

## **EXPLANATORY STATEMENT**

*Australian Education Act 2013*

*Australian Education Amendment (2017 Measures No.1) Regulations 2017*

### **Authority**

Subsection 130(1) of the *Australian Education Act 2013* (the Act) empowers the Governor-General to make regulations prescribing matters required or permitted by the Act to be prescribed by the regulations, or necessary or convenient to be prescribed for carrying out or giving effect to the Act. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

### **Legislative background**

The Act is the principal legislation by which the Australian Government provides Commonwealth financial assistance for schools.

The *Australian Education Regulation 2013* (the Principal Regulation) contains a number of provisions to ensure the correct calculation and indexation of Commonwealth financial assistance for schools, and for the effective and efficient administration of that financial assistance.

The Act and Principal Regulation commenced on 1 January 2014.

### **Purpose and operation**

Financial assistance under the Act is provided to states and territories for distribution to approved authorities for government and non-government schools, block grant authorities, capital grants authorities and non-government representative bodies. Entities approved to receive Commonwealth financial assistance under the Act, including states and territories in their capacity as approved authorities for government schools, must meet and maintain the conditions of approval outlined in the Act.

The Principal Regulation prescribes a range of matters concerning:

- the interpretation of provisions in the Act
- conditions of grants of Commonwealth financial assistance to states and territories under the Act
- matters relevant to Commonwealth financial assistance for participating schools, including matters relevant to the calculation of that financial assistance
- matters relevant to the provision of prescribed circumstances funding under the Act
- matters relevant to the basic requirements of approval for approved authorities, block grant authorities, and non-government representative bodies
- matters relevant to the ongoing requirements of approval for approved authorities, block grant authorities, and non-government representative bodies
- matters relevant to the ongoing policy requirements of approval for approved authorities

- matters relevant to actions the Minister may take for failure to comply with the Act or the Principal Regulation
- other matters relevant to carrying out or giving effect to the Act.

### **Purpose and operation of amendments**

The purpose of the *Australian Education Amendment (2017 Measures No.1) Regulations 2017* (Amendment Regulation) is to provide for capital funding indexation for 2017 for block grant authorities. The Amendment Regulation changes the Principal Regulation to provide an indexation percentage for capital funding for block grant authorities for 2017, increasing capital funding from 2016 by almost \$2.7 million to over \$142 million.

### **Regulation Impact Statement (RIS)**

For the 2017 capital indexation percentage, OBPR agreed a RIS is not required for the amendments to the Principal Regulation (OBPR ID 21846).

### **Commencement**

The Amendment Regulation commences on the day after it is registered on the Federal Register of Legislation.

### **Consultation**

Pursuant to subsection 130(5) of the Act, the Minister has consulted with the Ministerial Council.

The Amendment Regulation will have no significant impact on states and territories as it will make available additional capital funding for non-government schools in each state and territory.

For the purposes of subsection 68(4) of the Act, the Minister has considered changes in the index specified in section 24B of the Principal Regulation.

## **Statement of Compatibility with Human Rights**

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*  
*Australian Education Amendment (2017 Measures No.1) Regulations 2017*

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### **Overview of the Legislative Instrument**

The *Australian Education Amendment (2017 Measures No.1) Regulations 2017* (the Amendment Regulation) amends the *Australian Education Regulation 2013* (the Principal Regulation) to provide an indexation percentage for capital funding for block grant authorities for 2017, increasing capital funding from 2016 by almost \$2.7 million to over \$142 million.

### **Human rights implications**

The Amendment Regulation engages the following human rights:

- the right to education – Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and Articles 28 and 29 of the *Convention on the Rights of the Child* (UNCRC).

#### *Right to Education*

The Amendment Regulation engages the right to education in Article 13 of the ICESCR. Article 13 recognises the right of everyone to education, which is directed towards the full development of the human personality and the sense of its dignity and to enable all persons to participate effectively in society. It also recognises the liberty of parents and guardians to choose non-government schools for their children, provided those schools conform to the minimum educational standards set out by the Australian Government. The right to education for children is also found in Articles 28 and 29 of the UNCRC.

The Amendment Regulation provides for an indexation percentage to be applied in respect of capital funding for block grant authorities for 2017. This will result in increased capital funding being available for block grant authorities to use in providing support for capital projects for non-government schools. This measure is compatible with the right to education and promotes the right to education.

### **Conclusion**

The Amendment Regulation is compatible with human rights because it advances the protection of human rights.

**Simon Birmingham**  
**Minister for Education and Training**

## **Detailed explanation of the Amendment Regulation provisions**

### Section 1 – Name of Amendment Regulation

This section provides that the title of the Amendment Regulation is the *Australian Education Amendment (2017 Measures No.1) Regulations 2017*.

### Section 2 – Commencement

This section provides for the commencement of the provisions of the Amendment Regulation. The provisions of the Amendment Regulation commence on the day after the Amendment Regulation is registered on the Federal Register of Legislation.

### Section 3 – Authority

This section provides that the Amendment Regulation is made under the *Australian Education Act 2013*.

### Section 4 – Schedule(s)

This section provides that each instrument that is specified in a Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the instrument has effect according to its terms.

### Schedule 1 – Amendments

**Item 1** amends section 24A of the Principal Regulation, providing that the indexation percentage for 2017 for the purposes of paragraph 68(3)(b) of the Act is 101.92%.

In order to calculate the total amount of capital funding available for block grant authorities for non-government schools for a year (the base assistance amount), the indexation percentage is multiplied by the base assistance amount for the previous year. For 2017, the base assistance amount will therefore be the 2016 base assistance amount multiplied by 101.92%.