

2008

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**SCHOOLS ASSISTANCE BILL 2008**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Education,  
the Honourable Julia Gillard MP)

# SCHOOLS ASSISTANCE BILL 2008

## OUTLINE

The purpose of the Bill is to implement the Government's commitment to provide stability in Commonwealth funding for non-government schools for 2009 to 2012.

The Bill appropriates funding for Commonwealth programs of financial assistance to the States and Territories for non-government schools. It succeeds the *Schools Assistance (Learning Together – Achievement Through Choice and Opportunity) Act 2004* (the former Act) which authorised funding for government and non-government schools for the 2005 to 2008 funding period.

The socioeconomic status (SES) funding model will be maintained as the basis for Commonwealth funding of non-government schools for 2009 to 2012. The SES funding arrangements were introduced in 2001 to provide a more transparent, objective and equitable approach to funding non-government schools. General recurrent funding is distributed according to need and schools serving the neediest communities receive the greatest financial support.

The Bill will implement the following funding arrangements for non-government schools for 2009 to 2012:

- Schools with a 2009-2012 SES score that is the same as their score for the current quadrennium will continue to receive per capita funding entitlements at the same rate of Average Government School Recurrent Costs (AGSRC).
- Schools that are currently funding maintained, will continue to be funding maintained for 2009 to 2012 unless their 2009 to 2012 SES score indicates higher total school funding than the school currently receives.
- Schools with a 2009 to 2012 SES score that is lower than their current score will attract a higher per capita funding rate from 2009 unless the school is currently funding maintained and in receipt of higher total school funding or already in receipt of maximum funding.
- Schools with a 2009 to 2012 SES score that is higher than their current score will have their 2008 per capita dollar amounts guaranteed (or frozen) until the value of the new score is equal to, or greater than, their 2008 entitlements unless the school is funding maintained or already in receipt of maximum funding.
- Maximum recurrent grant funding of 70 per cent of AGSRC is automatically provided for schools that are special schools or meet the criteria as a special assistance school. For 2009 to 2012 this maximum level of funding is provided for a new class of schools that have certain levels of Indigenous enrolments (where Indigenous enrolments are 50 per cent or more of enrolments for schools in very remote areas and 80 per cent or more of enrolments in any other area).

- A remoteness loading will apply for students attending a school campus (not including distance education students) if the campus is classified as a moderately accessible school campus, a remote school campus or a very remote school campus. These loadings are 5 per cent, 10 per cent and 20 per cent respectively of a school's SES score entitlement. The remoteness loading will apply for non-government schools that are already in receipt of general recurrent funding.

The Bill will include recurrent funding for Indigenous Supplementary Assistance for Indigenous students attending non-government schools. This funding for Indigenous students was previously appropriated under the *Indigenous Education (Targeted Assistance) Act 2000*.

The Bill also provides for an Indigenous Funding Guarantee, to ensure that non-government schools and systems do not receive less funding than they would have been entitled to in 2008.

The Bill provides funding for capital grants for non-government schools. The Bill continues funding for existing Commonwealth programs of targeted assistance for non-government schools for 2009-2012. These programs include:

- Literacy, Numeracy and Special Learning Needs, for students who are educationally disadvantaged, including students with disabilities;
- Country Areas, for non-government students in geographically isolated areas;
- Languages, to support language programs in non-government schools; and
- English as a Second Language for New Arrivals, to support newly arrived students to learn English;
- Short Term Emergency Assistance for non-government schools to support the operation of schools that have been affected by unforeseen, emergency circumstances;

Establishment assistance grants will be provided in 2009. Non-government schools which commenced operation in 2008 and received the first year per student entitlement of establishment assistance under the former Act in 2008 will receive their second year entitlement in 2009.

The Bill provides for the indexation of recurrent and targeted programs based on Average Government School Recurrent Costs (AGSRC). Capital grants will continue to be indexed according to annual movements in building prices.

The Bill implements a school performance information and transparency framework for 2009 to 2012 focused on good reporting to parents, the community and government to drive system reform and improve student outcomes.

National student assessments are to be carried out as specified in the regulations and in the way and time specified in the regulations. Regulations may prescribe assessments against specified national standards, including standards in reading, writing, language conventions and numeracy for students in year 3, 5, 7 and 9. They may also prescribe the coverage and frequency of such assessments, whether full-cohort annual literacy and numeracy assessments or triennial sample assessments.

The Bill requires all school authorities to provide, in a timely manner, to such bodies as the Minister determines, the performance information specified in regulations. This information will be published in national reports on schooling.

The Bill requires all schools and school system authorities to provide the Minister, or such other body as determined, the individual school information specified in the regulations, for each school or school in the system.

The Bill will require schools to provide reports to parents that are timely and provide plain language feedback on their child's performance, including each student's achievement against any national standards and relative to the student's peer group at the school. Further requirements could be specified in regulations, for example that reports to parents must include a report from national literacy and numeracy tests showing student achievement against key indicators, such as the national average, the middle 60 per cent of students and national minimum literacy and numeracy attainment standards where these have been set.

The Bill will require all schools to publish a range of information in relation to the school, to be made publicly available within 6 months of the end of each year. The information, and the manner in which it may be published, is to be specified in regulations. The required information will include information about the school, its teachers, and key student outcomes.

The Bill will require all non-government education authorities and schools to implement the National Curriculum, prescribed by the regulations, before the start of the 2012 school year.

The Bill includes financial accountability requirements as a condition of funding.

The legislative basis for schools funding will continue to be underpinned by agreements with non-government school authorities. Administrative details will be in guidelines.

## **FINANCIAL IMPACT**

The Bill provides for an appropriation of an estimated \$28.0 billion (final 2008 prices) for 2009 to 2012.

In accordance with the Government's policy, these amounts will be adjusted for price movements.

# SCHOOLS ASSISTANCE BILL 2008

## NOTES ON CLAUSES

### **Part 1—Preliminary**

#### **Clause 1 – Short title**

Provides that this Act may be cited as the Schools Assistance Act 2008.

#### **Clause 2 – Commencement**

Provides that this Act commences on 1 January 2009.

#### **Clause 3 – Simplified outline of Act**

**Clause 3** is an information provision which provides an overview of the Bill to assist with readability. The main provisions of the Bill are:

- Financial assistance may be paid to a State for or in connection with non-government schools (or approved school systems) in the State for recurrent expenditure, capital expenditure and targeted expenditure.
- Financial assistance may be paid for the 2009 to 2012 program years.
- Financial assistance for a non-government school, or another non-government body, may only be paid if there is a funding agreement with the relevant authority of the school or body that sets out the requirements that must, under this Bill, be included in the agreement.
- If a non-government school, or another non-government body, breaches a funding agreement, the Minister may (under the agreement) require the school or body to repay an amount to the Commonwealth. The Minister may also reduce or delay the amount of other payments for the school or body under this Bill.
- If a State fails to pass on an amount of financial assistance to a non-government school or another non-government body for which financial assistance is granted under this Bill, the Minister may require the State to repay an amount to the Commonwealth.

## **Part 2—Interpretation**

### **Division 1 - Definitions**

#### **Clause 4 - Definitions [see also 2004 Act section 4]**

An interpretation provision which contains definitions of the terms and expressions used in the Bill.

## **Division 2 - Other important concepts**

### **Clause 5 - Students receiving education at non-government schools**

Provides for a definition of the concept of a student *receiving* primary education or secondary education at a non-government school.

**Subclause 5(1)** deals with the definition of receiving primary education or secondary education.

**Subclause 5(2)** deals with receiving primary distance education or secondary distance education. This subclause in conjunction with Part 4 Division 7 specify that while a student may be receiving a primary or secondary level of distance education, they will only be entitled to funding where they are attached to a non-government school that is already in receipt of recurrent funding, for the particular level and at the particular location, as per Part 4 Division 3 to Division 6.

### **Clause 6 - Meaning of *funding level***

Provides for a definition of the concept of *funding level* of a school for a particular level of education. The table at **Clause 6** sets out the *general funding levels*.

### **Clause 7 - Levels of education**

Provides for a definition of the concept of *level of education*.

**Subclauses 7(1), (2) and (3)** provide that the Minister may determine, by legislative instrument, a level of primary education or a level of secondary education for a State, and the matters to which that determination may relate.

**Subclause 7(4)** provides that a reference in the Bill to a level of education at a school in a State includes a reference to a year in a course of primary education or secondary education provided at the school at a level, determined by the Minister (under subclause (1)) that applies to the school.

### **Clause 8 - Meaning of *schools census day***

Provides a definition of the concept of *schools census day*.

**Subclauses 8(2) and (3)** provide for the circumstances in which the Minister may declare a particular day in a calendar year to be the schools census day for that year (where special circumstances exist), or agree with the State Minister that a particular day in a calendar year is to be the schools census day for that year.



**Clause 9 – Meaning of *school campus census day***

Provides a definition of the concept of *school campus census day*.

**Subclause 9(2)** provides that the Minister may declare a particular day in a calendar year to be the schools campus census day for that year in special circumstances.

**Clause 10 - Meaning of *nominated authority***

Provides for a definition of the concept of *nominated authority*.

**Subclause 10(1)** provides that for the purposes of this Bill, or a provision (or provisions) of this Bill specified under subclause (2), a body nominated under that subsection by a group of non-government schools is the *nominated authority* of the group.

**Subclause 10(2)** provides that a group of non-government schools may make a written nomination to the Secretary of the Department of a body to be the nominated authority of the group for the purposes of this Bill, or of a specified provision or provisions of this Bill.

## **Part 3—Authorisation of financial assistance**

### **Division 1—Simplified outline of Part**

#### **Clause 11 – Simplified outline**

**Clause 11** is an information provision which provides an overview of Part 3 to assist with readability.

## **Division 2—Authorised financial assistance**

### **Clause 12 – Authorised financial assistance—funding agreements**

Provides that a funding agreement must be in place before the Minister authorises a payment of financial assistance.

**Subclause 12(1)** provides that the Minister must not authorise a payment to a State under this Bill for a non-government school, or another non-government body, unless the relevant authority of the school or body has made an agreement (a funding agreement) with the Commonwealth that complies with Division 3 (Funding agreements).

**Subclause 12(2)** clarifies that a funding agreement may have been made before the commencement of this Bill.

### **Clause 13 – Authorised financial assistance—schools must be approved**

**Clause 13** provides that the Minister must not authorise a payment to a State under this Bill for education at a particular level at a particular location at a non-government school unless the school is an approved school for that level and location. A note at the end of the clause has been inserted to assist the reader to clarify that Part 7 deals with the approval of schools.

### **Clause 14 – Authorised financial assistance— State recognition of schools**

Deals with State recognition of schools, levels of education at schools, and locations for levels of education at schools, for the purposes of authorising payments under this Bill.

**Subclause 14(1)** empowers the Minister to refuse to authorise payment to a State for a non-government school during any period when the State Minister does not recognise the school. A note at the end of the subclause assists the reader to clarify that if a State Minister does not recognise a school, then the Minister must revoke the school's approved school determination under clause 122.

**Subclause 14(2)** empowers the Minister to refuse to authorise a payment to a State under this Bill for a non-government school for a particular level of education provided at that school during any period when the State Minister does not recognise that school for that level of education.

**Subclause 14(3)** empowers the Minister to refuse to authorise a payment to a State under this Bill for a non-government school for provision of a level of education by the school at a particular location during any period when the State Minister does not recognise the school for that level of education provided at the location.

**Subclause 14(4)** provides that, without limiting subclauses (1) to (3), for the purposes of Clause 14 a period during which the State Minister concerned does not recognise a

school includes a period (including a temporary period) during which the school is not permitted under the law of the State concerned to provide:

- in relation to the condition in subclause (1)—any level of education (at whatever level) at the school; or
- in relation to the condition in subclause (2)—the level of education concerned at the school; or
- in relation to the condition in subclause (3)—the level of education concerned at the school, at the location concerned.

This can include cancellation of a particular level of education (such as senior secondary) or the suspension of any levels of education.

### **Clause 15– Authorised financial assistance—financial viability**

**Clause 15** provides that the Minister may refuse to authorise, or may delay, a payment to a State under this Bill for a non-government body (including a non-government school), or the relevant authority of such a body, if the following circumstances apply:

- either or both the body or authority is a body corporate that is being wound up or whose affairs are under any form of external control (for example, the control of a manager) under a law of the Commonwealth or a State; or
- the Minister considers that the liabilities of the body or authority are greater than its assets or the body or authority is (and is likely to continue for a substantial period to be) unable to pay its debts as and when they fall due for payment; or
- if a law of the Commonwealth or a State requires the body or authority to be audited, the relevant audit is expressed to be qualified or expresses concern about the financial viability of the body or authority.

Paragraph 15(a) can include where the school is under the control of a liquidator, an administrator, a manager or a receiver. Paragraph 15(c) can include an independent auditor's report required by the Australian Securities and Investment Commission.

## **Division 3—Funding agreements**

### **Subdivision A —Purpose of grants**

#### **Clause 16 –Funding agreements—purpose of grants**

**Clause 16** requires amounts received by the relevant authority be spent for the specified purposes.

**Subclause 16(1)** provides that a funding agreement must require the relevant authority for the non-government school, or other non-government body, to ensure that amounts received by the relevant authority from the State, as a result of the payment to the State for the school or body, are spent for purposes that are determined by the Minister and set out in the agreement.

**Subclause 16(2)** provides that, without limiting subclause 16(1), the purposes include administrative expenses incurred by the relevant authority. A note at the end of subsection 16(2) has been inserted to assist the reader by clarifying that financial assistance may be given for recurrent expenditure, capital expenditure or targeted expenditure (see Parts 4, 5 and 6).

### **Subdivision B—National school performance and transparency requirements**

Subdivision B sets out the requirements relating to performance of, and reporting by, non-government schools.

#### **Clause 17 – Funding agreements—national student assessments**

**Clause 17** requires all relevant authorities for schools and school systems to ensure that students in the school or schools for which they are the relevant authority participate in national testing that is specified in the regulations and participate by a date no later than a date or dates determined by the Minister. National student assessments currently include annual full-cohort assessments in literacy and numeracy at years 3, 5, 7 and 9, together with less frequent national and international sample assessments at various year levels in reading, mathematics, science, civics and citizenship education and Information and Communications Technologies (ICT) literacy.

**Subclause 17(1)** provides for a definition of *national student assessments* - that they are assessments prescribed in the regulations which must be made against national standards, including standards in reading, writing, language conventions and numeracy for students in year 3, 5, 7 and 9 at school.

**Subclause 17(2)** sets out the requirements for national student assessments and provides that a funding agreement for a non-systemic school, or for an approved

school system, must require the relevant authority for the school or system to ensure that, each national student assessment specified in the regulations as applying to the school (or the schools in the system) is carried out no later than a day or days (if any) determined by the Minister and as prescribed by the regulations. A note at the end of subclause 17(2) has been inserted to assist the reader by clarifying that the regulations may provide that the assessments are to be carried out only for schools of a particular class and may make different provisions for assessments at schools of different classes, permitted by subsection 33(3A) of the *Acts Interpretation Act 1901*.

**Subclause 17(3)** provides that, without limiting subclause (2), the regulations made for the purposes of that subclause may require a national student assessment to be carried out for the students specified in the regulations, and in the way and with the frequency prescribed by the regulations. A note at the end of subclause (3) has been inserted to assist the reader by clarifying that the regulations may provide that the assessments are to be carried out only for students of a particular class and may make different provisions for students of different classes, permitted by subsection 33(3A) of the *Acts Interpretation Act 1901*.

**Subclause 17(4)** provides that regulations made for the purposes of clause 17 may make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time. This is required to show a ‘contrary intention’ for the purposes of subsection 14(2) of the *Legislative Instruments Act 2003* which provides that unless the contrary intention appears, the legislative instrument may not make provision 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.

The purpose of this provision is to allow the regulations to prescribe tests by reference to other documents and incorporating any changes to those documents from time to time, rather than only permitting the referenced document to be incorporated in the form that it exists when this Bill commences.

## **Clause 18 – Funding agreements—national reports on the outcomes of schooling**

**Clause 18** requires all school authorities to provide, in a timely manner, performance information including the results of the national student assessments, information on student enrolment and attendance and information on Year 12 attainment and on transition. This information will be published in national reports on schooling which it is expected will be published within 12 months of the end of the program year.

**Subclause 18(1)** provides that a funding agreement for a non-systemic school, or for an approved school system, must require the relevant authority for the school or system to do each of the following:

- in the case of an agreement for a non-systemic school—ensure that the school participates in preparing a national report (or reports) on the outcomes of schooling;

- in the case of an agreement for an approved school system—ensure that the system, and each school in the system, participates in preparing a national report (or reports) on the outcomes of schooling;
- give the Minister (for inclusion in a report mentioned in paragraphs 18(1)(a) or 18(1)(b)) a report (or reports), of a kind or kinds required by the Minister, addressing the requirements for performance information prescribed by the regulations.

The purpose of subclause 18(1) is to ensure that the relevant authority for a non-government school or approved school system must participate in and ensure that the school or each school in the approved school system for which it is the relevant authority must participate in preparing a national report on the outcomes of schooling.

**Subclause 18(2)** provides that a requirement mentioned in paragraph 18(1)(a), 18(1)(b) or 18(1)(c) must be satisfied not later than a day or days determined by the Minister (if determined) or, in any other case, a day or days that will allow publication of any report mentioned in paragraphs 18(1)(a) and 18(b) within one year after the end of each program year.

### **Clause 19 – Funding agreements—individual school information**

**Clause 19** requires all school authorities to provide to the Minister (on request) reports about each individual school in relation to assessments at Years 3, 5, 7 and 9 at each school, disaggregated according the specified student background characteristics.

**Subclause 19(1)** provides that a funding agreement for a non-systemic school, or an approved school system, must require the relevant authority for the school or system to ensure that the school, or each school in the system, gives the Minister, or another person or body determined by the Minister, a report (or reports) about individual school information specified by the regulations for the school.

**Subclause 19(2)** provides that the report (or reports) mentioned in subclause 19(1) must be of a kind (or kinds) required by the Minister, must be given to the Minister from time to time as required by the Minister in the way (if any) determined by the Minister and no later than a day or days (if any) required by the Minister.

### **Clause 20 – Funding agreements—reporting to parents etc**

**Clause 20** requires all school authorities to provide to the parents or guardians of each child attending each school student reports which meet certain specified requirements. The Minister may determine the required characteristics of student's reports, including common national formats. The aim of the changes to the conditions in the Bill from the similar condition in the 2004 Act is to simplify the provisions in the Bill and move all the detail about the time, manner and the content of the reports into the regulations.

**Subclause 20(1)** explains the scope of clause 20 which is that the clause applies in relation to a student who attends a non-systemic school, or a school that is a member of an approved school system.

**Subclause 20(2)** deals with reports about students attending school. The clause provides that a funding agreement for the school, or system, must require the relevant authority for the school or system to give each person responsible for the student a report (or reports) that complies with this clause.

**Subclause 20(3)** provides that the report (or reports) complies with this clause if the report:

- uses plain language and is readily understood by the person responsible for the student;
- gives an accurate and objective assessment of the student's progress and achievement
- includes an assessment of the student's achievement against available national standards and relative to the performance of the student's peer group at the school;
- meets any other requirements specified in the regulations; and
- is given to each person responsible for the student in the way and with the frequency prescribed by the regulations.

#### **Clause 21 – Funding agreements—publication by schools of information relating to schools**

**Clause 21** requires relevant authorities to ensure that each school for which they are the relevant authority publishes information for parents and the community, in an annual report, against a set of indicators, with such information to be published on the school's website and within six months of the end of the school year.

**Subclause 21(1)** provides that a funding agreement for a non-systemic school, or an approved school system, must require the relevant authority for the school or system to ensure that the school, or each school in the system, makes the information specified in the regulations relating to the school for a program year publicly available within 6 months after the end of the program year.

**Subclause 21(2)** provides that the information mentioned in subclause (1) must be made publicly available in the way (if any) specified by the regulations.

#### **Clause 22 – Funding agreements—national curriculum**

**Clause 22** will introduce a new policy which requires the relevant authority to ensure that each school implements a national curriculum for primary and secondary education.

**Subclause 22(1)** provides that a funding agreement for a non-systemic school, or an approved school system, must require the relevant authority for the school or system to ensure that the school, or each school in the system, implements the national



curriculum prescribed by the regulations for primary education or secondary education (or both, as applicable).

**Subclause 22(2)** provides that the requirement to implement the national curriculum must be satisfied on or before 31 January 2012.

## **Subdivision C—Grant acquittal and reporting requirements**

### **Clause 23 – Funding agreements—acquittal of grants**

**Clause 23** requires the relevant authority for the non-government school or other non-government body to acquit to the Secretary that the financial assistance has been spent for the specified purposes.

**Subclause 23(1)** provides that a funding agreement must require the relevant authority for the non-government school, or other non-government body to give the Secretary of the Department a certificate by a qualified accountant stating whether an amount equal to the sum of the amounts mentioned in subclause 16(1) has been spent (or committed to be spent) for the program year for the purposes mentioned in that subclause and to give the certificate on or before 30 June following the program year concerned, or another day allowed by the Minister.

**Subclause 23(2)** is a definition provision which provides for the purposes of clause 23, a *qualified accountant* means a qualified accountant within the meaning of the *Corporations Act 2001*, a person registered (or taken to be registered) as a company auditor under the *Corporations Act 2001* or is a person approved by the Minister as a qualified accountant under subsection (3).

**Subclause 23(3)** empowers the Minister to approve a person as a qualified accountant for the purposes of subclause (2).

### **Clause 24 – Funding agreements—reports on programs and financial operations**

**Clause 24** requires a relevant authority for a non-government school or other non-government body to give to the Minister reports on programs of financial assistance and the financial operations of the school or other body and all the schools in the system (if applicable).

**Subclause 24(1)** provides that a funding agreement must require the relevant authority for the non-government school, or other non-government body, to ensure that a report or reports, of a kind or kinds required by the Minister, is given to the Minister in relation to each of the following:

- programs of financial assistance provided under this Bill, so far as they relate to the relevant authority;
- the financial operations (including the financial viability and funding sources) of the school or other body and, in the case of an approved school system, the schools (including each particular school) in the system.

**Subclause 24(2)** provides that the report must be given to the Minister no later than a day or days (if any) determined by the Minister.

## **Subdivision D—Monitoring, evaluation and compliance**

### **Clause 25 – Funding agreements—monitoring**

**Clause 25** requires a relevant authority for a non-government school or other body to allow a person authorised in writing by the Minister to have access to and take copies of or take extracts from documents, accounts, records and other documents relevant to the authority and to have access to the premises. The powers in clause 25 are not linked to criminal offences or a civil penalty regime – failure to comply would result only in reduction or repayment of conditional funding under agreements pursuant to clause 27. Nevertheless the Australian Federal Police has been consulted in relation to these powers.

**Subclause 25(1)** deals with monitoring of the relevant authority. The subclause provides that a funding agreement must require the relevant authority for the non-government school, or other non-government body, to allow a person authorised in writing (who is defined as an authorised person) by the Minister for the purpose to do either or both of the following:

- to have full and free access to accounts, records and documents of the relevant authority relating to information that the authority is required under the agreement to give to the Minister;
- to take extracts from, or make copies of, any such accounts, records and documents.

**Subclause 25(2)** deals with monitoring of schools. The subclause provides that, without limiting subclause 25(1), a funding agreement for a non-systemic school, or an approved school system, must allow an authorised person to have full and free access to each campus of the school, or of each school in the system, for the purposes mentioned in paragraphs 25(1)(a) and (b) and to undertake any reasonable inspection of the campus, and of the students at the campus, including an inspection for the purposes of counting the number of students at the campus.

**Subclause 25(3)** explains what is reasonable notice, access times and assistance and provides that the funding agreement must allow for access mentioned in this clause to be given only on condition that:

- in the case of a non-systemic school, the authorised person gives reasonable notice to the relevant authority for the school;
- in the case of a systemic school, the authorised person gives reasonable notice to the relevant authority for the approved school system concerned and to a person responsible for the operation of the school; and
- in any case the access is given at reasonable times

and must provide for the authorised person to be given such help as he or she requires to exercise any power mentioned in clause 25.

## **Clause 26 – Funding agreements—evaluation**

**Clause 26** requires a relevant authority for a non-government school or other body to participate in and ensure that each school or school in an approved school system participates in the evaluation of outcomes of programs for which financial assistance was provided.

**Subclause 26(1)** provides a funding agreement must require the relevant authority for the non-government school, or other non-government body, to ensure that the school or body participates in evaluating the outcomes of programs of financial assistance provided under this Bill for the school or body.

**Subclause 26(2)** provides that if subclause 26(1) applies to a relevant authority for an approved school system, without limiting that subclause, the funding agreement must require the authority to ensure that each school in the system participates in evaluating the outcomes of programs of financial assistance provided under this Bill for the school.

## **Clause 27 – Funding agreements—failure to comply**

**Clause 27** sets out the consequences if the relevant authority fails to comply with any or all of the requirements set out in the agreement.

**Subclause 27(1)** deals with failure of the relevant authority to comply with the funding agreement.

The subclause provides that a funding agreement must contain a provision to the effect that any or all of the consequences set out in clause 27 may apply if the relevant authority does not comply with a requirement of the agreement within the period required by or under the agreement or within a further period allowed by the Minister. The Minister may allow this further period before or after the end of the period required by or under the agreement.

**Subclauses 27(2), 27(3) and 27(4)** set out the consequences of failure to comply with the funding agreement. The intention is for the consequences to apply independently of each other.

**Subclause 27(2)** provides that if the Minister so determines, the relevant authority must pay to the Commonwealth a specified amount (not more than the sum of the amounts mentioned in subclause 16(1)).

**Subclause 27(3)** provides that the Minister may determine that any other amount or amounts of financial assistance to the State under this Bill for the school or body is to be reduced by an amount or amounts totalling not more than the amounts required to be paid under the determination (if the Minister makes a determination under subclause 27(2)) or, in any other case, the sum of the amounts mentioned in subclause 16(1).

A note at the end of subclause 27(3) has been inserted to assist the reader to clarify that a determination reducing the amount of a payment is made under clause 34.

**Subclause 27(4)** provides that the Minister may delay the making of any further payment (or part of a further payment) to the State under this Bill for the school or body until the relevant authority complies with the requirement set out in the agreement.

### **Clause 28 – Funding agreements—unauthorised amounts**

**Clause 28** requires amounts that were paid in excess of the authorised amount under subclause 16(1) to be repaid or for any other amount to be reduced by the unauthorised amount if the Minister determines.

**Clause 28** provides that a funding agreement must contain a provision that, if the sum of the amounts mentioned in subclause 16(1) exceeds the total amount that was properly authorised to be paid to the State for the school or body:

- the relevant authority must, if the Minister so determines, pay to the Commonwealth an amount (the *determined amount*) equal to the excess; and
- in the event that the authority does not pay the determined amount to the Commonwealth, the Minister may make a further determination reducing any other amount or amounts of financial assistance for the State under this Bill for the non-government body by an amount or amounts not more than the determined amount.

A note at the end of clause 28 has been inserted to assist the reader to clarify that a further determination mentioned in paragraph 28(b) is made under clause 44.

### **Subdivision E—Other provisions in funding agreements**

#### **Clause 29 – Funding agreements—other provisions**

**Clause 29** sets out the other provisions that must be included in a funding agreement.

**Clause 29** provides that a funding agreement (or a funding agreement as varied) must include:

- the provisions mentioned in any of the following paragraphs of this Act (if applicable):
  - (i) paragraph 135(b) (the inclusion of new schools in an approved school system);
  - (ii) paragraph 140(e) (ending membership of schools from an approved school system)
  - (iii) paragraph 158(d) (changes of approved authorities);
- any provisions prescribed by the regulations;
- any other provisions that the Minister considers appropriate in relation to the relevant authority, school or body.

## **Division 4—Conditions applying to the States**

**Division 4** sets out the conditions that apply to the States. **Clause 30** requires a State to pay to the relevant authority each amount paid to the State as soon as practicable and **clause 31** sets out the consequences if the State fails to pay the financial assistance within time.

### **Clause 30– Conditions applying to the States—payment of financial assistance to non-government schools and bodies**

**Subclause 30(1)** provides that the grant to a State because of a provision of this Bill of financial assistance for a non-government school, or another non-government body, for a program year is subject to the condition that the State is required to pay to the relevant authority of the school or body each amount paid to the State for the school or body because of the provision and to describe the amount paid to the relevant authority as a payment made out of money paid to the State by the Commonwealth.

**Subclause 30(2)** provides that it is also a condition of the grant to the State that the payment of each amount must be made as soon as practicable after the amount is paid to the State or within such further time as the Minister allows. The Minister may allow this before or after the end of the time mentioned in paragraph 30(2)(a).

### **Clause 31 – Conditions applying to the States— requirement to repay amounts to Commonwealth**

**Subclause 31(1)** provides that a grant to a State mentioned in clause 30 is subject to the condition that, in the event that the State does not comply with the condition mentioned in subclause 30(1) the State is required, if the Minister so determines, to repay to the Commonwealth the amount stated in the determination.

**Subclause 31(2)** provides that the amount stated in a determination under subclause 31(1) must not exceed the sum of the amounts of financial assistance paid to the State under the provision for the school or body for the program year concerned.

## **Division 5—Repayment of financial assistance**

### **Clause 32 – Repayment of financial assistance—relevant considerations**

**Clause 32** prescribes that the Minister must take into account all relevant matters before making a determination under clause 27 or 28 or subclause 31(1).

**Subclause 32(1)** applies if the Minister is considering whether to make a determination under a provision of an agreement mentioned in clause 27 or 28 that the relevant authority of a school or body is to pay an amount to the Commonwealth or under subclause 31(1) that a State is to repay an amount to the Commonwealth.

**Subclause 32(2)** provides in considering whether to make a determination, the Minister must take into account all relevant matters, including whether the relevant authority or State gave all relevant information to the Commonwealth before the grant of financial assistance was made.

### **Clause 33 – Repayment of financial assistance—recovery from States as debts**

Provides that an amount payable by a State to the Commonwealth under this Bill is a debt due by the State to the Commonwealth.

### **Clause 34 – Repayment of financial assistance—failure by relevant authorities to repay amounts**

**Clause 34** deals with repayment of financial assistance if the Minister has determined that the authority is to pay an amount to the Commonwealth and the amount remains unpaid.

**Subclause 34(1)** explains when clause 34 applies. The subclause provides that clause 34 applies if under a funding agreement (or an agreement under section 30 of the former Act) between the Commonwealth and the relevant authority of a non-government school or another non-government body, the Minister or the relevant Minister (as appropriate) has determined that the authority is to pay an amount to the Commonwealth and an amount (the *amount repayable*) that is all or a part of the amount mentioned in paragraph 34(1)(a) remains unpaid.

**Subclause 34(2)** provides that the Minister may make a determination reducing an amount that is authorised to be paid to a State for the school or body under any provision of this Bill in any program year by an amount not more than the amount repayable.

**Subclause 34(3)** empowers the Minister to make a determination under a provision of this Bill increasing the maximum amount that may be paid to a State for the school or body for any purpose under that provision in any program year by an amount or amounts totalling not more than the amount of any reduction under subclause (2).

**Subclause 34(4)** clarifies that it does not matter whether the reduction was made in relation to the same provision of this Bill as the provision of this Bill mentioned in subclause 34(3), or a different provision.

## **Part 4—Grants for recurrent expenditure**

### **Division 1—Simplified outline of Part**

#### **Clause 35 – Simplified outline**

**Clause 35** is an information provision which provides an overview of Part 4 of the Bill to assist with readability. The main provisions of Part 4 are:

- To allow the Minister to make determinations authorising the payment of financial assistance to the States for non-government schools, for recurrent expenditure that relate to current SES funding, maintained funding, guaranteed year 2008 funding, maximum SES funding, distance education funding, remoteness loading, Indigenous supplementary assistance and Indigenous funding guarantee.
- To provide that funding for recurrent expenditure is worked out on a school by school basis (whether the school is a systemic school or a non-systemic school).
- To set limits on financial assistance for those types of recurrent expenditure, using a series of per student amounts for different categories of students, and different levels of education, at each school.

From 2001, the socio-economic status (SES) of school communities has been used as the basis of needs-based funding of non-government schools. General recurrent grant funding for non-government schools is allocated according to a formula that measures the SES of the school community. The SES funding model involves linking student residential addresses to data from the Australian Bureau of Statistics (ABS) national Census of Population and Housing to obtain a socioeconomic profile of the school community and measure its capacity to support the school.

The SES index that is used to calculate schools' SES scores is a transparent and objective measure, based on independent data that are consistent for all schools. The SES methodology measures the education, occupation and income levels of all the residents within a Census Collection District (CD). The CD is the smallest spatial unit in the Australian Standard Geographical Classification. In urban areas CDs average about 220 dwellings. In rural areas the number of dwellings per CD reduces as population densities decrease.

Student residential addresses are mapped to the correct CDs by a process called geocoding. Each school's community is defined in terms of the CDs from which it draws its students and the school's SES score is calculated on the basis of the average SES of these CDs. School SES scores for the 2005-2008 quadrennium are based on 2001 ABS Census data. SES scores for the 2009-2012 quadrennium will be based on 2006 ABS Census data.

The SES index is a measure of social advantage as well as disadvantage and both high and low SES families have an impact on the SES score of the CD in which they reside. The SES methodology is not designed to produce an SES score representative of any particular family in a school community, but rather to calculate an average



score based on all the CDs from which each school draws its students. The data present an average socioeconomic profile of the community supporting a school and each school's SES score is used to determine its ranking, relative to all other non-government schools. The lower the SES score, the greater the considered need of the school.

## **Division 2—Average Government School Recurrent Costs**

### **Clause 36 – Average Government School Recurrent Costs—meaning of AGSRC**

**Clause 36** explains what is meant by AGSRC (Average Government School Recurrent Costs).

**Subclause 36(1)** explains that AGSRC means for primary education for a program year—\$8,044, or another amount specified for the program year by regulations made for the purposes of subsection (2); and for secondary education for a program year—\$10,061, or another amount specified for the program year by regulations made for the purposes of subsection (2).

**Subclause 36(2)** provides that the regulations may specify amounts for the purposes of subclause 36(1).

**Subclause 36(3)** provides that before the Governor-General makes regulations for the purposes of subclause 36(2), the Minister must consider changes in the figures known as the Average Government School costs published by the Ministerial Council on Education, Employment, Training and Youth Affairs or a body specified by the regulations that has a corresponding function.

### **Clause 37 – Average Government School Recurrent Costs—rounding up per student funding amounts**

Provides for AGSRC to be rounded up.

**Subclause 37(1)** provides definitions for the formulas set out in subclauses (2) and (3).

**Subclause 37(2)** provides for the rounding up of an amount of a component of a funding amount, in relation to a level of education and a program year worked out in subclause (3).

**Subclause 37(3)** provides a formula for the working out of the amount of a component of a funding amount in relation to a level of education and a program year.

## **Division 3—Current SES funding**

### **Clause 38 – Current SES funding—scope**

Provides that Division 3 applies to a non-government school in a State for a particular program year and level of education provided at the school, unless one of Divisions 4 (maintained funding), 5 (guaranteed year 2008 funding) or 6 (maximum SES funding) applies to the school for that program year and for that level of education

**Clauses 39 and 41** provide for SES funding for primary education and secondary education. A school will be funded under the *current SES funding* category if the school is not funded under the *maintained funding*, *guaranteed year 2008 funding* or *maximum SES funding category*.

### **Clause 39 – Current SES funding—primary education funding determination**

Empowers the Minister to authorise payments to a State for recurrent expenditure for a non-systemic school or a school in an approved school system.

**Subclause 39(1)** provides that the Minister may make a determination authorising payment of an amount of financial assistance to the State for recurrent expenditure:

- if the school is a non-systemic school—of the school for primary education provided by the school in the program year, or
- if the school is a member of an approved school system—of the approved school system for primary education provided by the school in the program year.

**Subclause 39(2)** provides that the amount determined under subclause 39(1) must not exceed the amount worked out for the school by adding up the amount (if any) worked out under clause 40 for the school's primary students and the amount (if any) worked out under clause 57 for the school's primary distance education students.

### **Clause 40 – Current SES funding—primary education funding amounts**

Provides a formula for calculating funding for a school's primary students for the program year according to a schools current SES funding level.

### **Clause 41 – Current SES funding—secondary education funding determination**

Empowers the Minister to authorise payments to a State for recurrent expenditure for a non-systemic school, or a school in an approved school system.

**Subclause 41(1)** provides that the Minister may make a determination authorising payment of an amount of financial assistance to the State for recurrent expenditure:

- if the school is a non-systemic school—of the school for secondary education provided by the school in the program year, or

- if the school is member of an approved school system—of the approved school system for secondary education provided by the school in the program year.

**Subclause 41(2)** provides that the amount determined under subclause 41(1) must not exceed the amount worked out for the school by adding up the amount (if any) worked out under clause 42 for the school's secondary students and the amount (if any) worked out under clause 58 for the school's secondary distance education students.

**Clause 42 – Current SES funding—secondary education funding amounts**

Provides a formula for calculating funding for a school's secondary students for the program year according to a schools current SES funding level.

## Division 4—Maintained funding

“Maintained funding” will replace both “Maintained year 2000 funding” and “Maintained Catholic school funding” which were SES funding categories under the *Schools Assistance (Learning Together – Achievement Through Choice and Opportunity) Act 2004* (2004 Act).

*Maintained funding* will apply to a school which satisfies the following criteria for a *program year* between 2009 and 2012:

- On 31 December 2008, the school had for the purposes of the 2004 Act, a *funding level* (a *year 2008 funding level*) that was either:
  - (i) calculated in accordance with Part 6 Division 2 Subdivision D of the 2004 Act (Maintained Year 2000 funding); or
  - (ii) calculated in accordance with Part 6 Division 2 Subdivision E of the 2004 Act (Maintained Catholic school funding); and
- In the relevant *program year* the school is not a *special school*, a *special assistance school*, nor a *maximum funded Indigenous school*; and
- The total amount of recurrent funding that was paid for the school for the 2008 program year under the 2004 Act was greater or equal to an amount that would have been paid to the school if the school’s funding for the 2008 year had been calculated using the *current SES funding level primary amount* and the *current SES funding level secondary amount* applicable to schools which are funded under the current SES funding provisions of the Bill in the 2009 program year; and
- The school’s SES score has not been determined by the Minister under the provisions that enable the Minister to change an SES score or because of a false or misleading statement.

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### *Year 2008 funding level*

The *year 2008 funding level* for a school under the Bill will mean the percentage of AGSRC in the relevant schedule to the Bill which is equal to the percentage of AGSRC used to determine amounts payable to schools for the 2008 program year under the 2004 Act.

If a school is a *Maintained funding* school according to the criteria set out above, it will remain a *Maintained funding* school for the four program years covered by the Bill except if the school applies for a review of its SES score or if it becomes entitled to funding under the *Maximum SES funding* division.

If under the Bill:

- a school would be entitled to *Maintained funding* except for the fact that it is a school eligible to receive Maximum SES funding under the Bill, and

- it is entitled to the *Maximum SES funding* due to its Indigenous enrolments, and
- in a subsequent *program year* it ceases to be eligible for *Maximum SES funding* due to a change in Indigenous enrolments,

then the school will be eligible for *Maintained funding* again.

#### **Clause 43 – Maintained funding—scope**

**Subclause 43(1)** sets the scope of Division 4 and how it applies to a non-government school.

**Subclause 43(2)** provides formulas which explain the conditions based on 2008 funding.

#### **Clause 44 – Maintained funding—determination**

Empowers the Minister to authorise payments to a State for an amount of financial assistance for a non-systemic school or a school in an approved school system.

**Subclause 44(1)** provides that the Minister may make a determination authorising payment of an amount of financial assistance to the State for recurrent expenditure:

- if the school is a non-systemic school, of the school for the program year; or
- if the school is a member of an approved school system, of the approved school system for the school for the program year.

**Subclause 44(2)** provides that the amount determined under subclause 44(1) must not exceed the amount worked out for the school by adding up the amounts worked out under clause 45 for the school's primary students, clause 46 for the school's secondary students, clause 57 for the school's primary distance education students and clause 58 for the school's secondary distance education students.

#### **Clause 45 – Maintained funding—primary education funding amounts**

Provides a formula for calculating funding for a school's primary students for the program year where a school has a Maintained funding level.

#### **Clause 46 – Maintained funding—secondary education funding amounts**

Provides a formula for calculating funding for a school's secondary students for the program year where a school has a Maintained funding level.

## **Division 5—Guaranteed year 2008 funding**

“Guaranteed year 2008 funding” is a new funding category which will replace “Guaranteed year 2004 funding” a funding category under the 2004 Act. The Guaranteed year 2008 funding provisions will operate in the same way that Guaranteed year 2004 funding operated under the 2004 Act for schools in program years covered by the 2004 Act.

The “Guaranteed year 2008 funding” will apply to a school for a *program year* between 2009 to 2012 which satisfies the following criteria in relation to funding for its primary students and secondary students respectively:

- On 31 December 2008, a school had for the purposes of the 2004 Act, a funding level (a *year 2008 funding level*) that was either:
  - (i) Calculated in accordance with Part 6 Division 2 Subdivision C of the 2004 Act; or
  - (ii) Calculated in accordance with Part 6 Division 2 Subdivision F of the 2004 Act; and
- The school is not a *Maximum SES funded school*; and
- The school’s 2008 year funding level primary amount or the school’s 2008 year funding level secondary amount exceeds the schools current SES funding level primary amount or current SES funding level secondary amount (respectively) for the program year; and
- The school’s SES score has not been determined by the Minister under the provisions that enable the Minister to change an SES score or because of a false or misleading statement.

If a school moves off Guaranteed year 2008 funding to current SES funding it cannot move back to Guaranteed year 2008 funding in a subsequent program year except in one circumstance: If a school would be entitled to Guaranteed year 2008 funding except for the fact that it is a school eligible to receive Maximum SES funding, then, in a subsequent program year it ceases to be eligible for Maximum SES funding due to a change in Indigenous enrolments, the school can be eligible for Guaranteed year 2008 funding again subject to it satisfying the criteria above.

### **Clause 47 – Guaranteed year 2008 funding—scope**

**Subclause 47(1)** sets the scope of Division 5 and how it applies to a non-government school.

**Subclause 47(2)** provides a formula which explains the conditions based on 2008 funding.

**Clause 48– Guaranteed year 2008 funding—primary education funding determination**

Empowers the Minister to authorise payments to a State for an amount of financial assistance for recurrent expenditure for a non-systemic school or a school in an approved school system.

**Subclause 48(1)** provides that the Minister may make a determination authorising payment of an amount of financial assistance to the State for recurrent expenditure:

- if the school is a non-systemic school—of the school for primary education provided by the school in the program year, or
- if the school is a member of an approved school system—of the approved school system for primary education provided by the school in the program year.

**Subclause 48(2)** provides that the amount determined under subclause 48(1) must not exceed the amount worked out for the school by adding up the amount worked out under clause 49 for the school’s primary students and the amount worked out under clause 57 for the school’s primary distance education students.

**Clause 49 – Guaranteed year 2008 funding—primary education funding amounts**

Provides a formula for calculating funding for a school’s primary students for the program year where a school has a Guaranteed year 2008 funding level.

**Clause 50 – Guaranteed year 2008 funding—secondary education funding determination**

Empowers the Minister to authorise payments to a State for an amount of financial assistance for recurrent expenditure for a non-systemic school or a school in an approved school system.

**Subclause 50(1)** provides that the Minister may make a determination authorising payment of an amount of financial assistance to the State for recurrent expenditure:

- if the school is a non-systemic school—of the school for secondary education provided by the school in the program year, or
- if the school is a member of an approved school system—of the approved school system for secondary education provided by the school in the program year.

**Subclause 50(2)** provides that the amount determined under subclause 50(1) must not exceed the amount worked out for the school by adding up the amount worked out under clause 51 for the school’s secondary students and the amount worked out under clause 58 for the school’s secondary distance education students.



**Clause 51 – Guaranteed year 2008 funding—secondary education funding amounts**

Provides a formula for calculating funding for a school's secondary students for the program year where a school has a Guaranteed year 2008 funding level.

## **Division 6—Maximum SES funding**

Maximum SES funding is a new SES funding category which will replace the funding category for special schools and special assistance schools in the 2004 Act and cover the newly created majority Indigenous student school.

This funding category will apply to:

- Non-government schools that were not very remote where 80% or more of students enrolled at the school in the program year (being combined enrolments for students receiving a level of primary education at the school and students receiving a level of secondary education at the school) as at the schools census day for the calendar year before the program year were Indigenous students;
- Very remote non-government schools where 50% or more of students enrolled at the school (being combined enrolments in the program year for students receiving a level of primary education at the school and students receiving a level of secondary education at the school) as at the schools census day for the calendar year before the program year are Indigenous students;
- Special schools;
- Special assistance schools.

### **Clause 52 – Maximum SES funding—scope**

**Clause 52** sets the scope of Division 6 and how it applies to a non-government school.

### **Clause 53 – Maximum SES funding – meaning of *majority Indigenous student school***

**Subclause 53(1)** provides a definition of *majority Indigenous student school* for the purposes of Division 6.

**Subclause 53(2)** provides a definition of *very remote school* which means a school whose only school campus is very remote or a school all of whose school campuses are very remote. A note at the end of subclause 53(2) assists the reader by clarifying that the definition of very remote school campus in clause 4 applies a more up-to-date Remoteness Structure than the one which was applied in the former Act.

### **Clause 54 – Maximum SES funding—determination**

Empowers the Minister to authorise payments to a State for an amount of financial assistance for recurrent expenditure for a non-systemic school or a school in an approved school system.

**Subclause 54(1)** provides that the Minister may make a determination authorising payment of an amount of financial assistance to the State for recurrent expenditure:

- if the school is a non-systemic school—of the school for the program year, or
- if the school is a member of an approved school system—of the approved school system for the school for the program year.

**Subclause 54(2)** provides that the amount determined under subclause 54(1) must not exceed the amount worked out for the school by adding up:

- the amount worked out under clause 55 for the school's primary students;  
and
- the amount worked out under clause 56 for the school's secondary students;  
and
- the amount worked out under clause 57 for the school's primary distance education students; and
- the amount worked out under clause 58 for the school's secondary distance education students.

#### **Clause 55 – Maximum SES funding—primary education funding amounts**

Provides a formula for calculating funding for a school's primary students for the program year where a school has a Maximum SES funding level.

#### **Clause 56 – Maximum SES funding—secondary education funding amounts**

Provides a formula for calculating funding for a school's secondary students for the program year where a school has a Maximum SES funding level.

## **Division 7—Distance education funding**

A non-government school will be eligible for distance education funding if students receive primary or secondary distance education (as the case may be) at the school (or a school campus) and:

- the students reside in the State,
- the State provides funding for the school for the level of education for students enrolled at the school who receive distance education from the school;
- the students are not home education students; and
- the school also receives funding for another category of general recurrent funding under the Bill.

### **Clause 57 – Distance education funding—primary distance education funding amounts**

**Subclause 57(1)** provides that clause 57 applies in relation to a non-government school for the purposes of current SES funding (paragraph 39(2)(b)), maintained funding (paragraph 44(2)(c)), guaranteed year 2008 funding (paragraph 48(2)(b)) and maximum SES funding (paragraph 54(2)(c)).

**Subclause 57(2)** sets out a formula to work out the amount for the school's primary distance education students for the program year.

### **Clause 58 – Distance education funding—secondary distance education funding amounts**

**Subclause 58(1)** provides that clause 58 applies in relation to a non-government school for the purposes of current SES funding (paragraph 39(2)(b)), maintained funding (paragraph 44(2)(c)), guaranteed year 2008 funding (paragraph 48(2)(b)) and maximum SES funding (paragraph 54(2)(c)).

**Subclause 58(2)** sets out a formula to work out the amount for the school's secondary distance education students for the program year.

**Subclause 58(3)** provides for the circumstance in which the assistance amount per student for a program year may be rounded up.

## **Division 8—Remoteness loading**

Remoteness loading funding will apply for students attending a school campus in a program year if the campus is a moderately accessible school campus, a remote school campus, or a very remote school campus providing the school is also eligible for another category of general recurrent funding under the Bill.

The Bill contains provisions to calculate a remoteness per capita loading which will operate in the same way as those in the 2004 Act. The only change from the 2004 Act is that there is a more up-to-date version of the *Remoteness Structure* referred to which feeds into the definitions of *moderately accessible school campus*, *remote school campus* and *very remote school campus*.

### **Clause 59 – Remoteness loading—scope [see also 2004 Act, section 77A]**

Provides that Division 7 applies to a non-government school in a State for a particular program year if the school campus of the school, or at least one of the school campuses, is a moderately accessible school campus, a remote school campus, or a very remote school campus, for that program year.

A note at the end of clause 59 has been inserted to assist the reader by clarifying that assistance under Division 8 is in addition to the financial assistance that is available under other Divisions of Part 4 (other than distance education funding).

### **Clause 60– Remoteness loading—primary education funding determination**

Empowers the Minister to authorise payments to a State for an amount of financial assistance for recurrent expenditure for a non-systemic school or a school in an approved school system.

**Subclause 60(1)** provides that the Minister may make a determination under subclause 60(1) authorising payment of an amount of financial assistance to the State for recurrent expenditure:

- if the school is a non-systemic school—of the school for primary education provided by the school in the program year, or
- if the school is a member of an approved school system—of the approved school system for primary education provided by the school in the program year.

**Subclause 60(2)** provides that the amount determined under subclause 60(1) must not exceed the amount worked out for the school by adding up:

- the amount worked out under subclause 61(1) for the school's primary students at moderately accessible school campuses; and
- the amount worked out under subclause 61(2) for the school's primary students at remote school campuses; and

- the amount worked out under subclause 61(3) for the school’s primary students at very remote school campuses.

A school’s remoteness is determined from the Australian Bureau of Statistics’ “Statistical Geography Volume 1 Australian Standard Geographical Classification (ASGC) July 2006”

### **Clause 61 – Remoteness loading—primary education funding amounts**

**Subclauses 61(1), 61(2) and 61(3)** provide formulas for:

- calculating funding for a school’s primary students at any moderately accessible campus of the school for the program year (see paragraph 60(2)(a));
- calculating funding for a school’s primary students at any remote campus of the school for the program year (see paragraph 60(2)(b));
- calculating funding for a school’s primary students at any very remote campus of the school for the program year (see paragraph 60(2)(c)).

**Subclause 61(4)** provides that distance education students do not count for the purposes of working out the number of students receiving primary education at a school campus.

**Subclause 61(5)** provides for the circumstance in which the assistance amount per student for a program year may be rounded up.

### **Clause 62 – Remoteness loading—secondary education funding determination**

Empowers the Minister to authorise payments to a State for an amount of financial assistance for recurrent expenditure for a non-systemic school or a school in an approved school system.

**Subclause 62(1)** provides that the Minister may make a determination under this subclause authorising payment of an amount of financial assistance to the State for recurrent expenditure:

- if the school is a non-systemic school—of the school for secondary education provided by the school in the program year, or
- if the school is a member of an approved school system—of the approved school system for secondary education provided by the school in the program year.

**Subclause 62(2)** provides that the amount determined under subclause 62(1) must not exceed the amount worked out for the school by adding up:

- the amount worked out under subclause 63(1) for the school’s secondary students at moderately accessible school campuses; and
- the amount worked out under subclause 63(2) for the school’s secondary students at remote school campuses; and

- the amount worked out under subclause 63(3) for the school's secondary students at very remote school campuses.

### **Clause 63 – Remoteness loading—secondary education funding amounts**

**Subclauses 63(1), 63(2) and 63(3)** provide formulas for:

- calculating funding for a school's secondary students at any moderately accessible campus of the school for the program year (see paragraph 62(2)(a));
- calculating funding for a school's secondary students at any remote campus of the school for the program year (see paragraph 62(2)(b));
- calculating funding for a school's secondary students at any very remote campus of the school for the program year (see paragraph 62(2)(c)).

**Subclause 63(4)** provides that distance education students do not count for the purposes of working out the number of students receiving secondary education at a school campus.

**Subclause 63(5)** provides for the circumstance in which the assistance amount per student for a program year may be rounded up.

## **Division 9—Indigenous supplementary assistance**

### **Clause 64 - Indigenous supplementary assistance —scope**

Provides that Division 9 applies to a non-government school in a State for a particular program year and level of education provided at the school, in relation to any Indigenous students receiving that level of education at the school in that year. A note to assist readers clarifies that assistance is in addition to that available under other divisions of this Part.

This Division is a special measure for the purposes of the *Racial Discrimination Act 1975* with the purpose of providing a benefit to Indigenous students.

### **Clause 65 - Indigenous supplementary assistance—definitions**

An interpretation provision which provides for the definitions of *number of Indigenous primary students*, and *number of Indigenous secondary students*.

### **Clause 66 – primary education funding determination**

Empowers the Minister to authorise payments to States for an amount of financial assistance for recurrent expenditure for a non-systemic school or a school in an approved school system for primary education.

**Subclause 66(1)** provides that the Minister may make a determination under subclause 66(1) authorising payment of an amount of financial assistance to the State for recurrent expenditure if the school is a non-systemic school—of the school for primary education provided by the school in the program year or if the school is a member of an approved school system—of the approved school system for primary education provided by the school in the program year.

**Subclause 66(2)** provides that the amount determined under subclause 66(1) must not exceed the amount worked out for the school by adding up:

- the amount worked out under subclause 67(1) for the school's Indigenous primary students at school campuses other than remote and very remote school campuses; and
- the amount worked out under subclause 67(2) for the school's Indigenous primary students at remote and very remote school campuses.

### **Clause 67 Indigenous supplementary assistance—primary education funding amounts**



**Subclause 67(1)** provides a formula for calculating the amount for the school's Indigenous primary students at school campuses other than remote and very remote school campuses and provides a definition of *assistance amount per student* for the purposes of that formula.

**Subclause 67(2)** provides a formula for calculating the amount for the school's Indigenous primary students at remote and very remote school campuses and provides a definition of *assistance amount per student* for the purposes of that formula.

**Subclauses 67(3) and (4)** provide that the regulations may specify an amount as an assistance amount per student for the purposes of subsection (1) or (2) for a program year, and that the regulations may increase that amount from one program year to the next by reference to changes in a specified index.

#### **Clause 68 - Indigenous supplementary assistance—secondary education funding determination**

Empowers the Minister to authorise payments to States for an amount of financial assistance for recurrent expenditure for a non-systemic school or a school in an approved school system for secondary education.

**Subclause 68(1)** provides that the Minister may make a determination under subclause 68(1) authorising payment of an amount of financial assistance to the State for recurrent expenditure if the school is a non-systemic school—of the school for secondary education provided by the school in the program year or if the school is in an approved school system—of the approved school system for secondary education provided by the school in the program year.

**Subclause 68(2)** provides that the amount determined under subclause 68(1) must not exceed the amount worked out for the school by adding up:

- the amount worked out under subclause 69(1) for the school's Indigenous secondary students at school campuses other than remote and very remote school campuses; and
- the amount worked out under subclause 69(2) for the school's Indigenous secondary students at remote and very remote school campuses.

#### **Clause 69 - Indigenous supplementary assistance—secondary education funding amounts**

**Subclause 69(1)** provides a formula for calculating the amount for the school's Indigenous secondary students at school campuses other than remote and very remote school campuses and provides a definition of *assistance amount per student* for the purposes of that formula.

**Subclause 69(2)** provides a formula for calculating the amount for the school's Indigenous secondary students at remote and very remote school campuses and provides a definition of *assistance amount per student* for the purposes of that formula.

## **Division 10—Indigenous funding guarantee**

### **Clause 70 - Guaranteed Indigenous student funding—funding determination**

Empowers the Minister to authorise payments of financial assistance to States for recurrent expenditure for a non-systemic school or a school in an approved school system in relation to Indigenous students receiving education in those schools for a program year. This Division is a special measure for the purposes of the *Racial Discrimination Act 1975* with the purpose of providing a benefit to Indigenous students.

**Subclause 70(1)** provides that the Minister may make a determination under subclause 98J(1) authorising payment of financial assistance to a State for recurrent expenditure in relation to Indigenous students receiving education at a non-systemic school, or at schools in an approved school system, in the State, for a program year.

**Subclause 70(2)** provides that in making a determination under subclause (1) the Minister may consider amounts of financial assistance already received or to be received by the school or all schools in the system:

- Authorised for the calendar year 2008 under either or both Division 2 of Part 6 of the former Act and the *Indigenous Education (Targeted Assistance) Act 2000*; and
- to be authorised for the program year under this Part (apart from under this Division).

A note has been inserted at the end of subclause 70(2) to assist the reader by clarifying that payments of financial assistance authorised under this section are in addition to any payments of financial assistance authorised under divisions in this Part including Division 9 (Indigenous supplementary assistance), or any other provision of this Bill.

### **Clause 71- Indigenous funding guarantee—funding amounts**

Provides that the sum of the amounts paid to the States under clause 70 for a program year must not exceed:

- the amount specified in the table at clause 70 for the program year; or
- if the regulations specify a different amount for a particular program year—that amount.

## **Division 11—SES Scores**

### **Subdivision A —Definition**

#### **Clause 72 - SES scores—definition**

An interpretation provision which contains the definition of *SES score* for the purposes of Division 11 and the circumstances in which the Minister may make determinations in respect of matters connected with SES scores.

**Subclause 72(3)** provides that the Minister may approve guidelines for the determination of SES scores and that those guidelines are a legislative instrument.

### **Subdivision B —SES scores under former Act**

#### **Clause 73 - SES scores—transitional determinations**

Clause 73 provides for the scope and nature of a *transitional SES score determination* made under clause 72(2) in respect of a school for which a determination of a particular SES score was made under section 8 of the former Act as at 31 December 2008. The provision has the effect that where such a determination was in effect the Minister is taken to have determined that SES score by determination made under subclause 72(2) with effect from 1 January 2009. Clause 82 (notice of determination) does not apply to such a determination.

#### **Clause 74 - SES scores—transitional guidelines**

**Subclause 74(1)** provides that clause 74 applies if guidelines under section 8 of the former Act for the making of SES score determinations were in effect as at 31 December 2008.

**Subclause 74(2)** provides that the Minister is taken to have approved those guidelines for the purposes of this Bill by determination made under subclause 72(3) with effect from 1 January 2009.

### **Subdivision C —Change of SES score determination**

## **Clause 75 - SES scores—determination of changes**

Empowers the Minister to vary an SES score determination

**Subclause 75(1)** provides that the Minister may vary an SES score determination. A note to assist readers clarifies that notification of the variation must be provided to the approved authority of the school concerned.

**Subclause 75(2)** provides that the Minister may only vary a determination under subclause (1) if permitted to do so by another provision of the Bill. A note directs readers to the provisions in the Bill which set out the circumstances in which the Minister may vary an SES score determination for a school.

## **Subdivision D —SES score changes on application by school**

### **Clause 76 - SES scores—change proposals**

**Subclause 76(1)** provides that the subdivision applies to a school where an approved authority for the school:

- considers that the SES score determined for that school has not been determined correctly, or does not reflect that socioeconomic circumstances of the school's community (in the way required by the guidelines approved by the Minister under subclause 76(2), or is no longer accurate because of a significant change in the school's circumstances; and
- applies to the Minister to vary the school's SES score determination under clause 77.

**Subclause 76(2)** provides that the Minister may approve guidelines for the purposes of subclause (1) and that those guidelines are a legislative instrument.

### **Clause 77 - SES scores—change applications**

**Clause 77** sets out who can apply to the Minister for approval of an SES score change proposal and what the applications must contain.

### **Clause 78 - SES scores—decisions on change proposals**

Provides that the Minister must either approve or refuse to approve the proposal. A note to assist the reader clarifies that the Minister's power to approve the proposal is subject to general prerequisites for change proposals set out in clause 79.

### **Clause 79 - SES scores—general prerequisites for change proposals**

Provides for general prerequisites for change proposals that the Minister must have regard to before approving an SES score change proposal.

**Clause 80 - SES scores—variation of determinations**

**Subclause 80(1)** provides that if the Minister approves the proposal, the Minister must vary the school's SES score determination under clause 75 to determine a new SES score for the school. A note to assist readers clarifies that notification of the variation must be provided to the approved authority of the school concerned.

**Subclauses 80(2) and (3)** provide for the program year of effect for a determination to vary a school's SES score.

**Subdivision E— Miscellaneous**

**Clause 81 - SES scores—clerical or formal changes**

Empowers the Minister to vary an SES score determination under clause 75 to correct clerical errors or to make alterations of a formal kind.

**Clause 82 - SES scores—notice of determinations**

Provides that if the Minister makes a determination under this Division, the Minister must give written notice of the determination to the approved authority of the school concerned.

## **Part 5—Grants for capital expenditure**

### **Clause 83 - Capital expenditure—definitions**

**Clause 83** is an interpretation section which provides definitions of *block grant authority* and *capital expenditure*.

**Subclause 83(2)** provides that for the purposes of the definition of block grant authority in subsection (1), that the Minister may determine a body corporate to be a block grant authority.

### **Clause 84 – Capital expenditure—funding determination**

**Clause 84** provides for grants for capital expenditure.

**Subclause 84(1)** provides that the Minister may make a determination authorising payment of financial assistance to a State for

- capital expenditure for a program year in connection with a non-government school in the State or groups of non-government schools in the State; or
- capital expenditure for a program year in connection with block grant authorities and non-government schools in the State.

**Subclause 84(2)** provides a formula to determine amounts under subsection 84(1) and provides a definition for *base assistance amount*.

**Subclause 84(3)** provides that for the purposes of subsection (1), the regulations may specify an amount to be the *base assistance amount*.

**Subclause 84(4)** provides that if an amount worked out under subsection 84(2) is not a multiple of \$1,000, the amount is to be rounded to the nearest \$1,000 (rounding \$500 upwards).

### **Clause 85 - Capital expenditure—capital expenditure supplementation number**

**Subclause 85(1)** provides a definition of *capital expenditure supplementation number*

**Subclauses 85(2) and (3)** provide that for the purposes of subsection (1), the regulations may specify an amount to be the *capital expenditure supplementation number* and that number may be greater or less than 1.

**Subclause 85(4)** prescribes that before the Governor General makes regulations for the purposes of subsection (2), the Minister must consider changes in an index of building prices and an index of wage costs published by the Australian Statistician.

**Subclause 85(5)** provides that regulations made for the purposes of clause 85 may make provision in relation to a matter by applying, adopting or incorporating any

matter contained in an instrument or other writing as in force or existing from time to time. This is required to show a 'contrary intention' for the purposes of subsection 14(2) of the *Legislative Instruments Act 2003* which provides that unless the contrary intention appears, the legislative instrument may not make provision 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.

## **Part 6—Grants for targeted expenditure**

### **Division 1 – Simplified outline of Part**

#### **Clause 86 – Simplified outline**

**Clause 86** is an information provision which provides an overview of Part 6 to assist with readability.



## **Division 2 – Short term emergency assistance**

### **Clause 87 - Short term emergency assistance—funding determination**

Empowers the Minister to make grants of short term emergency assistance.

**Subclause 87(1)** provides that the Minister may determine a grant of short term emergency assistance to a State for a non-government school for one or more program years if the Minister is satisfied that because of an unexpected circumstance a school is in severe financial difficulty and has a special need of that assistance in the program year or years.

**Subclause 87(2)** provides a formula to determine the maximum amounts that can be paid to the States under subclause (1) and provides a definition for *base assistance amount*.

**Subclause 87(3)** provides that for the purposes of subclause (2) that the base assistance amount for a program year may be specified by the regulations.

**Subclause 87(4)** provides that the amount specified in the regulations under subclause (3) may be nil.

**Subclause 87(5)** provides that the amount worked out under subsection (2) for a program year is not a multiple of \$1,000, the amount is to be rounded to the nearest \$1,000 (rounding \$500 upwards).

## **Division 3 – Education in country areas**

### **Clause 88 - Education in country areas—funding determination**

Empowers the Minister to make grants for education in country areas.

**Subclause 88(1)** provides that the Minister may make a determination authorising payments of financial assistance to States for expenditure approved by the Minister for a program year connected with the education, in non-government schools in country areas of the State, of students who are educationally disadvantaged because of their geographical location.

**Subclause 88(2)** provides a formula to determine the maximum amounts that can be paid to the States under subclause (1) and provides a definition for *base assistance amount*.

**Subclause 88(3)** provides that for the purposes of subclause (2) that the base assistance amount for a program year may be specified by the regulations.

**Subclause 88(4)** provides that if the amount worked out under subsection (2) for a program year is not a multiple of \$1,000, the amount is to be rounded to the nearest \$1,000 (rounding \$500 upwards).

## **Division 4 – Languages education**

### **Clause 89 - Languages education—improving learning outcomes**

**Clause 89** provides that the Minister may make a determination authorising payments of financial assistance to States for expenditure for a program year connected with non-government schools to improve the learning outcomes of students who are learning languages other than English. A note to assist readers clarifies that clause 91 provides for a maximum grant amount that can be paid to States for the purposes of this Division.

### **Clause 90 - Languages education—national projects**

Empowers the Minister to approve projects, and to authorise payments, in respect of projects which foster the learning of languages other than English.

**Subclause 90(1)** provides that the Minister may approve a project if the sole or principal object is to foster the learning of languages other than English and if the project is conducted by non-government school or other non-government body.

**Subclause 90(2)** provides that the Minister may make a determination authorising payments to States for a program year for financial assistance for either or both the expenditure on a project approved under subsection (1) or expenditure on disseminating information about the project or other related activities. A note to assist readers clarifies that clause 91 provides for a maximum grant amount that can be paid to States for the purposes of this Division.

**Subclause 90(3)** clarifies that for the purposes of clause 90 it does not matter whether the project is conducted within, or outside, or within and outside, the State.

### **Clause 91 - Languages education—grant amounts**

Prescribes that the amounts authorised under this Division must not exceed a maximum amount.

**Subclause 91(1)** provides a formula to determine the maximum amounts that can be paid to the States under clause 91 and provides a definition for *base assistance amount*.

**Subclause 91(2)** provides that for the purposes of subclause (1) that the base assistance amount for a program year may be specified by the regulations.

**Subclause 91(3)** provides that if the amount worked out under subsection (1) for a program year is not a multiple of \$1,000, the amount is to be rounded to the nearest \$1,000 (rounding \$500 upwards).

## **Division 5 – Teaching English to new arrivals**

### **Clause 92- Teaching English to new arrivals—definitions**

An interpretation provision which contains definitions of the terms and expressions used in the Division and the circumstances in which the Minister may make determinations in respect of matters connected with those definitions.

**Subclause 92(1)** provides for the meaning of *eligible humanitarian new arrival*, and *eligible new arrival* and *intensive ESL course*.

**Subclauses 92(2) to (5)** provide that the Minister may make determinations in respect of matters connected with the definitions under subsection (1).

**Subclause 92(6)** provides that the determinations made under clause 92 are legislative instruments.

**Subclause 92(7)** is a deeming provision which sets out in a table that certain determinations, made by the relevant Minister for the purposes of definitions of certain terms under section 4 the former Act and in force on 31 December 2008 are taken to be determinations made under relevant subclauses of this clause 92.

### **Clause 93 - Teaching English to new arrivals—funding determination**

Empowers the Minister to make grants for education in English as a second language to new arrivals.

**Subclause 93(1)** provides that the Minister may make a determination authorising payments of financial assistance to a State for recurrent expenditure for a program year connected with providing education in English as a second language (ESL) for eligible new arrivals enrolled in ESL courses.

**Subclause 93(2)** provides that the amount determined under subclause 93(1) must not exceed the amount worked out for the school by adding up:

- the amount (if any) worked out under clause 94 for the State for the program year (maximum amount for ESL new arrivals); and
- the amount (if any) worked out under clause 95 for the State for the program year (maximum amount for ESL humanitarian new arrivals).

### **Clause 94 - Teaching English to new arrivals—eligible new arrivals amounts**

Provides a formula for working out the maximum amount for the State for the program year for ESL new arrivals.

**Clause 95 - Teaching English to new arrivals—eligible humanitarian new arrivals amounts**

Provides a formula for working out the maximum amount for the State for the program year for ESL humanitarian new arrivals.

## **Division 6 – Literacy, numeracy and special learning needs**

### **Clause 96- Literacy, numeracy and special learning needs—students with disabilities**

Empowers the Minister to make grants to improve the learning outcomes of students with disabilities.

**Subclause 96(1)** provides that the Minister may make a determination authorising payment of financial assistance to a State for expenditure for a program year connected with non-government schools (including schools providing special education) in the State to improve the learning outcomes of students with disabilities.

**Subclause 96(2)** provides a formula to determine the maximum amounts that can be paid to the States under subclause 96(1) and provides definitions of *number of students with disabilities* and *assistance amount per student*.

**Subclause 96(3)** provides a formula to determine the *assistance amount per student* for the purposes of subclause (2).

**Subclause 96(4)** provides for the circumstance in which the assistance amount per student for a program year may be rounded up. A note at the end of subclause (4) assists the reader by clarifying that financial assistance under this clause is in addition to the assistance that is available under clause 97 (students who are educationally disadvantaged).

### **Clause 97 - Literacy, numeracy and special learning needs—students who are educationally disadvantaged**

Empowers the Minister to make grants to improve the learning outcomes of students who are educationally disadvantaged.

**Subclause 97(1)** provides that the Minister may make a determination authorising payment of financial assistance to a State for expenditure for a program year connected with non-government schools (including schools providing special education) in the State to improve the learning outcomes of students who are educationally disadvantaged.

**Subclause 97(2)** prescribes that the sum of the amounts authorised to be paid to the States under subclause (1) for a program year must not exceed the amount worked out by adding up:

- the amount (if any) worked out under clause 98 for the program year (maximum amount for grants for schools); and
- the amount (if any) specified under clause 99 for the program year (maximum guarantee amount).

**Subclause 97(3)** provides a definition of *students who are educationally disadvantaged*. A note at the end of subclause (3) assists the reader by clarifying that financial assistance under this clause is in addition to the assistance that is available under Divisions 3 and 5 and clause 96 (students with disabilities).

**Clause 98 - Literacy, numeracy and special learning needs—school grant amounts**

Provides a formula to determine the maximum amount for grants for schools for the purposes of the maximum amount for grants for schools under subclause 97(2), provides a definition for *base assistance amount*, and provides for the circumstance in which the assistance amount per student for a program year may be rounded up.

**Clause 99 - Literacy, numeracy and special learning needs—guarantee amounts**

Provides that for the purposes of the maximum guarantee amount for schools under subclause 97(2) the amount is \$1,942,000 or if the regulations specify an amount, that amount.

## **Division 7 —Establishment assistance**

### **Clause 100 - Establishment assistance—funding determination**

Empowers the Minister to make grants to States to provide establishment assistance for non-systemic schools and members of approved school systems, for the 2009 program year.

**Subclause 100(1)** is a scoping provision which provides that the clause applies if, in 2008, the relevant Minister varied the former list of non-government schools in relation to a school in a State because the school was covered by paragraph (c) of the definition of *new school proposal* in the former Act.

**Subclauses 100(2) and (3)** provide that the minister may make a determination authorising financial assistance non-systemic schools and members of approved school systems, for the 2009 program year.

**Subclause 100(4)** provides a formula for calculating the maximum grant amount for establishment assistance for the purposes of clause 100.



## **Division 8 —Targeted expenditure supplementation number**

### **Clause 101 - Targeted expenditure supplementation number**

Provides for a targeted expenditure supplementation number.

**Subclause 101(1)** provides a definition of *targeted expenditure supplementation number*.

**Subclause 101(2)** provides that the regulations may specify a number to be the targeted expenditure supplementation number for a program year.

**Subclause 101(3)** provides that a number specified in the regulations under subclause (2) may be greater than or less than 1.

**Subclause 101(4)** prescribes that before the Governor-General makes regulations for the purposes of subclause (2) , the Minister must consider changes in the relevant figures known as Average Government School Costs published by:

- the Ministerial Council on Education, Employment, Training and Youth Affairs; or
- a body, prescribed by the regulations, that has a corresponding function.

## **Part 7—Approved schools**

### **Division 1 – Simplified outline of Part**

#### **Clause 102 – Simplified outline**

**Clause 102** is an information provision which provides an overview of Part 7 to assist with readability.

## **Division 2 – Approved schools**

**Clause 103** is an interpretation section which provides a definition of *approved school*.

## **Division 3 – Listed schools**

### **Clause 104 - Listed schools**

Provides for the scope and nature of a transitional approved school determination made under clause 110 in respect to schools that were included on the list of non-government schools under the former Act on 31 December 2008. The provision has the effect that where a school was listed in the 2004 Act list of non-government schools for a level of education and a location for that level of education, that the Minister is taken to have approved the school for that level of education at that location by determination pursuant to clause 110 with effect from 1 January 2009. Subclauses 110(3) (approved school system or approved authority) 110(4) (SES score) and clause 123 (notice of determination) do not apply to such a determination.

## **Division 4 – Listed schools**

### **Subdivision A—Scope of Division**

#### **Clause 105 - Approved school determinations—new school proposals**

Prescribes that the Division applies to a proposal that one of the following schools be approved for a level (or levels) for a location (or locations) for the purposes of the Bill:

- a non-government school formed as a result of the amalgamation of 2 or more schools (at least one of which was an approved school);
- a non-government school formed as a result of the separation of an approved school into 2 or more schools;
- a new non-government school;
- an existing non-government school that is not already an approved school.

### **Subdivision B—Applications**

#### **Clause 106 - Approved school determinations—new school applications**

Sets out who can apply to the Minister for approval of a new school proposal and what the applications must contain.

#### **Clause 107 - Approved school determinations—decisions on new school proposals**

Provides that the Minister must either approve or refuse to approve the proposal. A note to assist the reader clarifies that the Minister's power to approve the proposal is subject to general and particular prerequisites for new school proposals set out in clauses 108 and 109.

The Minister's power to approve new school proposals will also be guided by administrative guidelines.

This provision has been drafted to mirror existing provisions in the 2004 Act and as such does not provide for merits review, however review under the *Administrative Decisions (Judicial Review) Act 1977* is available.

**Clauses 108 - Approved school determinations—general prerequisites for new school proposals**

Provides for general prerequisites for new school proposals that the Minister must have regard to before approving a new school proposal.

**Clause 109 - Approved school determinations—prerequisites for new school proposals applying in previous program years**

Provides that the Minister may only make an approved school determination retrospectively if the Minister is satisfied that there are exceptional circumstances that justify such a determination.

**Subdivision C—Making approved school determinations**

**Clause 110 - Approved school determinations—power to determine**

Empowers the Minister to make a determination approving a school for the purposes of the Bill if the Minister approves the proposal. Subclauses (1) to (4) prescribe the manner in which that determination must be made and other requirements of the determination. Subclause (5) sets out the circumstances in which the Minister may vary the determination.

**Clause 111 - Approved school determinations—contents**

Prescribes the contents of the determination made under clause 110.

## **Division 5 – Changes to approved school determinations**

### **Subdivision A—General provisions**

#### **Clause 112 - Changes to approved school determinations—power to determine**

Empowers the Minister to vary, by determination, an approved school determination if permitted to do so by another provision of the Bill. A note to assist readers clarifies that notification of the variation must be provided to the approved authority of the school concerned.

### **Subdivision B—End of State Recognition or approval**

#### **Clause 113 - Changes to approved school determinations—end of State recognition**

Provides that if an approved school in a State stops being recognised by the State for a particular level of education, the Minister may vary the school's approved school determination under clause 112 to remove the reference to that level of education.

This provision has been drafted to mirror existing provisions in the 2004 Act and as such does not provide for merits review, however review under the *Administrative Decisions (Judicial Review) Act 1977* is available.

### **Subdivision C—Location changes**

#### **Clause 114 - Changes to approved school determinations—location change proposals**

Sets out the circumstances in which an approved school may apply for a location change approval from the Minister.

#### **Clause 115 - Changes to approved school determinations—location change applications**

Sets out who can apply to the Minister for approval of a new school proposal, and what the applications must contain.

#### **Clause 116 - Changes to approved school determinations—decisions on location change proposals**

Provides that the Minister must either approve or refuse to approve the proposal. A note to assist the reader clarifies that the Minister's power to approve the proposal is subject to general and particular prerequisites for location change proposals set out in clauses 117 and 118.

The Minister's power to approve location change proposals will also be guided by administrative guidelines.

This provision has been drafted to mirror existing provisions in the 2004 Act and as such does not provide for merits review, however review under the *Administrative Decisions (Judicial Review) Act 1977* is available.

#### **Clauses 117 - Changes to approved school determinations—general prerequisites for location change proposals**

Provides for general prerequisites for location change proposals that the Minister must have regard to before approving a new school proposal.

#### **Clause 118 - Changes to approved school determinations—prerequisites for location changes applying in previous program years**

Provides that the Minister must not, in order to take account of the proposal, vary the approved school determination for the school with effect from a day in the program year preceding the program year in which the application is made unless the Minister is satisfied that there are exceptional circumstances that justify the variation taking effect in that preceding program year.

#### **Clause 119 - Changes to approved school determinations—location changes**

Empowers the Minister to vary the approved school determination for the school, if the Minister approves the proposal. Subclauses (1) and (2) prescribe the manner in which that determination must be made.

### **Subdivision D—Miscellaneous**

#### **Clause 120 - Changes to approved school determinations—clerical or formal changes**

Provides that the Minister may vary an approved school determination for a school under clause 112 to correct clerical errors or to make alterations of a formal kind, including to remove from the determination:

- a location at which the school has stopped providing education; or



- a level of education that the school has stopped providing.

## **Division 6—Revoking approved school determinations**

### **Clause 121 - Revoking approved school determinations—power to determine**

Empowers the Minister to revoke, by determination, an approved school determination in certain circumstances.

**Subclauses 121 (1) to (4)** provide for the manner and the circumstances in which an approval may be revoked, and the consequences and possible consequences of revocation.

### **Clause 122 - Revoking approved school determinations—schools ineligible for funding**

Provides that the Minister may or must revoke an approved school determination for a school and the circumstances in which that can occur.

The Minister's power to revoke an approved school determination will also be guided by administrative guidelines.

This provision has been drafted to mirror existing provisions in the 2004 Act and as such does not provide for merits review, however review under the *Administrative Decisions (Judicial Review) Act 1977* is available.

## **Division 7—Miscellaneous**

### **Clause 123 - Minister to give notice of determinations to approved authorities**

Prescribes that if the Minister makes an approved school determination or a determination varying or revoking an approved school determination then the Minister must give written notice of the determination to the approved authority of the school concerned.

### **Clause 124 - Determinations may be given retrospective effect**

Provides that an approved school determination or a determination varying or revoking an approved school determination may take effect from a day before the day on which the determination is made, but not before 1 January 2009.

### **Clause 125 - Publication of list of funded schools**

Prescribes that as soon as practicable after 1 July in each program year, the Minister must arrange for a notice to be published setting out:

- the name of each school for which financial assistance is paid under this Bill for the program year; and
- for each school, the funding level used to work out the amount of financial assistance the school receives in the program year.

## **Part 8—Approved school systems**

### **Division 1 – Simplified outline of Part**

#### **Clause 126 – Simplified outline**

**Clause 126** is an information provision which provides an overview of Part 8 to assist with readability.

## **Division 2 – Approved school systems**

### **Clause 127 - Approved school systems—definitions**

An interpretation provision which provides definitions of *approved school system* and *member*.

## **Division 3 – Listed school systems**

### **Clause 128 - Listed school systems**

Provides for the scope and nature of a transitional approved school system determination, made under clause 129 with respect to approved school systems and approved schools that were included on the list as members of those systems under the former Act on 31 December 2008. The provision has the effect that where a school system was approved, that the Minister is taken to have approved each school on the list as a member of that system by determination pursuant to clause 129 with effect from 1 January 2009. Subclause 129(2) (approved authority) and clause 145 (notice of determination) do not apply to such a determination.

## **Division 4 – Approved school system determinations**

### **Clause 129 - Approved school system determinations—power to determine**

Empowers the Minister to make a determination approving a body as an approved school system and a school as a member of the system for the purposes of the Bill.

The Minister's power to approve a body as an approved school system and a school as a member of the system will also be guided by administrative guidelines.

This provision has been drafted to mirror existing provisions in the 2004 Act and as such does not provide for merits review, however review under the *Administrative Decisions (Judicial Review) Act 1977* is available.

**Subclause 129(2)** provides that if the Minister makes an approved school system determination for an approved school system, the Minister must approve a body as the approved authority of the system under clause 151.

### **Clause 130 - Approved school system determinations—contents**

Prescribes the contents of the determination for an approved school system.

## **Division 5 – Changes to approved school system determinations**

### **Subdivision A—General provisions**

#### **Clause 131 - Changes to approved school system determinations—power to determine**

Empowers the Minister to vary by determination, an approved school system determination in certain circumstances.

**Subclauses 131(1) to (3)** set out the manner and the circumstances in which a variation may be made. Subclause (3) clarifies that a school stops being a member of an approved school system if the Minister removes the school from the system's approved school system determination under subclause (1).

### **Subdivision B—New members of systems**

#### **Clause 132 - Changes to approved school system determinations—new member proposals**

An application provision which provides that the Subdivision applies in relation to a proposal to approve a non-systemic school as a member of an approved school system, but does not apply to in relation to a proposal that is consequential on a proposal:

- to which Division 4 of Part 7 applies (new schools); or
- to which Division 4 of this Part applies (new school systems).

#### **Clause 133 - Changes to approved school system determinations—new member applications**

Sets out who can apply to the Minister for approval of a proposal to approve a non-systemic school as a member of an approved school system, and what the application must contain, including whether the school system approved authority agrees to fulfil any outstanding obligations of the approved authority of the school.

#### **Clause 134 - Changes to approved school system determinations—decisions on new member proposals**

Provides that the Minister must either approve or refuse to approve the proposal. A note to assist the reader clarifies that the Minister's power to approve the proposal is subject to prerequisites for new member proposals set out in clause 135.



The Minister's decision making power in relation to new member proposals will also be guided by administrative guidelines.

This provision has been drafted to mirror existing provisions in the 2004 Act and as such does not provide for merits review, however review under the *Administrative Decisions (Judicial Review) Act 1977* is available.

**Clause 135 - Changes to approved school system determinations—prerequisites for new member proposals**

Provides that the Minister must not approve the proposal unless the prerequisites for new member proposals are met.

**Clause 136 - Changes to approved school system determinations—new member changes**

Provides that the Minister must vary the approved school system's approved school system determination under clause 131 to approve the school as a member of the system, if the Minister approves the proposal. Subclauses (1) and (2) prescribe the manner in which that determination must be made. Subclause (3) provides that if the Minister approves the proposal, the Minister may revoke the approved authority determination for the school under clause 154.

**Subdivision C—Ending membership**

**Clause 137 - Changes to approved school system determinations—proposals to end membership**

An application provision which provides that the Subdivision applies in relation to a proposal for a school to stop being a member of an approved school system but does not apply in relation to a proposal that is consequential on a proposal to which Division 6 of Part 7 applies (Revoking approved school determinations).

**Clause 138 - Changes to approved school system determinations—applications to end membership**

Sets out who can apply to the Minister for approval of a proposal to end membership of an approved school system, and what the application must contain.

**Clause 139 - Changes to approved school system determination—decisions on proposals to end membership**

Provides that the Minister must either approve or refuse to approve the proposal. A note to assist the reader clarifies that the Minister's power to approve the proposal is subject to prerequisites for proposals to end membership set out in clause 140.

The Minister's decision making power in relation to proposals to end membership will also be guided by administrative guidelines.

This provision has been drafted to mirror existing provisions in the 2004 Act and as such does not provide for merits review, however review under the *Administrative Decisions (Judicial Review) Act 1977* is available.

**Clause 140 - Changes to approved school system determination—prerequisites for proposals to end membership**

Provides that the Minister must not approve the proposal unless the prerequisites for proposals to end membership are met.

**Clause 141 - Changes to approved school system determinations—ending membership**

Provides that the Minister must remove the school from the approved school system's approved school system determination under clause 131 if the Minister approves the proposal. Subclauses (1) and (2) prescribe the manner in which that determination must be made. Subclause (3) provides that if the Minister approves the proposal, the Minister must approve the responsible body as the approved authority of the school under clause 151.

**Subdivision D—Miscellaneous**

**Clause 142 - Changes to approved school system determinations—clerical or formal changes**

Provides that Minister may vary an approved school system determination under clause 131 to correct clerical errors or to make alterations of a formal kind.

## **Division 6 – Revoking approved school system determinations**

### **Clause 143 - Revoking approved school system determinations—power to determine**

Empowers the Minister to revoke, by determination, an approved school determination.

**Subclauses 143(1) to (3)** set out the manner and consequences of revocation.

**Subclause 143(4)** provides that if the Minister revokes an approved school system determination for an approved school system, the Minister may revoke the approved authority determination for the system under clause 154.

### **Clause 144 - Revoking approved school system determinations—systems stopped existing**

Empowers the Minister to revoke an approved school system determination for an approved school system under clause 143 if the system has stopped existing. A note to assist readers clarifies that the Minister must give notice of the revocation to the approved authority of the approved school system.

This provision has been drafted to mirror existing provisions in the 2004 Act and as such does not provide for merits review, however review under the *Administrative Decisions (Judicial Review) Act 1977* is available.

## **Division 7 – Miscellaneous**

### **Clause 145 - Minister to give notice of determinations to approved authorities**

Prescribes that if the Minister makes an approved school system determination or a determination varying or revoking an approved school system determination the Minister must give written notice of the determination to the approved authority of the approved school system concerned.

### **Clause 146 - Determinations may be given retrospective effect**

Provides that an approved school system determination or a determination varying or revoking an approved school system determination may take effect from a day before the day on which the determination is made, but not before 1 January 2009.

### **Clause 147 - Publication of list of approved school systems**

Prescribes that as soon as practicable after 1 July in each program year, the Minister must arrange for the following to be published setting out:

- the name of each approved school system; and
- for each approved school system, the name of each approved member of the system.

## **Part 9—Approved authorities and nominated authorities**

### **Division 1 – Simplified outline of Part**

#### **Clause 148 – Simplified outline**

**Clause 148** is an information provision which provides an overview of Part 9 to assist with readability.

## **Division 2 – Approved authorities**

### **Clause 149 - Approved authorities—definition**

An interpretation provision which provides the definition of *approved authority*.

## **Division 3 – Approved authorities under former Act**

### **Clause 150 - Approved authorities under former Act**

Provides for the scope and nature of a transitional approved school determination made under clause 151 with respect to an *existing authority* under the former Act as at 31 December 2008. The provision has the effect that where a body was approved as the approved authority of a non-government body (other than a systemic school), that the Minister is taken to have approved the *existing authority* with effect from 1 January 2009. Subclause 160 (notice of determination) does not apply to such a determination.

## **Division 4 – Approved authority determinations**

### **Clause 151 - Approved authority determinations—power to determine**

Empowers the Minister to approve, by determination, a body as the approved authority of an approved school system, a non-systemic school or another non-government body (other than a systemic school).



## **Division 5 – Changes to approved authority determinations**

### **Clause 152 - Changes to approved authority determinations—power to determine**

Empowers the Minister to vary by determination, an approved school system determination in certain circumstances.

### **Clause 153 - Changes to approved authority determinations—clerical and formal changes**

Provides that the Minister may vary an approved authority determination under clause 152 to correct clerical errors or to make alterations of a formal kind.

## **Division 6—Revoking approved authority determinations**

### **Subdivision A—General provisions**

#### **Clause 154 - Revoking approved authority determinations—power to determine**

Empowers the Minister to revoke, by determination, an approved authority determination in certain circumstances.

**Subclauses 154 (1) to (3)** provide for the manner and the circumstances in which an approval may be revoked, and the consequences of revocation.

### **Subdivision B—Change of Authorities**

#### **Clause 155 - Revoking approved authority determinations—change of authorities—scope**

An application provision which provides that the Subdivision applies in relation to a proposal that the Minister replace the approved authority (the existing authority) of a non-government body (other than a systemic school) with another body (the proposed authority) but does not apply in relation to a proposal that is consequential on a proposal to which Division 4 of Part 7 (new schools), or Division 4 of Part 8 (new school systems), or Subdivision B or C of division 5 of Part 8 apply .

#### **Clause 156 - Revoking approved authority determinations—change of authority proposals**

Sets out who can apply to the Minister for approval of a proposal that the Minister replace the existing authority with the proposed authority, and what the application must contain.

#### **Clause 157 - Revoking approved authority determinations—decisions on change of authority proposals**

Provides that the Minister must either approve or refuse to approve the proposal. A note to assist the reader clarifies that the Minister's power to approve the proposal is subject to prerequisites for change of authority proposals set out in clause 158.

The Minister's decision making power in relation to change of authority proposals will also be guided by administrative guidelines.

This provision has been drafted to mirror existing provisions in the 2004 Act and as such does not provide for merits review, however review under the *Administrative Decisions (Judicial Review) Act 1977* is available.

**Clause 158 - Revoking approved authority determinations—prerequisites for change of authority proposals**

Prescribes that the Minister must not approve the proposal unless the prerequisites for change of authority proposals are met.

**Clause 159 - Revoking approved authority determinations—change of authority**

**Subclause 159(1)** Provides that if the Minister approves the proposal then the Minister must revoke the approved authority determination for the school or system under clause 154 and approve the proposed authority as the approved authority for the school or system under clause 151. A note to assist readers provides that the Minister must notify the authority concerned under 160.

**Subclause 159(2)** provides for the program year of effect of the change of authority determination.

## **Division 7—Miscellaneous**

### **Clause 160 - Minister to give notice of determinations to approved authorities**

Prescribes that if the Minister makes an approved authority determination or a determination varying or revoking an approved authority determination the Minister must give written notice of the determination to the approved authority concerned.

### **Clause 161- Determinations may be given retrospective effect**

Provides that for an approved authority determination or a determination varying or revoking an approved authority determination, the determination may take effect from a day before the day on which the determination is made, but not before 1 January 2009.

## **Part 10—Miscellaneous**

### **Division 1—Timing and amounts of financial assistance**

#### **Clause 162 - Minister may fix amounts and times of payment of financial assistance**

Provides that financial assistance authorised to be paid to a State or States under this Bill is to be paid in such amounts, and at such times, as the Minister determines. A note to assist readers clarifies that the general rule under subsection 33(3A) of the *Acts Interpretations Act 1901* operates in relation to determinations made under this Bill, that is, that a determination may apply in relation to a particular class or classes of financial assistance.

#### **Clause 163 - Advances**

Provides that the Minister may make an advance to a State on account of an amount that is expected to become payable under this Bill to the State. **Subclause 163(2)** clarifies that any conditions that might apply to the payment, apply to the advance.

#### **Clause 164 - Determination authorising the making of payments may authorise Minister to determine amounts of payments**

Provides that where a provision of this Bill empowers the Minister to make a determination authorising the making of payments to a State, that the determination may either set out the amounts authorised to be paid or authorise the Minister or another person named in the Determination, to decide those amounts.

## **Division 2—False or misleading statements**

### **Clause 165 - False or misleading statements—reduction of payments**

**Clause 165** provides that where a false or misleading statement in relation to a grant of financial assistance has been made by a non-government body to a relevant person administering an Education Assistance Act (which includes block grant authorities), for the purposes of either the Act or an agreement under the Act, and a payment was made in reliance on that statement, the Minister may make a determination reducing any amount payable to a State for a non-government body in one or more program years.

**Subclause 165(2)** provides that the amount payable may be reduced by the amount which exceeded the amount that would have been payable if the false or misleading statement had not been made.

**Subclause 165(3)** provides that such a determination may have a retrospective effect.

### **Clause 166 - False or misleading statements—variation of SES score**

**Clause 166** provides that where a false or misleading statement in relation to a grant of financial assistance has been made by a non-government body to a relevant person administering the Act, for the purposes of either the Act or an agreement under the Act, and as a result of the statement a non-government school or school in an approved school system receives a higher funding level for the purposes of meeting recurrent expenditure or larger amount of remoteness loading, than the school may have obtained if the statement had not been made, that the Minister may make a determination varying the SES score for that school.

**Subclause 166(3)** provides that such a determination may have a retrospective effect.

### **Division 3—Appropriation and borrowings**

#### **Clause 167 - Appropriation**

Provides that the Consolidated Revenue Fund is appropriated as necessary for the purposes of this Bill.

#### **Clause 168 – Borrowings for capital expenditure**

Provides that the Treasurer may, from time to time, in accordance with the provisions of the *Commonwealth Inscribed Stock Act 1911*, or in accordance with the provisions of an Act authorising the issue of Treasury Bills, borrow amounts totalling not more than the sum of the amounts that may become payable to the States under Part 5 (capital expenditure) of this Bill.

## **Division 4—Administration**

### **Clause 169 - Administration—determinations and approvals**

Provides for the form, manner and effect of determinations made under this Bill.

### **Clause 170 - Administration—general power to vary or revoke determinations and approvals**

**Subclause 170(1)** provides that the power to make a determination under this Bill includes the power to vary or revoke a previous determination in the exercise of that power.

**Subclause 170(2)** sets out the determinations to which subsection (1) does not apply. A note to assist readers clarifies that the Minister has an express power to revoke or vary the determinations listed in subclause (2).

**Subclauses 170(3) and (4)** deal with the effect of determinations of revocation under subclause (1) that are expressed to revoke a determination as previously varied.

**Subclause 170(5)** provides that one instrument under subclause (1) may contain more than one revocation or variation or both revocations and variations.

**Subclauses (6) and (7)** deal with the date of effect of determinations under subclause (1), and clarifies that a determination may only have retrospective effect if the provision under which the determination is made permits it.

### **Clause 171 - Administration—delegation**

Provides that the Minister may, by written instrument, delegate all or any of the Minister's powers and functions under this Bill or under an agreement mentioned in this Bill to the Secretary of the Department or an SES employee in the Department. A note to assist readers clarifies that an SES employee is defined in the *Acts Interpretation Act 1901*.

### **Clause 172 - Administration—annual report by Minister**

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

- financial assistance (if any) granted in the year under this Bill for recurrent expenditure; and
- the application of the financial assistance granted in the year under this Bill (including financial assistance by way of capital grants).



## **Division 5—Overseas students**

### **Clause 173 - Overseas students not covered**

Provides that financial assistance under this Bill is not to be provided to a State for overseas students.

**Subclause 173(2)** provides for a definition of *overseas student* for the purposes of the Bill.

**Subclause 173(3)** provides that the regulations may specify a persons for the purposes of subparagraph (a)(iii) the definition of *overseas student*. A note at the end of subclause (3) assists the reader by clarifying that the regulations may specify a person by reference to a class of persons, in accordance with section 13(3) of the *Legislative Instruments Act 2003*.

**Subclause 173(4)** provides that the Minister may, by legislative instrument, determine that a person is not an *overseas student*. A note to assist the reader clarifies that the determination may specify a person by reference to a class of persons, in accordance with section 13(3) of the *Legislative Instruments Act 2003*.

**Subclauses 173(5) and (6)** are deeming provisions which provide that regulations or determinations made for the purposes of the definition of *overseas student* under the former Act and in force as at 31 December 2008 are taken to have been made for the purposes of subclauses 173(3) and (4).

## **Division 6—Regulations**

### **Clause 174 – Regulations**

Provides that the Governor-General may make regulations prescribing all matters:

- required or permitted by this Bill to be prescribed; or
- necessary or convenient to be prescribed for carrying out or giving effect to this Bill.

## **SCHEDULES**

Schedule 1 is a table which provides for the current SES funding level as defined in clause 4 (being, for a school with a particular SES score at column 1, a percentage of Average Government School Recurrent Costs (AGSRC) specified in column 2 for that SES score).