

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2011 No. 60**

Subject - *Schools Assistance Act 2008*

*Schools Assistance Amendment Regulations 2011 (No. 1)*

#### **Background**

The *Schools Assistance Act 2008* (the Act) provides for Commonwealth financial assistance to the states and territories for non-government schools for 2009 to 2012.

#### **Authority**

Section 174 of the Act provides that the Governor-General may make regulations prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsections 67(1A) and 69(1A) of the Act respectively provide that the regulations may specify an additional amount of assistance for each Indigenous student from a remote or a very remote area receiving primary or secondary education at a non-remote campus, by reference to an amount or a formula for calculating that additional amount of assistance.

#### **Purpose and operation**

The *Schools Assistance Amendment Regulations 2010 (No. 1)* (the 2010 Regulations) amended the *Schools Assistance Regulations 2009* (the Principal Regulations) to, among other things, specify a guarantee amount for literacy, numeracy and special learning needs for the 2010 program year under paragraph 99(b) of the Act. The funding guarantee relates to the special education component of the allocative mechanism for the literacy, numeracy and special learning needs program.

The Regulations amend regulation 9.2 to correct the guarantee amount for literacy, numeracy and special learning needs for the 2010 program year previously prescribed.

The Regulations also specify an increase in funding for Indigenous boarding students attending non-remote non-government boarding schools. This covers non-remote non-government boarding schools with more than 50 Indigenous boarding students from remote Indigenous communities receiving primary or secondary education.

The proposed Regulations would be a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (the LI Act).

#### **Consultation**

The Department of Education, Employment and Workplace Relations undertook consultations in regards to the amendments made by Schedule 2 of the Regulations. The Department consulted with representatives from the National Catholic Education

Commission and the Independent Schools Council of Australia in relation to the additional assistance for Indigenous boarding students from remote or very remote areas receiving primary or secondary education at non-remote campuses.

In relation to the amendment made by Schedule 1 of the Regulations, as the effect of the amendment was beneficial in nature, consultation was not undertaken as it was not considered necessary.

### Commencement

Regulations 1 to 3 and Schedule 1 to the Regulations, which corrects the guarantee amount literacy, numeracy and special learning needs, would be taken to have commenced on the commencement of the 2010 Regulations, which was on 26 November 2010.

The retrospective commencement would not infringe subsection 12(2) of the LI Act because the proposed Regulations are beneficial in nature and would not affect the rights of a person (other than the Commonwealth or an authority of the Commonwealth) as at the date of registration so as to disadvantage that person. Nor would the proposed Regulations impose any liabilities on any person (other than the Commonwealth or an authority of the Commonwealth) in respect of anything done or omitted to be done before the date of registration

Regulation 4 and Schedule 2, which specify increased funding amounts for Indigenous boarding students attending non-remote non-government boarding schools, commenced on the day after they were registered on the Federal Register of Legislative Instruments.

### Details of the Regulations

#### Regulation 1 – Name of Regulations

This regulation provides that the title of the regulations is the *Schools Assistance Amendment Regulations 2011 (No. 1)*.

#### Regulation 2 – Commencement

Paragraph 2(a) provides that regulations 1 to 3 and Schedule 1 are taken to have commenced on 26 November 2010.

Paragraph 2(b) provides that regulation 4 and Schedule 2 commence on the day after they are registered on the Federal Register of Legislative Instruments.

#### Regulation 3 – Amendment of *Schools Assistance Regulations 2009*

This regulation provides that the Principal Regulations are amended as set out in Schedule 1.

## Regulation 4 – Amendment of *Schools Assistance Regulations 2009*

This regulation provides that the Principal Regulations are amended as set out in Schedule 2.

### **Schedule 1– Amendment of *Schools Assistance Regulations 2009* taken to have commenced on 26 November 2010**

#### Item [1] – Regulation 9.2, table, item 2

Regulation 9.2 prescribes, for subsection 99(b) of the Act, the guarantee amount for literacy, numeracy and special learning needs for a program year.

Item [1] omits and substitutes table item 2 of the table under regulation 9.2 to provide \$1 327 627 as the new guarantee amount for the 2010 program year.

### **Schedule 2 – Amendments of *Schools Assistance Regulations 2009* commencing on day after registration**

#### Item [1] – Regulation 7.2A – additional Indigenous supplementary assistance - primary

Item [1] inserts a new regulation 7.2A after regulation 7.2.

Regulation 7.2A deals with additional Indigenous supplementary assistance for primary education at non-remote school campus that is a boarding school.

Regulation 7.2A provides that for subsection 67(1A) of the Act, the additional assistance amount is \$2537 for the 2011 program year for an Indigenous student from a remote area or a very remote area and receiving primary education as a boarding student at a non-remote campus of a boarding school that has more than 50 Indigenous boarding students from remote or very remote areas on the schools census day.

#### Item [2] – Regulation 7.3A – additional Indigenous supplementary assistance – secondary

Item [2] inserts new regulation 7.3A after regulation 7.3.

Regulation 7.3A deals with additional Indigenous supplementary assistance for secondary education at non-remote school campus that is a boarding school.

Regulation 7.3A provides that for subsection 69(1A) of the Act, the additional assistance amount is \$2435 for the 2011 program year for an Indigenous student from a remote area or a very remote area and is receiving secondary education as a boarding student at a non-remote campus of a boarding school that has more than 50 Indigenous boarding students from remote or very remote areas on the schools census day.

Notes 1 and 2 are respectively identical notes inserted under new regulations 7.2A and 7.3A.

Note 1 has the effect of providing that the total number of Indigenous boarding students mentioned in each of paragraphs 7.2A(b) and 7.3A(b) may be calculated by the number of students receiving primary or secondary education at the boarding school.

Note 2 provides that the terms, remote area and very remote area, are identified in the ***Remoteness Structure***, which is defined in section 4 of the *Schools Assistance Act 2008*.