



Bills Digest | 29 October 2024

Better and Fairer Schools (Funding and Reform) Bill 2024

Dr Matthew Crowe, Leah Ferris and Dr Emma Vines
Bills Digest No. 25, 2024–25

Key points

- The [Better and Fairer Schools \(Funding and Reform\) Bill 2024](#) (the Bill) amends the [Australian Education Act 2013](#) to change the approach for determining the Commonwealth's contribution to recurrent funding for government schools.
- With the current [National School Reform Agreement](#) due to expire at the end of 2024, the government released its intended replacement, [The Better and Fairer Schools Agreement \(2025-2034\)](#) (BFSA), in July.
- New South Wales, Queensland, South Australia and Victoria are yet to sign on to the BFSA, demanding a higher contribution from the Commonwealth towards funding government schools. The government has [stated](#) that without agreement 'the current funding arrangements will continue for another 12 months.'
- The Bill provides that the Commonwealth share for government schools from 2025 onwards will be prescribed by regulation subject to conditions that the share cannot be set below 20% (or for government schools in the Northern Territory, set below 40% for 2029 and onwards), or less than the percentage prescribed by regulation for that year or the previous year.
- The Bill will also allow for the Commonwealth to provide a different Commonwealth share for government schools located in different states or territories.
- The reforms will also change the definition of a national agreement relating to school education reform to allow financial assistance to be paid to the states/territories which have signed up to the BFSA.
- If the Bill were to not pass before the end of the year, it appears as though the current funding arrangements would continue in 2025 for jurisdictions which have signed up to the BFSA (Western Australia, Tasmania and the Northern Territory).
- The Bill has been referred to the Senate Standing Committees on Education and Employment for [inquiry and report](#) by 18 November 2024.

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Date of introduction: 10 October 2024

House introduced in: House of Representatives

Portfolio: Education

Commencement: Schedule 1, Part 2 commences on the earlier of Proclamation or 6 months after Royal Assent. All other provisions commence on the day after Royal Assent.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the [Bill's home page](#), or through the [Australian Parliament website](#).

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the [Federal Register of Legislation website](#).

All hyperlinks in this Bills Digest are correct as at October 2024.

Purpose of the Bill

The purpose of the [Better and Fairer Schools \(Funding and Reform\) Bill 2024](#) (the Bill) is to amend the [Australian Education Act 2013](#) (the Act) to:

- change the definition of a national agreement relating to school education reform to allow financial assistance to be paid to the states/territories which have signed up to the Better

and Fairer Schools Agreement in the event all states/territories have not signed up to the agreement by the end of the year

- provide that the Commonwealth share for government schools from 2025 onwards will be prescribed by regulation, subject to conditions that the share cannot be:
 - set below 20% (or for government schools in the Northern Territory, set below 40% for 2029 and onwards) or
 - less than the percentage prescribed by regulation for that year or the previous year.
- allow for the Commonwealth to provide a different Commonwealth share for government schools located in different states or territories
- specifically provide that the Northern Territory's funding share will be 60% for government schools and 20% for non-government schools from 2029, unless the agreement with the Northern Territory provides otherwise
- amend the definition of a 'transition year' to provide that the transitional arrangements for government schools (other than a 6-year transitioning government school) will cease after 2024, instead of 2027
- introduce a regulation-making power to clarify the kinds of school education information (except personal information) that may be published under existing arrangements and
- require the Minister to table a statement in Parliament on progress in relation to agreements relating to school education reform, with the first statement to be tabled by 1 January 2027.

Background

Funding for schools in Australia

State and territory governments and the Australian Government jointly provide funding for schools, with [state and territory governments providing most of the total funding](#).

- State and territory governments provide most of the public funding for government schools and the minority of public funding for non-government schools.
- Conversely, the Australian Government provides most of the public funding for non-government schools and the minority of public funding for government schools.

Schools, particularly non-government schools, also receive funding from private sources.

Australian Government funding for schools

Legislative framework

[Australian Government funding for schools](#) is provided to the states and territories under sections 96 and 122 (respectively) of [the Constitution](#) which allow the Commonwealth to set the relevant terms and conditions for the funding. The [Australian Education Act 2013](#) (the Act) and the [Australian Education Regulations 2023](#) impose requirements on states and territories

as conditions of this financial assistance, including requirements to be party to intergovernmental agreements on school education, and to implement nationally-agreed policy initiatives on school education.

National School Reform Agreement

Being party to a national agreement relating to school education reform is a condition of states and territories receiving financial assistance under section 22 of the Act. The [National School Reform Agreement](#) (NSRA) is a joint agreement between the Australian and state and territory governments that sets out strategic reforms to improve student outcomes.

Each state and territory is also required to have a bilateral agreement with the Australian Government. The [bilateral agreements](#) set out state-specific actions to improve student outcomes, including activities that support particular student cohorts. Bilateral agreements also set out the minimum funding contribution (as a percentage of the Schooling Resource Standard, discussed below) that states and territories must meet as a condition of receiving Australian Government school funding.

The NSRA commenced on 1 January 2019 and was due to end on 31 December 2023. In December 2022, education ministers agreed in principle to [extend](#) the current NSRA for 12 months to allow for a [Productivity Commission review](#) and the Expert Panel's [Review to Inform a Better and Fairer Education System](#) (discussed further below).

Schooling Resource Standard

The [Schooling Resource Standard](#) (SRS) estimates the total public funding a school requires to meet its students educational needs. The SRS was developed following the recommendations of the 2011 [Review of funding for schooling](#) (the Gonski Review).

The SRS sets out an amount per student required to meet educational needs. The amount per student is determined each year (and indexed through the [SRS indexation factor](#)) and is governed by the Act. To arrive at the total funding needed for a school, the base per student amount of the SRS is then varied by 6 loadings according to priority cohorts and, for most non-government schools, the [capacity to contribute](#). For more detail on the SRS see [Funding for schools in Australia: a quick guide](#).

SRS levels

When the SRS was first introduced there was no legislated cap on Government contributions – rather, funding arrangements were negotiated individually with the states and territories. This was criticised in 2017 by then Assistant Minister for Vocational Education and Skills, Karen Andrews, during the [second reading of the Australian Education Amendment Bill 2017](#):

As the Australian Education Act 2013 currently stands, Commonwealth recurrent funding varies considerably depending on negotiated arrangements by the former Labor government with state and territory governments. This means students with the same need in the same sector are treated differently because of the state in which they live.

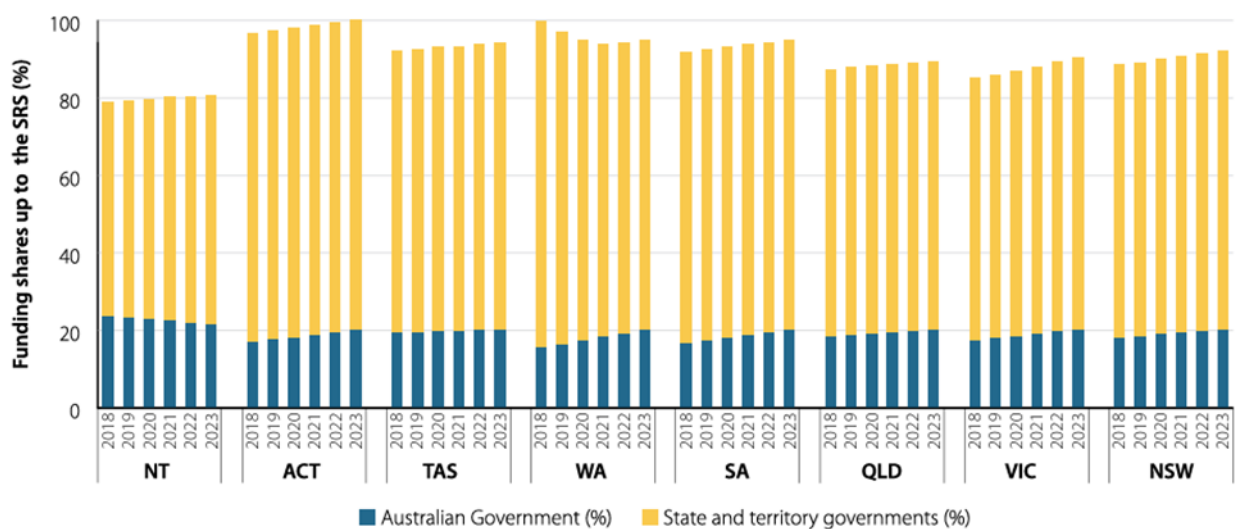
That Bill amended the Act to insert [section 35A](#), which provides that the Australian Government contributes 20% of the SRS for government schools and 80% for non-

government schools (the Commonwealth share). The intention is that the states and territories provide the remainder.

However, current [bilateral agreements](#) (apart from the ACT) under the NSRA (including the 12-month extension) would only see government schools funded at 95% rather than 100% of the SRS for several years, through commitments from the states to only maintain (SA and WA) or reach a 75% share by 2027 (NSW and Tasmania), 2028 (Victoria) and 2032 (Qld).

As of 2023, in all jurisdictions but the ACT, government schools are funded below 100% of the SRS, despite the Commonwealth delivering its full 20% commitment. Figure 1 shows the share of funding for government schools up to the SRS from Commonwealth and state and territory governments between 2018 and 2023.

Figure 1 Share of funding for government schools from the Australian and state and territory governments up to the SRS, 2018–2023



Source: Department of Education (2023) Internal analysis of agreed government funding for government schools 2018–2023, Department of Education, Australian Government.

Source: Expert Panel, [Improving outcomes for all: the report of the Independent Expert Panel’s review to Inform a Better and Fairer Education System](#), (Canberra: Department of Education, 2023), p. 76.

NSW has since [reached an agreement](#) to bring its contribution to 75% by 2025, two years earlier than forecast (other announced changes are discussed below).

NSRA Reviews

The Productivity Commission’s [review of the NSRA](#) was provided to the government in December 2022 and publicly released in January 2023. It found that the NSRA had done little to improve student outcomes. Minister Clare [commented on](#) the ‘damning’ findings and stated that ‘the Albanese Government is committed to working with State and Territory Governments to get all schools to 100% of their fair funding level’.

Funding was outside the remit of this review, as section 30 of the [NSRA](#) explicitly precluded the Productivity Commission from considering section 22A of the Act – the conditions of financial assistance to the states and territories.

The [Review to Inform a Better and Fairer Education System](#) was published in December 2023. Its scope was broader than the Productivity Commission's review, and included consideration of the SRS (although [it could not](#) revisit how the SRS is calculated).

The report included discussion of the SRS with reference to the objectives of the NSRA, and noted that:

...underfunding of schools, and government schools in particular, is undermining other reform efforts, with real implications for student educational and wellbeing outcomes, teacher attraction and retention, and ultimately confidence in the public education system. (p. 35)

The life of the next agreement was also scrutinised, and the Panel recommended a duration of 10 years, rather than 5, to increase consistency and realise reform objectives (p. 177). The review also called for a mid-point review to inform 5-year bilateral agreements, 'creating the opportunity to gage progress and strengthen system learning' (p. 178).

The Better and Fairer Schools Agreement

The government released the [Better and Fairer Schools Agreement 2025–2034](#) on 31 July 2024 as the intended replacement for the NSRA, due to expire by the end of 2024. [According to the Department of Education](#), 'each state and territory will need to sign a Heads of Agreement and a Bilateral Agreement with the Australian Government in 2024 to receive Australian Government funding from January 2025'.

The BFSA represents billions of dollars in funding according to proposed new [recurrent funding arrangements](#). It also attempts to fulfil the Australian Labor Party's [long-held commitment](#) to fully-fund Australian schools to 100% of the SRS.

For more information on the reforms and policies in the BFSA, see [The Better and Fairer Schools Agreement Flagpost](#).

Funding proposal

The primary area of contention in relation to funding for government schools centres around the Australian Government's share of the SRS.

For all jurisdictions except the Northern Territory, the [BFSA](#) promises an additional 2.5% by no later than 2029, taking the overall Commonwealth contribution to 22.5% (clause 78). The states would need to match this 2.5% funding increase to take funding for government schools to 100% of the SRS.

Negotiations

Western Australia and the Northern Territory have signed on to the BFSA and bilateral agreements with the government, and Tasmania also [recently signed](#) on to the BFSA with a commitment to the bilateral agreement to follow.

In [Western Australia](#), the Commonwealth will increase its SRS share to 22.5%, with the state to increase its share to 77.5%, by 2026. This involves a commitment from 2025 to 2029 of \$785.4 million from the Australian Government, to be matched by the Western Australian Government.

In the [Northern Territory](#), the Commonwealth will increase its share to 40%, with the territory to increase its share to 60%, by 2029. This involves a commitment from 2025 to 2029 of \$737.7 million from the Australian Government and \$350 million from the Northern Territory Government.

In [Tasmania](#), the Commonwealth will increase its share to 22.5%, with the state to increase its share to 77.5%, by no later than 2029.

Queensland, Victoria, New South Wales and South Australia [continue to argue](#) that an additional 2.5% from the Commonwealth is inadequate and the Commonwealth's share should be increased by 5% to 25%. In late July 2024, Minister Clare, [said that](#) states that did not confirm before the end of September that they would sign onto the new agreement would consequently 'continue with the current funding arrangement.' The government's [media release](#) from 10 October 2024 reiterated that without agreement 'the current funding arrangements will continue for another 12 months.'

Commentary since the introduction of the Bill [has criticised](#) the agreements in regard to the timelines for reaching 100% SRS funding for government schools, as well as the lack of any enforcement mechanisms if states and territories do not meet their obligations.

Policy position of non-government parties/independents and key stakeholders

The Liberal Party [criticised](#) aspects of the reform agenda in the BFSA when it was announced, and has blamed the government for the difficulties negotiating with the states.

In September, the Greens, and Senators David Pocock, Fatima Payman and Jacqui Lambie [released a joint statement](#) demanding that the Commonwealth lift its share of SRS funding to a minimum of 25%. They claimed the BFSA locked in 'another decade of underfunding for public schools'.

The [Australian Education Union](#) (AEU) has also called for the Commonwealth to raise its share to 25%, and has regularly coordinated its advocacy with state governments. Most Australian education ministers endorsed an AEU [media statement](#) the day before the May Budget, and on 21 August 2024, 5 state and territory education ministers (all but Western Australia, Tasmania and the Northern Territory) [joined a protest action](#) outside Parliament House.

The day before the introduction of the Bill, the AEU [announced](#) a ban for its members on enacting reforms in the Better and Fairer Schools Agreement, claiming the reform agenda was incompatible with the underfunding of schools, a move [criticised by some](#).

In response to the Bill, the AEU [has criticised](#) the setting of the floor at 20%, the introduction of legislation before all agreements have been settled, and that it does not address the issue of [states being able to claim up to 4% of SRS funding on capital depreciation and transport costs](#).

The organisation Save our Schools Australia has [similarly criticised](#) the Bill for what it sees as a low floor, and for not addressing the 'accounting tricks' of 4% depreciation claims. It has

also criticised the provisions of the Bill that would mean the government's SRS share for each year would be set through regulation that the Parliament could not disallow, thereby permitting the possibility of a future government reneging on agreed incremental increases towards meeting the full commitment over time.

Key issues and provisions

Changes to the definition of a national agreement relating to school education reform

Currently section 22 of the Act provides that in order to receive financial assistance from the Commonwealth, a state/territory must be both:

- a party to a national agreement relating to school education reform (paragraph 22(2)(a)) and
- a party to a bilateral agreement with the Commonwealth relating to implementation of school education reform (paragraph 22(2)(b)).

Part 1, Schedule 1 of the Bill will amend paragraph 22(2)(a) to remove the requirement for a state/territory to be party to a national agreement and replace it with a requirement for a state/territory to be party to an agreement that satisfies all of the following conditions:

- the Commonwealth and one or more states or territories are parties to the agreement
- it is open to any state or territory to become a party to the agreement and
- the agreement relates to school education reform.

The purpose of these amendments appears to be to allow for the possibility that not all states/territories will sign up to the BFSA by the end of this year. As stated in the Explanatory Memorandum:

The Bill clarifies what constitutes a 'national agreement' and the requirements that are to be met for funding to be provided. **This clarifies that a jurisdiction is not dependent on the commitment of all other jurisdictions in order to be entitled to its funding**, providing greater funding certainty. Emphasis added (p. 7)

The amendments appear to allow for there to not be one 'national agreement' with respect to school education reform, but rather separate agreements on certain aspects of school education reform policy initiatives:

The limb in new subparagraph 22(2)(a)(iii) seeks to include agreements that have terms which relate to school education reform. For clarity, this would include terms which may be related to school education reform, focus on student learning and achievement, support teaching and the school education workforce, and improve national and state and territory level systems and infrastructure. This could also relate to student transition from school to work, or various places in which school education is provided or undertaken. (p. 11 of the Explanatory Memorandum).

Changes to the Commonwealth share

The [Australian Education Amendment Act 2017](#) inserted section 35A into the Act, which specifies the current Commonwealth funding share of the SRS for schools from 1 January 2018:

35A Commonwealth share

Unless the regulations prescribe otherwise, the *Commonwealth share* for a school for a year (subject to section 35B) is:

- (a) for a government school—20%; and
- (b) for a non-government school—80%.

The [Australian Education Amendment Act 2017](#) also inserted [section 35B](#) which provides for funding arrangements that would gradually transition government schools to a Commonwealth share of 20%. According to the Explanatory Memorandum, ‘these provisions operated to allow for all existing schools that attracted recurrent funding in 2017 to have their Commonwealth funding share adjusted over a 10-year period, until 2027’ (p. 12).

Part 2 of Schedule 1 of the Bill will amend [section 35A](#) to provide that the Commonwealth share for government schools from 2025 onwards will be prescribed by regulation, subject to conditions that the share cannot be:

- set below 20% (or for government schools in the Northern Territory, set below 40% for 2029 and onwards) or
- less than the percentage prescribed by regulation for that year or the previous year.

The Government has described these amendments as setting a ‘funding floor’ and provided examples of how this will work in practice (see pp. 17–18 of the Explanatory Memorandum). The current arrangements for non-government schools will remain unchanged.

Proposed subsection 35A(3) provides that the regulations may prescribe different Commonwealth shares for government schools located in different states or territories. This includes regulations that prescribe different methods for working out Commonwealth shares.

Before regulations prescribing the Commonwealth share for government schools for a year can be made, the Minister will be required to consult and have regard to any decisions of the Ministerial Council (**item 10** of Schedule 1 to the Bill). The Ministerial Council is defined in [section 6](#) of the Act to mean a body (however described) that consists of the Minister of the Commonwealth and the Minister of each state and territory who is responsible, or principally responsible, for matters relating to school education. The Act already includes requirements to consult with the Ministerial Council before making regulations in relation to other matters (see [subsection 130\(5\)](#)).

Proposed subsection 35A(5) exempts the regulations prescribing the Commonwealth share for government schools from being subject to disallowance by the Parliament. The Standing Committee for the Scrutiny of Bills has stated that its ‘consistent scrutiny view is that exemptions from disallowance are only justified in exceptional and limited circumstances’ (p. 17 of the [Committee’s Guidelines](#)). The Explanatory Memorandum argues that the Bill includes appropriate safeguards, and the exemption is necessary to ensure that ‘a

Commonwealth share is prescribed for the next year in a timely manner, to allow government schools and approved authorities properly plan and manage their funding' and to ensure funding is not delayed following the passage of the Bill (pp. 17–18).

Part 2 of Schedule 1 will also amend the definition of a 'transition year' to provide that the transitional arrangements for government schools (other than a 6-year transitioning government school) will cease after 2024, instead of 2027. Therefore, under the new arrangements, from 2025, these schools will receive a Commonwealth share as set out in proposed subsection 35A(1). See pages 13 to 14 of the Explanatory Memorandum for further information.

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ISSN 1328-8091