the Commonwealth and the authority relating to grants of financial assistance provided in accordance with this Act to the authority for the school.

Note: For an approved authority for participating government schools, the National Education Reform Agreement is a relevant arrangement. For an approved authority for non-participating government schools, the

Intergovernmental Agreement (within the meaning of section 4 of the *Federal Financial Relations Act 2009*) is a relevant arrangement.

relevant person for a reviewable decision means:

- (a) for a reviewable decision referred to in column 1 of the table in subsection 118(1)—the person referred to in column 3 of that table in relation to that decision; and
- (b) for a reviewable decision prescribed by regulations made for the purposes of subsection 118(2)—the person specified by the regulations as the relevant person for that decision.

remote school has the meaning given by subsection 13(1).

reviewable decision has the meaning given by subsections 118(1) and (2).

school means a primary school, a secondary school or a combined school, and, where appropriate, a proposed school.

Note 1: Non-government schools that provide only distance education are taken not to be schools (see section 19).

Note 2: For references to school in Part 3 (funding for participating schools), see section 55.

secondary education: a person (other than an overseas student) receives **secondary education** at a school, and a school provides **secondary education**, if the person receives, or the school provides, education at a level that constitutes secondary education for the school under section 15.

secondary percentage has the meaning given by subsection 45(2).

secondary school means a school (other than a combined school) that provides secondary education.

secondary student at a school means a person receiving secondary education at the school (including a part-time student, but excluding an overseas student).

Secretary means the Secretary of the Department.

Section 6

SES score: a school's **SES score** is the number determined by the Minister under subsection 52(2) or (3).

size loading has the meaning given by subsections 42(1) to (4).

small school has the meaning given by subsection 43(1).

sole provider school: a school is a **sole provider school** if:

- (a) the school:
 - (i) has an ARIA index value of more than 5.92; or
 - (ii) is in a remote or very remote area (as defined in the MCEETYA Geographical Location Classification issued in July 2001, or any equivalent document); and
- (b) the distance between the school and any other school that provides the same level of education is more than 25 km.

Note: This distance is measured in a straight line (see section 35 of the *Acts Interpretation Act 1901*).

special assistance school means a school that:

- (a) is, or is likely to be, recognised by the State or Territory Minister for the school as a special assistance school; and
- (b) primarily caters for students with social, emotional or behavioural difficulties.

special school means a school that:

- (a) is, or is likely to be, recognised by the State or Territory Minister for the school as a special school; and
- (b) provides education under special programs, or special activities, designed specifically for students with disabilities.

SRS funding amount has the meaning given by subsections 34(1), (2) and (4).

starting amount has the meaning given by subsections 49(1) and (4).

State or Territory Minister for a school means the Minister of the State or Territory in which the school is located who has responsibility for school education.

student means a primary student or a secondary student.

student with disability has the meaning given by the regulations.

student with disability loading has the meaning given by subsection 36(1).

Territory means the Australian Capital Territory or the Northern Territory.

this Act includes any regulations made under this Act.

total entitlement has the meaning given by subsections 12(1) to (3).

total loading has the meaning given by section 35.

transition school has the meaning given by paragraph 63A(1)(a).

very remote school has the meaning given by subsection 13(1).

very small school has the meaning given by subsection 43(1).

year means a calendar year (except when used to refer to a year in a course of primary education or secondary education).

zero lower limit has the meaning given by subsection 43(4).

7 Definition of *census day*

- (1) A school's ***census day*** for a year is the day determined by the Minister for the school for the year under subsection (2).

Determining the census day

- (2) The Minister may determine, in writing, that a particular day in a year is the school's census day for the year.
- (3) The Minister must not determine a day to be a school's census day for a year less than 5 weeks before the day unless the Minister determines that special circumstances justify determining that day.

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If the Minister determines that such circumstances exist, the Minister may determine any day, including a past day.

Notifying census day

- (4) The Minister must:
- (a) notify the approved authority for a school of the school's census day for a year; and
 - (b) do so in a way that makes it reasonably likely the approved authority will become aware of the census day.

Example: A census day could be published on a website that the approved authority is likely to access regularly.

- (5) The notification must be given at least 5 weeks before the census day. If the Minister has determined that special circumstances exist under subsection (3), the notification must be given as soon as practicable.

When a student receives education on a census day

- (6) A student receives primary education or secondary education at a school on the school's census day for a year if:
- (a) the student is enrolled at the school on that day; and
 - (b) either:
 - (i) the student attends the school on a daily basis in the 4-week period that ends on that day (excluding school holidays); or
 - (ii) the Minister determines under subsection 10(2) that the student is a person who receives primary education or secondary education at the school.

Determination not legislative instrument

- (7) A determination under subsection (2) is not a legislative instrument.

8 Definition of *majority Aboriginal and Torres Strait Islander school*

- (1) A school is a *majority Aboriginal and Torres Strait Islander school* for a year if:
- (a) the school:
 - (i) has an ARIA index value of more than 10.53; or
 - (ii) is in a very remote area (as defined in the MCEETYA Geographical Location Classification issued in July 2001, or any equivalent document); and
 - (b) at least 50% of the students receiving primary education or secondary education at the school on the school's census day for the previous year are Aboriginal and Torres Strait Islander students.

Note: For when a student receives education at a school on a census day, see subsection 7(6).

- (2) A school is also a *majority Aboriginal and Torres Strait Islander school* for a year if:
- (a) the school is not covered by paragraph (1)(a); and
 - (b) at least 80% of the students receiving primary education or secondary education at the school on the school's census day for the previous year are Aboriginal and Torres Strait Islander students.

9 Definition of *overpayment*

Participating schools

- (1) A payment is an *overpayment* under this Act if:
- (a) the Commonwealth makes the payment to a State or Territory for a participating school for a year as a result of a determination made under paragraph 25(1)(a); and
 - (b) the total of the amount of the payment, and any previous payments made, as a result of the determination, to the State or Territory for the school for the year, exceeds the school's total entitlement for the year.

Note: **Total entitlement** is defined in section 12.

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Approved authorities during transition period

- (2) A payment is an **overpayment** under this Act if:
- (a) the Commonwealth makes the payment to a State or Territory for an approved authority for a year as a result of a determination made under paragraph 25(1)(b); and
 - (b) the total of the amount of the payment, and any previous payments made, as a result of the determination, to the State or Territory for the authority for the year, exceeds the authority's total entitlement for the year.

Non-participating schools

- (3) A payment is an **overpayment** under this Act if:
- (a) the Commonwealth makes the payment to a State or Territory for non-participating schools for a year as a result of a determination made under paragraph 25(1)(c); and
 - (b) the total of the amount of the payment, and any previous payments made, as a result of the determination, to the State or Territory for non-participating schools for the year, exceeds the total entitlement for those non-participating schools for the year.

Capital funding

- (4) A payment is an **overpayment** under this Act if:
- (a) the Commonwealth makes the payment to a State or Territory for a year for a capital grants authority or block grant authority for a school as a result of a determination made under paragraph 28(1)(a) or (b); and
 - (b) the total of the amount of the payment, and any previous payments made, as a result of the determination, to the State or Territory for the year for that authority and school, exceeds the amount determined under section 67 for the year for that authority and school.
- (5) A payment is an **overpayment** under this Act if:

- (a) the Commonwealth makes the payment to a State or Territory for a year for a block grant authority for a school as a result of a determination made under paragraph 28(1)(b); and
- (b) the total of the amount of the payment, and any previous payments made, as a result of that or any other determination made under that paragraph, to any State or Territory for the year for a block grant authority, exceeds the amount worked out for the year under section 68.

Special circumstances funding

- (6) A payment is an **overpayment** under this Act if:
 - (a) the Commonwealth makes the payment to a State or Territory for a school for a year as a result of a determination made under section 29; and
 - (b) the total of the amount of the payment, and any previous payments made, as a result of the determination, to the State or Territory for the school for the year, exceeds the amount determined for the school for the year under section 69.

Funding for non-government representative body

- (7) A payment is an **overpayment** under this Act if:
 - (a) the Commonwealth makes the payment to a State or Territory for a non-government representative body for a non-government school as a result of a determination made under section 30; and
 - (b) the total of the amount of the payment, and any previous payments made, as a result of the determination, to the State or Territory for the body for the year, exceeds the amount determined for the body for the year under section 70.

10 Definition of *receives*

Receiving primary or secondary education

- (1) A person **receives** primary education or secondary education (as the case requires) at a school only if:

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- (a) all of the following apply:
- (i) the person attends the school on a daily basis;
 - (ii) the location of the school at which the person attends is specified in the approval of the approved authority for the school;
 - (iii) the level of education provided by the school at that location is specified in that approval; or
- (b) the Minister determines under subsection (2) that the person receives primary education or secondary education at the school.
- (2) The Minister may determine that a person receives primary education or secondary education (as the case requires) at a specified school if the Minister is satisfied that special circumstances justify the determination.
- Note 1: Decisions under this section are reviewable decisions (see Division 3 of Part 9).
- Note 2: The regulations may prescribe matters that the Minister may or must have regard to in making a decision under this subsection (see paragraph 130(2)(b)).
- (3) A determination under subsection (2) may be made:
- (a) on the Minister's own initiative; or
 - (b) on application by the approved authority for the school.
- Note: For rules relating to applications, see Division 2 of Part 9.
- (4) An application by an approved authority for a school for a determination under subsection (2) that relates to a year must be made within:
- (a) 14 days of the school's census day for the year; or
 - (b) if the Minister allows a longer period (whether before or after the period referred to in paragraph (a))—that longer period.

Receiving primary or secondary education by distance education

- (5) A person **receives** primary education or secondary education by distance education at a school located in a State or Territory only if:

- (a) the person resides in the State or Territory; and
- (b) the State or Territory provides funding for the school (other than financial assistance provided to the State or Territory for the school in accordance with this Act), for primary education or secondary education (as the case requires), for students enrolled at the school who receive distance education (however described) from the school; and
- (c) the person is not approved as a home education student (however described) in accordance with the law of the State or Territory in which the person resides.

11 Definition of *recoverable payment*

A payment is a *recoverable payment* if:

- (a) the Commonwealth purports to make the payment as a payment of financial assistance to a State or Territory under this Act; and
- (b) the Commonwealth does not have the power to make the payment (apart from under section 112); and
- (c) the payment is not an overpayment.

12 Definition of *total entitlement*

- (1) A participating school's *total entitlement* for a year is the amount payable to a State or Territory under Division 2 of Part 3 for the school for the year.

Note: In some circumstances, section 27 may affect a participating school's total entitlement.

- (2) An approved authority's *total entitlement* for a year is the amount payable to a State or Territory under Division 5 of Part 3 for the authority for the year.

Note: In some circumstances, section 27 may affect an approved authority's total entitlement.

- (3) The *total entitlement* for a year for non-participating schools located in a State or Territory is the amount payable under Part 4 to

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the State or Territory for those non-participating schools for the year.

13 Definitions of kinds of schools based on location

- (1) The following table sets out definitions of kinds of schools based on location.

Definitions of kinds of schools based on location		
Item	Column 1	Column 2
	A school is this kind of school ...	if the school has an ARIA index value of ...
1	a <i>major city school</i>	1, or less than 1.
2	an <i>inner regional school</i>	more than 1, and less than 2.4.
3	an <i>outer regional school</i>	at least 2.4, and less than 6.
4	a <i>remote school</i>	at least 6, and less than 10.
5	a <i>very remote school</i>	at least 10, and less than or equal to 15.

- (2) The regulations may replace a number (the *original number*) in column 2 of the table with a new number. If the regulations do so, a reference to the original number in:
- (a) the table; and
 - (b) the fractions in section 41 (location percentage for certain schools), subsection 47(2) and section 50 (size loading for very small schools); and
 - (c) the denominator of the fraction in subsection 47(1) (size loading for very small schools);
- is taken to be a reference to the new number.

14 Minister to determine participating States and Territories

- (1) The Minister may determine, in writing, that a State or Territory is a participating State or Territory if the Minister is satisfied that the State or Territory is a participating State or Territory.

Note: A participating State or Territory is a party to the National Education Reform Agreement and has a bilateral agreement with the Commonwealth (see the definition of *participating State or Territory* in section 6).

- (2) The determination comes into force on 1 January of the year specified in the determination.
- (3) A determination under subsection (1) is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the determination.

15 Levels of education

- (1) The regulations may prescribe, for a State or Territory, the level of education that constitutes primary education or secondary education for schools located in the State or Territory.

Note: A level of education may be prescribed by reference to a particular year in a course of primary education or secondary education (such as year 6), or by reference to a student's age.

- (2) Before the Governor-General makes regulations for the purposes of subsection (1) for a State or Territory, the Minister must have regard to the arrangements made for providing education at government schools located in the State or Territory. This does not limit the matters to which the Minister may have regard.

Ministerial determination

- (3) The Minister may determine, in writing, that a different level of education from the level prescribed by the regulations constitutes primary education or secondary education for a specified special school, special assistance school or student at the school if the Minister is satisfied that the special circumstances justify the determination.

Note: A decision under this subsection is a reviewable decision (see Division 3 of Part 9).

- (4) A determination under subsection (3) is not a legislative instrument.

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16 Working out the number of students at a school for a year

A reference in this Act to the number of students at a school for a year is a reference to the number of students who receive primary education or secondary education at the school on the school's census day for the year.

Note: For when a student receives primary education or secondary education at a school on a census day, see subsection 7(6).

17 Part-time students

- (1) This section applies in relation to a reference in this Act to the number of students at a school (whether generally or by reference to a category of students).
- (2) If a student receives primary education or secondary education at a school part-time, then for the purposes of working out the number of students at the school, the student is to be counted as a fraction of a student representing the fraction of the full-time study load that the student undertakes at the school.

18 Minister to make determinations in relation to locations of schools

- (1) This section applies if a school has more than one location.
- (2) The Minister may, in writing, determine the location of the school for the purposes of working out the school's ARIA index value.
- (3) If not all locations of the school are in the same State or Territory, the Minister may, in writing, determine which State or Territory the school is located in.
- (4) For the purposes of this Act, a determination under subsection (2) or (3) has effect according to its terms.
- (5) A determination under subsection (2) or (3) is not a legislative instrument.

19 Non-government schools providing only distance education

- (1) A non-government school that provides primary education or secondary education only by distance education is taken not to be a school for the purposes of this Act.
- (2) The Minister may, by legislative instrument, determine that subsection (1) does not apply to a specified non-government school.

Part 2—Grants of financial assistance to States and Territories

20 Guide to this Part

This Part sets out the financial assistance that is payable by the Commonwealth to States and Territories under this Act, and the conditions that apply when that financial assistance is provided.

The conditions include requiring States and Territories to implement national policy initiatives for school education, as well as requiring a State or Territory to give any financial assistance provided to the State or Territory to the appropriate approved authority, capital grants authority, block grant authority or non-government representative body.

The Minister may determine the amounts and timing of individual payments of financial assistance.

21 Financial assistance for schools

Financial assistance is payable to a State or Territory for a year under the following provisions:

- (a) Division 2 of Part 3 (recurrent funding) for a participating school located in the State or Territory;
- (b) Division 5 of Part 3 (transitional recurrent funding for participating schools) for an approved authority;
- (c) Part 4 (recurrent funding) for non-participating schools located in the State or Territory;
- (d) Division 2 of Part 5 (capital funding) for a capital grants authority or block grant authority for a school if the Minister determines that financial assistance is payable for the authority;

- (e) Division 3 of Part 5 (special circumstances funding) for a school if the Minister determines that financial assistance is payable for the school for the year;
- (f) Division 4 of Part 5 (funding for non-government representative bodies) for a non-government representative body for a non-government school if the Minister determines that financial assistance is payable for the body for the year.

22 Conditions of financial assistance—implementing national policy initiatives relating to school education

- (1) A payment of financial assistance under this Act to a State or Territory is subject to the condition that the State or Territory implement national policy initiatives for school education in accordance with the regulations.

Note: The national policy initiatives are those agreed policy initiatives that States and Territories have responsibility for implementing for the school education system generally. They include:

- (a) overseeing the school education system in the State or Territory (including through consistent regulation of the provision of school education, and working cooperatively with other governments and non-government education authorities to provide a high quality and highly equitable education system); and
 - (b) supporting the work of national education institutions (including the Australian Curriculum, Assessment and Reporting Authority, the Australian Institute for Teaching and School Leadership Ltd, and Education Services Australia Ltd); and
 - (c) improving the quality of teachers (including through nationally consistent registration processes using national professional standards, and through accrediting initial teacher education courses); and
 - (d) addressing Aboriginal and Torres Strait Islander educational disadvantage (including through implementing the Aboriginal and Torres Strait Islander Education Plan agreed to by the States and Territories).
- (2) Before the Governor-General makes regulations for the purposes of this section, the Minister must have regard to:
 - (a) any decisions of the Ministerial Council relating to national policy initiatives for school education; and

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- (b) any relevant arrangement of a State or Territory (in its capacity as an approved authority for government schools).

23 Conditions of financial assistance—conditions relating to payments to States and Territories for non-government schools

- (1) The following payments of financial assistance are subject to the conditions in this section:
 - (a) a payment under Division 2 of Part 3 (recurrent funding for participating schools) to a State or Territory for a non-government school;
 - (b) a payment under Division 5 of Part 3 (transitional recurrent funding for participating schools) to a State or Territory for an approved authority for a non-government school;
 - (c) a payment under Division 2 of Part 5 (capital funding) to a State or Territory for a capital grants authority for a non-government school, or a block grant authority;
 - (d) a payment under Division 3 of Part 5 (special circumstances funding) to a State or Territory for a non-government school;
 - (e) a payment under Division 4 of Part 5 (funding for non-government representative body) to a State or Territory for a non-government representative body for a non-government school.

Note: For the consequences of failing to comply with this section, see Division 2 of Part 8.

Payment to be made to relevant authority or body

- (2) The State or Territory is required:
 - (a) to pay to the approved authority for a school each payment referred to in paragraph (1)(a) or (d) that is paid to the State or Territory for the school; and
 - (b) to pay to the approved authority each payment referred to in paragraph (1)(b) that is paid to the State or Territory for the authority; and

- (c) to pay to the capital grants authority or block grant authority for a school each payment referred to in paragraph (1)(c) that is paid to the State or Territory for the authority; and
- (d) to pay to the non-government representative body for a school each payment referred to in paragraph (1)(e) that is paid to the State or Territory for the body; and
- (e) when making a payment referred to in any of paragraphs (a) to (d) of this subsection, to describe the payment as a payment made out of money paid to the State or Territory by the Commonwealth.

Payment to be made as soon as practicable

- (3) The State or Territory is required to make a payment referred to in subsection (1):
 - (a) as soon as practicable after the amount is paid to the State or Territory; or
 - (b) within a further period allowed by the Minister (whether the Minister allows this before or after the end of the time referred to in paragraph (a)).

24 Condition of financial assistance—recovering amounts

A payment of financial assistance under this Act to a State or Territory is subject to the condition that the State or Territory comply with any requirements prescribed by the regulations in relation to recovering amounts, as a result of a determination made under paragraph 110(1)(a) or (b) in relation to a State or Territory, from:

- (a) the State or Territory; or
- (b) an approved authority, a capital grants authority, a block grant authority or a non-government representative body.

25 Minister to determine timing and amounts of recurrent funding

- (1) The Minister may, in writing, determine:

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- (a) an amount or amounts of payments of financial assistance that it appears to the Minister are or will become payable under Division 2 of Part 3 (recurrent funding for participating schools) to a State or Territory for a year for a participating school that is located in the State or Territory; and
- (b) an amount or amounts of payments of financial assistance that it appears to the Minister are or will become payable under Division 5 of Part 3 (transitional recurrent funding for participating schools) to a State or Territory for a year for an approved authority; and
- (c) an amount or amounts of payments of financial assistance that it appears to the Minister are or will become payable under Part 4 (recurrent funding for non-participating schools) to a State or Territory for a year for non-participating schools located in the State or Territory; and
- (d) when the payments referred to in paragraphs (a) to (c) are to be made.

Note: A State or Territory is entitled to be paid a certain amount (see section 26).

Determination of payments in advance

- (2) An amount may be determined, and a payment made under subsection (1), for a year:
 - (a) taking account of information from a previous year (including information from a census day of a previous year); and
 - (b) before the beginning of the year.

Determinations after the end of the year

- (3) To avoid doubt, a determination for a school for a year may be made after the end of the year.

26 Entitlement to recurrent funding

- (1) The total amount of payments made under paragraph 25(1)(a) to a State or Territory for a participating school for a year must equal

the amount determined under subsection (4) as the school's total entitlement for the year.

Note 1: *Total entitlement* is defined in section 12.

Note 2: The total entitlement may be reduced under section 110 (action Minister may take for failure to comply with this Act, and to require amounts to be repaid).

- (2) The total amount of payments made under paragraph 25(1)(b) to a State or Territory for an approved authority for a year must equal the amount determined under subsection (4) as the authority's total entitlement for the year.
- (3) The total amount of payments made under paragraph 25(1)(c) to a State or Territory for non-participating schools for a year must equal the amount determined under subsection (4) as the total entitlement for those non-participating schools for the year.
- (4) For the purposes of subsections (1) to (3), the Minister may determine an amount that the Minister is satisfied is the relevant total entitlement.

Note: A decision under this subsection is a reviewable decision if the total entitlement relates to an amount that is payable under Division 2 or 5 of Part 3 (see Division 3 of Part 9). (Total entitlements relating to amounts determined under Part 4 are not reviewable.)

Determination not legislative instrument

- (5) A determination under this section is not a legislative instrument.

27 Pro-rating of recurrent funding

- (1) The total entitlement for a participating school, or an approved authority for a participating school, for a year is to be determined under section 26 in accordance with the regulations if:
 - (a) no student receives primary education or secondary education at the school, or at a location of the school, during a part of the year (except school holidays); or

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- (b) the approval of the school's approved authority is varied during the year to change a level of education for a location of the school; or
 - (c) the school becomes or ceases to be entitled to financial assistance under Part 3.
- (2) Without limiting subsection (1), the regulations may prescribe:
- (a) that no financial assistance is payable for a school for a year in prescribed circumstances; or
 - (b) that a full amount of financial assistance is payable for a school for a year in prescribed circumstances; or
 - (c) that an amount of financial assistance is to be determined for a year on a pro rata basis set out in the regulations in prescribed circumstances.

28 Minister to determine timing and amounts of capital funding

- (1) The Minister may, in writing, determine:
- (a) an amount or amounts of payments of financial assistance that have been determined under subsection 67(1) (capital funding for capital grants authorities) to be payable to a State or Territory for a year for a capital grants authority; and
 - (b) an amount or amounts of payments of financial assistance that have been determined under subsection 67(2) (capital funding for block grant authorities) to be payable to a State or Territory for a year for a block grant authority; and
 - (c) when the payments referred to in paragraphs (a) and (b) are to be made.

Note: The amount payable to a State or Territory may be reduced under section 110 (action Minister may take for failure to comply with this Act, and to require amounts to be repaid).

Determinations not legislative instruments

- (2) A determination under this section is not a legislative instrument.

29 Minister to determine timing and amounts of special circumstances funding

- (1) The Minister may, in writing, determine:
- (a) an amount or amounts of payments of financial assistance that have been determined under Division 3 of Part 5 (special circumstances funding) to be payable to a State or Territory for a year for a school that is located in the State or Territory; and
 - (b) when the payments referred to in paragraph (a) are to be made.

Note: The amount payable to a State or Territory may be reduced under section 110 (action Minister may take for failure to comply with this Act, and to require amounts to be repaid).

Determinations not legislative instruments

- (2) A determination under this section is not a legislative instrument.

30 Minister to determine timing and amounts of funding for non-government representative body

- (1) The Minister may, in writing, determine:
- (a) an amount or amounts of payments of financial assistance that have been determined under Division 4 of Part 5 (funding for non-government representative body) to be payable to a State or Territory for a year for a non-government representative body; and
 - (b) when the payments referred to in paragraph (a) are to be made.

Note: The amount payable to a State or Territory may be reduced under section 110 (action Minister may take for failure to comply with this Act, and to require amounts to be repaid).

Determinations not legislative instruments

- (2) A determination under this section is not a legislative instrument.

Part 3—Recurrent funding for participating schools

Division 1—Guide to this Part

31 Guide to this Part

Financial assistance for participating schools is payable by the Commonwealth each year, based on a formula in Division 2 of this Part. The formula produces the Commonwealth share of a total amount of funding.

All participating schools are entitled to a base amount of funding for every student. Students and schools who need extra support will also attract additional loadings.

The base amount, and most of the loadings, are worked out by reference to an amount per student called the SRS funding amount. (SRS is short for schooling resource standard). There is a different SRS funding amount for primary and secondary students, which is indexed yearly.

The base amount for a school for a year reflects:

- (a) the number of students at the school for the year; and
- (b) the SRS funding amount for the year for a student at the school; and
- (c) the capacity of the school's community to contribute financially to the school.

The following loadings are also provided:

- (a) a loading for students with disability;
- (b) a loading for Aboriginal and Torres Strait Islander students;
- (c) a loading for students with a low socioeconomic status;
- (d) a loading for students who have low English proficiency;
- (e) a loading for schools that are not in major cities;
- (f) a loading for schools that are not large schools.

The loadings (except the size loading) are a percentage of the relevant SRS funding amount multiplied by the number of students at a school that qualify for that loading. The size loading provides an amount based on the total number of students at a school. Small schools, and very small schools in very remote areas with a certain number of students, are entitled to the maximum size loading while large schools are not entitled to any size loading. All other schools are entitled to a proportion of the maximum size loading.

Not all participating schools will attract the amount worked out using the formula immediately. Whether a particular school attracts funding using the formula depends on comparing an old per student amount for the school's approved authority and a new per student amount. Approved authorities whose old per student amount for 2014 is less than their new per student amount for 2014 will move to the amount worked out using the formula over a period of time. Approved authorities whose old per student amount for 2013, increased by 3%, is more than their new per student amount for 2014 will continue to receive the Commonwealth's share of the old per student amount, plus indexation, until the amount worked out using the formula catches up.

Part 3 Recurrent funding for participating schools

Division 1 Guide to this Part

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A special transitional rule applies for special schools and special assistance schools to ensure that the approved authority for those schools is paid at least the Commonwealth's share of the old per student amount for those students.

Division 2—The funding formula for participating schools

32 The amount payable for a participating school

The amount of financial assistance that is payable under this Division to a State or Territory for a year for a participating school is worked out using the following formula:

$$\left(\begin{array}{l} \text{The school's base} \\ \text{amount for the year} \end{array} + \begin{array}{l} \text{The school's total} \\ \text{loading for the year} \end{array} \right) \times \begin{array}{l} \text{The Commonwealth} \\ \text{share for the school} \end{array}$$

Note 1: During the transition period, the amount of financial assistance that is payable to a State or Territory may be worked out under Division 5.

Note 2: This amount may be rounded up or down (see section 56).

33 Base amount for schools

- (1) A primary school or secondary school's **base amount** for a year is worked out using the following formula:

$$\begin{array}{l} \text{The number} \\ \text{of students} \\ \text{at the school} \\ \text{for the year} \end{array} \times \begin{array}{l} \text{The SRS funding} \\ \text{amount for the year} \\ \text{for a student} \\ \text{at the school} \end{array} \times \left(1 - \begin{array}{l} \text{The school's} \\ \text{capacity to} \\ \text{contribute} \\ \text{percentage} \end{array} \right)$$

Note: To work out the number of students at a school for a year, see sections 16 and 17.

- (2) To work out the **base amount** for a year for a combined school, add up the following amounts:
- the amount that would be the school's base amount for the year if the school were a primary school consisting only of those students at the school who are primary students;
 - the amount that would be the school's base amount for the year if the school were a secondary school consisting only of those students at the school who are secondary students.

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- (3) To work out the **base amount** for a year for a school that is not covered by subsection 54(1) (capacity to contribute percentage) at which students receive distance education, add up the following amounts:
- (a) the amount that would be the school's base amount under subsection (1) or (2) for the year excluding students receiving distance education at the school;
 - (b) the amount that would be the school's base amount under subsection (1) or (2) for the year if:
 - (i) the school were a school consisting only of those students receiving distance education at the school; and
 - (ii) the SRS funding amount for a student at the school were the percentage of that amount set out in subsection (4); and
 - (iii) the school's capacity to contribute percentage were 0%.
- (4) For the purposes of subparagraph (3)(b)(ii), the percentage is:
- (a) 35%; or
 - (b) if the regulations prescribe another percentage for the purposes of this paragraph—that other percentage.

Note 1: The percentage set out in this subsection maintains support for a school, while recognising the recurrent cost structure and operating profile of the school.

Note 2: A school attracts 100% of the loadings for students who receive distance education at the school.

34 SRS funding amounts

SRS funding amount for a primary student

- (1) The **SRS funding amount** for a year for a primary student is:
- (a) for 2014—\$9,271; or
 - (b) if the regulations prescribe another amount for a primary student for the year—that other amount; or
 - (c) otherwise—the SRS funding amount for a primary student for the year, as indexed under subsection (3).

Note: For students receiving distance education, see subsection 33(3).

SRS funding amount for a secondary student

- (2) The **SRS funding amount** for a year for a secondary student is:
- (a) for 2014—\$12,193; or
 - (b) if the regulations prescribe another amount for a secondary student for the year—that other amount; or
 - (c) otherwise—the SRS funding amount for a secondary student for the year, as indexed under subsection (3).

Indexation of SRS funding amounts

- (3) An SRS funding amount for a primary student or a secondary student for a year is indexed as follows:

$$\frac{\text{The SRS funding amount for such a student for the previous year}}{\text{The SRS funding amount for such a student for the previous year}} \times 103.6\%$$

SRS funding amount for a student at a combined school

- (4) For the purposes of Division 3 (loadings), the **SRS funding amount** for a year for a student at a combined school is worked out in accordance with the following formula:

$$\frac{\left(\begin{array}{l} \text{The number of primary students at the school for the year} \\ \times \\ \text{SRS funding amount for the year for a primary student} \end{array} \right) + \left(\begin{array}{l} \text{The number of secondary students at the school for the year} \\ \times \\ \text{SRS funding amount for the year for a secondary student} \end{array} \right)}{\text{The number of students at the school for the year}}$$

Note: The SRS funding amounts in subsections (1) and (2) are used to work out a combined school's base amount under section 33.

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35 School's total loading

A school's ***total loading*** for a year is the total of the following amounts:

- (a) the school's student with disability loading for the year;
- (b) the school's Aboriginal and Torres Strait Islander loading for the year;
- (c) the school's low socioeconomic status student loading for the year;
- (d) the school's low English proficiency loading for the year;
- (e) the school's location loading for the year;
- (f) the school's size loading for the year.

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Subdivision A—Loadings (except location and size loadings)

36 Student with disability loading

- (1) A school's *student with disability loading* for a year is the amount worked out using the following formula:

$$\begin{array}{r} \text{The disability} \\ \text{loading percentage} \\ \text{for the school} \end{array} \times \begin{array}{r} \text{The SRS} \\ \text{funding amount} \\ \text{for the year} \\ \text{for a student} \\ \text{at the school} \end{array} \times \begin{array}{r} \text{The number of} \\ \text{students with} \\ \text{disability at the} \\ \text{school for} \\ \text{the year} \end{array}$$

Note: This amount may be rounded up or down (see section 56).

- (2) The *disability loading percentage* is the percentage prescribed for the school by the regulations.
- (3) The number of students with disability at a school for a year is the number of such students receiving primary education or secondary education at the school on the school's census day for the year.

Note 1: For when a student receives education at a school on a census day, see subsection 7(6).

Note 2: For part-time students, see section 17.

37 Aboriginal and Torres Strait Islander loading

- (1) A school's *Aboriginal and Torres Strait Islander loading* for a year is the amount worked out using the following formula:

$$\begin{array}{r} \text{The school's} \\ \text{ATSI percentage} \\ \text{for the year} \end{array} \times \begin{array}{r} \text{The SRS funding} \\ \text{amount for the year} \\ \text{for a student} \\ \text{at the school} \end{array} \times \begin{array}{r} \text{The number of} \\ \text{Aboriginal and} \\ \text{Torres Strait Islander} \\ \text{students at the school} \\ \text{for the year} \end{array}$$

Note: This amount may be rounded up or down (see section 56).

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- (2) A school's *ATSI percentage* for a year is the following (expressed as a percentage):

$$\frac{1}{5} + \frac{\text{The number of Aboriginal and Torres Strait Islander students at the school for the year}}{\text{The number of students at the school for the year}}$$

- (3) The number of Aboriginal and Torres Strait Islander students at a school for a year is the number of such students receiving primary education or secondary education at the school on the school's census day for the year.

Note 1: For when a student receives education at a school on a census day, see subsection 7(6).

Note 2: For part-time students, see section 17.

38 Low socioeconomic status student loading

- (1) A school's *low socioeconomic status student loading* for a year is the amount worked out using the following formula:

$$\frac{\text{The school's quartile 1 amount for the year}}{\text{The school's quartile 2 amount for the year}}$$

Note: This amount may be rounded up or down (see section 56).

A school's quartile 1 amount

- (2) A school's *quartile 1 amount* for a year is the amount worked out using the following formula:

$$\frac{\text{The school's quartile 1 percentage for the year}}{\text{The SRS funding amount for the year for a student at the school}} \times \frac{\text{The number of students at the school for the year who are in quartile 1}}{\text{The number of students at the school for the year who are in quartile 1}}$$

- (3) A school's **quartile 1 percentage** for a year is the lower of 50%, and the amount worked out using the following formula (expressed as a percentage):

$$\frac{3}{20} + \left(\frac{\text{The number of students at the school for the year who are in quartile 1}}{\text{The number of students at the school for the year}} \times \frac{7}{15} \right)$$

Note: To work out the number of students at a school for a year, see sections 16 and 17.

- (4) The number of students at a school for a year who are in quartile 1 is the number prescribed by the regulations.

A school's quartile 2 amount

- (5) A school's **quartile 2 amount** for a year is the amount worked out using the following formula:

$$\frac{\text{The school's quartile 2 percentage for the year}}{\text{The school's quartile 2 percentage for the year}} \times \frac{\text{The SRS funding amount for the year for a student at the school}}{\text{The SRS funding amount for the year for a student at the school}} \times \frac{\text{The number of students at the school for the year who are in quartile 2}}{\text{The number of students at the school for the year who are in quartile 2}}$$

- (6) A school's **quartile 2 percentage** for a year is the lower of 37.5%, and the amount worked out using the following formula (expressed as a percentage):

$$\frac{3}{40} + \left(\frac{\text{The number of students at the school for the year who are in quartile 2}}{\text{The number of students at the school for the year}} \times \frac{2}{5} \right)$$

- (7) The number of students at a school for a year who are in quartile 2 is the number prescribed by the regulations.
-

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39 Low English proficiency loading

- (1) A school's *low English proficiency loading* for a year is the amount worked out using the following formula:

$$10\% \times \frac{\text{The SRS funding amount for the year for a student at the school}}{\text{The number of students at the school for the year who have low English proficiency}}$$

Note: This amount may be rounded up or down (see section 56).

- (2) The number of students at a school for a year who have low English proficiency is the number prescribed by the regulations.

Note: For part-time students, see section 17.

Subdivision B—Location loading

40 Location loading

- (1) A school's *location loading* for a year is the amount worked out using the following formula:

$$\text{The school's location percentage} \times \left[\left(\frac{\text{The SRS funding amount for the year for a student at the school}}{\text{The number of students at the school for the year}} \right) + \text{The school's size loading for the year} \right]$$

Note 1: To work out the number of students at a school for a year, see sections 16 and 17.

Note 2: This amount may be rounded up or down (see section 56).

Note 3: For the locations of a school that are covered by this Part, see section 55.

- (2) A school's *location percentage* is set out in the following table.

Location percentage		
Item	For this kind of school ...	the school's location percentage is ...
1	a major city school	0%.
2	an inner regional school	the percentage worked out under subsection 41(1).
3	an outer regional school	the percentage worked out under subsection 41(2).
4	a remote school	the percentage worked out under subsection 41(3).
5	a very remote school	the percentage worked out under subsection 41(4).

41 Location percentage for certain schools

Inner regional schools

- (1) The location percentage for an inner regional school is the number worked out using the following formula divided by 100 (expressed as a percentage):

$$\frac{\text{The school's ARIA index value} - 1}{2.4 - 1} \times 10$$

Note: The numbers referred to in a fraction in a formula in this section may be changed if regulations are made for the purposes of subsection 13(2).

Outer regional schools

- (2) The location percentage for an outer regional school is the number worked out using the following formula divided by 100 (expressed as a percentage):

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$$10 + \left(\frac{\text{The school's ARIA index value} - 2.4}{6 - 2.4} \times 20 \right)$$

Remote schools

- (3) The location percentage for a remote school is the number worked out using the following formula divided by 100 (expressed as a percentage):

$$30 + \left(\frac{\text{The school's ARIA index value} - 6}{10 - 6} \times 40 \right)$$

Very remote schools

- (4) The location percentage for a very remote school is the number worked out using the following formula divided by 100 (expressed as a percentage):

$$70 + \left(\frac{\text{The school's ARIA index value} - 10}{15 - 10} \times 10 \right)$$

Subdivision C—Size loading

42 Size loading

- (1) The *size loading* for a school that is a small school for a year is the school's maximum size loading for the year.

Note 1: A school's maximum size loading for a year is worked out under section 44.

Note 2: The kinds of school referred to in this section are defined in section 43.

- (2) The **size loading** for a school that is a very small school for a year is the amount worked out in accordance with section 46.

Note: A very small school that is very remote or has more than a certain number of students is entitled to the maximum size loading. Other very small schools are entitled to a proportion of that maximum size loading, depending on their remoteness and size.

- (3) The **size loading** for a school that is a medium-sized school for a year is the amount worked out in accordance with section 51.

Note: A medium-sized school is entitled to a proportion of the maximum size loading, depending on its size.

- (4) The **size loading** for a school that is a large school for a year is zero.

43 Definitions—kinds of schools based on size

- (1) The following table sets out definitions of kinds of schools based on size.

Definitions of kinds of schools based on size		
Item	Column 1 A school is this kind of school for a year ...	Column 2 if the school has this number of students at the school for the year ...
1	a <i>very small school</i>	less than the school's maximum lower limit.
2	a <i>small school</i>	(a) more than or equal to the school's maximum lower limit; and (b) less than or equal to the school's maximum upper limit.
3	a <i>medium-sized school</i>	(a) more than the school's maximum upper limit; and (b) less than the school's zero lower limit.
4	a <i>large school</i>	more than or equal to the school's zero lower limit.

Note: The maximum upper and lower limits are the numbers of students required for a school to be entitled to the maximum size loading. The

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zero lower limit is the number of students at or above which a school is not entitled to any size loading.

(2) A school's *maximum lower limit* is:

(a) for a primary school:

(i) 15; or

(ii) if the regulations prescribe another number as the maximum lower limit for a primary school—that number; and

(b) for a secondary school:

(i) 100; or

(ii) if the regulations prescribe another number as the maximum lower limit for a secondary school—that number; and

(c) for a combined school for a year—the amount worked out using the following formula:

$$\left(\begin{array}{l} \text{The} \\ \text{maximum} \\ \text{lower} \\ \text{limit for a} \\ \text{primary} \\ \text{school} \end{array} \times \begin{array}{l} \text{The} \\ \text{school's} \\ \text{primary} \\ \text{percentage} \\ \text{for the year} \end{array} \right) + \left(\begin{array}{l} \text{The} \\ \text{maximum} \\ \text{lower} \\ \text{limit for a} \\ \text{secondary} \\ \text{school} \end{array} \times \begin{array}{l} \text{The} \\ \text{school's} \\ \text{secondary} \\ \text{percentage} \\ \text{for the year} \end{array} \right)$$

Note: The *primary percentage* and *secondary percentage* are defined in section 45.

(3) A school's *maximum upper limit* is:

(a) for a primary school:

(i) 200; or

(ii) if the regulations prescribe another number as the maximum upper limit for a primary school—that number; and

(b) for a secondary school:

(i) 500; or

(ii) if the regulations prescribe another number as the maximum upper limit for a secondary school—that number; and

- (c) for a combined school for a year—the amount worked out using the following formula:

$$\left(\begin{array}{l} \text{The} \\ \text{maximum} \\ \text{upper} \\ \text{limit for a} \\ \text{primary} \\ \text{school} \end{array} \times \begin{array}{l} \text{The} \\ \text{school's} \\ \text{primary} \\ \text{percentage} \\ \text{for the year} \end{array} \right) + \left(\begin{array}{l} \text{The} \\ \text{maximum} \\ \text{upper} \\ \text{limit for a} \\ \text{secondary} \\ \text{school} \end{array} \times \begin{array}{l} \text{The} \\ \text{school's} \\ \text{secondary} \\ \text{percentage} \\ \text{for the year} \end{array} \right)$$

- (4) A school's **zero lower limit** is:

- (a) for a primary school:

(i) 300; or

(ii) if the regulations prescribe another number as the zero lower limit for a primary school—that number; and

- (b) for a secondary school:

(i) 700; or

(ii) if the regulations prescribe another number as the zero lower limit for a secondary school—that number; and

- (c) for a combined school for a year—the amount worked out using the following formula:

$$\left(\begin{array}{l} \text{The zero} \\ \text{lower limit} \\ \text{for a} \\ \text{primary} \\ \text{school} \end{array} \times \begin{array}{l} \text{The school's} \\ \text{primary} \\ \text{percentage} \\ \text{for the year} \end{array} \right) + \left(\begin{array}{l} \text{The zero} \\ \text{lower limit} \\ \text{for a} \\ \text{secondary} \\ \text{school} \end{array} \times \begin{array}{l} \text{The school's} \\ \text{secondary} \\ \text{percentage} \\ \text{for the year} \end{array} \right)$$

44 Definition—*maximum size loading*

Primary schools and secondary schools

- (1) A primary school or secondary school's **maximum size loading** for a year is:

(a) for a primary school for 2014—\$150,000; and

(b) for a secondary school for 2014—\$240,000; and

(c) for any other year:

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- (i) the school's maximum size loading for the year, as indexed under subsection (2); or
 - (ii) if the regulations prescribe another amount as the maximum size loading for the school (whether generally or by reference to a class of schools) for the year—that other amount.
- (2) A primary school or secondary school's maximum size loading for a year after 2014 is indexed as follows:

The school's maximum size loading
for the previous year \times The indexation percentage

- (3) The *indexation percentage* is:
- (a) 103.6%; or
 - (b) if the regulations prescribe another percentage for the purposes of this paragraph—that percentage.

Combined schools

- (4) A combined school's *maximum size loading* for a year is the amount worked out using the following formula:

$$\left(\begin{array}{l} \text{The} \\ \text{maximum} \\ \text{size loading} \\ \text{for a primary} \\ \text{school} \\ \text{for the year} \end{array} \times \begin{array}{l} \text{The school's} \\ \text{primary} \\ \text{percentage} \\ \text{for the year} \end{array} \right) + \left(\begin{array}{l} \text{The} \\ \text{maximum} \\ \text{size loading} \\ \text{for a} \\ \text{secondary} \\ \text{school} \\ \text{for the year} \end{array} \times \begin{array}{l} \text{The school's} \\ \text{secondary} \\ \text{percentage} \\ \text{for the year} \end{array} \right)$$

45 Definitions—*primary percentage* and *secondary percentage*

- (1) A combined school's *primary percentage* for a year is the percentage of students at the school receiving primary education on the school's census day for the year.

- (2) A combined school's *secondary percentage* for a year is the percentage of students at the school receiving secondary education on the school's census day for the year.

46 Very small schools—size loading

The size loading for a school that is a very small school for a year is specified in column 2 of the item that applies to the school.

Size loading for very small schools		
Item	Column 1	Column 2
	For this kind of school ...	the size loading is ...
1	a very remote school	the school's maximum size loading for the year.
2	a school that: (a) is not a very remote school or a major city school; and (b) has more students at the school for the year than the school's ARIA student number	the school's maximum size loading for the year.
3	a school that is not covered by item 1, 2 or 4	the amount worked out under section 47.
4	a major city school	the amount worked out under section 48.

Note: The school's ARIA student number is a number of students worked out for the school under section 50 by reference to the school's ARIA index value.

47 Very small schools—schools covered by item 3 of the table in section 46

- (1) The size loading for a year for a school covered by item 3 of the table in section 46 is worked out using the following formula:

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$$\left[\begin{array}{c} \text{The} \\ \text{school's} \\ \text{increased} \\ \text{starting} \\ \text{amount} \\ \text{for the year} \end{array} + \left(\begin{array}{c} \text{The} \\ \text{school's} \\ \text{maximum} \\ \text{size loading} \\ \text{for the year} \end{array} - \begin{array}{c} \text{The} \\ \text{school's} \\ \text{increased} \\ \text{starting} \\ \text{amount} \\ \text{for the year} \end{array} \right) \times \frac{\begin{array}{c} \text{The number} \\ \text{of students} \\ \text{at the school} \\ \text{for the year} \end{array} - 1}{\begin{array}{c} \text{The school's} \\ \text{ARIA student} \\ \text{number} \end{array} - 1} \right]$$

Note 1: The number referred to in the denominator of the fraction in the formula in this subsection may be changed if regulations are made for the purposes of subsection 13(2).

Note 2: To work out the number of students at a school for a year, see sections 16 and 17.

(2) A school's **increased starting amount** for a year is worked out using the following formula:

$$\left[\begin{array}{c} \text{The} \\ \text{school's} \\ \text{starting} \\ \text{amount} \\ \text{for the year} \end{array} + \left(\begin{array}{c} \text{The} \\ \text{school's} \\ \text{maximum} \\ \text{size loading} \\ \text{for the year} \end{array} - \begin{array}{c} \text{The} \\ \text{school's} \\ \text{starting} \\ \text{amount} \\ \text{for the year} \end{array} \right) \times \frac{\begin{array}{c} \text{The school's} \\ \text{ARIA} \\ \text{index} \\ \text{value} \end{array} - 1}{10 - 1} \right]$$

Note 1: The **starting amount** is defined in section 49.

Note 2: The numbers referred to in the fraction in the formula in this subsection may be changed if regulations are made for the purposes of subsection 13(2).

48 Very small schools—major city schools

The size loading for a year for a school covered by item 4 of the table in section 46 is worked out using the following formula:

$$\text{The school's starting amount for the year} + \left[\left(\begin{array}{c} \text{The school's} \\ \text{maximum} \\ \text{size loading} \\ \text{for the year} \end{array} - \begin{array}{c} \text{The school's} \\ \text{starting} \\ \text{amount} \\ \text{for the year} \end{array} \right) \times \frac{\begin{array}{c} \text{The number} \\ \text{of students} \\ \text{at the school} \\ \text{for the year} \end{array} - 1}{\begin{array}{c} \text{The school's} \\ \text{maximum} \\ \text{lower limit} \end{array} - 1} \right]$$

Note: To work out the number of students at a school for a year, see sections 16 and 17.

49 Very small schools—starting amount

Primary and secondary schools

- (1) A primary school or secondary school's **starting amount** for a year is:
- (a) for a primary school for 2014—\$10,000; and
 - (b) for a secondary school for 2014—\$20,000; and
 - (c) for any other year:
 - (i) the starting amount for the school for the year, as indexed under subsection (2); or
 - (ii) if the regulations prescribe another amount as the starting amount for the school (whether generally or by reference to a class of schools) for the year—that other amount.
- (2) A primary school or secondary school's starting amount for a year is indexed as follows:

$$\text{The school's starting amount for the previous year} \times \text{The indexation percentage}$$

- (3) The **indexation percentage** is:
- (a) 103.6%; or
 - (b) if the regulations prescribe another percentage for the purposes of this paragraph—that percentage.

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Combined schools

- (4) A combined school's **starting amount** for a year is worked out using the following formula:

$$\left(\begin{array}{l} \text{The starting} \\ \text{amount} \\ \text{for a} \\ \text{primary school} \\ \text{for the year} \end{array} \times \begin{array}{l} \text{The} \\ \text{school's} \\ \text{primary} \\ \text{percentage} \\ \text{for the year} \end{array} \right) + \left(\begin{array}{l} \text{The starting} \\ \text{amount} \\ \text{for a} \\ \text{secondary school} \\ \text{for the year} \end{array} \times \begin{array}{l} \text{The} \\ \text{school's} \\ \text{secondary} \\ \text{percentage} \\ \text{for the year} \end{array} \right)$$

50 Very small schools—ARIA student number

A school's **ARIA student number** is worked out using the following formula:

$$\begin{array}{l} \text{The} \\ \text{school's} \\ \text{maximum} \\ \text{lower limit} \end{array} - \left[\left(\begin{array}{l} \text{The} \\ \text{school's} \\ \text{maximum} \\ \text{lower limit} \end{array} - 1 \right) \times \frac{\begin{array}{l} \text{The school's} \\ \text{ARIA index value} \end{array} - 1}{10 - 1} \right]$$

51 Medium-sized schools—size loading

The size loading for a medium-sized school for a year is:

$$\left(\frac{\begin{array}{l} \text{The school's} \\ \text{zero lower limit} \end{array} - \begin{array}{l} \text{The number of} \\ \text{students at} \\ \text{the school} \\ \text{for the year} \end{array}}{\begin{array}{l} \text{The school's} \\ \text{zero lower limit} \end{array} - \begin{array}{l} \text{The school's} \\ \text{maximum} \\ \text{upper limit} \end{array}} \right) \times \begin{array}{l} \text{The school's maximum} \\ \text{size loading for the year} \end{array}$$

Note: To work out the number of students at a school for a year, see sections 16 and 17.

Division 4—Miscellaneous

Subdivision A—Capacity to contribute percentage

52 Determining SES scores

- (1) The Minister must (subject to subsection (6)) determine, in writing, each participating school's **SES score**.

Determination by legislative instrument

- (2) The Minister may, by legislative instrument, determine the SES score for one or more schools.

Determination by administrative decision

- (3) If the Minister does not determine a school's SES score under subsection (2), the Minister must determine the SES score for a school under this subsection.

Note: Decisions under this subsection are reviewable decisions (see Division 3 of Part 9).

- (4) A determination under subsection (3) for a school must be in accordance with the regulations unless the Minister is satisfied doing so would result in an SES score that does not accurately reflect the general socioeconomic circumstances of the persons responsible for students at the school.

Note: The regulations may prescribe matters that the Minister may or must have regard to in making a decision under this subsection (see paragraph 130(2)(b)).

- (5) A determination of a school's SES score that applies to a year must not be made under subsection (3) after the year has ended unless:

(a) both of the following apply:

- (i) the determination (the **new determination**) replaces a previous determination that is in force for the school;
- (ii) the SES score in the new determination is no higher than the SES score in the previous determination; or

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- (b) the approved authority for the school agrees in writing to the determination being made retrospectively; or
 - (c) the Minister is satisfied that special circumstances justify the determination; or
 - (d) the determination is made by, or as a result of a decision by, an internal reviewer, the Administrative Appeals Tribunal or a court after reviewing a previous determination that applied to the year.
- (6) This section does not apply in relation to the following schools:
- (a) a government school;
 - (b) a special school;
 - (c) a special assistance school;
 - (d) a school that is a majority Aboriginal and Torres Strait Islander school for a year;
 - (e) a sole provider school.

53 Determinations may be on application or on Minister's own initiative

- (1) A determination of a school's SES score may be made under subsection 52(2) or (3) on the Minister's own initiative.
- (2) A determination of a school's SES score may be made under subsection 52(3) on application by the approved authority for the school (or a person who is applying to be the approved authority for the school).

Note: For rules relating to applications, see Division 2 of Part 9.

- (3) An application made by a person must specify the following:
 - (a) the school to which the application relates;
 - (b) the year to which the application relates;
 - (c) if a determination under section 52 is already in force for the school—the reasons why the person is applying for a new determination.

- (4) A person may not apply for a determination of a school's SES score under subsection 52(3) if the school's score has been determined under subsection 52(2).

54 Capacity to contribute percentage

- (1) The *capacity to contribute percentage* for any of the following schools is 0%:
- (a) a government school;
 - (b) a special school;
 - (c) a special assistance school;
 - (d) a school that is a majority Aboriginal and Torres Strait Islander school for a year;
 - (e) a sole provider school.
- (2) The *capacity to contribute percentage* for a primary school (except one referred to in subsection (1)) is the percentage in column 2 of the item in the table in subsection (3) that contains the school's SES score.

Note: A school that has students who receive distance education at the school has a 0% capacity to contribute percentage in relation to those students (see subsection 33(3)).

- (3) The *capacity to contribute percentage* for a secondary school (except one referred to in subsection (1)) is the percentage in column 3 of the item in the table in this subsection that contains the school's SES score.

Note: A school that has students who receive distance education at the school has a 0% capacity to contribute percentage in relation to those students (see subsection 33(3)).

Capacity to contribute percentage			
Item	Column 1 SES score	Column 2 Primary school	Column 3 Secondary school
1	93 or lower	10.00	10.00
2	94	10.29	12.19

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Capacity to contribute percentage			
Item	Column 1	Column 2	Column 3
	SES score	Primary school	Secondary school
3	95	10.57	14.38
4	96	10.86	16.56
5	97	11.14	18.75
6	98	11.43	20.94
7	99	11.71	23.13
8	100	12.00	25.31
9	101	13.50	27.50
10	102	15.00	29.69
11	103	16.50	31.88
12	104	18.00	34.06
13	105	19.50	36.25
14	106	21.00	38.44
15	107	22.50	40.63
16	108	24.00	42.81
17	109	25.50	45.00
18	110	27.00	47.19
19	111	29.60	49.38
20	112	32.20	51.56
21	113	34.80	53.75
22	114	37.40	55.94
23	115	40.00	58.13
24	116	42.60	60.31
25	117	45.20	62.50
26	118	47.80	64.69
27	119	50.40	66.88
28	120	53.00	69.06
29	121	58.40	71.25
30	122	63.80	73.44

Capacity to contribute percentage			
Item	Column 1	Column 2	Column 3
	SES score	Primary school	Secondary school
31	123	69.20	75.63
32	124	74.60	77.81
33	125 or higher	80.00	80.00

Subdivision B—Miscellaneous

55 Locations of a school

For the purposes of this Part, and any other provision of this Act to the extent that it relates to this Part, a reference to a school includes a location of the school only if:

- (a) the location is specified in the approval of the approved authority for the school; and
- (b) the level of education provided by the school at that location is specified in that approval.

56 Rounding amounts

If any of the following amounts is not a whole dollar, the amount is to be rounded to the nearest dollar, rounding up an amount of 50 cents:

- (a) an amount of financial assistance that is payable to a State or Territory for a year for a participating school, as worked out under section 32;
- (b) an amount of a school's loading for a year as referred to in any of paragraphs 35(a) to (f).

Division 5—Transitional recurrent funding for participating schools

Subdivision A—Funding for approved authorities that were approved authorities on 1 January 2014

57 Application of this Subdivision

- (1) This Subdivision applies in relation to an approved authority for one or more participating schools.

Note: Section 63B affects the application of this Subdivision in relation to certain approved authorities.

- (2) In the situations set out in sections 59, 61 and 62, the amount of financial assistance that is payable under this Subdivision to a State or Territory for a year is payable for an approved authority instead of a school.

58 New and old per student amounts

- (1) The Minister must determine, in writing, for each approved authority that is an approved authority on 1 January 2014:
 - (a) an old per student amount for 2013 and 2014; and
 - (b) if section 59 applies in relation to the approved authority—an old Commonwealth per student amount for 2014; and
 - (c) if section 61 or 62 applies in relation to the approved authority—an old Commonwealth per student amount for 2013.
- (2) An amount determined under subsection (1) for an approved authority must not be inconsistent with any relevant arrangement of the approved authority.
- (3) The *new per student amount*, for a year, for an approved authority that is an approved authority on 1 January 2014 is worked out using the following formula:

The approved authority's total
public funding amount for the year

The total number of students
for the year at all schools
for which the approved authority
is approved in that year

Note: To work out the number of students at a school for a year, see
sections 16 and 17.

- (4) The approved authority's **total public funding amount** for a year is the total amount worked out (subject to subsection (5)) for the year under section 32 for all schools for which the approved authority is approved in that year.
- (5) For the purposes of subsection (4), in working out an amount under section 32 for a school for a year, disregard the Commonwealth's share for the school.
- (6) The **new Commonwealth per student amount**, for a year, for an approved authority in relation to which section 61 or 62 applies is worked out using the following formula:

The total amount worked out for
the year under section 32 for all schools
for which the approved authority
is approved in that year

The total number of students
for the year at all schools
for which the approved authority
is approved in that year

Note: To work out the number of students at a school for a year, see
sections 16 and 17.

59 Old per student amount for 2014 less than new per student amount for 2014

- (1) This section applies if an approved authority's old per student amount for 2014 is less than the authority's new per student amount for 2014.

Section 59

Minister to determine amount during transition period

- (2) For each year in the transition period, the amount of financial assistance that is payable under this Subdivision to a State or Territory for the approved authority is the amount determined by the Minister under subsection (3).
- (3) The Minister may (subject to section 60), in writing, determine the amount of financial assistance that is payable under this Subdivision to the State or Territory for the approved authority for a year in the transition period.

Note: Section 60 sets limits on the amounts that the Minister may determine under this subsection.

When amounts are worked out under section 32

- (4) The amount of financial assistance that is payable under this Part to a State or Territory is worked out under section 32 for each of the approved authority's schools for each year that begins after the end of the authority's transition period.
- (5) To avoid doubt, subsection (4) applies in relation to a school even if the approved authority does not become approved for the school or a location of the school until after 1 January 2014.

Definition of transition period

- (6) The approved authority's **transition period** is the period that:
 - (a) begins on:
 - (i) for an approved authority for government schools located in a State or Territory—the day the determination that the State or Territory is a participating State or Territory comes into force under section 14; and
 - (ii) for an approved authority for non-government schools—1 January 2014; and
 - (b) ends on the day determined by the Minister as the last day of the authority's transition period.

- (7) The Minister may determine a day as the last day of the authority's transition period.

Determination not to be inconsistent with relevant arrangement

- (8) A determination made under subsection (3) or (7) for the approved authority must not be inconsistent with any relevant arrangement of the approved authority.

Determination not legislative instrument

- (9) A determination under subsection (3) or (7) is not a legislative instrument.

60 Limits on amount that may be determined for the purposes of section 59

- (1) The amount determined by the Minister under subsection 59(3) must not (subject to subsection (4)) be less than the amount worked out using the following formula:

$$\frac{\text{The old Commonwealth per student amount for the approved authority for the year}}{\text{The total number of students for the year at all schools for which the approved authority is approved in that year}} \times$$

Note: To work out the number of students at a school for a year, see sections 16 and 17.

- (2) The old Commonwealth per student amount for a year after 2014 is indexed as follows:

$$\frac{\text{The old Commonwealth per student amount for the approved authority for the previous year}}{\text{The old Commonwealth per student amount for the approved authority for the previous year}} \times 104.7\%$$

- (3) The amount determined by the Minister under subsection 59(3) must not be more than the total amount that would be payable to the State or Territory under section 32 for the year for all schools for which the approved authority is approved in that year.

Section 61

- (4) If the amount worked out under subsection (1) is more than the total amount referred to in subsection (3), the Minister must determine the total amount referred to in subsection (3).

61 Old per student amount for 2013, increased by 3%, more than new per student amount for 2014

- (1) This section applies if:
- (a) an approved authority's old per student amount for 2013, increased by 3%, is more than the authority's new per student amount for 2014; and
 - (b) neither section 59 nor 62 applies in relation to the approved authority.

Old Commonwealth per student amount payable

- (2) The amount payable under this Subdivision to a State or Territory for the approved authority for a year (subject to subsection (4)) is worked out using the following formula:

$$\frac{\text{The approved authority's old Commonwealth per student amount for the year}}{\text{The total number of students for the year at all schools for which the approved authority is approved in that year}} \times$$

Note: To work out the number of students at a school for a year, see sections 16 and 17.

- (3) The old Commonwealth per student amount for a year (from and including 2014) is indexed as follows:

$$\frac{\text{The approved authority's old Commonwealth per student amount for the previous year}}{\text{The approved authority's old Commonwealth per student amount for the previous year}} \times 103\%$$

- (4) Subsection (2) ceases to apply to the approved authority for a year once the approved authority's new Commonwealth per student amount for the year is equal to or more than the approved authority's old Commonwealth per student amount for that year.

When amounts are worked out under section 32

- (5) The amount of financial assistance that is payable under this Part to a State or Territory is worked out under section 32 for each of the approved authority's schools for the year referred to in subsection (4) and each later year.
- (6) To avoid doubt, subsection (5) applies in relation to a school even if the approved authority does not become approved for the school or a location of the school until after 1 January 2014.

62 Transitional recurrent funding for special schools and special assistance schools

- (1) This section applies if:
 - (a) on 1 January 2014, an approved authority is approved only in relation to one or more special schools or special assistance schools; and
 - (b) section 59 does not apply in relation to the approved authority.

Old Commonwealth per student amount payable

- (2) The amount payable under this Subdivision to a State or Territory for the approved authority for a year (subject to subsection (2C)) is worked out using the following formula:

$$\begin{array}{l} \text{The approved authority's} \\ \text{old Commonwealth per} \\ \text{student amount for the year} \end{array} \times \begin{array}{l} \text{The total number} \\ \text{of students} \\ \text{for the year at all schools} \\ \text{for which the approved} \\ \text{authority is approved} \\ \text{in that year} \end{array}$$

Note: To work out the number of students at a school for a year, see sections 16 and 17.

- (2A) The old Commonwealth per student amount for a year (from and including 2014) is indexed as follows:

Part 3 Recurrent funding for participating schools

Division 5 Transitional recurrent funding for participating schools

Section 63

The approved authority's
old Commonwealth per student × The indexation percentage
amount for the previous year

- (2B) The *indexation percentage* is:
- (a) 103%; or
 - (b) if the regulations prescribe a higher percentage for the purposes of this paragraph—that higher percentage.
- (2C) Subsection (2) ceases to apply to the approved authority for a year once the approved authority's new Commonwealth per student amount for the year is equal to or more than the approved authority's old Commonwealth per student amount for that year.

When amounts are worked out under section 32

- (3) The amount of financial assistance that is payable under this Part to a State or Territory is worked out under section 32 for each of the approved authority's schools for the year referred to in subsection (2C) and each later year.
- (4) To avoid doubt, subsection (3) applies in relation to a school even if the approved authority does not become approved for the school or a location of the school until after 1 January 2014.

63 Funding for all other participating schools

- (1) The amount payable under this Part to a State or Territory is worked out under section 32, for 2014 and each later year, for each participating school whose approved authority is not covered by section 59, 61 or 62.
- (2) To avoid doubt, subsection (1) applies in relation to a school whose approved authority is not approved until after 1 January 2014.

Subdivision B—Funding for approved authorities if there is a change in the approved authority for a participating school

63A Transitional recurrent funding for a participating school whose approved authority changes after 1 January 2014

- (1) This section applies if:
- (a) on 1 January 2014, a participating school (the *transition school*) was specified in the approval of an approved authority (the *old approved authority*); and
 - (b) after 1 January 2014, the transition school is specified in the approval of another approved authority (the *new approved authority*); and
 - (c) before the transition school was so specified, Subdivision A of this Division applied in relation to the old approved authority in relation to the transition school.

Note: The new approved authority may be approved on or after 1 January 2014.

Ministerial determination of amount of financial assistance

- (2) The Minister may determine, in writing, an amount of financial assistance that is payable under this section to a State or Territory for the new approved authority for the transition school for a year.

Note: The regulations may prescribe matters that the Minister may or must have regard to in making a decision under this subsection (see paragraph 130(2)(b)).

- (3) A determination under subsection (2) is not a legislative instrument.

When amounts are worked out under section 32

- (4) The amount of financial assistance that is payable under this Part to a State or Territory for the new approved authority's transition school is worked out under section 32 for a year if:

Section 63B

- (a) no determination is in force under subsection (2) of this section in relation to the school for the year; and
- (b) Subdivision A of this Division does not apply in relation to the new approved authority in relation to the school.

63B Application of Subdivision A of this Division to the new approved authority

- (1) This section applies if:
 - (a) a determination under subsection 63A(2) is in force in relation to a new approved authority for a transition school for a year; and
 - (b) immediately before the new approved authority became the approved authority for the transition school, Subdivision A of this Division applied in relation to the authority for one or more other participating schools for a year.
- (2) Despite anything else in this Act, the following continue to apply in relation to the new approved authority for those other participating schools for the year to which the determination relates as if the transition school were not specified in the authority's approval:
 - (a) Subdivision A of this Division;
 - (b) any other provisions that relate to that Subdivision.

Part 4—Recurrent funding for non-participating schools through a national specific purpose payment

64 Guide to this Part

Financial assistance for non-participating schools is payable by the Commonwealth under this Part. Only government schools can be non-participating schools. The financial assistance is provided through a national specific purpose payment for schools located in non-participating States and Territories.

The amount of financial assistance that is payable to a State or Territory for non-participating schools located in the State or Territory is worked out by reference to the amount the non-participating States and Territories received for 2013 through the national specific purpose payment for schools under the *Federal Financial Relations Act 2009* (the FFR).

That amount is indexed each year.

65 National specific purpose payments for schools in non-participating States and Territories

- (1) The amount of financial assistance that is payable under this Part to a State or Territory for a year for non-participating schools located in the State or Territory is the amount worked out in accordance with this section.

Section 65

Working out the total amount payable for all non-participating States and Territories

- (2) The total amount of financial assistance that is payable to all non-participating States and Territories for a year for non-participating schools located in those States or Territories is:
- (a) for 2014—the FFR amount for 2013 for those States and Territories, indexed in accordance with subsection (3); and
 - (b) for any other year—the total amount payable for the previous year under this Part for those States and Territories, indexed in accordance with subsection (3).
- (3) The Minister may, by legislative instrument, determine the manner in which the total amount under subsection (2) is to be indexed for a particular year. The determination must include a statement of the total amount for that year.

FFR amount for 2013 for non-participating States and Territories

- (4) The **FFR amount** for 2013 for non-participating States and Territories is worked out using the following formula:

$$\frac{1}{2} \times \left(\begin{array}{c} \text{2012/13 FFR amount} \\ \text{for those States and Territories} \end{array} + \begin{array}{c} \text{2013/14 FFR amount} \\ \text{for those States and Territories} \end{array} \right)$$

- (5) The **2012/13 FFR amount** for non-participating States and Territories is the total amount payable under subsection 11(1) of the *Federal Financial Relations Act 2009* for the financial year starting on 1 July 2012 for those States and Territories (worked out in accordance with paragraph 11(2)(c) and subsection 11(5) of that Act).
- (6) The **2013/14 FFR amount** for non-participating States and Territories is the total amount payable under subsection 11(1) of the *Federal Financial Relations Act 2009* for the financial year starting on 1 July 2013 for those States and Territories (worked out in accordance with paragraph 11(2)(c) and subsection 11(5) of that Act).

Section 65

*Working out the amount payable for a particular non-participating
State or Territory*

- (7) The Minister may, by legislative instrument, determine, for each year in which there are at least 2 non-participating States and Territories, the manner in which the total amount under subsection (2) is to be divided between those non-participating States and Territories.

Minister to have regard to relevant arrangement

- (8) In making a determination under subsection (3) or (7), the Minister must have regard to any relevant arrangement of the non-participating States and Territories (in their capacity as approved authorities for government schools).

Note: The Intergovernmental Agreement (within the meaning of section 4 of the *Federal Financial Relations Act 2009*) is a relevant arrangement for non-participating States and Territories.

Part 5—Capital funding, special circumstances funding and funding for non-government representative bodies

Division 1—Guide to this Part

66 Guide to this Part

This Part provides additional discretionary funding for any school (whether the school is a participating school or not).

The Minister may determine capital funding to be paid to a State or Territory under this Part. The capital funding is to be paid by the State or Territory to either a capital grants authority or a block grant authority, as determined by the Minister.

Block grant authorities are bodies corporate that are approved for a non-government school by the Minister under Division 3 of Part 6. A school's capital grants authority is its approved authority. If the school has a block grant authority, the block grant authority is also the school's capital grants authority. If the school is a non-government school located in a State or Territory, the approved authority for government schools located in the State or Territory is also the school's capital grants authority.

The Minister may also determine that financial assistance is payable for a school in special circumstances.

The total amount of capital funding payable to block grant authorities for a year is capped.

The Minister can also determine funding for non-government representative bodies. These are bodies that are approved by the Minister under Division 4 of Part 6 and that represent the interests of one or more approved authorities for non-government schools.

Division 2—Capital funding

67 Capital funding

Capital funding for capital grants authorities

- (1) The Minister may, in writing, determine an amount of financial assistance that is payable under this Division to a State or Territory for a year for a capital grants authority for a school (including a capital grants authority that is also a block grant authority for the school) if the Minister is satisfied that the financial assistance is required for capital expenditure by the capital grants authority in relation to the school.

Capital funding for block grant authorities

- (2) The Minister may, in writing, determine an amount of financial assistance that is payable under this Division to a State or Territory for a year for a block grant authority for a school if the Minister is satisfied that the financial assistance is required for capital expenditure by the block grant authority in relation to the school.

Note 1: There is a limit on the total amount that can be determined for block grant authorities for a year (see section 68).

Note 2: Financial assistance provided for a block grant authority is appropriated by section 126.

Determinations not legislative instruments

- (3) A determination under subsection (1) or (2) is not a legislative instrument.

68 Limit on total amount available for capital funding for block grant authorities

- (1) The total of the amounts that the Minister determines under subsection 67(2) for a year for block grant authorities must not exceed:

Section 68

- (a) for 2014—the base assistance amount worked out under subsection 84(2) of the *Schools Assistance Act 2008*, if that subsection had applied for the year; and
- (b) for any other year:
 - (i) the base assistance amount, as indexed under subsection (2) of this section; or
 - (ii) if the regulations prescribe another amount as the base assistance amount for the year for the purposes of this section—that other amount.

Indexing the base assistance amount

- (2) The base assistance amount is indexed as follows:

$$\frac{\text{The base assistance amount for the previous year}}{\text{The base assistance amount for the previous year}} \times \text{The indexation percentage}$$

- (3) The ***indexation percentage*** is:
- (a) 100%; or
 - (b) if the regulations prescribe another percentage (whether more or less than 100%) for the purposes of this paragraph—that percentage.
- (4) Before the Governor-General makes regulations for the purposes of subsection (3), the Minister must consider changes in the following indexes:
- (a) an index of building prices prescribed by the regulations;
 - (b) an index of wage costs prescribed by the regulations.
- (5) If the base assistance amount worked out under subsection (2) for a year is not a multiple of \$1,000, the amount is to be rounded to the nearest \$1,000 (rounding \$500 upwards).

Failure to comply with subsection (1)

- (6) A failure to comply with subsection (1) does not affect the validity of a payment made as a result of a determination made under

paragraph 28(1)(b) (Minister to determine timing and amounts of
capital funding).

Part 5 Capital funding, special circumstances funding and funding for non-government representative bodies

Division 3 Special circumstances funding

Section 69

Division 3—Special circumstances funding

69 Special circumstances funding

- (1) The Minister may, in writing, determine an amount of financial assistance that is payable under this Division to a State or Territory for a school for a year if the Minister is satisfied that special circumstances justify the determination.

Note 1: The regulations may prescribe matters that the Minister may or must have regard to in making a decision under this subsection (see paragraph 130(2)(b)).

Note 2: Decisions under this section are not reviewable decisions.

- (2) A determination under subsection (1) is not a legislative instrument.

Division 4—Funding for non-government representative bodies

70 Funding for non-government representative bodies

- (1) The Minister may, in writing, determine an amount of financial assistance that is payable under this Division to a State or Territory for a year for a non-government representative body for a non-government school.

Note 1: The regulations may prescribe matters that the Minister may or must have regard to in making a decision under this subsection (see paragraph 130(2)(b)).

Note 2: Decisions under this section are not reviewable decisions.

- (2) A determination under subsection (1) is not a legislative instrument.

Part 6—Approving authorities and bodies

Division 1—Guide to this Part

71 Guide to this Part

The Minister approves approved authorities, block grant authorities and non-government representative bodies under this Part.

An approved authority is the body to which recurrent funding under this Act is ultimately paid. For government schools, the approved authority is the relevant State or Territory. For a non-government school, the approved authority is the body corporate approved by the Minister for the school.

A block grant authority is one of the bodies to which capital funding may ultimately be paid under subsection 67(1), and is the body to which capital funding is ultimately paid under subsection 67(2). A body can be a block grant authority only for non-government schools.

A non-government representative body for a non-government school represents the interests of the approved authority for the school. A non-government representative body is the body to which funding under section 70 is ultimately paid.

An approved authority, block grant authority or non-government representative body must satisfy basic requirements (such as being fit and proper), as well as ongoing requirements (such as requirements relating to dealing with financial assistance and providing information).

Division 2—Approving approved authorities

72 Application for person to be approved as an approved authority

- (1) A person may apply to the Minister to be approved as an approved authority for one or more schools.

Note: For rules relating to applications, see Division 2 of Part 9.

- (2) The application must specify the following:
- (a) each school for which the application is made;
 - (b) each location of each school;
 - (c) for each location of each school—the level of education provided at the location.

73 Approval of person

- (1) The Minister may, in writing, approve a person as an approved authority for one or more schools if:
- (a) the person has made an application under section 72; and
 - (b) the Minister is satisfied that:
 - (i) the person satisfies, and will continue to satisfy, the requirements in section 75; and
 - (ii) the ongoing policy requirements in section 77 will be satisfied in relation to the schools; and
 - (iii) the ongoing funding requirements in section 78 will be satisfied in relation to the schools.

Note 1: This section is subject to section 74 (approval or refusal on public interest grounds).

Note 2: Decisions under this section are reviewable decisions (see Division 3 of Part 9).

Note 3: An approved authority is approved only for specified locations and levels of education (see section 79).

- (2) The Minister must not approve a person as an approved authority for a school if another approved authority is already approved for the school.

Section 74

- (3) An approval of an approved authority may be made subject to one or more conditions, and the approved authority must comply with those conditions.
- (4) In imposing conditions under subsection (3) for the approved authority, the Minister must have regard to any relevant arrangement of the approved authority.
- (5) An approval must specify the day on and after which the approval is in force.
- (6) A day specified under subsection (5) can be earlier than the day the approval is given, but may be earlier than 1 January of the year in which the relevant application was made only if the Minister is satisfied that special circumstances justify determining that day.

Note: The regulations may prescribe matters that the Minister may or must have regard to in making a decision under this subsection (see paragraph 130(2)(b)).

74 Approval or refusal of approval on public interest grounds

- (1) Despite subsection 73(1), the Minister may, in writing, do the following:
 - (a) refuse to approve, as an approved authority, a person that the Minister would otherwise approve, if the Minister is satisfied that it would be contrary to the public interest to approve the person;
 - (b) approve, as an approved authority, a person that the Minister would not otherwise approve, if the Minister is satisfied that it is in the public interest to approve the person.

Note 1: A decision under this section is not a reviewable decision.

Note 2: A report must be laid before each House of the Parliament if the Minister makes a decision under this section (see section 127).

- (2) If the Minister makes a decision under subsection (1) in relation to a person, the Minister must, within 7 days of making the decision, publish a notice that:
 - (a) states that the decision has been made; and

- (b) gives a brief statement of the reasons for the decision.
- (3) Subsections 73(2) to (6) apply to an approval under this section as if the approval were given under section 73.
- (4) An approval of a person under paragraph (1)(b) of this section may specify either or both of the following:
 - (a) a period during which the approval is to be in force;
 - (b) one or more requirements under section 75, 77 or 78 with which the person is not required to comply.
- (5) An approval that specifies:
 - (a) a period under paragraph (4)(a); or
 - (b) one or more requirements under paragraph (4)(b);has effect accordingly.

75 Basic requirements for approval

- (1) This section sets out requirements for a person for the purposes of subparagraph 73(1)(b)(i) and paragraph 81(1)(a).

Note: Approved authorities for government schools may be taken to satisfy the requirements in this section (see section 76).

Body corporate or body politic

- (2) The person is a body corporate or a body politic.

Not-for-profit

- (3) The person does not conduct for profit any school in relation to which the application is made.

Financial viability

- (4) The person is financially viable.

Section 76

Fit and proper person

- (5) The person is fit and proper to be an approved authority for one or more schools.

Matters to have regard to

- (6) For the purposes of determining whether a person satisfies the requirement in subsection (3), (4) or (5), the Minister may have regard to:
- (a) for the purposes of subsection (3)—whether the State or Territory Minister for a school in relation to which the person is applying considers that the person conducts the school for profit; and
 - (b) for the purposes of subsection (4)—the amount of financial assistance the person receives, or is likely to receive, from the Commonwealth, a State or a Territory; and
 - (c) for the purposes of subsection (5)—whether the person has complied, or is complying, with laws of the Commonwealth, a State or a Territory relating to the provision of school education; and
 - (d) any other matters the Minister considers relevant.

Note: The regulations may prescribe other matters that the Minister may or must have regard to in making a decision under this section (see paragraph 130(2)(b)).

Permission under law of relevant State or Territory

- (7) For each level and location specified in the approval, the person is permitted under a law of the relevant State or Territory to provide that level of education at that location.

76 Approved authorities for government schools taken to satisfy basic requirements

- (1) An approved authority for government schools located in a State or Territory is taken to satisfy the requirements in section 75.

- (2) The Minister may, in writing, determine that subsection (1) does not apply in relation to an approved authority for government schools located in a State or Territory.

Note 1: The regulations may prescribe matters that the Minister may or must have regard to in making a decision under this subsection (see paragraph 130(2)(b)).

Note 2: A report must be laid before each House of the Parliament if the Minister makes a decision under this subsection (see section 127).

- (3) A determination under subsection (2) is not a legislative instrument.

77 Ongoing policy requirements for approved authorities

- (1) This section sets out the ongoing policy requirements for all approved authorities for the purposes of subparagraph 73(1)(b)(ii) and paragraph 81(1)(a).
- (2) The ongoing policy requirements for an approved authority for the schools for which the authority is approved are the following:
- (a) the approved authority has in place processes and procedures for enhancing principal and teacher performance and professional development at the schools in accordance with the regulations;
 - (b) the approved authority implements a curriculum at the schools in accordance with the regulations;
 - (c) the approved authority ensures that the schools participate in the national assessment program in accordance with the regulations;
 - (d) the approved authority ensures that:
 - (i) the authority has a school improvement framework in accordance with the regulations; and
 - (ii) each school develops, implements, publishes and reviews a school improvement plan in accordance with the regulations;
 - (e) the approved authority complies, and ensures each school complies, with relevant disability discrimination laws of the Commonwealth, a State or a Territory;

Section 78

- (f) the approved authority provides information in accordance with the regulations.
 - (3) Without limiting paragraph (2)(f), the regulations may require the approved authority to provide the following information:
 - (a) information relating to a school's census;
 - (b) information for the purposes of a national program to collect data on schools and school education;
 - (c) information for the purposes of conducting research on schools and school education;
 - (d) information relating to any implementation plan of the authority or a school improvement plan for a school;
 - (e) information relating to the administration and operation of a school;
 - (f) information in reports to persons responsible for students at a school;
 - (g) information provided to the public about a school.
- Note: The regulations may prescribe penalties for offences in relation to the requirement to provide information relating to a school's census (see paragraph 130(2)(a)).
- (4) Before the Governor-General makes regulations for the purposes of this section, the Minister must have regard to any relevant arrangement of approved authorities for government schools.

78 Ongoing funding requirements for approved authorities

- (1) This section sets out the ongoing funding requirements for an approved authority for a school for the purposes of subparagraph 73(1)(b)(ii) and paragraph 81(1)(a).
- (2) The ongoing funding requirements for all approved authorities are the following:
 - (a) the approved authority deals, in accordance with the regulations, with financial assistance that is payable under Division 2 or 5 of Part 3 (recurrent funding for participating schools), Part 4 (recurrent funding for non-participating

- schools), or Division 2 or 3 of Part 5 (capital and special circumstances funding) to the authority;
- (b) the approved authority complies with requirements prescribed by the regulations in relation to monitoring the authority's compliance with this Act, and with any implementation plan required by Part 7.
- (3) The ongoing funding requirements for an approved authority for more than one participating school are also:
- (a) to distribute all financial assistance received in accordance with Division 2 or 5 of Part 3, or from a State or Territory, in accordance with a needs-based funding arrangement that complies with any requirements prescribed by the regulations; and
- (b) to comply with Part 7 (implementation plans).

79 Limitation on approval

An approved authority is approved only for:

- (a) a school that is specified in the approval; and
- (b) a location of the school that is specified in the approval; and
- (c) a level of education at that location that is specified in the approval.

80 Variation or revocation of approval on application

- (1) An approved authority may apply, in writing, for the authority's approval to be varied or revoked.

Note: For rules relating to applications, see Division 2 of Part 9.

- (2) The Minister may, in writing, vary the approved authority's approval for one or more schools only if the Minister is satisfied that the requirements referred to in paragraph 73(1)(b) are, and will continue to be, satisfied in relation to the varied approval.

Note 1: Decisions under this section are reviewable decisions (see Division 3 of Part 9).

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Note 2: This subsection is subject to paragraph 74(4)(b) (approval or refusal on public interest grounds).

- (3) The Minister may, in writing, revoke the approved authority's approval.
- (4) A variation or revocation must specify the day on which the variation or revocation takes effect, which may be earlier than the day the Minister varies or revokes the approval.

81 Variation or revocation of approval on Minister's own initiative

- (1) The Minister may, in writing, vary or revoke an approved authority's approval for one or more schools on the Minister's own initiative if:
 - (a) the Minister is satisfied that the approved authority does not comply, is not complying, or has not complied, with section 75, 77 or 78; or
 - (b) the Minister is satisfied that the approved authority is not complying or has not complied with a condition to which the approval is subject; or
 - (c) the Minister is satisfied that varying or revoking the approval is in the public interest; or
 - (d) for an approved authority for government schools located in a State or Territory—the Minister is satisfied that the State or Territory has not complied with a condition under section 22 or 24, any of paragraphs 23(2)(a) to (d), or subsection 23(3).

Note 1: Decisions under paragraphs (1)(a), (b) and (d) are reviewable decisions (see Division 3 of Part 9).

Note 2: A report must be laid before each House of the Parliament if the Minister makes a decision under paragraph (1)(c) (see section 127).

- (2) Without limiting subsection (1), the Minister may vary an approved authority's approval by making the approval subject to one or more conditions, and the approved authority must comply with those conditions.

- (3) The Minister may do either of the following if the Minister is satisfied that a school has ceased to provide primary education or secondary education:
- (a) if the approved authority for the school is approved only for that school—revoke the authority’s approval;
 - (b) if the approved authority for the school is approved for other schools as well—vary the authority’s approval by removing the school from the approval.
- (4) The Minister may vary an approved authority’s approval for one or more schools only if the Minister is satisfied that the requirements referred to in paragraph 73(1)(b) are, and will continue to be, satisfied in relation to the varied approval.
- Note: This subsection is subject to paragraph 74(4)(b) (approval or refusal on public interest grounds).
- (5) A variation or revocation must specify the day on which the variation or revocation takes effect, which may be earlier than the day the Minister varies or revokes the approval.
- (6) In varying or revoking an approval of an approved authority under subsection (1) (including by imposing conditions as referred to in subsection (2)), the Minister must have regard to any relevant arrangement of the approved authority.

Division 3—Approving block grant authorities

82 Application for person to be approved as a block grant authority

- (1) A person may apply to the Minister to be approved as a block grant authority for a non-government school.

Note: For rules relating to applications, see Division 2 of Part 9.

- (2) The application must specify each school for which the application is made. However, a school may be specified by referring to the approved authority for the school.

83 Approval of person

- (1) The Minister may, in writing, approve a person as a block grant authority for one or more schools if:
- (a) the person has made an application under section 82; and
 - (b) the Minister is satisfied that:
 - (i) the person satisfies, and will continue to satisfy, the requirements in section 84; and
 - (ii) the ongoing requirements in section 85 will be satisfied.

Note 1: Decisions under this section are reviewable decisions (see Division 3 of Part 9).

Note 2: A block grant authority is approved only for specified schools (see section 86).

- (2) The Minister must not approve a person as a block grant authority for a school if another block grant authority is already approved for the school.
- (3) An approval of a person as a block grant authority may be made subject to one or more conditions, and the block grant authority must comply with those conditions.
- (4) An approval must specify the day on and after which the approval is in force.

- (5) A day specified under subsection (4) can be earlier than the day the approval is given, but may be earlier than 1 January of the year in which the relevant application was made only if the Minister is satisfied that special circumstances justify determining that day.

Note: The regulations may prescribe matters that the Minister may or must have regard to in making a decision under this subsection (see paragraph 130(2)(b)).

84 Basic requirements for approval

- (1) This section sets out requirements for a person for the purposes of subparagraph 83(1)(b)(i) and paragraph 88(1)(a).

Body corporate

- (2) The person is a body corporate.

Not-for-profit

- (3) The person is a not-for-profit organisation.

Financial viability

- (4) The person is financially viable.

Fit and proper person

- (5) The person is fit and proper to be a block grant authority for one or more schools.

Matters to have regard to

- (6) For the purposes of determining whether a person satisfies the requirement in subsection (4), the Minister may have regard to the amount of financial assistance the person receives, or is likely to receive, from the Commonwealth, a State or a Territory.

Note: The regulations may prescribe other matters that the Minister may or must have regard to in making a decision under this section (see paragraph 130(2)(b)).

Section 85

Permission from approved authority

- (7) For each school specified (whether expressly or by reference to an approved authority) in an approval of a block grant authority, the block grant authority has the written permission of the approved authority for the school to receive financial assistance that is payable under Division 2 of Part 5.

85 Ongoing requirements for approval

- (1) This section sets out the ongoing requirements for the purposes of subparagraph 83(1)(b)(ii) and paragraph 88(1)(a).
- (2) The ongoing requirements for an approval of a block grant authority are the following:
- (a) the block grant authority deals, in accordance with the regulations, with financial assistance that is payable under Division 2 of Part 5 to the authority;
 - (b) the block grant authority complies with requirements prescribed by the regulations in relation to monitoring the authority's compliance with this Act;
 - (c) the block grant authority provides information in accordance with the regulations.
- (3) Without limiting paragraph (2)(a), the regulations may:
- (a) specify how financial assistance that is payable to a State or Territory under Division 2 of Part 5 for a block grant authority is to be allocated in relation to schools; and
 - (b) provide for requirements for review of decisions of the block grant authority on how to allocate that financial assistance.
- (4) Without limiting paragraph (2)(c), the regulations may require the block grant authority to provide:
- (a) information relating to the administration and operation of a school; and
 - (b) information to the public about a school.

86 Limitation on approval

A block grant authority is approved only for:

- (a) schools specified in the approval; or
- (b) if the approval instead specifies an approved authority (see subsection 82(2))—the schools for which the approved authority is, from time to time, approved.

87 Variation or revocation of approval on application

- (1) A block grant authority may apply, in writing, for its approval to be varied or revoked.

Note: For rules relating to applications, see Division 2 of Part 9.

- (2) The Minister may, in writing, vary the approval only if the Minister is satisfied that the requirements referred to in paragraph 83(1)(b) are, and will continue to be, satisfied in relation to the varied approval.

Note: Decisions under this section are reviewable decisions (see Division 3 of Part 9).

- (3) The Minister may, in writing, revoke the approval.
- (4) A variation or revocation must specify the day on which the variation or revocation takes effect, which may be earlier than the day the Minister varies or revokes the approval.

88 Variation or revocation of approval on Minister's own initiative

- (1) The Minister may, in writing, vary or revoke an approval of a block grant authority for one or more schools on the Minister's own initiative if:
 - (a) the Minister is satisfied that the authority does not comply, is not complying, or has not complied, with section 84 or 85; or
 - (b) the Minister is satisfied that the authority is not complying or has not complied with a condition to which the approval is subject.

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Note: Decisions under this subsection are reviewable decisions (see Division 3 of Part 9).

- (2) Without limiting subsection (1), the Minister may vary an approval of a block grant authority by making the approval subject to one or more conditions, and the block grant authority must comply with those conditions.
- (3) The Minister may do either of the following if the Minister is satisfied that a school has ceased to provide primary education or secondary education:
 - (a) if a block grant authority for the school is approved only for that school—revoke the approval of the authority;
 - (b) if a block grant authority for the school is approved for other schools as well—vary the approval of the authority by removing the school from the approval.
- (4) The Minister may vary an approval of a block grant authority for one or more schools only if the Minister is satisfied that the requirements referred to in paragraph 83(1)(b) are, and will continue to be, satisfied in relation to the varied approval.
- (5) A variation or revocation must specify the day on which the variation or revocation takes effect, which may be earlier than the day the Minister varies or revokes the approval.

Division 4—Approving non-government representative bodies

89 Minister may invite a person to apply to be a non-government representative body

- (1) The Minister may, in writing, invite a person to apply to be approved as a non-government representative body for a non-government school if the Minister is satisfied that:
 - (a) the person represents the interests of the approved authority for the school; and
 - (b) the person is likely to meet the requirements in section 92 (basic requirements for approval).
- (2) The Minister may, in writing, withdraw an invitation at any time before the person makes an application under section 90 (in which case the person may not make an application).
- (3) To avoid doubt, the Minister may be satisfied that a person represents the interests of an approved authority irrespective of the views of the authority.

90 Application for person to be approved as a non-government representative body

- (1) A person who the Minister has, under section 89, invited to apply to be approved as a non-government representative body for a non-government school may apply to the Minister to be so approved.

Note: For rules relating to applications, see Division 2 of Part 9.
- (2) The application must specify each non-government school for which the application is made. However, a school may be specified by referring to the approved authority for the school.

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91 Approval of person

- (1) The Minister may, in writing, approve a person as a non-government representative body for a non-government school if:
- (a) the person has made an application under section 90; and
 - (b) the Minister is satisfied that:
 - (i) the person satisfies, and will continue to satisfy, the requirements in section 92; and
 - (ii) the ongoing requirements in section 93 will be satisfied.

Note 1: Decisions under this section are reviewable decisions (see Division 3 of Part 9).

Note 2: A non-government representative body is approved only for specified schools (see section 94).

- (2) An approval of a person as a non-government representative body may be made subject to one or more conditions, and the body must comply with those conditions.
- (3) An approval must specify the day on and after which the approval is in force. The day specified must be on or after the day the approval is given.

Note: The regulations may prescribe matters that the Minister may or must have regard to in making a decision under this subsection (see paragraph 130(2)(b)).

92 Basic requirements for approval

- (1) This section sets out requirements for a person for the purposes of subparagraph 91(1)(b)(i) and paragraph 96(1)(a).

Body corporate

- (2) The person is a body corporate.

Not-for-profit

- (3) The person is a not-for-profit organisation.

Financial viability

- (4) The person is financially viable.

Fit and proper person

- (5) The person is fit and proper to be a non-government representative body for a non-government school.

Note: The regulations may prescribe matters that the Minister may or must have regard to in making a decision under this section (see paragraph 130(2)(b)).

Matters to have regard to

- (6) For the purposes of determining whether a person satisfies the requirement in subsection (4), the Minister may have regard to the amount of financial assistance the person receives, or is likely to receive, from the Commonwealth, a State or a Territory.

Note: The regulations may prescribe other matters that the Minister may or must have regard to in making a decision under this section (see paragraph 130(2)(b)).

93 Ongoing requirements for approval

- (1) This section sets out the ongoing requirements for the purposes of subparagraph 91(1)(b)(ii) and paragraph 96(1)(a).
- (2) The ongoing requirements for an approval of a non-government representative body for a non-government school are the following:
- (a) the body represents the interests of the approved authority for the school;
 - (b) the body deals, in accordance with the regulations, with financial assistance that is payable under Division 4 of Part 5 (funding for non-government representative bodies) to the body;
 - (c) the body complies with requirements prescribed by the regulations in relation to monitoring the body's compliance with this Act;

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- (d) the body provides information in accordance with the regulations.

94 Limitation on approval

A non-government representative body is approved only for:

- (a) schools specified in the approval; or
- (b) if the approval instead specifies an approved authority (see subsection 90(2))—the schools for which the authority is, from time to time, approved.

95 Variation or revocation of approval on application

- (1) A non-government representative body may apply, in writing, for its approval to be varied or revoked.

Note: For rules relating to applications, see Division 2 of Part 9.

- (2) The Minister may, in writing, vary the approval only if the Minister is satisfied that the requirements referred to in paragraph 91(1)(b) are, and will continue to be, satisfied in relation to the varied approval.

Note: Decisions under this section are reviewable decisions (see Division 3 of Part 9).

- (3) The Minister may, in writing, revoke the approval.
- (4) A variation or revocation must specify the day on which the variation or revocation takes effect, which may be earlier than the day the Minister varies or revokes the approval.

96 Variation or revocation of approval on Minister's own initiative

- (1) The Minister may, in writing, vary or revoke an approval of a non-government representative body for a non-government school on the Minister's own initiative if:
 - (a) the Minister is satisfied that the body does not comply, is not complying, or has not complied, with section 92 or 93; or

- (b) the Minister is satisfied that the body is not complying or has not complied with a condition to which the approval is subject.

Note: Decisions under this subsection are reviewable decisions (see Division 3 of Part 9).

- (2) Without limiting subsection (1), the Minister may vary an approval of a non-government representative body by making the approval subject to one or more conditions, and the body must comply with those conditions.
- (3) The Minister may vary an approval of a non-government representative body only if the Minister is satisfied that the requirements referred to in paragraph 91(1)(b) are, and will continue to be, satisfied in relation to the varied approval.
- (4) A variation or revocation must specify the day on which the variation or revocation takes effect, which may be earlier than the day the Minister varies or revokes the approval.

Part 7—Implementation plans

97 Guide to this Part

The approved authority for more than one participating school must have an implementation plan. The implementation plan explains how the approved authority intends to implement the education reforms that the approved authority has agreed to.

The implementation plan must set out:

- (a) activities, programs and initiatives; and
- (b) milestones and timelines for implementing those activities, programs and initiatives.

The approved authority must review the implementation plan and evaluate progress. The implementation plan, and reports on reviews of the plan, must be published.

The Minister may give directions to approved authorities who have implementation plans in relation to those plans.

98 Application of this Part to approved authorities for more than one participating school

This Part applies only in relation to approved authorities for more than one participating school.

99 Approved authority must have an implementation plan

- (1) An approved authority must have an implementation plan.
- (2) The implementation plan must do the following:

- (a) set out activities, programs and initiatives to be undertaken by or on behalf of the approved authority that will contribute to the following:
 - (i) achieving the objects of this Act, including the 5 reform directions of quality teaching, quality learning, empowered school leadership, transparency and accountability, and meeting student need;
 - (ii) achieving outcomes for school education, agreed by the Ministerial Council, and prescribed by the regulations;
 - (b) set out how the activities, programs and initiatives will contribute to achieving those objects, directions and outcomes;
 - (c) set out milestones and timelines for implementing the activities, programs and initiatives;
 - (d) set out performance indicators to measure the authority's progress against the milestones and timelines;
 - (e) set out the mechanisms for obtaining and evaluating feedback on that progress;
 - (f) set out the day the implementation plan is to start;
 - (g) comply with any other requirements prescribed by the regulations.
- (3) The implementation plan must relate to the period of at least 6 years starting on the day specified under paragraph (2)(f).
- (4) In dealing with matters for the purposes of subsection (2), the implementation plan must take into account any relevant arrangement of the approved authority.

100 Approved authority must be able to implement implementation plan properly

An approved authority must ensure that the authority has in place suitable structures and practices relating to governance and management to implement its implementation plan properly.

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101 Period of implementation plan

An approved authority must make a new implementation plan at least once every 6 years.

102 Review of implementation plan

- (1) An approved authority must review its implementation plan in accordance with the regulations.

Note 1: A report of the review must be published under section 104.

Note 2: An approved authority may conduct its own review of an implementation plan at any time.

- (2) The review must:
- (a) evaluate whether the implementation plan continues to comply with section 99, and otherwise remains up to date; and
 - (b) if the implementation plan requires the outcome of an activity, program or initiative to be measured:
 - (i) consider the outcome of the activity, program or initiative; and
 - (ii) consider whether the intended outcome of the activity, program or initiative is being, or is likely to be, achieved.
- (3) After conducting the review, if the intended outcome of the activity, program or initiative is not being, or is not likely to be, achieved, the approved authority must update the implementation plan to take account of the result of paragraph (2)(b).

103 Keeping implementation plans up to date

An approved authority must ensure that its implementation plan is kept up to date, having regard to:

- (a) the progress of activities, programs and initiatives set out in the implementation plan; and

- (b) the result of any reviews of the implementation plan that have been undertaken (whether under section 102 or otherwise).

104 Publication of implementation plan

- (1) An approved authority must publish its implementation plan in a form that is readily accessible to the public.

Example: An approved authority's implementation plan could be published on the authority's website.

- (2) The approved authority must ensure that the copy of the implementation plan that is published is kept up to date.
- (3) The approved authority must publish, in a form that is readily accessible to the public, a report of any review conducted under section 102 as soon as practicable after the review is conducted.

Note 1: The approved authority may publish a report of any review that the authority has conducted on its own initiative.

Note 2: Regulations made for the purposes of paragraph 77(2)(f) may also require an approved authority to provide information relating to the authority's implementation plan (see paragraph 77(3)(d)).

105 Minister may give a direction in relation to an implementation plan

- (1) The Minister may give an approved authority a written direction in relation to its implementation plan.

Note 1: A decision to give a direction is a reviewable decision (see Division 3 of Part 9).

Note 2: A report must be laid before each House of the Parliament if the Minister gives a direction under this subsection (see section 127).

- (2) The approved authority must comply with the direction.
- (3) In deciding whether to give a direction to an approved authority under this section, the Minister must have regard to the following:
- (a) any relevant arrangement of the authority (including any provisions relating to dispute resolution in the arrangement);

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- (b) whether the authority's implementation plan complies with section 99;
- (c) whether the activities, programs and initiatives set out in the authority's implementation plan are being undertaken by or on behalf of the authority in accordance with the plan;
- (d) whether the authority is complying with this Part.

Note: The regulations may prescribe other matters that the Minister may or must have regard to in making a decision under this section (see paragraph 130(2)(b)).

106 Requirement to consider relevant arrangements before making regulations

Before the Governor-General makes regulations for the purposes of this Part, the Minister must have regard to relevant arrangements of approved authorities for any schools.

Part 8—Actions Minister may take for failure to comply with this Act, and to require amounts to be repaid

Division 1—Guide to this Part

107 Guide to this Part

This Part gives the Minister the power to take action if an approved authority, a block grant authority, a non-government representative body or a State or Territory fails to comply with this Act or does not repay an amount that it owes to the Commonwealth. The Minister may require a State or Territory to pay an amount, reduce an amount that would otherwise be payable under this Act or delay a payment.

Division 3 deals with recoverable payments (which are payments that the Commonwealth does not otherwise have the power to make). The Secretary must report on any recoverable payments that are made.

Part 8 Actions Minister may take for failure to comply with this Act, and to require amounts to be repaid

Division 2 Actions Minister may take for failure to comply with this Act, and to require amounts to be repaid

Section 108

Division 2—Actions Minister may take for failure to comply with this Act, and to require amounts to be repaid

108 Application of Division for failure to comply with this Act

This Division applies to a State or Territory if any of the following applies:

- (a) the State or Territory fails to comply with any of section 22, paragraphs 23(2)(a) to (d) or subsection 23(3) (conditions of financial assistance);
- (b) an approved authority for one or more schools located in the State or Territory does not comply, is not complying or has not complied with section 75, 77 or 78 (basic and ongoing requirements for approval);
- (c) a block grant authority for one or more schools located in the State or Territory does not comply, is not complying or has not complied with section 84 or 85 (basic and ongoing requirements for approval);
- (d) a non-government representative body for a non-government school does not comply, is not complying or has not complied with section 92 or 93 (basic and ongoing requirements for approval);
- (e) an approved authority or block grant authority for one or more schools located in the State or Territory breaches a condition to which the authority's approval is subject;
- (f) a non-government representative body for a non-government school breaches a condition to which the body's approval is subject.

Actions Minister may take for failure to comply with this Act, and to require amounts to be repaid **Part 8**
Actions Minister may take for failure to comply with this Act, and to require amounts to be repaid **Division 2**

Section 109

109 Application of Division when amounts are required to be repaid

Overpayments under this Act

- (1) This Division applies to a State or Territory if the Commonwealth makes an overpayment under this Act to the State or Territory.

Note: **Overpayment** is defined in section 9.

Recoverable payments under this Act

- (2) This Division applies to a State or Territory if the Commonwealth makes a recoverable payment under this Act to the State or Territory.

Note: For other rules relating to recoverable payments, see Division 3.

Unpaid amounts under other Acts

- (3) This Division applies to a State or Territory if:
- (a) any of the following applies:
- (i) the State or Territory has been paid an amount under section 11 of the *Federal Financial Relations Act 2009* in excess of the amount that it was entitled to receive under that section;
 - (ii) an approved authority or block grant authority for one or more schools located in the State or Territory, or the State or Territory, has been paid an amount under the *Schools Assistance Act 2008* in excess of the amount that it was entitled to receive under that Act;
 - (iii) an approved authority or block grant authority for one or more schools located in the State or Territory, or the State or Territory, has been paid an amount under the *Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Act 2004* in excess of the amount that it was entitled to receive under that Act;
 - (iv) an approved authority for one or more schools located in the State or Territory, or the State or Territory, has been paid an amount under the *States Grants (Primary*

Part 8 Actions Minister may take for failure to comply with this Act, and to require amounts to be repaid

Division 2 Actions Minister may take for failure to comply with this Act, and to require amounts to be repaid

Section 110

and Secondary Education Assistance) Act 2000 in excess of the amount that it was entitled to receive under that Act; and

- (b) the whole or a part of the amount has not been repaid.

Recovering capital funding

- (4) This Division applies to a State or Territory if:
- (a) an amount of financial assistance is paid to the State or Territory under Division 2 of Part 5 (capital funding) for a block grant authority or capital grants authority for a school; and
 - (b) the amount is spent as capital expenditure in relation to the school; and
 - (c) the school ceases to provide primary education or secondary education; and
 - (d) the regulations prescribe that the amount is recoverable.

110 Actions the Minister may take

- (1) The Minister may take any one or more of the following actions in relation to a State or Territory to which this Division applies:
- (a) determine, in writing, that the State or Territory pay to the Commonwealth a specified amount;
 - (b) determine, in writing, that the amount of financial assistance that is payable to the State or Territory under this Act is reduced by a specified amount;
 - (c) delay making any further payment (or a part of a further payment) to the State or Territory under this Act for a year until:
 - (i) if this Division applies because of section 108—the non-compliance, breach or failure is rectified; and
 - (ii) if this Division applies because of section 109—the overpayment, the amount of the recoverable payment, or the unpaid amount referred to in paragraph 109(3)(b), is repaid.

Actions Minister may take for failure to comply with this Act, and to require amounts to be repaid **Part 8**
Actions Minister may take for failure to comply with this Act, and to require amounts to be repaid **Division 2**

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- Note 1: For the effect of a determination made under paragraph (1)(a) or (b), see sections 24 and 111.
- Note 2: Decisions under this section are reviewable decisions (see Division 3 of Part 9).
- Note 3: Under subsection 33(3) of the *Acts Interpretation Act 1901*, the Minister could revoke a determination that reduces the amount of financial assistance that is payable to a State or Territory. This would require the amount of the reduction to be paid by the Commonwealth to the State or Territory.

- (2) An amount may be reduced or a payment delayed under paragraph (1)(b) or (c):
- (a) for one or more schools for a year; or
 - (b) for an approved authority for a school for a year; or
 - (c) for a capital grants authority or block grant authority for a school for a year; or
 - (d) for a non-government representative body for a non-government school for a year.

Regulations

- (3) The regulations may prescribe a limit, or a method of determining a limit, on an amount determined under paragraph (1)(a) or (b).

Minister to have regard to relevant arrangement

- (4) In taking an action under subsection (1) in relation to a State or Territory, the Minister must have regard to any relevant arrangement of the State or Territory (in its capacity as an approved authority for government schools).

Determination not legislative instrument

- (5) A determination under this section is not a legislative instrument.

Part 8 Actions Minister may take for failure to comply with this Act, and to require amounts to be repaid

Division 2 Actions Minister may take for failure to comply with this Act, and to require amounts to be repaid

Section 111

111 Effect of determination under paragraph 110(1)(a) or (b)

Effect of determination under paragraph 110(1)(a)

- (1) If the Minister determines under paragraph 110(1)(a) that a State or Territory pay an amount to the Commonwealth, the amount payable by the State or Territory to the Commonwealth is (subject to any regulations made for the purposes of section 24) a debt due by the State or Territory to the Commonwealth, and may be recovered by the Minister, on behalf of the Commonwealth, in a court of competent jurisdiction.

Effect of determination under paragraph 110(1)(b)

- (2) Subsection (3) applies if the Minister determines under paragraph 110(1)(b) that the amount of financial assistance that is payable to a State or Territory under this Act is reduced by a specified amount:
 - (a) for one or more schools for one or more years; or
 - (b) for an approved authority for a year; or
 - (c) for a capital grants authority or block grant authority for a school for a year; or
 - (d) for a non-government representative body for a non-government school for a year.
- (3) For the purposes of this Act, the amount that is payable to the State or Territory for the schools, authority or body for the year under the following provision (as the case requires) is reduced by the amount specified:
 - (a) Division 2 of Part 3 (recurrent funding for participating schools);
 - (b) Division 5 of Part 3 (transitional recurrent funding for participating schools);
 - (c) Part 4 (recurrent funding for non-participating schools);
 - (d) subsection 67(1) (capital funding for capital grants authorities);
 - (e) subsection 67(2) (capital funding for block grant authorities);

Actions Minister may take for failure to comply with this Act, and to require amounts to be repaid **Part 8**
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- (f) Division 3 of Part 5 (special circumstances funding);
- (g) Division 4 of Part 5 (funding for non-government representative bodies).

Note: This affects the amounts of the payments of financial assistance that are determined under section 25, 28, 29 or 30.

Part 8 Actions Minister may take for failure to comply with this Act, and to require amounts to be repaid

Division 3 Recoverable payments

Section 112

Division 3—Recoverable payments

112 Recoverable payments

- (1) This section applies if the Commonwealth makes a recoverable payment.
- (2) The Commonwealth is taken to have the power to make the recoverable payment.

Note: The Minister may also determine that the State or Territory repay the amount (see Division 2).

Appropriation

- (3) If the recoverable payment was purportedly made in accordance with a determination made under section 25, then section 126 (appropriation) applies as if the recoverable payment were made in accordance with the determination.
- (4) If the recoverable payment was purportedly made in accordance with a determination made under paragraph 28(1)(b), then section 126 applies as if the recoverable payment were made in accordance with the determination.

113 Reports about recoverable payments

- (1) The Secretary must cause the following information to be included in the Department's annual report for a financial year:
 - (a) the number of recoverable payments that departmental officials are aware of that were paid during that financial year;
 - (b) the total amount of recoverable payments referred to in paragraph (a);
 - (c) the number of recoverable payments that departmental officials became aware of during that financial year that were paid during an earlier financial year;

Actions Minister may take for failure to comply with this Act, and to require amounts to
be repaid **Part 8**
Recoverable payments **Division 3**

Section 113

- (d) the total amount of recoverable payments referred to in paragraph (c);
 - (e) for each recoverable payment referred to in paragraph (c)—
the financial year in which the payment was made.
- (2) Information is not required in the Department's annual report if no departmental officials are aware of any recoverable payments referred to in paragraph (1)(a) or (c).

Part 9—Miscellaneous

Division 1—Guide to this Part

114 Guide to this Part

Division 2 contains rules relating to applications made under this Act.

Division 3 provides for decisions under this Act to be reviewed internally and by the Administrative Appeals Tribunal.

Division 4 contains miscellaneous provisions, including provisions relating to false and misleading information, the use and disclosure of information, and delegations.

Division 2—Rules relating to applications

115 Approved form for applications

- (1) The Minister may approve a form for applications made under a provision of this Act.
- (2) If the Minister does so, an application made under that provision must be in the approved form.

116 Request for further information

- (1) The Minister may, by written notice, request a person applying under a provision of this Act to give the Minister further information in relation to the application, within the period specified in the notice.
- (2) A period specified under subsection (1) must be reasonable, and at least 28 days.
- (3) The Minister may refuse to consider the application until the information is provided.
- (4) The application is taken to be withdrawn if the information is not provided within the specified period.

117 Withdrawal of application

A person applying under a provision of this Act may, by written notice given to the Minister, withdraw the application at any time before the Minister makes a decision on the application.

Section 118

Division 3—Review of decisions

118 Reviewable decisions

- (1) Each of the decisions referred to in column 1 of the following table is a *reviewable decision*.

Reviewable decisions			
Item	Column 1 Reviewable decision	Column 2 Provision under which the reviewable decision is made	Column 3 Relevant person for the reviewable decision
1	To refuse to determine that a person receives primary education or secondary education at a school	Subsection 10(2)	The approved authority for the school
2	To determine a different level of education for a special school, special assistance school or student at a special school or special assistance school	Subsection 15(3)	The approved authority for the school

Section 118

Reviewable decisions			
Item	Column 1 Reviewable decision	Column 2 Provision under which the reviewable decision is made	Column 3 Relevant person for the reviewable decision
3	To determine a total entitlement for a school for a year if the amount of financial assistance to which the determination relates is payable under Division 2 or 5 of Part 3	Subsection 26(4)	The approved authority for the school
4	To determine a school's SES score	Subsection 52(3)	The approved authority for the school
5	To refuse to approve a person as an approved authority for a school	Subsection 73(1)	The person
6	To refuse to approve a person as an approved authority for a location of a school or a level of education at a location of a school	Subsection 73(1)	The person
7	To make an approval of an approved authority subject to conditions	Subsection 73(3)	The approved authority
8	To specify a day on and after which an approval of an approved authority is in force	Subsection 73(5)	The approved authority

Part 9 Miscellaneous
Division 3 Review of decisions

Section 118

Reviewable decisions			
Item	Column 1 Reviewable decision	Column 2 Provision under which the reviewable decision is made	Column 3 Relevant person for the reviewable decision
9	To vary or revoke an approval of an approved authority for one or more schools (other than in accordance with an application by the authority or under paragraph 81(1)(c))	Section 80 or paragraph 81(1)(a), (b) or (d)	The approved authority (or former approved authority)
10	To refuse to vary or revoke an approval of an approved authority	Section 80	The approved authority
11	To specify in a variation or revocation of an approval of an approved authority a day on which the variation or revocation takes effect that is earlier than the day the Minister varies or revokes the approval	Subsection 80(4) or 81(5)	The approved authority (or former approved authority)
12	To refuse to approve a person as a block grant authority for a school	Subsection 83(1)	The person
13	To make an approval of a block grant authority subject to conditions	Subsection 83(3)	The block grant authority

Section 118

Reviewable decisions			
Item	Column 1 Reviewable decision	Column 2 Provision under which the reviewable decision is made	Column 3 Relevant person for the reviewable decision
14	To specify a day on and after which an approval of a block grant authority is in force	Subsection 83(4)	The block grant authority
15	To vary or revoke an approval of a block grant authority for one or more schools (other than in accordance with an application by the authority)	Section 87 or subsection 88(1)	The block grant authority (or former block grant authority)
16	To refuse to vary or revoke an approval of a block grant authority	Section 87	The block grant authority
17	To specify in a variation or revocation of an approval of a block grant authority a day on which the variation or revocation takes effect that is earlier than the day the Minister varies or revokes the approval	Subsection 87(4) or 88(5)	The block grant authority (or former block grant authority)

Part 9 Miscellaneous
Division 3 Review of decisions

Section 118

Reviewable decisions			
Item	Column 1 Reviewable decision	Column 2 Provision under which the reviewable decision is made	Column 3 Relevant person for the reviewable decision
18	To refuse to approve a person as a non-government representative body for a non-government school	Subsection 91(1)	The person
19	To make an approval of a non-government representative body subject to conditions	Subsection 91(2)	The non-government representative body
20	To specify a day on and after which an approval of a non-government representative body is in force	Subsection 91(3)	The non-government representative body
21	To vary or revoke an approval of a non-government representative body (other than in accordance with an application by the body)	Section 95 or subsection 96(1)	The non-government representative body (or former non-government representative body)
22	To refuse to vary or revoke an approval of a non-government representative body	Section 95	The non-government representative body

Section 118

Reviewable decisions			
Item	Column 1 Reviewable decision	Column 2 Provision under which the reviewable decision is made	Column 3 Relevant person for the reviewable decision
23	To specify in a variation or revocation of an approval of a non-government representative body a day on which the variation or revocation takes effect that is earlier than the day the Minister varies or revokes the approval	Subsection 95(4) or 96(4)	The non-government representative body (or former non-government representative body)
24	To give a direction to an approved authority in relation to an implementation plan	Section 105	The approved authority
25	To take action in relation to a State or Territory (including to reduce the amount payable to the State or Territory for a school for a year)	Section 110	The State or Territory
26	To reduce the amount payable to a State or Territory for a year for a school or an approved authority for a school	Section 110	The approved authority for the school

Section 119

Reviewable decisions			
Item	Column 1	Column 2	Column 3
	Reviewable decision	Provision under which the reviewable decision is made	Relevant person for the reviewable decision
27	To reduce the amount payable to a State or Territory for a year for a capital grants authority, a block grant authority or a non-government representative body	Section 110	The authority or body

- (2) The regulations may also:
- (a) prescribe a decision made under a specified provision of the regulations as a *reviewable decision*; and
 - (b) specify the relevant person for the reviewable decision.

119 Notice of decision

After a reviewable decision is made, the person who made the decision must give a written notice to the relevant person for the decision containing:

- (a) the terms of the decision; and
- (b) the reasons for the decision; and
- (c) notice of the person's right to have the decision reviewed.

However, a failure to give the notice required by this section does not affect the validity of the decision.

120 Internal review of reviewable decisions

Application for review

- (1) A relevant person for a reviewable decision may apply to the Secretary for review of the decision, unless the decision was made by the Minister or Secretary personally.

Section 120

Note: For review of a decision made personally, see section 122.

- (2) An application for review must:
- (a) be in writing; and
 - (b) set out the reasons for the application; and
 - (c) be made within:
 - (i) 30 days after the decision was made; or
 - (ii) if the Secretary allows a longer period (whether before or after the end of the period referred to in subparagraph (i))—that longer period.

Note: Under section 121, further information may be required in relation to an application.

Review of decision

- (3) On receiving an application, the Secretary must either:
- (a) review the reviewable decision personally; or
 - (b) cause the reviewable decision to be reviewed by a person (the *internal reviewer*) who:
 - (i) is a person to whom the power to make the decision has been delegated; and
 - (ii) was not involved in making the decision; and
 - (iii) if the decision was made by an individual—occupies a position that is at least the same level as the individual who actually made the decision.

Note: Decisions may be made by computer programs (see section 124).

- (4) In reviewing a decision, the Secretary or internal reviewer may exercise all powers and discretions that are conferred on the person who made the decision.
- (5) The Secretary or the internal reviewer may:
- (a) affirm, vary or set aside the reviewable decision; and
 - (b) if he or she sets aside the reviewable decision—make such other decision as he or she thinks appropriate.

Section 121

- (6) The decision (the *decision on review*) of the Secretary or internal reviewer is taken (other than for the purposes of section 118) to have been made under the provision under which the original decision was made.
- (7) The decision on review takes effect:
 - (a) on the day specified in the decision on review; or
 - (b) if a day is not specified—on the day the decision on review was made.

Notice of decision

- (8) After the decision on review is made, the person who made the decision must give the applicant a written notice containing:
 - (a) the terms of the decision; and
 - (b) the reasons for the decision; and
 - (c) notice of any right of the applicant to have the decision reviewed by the Administrative Appeals Tribunal.

However, a failure to comply with this subsection does not affect the validity of the decision.

121 Secretary or internal reviewer may require further information from applicants

- (1) The Secretary or an internal reviewer may, by written notice, require a person who has made an application under section 120 to give the Secretary or the internal reviewer further information about the application.
- (2) The Secretary or internal reviewer may refuse to consider the application until the person gives the Secretary or the internal reviewer the information.

122 Review by the Administrative Appeals Tribunal

- (1) An application may be made to the Administrative Appeals Tribunal for review of:

- (a) a reviewable decision made by the Minister or Secretary personally; or
 - (b) a decision of the Secretary or an internal reviewer made in accordance with section 120 that relates to a reviewable decision.
- (2) However, an application may not be made to the Administrative Appeals Tribunal for review of a decision to determine a total entitlement for an approved authority for a year if the amount of financial assistance to which the determination relates is payable under Division 5 of Part 3 (transitional recurrent funding for participating schools).
- (3) An application under subsection (1) may be made only by, or on behalf of, the relevant person for the reviewable decision referred to in paragraph (1)(a) or (b).
- (4) Subsection (3) has effect despite subsection 27(1) of the *Administrative Appeals Tribunal Act 1975*.

Division 4—Miscellaneous

123 False or misleading information

- (1) This section applies if:
 - (a) a decision is made under a provision of this Act; and
 - (b) the decision was based on, or took account of, information that was false or misleading in a material particular.

Note: A reference to *this Act* includes the regulations (see section 6).

- (2) Despite anything in this Act:
 - (a) the decision may be set aside and a new decision made under the provision; and
 - (b) the new decision may take effect from any day determined by the person making the decision (including a day that is earlier than the day the original decision was made).

124 Secretary may arrange for use of computer programs to make decisions

- (1) The Secretary may arrange for the use, under the Secretary's control, of computer programs for any purposes for which the Minister may make decisions under this Act.
- (2) A decision made by the operation of a computer program under such an arrangement is, for the purposes of this Act (except section 120 and paragraph 122(1)(a) (review of decisions)), taken to be a decision made by the Minister personally.

125 Making records of, using, disclosing or publishing protected information

- (1) The Minister may:
 - (a) make a record of, use or disclose protected information (including protected information that is personal information) in accordance with the regulations; and

- (b) impose conditions on any record, use or disclosure of protected information.

Note: This section constitutes an authorisation for the purposes of other laws, such as the *Privacy Act 1988*.

- (2) The Minister may publish, in any manner he or she thinks fit, protected information (except personal information).
- (3) Without limiting subsection (1), the regulations may prescribe the following:
- (a) a person or body to whom protected information may be disclosed;
 - (b) the purposes for which protected information may be recorded, used or disclosed (whether by the Minister or any other person);
 - (c) conditions (other than conditions determined by the Minister) on any record, use or disclosure of protected information.

Note: The regulations may prescribe offences in relation to making records of, using or disclosing protected information (see paragraph 130(2)(a)).

126 Appropriation

The Consolidated Revenue Fund is appropriated for the purposes of making payments of financial assistance under this Act to a State or Territory for a year in accordance with a determination made under:

- (a) section 25 (recurrent funding for schools); or
- (b) paragraph 28(1)(b) (capital funding for block grant authorities).

Note: A payment may be taken to have been made in accordance with a determination made under section 25 or paragraph 28(1)(b) (see section 112 (recoverable payments)).

Section 127

127 Annual report by Minister

As soon as practicable after 30 June each year, the Minister must cause a report dealing with the following to be laid before each House of the Parliament:

- (a) any financial assistance paid in the previous year under this Act;
- (b) the application of any financial assistance paid in the previous year under this Act;
- (c) any decisions made under any of the following provisions:
 - (i) section 74 (relating to public interest test in considering whether to approve a person as an approved authority);
 - (ii) subsection 76(2) (approved authorities for government schools not taken to satisfy basic requirements);
 - (iii) paragraph 81(1)(c) (variation or revocation of approval of approved authority in public interest);
 - (iv) subsection 105(1) (Minister may give a direction in relation to an implementation plan).

128 Review of, or for the purposes of, the National Education Reform Agreement

If a review is conducted of, or for the purposes of, the National Education Reform Agreement, the Minister must consider the results of that review and any impact of that review on this Act.

129 Delegation

Minister

- (1) The Minister may, by written instrument, delegate all or any of the Minister's powers and functions under this Act, except those in subsection (2), to:
 - (a) the Secretary; or
 - (b) an APS employee in the Department.

- (2) The Minister must not delegate his or her powers and functions under the following provisions:
- (a) subsection 52(2) (determining SES scores by legislative instrument);
 - (b) section 74 (relating to public interest test in considering whether to approve a person as an approved authority);
 - (c) subsection 76(2) (approved authorities for government schools not taken to satisfy basic requirements);
 - (d) paragraph 81(1)(c) (variation or revocation of approval of approved authority in public interest).

Secretary

- (3) The Secretary may, by written instrument, delegate all or any of the Secretary's powers and functions under this Act to an SES employee or acting SES employee in the Department.

130 Regulations

- (1) The Governor-General may make regulations prescribing matters:
- (a) required or permitted by this Act to be prescribed by the regulations; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Content of the regulations

- (2) Without limiting subsection (1), the regulations may prescribe the following:
- (a) penalties, not exceeding 50 penalty units, for offences in the regulations relating to:
 - (i) the requirement to provide information relating to a school's census; or
 - (ii) making records of, using or disclosing protected information;
 - (b) if a provision of this Act (including the regulations) permits or requires a decision to be made—matters that the

Section 130

decision-maker may or must (as prescribed by the regulations) have regard to in making the decision.

Example: A provision of this Act permits or requires a decision to be made if the provision permits or requires the Minister to make a determination of an administrative character.

- (3) The regulations may allow the Minister to determine matters in relation to anything in relation to which regulations may be made.
- (4) Despite subsection 14(2) of the *Legislative Instruments Act 2003*, the regulations may provide in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in any other instrument or other writing as in force or existing from time to time.

Requirement to consult Ministerial Council

- (5) Before the Governor-General makes regulations for the purposes of this Act, the Minister must consult the Ministerial Council.

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Endnotes about misdescribed amendments and other matters are included in a compilation only as necessary.

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the amendment is set out in the endnotes.

Endnotes

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

A = Act	orig = original
ad = added or inserted	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
am = amended	pres = present
amdt = amendment	prev = previous
c = clause(s)	(prev...) = previously
C[x] = Compilation No. x	Pt = Part(s)
Ch = Chapter(s)	r = regulation(s)/rule(s)
def = definition(s)	Reg = Regulation/Regulations
Dict = Dictionary	reloc = relocated
disallowed = disallowed by Parliament	renum = renumbered
Div = Division(s)	rep = repealed
exp = expires/expired or ceases/ceased to have effect	rs = repealed and substituted
F = Federal Register of Legislative Instruments	s = section(s)/subsection(s)
gaz = gazette	Sch = Schedule(s)
LI = Legislative Instrument	Sdiv = Subdivision(s)
LIA = <i>Legislative Instruments Act 2003</i>	SLI = Select Legislative Instrument
(md) = misdescribed amendment	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
o = order(s)	<u>underlining</u> = whole or part not commenced or to be commenced
Ord = Ordinance	

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Australian Education Act 2013	67, 2013	27 June 2013	1 Jan 2014 (s 2)	
Australian Education Amendment Act 2014	120, 2014	26 Nov 2014	Sch 1 (items 1–43, 45, 46): 27 Nov 2014 (s 2(1) item 2) Sch 2: 1 Jan 2014 (s 2(1) item 3)	Sch 1 (items 45, 46)

Endnotes

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Part 1 heading	
Division 1 heading	
s 4	am <u>No 120, 2014</u>
Division 2 heading	
s 6	am No 120, 2014
s 9	am <u>No 120, 2014</u>
s 12	am No 120, 2014
s 13	am No 120, 2014
Part 2 heading	
s 21	am <u>No 120, 2014</u>
s 23	am <u>No 120, 2014</u>
s 27	am No 120, 2014
s 29	am <u>No 120, 2014</u>
Part 3 heading	
Division 1 heading	
s 31	am No 120, 2014
Division 5 heading	
Subdivision A heading	ad No 120, 2014
s 57	am No 120, 2014
s 58	am No 120, 2014
s 59	am No 120, 2014
s 61	am No 120, 2014
s 62	am No 120, 2014
Subdivision B heading	ad No 120, 2014
s 63A.....	ad No 120, 2014
s 63B.....	ad No 120, 2014
Part 5 heading	rs <u>No 120, 2014</u>
Division 1 heading	

Endnote 4—Amendment history

Provision affected	How affected
s 66	am <u>No 120, 2014</u>
Division 2 heading	
s 68	am <u>No 120, 2014</u>
Division 3 heading	
	rs <u>No 120, 2014</u>
s 69	am <u>No 120, 2014</u>
s 69A	ad <u>No 120, 2014</u>
Part 6 heading	
Division 2 heading	
s 78	am <u>No 120, 2014</u>
Part 8 heading	
	rs <u>No 120, 2014</u>
Division 1 heading	
s 107	am <u>No 120, 2014</u>
Division 2 heading	
	rs <u>No 120, 2014</u>
s 108	am <u>No 120, 2014</u>
s 109	am <u>No 120, 2014</u>
s 111	am <u>No 120, 2014</u>
Division 3 heading	
s 112	am <u>No 120, 2014</u>
Part 9 heading	
Division 3 heading	
s 118	am <u>No 120, 2014</u>
Division 4 heading	
s 126	am <u>No 120, 2014</u>