

THIS VARIATION is made BETWEEN the

COMMONWEALTH OF AUSTRALIA represented by the Department of Education, Employment and Workplace Relations [ABN 63 578 775 294] ('Department')

AND

The State of NEW SOUTH WALES as represented by the New South Wales Department of Education and Training [ABN 40 300 173 822] ('NSW')

1. BACKGROUND:


- A. The Commonwealth of Australia as represented by the Department of Education, Employment and Workplace Relations and You entered into an Agreement ("the Agreement") regarding the Nation Building and Jobs Plan. The Agreement was varied on 27 August 2009 and 27 October 2009.
- B. The parties now wish to further vary the Agreement on the terms and conditions contained in this Variation.
- C. The Agreement requires that a variation be in writing and signed by both parties.

2. VARIATION:

IT IS AGREED as follows:

1. This Contract Variation commences on the date of execution.
2. Clause 3.1 of the Agreement is varied by adding the following clauses:
 12. You must ensure that the rectification plan at Attachment A in respect of schools whose projects did not meet or only marginally met the value for money assessment in the Building the Education Revolution Implementation Taskforce ("BERIT") 'First Report' dated 15 December 2010 are fully implemented by 25 June 2011.
 13. If BERIT makes further findings that projects do not meet or only partially meet the value for money requirement, You must ensure that rectification plans are put in place for those projects. You must provide the Commonwealth with a rectification plan for those projects within 10 business days of notification of BERIT's findings. You must liaise with the Commonwealth on Your proposed rectification plan and incorporate any comments from the Commonwealth before submitting Your rectification plan.
 14. You must ensure that the Schedule of Work at Attachment B is completed by 25 June 2011.

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2. The existing clause 4.1.1(b) is deleted and replaced with the following:
 - (b) Be audited annually by the NSW Auditor-General, their authorised representative or by another independent auditor in relation to the funding and provide the Commonwealth with a copy of the report of such audit within 120 days of the end of the relevant financial year.
3. The existing Item F of each of Schedules 2A and 2C is deleted and replaced with:

The person holding from time to time the position of the 'Building the Education Revolution National Coordinator'

Office Address: Department of Education, Employment and Workplace Relations
Level 11, 50 Marcus Clarke St
Canberra City ACT 2601
Postal Address: GPO Box 9880
Canberra City ACT 2601

3. The existing Schedule 2B is deleted and replaced with the attached Schedule 2B.

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Schedule 2B- the Commonwealth's Obligations

**AUSTRALIAN GOVERNMENT BUILDING THE EDUCATION REVOLUTION
PROGRAM FUNDING**

Item A: BER PROGRAM ELEMENT [clause 2.4]

Primary Schools for the 21st Century

Item B: FUNDING PERIOD [clause 5.1]

This Schedule applies to Funding authorised for the Period from 2008-09 to 2011-12

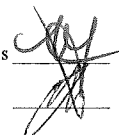
Item C: FUNDING AMOUNT [clause 5.1]

Total Funding available including the administration fee is \$3,025,911,100 (no GST on this transaction between Us and You).

Item D: FUNDING INSTALMENTS [clause 5.1]

D.1 Payments in Column 1 will be made at the times set out in Column 2.

	COLUMN 1	COLUMN 2
2008-09	Instalment 1 \$98,432,500	The 7 th day of the month following the month in which the agreement is executed by all parties.
	Instalment 2 \$33,187,500	The 7 th day of the month following the month in which the variation to the agreement is executed by all parties. This payment will not be made before 7 June 2009.
2009-10	Instalment 3 \$378,186,000	The 7 th day of the month following receipt and acceptance by the Commonwealth of the detailed statement of income and expenditure including expenditure to each school for the previous financial year in accordance with clause 4.1.1(c) of this agreement. This payment will not be made before 7 July 2009.
	Instalment 4 \$165,805,801	The 7 th day of the month following the month in which the variation to the agreement is executed by all parties.
	Instalment 5 \$356,779,000	The 7 th day of the month following acceptance by Us of the previous monthly report. This payment will not be made before 7 December 2009.
	Instalment 6 \$356,779,000	The 7 th day of the month following acceptance by Us of the previous monthly report. This payment will not be made before 7 February 2010.



New South Wales Department of Education and Training variation – February 2011

	COLUMN 1	COLUMN 2
2010-11	Instalment 7 \$356,779,000	The 7 th day of the month following acceptance by Us of the previous monthly report. This payment will not be made before 7 April 2010.
	Instalment 8 \$403,309,578	The 7 th day of July 2010 following acceptance by Us of the previous monthly report. This payment will not be made before 7 July 2010.
	Instalment 9 \$463,537,868	The 7 th November 2010 subject to acceptance by Us of the previous monthly report and You delivering the statement of income and expenditure for the funding for the 2009/2010 financial year required under clause 4.1(c)(i) of this agreement to us on or before 31 July 2010* .
	Instalment 10 \$25,000,000	The 7 th day of the month following agreement to rectification plans referred to in clause 3.2.12 and 3.2.13 and the Schedule of Work referred to in clause 3.2.14. This payment will not be made before 7 February 2011.
	Instalment 11 \$115,884,467	The 7 th day of the month following acceptance by Us of the previous monthly report. This payment will not be made before 7 February 2011.
	Instalment 12 \$115,884,467	The 7 th day of the month following acceptance by Us of the previous monthly report. This payment will not be made before 7 March 2011.
	Instalment 13 \$25,000,000	The 7 th day of the month following acceptance by Us that You have demonstrated substantial progress to the Commonwealth's satisfaction in relation to the rectification plans referred to in clause 3.2.12 and 3.2.13 and the Schedule of Work referred to in clause 3.2.14. This payment will not be made before 7 April 2011.
	Instalment 14 \$25,000,000	By 30 June 2011 following completion by You, to the Commonwealth's satisfaction, of the work specified in the rectification plans referred to in clause 3.2.12 and 3.2.13 and the Schedule of Work referred to in clause 3.2.14.
2011-12	Instalment 15 \$63,902,478	The 7 th day of July 2011 following acceptance by the Commonwealth of the previous monthly report. This payment will not be made before 7 July 2011.
	Instalment 16 \$42,443,441	The 7 th September 2011 subject to you delivering the statement of income and expenditure for the funding for the 2010/2011 financial year required under clause 4.1(c)(i) of this agreement to the Commonwealth on or before 31 July 2011* .

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D.2 Where:

- (a) You advise Us that the proposed amount or timing of one or more of the instalments in the Table will be insufficient to cover Your projected cash flows over a specified period within a financial year; and
- (b) You provide satisfactory information to Us to substantiate this advice;

We may adjust:

- the amount; and/or
- the timing;

of one or more instalments to cover such shortfalls as advised by You. Adjustments to individual instalments will not be approved by Us across financial years or in excess of the total funding amount specified at Item C.

D.3 The amounts of the instalments in the table may be adjusted by Us as a result of the operation of D.2.

D.4 If We decide to make an adjustment to instalments under D2 We will give you notice in writing of the adjustment and such notice will then form part of this Agreement.

D.5 We may withhold some, or all, of the payment of any funding instalment, subsequent to instalment 1 in the table above, if You have not paid to your schools at least 50 per cent of the funding paid to You by Us under this agreement from the previous instalment.

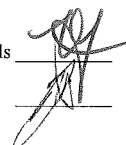
D.6 We will not provide any additional Funds to You to meet any GST component of liabilities You incur as a result of subcontracting any part of the performance of Your obligations under this Agreement.

D.7 The date for payment is within 30 days of the date specified in the Table and after acceptance by Us of:

- (a) any Report required by the Guidelines; and
- (b) if requested by Us, a correctly rendered tax invoice delivered by You to Us in accordance with this Agreement.

*Note that under clause 5.1.3 of this Agreement the Commonwealth may withhold or suspend any payment of funding in whole or in part if you have not performed your obligations under the Agreement or if you have outstanding or unacquitted money under any arrangement (whether contractual or statutory) with the Commonwealth.

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Item E: YOUR ADMINISTRATIVE EXPENDITURE [clause 4.5]

You may use **\$40,811,100** of the Funding Amount in Item C of this Schedule for your administrative expenses associated with carrying out your obligations under this agreement as follows:

Financial Year	Funding
2008-09	\$1,945,000
2009-10	\$21,407,000 (paid in Instalment 3)
2009-10	\$2,450,076 (paid in Instalment 4)
2010-11	\$14,771,710
2011-12	\$237,314
Total	\$40,811,100*

* Figures may not add due to rounding

Note: 2010-11 & 2011-12 Administration Funding no longer equates to 1.5%.

Item F: PROGRAM DELEGATE [clause 3.2 and 7.11]

The Program Delegate and the person who can accept notices for the Commonwealth is:

Name: The person holding from time to time the position of the
'Building the Education Revolution National Coordinator'

Office Address: Department of Education, Employment and Workplace Relations
Level 11, 50 Marcus Clarke St
Canberra City ACT 2601

Postal Address: GPO Box 9880
Canberra City ACT 2601

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

Signed for and on behalf of the Commonwealth of Australia by

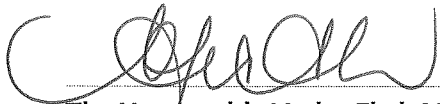


Senator the Hon Christopher Evans
Minister for Tertiary Education, Skills, Jobs
and Workplace Relations

26/5/11

2011

Signed for and on behalf of New South Wales by



The Honourable Verity Firth MP
Minister for Education and Training

3 March

2011

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