

EXPLANATORY STATEMENT

Australian Education Act 2013

Australian Education Amendment (2020 Capital Funding Limit) Regulations 2020

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.

Under the Act, the Commonwealth provides financial assistance to states and territories for distribution to approved authorities for government and non-government schools. 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 *Australian Education Regulation 2013* (the Principal Regulation) contains a number of provisions on matters concerning conditions and calculations of grants of Commonwealth financial assistance to states and territories for schools, matters relevant to the effective and efficient administration of that assistance, and matters relevant to the provision of prescribed circumstances funding under the Act.

The Act and Principal Regulation commenced on 1 January 2014.

Purpose and operation of amendments

The purpose of the *Australian Education Amendment (2020 Capital Funding Limit) Regulations 2020* (the Amendment Regulations) is to prescribe the maximum base assistance amount as \$170,584,000 for capital funding available for block grant authorities for non-government schools for 2020. This is a \$9,664,000 increase from the 2019 amount of \$160,920,000.

Regulation Impact Statement (RIS)

The Office of Best Practice Regulation has agreed a Regulation Impact Statement is not required in relation to the 2020 capital base assistance amount (OBPR reference 21846).

Commencement

The Amendment Regulations commence on the day after it is registered on the Federal Register of Legislation.

Consultation

The Minister for Education wrote to all state and territory education ministers, the Independent Schools Council of Australia, and the National Catholic Education Commission on 8 April 2020 to formally consult on the Amendment Regulations. The Department of Education, Skills and Employment received responses that were supportive of the proposed update to the Regulations.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*
Australian Education Amendment (2020 Capital Funding Limit) Regulations 2020

The *Australian Education Amendment (2020 Capital Funding Limit) Regulations 2020* (Amendment Regulations) 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

The Amendment Regulations prescribe the maximum base assistance amount as \$170,584,000 for capital funding available for block grant authorities for non-government schools for 2020. This is a \$9,664,000 increase from the 2019 amount of \$160,920,000.

Human rights implications

The Amendment Regulations engage the right to education under 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 Regulations positively engage 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's education, provided those schools conform to minimum educational standards. The right to education for children is also found in Articles 28 and 29 of the UNCRC.

The Amendment Regulations promote the right to education by increasing the amount of capital funding available for block grant authorities for use in providing financial support for capital projects at non-government schools. The Australian Government's Capital Grants Program (CGP) provides funding for non-government school communities to assist primary and secondary schools to improve capital infrastructure where they otherwise may not have access to sufficient capital resources. Capital funding provides a wide range of new infrastructure and upgrades to existing facilities, such as general and specialist learning areas, libraries, STEM facilities and outdoor learning areas. This measure thereby will have a beneficial impact on the right to education and will help to ensure Australia continues to have functioning and sufficiently supported educational institutions.

Conclusion

The Amendment Regulations are compatible with human rights because they promote the right to education under the ICESCR and the UNCRC.

Dan Tehan

Minister for Education

Detailed explanation of the Amendment Regulations provisions

Section 1 – Name of Amendment Regulations

This section provides that the title of the Amendment Regulations is the *Australian Education Amendment (2020 Capital Funding Limit) Regulations 2020*.

Section 2 – Commencement

This section provides that the Amendment Regulations commence on the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the Amendment Regulations are made under the Act.

Section 4 – Schedules

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

Section 68 of the Act sets the limit on the total amount of capital funding for block grant authorities for a year (the base assistance amount). Paragraph 68(1)(b) of the Act provides that the base assistance amount for a year is the base assistance amount for a year, as indexed in accordance with subsection 68(2), or the amount prescribed as the base assistance amount for the year in the regulations.

Section 24AA of the Principal Regulation currently prescribes that the base assistance amount for 2019 is \$160,920,000. **Item 1** amends section 24AA to prescribe a base assistance amount of \$170,584,000 for 2020.

The base assistance amount for 2020 is a \$9,664,000 increase on the 2019 level of funding. This includes:

- an increase of \$4,952,000 to grow the value of capital funding available to the non-government sector as part of the Australian Government's expansion of the Capital Grants Program for non-government schools under the *Quality Schools* package; and
- an increase of \$4,712,000 which is equivalent to 2.84 per cent indexation based on year-on-year movement, from 2018 to 2019, in building prices and wage costs (based on the Australian Bureau of Statistics *Producer Price Index, Non-Residential Building Construction*) and changes to full-time equivalent student enrolment in non-government schools. This increase is to ensure the base assistance amount retains its value.