

Terms of Reference

Annual review of state and territory compliance with section 22A of the *Australian Education Act 2013*

The *Australian Education Act 2013* (the Act) sets out conditions of financial assistance for state and territories (states) to receive Commonwealth financial assistance for government and non-government schools in that state or territory. This includes default requirements for minimum state funding contributions for the government and non-government sectors under section 22A of the Act.

Section 22A of the Act provides that a payment of financial assistance under the Act to a state is subject to the total amount of funding provided by the state for a year for:

- government schools located in the state equalling or exceeding the state contribution amount for government schools in the state for the year.
- non-government schools located in the state equalling or exceeding the state contribution amount for non-government schools in the state for the year.

Bilateral school education reform agreements (bilateral agreements) have been agreed as part of the new national schooling reform arrangements. Bilateral agreements take account of states' individual circumstances, and each bilateral agreement outlines the state's commitments to the implementation of reforms. The agreements include agreed minimum state funding contributions, as well as the agreed approach to measuring these contributions and treatment for immaterial shortfall, for the government and non-government sectors where arrangements vary from the default calculations set out in section 22A of the Act.

The total amount of funding provided by the state for a year will be calculated in accordance with the methodology set out in a state's bilateral agreement.

The National School Resourcing Board (the Board) has been established under section 128 of the Act. Subsection 128(7) requires an annual independent review of compliance by states with section 22A of the Act.

Consistent with the Act, the annual review will assess total funding for the government and non-government at the sector level, not school level. States will continue to have the discretion to allocate funding to schools according to their own funding distribution models.

Scope

The Board will consider and provide its assessment relating to compliance by a state subject to the terms of its bilateral agreement, including:

1. Whether the reported state funding for the given year equals or exceeds the minimum funding contribution requirements under section 22A of the Act for both government and non-government sectors;
2. Contributing or mitigating circumstances;
3. Suggestions for adjustments to current reporting processes that impact the ability of states to comply with the requirements under section 22A of the Act.

Contributing or mitigating circumstances

The Board is to take into account mitigating factors that have contributed to non-compliance. This may include, but is not be limited to, the following:

- 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. This may include consideration of funding in the previous or subsequent year, to the assessment year, where funding provided or budgeted for schools is above minimum requirements. The additional funding provided in the previous years could be considered a mitigating/contributing circumstance for the shortfall experienced in the assessment year. Evidence of future Budgets could also assist the Board in assessing compliance.
- unintended and unforeseeable budget pressures in the state budget process
- other unforeseeable circumstances (e.g. such as natural disasters)
- fluctuations in enrolment numbers or student characteristics that exceed what could have been reasonably anticipated
- significant differences in funding provided to schools compared to actual school allocation or school expenditure, that is outside the control of state governments
- financial accounting impacts (e.g. actuarial assessment and timing of expenditure due to reporting dates)
- mitigation or rectification processes proposed by the state or territory
- other relevant circumstances, supported by data and information from the relevant jurisdiction.

The Board should also have regard to the timing of state budget processes and recognise jurisdictions may set budget appropriations for schools in advance of the state funding contribution amount being finalised based on actual data for the year.

The Board may make a finding of compliant or non-compliant taking into account immaterial shortfalls and mitigating factors.

The Board does not have a role in providing recommendations on potential compliance action by the Minister. Under Section 110 of the Act, the Minister has discretion to determine compliance and any sanction action.

Consistent with the terms of reference, the Board will produce a final report containing assessments of overall compliance for each state.

Information to support the reviews

The bilateral agreements require states to provide the Australian Government Department of Education with annual reports demonstrating their compliance with section 22A of the Act for a year for the government and non-government sector by 30 November of the following year (unless otherwise set out in the bilateral agreement).

States may also provide any additional information they wish to have considered in the assessment of compliance.

This information will be provided to the Board along with any additional information on context and mitigating factors that the Board requests to support its deliberations.

States will not usually be required to report separately to the Board. If the Board seeks additional information from states, a formal request will be made by the Australian Government Department of Education, consistent with the arrangements outlined in section 65 (1)(aa) of the Australian Education Regulations 2023.

Consultation

The Board will consult with states and territories in undertaking its review, including consultation with the Education Council, and may also consult with other parties as required.

The Board will provide relevant sections of the draft review report to each state and territory, who will have the opportunity to provide further information for the Board's consideration. States and territories may request that their response, if any, is included as an annexure to the final report.

Timing

The Board is expected to provide its final report to the Australian Government Minister for Education by April two years following the reported year.

The Minister will invite the Chair of the Board to present the report to the Education Council.