

APPENDIX 2: BILATERAL AGREEMENT BETWEEN NEW SOUTH WALES AND THE COMMONWEALTH ON QUALITY SCHOOLS REFORM

Preliminaries

1. This agreement satisfies the conditions of subsection 22(2)(b) of the *Australian Education Act 2013* (the Act) requiring each State and Territory to be party to an agreement with the Commonwealth relating to the implementation of school education reform.
2. This bilateral agreement will inform the priorities for the work plans for non-government representative bodies in New South Wales (NSW) under the Australian Government's Non-Government Reform Support Fund.
3. This bilateral agreement between the Commonwealth and NSW will commence on 1 January 2019 and expire on 31 December 2024. Although these agreements commence on 1 January 2019, a State-Territory share stipulated in a bilateral agreement for 2018 will apply to the 2018 calendar year.
4. In the event the Commonwealth offers terms to the agreement that are more favourable in bilateral agreements with other jurisdictions, including but not limited to:
 - a. an adjustment to the measurement of state funding contribution included in another state's bilateral agreement, or
 - b. any subsequent agreement the Commonwealth makes with any other state or territory which favourably impacts on that state's financial contributions or risk sharing arrangements under the agreement,

then these terms will also be made available to New South Wales and this agreement will be updated to take into account the adjustment or material change to circumstance. The agreement may also be updated through agreement with the Commonwealth if there is a material change in the state's circumstances, beyond its reasonable control, which will affect New South Wales' fiscal position or the recognition of the state's funding contribution.

Reform context

5. NSW is focused on improving outcomes and opportunities for every student, including improvements for all equity cohorts.
6. In line with the commitments made in the historic Partnership Agreement on 'Closing the Gap', including the National Aboriginal and Torres Strait Islander Education Strategy 2015 and the National Indigenous Reform Agreement (NIRA), NSW is committed to improving the educational outcomes and wellbeing of Aboriginal students so that they excel and achieve in every aspect of their education. In July 2020, a new National Agreement on Closing the Gap was signed by all Australian Governments and the Coalition of Peaks to build on and replace the NIRA. This commitment underpins NSW's work in all areas and within the implementation of its reform agenda.
7. At the time of execution in 2018, NSW had agreed strategies in place to address reform priorities.

8. These activities, listed in previous agreements, were provided for context and are not considered part of this bilateral agreement for the purposes of subsections 22(2)(b) and (c) of the Act.
9. This bilateral agreement sets out additional activities to be undertaken during its term. These build on the reform directions identified by all jurisdictions in the National School Reform Agreement as critical to lifting educational outcomes for all students, regardless of the school they attend.

Part 1 — REFORMS

Reform activity

10. The reform activities agreed in this bilateral agreement align with the national reform directions of the National School Reform Agreement.
11. Bilateral reforms will be implemented to support improved outcomes for specific cohorts of students as appropriate, including Aboriginal and Torres Strait Islander students.
12. Specifically, NSW recognises the risk of educational disadvantage faced by Aboriginal students and existing national initiatives to improve Aboriginal education outcomes. Through these reforms, NSW is committed to the goal of having Aboriginal students match or improve on the outcomes of the broader student population, and will involve Aboriginal communities to ensure reform actions work towards these goals.
13. NSW undertakes to work with the government school sector in NSW in the implementation of the reforms outlined in this agreement as follows:
 - a. Continuing existing consultation channels and representation of stakeholders.
 - b. Establishing further mechanisms for consultation in the implementation of specific reforms that impact on all school sectors.
14. NSW undertakes to work with the non-government school sector in NSW in the implementation of the reforms outlined in this bilateral agreement as follows:
 - a. Continuing existing consultation channels and representation of the sectors through the Schools Advisory Council, the Non-Government Schools Advisory Council and on the Board and Committees of the NSW Education Standards Authority.
 - b. Establishing further mechanisms for consultation in the implementation of specific reforms that impact on all school sectors, as part of an enhanced accountability mechanism.
15. The Commonwealth will not impose financial or other sanctions on States or Territories for a failure by the non-government school sector to cooperate with this bilateral agreement, as per clause 50 of the National School Reform Agreement. Nor will the Commonwealth impose sanctions on the non-government school sector for a failure of NSW to cooperate with them in the implementation of this bilateral agreement.

Table 1 - NSW bilateral reform plan

Reform Direction	Actions	Sector(s)	Timing
Reform Direction A - Support students, student learning and achievement			
	Deliver the review of the K-12 curriculum to ensure the school education system is preparing students for the challenges and opportunities for the future.	All sectors	End of 2019
	Implement the refreshed curriculum post 2019 review, ensuring teachers are supported to implement a streamlined curriculum, including timely and formative assessments.	All sectors	From 2020
	Embed evidence-based practices (particularly to boost early achievement in literacy and numeracy), including implementing the Literacy and Numeracy Plan (LNAP).	All sectors	End 2020 (LNAP), Ongoing
	Meet the needs of students at risk of educational disadvantage (including students with disability, Aboriginal students, students with low English proficiency and students in rural and regional areas) through evidence-based pedagogy, quality teaching and leadership and innovation.	All sectors	Ongoing
Reform Direction B – Support teaching, school leadership and school improvement			
	Strengthen the mandatory content requirements of ITE courses in identified areas of STEM, Literacy/Numeracy, Students with Special Needs and Classroom Management.	All sectors	Ongoing
	Identify and support cohorts of high quality teachers across sectors for certification at Highly Accomplished and Lead Teacher level.	All sectors	2019
	Raise the bar for entry as a teacher in government schools through strengthened employment mechanisms.	Government	2019
	Improve the quality and relevance of professional learning, focused on improving student learning outcomes.	Government	2019

Reform Direction	Actions	Sector(s)	Timing
	Build a strong pipeline of leaders through early talent identification, systematic induction of new principals and delivering high quality development programs for current and aspiring school leaders through a School Leadership Institute.	Government	2019
	<p>Lifting the Burden to allow schools to focus on teaching and learning</p> <ul style="list-style-type: none"> • Reduce the administrative burden on schools, principals and teachers to increase the amount of time to focus on high quality teaching and leading. • De-cluttering the curriculum as part of the NESA review. <p>Harmonising the Commonwealth / State administrative arrangements.</p>	Government All sectors Non-government	2019 2020 2019
	<p>Targeted initiatives to improve system and school effectiveness</p> <ul style="list-style-type: none"> • Provide tailored support to improve every school, from capability-building to targeted intervention, using the School Excellence Framework to identify need and drive improvement. 	All Government	2019
	The Commonwealth will work with NSW to address identified NSW teacher workforce needs (particularly in the areas of maths and science) including through the development of a national and state specific teacher workforce strategy reflecting respective areas of responsibility.	All sectors	2019
	Strengthen accountability measures for non-government schools that receive state funding, initially through development of memoranda of understanding with the sectors.	Non-government	2019
	Implement a school level investment strategy to ensure that needs-based funding makes an impact on student learning through effective expenditure, aligned to school planning.	Government	2019
Reform Direction C – Enhancing the national evidence base			
	Establish a Catalyst Lab to explore and test innovative educational practice in partnership with schools and other partners.	Government	2019

Part 2 — STATE AND TERRITORY FUNDING CONTRIBUTIONS

Required funding contributions

16. Under section 22A of the Act, the state must meet its funding contributions for the government and non-government sectors as a condition of receiving Commonwealth funding.
17. The funding contributions for the government and non-government sectors in 2017 (also known as the 2017 starting share) will be set out in the Regulation and will determine the default requirement if this bilateral agreement is terminated by either party.
18. The 2017 starting shares for NSW are:
 - a. 70.73 per cent for the government sector
 - b. 25.29 per cent for the non-government sector.
19. The funding contributions for the government and non-government sectors agreed in this bilateral agreement are outlined in the table below for each year from 2018 to 2024. The minimum funding contributions are expressed as a percentage of the Schooling Resource Standard (SRS) as defined in Part 3 of the Act.

Sector	2018	2019	2020	2021	2022	2023	2024
Government	70.73 %	70.84 %	71.05 %	71.37 %	71.80 %	72.22 %	72.65%
Non-government	25.29 %	24.70 %	23.16%	22.74%	23.04%	22.57%	22.20%

20. The funding contributions outlined above have been agreed based on the following rationale:
 - a. The NSW final share for government schools in NSW will be at least 75 per cent of the SRS by 2027.
 - b. The NSW final share for non-government schools in NSW will be at least 20 per cent of the SRS by 2029.

Note, NSW funding for non-government schools will be provided at the school level according to the SRS from 2019. The transition pathway for NSW funding will align with the methodology for calculating the transition pathway of Commonwealth funding incorporating changes to capacity to contribute measures. A school will transition from its starting share to 20 per cent of the school SRS. Schools with a starting share above 20 per cent will transition from 2019 to 2029, and schools with a starting share below 20 per cent will transition from 2019 to 2023.

- c. The transition pathway for government and non-government schools for the NSW final share for the NSW government and non-government school sectors will be as set out in clause 19.

21. If the reported contribution for a state or territory for a year falls short of meeting the required contribution for a sector by an immaterial amount, this will not be considered non-compliant with section 22A of the Act. An immaterial amount is less than or equal to 0.6 per cent of the total SRS for the sector, or another immaterial amount agreed by the Commonwealth Minister for Education for a year, which accounts for the timing constraint of state budget processes being finalised in advance of the year and the required contribution for the year being finalised at the end of the year following the annual School Census.
22. In assessing compliance with this agreement, the National School Resourcing Board (the Board) will take into account mitigating factors that have contributed to non-compliance. This may include, but is not be limited to, fluctuations from year-to-year in funding which could be assessed through, for example, the application of a three year rolling average if funding has fallen below the required amount, unintended and unforeseeable budget pressures in the state budget process, financial accounting impacts (e.g. actuarial assessments and timing of expenditures due to reporting dates), and other unforeseeable circumstances (e.g. such as natural disasters).
23. Consistent with clause 61 of the National School Reform Agreement and in the event of a change to the SRS that has a consequential impact on state contribution requirements, the Parties can agree to amend the contribution shares set out in clause 19 above, to ensure that the state contribution amount is not impacted. The amended amount should represent the funding calculated as if the SRS settings are applied that were in operation at the time the agreement commenced. The Commonwealth will facilitate this process by continuing to provide data required to enable the State to calculate the amount of its contribution on an unchanged basis.

Measurement of contributions

24. For the purpose of this Schedule, Parties have agreed the costs that are measured towards NSW's funding contribution requirements for the government and non-government sectors.
25. Consistent with the calculation of the SRS, the state funding contributions will be measured according to NSW funding consistent with the Australian Curriculum, Assessment and Reporting Authority (ACARA) financial data reporting methodology for state Net Recurrent Income Per Student (NRIPS) for school years Year 1 minus 1 to Year 12, excluding funding for full fee paying overseas students, along with the following additional funding types:
 - a. Up to 4 per cent of the total SRS for the government sector each year for the following funding:
 - i. NSW Education Standards Authority
 - ii. capital depreciation.

Note if a state or territory reports a lower proportion of the SRS than the 4 per cent cap for a year, they cannot subsequently increase the expenditure reported to a higher proportion of the SRS.

26. NSW commits to provide sufficient evidence, including data and methodologies, to satisfy the Commonwealth that the NSW 2017 starting share reflects the principles of the agreement by 17 November 2018.

27. If requested by the Commonwealth, the Parties may agree to vary clause 25 of this agreement to provide clarification of the funding types set out in clause 25.

Requirements for annual reporting to the Commonwealth

28. The following clauses set out the annual reporting arrangements for NSW for a year (Year T).
29. The Commonwealth will provide all states and territories with a Funding Estimation Tool in January Year T+1 prior to the state or territory's annual report with the final Schooling Resource Standard (SRS) data for Year T for the purpose of the Board's review of section 22A of the Act.
30. The Director General or equivalent of the education portfolio for the state or territory must provide an annual report to the Secretary of the Australian Government Department of Education for each year of the agreement.
31. The annual report must be provided no later than 31 October Year T+1 (i.e. 31 October of the following year).
32. The annual report must set out the following:
 - a. the total amount of funding provided by the state or territory for government schools in the state or territory for Year T as measured in line with clause 25 above
 - b. the total amount of funding provided by the state or territory for non-government schools in the state or territory for Year T as measured in line with clause 25 above
 - c. total full time equivalent enrolments for Year T relating to the funding amounts above.
33. The annual report must also specify the amount for each funding type set out in clause 25 of this bilateral agreement as well as the amount of funding consistent with the specified NRIPS methodology.
34. Each amount included in the report must have been:
 - a. spent by the state or territory government for schools (including centralised funds expended by the department for schools and funds allocated for schools that are not spent within Year T but are spent within remainder of the financial year or subsequent years by schools) or approved authorities, or
 - b. spent by schools or approved authorities for Year T, and
 - c. not counted towards another reporting year for the purposes of this agreement.

Note this does not prevent a state or territory also including budgeted amounts in its report.
35. Each amount included in the report for a sector must have been allocated or provided for that sector. Note this means a state or territory cannot count funding provided for one sector towards the contribution requirement for the other sector.
36. Each amount included in the report must be net of any Australian Government funding.

37. For each amount, except items listed in clause 38 below, the report must include evidence that the amount has been certified and is consistent with the agreed methodology in clause 25 of this bilateral agreement by one of the following:
 - a. the Auditor-General of the state or territory or
 - b. an independent qualified accountant or
 - c. an independent qualified accountant engaged by ACARA for NRIPS funding or
 - d. the Director General or equivalent of the education portfolio for the state or territory, but only up to 0.1 per cent of the SRS for the state or territory for all reported funding.
38. For the items listed below, the amounts must be certified in accordance with clause 37 above however it is agreed that evidence of certification will be provided after the annual report but no later than 31 January Year T+2:
 - a. NRIPS funding
39. The annual report may also provide an explanation and supporting evidence for the National School Resourcing Board's (the Board) consideration of any shortfall between the total amount reported for Year T and the agreed funding contributions for Year T in clause 19 of this bilateral agreement.
40. The Commonwealth will provide the state or territory's annual report to the Board for assessment of the state or territory's compliance for Year T with section 22A of the Act, including any funding requirements specified in this bilateral agreement.
41. The Commonwealth may request additional information from the state or territory on behalf of the Board, to be provided within 21 days. If the state or territory does not provide information or advice in this timeframe, the Board will make an assessment based on the information and evidence available.
42. The state or territory will have an opportunity to provide further information for the Board's consideration following their receipt of the Board's draft findings.

PART 3 (NSW-SPECIFIC)¹ — ADDITIONAL FUNDING OUTSIDE THE STATE AND TERRITORY MINIMUM FUNDING REQUIREMENTS

43. The NSW Government will deliver record investment into schools. As articulated by the Act, governments, both state and federal, have a responsibility to provide every child with a quality education, regardless of where they live and what school they attend. This investment must be fairly and transparently distributed and allocated according to need. Consistent with its commitment to these needs based, sector blind principles, the NSW Government will always reserve the right to invest additional money as required to ensure funding equity for all students in NSW.
44. To improve educational opportunity and outcomes across all school sectors NSW, as the predominant funder of government schools, will establish and fund a program to support government schools, the NSW School Equity Program. Funding for the NSW School Equity Program is in addition to the required minimum state funding contributions under Part 2 of this bilateral agreement.
45. As the predominant funder of non-government schools, the Commonwealth will create a new \$1.2 billion national Choice and Affordability Fund over ten years that will complement existing non-government recurrent school funding. Funding will be distributed between the independent and Catholic sectors based on their sector share of schools.
46. The Choice and Affordability Fund will provide additional support to the non-government sector in accordance with the program designed by the Commonwealth Government to address parental choice and diversity, transitional adjustment assistance and other government priorities, such as regional and remote student needs.
47. The Choice and Affordability Fund in NSW will be distributed to non-government schools according to the arrangements established by the Commonwealth Government in consultation with the non-government sector.
48. NSW is resolutely committed to ensuring that Government, Catholic, and independent schools benefit equally from additional funding initiatives. The NSW School Equity Program will complement the Commonwealth's Choice and Affordability fund (starting from 2020).
49. NSW State Government additional funds under the NSW School Equity Program start from 2020 (and align with the duration of the Commonwealth fund over ten years). This funding will support government schools with higher needs in accordance with the loadings under the *Australian Education Act 2013* and represents an estimate of the government sector equivalent of the Choice and Affordability Fund, calculated to reflect the relative size of the government school sector.
50. Table 2 below sets out the funding under the NSW School Equity Program for the term of this bilateral agreement:

¹ Part 3 has been included at the request of the NSW Government.

Table 2 NSW School Equity Program

Sector	2020 (\$m)	2021 (\$m)	2022 (\$m)	2023 (\$m)	2024 (\$m)
Government*	\$71.2	\$71.2	\$71.2	\$71.2	\$71.2

**Note – Table 2 presents figures over the length of this bilateral agreement only (until December 31 2024). The NSW commitment to the NSW School Equity Program is a 10-year commitment.*

51. The NSW Schools Advisory Council, which consists of the heads of the government school system, Catholic Schools NSW and the Association of Independent Schools NSW will support co-ordination on areas of common interest between the sectors.

SIGNATURES


The Parties have confirmed their commitment to this agreement as follows:

Signed for and on behalf of the Commonwealth
of Australia by


The Honourable Jason Clare MP
Minister for Education

Date: 12/12/23

Signed for and on behalf of the state of New
South Wales by


The Honourable Prudence Car MP
Deputy Premier of New South Wales

Minister for Education and Early Learning
Date: 11 December 2023