



To Minister for Education
Subject Commonwealth funding shares for two non-government schools
Action date Please action by 29 July 2022 in order to meet timeframes to amend the Australian Education Regulation 2013 and finalise 2022 payments before the end of the 2022 year.

Recommendations - That you:

- 1) **agree** the Department of Education draft an amendment to *Australian Education Regulation 2013* to apply a more appropriate Commonwealth funding share for Bacchus Marsh Grammar (VIC) and All Saints College (NSW). **agreed / not agreed**
- 2) **agree** the amendment will also include a minor adjustment to clarify a definition relating to Capacity to Contribute scores. **agreed / not agreed**
- 3) **note** the department will communicate the proposed amendment to the two identified systems, before seeking your agreement to undertake broader consultation with the school sector once the regulation amendment has been drafted. **noted / please discuss**

Signature:

___/___2022

Comments (for MO use only)

Executive summary

- 1. The department identified the Commonwealth recurrent funding entitlement for All Saints College (part of the NSW Catholic system) as inaccurate due to structural changes to the school happening during a critical period for the calculation of its funding. **s 47G**
- 2. Following this, a review of all 1,885 systemic non-government schools was undertaken which identified that only one other school, Bacchus Marsh Grammar (part of the Ecumenical Schools Australia system), is also impacted by the same issue. **s 47G**
- 3. To address this issue the department recommends prescribing a more accurate Commonwealth funding entitlement for the two schools through an amendment to the *Australian Education Regulation 2013* (the Regulation) and, at the same time, make a minor amendment to clarify a definition relating to Capacity to Contribute (CTC) scores.
- 4. Should you agree, the department will draft the regulation amendment and communicate the proposed changes to the two impacted systems. Following this, the department will seek your approval to undertake broader consultation with the schooling sector.

Key pointsCommonwealth funding shares for two schools

5. Under the 2018 Quality Schools reforms, all non-government schools are moving to consistent Commonwealth funding shares of 80% of the Schooling Resource Standard (SRS) by 2029. As part of this, schools that were funded as part of a system (such as government and Catholic systems) were all assigned and transitioned to 80% on the same, average share for the whole system.
6. From 2020 the Regulation was amended to instead assign each non-government school its own school-level shares and individual transition to 80% by 2029, based on the funding schools had received from their systems in 2017 and a 2019 SRS amount for each school.
7. However, the NSW Catholic and Ecumenical Schools Australia systems made structural changes to All Saints College and Bacchus Marsh Grammar between the two key data points for calculating individual funding shares (2017 and 2019), resulting in the individual funding shares calculated in accordance with the Regulation being disproportionate for these two schools.
 - a. The St Peters campus of All Saints College was separated into an individual school in 2018, significantly decreasing enrolments for All Saints College compared to 2017.
 - b. Bacchus Marsh Grammar was merged with another existing school in 2019, significantly increasing enrolments for Bacchus Marsh Grammar compared to 2017.
 - c. More detail about how disproportionate shares were calculated is provided at [Attachment A](#).
s 47G
- c. More detail about the unintended funding impacts is provided at [Attachment A](#).
9. Under section 35C of the *Australian Education Act 2013* (the Act), the Commonwealth shares can be varied to apply more appropriate shares over the transition to 80%, by prescribing new Commonwealth shares or a new method for calculating Commonwealth shares in the Regulation.
10. It is recommended that the Regulation is amended to provide a more appropriate method to be applied for the two schools, reversing the unintended funding impacts.
11. The amendment will, just for All Saints College and Bacchus Marsh Grammar, override the existing method to calculate the individual starting Commonwealth share and instead prescribe a more accurate starting point. This will allow the existing provisions that calculate a smooth transition path from the starting share to 80% by 2029 continue to apply to these schools.
s 47G

Clarify CTC score definition

14. Under the Regulation, most non-government schools from 2022 will have CTC score calculated based on the Direct Measure of Income (DMI) methodology. However, the Regulation also prescribes other methodologies for calculating CTC scores prior to 2022 and for schools where the DMI is not available or not appropriate.
- a. This includes the Refined Area Based (RAB) methodology which links student addresses to geographical areas (similar to postcodes) where the ABS can calculate household and family income to determine a school CTC score.
15. Section 4 of the Regulation provides a definition for ‘a change in basis of a CTC score’ which currently lists all methodologies except the RAB methodology. Considering the rest of the Regulation and the Explanatory Statement, it is implicit that the RAB methodology is a different basis for calculating a CTC score, and the proposed amendment would make this explicit by including RAB scores in the definition in section 4.

Government policy issues and impact on other portfolios

16. Should the Regulation amendment be agreed, it would be consistent with the original policy intent of the calculation of individual shares in 2020 to provide a smooth transition from 2019 funding levels to final Commonwealth shares of 80% of the SRS by 2029.

Budget impact, financial considerations

17. Amending the shares as proposed will reduce Commonwealth recurrent funding estimates by approximately **\$82.8 million** over 2022–23 to 2025–26 and will be treated as an estimates variation.
18. The proposed amendment will not vary the SRS itself, therefore there are no flow-on impacts to required state funding contributions under section 22A of the Act. s 47C, s 47B

s 47C**Communications and media strategy**

N/A

Stakeholder consultation

19. In notifying the department of structural changes to All Saints College in 2021, the NSW Catholic system is aware of this issue, acknowledged that the Commonwealth share for the school is disproportionate, and indicated that they would accept a lower share.
20. Ecumenical Schools Australia is currently unaware of the issue or the additional funding they would receive if their share was adjusted as proposed, as the department identified the impact on the school as part of reviewing the funding shares of all systemic schools following identification of the issue for the All Saints College. s 47G
21. Bacchus Marsh Grammar is a member of the Coalition of Regional Independent Schools Australia, which has lobbied against funding reductions caused by the implementation of DMI. While this issue coincides with the DMI implementation it is unrelated to the DMI and to any funding reductions for the school related to their assessed DMI score.

AttachmentsAttachment A Unintended funding impact of disproportionated funding shares for two schools

Unintended funding impact due to disproportionate funding shares for two non-government schools

Background

As part of the 2018 Quality Schools reforms, all non-government schools are moving to consistent Commonwealth funding shares of 80 per cent of the Schooling Resource Standard (SRS) by 2029.

In 2018 and 2019, schools that were funded as part of a system (such as government and Catholic systems) were all assigned the same, average share for the system, on the basis that systems can redistribute funding between their member schools.

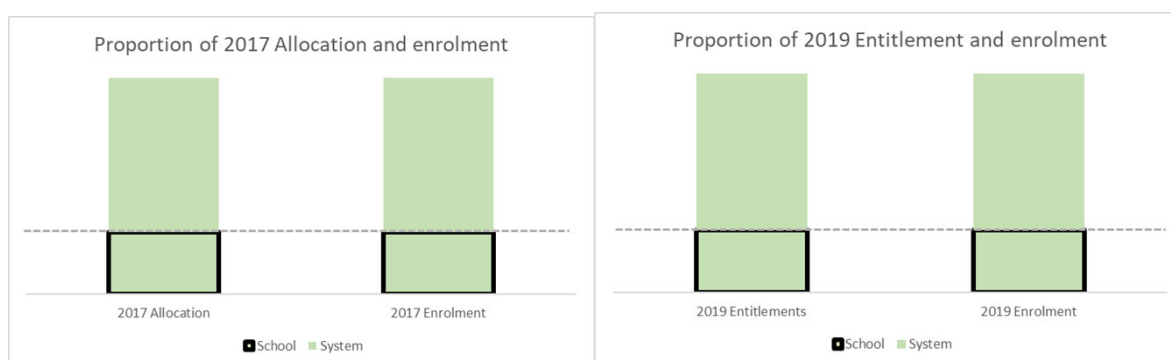
In 2020, in response to a number of challenges with applying system-level shares, the Regulation was amended to instead assign each non-government school its own school-level share and calculate an individual transition path for each school from 2020 to 80 per cent by 2029, from a 2019 baseline.

Disproportionate funding shares

The calculation of individual shares used the proportion of funding provided to the school by their system in 2017 (the latest data available at the time) to forecast the school's individual funding baseline in 2019, by applying the 2017 proportion for the school to the system's total 2019 entitlement.

When forecasting the 2019 amounts for a standard school with no significant enrolment changes, the proportion of funding and enrolments between 2017 and 2019 remains the same as shown in the hypothetical example below. This results in the schools share of the SRS in 2019 being comparable to the share it would have had in 2017.

Charts 1 & 2: Illustrative example of a hypothetical school's proportion of its system's funding and enrolments for 2017 and 2019



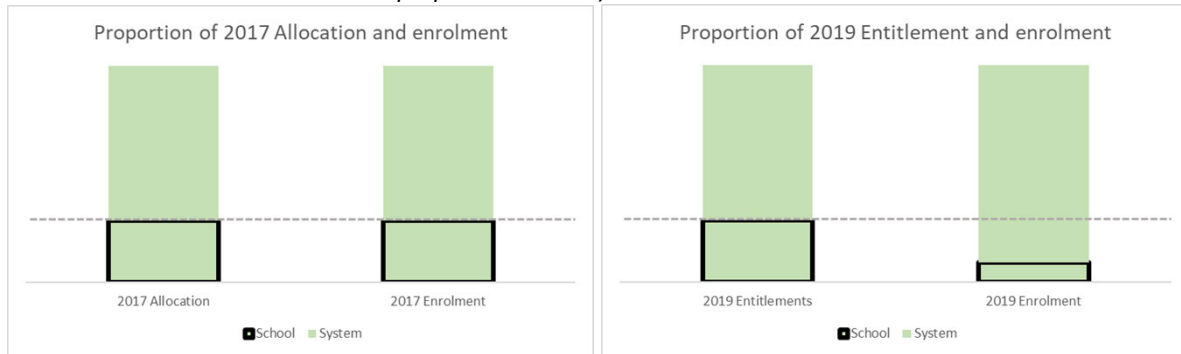
The two impacted schools, All Saints College (part of Catholic Schools NSW) and Bacchus Marsh Grammar (part of Victorian Ecumenical system), made structural changes between 2017 and 2019 resulting in a significant change in enrolments at each school and causing disproportionate 2019 funding levels to be calculated.

All Saints College (NSW Catholic system)

In 2018 All Saints College separated two campuses into two schools which significantly decreased the main school (All Saints College)’s enrolment figures between 2017 and 2019.

This meant All Saints College was attributed a disproportionately higher funding in 2019 compared to their actual 2019 student numbers.

Charts 3 & 4: Illustrative example of All Saints College’s proportion of its system’s funding and enrolments (note lower enrolment versus entitlement proportion in 2019)



Inflating their 2019 funding compared to their actual student numbers then also inflated the value of the 2019 funding as a share of the school’s 100 per cent SRS entitlement (which was calculated based on actual 2019 student numbers), resulting in a disproportionately higher funding share.

Bacchus Marsh Grammar (Ecumenical School Australia)

In 2019, Bacchus Marsh Grammar merged with a second school in the system which significantly increased the school’s enrolment figures between 2017 and 2019.

This meant Bacchus Marsh Grammar was attributed a disproportionately lower funding in 2019 compared to their actual 2019 student numbers resulting in a disproportionately lower funding share.

Chart 5 & 6: Illustrative example of Bacchus March Grammar’s proportion of its system’s funding and enrolments (note higher enrolment versus entitlement proportion in 2019)



Deflating their 2019 funding compared to their actual student numbers then also deflated the value of that funding as a share of the school’s 100 per cent SRS entitlement (which was calculated based on actual 2019 student numbers), resulting in a disproportionately lower funding share.

s 47G

s 47C, s 47G

s 47G

Proposed solution

Under section 35C of the Australian Education Act 2013 (the Act), the Commonwealth shares can be varied to apply more appropriate shares over the transition to 80 per cent, by prescribing new Commonwealth shares or a new method for calculating Commonwealth shares in the Regulation.

The amendment will, just for All Saints College and Bacchus Marsh Grammar, override the existing method to calculate the 2019 baseline and instead prescribe a proportionate starting point. This will allow the existing provisions that calculate the transition path from 2020 to 80 per cent to by 2029 continue to apply to these schools.

All Saints College (NSW Catholic system)

While the unintended funding impact has been in place since 2021, as any amendment to All Saints College's funding shares would result in a funding reduction, All Saints College's funding shares cannot be adjusted retrospectively so the amendment would prescribe a new starting share from 2022 for this school.

s 47G

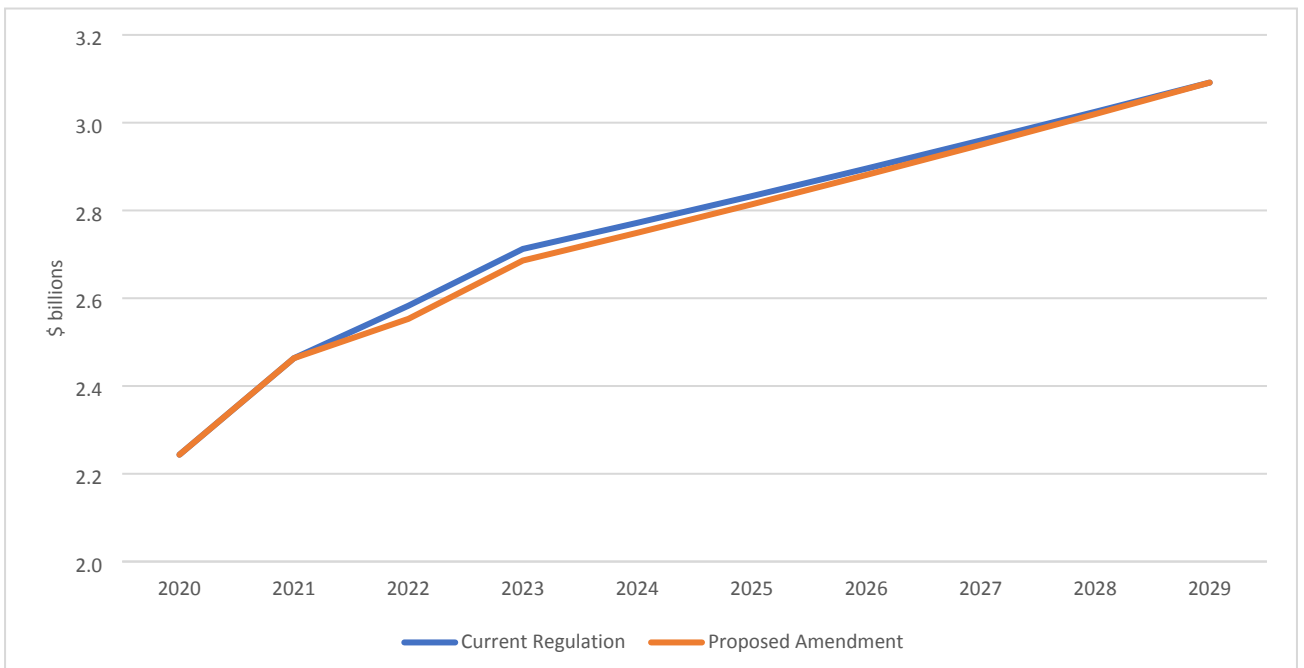
s 47G

	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2022-2029
School's current shares	322%	295%	324% ¹	289%	254%	219%	185%	150%	115%	80%	
Current funding for system (\$b)	2.2	2.5 ²	2.6	2.7	2.8	2.8	2.9	3.0	3.0	3.1	22.9
School's shares under proposed amendment	N/A	N/A	171% ¹	158%	145%	132%	119%	106%	93%	80%	
Funding impact of amendment for system (\$m)	N/A	N/A	-29.9	-26.4	-22.7	-18.7	-14.4	-9.9	-5.1	0	-127.2

1. Separate to the resetting of shares in 2020 and the issues outlined in this paper, funding shares have been subsequently reset again (resulting in the share increasing once off) in 2022 when the school moved to the Direct Measure of Income funding settings.

s 47G

Chart 3: Funding for NSW Catholic system (2020 to 2029) - current Regulation compared to proposed amendment



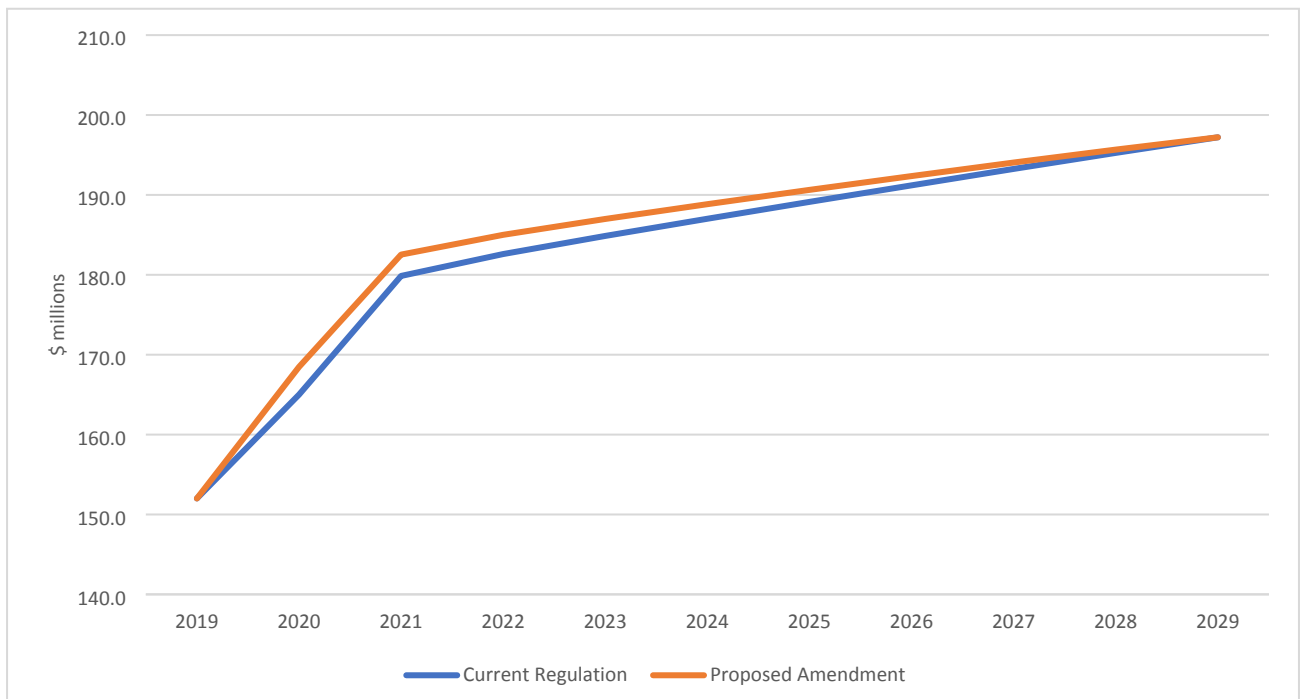
Bacchus Marsh Grammar (Ecumenical School Australia)

s 47G

	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2020-2029
School's current shares	66%	71%	80% ¹	80%	80%	80%	80%	80%	80%	80%	
Current funding for system (\$m)	165.0	179.9	182.6	184.9	187.0	189.1	191.2	193.3	195.3	197.2	1,865.4
School's shares under proposed amendment	76%	78%	87% ¹	86%	85%	84%	83%	82%	81%	80%	
Funding impact of amendment for system (\$m)	3.5	2.7	2.4	2.1	1.8	1.5	1.2	0.8	0.4	0	16.4

1. Separate to the resetting of shares in 2020 and the issues outlined in this paper, funding shares have been subsequently reset again (resulting in the share increasing once off) in 2022 when the school moved to the Direct Measure of Income funding settings.

Chart 4: Funding for Ecumenical School Australia system (2020 to 2029) - current Regulation compared to proposed amendment





To Minister for Education
CC Assistant Minister for Education
Subject Australian Education Amendment (2022 School Commonwealth Share Adjustment) Regulations 2022
Action date Please action by 20 September 2022. The reason is to meet consultation timeframes ahead of a Federal Executive Council meeting on 10 November 2022.

Recommendations - That you:

- | | |
|---|--------------------------------|
| 1) approve the Exposure Draft at <u>Attachment A</u> and accompanying explanatory document at <u>Attachment B</u> | approved / not approved |
| 2) sign the enclosed letters at <u>Attachment C</u> to consult state and territory Education Ministers, Independent Schools Australia, and the National Catholic Education Commission | signed / not signed |
| 3) note you will be briefed on the outcome of the consultation. | noted / please discuss |

Signature:

___/___2022

Comments (for MO use only)

Executive summary

1. You recently agreed that the Department of Education draft an amendment to the *Australian Education Regulation 2013* (the Regulation) to prescribe a more accurate Australian Government funding entitlement for Bacchus Marsh Grammar (VIC) and All Saints College (NSW), and to clarify a definition relating to Capacity to Contribute scores (MS22-000555 refers).
2. The Office of Parliamentary Counsel has now drafted the regulation amendment.
3. This brief seeks your approval of the Exposure Draft of the *Australian Education Amendment (School Commonwealth Share Adjustment) Regulations 2022* (Amendment Regulation) at Attachment A and the accompanying plain language explanatory document (Attachment B) for consultation with State and Territory Education Ministers, Independent Schools Australia, and the National Catholic Education Commission.
4. Following consultation, the aim is to make the Amendment Regulation at the 24 November 2022 meeting of the Federal Executive Council (ExCo) in order to finalise January 2023 payments to the impacted schools in accordance with the updated regulations.

Key points

5. The Regulation Amendment has been drafted to resolve an unintended funding impact for two out of 1,885 non-government systemic schools, which had disproportionate funding shares calculated under the Regulation, due to structural changes initiated by the schools.
6. s 47G

The Amendment Regulation will assign more accurate shares to each school.

7. The Amendment Regulation will also clarify that ‘a change in basis’ of Capacity to Contribute scores will include Refined Area Based scores, which are used when Direct Measure of Income scores are not available.
8. The relevant Approved Authorities for Bacchus Marsh Grammar and All Saints College were consulted on 16 and 17 August 2022 respectively. Both Approved Authorities are comfortable with the proposed Amendment Regulation to adjust the schools’ Government funding shares and entitlements.
9. The next step in the process of amending the regulation is to consult with states and territories. This consultation is a requirement under the *Australian Education Act 2013* and the National School Reform Agreement. Consultation can occur via correspondence. Past practice has further extended this consultation to the National Catholic Education Commission, and Independent Schools Australia. This is particularly relevant on this occasion given that the impacted schools are from these sectors.

Government policy issues and impact on other portfolios

10. Should the Regulation amendment be implemented, it would be consistent with the original policy intent of the calculation of funding shares to provide a smooth transition from existing funding levels to final Government shares of 80 per cent of the Student Resourcing Standard (SRS) by 2029.

Key risks and mitigation

11. Any slippage in the consultation period may prevent the Amendment Regulation in being ready for the ExCo meeting on 24 November 2022. This will increase the risk of the Amendment Regulation not taking effect in 2022, noting there are only two further ExCo meetings in 2022 in December.
 - a) If the Amendment Regulation does not take effect in 2022, the proposed reduction to the Government funding share and entitlement for All Saints College will have to be varied to apply from 2023 (rather than from 2022 as currently drafted), as the Regulation cannot be amended to retrospectively financially disadvantage the school. s 47G
12. The proposed amendment will not vary the SRS itself, therefore there are no impacts to required state and territory funding contributions under section 22A of the *Australian Education Act 2013*. s 47C, s 47B

s 47C

Budget impact, financial considerations

13. Amending the Government shares as proposed will reduce Government recurrent funding estimates by approximately \$82.8 million over 2022–23 to 2025–26. This will be treated as an estimates variation.

Communications and media strategy

N/A

Stakeholder consultation

14. The Approved Authorities for Bacchus Marsh Grammar and All Saints College were consulted on 16 and 17 August 2022 respectively.
15. The Schools Legal team was consulted in the preparation of the Exposure Draft of the Amendment Regulation.
16. The Office of Best Practice Regulation (OBPR) has agreed a Regulation Impact Statement is not required in relation to this measure (OBPR reference ID: OBPR22-02437).

Attachments

- Attachment A Exposure Draft of the *Australian Education Amendment (2022 School Commonwealth Share Adjustment) Regulations 2022*
- Attachment B Explanatory document for the Exposure Draft
- Attachment C Stakeholder consultation letters

s 22

EXPOSURE DRAFT



EXPOSURE DRAFT

Australian Education Amendment (2022 School Commonwealth Share Adjustment) Regulations 2022

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2022

David Hurley
Governor-General

By His Excellency's Command

Jason Clare [**DRAFT ONLY—NOT FOR SIGNATURE**]
Minister for Education

EXPOSURE DRAFT

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EXPOSURE DRAFT

1 Name

This instrument is the *Australian Education Amendment (2022 School Commonwealth Share Adjustment) Regulations 2022*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Australian Education Act 2013*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

EXPOSURE DRAFT

Schedule 1 Amendments

Schedule 1—Amendments

Australian Education Regulation 2013

1 Subsection 4(1) (after paragraph (c) of the definition of *basis*)

Insert:

- (ca) the refined area based score;

2 Section 19E

Omit “The *notional starting share* for a non-government school for a year for the school is”, substitute “(1) The *notional starting share* for a non-government school for a year for the school is (subject to subsection (2))”.

3 At the end of section 19E

Add:

Exceptions—Bacchus Marsh Grammar and All Saints College

(2) However:

- (a) in 2019 the *notional starting share* for Bacchus Marsh Grammar (AGEID 16082) is 75.255235070306; and
- (b) in 2021 the *notional starting share* for All Saints College (AGEID 13863) is 184.130020331571.

4 At the end of Part 8

Add:

77 Application provision for the Australian Education Amendment (2022 School Commonwealth Share Adjustment) Regulations 2022

The amendments made by items 2 and 3 of Schedule 1 to the *Australian Education Amendment (2022 School Commonwealth Share Adjustment) Regulations 2022* apply in relation to:

- (a) financial assistance for Bacchus Marsh Grammar for 2020 and each later year; and
- (b) financial assistance for All Saints College for 2022 and each later year.

**Explanation of Exposure Draft of
the Australian Education Amendment (2022 School Commonwealth Share Adjustment)
Regulations 2022
(Amendment Regulation)**

Schedule 1—Amendments commencing day after registration

Amend the Commonwealth share amount for two schools and clarify the definition of ‘basis’

Item 1 will amend Section 4(1) to clarify a definition relating to Capacity to Contribute (CTC) scores. Section 4(1) of the *Australian Education Regulation 2013* (the Regulation) provides a definition for the ‘basis of a school’s CTC score’ by listing the different methods of calculating a school’s CTC score for the purposes of Section 52 (‘Determining CTC scores’) of the *Australian Education Act 2013* (the Act). **Item 1** will ensure that the ‘basis’ of a school’s CTC score for a year may now expressly include scores calculated using the ‘refined area based’ method.

Policy rationale: The Amendment Regulation seeks to clarify the definition of the term ‘basis’ in terms of a school’s Capacity to Contribute (CTC) score for a year in Section 4 of the Regulation.

The purpose of the definition of ‘basis’ is to determine whether Section 19A, 19B or 19C of the Regulation is used to calculate a school’s Commonwealth share for a year by considering whether the ‘basis’ of a school’s CTC score has changed from one year to the next.

The current definition of ‘basis’ in Section 4 of the Regulation takes into consideration a variety of different methods of calculating a school’s CTC score for the purposes of Section 52 (‘Determining CTC scores’) of the Act.

Under section 21 of the Regulation (‘CTC score’), most non-government schools from 2022 will have CTC score calculated using the ‘direct measure of income’ (DMI) method. However, Section 21 also prescribes the ‘refined area based’ (RAB) method for calculating a school’s score for 2022 or later years where the Minister is satisfied that it is not reasonably practical to use the DMI score for the schools for the year.

The current definition of ‘basis’ in Section 4 inadvertently left off a ‘refined area based score’, which is set out in Section 23 of the Regulation (‘Refined area based score’).

By adding ‘refined area based scores’ to the list of methods for calculating a CTC score, the revised definition makes explicit that this method may also be used to calculate the CTC score for a school.

Items 2 and 3 will amend Section 19E of the Regulation to prescribe a notional starting share for:

- Bacchus Marsh Grammar (AGEID 16082) of 75.255235070306 for 2019, and
- All Saints College (AGEID 13863) of 184.130020331571 for 2021.

Policy rationale:

The purpose of the proposed amendment is to define a new notional starting share for two systemic schools. These schools are currently receiving unintended and disproportionate Commonwealth shares due to structural changes made by their approved system authority between 2017 and 2019, which affected their total enrolments. To address this, the Amendment Regulation will prescribe new and more accurate Commonwealth shares for each school.

As part of the 2018 Quality Schools reforms, all non-government schools that are not already funded at 80 per cent of the Schooling Resource Standard (SRS) are being transitioned to 80 per cent by 2029.

Under Section 35C of the Act, the Regulation may prescribe a percentage, or a method to work out a percentage, that is the Commonwealth share for a non-government school for a transition year (e.g. until 2029).

Under Division 1A, Part 3 of the Regulation, the Commonwealth share for a non-government school that is transitioning to 80 per cent and belongs to an approved system authority will be calculated as an individual pathway from 2020 which will smoothly move the school from its individual starting point (a notional 2019 starting share) to 80 per cent of the SRS by 2029.

The Regulation prescribes a methodology for calculating each school's notional 2019 starting share. Under this methodology, the proportion of the system's total 2017 funding that each member school received from their system in 2017 is applied to a notional 2019 SRS amount for each school.

As noted earlier, structural changes were initiated by the two affected schools and their systems between the 2017 and 2019 reference years, which resulted in significant shifts in enrolments. These changes in enrolments meant the schools' notional 2019 starting shares calculated under the current Regulation were disproportionate as the schools' 2019 funding should have represented a different proportion of their system's total 2019 funding compared to 2017.

Items 2 and 3 of the Amendment Regulation provide a notional starting share in 2019 for Bacchus Marsh Grammar and 2021 for All Saints College that are more accurate than the current notional starting shares for these schools.

These new notional starting shares are used in Sections 19A to 19C of the Regulation to work out the Commonwealth share and financial assistance for 2020 and subsequent years for Bacchus Marsh Grammar and for 2022 and subsequent years for All Saints College.

This change will allow the existing provisions in the Regulation to continue to calculate a smooth transition path from the new notional starting shares to 80 per cent of the SRS by 2029. For Bacchus Marsh Grammar this includes resetting the school's share again in 2022 under Section 19C to provide a smooth transition to its new funding levels under the DMI.

Item 4 will insert an application provision which specifies that certain amendments apply to financial assistance for 2020 (for Bacchus Marsh Grammar) and 2022 (for All Saints College) and later years.

Policy rationale:

The purpose of this amendment is to set a start date for the new notional starting shares for All Saints College and Bacchus Marsh in the Amendment Regulation. This is 2020 for Bacchus Marsh Grammar and 2022 for All Saints College.

Item 4 clarifies that the amendments relating to the new notional starting shares only apply to funding entitlements and payments in the specified commencement year and later years.

As the Amendment Regulation will result in a reduction to the Commonwealth funding entitlement for All Saints College, it cannot be applied retrospectively. Therefore, the Amendment Regulation can only be applied to the Commonwealth funding entitlement from 2022 onwards.



The Hon. Jason Clare MP
Minister for Education

Reference: MS22-000899

Ms Yvette Berry MLA
Deputy Chief Minister
Minister for Education and Early Childhood Development
GPO Box 1020
CANBERRA ACT 2601

By email: berry@act.gov.au

Dear Minister

As part of the Australian Government's commitment to consult and collaborate under the National School Reform Agreement, I am writing to advise you of a proposed amendment to the *Australian Education Regulation 2013* (the Regulation) that will adjust the Commonwealth funding share for two schools within the non-government sector to resolve an unintended funding impact for these schools.

As part of routine assurance of recurrent funding entitlements, the Department of Education identified that the Regulation has unintentionally calculated disproportionate Commonwealth shares where systemic non-government schools initiated structural changes which significantly changed their total enrolments between 2017 and 2019.

This occurred in only two cases nationally out of the 1,885 systemic non-government schools that had the Regulation applied to determine their Commonwealth share. One affected school is part of a New South Wales non-government system, and the second affected school is part of a Victorian non-government system.

I propose to determine a more appropriate and proportionate Commonwealth funding shares for the two schools through the Australian Education Amendment (2022 School Commonwealth Share Adjustment) Regulations 2022 (Amendment Regulation) to account for the structural changes.

The proposed change also seeks to make a minor amendment to clarify a definition relating to Capacity to Contribute scores.

An Exposure Draft of the Amendment Regulation and an Explanatory Document are enclosed for your consideration.

Please provide any feedback on the proposed Amendment Regulation by 4 October 2022 to ^{s 22} School Funding Branch, Department of Education.

If you have any questions, please contact ^{s 22} or by email at ^{s 22}

I trust this information is of assistance.

Yours sincerely

JASON CLARE

/ / 2022

Encl.



The Hon. Jason Clare MP
Minister for Education

Reference: MS22-000899

Ms Margery Evans
Chief Executive Officer
Independent Schools Australia
PO Box 324
DEAKIN WEST ACT 2600

By email: margery.evans@isa.edu.au

Dear Ms Evans

I am writing to advise you of a proposed amendment to the *Australian Education Regulation 2013* (the Regulation) that will adjust the Commonwealth funding share for two systemic schools within the non-government sector to resolve unintended funding impacts for these schools. One school affected by the changes is an independent school, Bacchus Marsh Grammar (AGEID 16082), which is part of the Ecumenical Schools Australia system.

As part of routine assurance of recurrent funding entitlements, the Department of Education identified that the Regulation has unintentionally calculated disproportionate Commonwealth shares for the two schools, as part of the arrangements in Part 3, Division 1A of the Regulation which shifted systemic non-government schools from an average funding share for their whole system in 2018 and 2019, to individual school funding shares from 2020.

The Regulation has had this unintended impact where systemic non-government schools' initiated structural changes which significantly changed their total enrolments between 2017 and 2019, which are key reference points used for the calculation of individual school funding shares from 2020. This occurred in only two cases nationally out of the 1,885 systemic non-government schools that had the Regulation applied to determine their Commonwealth share. The second school impacted is part of the Catholic Schools New South Wales system.

I propose to determine a more appropriate and proportionate Commonwealth funding shares for the two schools through the Australian Education Amendment (2022 School Commonwealth Share Adjustment) Regulations 2022 (Amendment Regulation) to account for the structural changes.

s 47G

The department has consulted the Approved Authorities for the two affected schools about the proposed amendment.

Table: Bacchus Marsh Grammar current and proposed Commonwealth funding shares (% of the Schooling Resource Standard)

	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029
Current Commonwealth share	66.1	70.7	80.1	80.1	80.1	80.1	80.1	80.0	80.0	80.0
Proposed Commonwealth Share	76.4	77.6	86.9	86.0	85.0	84.0	83.0	82.0	81.0	80.0

The proposed change also seeks to make a minor amendment to clarify a definition relating to Capacity to Contribute scores.

An Exposure Draft of the Amendment Regulation and an Explanatory Document are enclosed for your consideration.

Please provide any feedback on the proposed Amendment Regulation by 4 October 2022 to ^{s 22} School Funding Branch, Department of Education.

If you have any questions, please contact ^{s 22} or by email at

I trust this information is of assistance.

Yours sincerely

JASON CLARE

/ / 2022

Encl.



The Hon. Jason Clare MP
Minister for Education

Reference: MS22-000899

Ms Jacinta Collins
Executive Director
National Catholic Education Commission
PO Box R1802
ROYAL EXCHANGE NSW 1225

By email:

s 47F

Dear Ms Collins

I am writing to advise you of a proposed amendment to the *Australian Education Regulation 2013* (the Regulation) that will adjust the Commonwealth funding share for two systemic schools within the non-government sector to resolve unintended funding impacts for these schools. One school affected by the changes is a Catholic school, All Saints College (AGEID 13863), which is part of the Catholic Schools New South Wales system.

As part of routine assurance of recurrent funding entitlements, the Department of Education identified that the Regulation has unintentionally calculated disproportionate Commonwealth shares for the two schools, as part of the arrangements in Part 3, Division 1A of the Regulation which shifted systemic non-government schools from an average funding share for their whole system in 2018 and 2019, to individual school funding shares from 2020.

The Regulation has had this unintended impact where systemic non-government schools' initiated structural changes which significantly changed their total enrolments between 2017 and 2019, which are key reference points used for the calculation of individual school funding shares from 2020. This occurred in only two cases nationally out of the 1,885 systemic non-government schools that had the Regulation applied to determine their Commonwealth share. The second school impacted is part of the Ecumenical Schools Australia system.

I propose to determine a more appropriate and proportionate Commonwealth funding shares for the two schools through the Australian Education Amendment (2022 School Commonwealth Share Adjustment) Regulations 2022 (Amendment Regulation) to account for the structural changes.

s 47G

The department has consulted the Approved Authorities for the two affected schools about the proposed amendment.

Table: All Saints College current and proposed Commonwealth funding shares (% of the Schooling Resource Standard)

	2022	2023	2024	2025	2026	2027	2028	2029
Current Commonwealth share	324.1	289.2	254.3	219.5	184.6	149.7	114.9	80.0
Proposed Commonwealth Share	171.1	158.1	145.1	132.1	119.0	106.0	93.0	80.0

The proposed change also seeks to make a minor amendment to clarify a definition relating to Capacity to Contribute scores.

An Exposure Draft of the Amendment Regulation and an Explanatory Document are enclosed for your consideration.

Please provide any feedback on the proposed Amendment Regulation by 4 October 2022 to ^{s 22}, School Funding Branch, Department of Education.

If you have any questions, please contact ^{s 22} or by email at ^{s 22}

I trust this information is of assistance.

Yours sincerely

JASON CLARE

/ / 2022

Encl.



The Hon. Jason Clare MP
Minister for Education

Reference: MS22-000899

The Hon Sarah Mitchell MLC
Minister for Education and Early Learning
GPO Box 5341
SYDNEY NSW 2001

By email: office@mitchell.minister.nsw.gov.au

Dear Minister

As part of the Australian Government's commitment to consult and collaborate under the National School Reform Agreement, I am writing to advise you of a proposed amendment to the *Australian Education Regulation 2013* (the Regulation) that will adjust the Commonwealth funding share for two schools within the non-government sector to resolve an unintended funding impact for these schools. One of the schools affected by the change, All Saints College (AGEID 13863), is part of the Catholic Schools New South Wales system.

As part of routine assurance of recurrent funding entitlements, the Department of Education identified that the Regulation has unintentionally calculated disproportionate Commonwealth shares for the two schools, as part of the arrangements in Part 3, Division 1A of the Regulation which shifted systemic non-government schools from an average funding share for their whole system in 2018 and 2019, to individual school funding shares from 2020.

The Regulation has had this unintended impact where systemic non-government schools' initiated structural changes which significantly changed their total enrolments between 2017 and 2019, which are key reference points used for the calculation of individual school funding shares from 2020. This occurred in only two cases nationally out of the 1,885 systemic non-government schools that had the Regulation applied to determine their Commonwealth share. The second school impacted is part of a Victorian independent school system.

I propose to determine a more appropriate and proportionate Commonwealth funding shares for the two schools through the Australian Education Amendment (2022 School Commonwealth Share Adjustment) Regulations 2022 (Amendment Regulation) to account for the structural changes.

s 47G

The department has consulted the Approved Authorities for the two affected schools about the proposed amendment.

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Proposed Commonwealth Share	171.1	158.1	145.1	132.1	119.0	106.0	93.0	80.0

The proposed change also seeks to make a minor amendment to clarify a definition relating to Capacity to Contribute scores.

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Please provide any feedback on the proposed Amendment Regulation by 4 October 2022 to ^{s 22}, School Funding Branch, Department of Education.

If you have any questions, please contact ^{s 22} or by email at ^{s 22}

I trust this information is of assistance.

Yours sincerely

JASON CLARE

/ / 2022

Encl.



The Hon. Jason Clare MP
Minister for Education

Reference: MS22-000899

The Hon Eva Lawler MLA
Minister for Education
GPO Box 3146
DARWIN NT 0801

By email: minister.lawler@nt.gov.au

Dear Minister

As part of the Australian Government's commitment to consult and collaborate under the National School Reform Agreement, I am writing to advise you of a proposed amendment to the *Australian Education Regulation 2013* (the Regulation) that will adjust the Commonwealth funding share for two schools within the non-government sector to resolve an unintended funding impact for these schools.

As part of routine assurance of recurrent funding entitlements, the Department of Education identified that the Regulation has unintentionally calculated disproportionate Commonwealth shares where systemic non-government schools initiated structural changes which significantly changed their total enrolments between 2017 and 2019.

This occurred in only two cases nationally out of the 1,885 systemic non-government schools that had the Regulation applied to determine their Commonwealth share. One affected school is part of a New South Wales non-government system, and the second affected school is part of a Victorian non-government system.

I propose to determine a more appropriate and proportionate Commonwealth funding shares for the two schools through the Australian Education Amendment (2022 School Commonwealth Share Adjustment) Regulations 2022 (Amendment Regulation) to account for the structural changes.

The proposed change also seeks to make a minor amendment to clarify a definition relating to Capacity to Contribute scores.

An Exposure Draft of the Amendment Regulation and an Explanatory Document are enclosed for your consideration.

Please provide any feedback on the proposed Amendment Regulation by 4 October 2022 to ^{s 22}, School Funding Branch, Department of Education.

If you have any questions, please contact ^{s 22} or by email at ^{s 22}

I trust this information is of assistance.

Yours sincerely

JASON CLARE

/ / 2022

Encl.



The Hon. Jason Clare MP
Minister for Education

Reference: MS22-000899

The Hon Grace Grace MP
Minister for Education
GPO Box 15033
CITY EAST QLD 4002

By email: education@ministerial.qld.gov.au

Dear Minister

As part of the Australian Government's commitment to consult and collaborate under the National School Reform Agreement, I am writing to advise you of a proposed amendment to the *Australian Education Regulation 2013* (the Regulation) that will adjust the Commonwealth funding share for two schools within the non-government sector to resolve an unintended funding impact for these schools.

As part of routine assurance of recurrent funding entitlements, the Department of Education identified that the Regulation has unintentionally calculated disproportionate Commonwealth shares where systemic non-government schools initiated structural changes which significantly changed their total enrolments between 2017 and 2019.

This occurred in only two cases nationally out of the 1,885 systemic non-government schools that had the Regulation applied to determine their Commonwealth share. One affected school is part of a New South Wales non-government system, and the second affected school is part of a Victorian non-government system.

I propose to determine a more appropriate and proportionate Commonwealth funding shares for the two schools through the Australian Education Amendment (2022 School Commonwealth Share Adjustment) Regulations 2022 (Amendment Regulation) to account for the structural changes.

The proposed change also seeks to make a minor amendment to clarify a definition relating to Capacity to Contribute scores.

An Exposure Draft of the Amendment Regulation and an Explanatory Document are enclosed for your consideration.

Please provide any feedback on the proposed Amendment Regulation by 4 October 2022 to ^{s 22}, School Funding Branch, Department of Education.

If you have any questions, please contact ^{s 22} or by email at ^{s 22}

I trust this information is of assistance.

Yours sincerely

JASON CLARE

/ / 2022

Encl.



The Hon. Jason Clare MP
Minister for Education

Reference: MS22-000899

The Hon Blair Boyer MP
Minister for Education, Training and Skills
GPO Box 1563
ADELAIDE SA 5001

By email: Minister.Boyer@sa.gov.au

Dear Minister

As part of the Australian Government's commitment to consult and collaborate under the National School Reform Agreement, I am writing to advise you of a proposed amendment to the *Australian Education Regulation 2013* (the Regulation) that will adjust the Commonwealth funding share for two schools within the non-government sector to resolve an unintended funding impact for these schools.

As part of routine assurance of recurrent funding entitlements, the Department of Education identified that the Regulation has unintentionally calculated disproportionate Commonwealth shares where systemic non-government schools initiated structural changes which significantly changed their total enrolments between 2017 and 2019.

This occurred in only two cases nationally out of the 1,885 systemic non-government schools that had the Regulation applied to determine their Commonwealth share. One affected school is part of a New South Wales non-government system, and the second affected school is part of a Victorian non-government system.

I propose to determine a more appropriate and proportionate Commonwealth funding shares for the two schools through the Australian Education Amendment (2022 School Commonwealth Share Adjustment) Regulations 2022 (Amendment Regulation) to account for the structural changes.

The proposed change also seeks to make a minor amendment to clarify a definition relating to Capacity to Contribute scores.

An Exposure Draft of the Amendment Regulation and an Explanatory Document are enclosed for your consideration.

Please provide any feedback on the proposed Amendment Regulation by 4 October 2022 to ^{s 22} School Funding Branch, Department of Education.

If you have any questions, please contact ^{s 22} or by email at ^{s 22}

I trust this information is of assistance.

Yours sincerely

JASON CLARE

/ / 2022

Encl.



The Hon. Jason Clare MP
Minister for Education

Reference: MS22-000899

The Hon Roger Jaensch MP
Minister for Education, Children and Youth
80B Wilson Street
BURNIE TAS 7320

By email: roger.jaensch@parliament.tas.gov.au

Dear Minister

As part of the Australian Government's commitment to consult and collaborate under the National School Reform Agreement, I am writing to advise you of a proposed amendment to the *Australian Education Regulation 2013* (the Regulation) that will adjust the Commonwealth funding share for two schools within the non-government sector to resolve an unintended funding impact for these schools.

As part of routine assurance of recurrent funding entitlements, the Department of Education identified that the Regulation has unintentionally calculated disproportionate Commonwealth shares where systemic non-government schools initiated structural changes which significantly changed their total enrolments between 2017 and 2019.

This occurred in only two cases nationally out of the 1,885 systemic non-government schools that had the Regulation applied to determine their Commonwealth share. One affected school is part of a New South Wales non-government system, and the second affected school is part of a Victorian non-government system.

I propose to determine a more appropriate and proportionate Commonwealth funding shares for the two schools through the Australian Education Amendment (2022 School Commonwealth Share Adjustment) Regulations 2022 (Amendment Regulation) to account for the structural changes.

The proposed change also seeks to make a minor amendment to clarify a definition relating to Capacity to Contribute scores.

An Exposure Draft of the Amendment Regulation and an Explanatory Document are enclosed for your consideration.

Please provide any feedback on the proposed Amendment Regulation by 4 October 2022 to ^{s 22}, School Funding Branch, Department of Education.

If you have any questions, please contact ^{s 22} or by email at ^{s 22}

I trust this information is of assistance.

Yours sincerely

JASON CLARE

/ / 2022

Encl.



The Hon. Jason Clare MP
Minister for Education

Reference: MS22-000899

The Hon Natalie Hutchins MP
Minister for Education
Level 20, 1 Spring Street
MELBOURNE VIC 3000

By email: Natalie.Hutchins@parliament.vic.gov.au

Dear Minister

As part of the Australian Government's commitment to consult and collaborate under the National School Reform Agreement, I am writing to advise you of a proposed amendment to the *Australian Education Regulation 2013* (the Regulation) that will adjust the Commonwealth funding share for two schools within the non-government sector to resolve an unintended funding impact for these schools. One of the schools affected by the change, Bacchus Marsh Grammar (AGEID 16082), is part of the Ecumenical Schools Australia system.

As part of routine assurance of recurrent funding entitlements, the Department of Education identified that the Regulation has unintentionally calculated disproportionate Commonwealth shares for the two schools, as part of the arrangements in Part 3, Division 1A of the Regulation which shifted systemic non-government schools from an average funding share for their whole system in 2018 and 2019, to individual school funding shares from 2020.

The Regulation has had this unintended impact where systemic non-government schools' initiated structural changes which significantly changed their total enrolments between 2017 and 2019, which are key reference points used for the calculation of individual school funding shares from 2020. This occurred in only two cases nationally out of the 1,885 systemic non-government schools that had the Regulation applied to determine their Commonwealth share. The second school impacted is part of a Catholic Schools New South Wales system.

I propose to determine a more appropriate and proportionate Commonwealth funding shares for the two schools through the Australian Education Amendment (2022 School Commonwealth Share Adjustment) Regulations 2022 (Amendment Regulation) to account for the structural changes.

s 47G

The department has consulted the Approved Authorities for the two affected schools about the proposed amendment.

Table: Bacchus Marsh Grammar current and proposed Commonwealth funding shares (% of the Schooling Resource Standard)

	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029
Current Commonwealth share	66.1	70.7	80.1	80.1	80.1	80.1	80.1	80.0	80.0	80.0
Proposed Commonwealth Share	76.4	77.6	86.9	86.0	85.0	84.0	83.0	82.0	81.0	80.0

The proposed change also seeks to make a minor amendment to clarify a definition relating to Capacity to Contribute scores.

An Exposure Draft of the Amendment Regulation and an Explanatory Document are enclosed for your consideration.

Please provide any feedback on the proposed Amendment Regulation by 4 October 2022 to ^{s 22}, School Funding Branch, Department of Education.

If you have any questions, please contact ^{s 22} or by email at ^{s 22}

I trust this information is of assistance.

Yours sincerely

JASON CLARE

/ / 2022

Encl.



The Hon. Jason Clare MP
Minister for Education

Reference: MS22-000899

The Hon Sue Ellery MLC
Minister for Education and Training
Level 12, Dumas House
2 Havelock Street
WEST PERTH WA 6005

By email: minister.ellery@dpc.wa.gov.au

Dear Minister

As part of the Australian Government's commitment to consult and collaborate under the National School Reform Agreement, I am writing to advise you of a proposed amendment to the *Australian Education Regulation 2013* that will adjust the Commonwealth funding share for two schools within the non-government sector to resolve an unintended funding impact for these schools.

As part of routine assurance of recurrent funding entitlements, the Department of Education identified that the Regulation has unintentionally calculated disproportionate Commonwealth shares where systemic non-government schools initiated structural changes which significantly changed their total enrolments between 2017 and 2019.

This occurred in only two cases nationally out of the 1,885 systemic non-government schools that had the Regulation applied to determine their Commonwealth share. One affected school is part of a New South Wales non-government system, and the second affected school is part of a Victorian non-government system.

I propose to determine a more appropriate and proportionate Commonwealth funding shares for the two schools through the Australian Education Amendment (2022 School Commonwealth Share Adjustment) Regulations 2022 (Amendment Regulation) to account for the structural changes.

The proposed change also seeks to make a minor amendment to clarify a definition relating to Capacity to Contribute scores.

An Exposure Draft of the Amendment Regulation and an Explanatory Document are enclosed for your consideration.

Please provide any feedback on the proposed Amendment Regulation by 4 October 2022 to ^{s 22}, School Funding Branch, Department of Education.

If you have any questions, please contact Mr Edwards on ^{s 22} or by email at ^{s 22}

I trust this information is of assistance.

Yours sincerely

JASON CLARE

/ / 2022

Encl.



To Minister for Education
Subject Legislative instruments on schools-related expenditure and the
s 22

Action date Please action by **15 November 2022**. The reason is that the proposed Regulations and document packages must be lodged with the Executive Council (ExCo) Secretariat by 15 November 2022 to enable these Regulations to be made by the Governor-General, His Excellency, General the Hon David Hurley AC DSC (Retd), at the ExCo meeting on 24 November 2022.

Recommendation(s) - That you:

Proposed Regulations

1) **approve** the text of the following Regulations:

- a. *Australian Education Amendment (2022 School Commonwealth Share Adjustment) Regulations 2022*
(Attachment A)

approved / not approved

s 22

2) **approve** the text of Explanatory Statements for each of these Regulations (**please do not sign or initial**) (Attachments C

s 22

approved / not approved

3) **sign** each of these Regulations (**please do not date**)
(Attachments A s 22)

signed / not signed

4) **initial** the bottom right-hand corner of each page of the Explanatory Memorandum for each of these Regulations (including each page of their respective attachments)
(Attachments E s 22)

initialled / not initialled

s 22

6) **sign** the ExCo Minutes recommending that the Governor-General make each of the Regulations
(Attachments G s 22)

signed / not signed

s 22

Signature:

___/___2022

Comments (for MO use only)**Executive summary**

1. The Department of Education seeks your approval of the text of the following Regulations:
 - c. the *Australian Education Amendment (2022 School Commonwealth Share Adjustment) Regulations 2022* (the Commonwealth Shares Regulations)(Attachments A)
s 22
2. The department also seeks your approval of the text of the Explanatory Statements for each of these Regulations (Attachments C s 22), and for you to sign, initial and date as requested in the above recommendations to ensure that these Regulations are validly made.
3. Subject to your approval of these Regulations, the department proposes to have them made by the Governor-General at the ExCo meeting on 24 November 2022.
4. If the action date of 15 November 2022 is missed, these Regulations would not be able to be made until the next ExCo meeting on 8 December 2022. This would delay the expenditure provided for by the Commonwealth Shares Regulations. s 22

s 22

Key points***Australian Education Amendment (2022 School Commonwealth Share Adjustment) Regulations 2022***

7. The *Australian Education Regulation 2013* (the Australian Education Regulation) contains a number of provisions concerning conditions and calculations of Commonwealth financial assistance for schools and matters relevant to the provision of prescribed circumstances funding under the *Australian Education Act 2013* (Australian Education Act).
8. The Commonwealth Shares Regulations will amend section 19E of the Australian Education Regulation to amend the current method to calculate a Commonwealth share in respect of two schools to prescribe a more appropriate notional starting share for those schools.
9. The Commonwealth Shares Regulations will also amend a definition relating to Capacity to Contribute (CTC) scores that is used to measure a school community's capacity to financially contribute to a school.
10. Your agreement to these changes was provided on 4 August 2022 (MS22-000555 refers).

s 22

Government policy issues and impact on other portfolios

18. N/A

Key risks and mitigation

19. N/A

Budget impact, financial considerations

20. N/A

Communications and media strategy

21. N/A

Stakeholder consultation

22. Details of stakeholder consultation in respect of each of these legislative instruments is briefly described the 'Consultation' section of the Explanatory Statements for each legislative instrument.

23. The contacts officers are:

- a. for the Commonwealth Shares Regulation – s 22 School Funding
Analytics s 22
s 22

Attachments

Attachment A *Australian Education Amendment (2022 School Commonwealth Share Adjustment) Regulations 2022*

s 22

Attachment C *Explanatory Statement - Australian Education Amendment (2022 School Commonwealth Share Adjustment) Regulations 2022*

s 22

Attachment E *Explanatory Memorandum - Australian Education Amendment (2022 School Commonwealth Share Adjustment) Regulations 2022*

s 22

Attachment G *Executive Council Minute - Australian Education Amendment (2022 School Commonwealth Share Adjustment) Regulations 2022*

s 22

s 22



Australian Education Amendment (2022 School Commonwealth Share Adjustment) Regulations 2022

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2022

David Hurley
Governor-General

By His Excellency's Command

Jason Clare
Minister for Education

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<i>Australian Education Regulation 2013</i>		<i>2</i>

1 Name

This instrument is the *Australian Education Amendment (2022 School Commonwealth Share Adjustment) Regulations 2022*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Australian Education Act 2013*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Australian Education Regulation 2013

1 Subsection 4(1) (after paragraph (c) of the definition of *basis*)

Insert:

- (ca) the refined area based score;

2 Section 19E

Omit “The *notional starting share* for a non-government school for a year for the school is”, substitute “(1) The *notional starting share* for a non-government school for a year for the school is (subject to subsection (2))”.

3 At the end of section 19E

Add:

Exceptions—Bacchus Marsh Grammar and All Saints College

(2) However:

- (a) in 2019 the *notional starting share* for Bacchus Marsh Grammar (AGEID 16082) is 75.255235070306; and
- (b) in 2021 the *notional starting share* for All Saints College (AGEID 13863) is 184.130020331571.

4 At the end of Part 8

Add:

77 Application provision for the Australian Education Amendment (2022 School Commonwealth Share Adjustment) Regulations 2022

The amendments made by items 2 and 3 of Schedule 1 to the *Australian Education Amendment (2022 School Commonwealth Share Adjustment) Regulations 2022* apply in relation to:

- (a) financial assistance for Bacchus Marsh Grammar for 2020 and each later year; and
- (b) financial assistance for All Saints College for 2022 and each later year.

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Education

Australian Education Act 2013

*Australian Education Amendment (2022 School Commonwealth Share Adjustment)
Regulations 2022*

Authority

Subsection 130(1) of the *Australian Education Act 2013* (the Act) empowers the Governor-General to make regulations prescribing matters required or permitted by the Act to be prescribed by the regulations, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Legislative background

The Act is the principal legislation by which the Australian Government provides Commonwealth financial assistance for schools.

Under the Act, financial assistance is provided to states and territories for distribution to approved authorities for government and non-government schools, block grant authorities and non-government representative bodies for non-government schools. A block grant authority is the body, which exists—for non-government schools only—in order to provide capital funding for capital projects at such schools (and is different to an approved authority, which is the body to which recurrent funding under the Act is ultimately paid). Entities approved to receive financial assistance under the Act must meet and maintain the conditions of approval outlined in the Act.

The *Australian Education Regulation 2013* (the Principal Regulation) contains a number of provisions on matters concerning conditions and calculations of grants of Commonwealth financial assistance to states and territories for schools, matters relevant to the effective and efficient administration of that assistance, and matters relevant to the provision of prescribed circumstances funding under the Act.

Purpose and operation of amendments

The purpose of the *Australian Education Amendment (2022 School Commonwealth Share Adjustment) Regulations 2022* (the Amendment Regulations) is to prescribe a more appropriate Commonwealth funding share for two schools through an amendment to the Principal Regulation and also make a minor amendment to clarify a definition relating to Capacity to Contribute (CTC) scores which are an element of the school funding formula

under the Act that is used to measure a school community's capacity to contribute financially to a school.

Under the 2018 Quality Schools reforms, all non-government schools are moving to consistent Commonwealth funding shares of 80% of the Schooling Resource Standard (SRS) by 2029. The SRS is an estimate of how much total public funding a school needs to meet its students' educational needs. As part of this, schools that were funded as part of a system (such as government and Catholic systems) were all assigned and transitioned to 80% on the same, average share for the whole system.

From 2020 the Principal Regulation was amended to instead assign each non-government school its own school-level shares and individual transition to 80% by 2029, based on the funding schools had received from their systems in 2017 and a 2019 SRS amount for each school.

Structural changes made to All Saints College (Australian Government Education ID number (AGEID) 13863) and Bacchus Marsh Grammar (AGEID 16082) between 2017 and 2019 resulted in these schools receiving disproportionate individual funding shares calculated in accordance with the Regulation.

Under section 35C of the Act, the Commonwealth shares can be varied to apply more appropriate shares over the transition to 80%, by prescribing new Commonwealth shares or a new method for calculating Commonwealth shares in the Regulation.

To address this, the Amendment Regulations will amend the current method to calculate an individual starting Commonwealth share and instead prescribe a more appropriate starting point for the two schools by amending section 19E of the Principal Regulation to prescribe a notional starting share for:

- Bacchus Marsh Grammar (AGEID 16082) of 75.255235070306 per cent for 2019, and
- All Saints College (AGEID 13863) of 184.130020331571 per cent for 2021.

The prescribed new notional starting share for All Saints College will affect financial assistance in respect of the school from 2022 onwards so as to not financially disadvantage the school in respect of previous years, consistently with the requirements of section 12 of the *Legislation Act 2003*. For the avoidance of doubt, the application of new notional starting share for Bacchus Marsh Grammar will financially benefit the school with respect to its 2020 and 2021 funding entitlements and future years.

The Amendment Regulations will also make a minor amendment to clarify a definition relating to CTC scores. While most non-government schools from 2022 onwards will have CTC scores calculated based on the Direct Measure of Income (DMI) methodology, the Principal Regulation also prescribes other methodologies for calculating CTC scores prior to 2022 and for schools where the DMI is not available or not appropriate. Section 4 of the Principal Regulation ('Definitions') provides a definition for a change in basis of a CTC score which lists several key methodologies (e.g., the 2016 SES score) but inadvertently does not include the Refined Area Based (RAB) methodology. While it is implicit in the Principal

Regulation that the RAB methodology is a different basis for calculating a CTC score, this amendment seeks to include a formal definition to make this explicit.

Regulatory Impact

The Office of Best Practice Regulation has agreed a Regulation Impact Statement is not required in relation to the 2022 School Commonwealth Share Adjustment (OBPR reference OBPR22-02437).

Commencement

The Amendment Regulations will commence on the day after registration on the Federal Register of Legislation.

Consultation

The Minister for Education wrote to all state and territory Education Ministers, Independent Schools Australia and the National Catholic Education Commission on 19 September 2022 to formally consult on the Amendment Regulations. All responses received by the Department of Education were supportive of the proposed update to the Principal Regulation.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*
Australian Education Amendment (2022 Capital Funding Indexation) Regulations 2022

The *Australian Education Amendment (2022 School Commonwealth Share Adjustment) Regulations 2022* (Amendment Regulations) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

The Amendment Regulations prescribe new notional starting shares for All Saints College (Australian Government Education ID number (AGEID) 13863) for 2021 and Bacchus Marsh Grammar (AGEID 16082) for 2019. The Amendment Regulations also refines the definition of ‘basis’ to include the Refined Area Based methodology.

Human rights implications

The Amendment Regulations engage the right to education under Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), and Articles 28 and 29 of the *Convention on the Rights of the Child* (CRC).

Right to education

The Amendment Regulations positively engage the right to education in Article 13 of the ICESCR. Article 13 recognises the right of everyone to education, which is directed towards the full development of the human personality and the sense of its dignity, and to enable all persons to participate effectively in society. It also recognises the liberty of parents and guardians to choose non-government schools for their children’s education, provided those schools conform to minimum educational standards. The right to education for children is also found in Articles 28 and 29 of the CRC.

The Amendment Regulations promote the right to education by applying two new notional starting shares that more appropriately reflect the intended Commonwealth funding model. This measure will thereby promote the right to education by more effectively allocating finite funding resources and will help to ensure Australia continues to have functioning and sufficiently supported educational institutions.

Conclusion

The Amendment Regulations are compatible with human rights because they promote the right to education under the ICESCR and the CRC.

Minister for Education, the Hon Jason Clare MP

Detailed explanation of the provisions of the *Australian Education Amendment (2022 School Commonwealth Share Adjustment) Regulations 2022*

Section 1 – Name

This section provides that the title of the instrument is the *Australian Education Amendment (2022 School Commonwealth Share Adjustment) Regulations 2022* (the Amendment Regulations).

Section 2 – Commencement

This section provides that the Amendment Regulations commence on the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the Amendment Regulations are made under the *Australian Education Act 2013* (the Act).

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to the Amendment Regulations is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the instrument has effect according to its terms.

Schedule 1 – Amendments

Australian Education Regulation 2013

Item 1 – Subsection 4(1) (after paragraph(c) of the definition of *basis*)

This item amends section 4(1) of the *Australian Education Regulation 2013* (the Principal Regulation) to clarify the definition of ‘basis’ for the purposes of section 52 of the Act.

The purpose of this amendment is to clarify the definition of the term ‘basis’ in terms of a school’s Capacity to Contribute (CTC) score for a year. The current definition takes into consideration a variety of different methods of calculating a school’s CTC score for the purposes of section 52 of the Act.

This amendment clarifies that the refined area-based score method prescribed in section 23 of the Principal Regulation also provides a basis for the calculation of a CTC score.

Items 2 and 3 – Section 19E; At the end of section 19E

These items amend section 19E of the Principal Regulation to prescribe a notional starting share for:

- Bacchus Marsh Grammar (AGEID 16082) of 75.255235070306 per cent for 2019, and
- All Saints College (AGEID 13863) of 184.130020331571 per cent for 2021.

Section 35C of the Act provides that the regulations may prescribe a percentage, or a method to work out a percentage, for a non-government school for a transition year for the school that is the Commonwealth share for the school for the transition year.

Section 19 of the Principal Regulation specifies the formula for working out the notional starting share for non-government schools. For non-systemic schools, the notional starting share for a school is based on the proportion of Commonwealth funding entitlement for a year compared to 100 per cent of the Schooling Resource Standard (SRS). For systemic schools, the notional starting share is based on the amount their approved system authority provided in 2017 (proportioned to their 2019 Commonwealth funding entitlement) compared to 100 per cent of the SRS.

The purpose of this amendment is to define a new notional starting share for two schools that are receiving disproportionate Commonwealth shares.

Item 4 – At the end of Part 8

This item inserts an application provision which specifies that certain amendments apply to financial assistance for 2020 (for Bacchus Marsh Grammar) and 2022 (for All Saints College) and later years.

Schedule 1 to the Amendment Regulations refers to the amended notional starting shares for two schools. This schedule prescribes a notional starting share in 2019 for Bacchus Marsh Grammar and 2021 for All Saints College. Items 2 and 3 ensure that the new notional starting shares under this schedule are applied to the calculation and payment of funding entitlements from 2020 for Bacchus Marsh Grammar, and from 2022 for All Saints College. The prescribed new notional starting share for All Saints College will affect financial assistance in respect of the school from 2022 onwards so as to not financially disadvantage the school in respect of previous years, consistently with the requirements of section 12 of the *Legislation Act 2003*. For the avoidance of doubt, the application of new notional starting share for Bacchus Marsh Grammar will financially benefit the school with respect to its 2020 and 2021 funding entitlements and future years.

This item clarifies that the amendments relating to the new notional starting share only apply in the specified commencement year and later years.

EXPLANATORY MEMORANDUM

Minute No. 374 of 2022 - Minister for Education

Subject - *Australian Education Act 2013*
Australian Education Amendment (2022 School Commonwealth Share Adjustment) Regulations 2022

The proposed Regulations would address two minor anomalies in the operation of the *Australian Education Regulation 2013* by adjusting the method of calculating Commonwealth funding share in respect of two schools and clarifying the meaning of a defined term.

The *Australian Education Act 2013* (the Act) is the principal legislation for Commonwealth financial assistance for schools.

Subsection 130(1) of the Act empowers the Governor-General to make regulations prescribing matters required or permitted by the Act to be prescribed by the regulations, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Under the Act, financial assistance is provided to states and territories for distribution to approved authorities for government and non-government schools, block grant authorities and non-government representative bodies for non-government schools.

The *Australian Education Regulation 2013* (the Principal Regulation) contains a number of provisions governing the calculation, indexation and setting of Commonwealth financial assistance for schools, and for the effective and efficient administration of that financial assistance.

The purpose of the *Australian Education Amendment (2022 School Commonwealth Share Adjustment) Regulations 2022* (the proposed Regulations) is to prescribe a more appropriate Commonwealth funding share for two schools through an amendment to the Principal Regulation and also make a minor amendment to clarify a definition relating to Capacity to Contribute (CTC) scores which are an element of the school funding formula under the Act that is used to measure a school community's capacity to contribute financially to a school.

Under the 2018 Quality Schools reforms, all non-government schools are moving to consistent Commonwealth funding shares of 80% of the Schooling Resource Standard (SRS) by 2029. The SRS is an estimate of how much total public funding a school needs to meet its students' educational needs. As part of this, schools that were funded as part of a system (such as government and Catholic systems) were all assigned and transitioned to 80% on the same, average share for the whole system.

From 2020 the Principal Regulation was amended to instead assign each non-government school its own school-level shares and individual transition to 80% by 2029, based on the funding schools had received from their systems in 2017 and a 2019 SRS amount for each school.

Structural changes made to All Saints College (NSW) and Bacchus Marsh Grammar between 2017 and 2019 resulted in these schools receiving disproportionate individual funding shares calculated in accordance with the Regulation.

Under section 35C of the Act, the Commonwealth shares can be varied to apply more appropriate shares over the transition to 80%, by prescribing new Commonwealth shares or a new method for calculating Commonwealth shares in the Regulation.

To address this, the proposed Regulations would amend the current method to calculate a Commonwealth share, which uses a notional starting share, in respect of the two affected schools by amending section 19E of the Principal Regulation to prescribe a more appropriate notional starting share for:

- Bacchus Marsh Grammar of 75.255235070306 per cent for 2019; and
- All Saints College (NSW) of 184.130020331571 per cent for 2021.

The proposed Regulations would also make a minor amendment to clarify a definition relating to CTC scores. While most non-government schools from 2022 onwards will have CTC scores calculated based on the Direct Measure of Income (DMI) methodology, the Principal Regulation also prescribes other methodologies for calculating CTC scores prior to 2022 and for schools where the DMI is not available or not appropriate. Section 4 of the Principal Regulation provides a definition for a change in ‘basis’ of a CTC score which lists several key methodologies (e.g. the 2016 SES score) but inadvertently does not include the Refined Area Based (RAB) methodology. While it is implicit in the Principal Regulation that the RAB methodology is a different basis for calculating a CTC score, the proposed amendment seeks to clarify the definition to make this explicit.

The Minister for Education wrote to all state and territory Education Ministers, Independent Schools Australia and the National Catholic Education Commission on 19 September 2022 to formally consult on the proposed Regulations. The Department of Education received responses that were supportive of the proposed update to the Principal Regulation.

The Act specifies no conditions that need to be satisfied before the power to make the proposed Regulations may be exercised.

The proposed Regulations would be a legislative instrument for the purposes of the *Legislation Act 2003*.

The proposed Regulations would commence on the day after registration on the Federal Register of Legislation.

Details of the proposed Regulations are set out in the [Attachment](#).

The Minute recommends that Regulations be made in the form proposed.

Authority: Subsection 130(1) of the
Australian Education Act 2013

Details of the proposed *Australian Education Amendment (2022 School Commonwealth Share Adjustment) Regulations 2022*

Section 1 – Name

This section would provide that the title of the proposed Regulations is the *Australian Education Amendment (2022 School Commonwealth Share Adjustment) Regulations 2022*.

Section 2 – Commencement

This section would provide that the proposed Regulations commence on the day after registration on the Federal Register of Legislation.

Section 3 – Authority

This section would provide that the proposed Regulations are made under the Act.

Section 4 – Schedules

This section would provide that each instrument that is specified in a Schedule to the proposed Regulations is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the proposed Regulations has effect according to its terms.

Schedule 1 – Amendments

Australian Education Regulation 2013

Item 1 – Subsection 4(1) (after paragraph(c) of the definition of *basis*)

This item would amend subsection 4(1) to clarify the definition of ‘basis’ in the Principal Regulation, for the purposes of section 52 of the Act.

The purpose of the proposed amendment is to clarify the definition of ‘basis’ in terms of a school’s Capacity to Contribute (CTC) score for a year. The current definition takes into consideration a variety of different methods of calculating a school’s CTC score for the purposes of section 52 of the Act.

This revision would clarify that the refined area-based score method prescribed in section 23 of the Regulation also provides a basis for the calculation of a CTC score. The Regulation prescribes a number of bases on which CTC scores may be calculated. All the bases are listed in the definition of ‘basis’ in subsection 4(1) except the refined area-based score method. The refined area-based score is used in accordance with the requirements of paragraph 21(3)(b).

Items 2 and 3 – Section 19E; At the end of section 19E

These items would amend section 19E of the Principal Regulation to prescribe a notional starting share for:

- Bacchus Marsh Grammar (Australian Government Education ID number (AGEID) 16082) of 75.255235070306 per cent for 2019, and

- All Saints College ((AGEID) 13863) of 184.130020331571 per cent for 2021.

Section 35C of the Act provides that the regulations may prescribe a percentage, or a method to work out a percentage, for a non-government school for a transition year for the school that is the Commonwealth share for the school for the transition year.

Section 19 of the Principal Regulation specifies the formula for working out the notional starting share for non-government schools. For non-systemic schools, the notional starting share for a school is based on the proportion of Commonwealth funding entitlement for a year compared to 100 per cent of the SRS. For systemic schools, the notional starting share is based on the amount their approved system authority provided in 2017 (proportioned to their 2019 Commonwealth funding entitlement) compared to 100 per cent of the SRS.

The purpose of the proposed amendment is to define a new notional starting share for two schools that are receiving disproportionate Commonwealth shares. The prescribed notional starting shares would affect the Commonwealth share calculated for each school in the subsequent calendar years.

Item 4 – At the end of Part 8

This item would insert an application provision which specifies that certain amendments apply to financial assistance for 2020 (for Bacchus Marsh Grammar) and 2022 (for All Saints College) and later years.

Schedule 1 to the proposed Regulations refers to the amended notional starting shares for two schools. This schedule provided a notional share in 2019 for Bacchus Marsh Grammar and 2021 for All Saints College. Items 2 and 3 ensure that the new notional starting shares under this schedule are applied to the calculation and payment of funding entitlements from 2020 for Bacchus Marsh Grammar, and from 2022 for All Saints College. The application of the new notional starting share to financial assistance for All Saints College will apply from 2022 so as to not financially disadvantage the school in respect of previous years, consistently with the requirements of section 12 of the *Legislation Act 2003*. For the avoidance of doubt, the application of new notional starting share for Bacchus Marsh Grammar for 2020 will financially benefit the school with respect to its 2020 and 2021 funding entitlements.

This item would clarify that the amendments relating to the new notional starting share only apply in the specified commencement year and later years.

MINISTER FOR EDUCATION

Departmental No. 374 of 2022

Minute Paper for the Executive Council

Executive Council
Meeting No.

Subject

Australian Education Act 2013

*Australian Education Amendment (2022 School Commonwealth
Share Adjustment) Regulations 2022*

Approved in Council

Recommended for the approval of His Excellency the
Governor-General in Council that he make Regulations in the
attached form.

.....
David Hurley
Governor-General

.....
Filed in the Records
of the Council

Jason Clare
Minister for Education

.....
Secretary to the Executive Council

Commonwealth Funding Estimates

- incorporates Australian Education Amendment (2022 School Commonwealth Share Adjustment) Regulations 2022

Source: Australian Government Department of Education school funding model

Note:

1. Australian Government calculates recurrent school funding for schools and provides recurrent school funding payments to approved authorities.
2. Approved system authorities have their own needs-based school funding models and are able to redistribute funding on that basis according to subsection 78(5) of the *Australian Education Act 2013*.
3. From 2020, systemic non-government schools belonging to the same approved system authority transition to 80% share target as individual schools.
4. Division 1A of the *Australian Education Regulation 2013* (the Regulation) sets out the Commonwealth share transition for non-government schools from 2020 to 2029.

Name	2019 Cwth Share	2019 Total Cwth funding (Base + Loadings)	2020 Cwth Share	2020 Total Cwth funding (Base + Loadings)	2021 Cwth Share	2021 Total Cwth funding (Base + Loadings)	2022 Cwth Share	2022 Total Cwth funding (Base + Loadings)	2023 Cwth Share	2023 Total Cwth funding (Base + Loadings)	2024 Cwth Share	2024 Total Cwth funding (Base + Loadings)	2025 Cwth Share	2025 Total Cwth funding (Base + Loadings)	2026 Cwth Share	2026 Total Cwth funding (Base + Loadings)	2027 Cwth Share	2027 Total Cwth funding (Base + Loadings)	2028 Cwth Share	2028 Total Cwth funding (Base + Loadings)	2029 Cwth Share	2029 Total Cwth funding (Base + Loadings)
All Saints College	78.23%	5,326,721	322.20%	24,393,963	295.29%	68,224,459	171.11%*	32,538,444	158.10%	32,091,865	145.08%	30,538,861	132.07%	28,661,396	119.05%	26,689,028	106.03%	24,484,349	93.02%	22,122,932	80.00%	19,598,036
Bacchus Marsh Grammar	78.12%	24,992,817	76.44%*	25,680,394	77.63%	30,097,908	86.95%**	35,092,689	85.95%	36,183,811	84.96%	37,088,884	83.97%	37,792,741	82.98%	38,578,813	81.98%	39,261,618	80.99%	39,950,307	80.00%	40,644,709

*Application of the prescribed notional share in *Australian Education Amendment (2022 School Commonwealth Share Adjustment) Regulations 2022* to work out the Commonwealth share transition.

**Commonwealth share transition varied according to 19C of the Regulation as the school's CTC score is calculated using the Direct Measure of Income methodology from 2022.