

# EXPLANATORY STATEMENT

## *Australian Education Act 2013*

### *Australian Education Amendment (South Australia Year 7 Schools) 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, and matters relevant to the effective and efficient administration of that assistance.

The Act and Principal Regulation commenced on 1 January 2014.

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

The purpose of the *Australian Education Amendment (South Australia Year 7 Schools) Regulations 2020* (Amendment Regulations) is to update the list of schools in South Australia that deliver Year 7 as secondary education. This allows for the correct calculation of the full year entitlement, at the secondary level Schooling Resource Standard, for those schools that advised in 2020 that they commenced delivery of Year 7 in a secondary environment.

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

The Office of Best Practice Regulation has agreed a Regulation Impact Statement is not required in relation to the Amendment Regulations (OBPR reference 19792).

**Commencement**

The Amendment Regulations commence on the day after they would be registered on the Federal Register of Legislation, and apply to the year 2020 and each later year.

**Consultation**

The Minister for Education has consulted with the South Australian Education Minister and the Independent Schools of Australia as the stakeholders whose schools are supported by the amendment. The Department of Education, Skills and Employment wrote to representatives of all other state and territory Education Ministers and the National Catholic Education Commission notifying them of the amendment. No concerns were raised during the consultation period.

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

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*  
*Australian Education Amendment (South Australia Year 7 Schools) Regulations 2020*

The *Australian Education Amendment (South Australia Year 7 Schools) 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 purpose of the Amendment Regulations is to update the list of schools in South Australia that deliver Year 7 as secondary education in order for those schools to have their full year entitlement correctly calculated at the secondary level Schooling Resource Standard.

### **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 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 helping to ensure Australia can continue to have functioning and well-resourced educational institutions. The Amendment Regulations will ensure that additional schools in South Australia that deliver Year 7 as secondary education will attract secondary level Schooling Resource Standard funding for 2020 and each later calendar year. This measure thereby will have a beneficial impact on the right to education.

### **Conclusion**

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

**The Hon Dan Tehan MP**  
**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 (South Australia Year 7 Schools) Regulations 2020*.

### Section 2 – Commencement

This section provides that the Amendment Regulations commence on the day after they would be registered on the Federal Register of Legislation.

### Section 3 – Authority

This section provides that the Amendment Regulations are made under the *Australian Education Act 2013* (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

South Australia is currently the only State in which the State Government still considers Year 7 to be a primary level of education. Therefore, it has also been considered primary education for the purposes of the calculation of Commonwealth recurrent schools funding purposes. However, the Year 7 curriculum is the same throughout Australia, and a significant number of non-government schools in South Australia have begun delivering Year 7 in a secondary environment.

Section 15 of the Act provides that the regulations may prescribe, for a State or Territory, the level of education that constitutes primary education or secondary education for schools located in the State or Territory.

For the purposes of section 15 of the Act, paragraphs 7(1)(b) and 7(2)(b) of the Principal Regulation address the transition arrangements of Year 7 schooling in South Australia, from a primary to secondary setting in certain non-government schools. This provides national consistency with Year 7 students in every other state and territory, where Year 7 is delivered in secondary school and students attract the secondary Schooling Resource Standard amount.

**Clause 1** of the Schedule to the Amendment Regulations would repeal the table of certain schools in South Australia in clause 1 of Schedule 3 to the Principal Regulation and replace it with a new table that would include additional schools in South Australia that the Australian Government recognises as delivering Year 7 as secondary education from 2020.

Currently, under subsection 7(2) of the Principal Regulation, for the purposes of section 15 of the Act, the levels of education that constitute secondary education for schools in South Australia for a calendar year are Years 8 to 12, unless specified in the table in clause 1 of Schedule 3.

The amendments would update this table following an annual exercise undertaken by the Department of Education, Skills and Employment to ensure it remains current. As the funding amount for a secondary student under the Act is greater than the funding amount set for a primary student, the amendments would increase the funding amounts for students in Year 7 at those schools.