



# **Federal Financial Relations Act 2009**

**No. 11, 2009**

**An Act to provide financial assistance to the States,  
the Australian Capital Territory and the Northern  
Territory, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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**An Act to provide financial assistance to the States,  
the Australian Capital Territory and the Northern  
Territory, and for related purposes**

*[Assented to 26 March 2009]*

The Parliament of Australia enacts:

## **Part 1—Preliminary**

### **1 Short title**

This Act may be cited as the *Federal Financial Relations Act 2009*.

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## 2 Commencement

This Act commences on 1 April 2009.

## 3 Object

The object of this Act is to provide ongoing financial support for the delivery of services by the States, through:

- (a) general revenue assistance, including the provision of GST revenue grants, to be used by the States for any purpose; and
- (b) national specific purpose payments, to be spent by the States on certain service delivery sectors; and
- (c) national partnership payments, to:
  - (i) support the delivery by the States of specified outputs or projects; or
  - (ii) facilitate reforms by the States; or
  - (iii) reward the States for nationally significant reforms.

## 4 Definitions

In this Act:

***Appropriation Act*** means an Act appropriating money for expenditure out of the Consolidated Revenue Fund.

***COAG Reform Fund*** means the COAG Reform Fund established by section 5 of the *COAG Reform Fund Act 2008*.

***drawing right*** means a drawing right issued under section 27 of the *Financial Management and Accountability Act 1997*.

***estimated population*** of a State has the meaning given by section 7.

***general interest charge*** means the charge worked out under Part IIA of the *Taxation Administration Act 1953*.

***GST*** has the same meaning as in the GST Act.

***GST Act*** means the *A New Tax System (Goods and Services Tax) Act 1999*.

***GST Imposition Acts*** means the following Acts:

- (a) the *A New Tax System (Goods and Services Tax Imposition—Customs) Act 1999*;
- (b) the *A New Tax System (Goods and Services Tax Imposition—Excise) Act 1999*;
- (c) the *A New Tax System (Goods and Services Tax Imposition—General) Act 1999*;
- (d) the *A New Tax System (Goods and Services Tax Imposition (Recipients)—Customs) Act 2005*;
- (e) the *A New Tax System (Goods and Services Tax Imposition (Recipients)—Excise) Act 2005*;
- (f) the *A New Tax System (Goods and Services Tax Imposition (Recipients)—General) Act 2005*.

***GST law*** has the same meaning as in the GST Act.

***GST refund provision*** means a provision of a Commonwealth law the effect of which is to require the Commonwealth to refund some or all of an amount of GST that has been paid, whether or not the provision also applies in relation to other kinds of tax.

***GST revenue*** has the meaning given by section 6.

***GST revenue sharing relativity*** for a State for a payment year has the meaning given by section 8.

***Intergovernmental Agreement*** means the *Intergovernmental Agreement on Federal Financial Relations* that took effect on 1 January 2009.

Note: The *Intergovernmental Agreement on Federal Financial Relations* provides an overarching framework for financial transfers between the Commonwealth and the States and related collaboration on policy development and service delivery.

***luxury car tax law*** has the meaning given by section 27-1 of the *A New Tax System (Luxury Car Tax) Act 1999*.

***payment year*** means:

- (a) the financial year starting on 1 July 2009; and
- (b) each succeeding financial year.

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These are described by a figure referring to 2 years (for example, the 2009-10 payment year is the payment year starting on 1 July 2009).

*State* includes the Australian Capital Territory and the Northern Territory.

*wine equalisation tax law* has the meaning given by section 33-1 of the *A New Tax System (Wine Equalisation Tax) Act 1999*.

## Part 2—General revenue assistance

### Division 1—GST revenue grants

#### 5 GST revenue grants

Subject to this Act, each State is entitled to the payment, by way of financial assistance, for a payment year, of a grant worked out using the formula:

$$\frac{\text{Adjusted State population} \times \text{GST revenue}}{\text{Adjusted total population}}$$

where:

*adjusted State population* means the estimated population of the State on 31 December in the payment year (see section 7) multiplied by the GST revenue sharing relativity (see section 8) for the State for that year.

*adjusted total population* means the sum of the adjusted State populations of all of the States for the payment year.

*GST revenue* means the GST revenue for the payment year (see section 6).

#### 6 GST revenue

- (1) The Minister must make a determination for each of the matters covered by subsections (3) and (4) stating the amount for the payment year.
- (2) The *GST revenue* for a payment year is the difference between:
  - (a) the sum of all of the amounts determined for matters covered by subsection (3) for the payment year; and
  - (b) the sum of all of the amounts determined for matters covered by subsection (4) for the payment year.
- (3) The matters are:

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- (a) the amount of GST that was collected; and
  - (b) the amount of general interest charge that was collected to the extent that it is attributable to:
    - (i) unpaid GST; or
    - (ii) unpaid general interest charge, being general interest charge payable in respect of unpaid GST; and
  - (c) the amount of payments made to the Commissioner of Taxation where the payment represents an amount of GST that would have been payable if the Constitution did not prevent tax from being imposed on property of any kind belonging to a State and if section 5 of the GST Imposition Acts had not been enacted; and
  - (d) the amount of additional amounts of GST that would have been collected if the Commonwealth and Commonwealth entities could be made subject to taxation by a Commonwealth law and if section 177-1 of the GST Act made those entities actually liable rather than notionally liable; and
  - (e) the amount, determined in a manner agreed by the Commonwealth and all of the States, that represents amounts of voluntary GST payments that should have, but have not, been paid by local government bodies.
- (4) The matters are:
- (a) the amount that was paid under the GST refund provisions; and
  - (b) the amount that was payable under the GST refund provisions and that (rather than being paid directly under those provisions) was allocated, applied or refunded in accordance with Part IIB of the *Taxation Administration Act 1953*;
- to the extent that the amounts are attributable to GST.
- (5) In making determinations for the purposes of this section, the Minister must make such adjustments as are necessary to ensure that any effect that the luxury car tax law or wine equalisation tax law would otherwise have on the amounts of GST, and the amounts attributable to GST, is removed.

- (6) A determination made under subsection (1) is not a legislative instrument.

### **7 Determination of population of a State**

The *estimated population* of a State on 31 December in a payment year is the population of the State on that date as determined by the Australian Statistician after that date and before 31 August in the following payment year.

### **8 GST revenue sharing relativity**

- (1) The Minister may determine that a factor specified in the determination is the *GST revenue sharing relativity* for a State for a payment year.
- (2) Before making a determination under subsection (1), the Minister must consult each of the States.
- (3) A determination under subsection (1) is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the determination.

## Division 2—Other general revenue assistance

### 9 General purpose financial assistance

- (1) The Minister may determine that an amount specified in the determination is to be paid to a State specified in the determination for the purpose of making a grant of general purpose financial assistance to the State.
- (2) If the Minister determines an amount under subsection (1):
  - (a) that amount must be credited to the COAG Reform Fund; and
  - (b) the Minister must ensure that, as soon as practicable after the amount is credited, the COAG Reform Fund is debited for the purposes of making the grant.
- (3) Despite subsection (2), the total amount credited to the COAG Reform Fund under paragraph (2)(a) must not exceed, and the total amount covered by drawing rights authorising debits from the COAG Reform Fund for the purposes of making such grants must not exceed:
  - (a) in the financial year starting on 1 July 2008—\$500,000,000; or
  - (b) in a later financial year in relation to which an Appropriation Act relating to that financial year declares that a specified amount is the *general drawing rights limit* for the purposes of this section—that specified amount.
- (4) Despite subsections (2) and (3), if no Appropriation Act relating to a financial year starting after 30 June 2009 declares, in relation to that financial year, that a specified amount is the general drawing rights limit for the purposes of this section:
  - (a) amounts must not be credited to the COAG Reform Fund under paragraph (2)(a) during that financial year; and
  - (b) drawing rights must not be issued authorising debits from the COAG Reform Fund for the purposes of making such grants in that financial year.

- (5) A determination under subsection (1) is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the determination.

## Part 3—National specific purpose payments

### 10 National specific purpose payments for healthcare

- (1) Financial assistance is payable in accordance with this section to a State, for the financial year starting on 1 July 2009 and for each later financial year, for the purpose of expenditure on healthcare.
- (2) The total amount of all financial assistance payable under subsection (1) to the States for a financial year is:
  - (a) for the financial year starting on 1 July 2009—\$11,224,185,000; or
  - (b) for a later financial year—the total amount under this subsection for the preceding financial year, indexed in accordance with subsection (3).
- (3) The Minister may, by legislative instrument, determine the manner in which the total amount under paragraph (2)(b) is to be indexed for a particular financial year. The determination must include a statement of the total amount for that financial year.
- (4) The Minister may, by legislative instrument, determine, for each financial year, the manner in which the total amount under subsection (2) is to be divided between the States.
- (5) Financial assistance is payable to a State under this section on condition that the financial assistance is spent on healthcare.

### 11 National specific purpose payments for schools

- (1) Financial assistance is payable in accordance with this section to a State, for the financial year starting on 1 July 2008 and for each later financial year, for the purpose of expenditure on schools.

Note: Financial assistance for non-government schools is provided for under the *Schools Assistance Act 2008*.

- (2) The total amount of all financial assistance payable under subsection (1) to the States for a financial year is:

- (a) for the financial year starting on 1 July 2008—the amount determined by the Minister; or
  - (b) for the financial year starting on 1 July 2009—\$3,286,594,000; or
  - (c) for a later financial year—the total amount under this subsection for the preceding financial year, indexed in accordance with subsection (4).
- (3) A determination under paragraph (2)(a) is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the determination.
- Note: The total amount of all financial assistance payable to the States under subsection (1) of this section and subsections 12(1), 13(1) and 14(1), for the financial year starting on 1 July 2008, is limited by section 15.
- (4) The Minister may, by legislative instrument, determine the manner in which the total amount under paragraph (2)(c) is to be indexed for a particular financial year. The determination must include a statement of the total amount for that financial year.
- (5) The Minister may, by legislative instrument, determine, for each financial year, the manner in which the total amount under subsection (2) is to be divided between the States.
- (6) Financial assistance is payable to a State under this section on condition that the financial assistance is spent on schools.

## **12 National specific purpose payments for skills and workforce development**

- (1) Financial assistance is payable in accordance with this section to a State, for the financial year starting on 1 July 2008 and for each later financial year, for the purpose of expenditure on skills and workforce development.
- (2) The total amount of all financial assistance payable under subsection (1) to the States for a financial year is:
- (a) for the financial year starting on 1 July 2008—the amount determined by the Minister; or
  - (b) for the financial year starting on 1 July 2009—\$1,317,877,000; or
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- (c) for a later financial year—the total amount under this subsection for the preceding financial year, indexed in accordance with subsection (4).
- (3) A determination under paragraph (2)(a) is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the determination.
- Note: The total amount of all financial assistance payable to the States under subsection (1) of this section and subsections 11(1), 13(1) and 14(1), for the financial year starting on 1 July 2008, is limited by section 15.
- (4) The Minister may, by legislative instrument, determine the manner in which the total amount under paragraph (2)(c) is to be indexed for a particular financial year. The determination must include a statement of the total amount for that financial year.
- (5) The Minister may, by legislative instrument, determine, for each financial year, the manner in which the total amount under subsection (2) is to be divided between the States.
- (6) Financial assistance is payable to a State under this section on condition that the financial assistance is spent on skills and workforce development.

### 13 National specific purpose payments for disability services

- (1) Financial assistance is payable in accordance with this section to a State, for the financial year starting on 1 July 2008 and for each later financial year, for the purpose of expenditure on disability services.
- (2) The total amount of all financial assistance payable under subsection (1) to the States for a financial year is:
- (a) for the financial year starting on 1 July 2008—the amount determined by the Minister; or
  - (b) for the financial year starting on 1 July 2009—\$903,686,000; or
  - (c) for a later financial year—the total amount under this subsection for the preceding financial year, indexed in accordance with subsection (4).

- (3) A determination under paragraph (2)(a) is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the determination.

Note: The amount of all financial assistance payable to the States under subsection (1) of this section and subsections 11(1), 12(1) and 14(1), for the financial year starting on 1 July 2008, is limited by section 15.

- (4) The Minister may, by legislative instrument, determine the manner in which the total amount under paragraph (2)(c) is to be indexed for a particular financial year. The determination must include a statement of the total amount for that financial year.
- (5) The Minister may, by legislative instrument, determine, for each financial year, the manner in which the total amount under subsection (2) is to be divided between the States.
- (6) Financial assistance is payable to a State under this section on condition that the financial assistance is spent on disability services.

#### **14 National specific purpose payments for housing services**

- (1) Financial assistance is payable in accordance with this section to a State, for the financial year starting on 1 July 2008 and for each later financial year, for the purpose of expenditure on housing services.
- (2) The total amount of all financial assistance payable under subsection (1) to the States for a financial year is:
- (a) for the financial year starting on 1 July 2008—the amount determined by the Minister; or
  - (b) for the financial year starting on 1 July 2009—\$1,202,590,000; or
  - (c) for a later financial year—the total amount under this subsection for the preceding financial year, indexed in accordance with subsection (4).
- (3) A determination under paragraph (2)(a) is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the determination.

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Note: The total amount of all financial assistance payable to the States under subsection (1) of this section and subsections 11(1), 12(1) and 13(1), for the financial year starting on 1 July 2008, is limited by section 15.

- (4) The Minister may, by legislative instrument, determine the manner in which the total amount under paragraph (2)(c) is to be indexed for a particular financial year. The determination must include a statement of the total amount for that financial year.
- (5) The Minister may, by legislative instrument, determine, for each financial year, the manner in which the total amount under subsection (2) is to be divided between the States.
- (6) Financial assistance is payable to a State under this section on condition that the financial assistance is spent on housing services.

### **15 Total amount of financial assistance for the 2008-2009 financial year**

The total amount of all financial assistance payable under subsections 11(1), 12(1), 13(1) and 14(1), for the financial year starting on 1 July 2008, must not exceed \$4,000,000,000.

## **Part 4—National partnership payments**

### **16 National partnership payments**

- (1) The Minister may determine that an amount specified in the determination is to be paid to a State specified in the determination for the purpose of making a grant of financial assistance to:
  - (a) support the delivery by the State of specified outputs or projects; or
  - (b) facilitate reforms by the State; or
  - (c) reward the State for nationally significant reforms.
- (2) If the Minister determines an amount under subsection (1):
  - (a) that amount must be credited to the COAG Reform Fund; and
  - (b) the Minister must ensure that, as soon as practicable after the amount is credited, the COAG Reform Fund is debited for the purposes of making the grant.
- (3) Despite subsection (2), the total amount credited to the COAG Reform Fund under paragraph (2)(a) must not exceed, and the total amount covered by drawing rights authorising debits from the COAG Reform Fund for the purposes of making such grants must not exceed:
  - (a) in the financial year starting on 1 July 2008—\$8,000,000,000; or
  - (b) in a later financial year in relation to which an Appropriation Act relating to that financial year declares that a specified amount is the *general drawing rights limit* for the purposes of this section—that specified amount.
- (4) Despite subsections (2) and (3), if no Appropriation Act relating to a financial year starting after 30 June 2009 declares, in relation to that financial year, that a specified amount is the general drawing rights limit for the purposes of this section:
  - (a) amounts must not be credited to the COAG Reform Fund under paragraph (2)(a) during that financial year; and

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- (b) drawing rights must not be issued authorising debits from the COAG Reform Fund for the purposes of making such grants in that financial year.
- (5) A determination under subsection (1) is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the determination.

## **Part 5—Payment of grants**

### **17 Advance payments for financial year**

The Minister may make advances to a State of portions of the amount or amounts to which, it appears to the Minister, the State will be entitled under:

- (a) section 5; or
  - (b) a provision of Part 3;
- for a financial year.

### **18 Overpayment or underpayment of grant**

- (1) If a State has been paid an amount in excess of the amount that, under:
  - (a) section 5; or
  - (b) a provision of Part 3;it was entitled to receive by way of financial assistance for a financial year, the Minister must deduct an amount equal to the excess from any amount that the State is entitled to receive by way of financial assistance under that provision for the first practicable subsequent financial year.
- (2) If a State has been paid less than the amount that, under:
  - (a) section 5; or
  - (b) a provision of Part 3;it was entitled to receive by way of financial assistance for a financial year, the Minister must add an amount equal to the shortfall to any amount that the State is entitled to receive by way of financial assistance under that provision for the first practicable subsequent financial year.

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**19 Minister may fix amounts, and times of payments, of financial assistance**

- (1) Financial assistance payable to a State under this Act is to be paid in such amounts, and at such times, as the Minister determines in writing.
- (2) A determination made under subsection (1) is not a legislative instrument.

**20 Repayment if condition not fulfilled**

- (1) It is a condition of a payment of financial assistance under this Act to a State that, if the State does not fulfil a condition in respect of the payment, the State will, if the Minister so determines, repay to the Commonwealth the amount stated in the determination.
- (2) The amount stated in the determination under subsection (1) must not be more than the amount of the payment.
- (3) A determination made under subsection (1) is not a legislative instrument.
- (4) If:
  - (a) a payment of financial assistance has, during a financial year, been made to a State under this Act; and
  - (b) the Minister has determined under subsection (1) that the State must repay an amount in respect of the payment; and
  - (c) the State has not repaid the amount;the Minister may deduct an amount equal to the amount unpaid from any amount that the State is entitled to receive by way of financial assistance under this Act for a subsequent financial year.
- (5) An amount payable by a State to the Commonwealth under this Act is a debt due by the State to the Commonwealth.

## **Part 6—Miscellaneous**

### **21 Minister to have regard to Intergovernmental Agreement and other agreements**

In making a determination under this Act, the Minister must have regard to:

- (a) the Intergovernmental Agreement; and
- (b) if the determination relates to financial assistance to a particular State—any other written agreement between the Commonwealth and the State that relates to the financial assistance.

### **22 Appropriation**

Payments under Division 1 of Part 2, Part 3 or Part 5 are to be made out of the Consolidated Revenue Fund, which is appropriated accordingly.

### **23 Delegation**

- (1) The Minister may, by writing, delegate any or all of his or her powers under section 17 or 19 to an SES employee, or acting SES employee, in the Department.

Note: The expressions *SES employee* and *acting SES employee* are defined in section 17AA of the *Acts Interpretation Act 1901*.

- (2) In exercising powers under a delegation, the delegate must comply with any directions of the Minister.

### **24 Regulations**

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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*[Minister's second reading speech made in—  
House of Representatives on 12 February 2009  
Senate on 12 March 2009]*

(12/09)

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