

Victorian schools could potentially be without federal funding after 31 December 2018 if the state government refuses to sign up to the [Gonski 2.0](#) funding reforms. In a [letter](#) to Victorian Premier Daniel Andrews on Monday, Prime Minister Scott Morrison stated he was committed to coming to an agreement by today, when the [Council of Australian Governments](#) meets. The Victorian government has raised its portion of school funding from 66% to 75%, and is asking that the federal government also raise their share by an additional 5% to 25%.

Another [letter](#), this time written by shadow federal education minister Tanya Plibersek to Andrews, circulated this morning. In the letter, Plibersek promised Labor would backdate any school funding withheld from Victorian students if it wins the May election.

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The federal government has responded by saying Victoria isn't entitled to federal funding after 31 December if the state doesn't sign on to the reforms. The Victorian government claims it has legal advice that says the state would be entitled to funding come 2019.

In what essentially amounts to a game of political chicken, who wins? The federal government is right that it doesn't have to fund Victorian schools in 2019 if they don't sign an agreement. But that would be a poor political move at a time when the Coalition faces mounting criticism in the lead-up to an election.

The Australian constitution, money, and schools

The standoff is underpinned by the financial relationship between state and federal government, established by the [Australian constitution](#). What does the constitution require the governments to do in this situation? Basically, nothing. Neither the state nor the federal government is under any constitutional obligation to fund schools. Nor does the constitution give Victoria an

entitlement to federal funding.

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The constitution leaves responsibility for running schools to state governments. The federal parliament is not given power to make laws about schools. So why does the federal government have anything to do with schools?

The answer lies in a very powerful provision of the constitution: [section 96](#). This section allows the federal government to give money to state governments, *on such terms and conditions as the federal Parliament thinks fit*.

For example, the federal government may give a state money to run schools, on the condition the money is distributed in a certain way, or even that particular teaching methods are adopted.

What can state government do if it doesn't like the conditions?

There are three options:

1. the state can accept the money on those conditions, even though it doesn't like them
2. the state can refuse to accept the money at all
3. the state can try to negotiate with the federal government to secure the money on more appealing conditions.

From a constitutional point of view, the states are in a weak position here. The federal government can simply refuse to hand over the money, leaving the states with empty pockets. Australian state governments rely heavily on section 96 grants from the federal government.

The states are unable to collect enough tax to fund crucial government responsibilities (such as education and health). Under the constitution, the federal government has greater ability to

collect tax, so the states rely on the federal government for a large chunk of the state budget each year. It's called a [vertical fiscal imbalance](#) .

But what about the politics?

From a political point of view, the playing field is more even. For many years, the federal government has given the states money to pay for schools. There is now a strong public expectation it will continue to do so. If the federal government were to refuse to fund Victorian schools in 2019, this would be rich fodder for the government's political opponents.

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Similarly, though, if the Victorian government refuses to accept money on the conditions offered by the federal government, it will be partially responsible if schools don't have enough funding to operate in 2019.

The constitution leaves both governments with a lot of freedom to choose what to do here. But for either government to be responsible for shutting down Victoria's schools would be extremely unattractive, politically. There is a strong political incentive on both sides for the Victorian and federal governments to reach agreement very soon - certainly in time for the new school year to proceed as usual.

Anna Olijnyk does not work for, consult, own shares in or receive funding from any company or organisation that would benefit from this article, and has disclosed no relevant affiliations beyond their academic appointment.

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