

CHOICE AND AFFORDABILITY FUND AGREEMENT

2020 to 2029

Association of Independent Schools of
NSW

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Choice and Affordability Fund Agreement

PRELIMINARIES

1. As part of the Australian Government's commitment to providing choice to Australian families, the Government announced the Choice and Affordability Fund (the Fund). The Fund will provide an estimated \$1.2 billion over 10 years from 2020 to 2029 to address specific challenges in the non-government school sector. The Fund incorporates the National Adjustment Assistance Fund, which was established to provide transition funding support for non-systemic independent schools.
2. The Choice and Affordability Fund Guidelines (the Guidelines), published on the Department of Education, Skills and Employment website, outline the expectations for the fund through national priorities. The national priorities were developed in consultation with the national representative bodies and are:
 - Choice and affordability of schools
 - Transition assistance
 - Special circumstances funding
 - Strengthening outcomes for schools and educationally disadvantaged schools and students
 - Student wellbeing and support
 - Other priorities identified by the Minister from time to time.
3. Through the Choice and Affordability Fund Agreement (the Agreement), state and territory non-government representative bodies (NGRBs) agree to receive and use funding in line with these national priorities, as well as local priorities agreed by the Australian Government and state and territory level NGRBs in accordance with paragraph 28 of this Agreement.
4. Funding is provided under section 70 of the *Australian Education Act 2013* (the Act) for an NGRB for the purpose of supporting school education at non-government schools. NGRBs are expected to provide all non-government schools they represent with the opportunity to apply for or be supported through the funding.
5. Working collaboratively with non-government schools, the NGRBs will create work plans, updated as required, to help achieve priority outcomes. The NGRBs will report annually against the agreed work plan, as set out in [Part 4 – Work Plans, Reporting and the Payment Schedule](#). Ongoing reporting remains a condition of funding under the Act and the Australian Education Regulation 2013 (the Regulation).
6. This Agreement is the written arrangement entered into in relation to the Fund for the purposes of paragraphs 25B(1)(c), 31(1)(d) and 36(6)(c) of the Regulation for payments the Minister for Education (the Minister) is able to make under section 70 of the Act. It sets out matters that the Minister must have regard to for the purposes of determining an amount(s) of Choice and Affordability funding payable under section 70 of the Act for the NGRB. It also specifies the requirements on an NGRB with respect to its expenditure of Choice and Affordability funding paid under the Act and associated reporting requirements. This Agreement does not impact the expenditure by the NGRB, or associated reporting, relating to the Non-Government Reform Support Fund.

7. Any action taken under the Agreement is subject to, and must be consistent with, the Act and Regulation and all other applicable legislation. The terms and obligations contained in the Agreement are in addition to and not to be read as limiting anything in the Act or Regulation.
 8. To avoid doubt, this Agreement is not intended to create legally binding obligations on the Commonwealth of Australia whether contractual or otherwise for any purpose other than that permitted in accordance with the Act or Regulation. In accordance with subsection 25B(1) of the Regulation, the Minister will have regard to this Agreement, for the purpose of determining under section 70 of the Act, the amount of financial assistance that is payable to a State or Territory for a year, for a NGRB for a non-government school.
 9. The Regulation prescribes a range of matters for the purposes of the Act including ongoing requirements for approval of NGRBs; matters relevant to actions the Minister may take for failure to comply with the Act or the Regulations; requirements in relation to the acquittal of funding paid under the Act; and other miscellaneous matters.
 10. The Guidelines set out the requirements under the Regulation in relation to the administration, use and reporting of the Fund.
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11. A reference to the Minister or the Secretary in this Agreement and the Guidelines includes a reference to a delegate of the Minister or the Secretary, respectively, under the Act.

PART 1 – PARTIES AND OPERATION

Parties

12. The Parties to this Agreement (the Parties) are:

- a) the Secretary of the Department of Education, Skills and Employment, and
- b) the Association of Independent Schools of New South Wales Limited (ABN 96 003 509 073).

Term

13. This Agreement shall take effect on and from the date when it is signed by the last party to do so.

14. Unless terminated earlier in accordance with paragraph 18, this Agreement will expire on the latter of the following events:

- a) 31 March 2030, or
- b) on completion of a final annual report to the Secretary's satisfaction.

Review

15. The Commonwealth will review the Choice and Affordability funding arrangements in 2027.

Variation

16. This Agreement may be amended at any time with the agreement in writing of the Parties.

17. The attachments to this Agreement may be varied or revoked, and new attachments may be added, at any time with the written agreement of the Parties.

Termination

18. A Party to this Agreement may terminate the Agreement at any time by notifying the other Party in writing. A Party intending to terminate, should provide a minimum of 12 months' notice.

Survival of obligations following expiry or termination

19. The following obligations survive the expiry or termination of this Agreement:

- a) The requirement to submit an annual report as specified in Paragraph 47 of this Agreement and Part D of the Guidelines;
- b) any requirements under the Guidelines, the Act and/or the Regulation that expressly or impliedly continue to survive, including but not limited to those relating to:
 - i. expenditure of the Fund amounts received by the NGRB;
 - ii. ongoing policy and funding requirements for approval;
 - iii. monitoring the NGRB's compliance with the Act;
 - iv. keeping and providing information and records;
 - v. taking action with respect to non-compliance;

vi. requiring amounts to be repaid.

20. The above obligations continue until the Choice and Affordability funding available is either fully spent or returned.

Dispute Resolution

21. Any Party may give notice to the other Party of a dispute under this Agreement. The notice must set out the nature of the dispute.

22. Within 10 business days (or such other period agreed to by the Parties in writing), each party will nominate a representative to try and settle the dispute by direct negotiation, in good faith.

23. The existence of a dispute does not, of itself, constitute failure to implement the Agreement by either Party.

PART 2 – PRIORITIES

National priorities

24. The Guidelines specify the national priorities determined by the Minister. Through this Agreement, the Parties commit to contribute to the following national priorities.

a) *Choice and affordability of schools*

The Fund will provide funding for initiatives that facilitate parental choice and opportunity giving parents the ability to choose an affordable school that will best suit their individual child.

b) *Transition assistance*

The Fund incorporates the National Adjustment Assistance Fund, which was established to provide transition funding support for non-systemic independent schools. This means NGRBs will make financial and other transition support available for schools that would have met the criteria to have access to support through the National Adjustment Assistance Fund; that is, non-systemic independent schools which are expected to experience year-on-year reductions in per student funding due to changes in Commonwealth recurrent funding settings over 2020 to 2029. The Fund will also provide support for schools in general to transition to a new capacity to contribute model for recurrent funding.

c) *Special circumstances funding*

The Choice and Affordability Fund will support schools and students impacted by special circumstances or in priority areas such as rural, regional and remote locations and areas affected by drought or other natural disasters.

Special circumstances funding should be prioritised for schools requiring short term emergency assistance when unexpected circumstances or events cause severe and temporary financial difficulty. Assistance should be provided for schools in situations that satisfy all of the following criteria:

- **unexpected**

- Could not have been reasonably foreseen.
- **causing severe financial difficulty**
 - Where a school faces a real prospect of having to cease a large part of its educational activities or significantly lower its educational services.
- **short term**
 - Schools should be able to overcome their financial difficulty and resume operations and must provide a five-year business and recovery plan.
- **a special need**
 - Schools have exhausted all other options to remedy the financial situation of the school.

d) *Strengthening outcomes for schools and educationally disadvantaged schools and students*

The Fund will support initiatives that strengthen outcomes for schools such as helping underperforming schools improve outcomes, including through school industry partnerships, and supporting educationally disadvantaged schools and students.

e) *Student wellbeing and support*

Student wellbeing is essential for both academic and social development. The Fund will support schools that require additional assistance to ensure safe, supportive and respectful learning environments.

f) *Other priorities* identified by the Minister from time to time.

Where new priorities emerge, the Minister will consult with NGRBs to be progressed only by the agreement of both parties.

25. Transition assistance (priority b)) and special circumstances funding (priority c)) are compulsory inclusions for all NGRBs and, along with the regional transition assistance support provided under paragraph 40, these priorities should be prioritised over the other national priorities.
26. The Secretary will provide advance notice to NGRBs through Funding Estimation Tools (FETs) of their represented schools which must have access to financial support through transition assistance (priority b)). The department expects the activities outlined in paragraph 31 below and the work plans should result in a nationally consistent approach to support for these schools and will provide guidance on funding that should be set aside to meet the requirements of these schools. There is flexibility for NGRBs to extend this support, or provide alternative transition support, to other schools.
27. The implementation of national priorities outlined in paragraph 24 of this Agreement is a condition of funding to the NGRB. It is anticipated that the Parties may vary paragraph 24 of this Agreement in writing, over time as national priorities are further developed, considered and are the subject of consultation.

Local priorities

28. Local priorities are to be outlined in the NGRB's Choice and Affordability Fund work plan.

29. The implementation of local priorities outlined in the Choice and Affordability Fund work plan (Attachment A) is a condition of funding to the NGRB. It is anticipated that the relevant NGRB may formulate proposals to vary the work plan over time as local priorities are further developed and considered.
30. If the relevant NGRB proposes new local priorities, these will be agreed to by the Parties via an updated work plan.

Overview of activities

31. The following is an overview of planned activities and description of what the NGRB seeks to achieve with the Fund over 2020 to 2029.

Funding distribution

To best support represented schools transition to the Direct Measure of Income determination of Capacity to Contribute, AISNSW will provide transition assistance funding directly to identified regional schools, in accordance with paragraph 40, distributed from 2022. AISNSW will also extend this support by providing additional financial assistance to schools transitioning to the Direct Measure of Income (DMI) funding arrangements determination of Capacity to Contribute (CTC) score. This financial assistance will be addressed under priority b).

The disbursement of special circumstances funding under priority c) is dependent upon the specific circumstances of schools and cannot be predicted. As such, AISNSW will disperse grants directly to schools requiring short term emergency assistance when unexpected circumstances or events cause severe and temporary financial difficulty in accordance with set criteria. AISNSW will also establish specific grant programs in response to priority areas or natural disaster, including drought and bushfire.

AISNSW 10 year expenditure profile

2020	2021	2022	2023	2024
\$ 5, 241, 719	\$ 7, 341, 777	\$ 10, 228, 180	\$ 12, 229, 856	\$ 14, 060, 670
2025	2026	2027	2028	2029
\$ 15, 402, 734	\$ 17, 256, 426	\$ 19, 622, 144	\$ 22, 500, 298	\$ 23, 086, 254

Priority Objectives

AISNSW will address all Choice and Affordability Fund national priorities over the 10 year period, including any additional priorities identified by the Minister.

In addition to distributing transition assistance funding directly to schools, AISNSW will deliver centralised support for represented schools to support financial sustainability, underpinned by sound financial management practice and good governance that facilitates parental choice and opportunity. This will include independent reviews of school financial practices to develop their continued viability.

As identified above, AISNSW will provide financial assistance to schools based on need in situations that are unexpected, causing severe financial difficulty, are short term and where the school has

exhausted all other options. Specific grant programs will extend this support in response to priority areas or natural disaster, such as drought and bushfire.

AISNSW will provide support to strengthen outcomes for schools and educationally disadvantaged schools and students, including by supporting participating schools to develop and implement strategies to improve the literacy, numeracy and other academic outcomes of their Aboriginal and Torres Strait Islander students and enabling teachers to strengthen their knowledge and skills in their area of teaching, such as through school-industry partnerships. This support will take the form of centralised programs and distributed grants.

AISNSW will also deliver centralised programs to support student wellbeing and facilitate safe, supportive and respectful learning environments. This will include whole school wellbeing initiatives and implementing a framework of behaviour support, such as enhancing classroom management processes and practices. Distributed funding will also be provided directly to schools.

Intended Outcomes

The Choice and Affordability fund priorities undertaken by AISNSW are intended to:

- Enhance choice and affordability
- Support schools transition to the DMI funding arrangements.
- Enhance financial governance of schools, through sound financial management practices and good governance
- Assist schools impacted by Special Circumstances
- Strengthen outcomes for schools and educationally disadvantaged schools and students
- Improve education outcomes for Aboriginal and Torres Strait Islander students
- Support student wellbeing
- Facilitate safe, supportive and respectful learning environments for students and their teachers.

PART 3 – FUNDING ARRANGEMENTS

Payment amount

32. Commonwealth funding for the Fund is provided through Part 5 of the Act. Section 70 of the Act provides that the Minister may determine an amount of financial assistance that is payable for a year to a non-government representative body for a non-government school.
33. Payments will be paid through state and territory treasuries to pass to the NGRB. Funding will be administered by the NGRB for its represented non-government schools, in accordance with this Agreement and approved Choice and Affordability Fund work plans.
34. The following table describes the payment amount for 2020. Payment amounts for 2020 to 2029 are subject to annual appropriation, ministerial determination for the purposes of section 70 of the Act, and the Schooling Resource Standard (SRS) indexation factor applied to amounts from 2021 to 2029 as set out in paragraph 25B(2)(b) of the Regulation and section 11A of the Act.

	2020
Choice and Affordability Fund funding (\$)	12,585,940

35. The Government has committed to review the SRS indexation factor by 2023.
36. For the purposes of making a section 70 determination, in addition to the matters listed in subsection 25B(1) of the Regulation, the Minister may have regard to advice from NGRBs or the national representative body for a sector on their preferred state and territory level distribution of funding for 2020 or any subsequent year. Advice to vary the distribution for 2020 must be provided before Agreements are finalised. Advice to vary the distribution for 2021 or a subsequent year must be provided at least by the end of August of the year prior to the variation unless otherwise agreed with the Secretary.
37. The department will confirm the payment amounts to NGRBs by October each year for the following year (e.g. confirmation by October 2020 for the payment amounts for 2021), once the SRS indexation factor for the year is known and the Minister has considered any advice from the national representative body or NGRB to vary the state and territory level distribution provided in accordance with paragraph 36.
38. The department will publish annually on its website the final distribution of funding at a state and territory level, based on the amounts the Minister has determined are payable for an NGRB for each year by 30 June the following year.

Use of funding

39. NGRBs and non-government schools are to use funding in line with the Guidelines. NGRBs must require non-government schools to provide assurance through the annual reporting and financial statement arrangements that distributed funding has been used for the purposes it was provided.
40. To ensure support for regional schools during transition to the Direct Measure of Income for capacity to contribute, and in accordance with paragraph 23 of the Guidelines, the NGRB must ensure that funding as specified in the following table is provided for regional assistance. Note, the figures in this table will be revised annually to reflect final SRS indexation factors and distribution variations provided in accordance with paragraph 36.

	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029
Regional transition assistance (\$)	3,784,682	3,913,362	4,046,416	4,183,994	4,326,250	4,473,342	4,625,436	4,782,700	4,945,312	5,113,452

41. Subject to the requirements contained in section 31 of the Regulation and in the Guidelines which must be complied with, as well as the compulsory requirements to provide the regional assistance specified in paragraph 40 above, transition assistance (priority b)) and special circumstances funding (priority c)), NGRBs have discretion to spend Choice and Affordability funding over the period 2020 to 2029 in order to best achieve the priorities of the Fund according to their own circumstances. For avoidance of doubt, expenditure of some or all of the funds received may be spent in later years, in order to best achieve the priorities of the Fund.

42. Any interest earned on the financial assistance must be spent, or committed to be spent, in the same way as the financial assistance.

PART 4 – WORK PLANS, REPORTING AND THE PAYMENT SCHEDULE

Work plans

43. The NGRB must submit a work plan for the Secretary's approval in accordance with the Guidelines. The NGRB must submit a two-year work plan for 2020 to 2021. Four-year work plans for 2022 to 2025 and 2026 to 2029 must be submitted in line with timing set out in Table 1.
44. The Parties agree to include the Fund work plan as Attachment A of this Agreement and understand that, once approved, the work plan is part of this Agreement.
45. The work plans are expected to be a flexible document that may be varied over time to accommodate changed circumstances. Except where paragraph 46 is applicable, any variations to an approved Fund work plan, including the inclusion of additional activities, must be agreed by both Parties in writing in accordance with paragraphs 16 to 17 of this Agreement.
46. The NGRB may transfer funding between categories of activities or initiatives within the work plan Budget (the Budget), without the written consent of the Secretary, provided that such transfer:
- a) does not exceed 20 per cent of the relevant item specified in the Budget for a year from which the amount of funds is being transferred, and
 - b) requirements to provide transition assistance (priority b)), special circumstances funding (priority c)) and regional assistance set out in paragraph 40 are still met each year.

The NGRB may also vary funding allocated for an activity without the written consent of the Secretary in response to increased demand for transition assistance (priority b)) and special circumstances funding (priority c)) as well as in response to variation to the final total amount payable for a year in accordance with paragraph 41.

Annual reports

47. The NGRB will submit an annual report in accordance with the Guidelines and the template at Attachment B.

Payment schedule

48. For 2020 85 per cent of the 2020 allocation for the NGRB will be paid following signing of the Agreement. The balance of 15 per cent is expected to be paid in late 2020, subject to appropriation.
49. Subject to paragraph 50 below, for 2021 to 2029, payments will be made in January and August, each payment being approximately 50 per cent of the year's annual allocation. An additional payment will be made before 30 June for the purposes of making adjustment payments, including for indexation for the previous year if required. In accordance with paragraph 37 above, NGRBs will be advised of payments in October for the following year. Timing of the payment scheduled for January 2021 is subject to appropriation.

50. For 2022 and 2026 only, the January payment referred to in paragraph 50 will be paid following receipt of a work plan to the Secretary's satisfaction for 2022 to 2025 and 2026 to 2029 respectively.

51. The NGRB agrees to and accepts the reporting and payment schedule at Table 1. Unless otherwise agreed to by the Secretary in writing, the NGRB will submit documentation according to the reporting and payment schedule of the Fund.

Table 1. Reporting and expected payment schedule of the Choice and Affordability Fund

Report	Submission date	Payment date ¹
2020-2021 work plan	By 1 June 2020	Following signing of the Agreement
-	-	Late 2020
-	-	January 2021
2020 Annual Report	By 30 June 2021	August 2021
2022-2025 work plan	By 31 October 2021	January 2022
2021 Annual Report	By 30 June 2022	August 2022
-	-	January 2023
2022 Annual Report	By 30 June 2023	August 2023
-	-	January 2024
2023 Annual Report	By 30 June 2024	August 2024
-	-	January 2025
2024 Annual Report	By 30 June 2025	August 2025
2026-2029 work plan	By 31 October 2025	January 2026
2025 Annual Report	By 30 June 2026	August 2026
-	-	January 2027
2026 Annual Report	By 30 June 2027	August 2027
-	-	January 2028
2027 Annual Report	By 30 June 2028	August 2028
-	-	January 2029
2028 Annual Report	By 30 June 2029	August 2029
2029 Annual Report	By 30 June 2030	

- indicates no reporting requirement or payment applicable

1. Payment dates reflect the department's process timeframes and are indicative only and may be subject to change and do not factor in state or territory government payment processes.

Note: From 2021, an additional payment may be schedule prior to 30 June if required. NGRBs will be advised of payment timing and amounts in October for the following year in accordance with paragraph 37.

PART 5 – SIGNATURES

Signed for and on behalf of the Secretary of the
Department of Education, Skills and
Employment by:

Signed for and on behalf of the Association of
Independent Schools of NSW Ltd by:

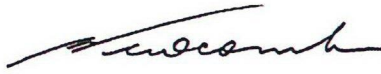


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Mark Sawade
First Assistant Secretary
Funding and Data Collection Group

Date of signature:

16 July 2020
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Dr Geoff Newcombe AM
Chief Executive

Date of signature:

15 July 2020