

EXPLANATORY STATEMENT

Select Legislative Instrument No. 231, 2013

Issued by the authority of the Minister for Education

Schools Assistance Act 2008

Schools Assistance Amendment (2013 Measures No. 1) Regulation 2013

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 2013 for recurrent expenditure and targeted expenditure and for 2009 to 2014 for capital expenditure.

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. Section 33 of the *Acts Interpretation Act 1901* provides authority for the making of the instrument.

Purpose and operation

The *Schools Assistance Amendment (2013 Measures No. 1) Regulation 2013* (the Regulation) amends the *Schools Assistance Regulations 2009* (the Principal Regulations) for the following purpose:

- to supplement funding for all programs of financial assistance under the Act for the 2013 program year (defined in the Act as a calendar year) for primary and secondary non-government schools.

Supplementation funding

Overall, the Regulation provides an estimated \$315.1 million of additional funding to non-government schools for the 2013 calendar year.

Supplementation to funding occurs through indexation to recurrent and targeted expenditure for non-government schools in line with the changes in the Average Government School Costs (AGSC), published by the Ministerial Council (which is currently known as the Standing Council on School Education and Early Childhood (SCSEEC)).

Subsection 36(3) of the Act (which refers to recurrent expenditure) and subsection 101(4) (which refers to targeted expenditure) both provide that, before the Governor-General makes regulations for the purposes of subsection 36(2) (specifying the amounts for the Average Government School Recurrent Costs (AGSRC)) and subsection 101(2) (specifying a number to be the targeted expenditure supplementation number for a program year) respectively, the Minister must consider changes in the figures of the AGSC. The AGSC is the movement in

State and Territory expenditure for government schools. The Minister has considered changes in these figures.

Under paragraphs 36(1)(a)(ii) and 36(1)(b)(ii) of the Act, the Principal Regulations may specify the AGSRC for primary and secondary education respectively for a program year. AGSRC is the average recurrent cost of educating a primary student or a secondary student in a government school. It is based on recurrent government schools expenditure data maintained by the Ministerial Council. The AGSRC was first implemented in 1993 and was designed to ensure that Australian non-government school recurrent funding is indexed for real-cost increases faced by the government school sector. The Regulation sets out the increased AGSRC amounts for primary and secondary education for the 2013 program year.

Supplementation for capital expenditure reflects movement for the index number for the previous calendar year in Index Number 3020 *Non-Residential Construction Australia*, published by the Australian Bureau of Statistics.

The index is a fixed weight composite index of building prices and wage costs produced by the Australian Bureau of Statistics and covers non-residential new construction using a component cost method, as close as possible to market prices, which reflect labour, material, plant input costs, and subcontractors' margin. The *6427.0 Producer Price Indexes, Australia* is available at <http://www.abs.gov.au>, by inserting '6427' in the search field on the front page. For the 2013 program year, the index moved from 100.3 in December 2011 to 99.6 in December 2012, a 0.993 per cent decrease. Under section 85 of the Act, the Minister determined the supplementation number to be 1.000. The Regulation sets out the **base assistance amount** for the 2013 program year and the **capital expenditure supplementation number** for the 2013 program year.

Subsection 85(4) of the Act provides that before the Governor-General makes regulations for the purposes of subsection 85(2) (specifying a number to be the capital expenditure supplementation number for a program year), the Minister must consider changes in indices of building prices and wage costs specified in the Principal Regulations. The Minister has considered changes in indexation covering building prices and wage costs.

Under subsection 67(3) of the Act, the Principal Regulations may specify a greater amount of 'assistance amount per student' for the purposes of supplementary assistance for Indigenous primary students at non-remote school campuses and remote and very remote school campuses for the program year (pursuant to paragraphs 67(1)(b) and 67(2)(b) respectively). The Regulation sets out a greater amount of Indigenous supplementary assistance for Indigenous primary students at both non-remote school campuses and remote and very remote school campuses for the 2013 program year.

Subsection 67(1A) of the Act provides that the Principal Regulations may specify an additional amount of assistance for an Indigenous student from a remote or very remote area who is receiving primary education at a non-remote school campus. For subsection 67(1A) of the Act, the Regulation sets out an additional amount of assistance in relation to an Indigenous student who is:

- a) from a remote area or very remote area; and
- b) 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 Indigenous communities on the schools census day in the program year.

Under subsection 69(3) of the Act, the Principal Regulations may specify a greater amount of ‘assistance amount per student’ for the purposes of supplementary assistance for Indigenous secondary students at non-remote school campuses and remote and very remote school campuses for the program year (pursuant to paragraphs 69(1)(b) and 69(2)(b) respectively). The Regulation sets out a greater amount of Indigenous supplementary assistance for Indigenous secondary students at both non-remote school campuses and remote and very remote school campuses for the 2013 program year.

Subsection 69(1A) of the Act provides that the Principal Regulations may specify an additional amount of assistance for an Indigenous student from a remote or very remote area who is receiving secondary education at a non-remote school campus. For subsection 69(1A) of the Act, the Regulation sets out an additional amount of assistance in relation to an Indigenous student who is:

- a) from a remote or very remote area; and
- b) 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 Indigenous communities on the schools census day in the program year.

Paragraph 99(b) of the Act provides that the Principal Regulations may specify a guarantee amount for literacy, numeracy and special learning needs (LNSLN) for a program year. The funding guarantee relates to the school grants component of the allocative mechanism for LNSLN. The Regulation sets out a reduced guarantee amount for literacy, numeracy and special learning needs for the 2013 program year (compared to the 2012 program year) due to the increase in the LNSLN schools grants amount for 2013.

Consultation

Consultation was not undertaken on supplementation of funding for the 2013 program year as the Regulation confers an overall benefit upon the relevant stakeholders for recurrent, capital and targeted funding.

Commencement

The Regulation commences the day after it is registered on the Federal Register of Legislative Instruments.

Details of the Regulation:

Section 1 – Name of Regulation

This section provides that the title of the Regulation is the *Schools Assistance Amendment (2013 Measures No. 1) Regulation 2013*.

Section 2 – Commencement

This section provides that the Regulation commences on the day after it is registered on the Federal Register of Legislative Instruments.

Section 3 – Authority

This section provides that the Regulation is made under the *Schools Assistance Act 2008*.

Section 4 – Schedule(s)

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

Schedule 1 – Amendments

Item [1] – Regulation 7.1, table, after item 3

Item [1] inserts a new item into the table in regulation 7.1 after item 4.

Regulation 7.1 prescribes, for the purposes of subsection 36(1) of the Act, changes to the Average Government Schools Recurrent Costs (AGSRC).

New table item 5 sets out \$10,411 and \$13,032 as the AGSRC amounts for Primary education and Secondary education respectively, for the 2013 program year.

Item [2] – Regulation 7.2, table, after item 4

Item [2] inserts a new item into the table in regulation 7.2 after item 4.

Regulation 7.2 deals with primary education funding amounts for Indigenous supplementary assistance. Regulation 7.2 prescribes, for the purposes of subsection 67(3) of the Act, changes to the assistance amount for each Indigenous primary student at non-remote school campuses, and remote and very remote school campuses, respectively.

New table item 5 sets out \$2,073 as the assistance amount for each Indigenous primary student at a non-remote school campus and \$4,986 as the assistance amount for each Indigenous primary student at a remote and very remote school campus for the 2013 program year.

Item [3] – Regulation 7.2A, table, after item 2

Item [3] inserts a new item in the table in regulation 7.2A after item 2.

Regulation 7.2A deals with additional Indigenous supplementary assistance for primary education at a non-remote school campus that is a boarding school. The regulation specifies the assistance amount for an Indigenous student 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 school census day. New table item 3 provides that, for subsection 67(1A) of the Act, the additional assistance amount is \$2,913 for the 2013 program year for each eligible Indigenous primary student from a remote area or a very remote area.

Item [4] – Regulation 7.3, table, after item 4

Item [4] inserts a new item into the table in regulation 7.3 after item 4.

Regulation 7.3 deals with secondary education funding amounts for Indigenous supplementary assistance. Regulation 7.3 prescribes, for the purposes of subsection 69(3) of

the Act, changes to the assistance amount for each Indigenous secondary student attending a non-remote school campus (column 3 of new table item 5) or a remote or very remote school campus (column 4 of new table item 5).

New table item 5 sets out \$2,916 as the assistance amount for each Indigenous secondary student at a non-remote school campus and \$5,700 as the assistance amount for each Indigenous secondary student at a remote or very remote school campus for the 2013 program year.

Item [5] – Regulation 7.3A, table, after item 2

Item [5] inserts a new item 3 in the table in regulation 7.3A after item 2.

Regulation 7.3A deals with additional Indigenous supplementary assistance for secondary education at a non-remote school campus that is a boarding school. The regulation specifies the assistance amount for an Indigenous student 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 school census day.

New table item 3 provides that, for subsection 69(1A) of the Act, the additional assistance amount is \$2,785 for the 2013 program year for each eligible Indigenous secondary student from a remote area or a very remote area.

Items [6] and [7] – Subregulation 8.1(1) and subregulation 8.1(2), table, after item 3

Subsection 84(1) of the Act provides authority for the Minister to make grants of financial assistance to States and Territories for capital expenditure by non-government schools. The maximum total amount of these grants in any particular program (i.e. calendar) year is determined by a formula set out in subsection 84(2) of the Act; the maximum total amount of grants is the factor of the *base assistance amount* and the *capital expenditure supplementation number*.

Subsection 84(3) of the Act permits the base assistance amount to be prescribed by regulation. Subsection 85(2) of the Act permits the capital expenditure supplementation number to be set by regulation. Part 8 (regulation 8.1) of the Principal Regulations prescribes both the base assistance amount and the capital expenditure supplementation number. Subregulation 8.1(1) sets out the base assistance amount for 2011 and 2012, and subregulation 8.1(2) sets out the capital expenditure supplementation number for 2009, 2010, 2011 and 2012.

Item [6] has the effect of prescribing a base assistance amount for 2013 of \$133,827,000 (the base assistance amount for 2012 remains at \$131,814,000). Item [7] has the effect of prescribing a capital expenditure supplementation number for 2013 of 1.000

The net effect of these two changes is that the maximum total amount of grants of financial assistance to States that the Minister may determine under subsection 84(1) of the Act for 2013 is \$133,827,000 (i.e. \$133,827,000 x 1.000 rounded to nearest \$1,000 in accordance with subsection 84(4) of the Act). By comparison, the maximum total amount of grants of financial assistance for 2012 was \$133,827,000 (i.e. \$131,814,000 x 1.01527 rounded to the nearest \$1,000).

Subsection 85(4) of the Act provides that, before the Governor-General makes regulations prescribing the capital expenditure supplementation number (i.e. item [7]), the Minister must consider changes in the index of building prices specified in the regulations and the index of wage costs specified in the regulations. The indexes are set out in subregulation 8.1(3) of the Principal Regulations. The Minister has considered changes in these indexes.

Item [8] – Regulation 9.2, table, after item 4

Item [8] inserts a new item 5 in the table in regulation 9.2 after item 4.

Section 99 of the Act permits the school guarantee amount to be prescribed in regulations.

Regulation 9.2 of the Principal Regulations prescribes, for paragraph 99(b) of the Act, the school guarantee amounts for 2009 (\$1,867,513), 2010 (\$1,327,627) 2011 (\$834,785) and 2012 (\$382,000). The effect of item [8] is to amend regulation 9.2 to prescribe a new guarantee amount for 2013 of \$315,817.

Item [9] – Regulation 9.3, table, after item 4

Part 9 of the Act provides authority for the Minister to make grants of financial assistance to States and Territories for non-government schools, for targeted assistance (i.e. financial assistance for specific purposes to address identified areas of need). The provisions in Part 9 of the Act provide for maximum grant amounts for each program year to be calculated by reference to formulas set out in those provisions. Many of those formulas include a factor called the *targeted expenditure supplementation number*.

The targeted expenditure supplementation number is essentially an indexation factor, which is designed to reflect the increase in the cost over time of providing school education in a government school – the “Average Government School Costs” (AGSC).

Subsection 101(2) of the Act permits the targeted expenditure supplementation number to be prescribed in regulations. Regulation 9.3 of the Principal Regulations prescribes the targeted expenditure supplementation number for 2009, 2010, 2011 and 2012.

The effect of item [9] is to amend regulation 9.3 to include a targeted expenditure supplementation number for 2013 of 1.032.

Subsection 101(4) of the Act provides that, before the Governor-General makes regulations prescribing the targeted expenditure supplementation number, the Minister must consider changes in the figures for the AGSC, as published by the Ministerial Council. The Minister has considered these changes.

The following summary specifies what the sum of the amounts and the respective estimated additional funding for the 2013 program year for each targeted program.

In accordance with subsection 87(2) of the Act, the sum of the amounts paid to the States for the 2013 program year for short term emergency assistance must not exceed \$1,305,000 and provides an estimated additional funding of \$40,000 for the 2013 program year.

In accordance with subsection 88(2) of the Act, the sum of the amounts paid to the States for the 2013 program year for education in country areas must not exceed \$6,686,328 and provides an estimated additional funding of \$207,328 for the 2013 program year.

In accordance with subsection 91(1) of the Act, the sum of the grant amounts paid to the States for the 2013 program year for languages education must not exceed \$15,234,000 and provides an estimated additional funding of \$472,000 for the 2013 program year.

In accordance with subsection 94(2) of the Act, the assistance amount per student for teaching English to eligible new arrivals for the 2013 program year is \$7,149 and provides an additional \$222 per student.

In accordance with subsection 95(2) of the Act, the assistance amount per student for teaching English to eligible humanitarian new arrivals for the 2013 program year is \$14,294 and provides an additional \$443 per student.

In accordance with subsection 96(3) of the Act, the assistance amount per student with disabilities for literacy, numeracy and special learning needs for the 2013 program year is \$1,056 and provides an additional \$33 per student.

In accordance with subsection 98(1) of the Act, the school grants amount for literacy, numeracy and special learning needs for the 2013 program year is \$180,897,037 and provides an estimated additional funding of \$5,609,210 for the 2013 program year.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Schools Assistance Amendment (2013 Measures No. 1) Regulation 2013

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The Legislative Instrument amends the *Schools Assistance Regulations 2009* (the Principal Regulations) for the following purposes:

- supplementing funding for the 2013 program year for primary and secondary education under sections 36, 67, 69, 84, 85, 99 and 101 of the Act.

Human rights implications

Right to education and Rights of Persons with Disabilities

The Legislative Instrument engages the right to education in Article 13 of the International Covenant on Economic, Social and Cultural Rights. Article 13 recognises the right of everyone to education which is directed towards the full development of the human personality and the sense of its dignity and to enable all persons to participate effectively in society. It also recognises the liberty of parents and guardians to choose non-government schools for their children, provided those schools conform to the minimum educational standards set out by the Australian Government. The right to education for children is also found in Articles 28 and 29 of the Convention on the Rights of the Child. Items 1 to 9 of the Legislative Instrument provide additional funding in support of improving educational outcomes for students attending non-government primary and secondary schools.

The Legislative Instrument also engages Articles 9 and 24 of the Convention on the Rights of Persons with Disabilities. Article 9 recognises the right of persons with disabilities to participate fully in all aspects of life. Article 24 recognises the right of persons with disabilities to an inclusive education. The additional recurrent, capital and targeted funding prescribed by this Legislative Instrument supports the improvement and accessibility of school facilities for eligible students with disabilities, and supports those students to facilitate their effective education.

As a whole, the Legislative Instrument engages and promotes the right to education and the rights of persons with disabilities by providing additional funding to assist with improving educational outcomes for students attending non-government primary and secondary schools, including Indigenous students, students educationally disadvantaged because of geographic isolation and students with disabilities.

Conclusion

This Legislative Instrument is compatible with human rights because it advances the protection of human rights.

The Hon Christopher Pyne MP
Minister for Education