

## **EXPLANATORY STATEMENT**

Issued by the authority of Minister for Education and Youth

*Australian Education Act 2013; Australian Education Regulation 2013*

### ***Australian Education (Required Information – Student with Disability Loading Settings Review) Determination 2021***

#### **AUTHORITY**

Paragraph 77(2)(f) of the *Australian Education Act 2013* (the Act) requires approved authorities for schools to provide information in accordance with the regulations. Section 52 of the *Australian Education Regulation 2013* (the Regulations) requires approved authorities to provide the information set out in section 58A. Paragraph 58A(2)(e) empowers the Minister to determine ‘any other information’ in relation to students with disability.

Subsection 52(3A) of the Regulations provides that information mentioned in section 58A must be given to the Department or a person determined by the Minister, by the day, and in the way determined by the Minister.

#### **PURPOSE AND OPERATION**

The *Australian Education (Required Information – Student with Disability Loading Settings Review) Determination 2021* (the Determination) sets out information about students with disability that approved authorities for certain schools are required to provide to consultants undertaking the Student with Disability Loading Settings Review (the Review) for the Department of Education, Skills and Employment (the Department). It also prescribes how and when the information is to be provided.

#### **Legislative background**

The Act is the principal legislation by which the Australian Government provides Commonwealth financial assistance for schools. The Regulations contain further detail to ensure the effective and efficient administration of that financial assistance. Commonwealth financial assistance is provided to states and territories for distribution to approved authorities for government and non-government schools.

## **Student with Disability Loading**

Commonwealth financial assistance for schools under the Act is determined by reference to a base amount and loadings that provide additional needs-based funding, including the student with disability loading (the Loading). The Determination provides for the collection of data to inform the Review of the Loading.

The Loading is based on the level of adjustment being provided to students at the school. These levels of adjustment (Quality Differentiated Teaching Practice, Supplementary, Substantial and Extensive) are set out in the Nationally Consistent Collection of Data on School Students with Disability (NCCD) Guidelines approved by the ministerial council each year (NCCD Guidelines, available at <https://www.nccd.edu.au/tools/nccd-guidelines-0>). Students in the Supplementary, Substantial and Extensive levels attract the Loading.

The Review is being conducted to develop a refined costing model for the Loading to inform the settings for the Loading from 2023. This implements a recommendation of the National School Resourcing Board's (NSRB) *Review of the Loading for Students with Disability 2019* (available at <https://www.dese.gov.au/national-school-resourcing-board/resources/final-report>).

### **Requirement to provide information in respect of students with disability**

The requirement for an approved authority to provide information under paragraph 77(2)(f) of the Act includes providing information under sections 52 and 58A of the Regulations through the annual NCCD. The NCCD informs the calculation of a school's Loading for the purposes of Commonwealth recurrent funding under the Act.

In addition, an approved authority must provide 'any other information' determined by the Minister by legislative instrument for the purposes of paragraph 58A(2)(e) of the Regulation. The Determination sets out additional information required for the purposes of the Review.

### **Information determined for the purposes of the Review**

Information specified in the Determination for the purposes of the Review is information about the costs of adjustments provided for students with disability at each level of adjustment at a school nominated by the Department for the purposes of the Review.

The Determination requires approved authorities participating in the Review to provide this information. Selected approved authorities for government and non-government schools nominated by the Department and agreed by the National Reference Group (see 'consultation' below) will participate in the Review.

The Determination also specifies how and when the information is to be provided for subsection 52(3A) of the Regulations. Participating approved authorities will provide the information by completing surveys. In addition, school visits will be conducted to obtain information from a sample of these approved authorities. Appropriately qualified personnel will undertake the surveys and school visits.

In making this Determination, the Minister has had regard to the NCCD Guidelines (in accordance with subsection 52(3B)). Although the information determined for the purposes of the Review will be provided through a separate collection to the NCCD, the Review is aligned with the NCCD Guidelines in that a student's level of adjustment is determined by reference to the NCCD Guidelines.

### **Collection of information authorised for the purposes of the Privacy Act**

To the extent that information determined for the purposes of the Review may contain personal information, the Determination authorises the collection of personal information for the purposes of the *Privacy Act 1988* (Cth) (Privacy Act).

The Review will not collect student names – indeed, information provided under subsection 58A of the Regulations must not explicitly identify a student (subsection 58A(3)) – but in limited circumstances where there is a small number of students receiving adjustments at a particular school, it is possible, though unlikely, that a student may be 'reasonably identifiable' from the anonymised information provided. Information about a 'reasonably identifiable' individual is personal information protected by the Privacy Act. Personal information relating to disability may also be 'sensitive information' under the Privacy Act. To the extent that the information collected under this Determination will constitute sensitive information, the Determination will authorise the collection of this information for the purposes of the Review. It will also authorise the collection of this information from a person other than the individual.

The collection of this information is necessary to inform the Review and support policy development relating to funding settings for students with disability. This will seek to ensure that students with disability are appropriately funded under the Act.

To the extent personal information is collected, it may only be used and disclosed in accordance with the Privacy Act. In addition, the consultant engaged to conduct the Review and collect the information determined under this Determination is subject to contractual obligations to protect personal information. The consultant is also subject to contractual obligations relating to information security requirements consistent with the Protective Security Policy Framework and the Commonwealth Information Security Manual.

### **REGULATORY IMPACT**

The Office of Best Practice Regulation has advised that a RIS is not required (OBPR ID 44101).

### **COMMENCEMENT**

The instrument will commence on the day after registration.

### **CONSULTATION**

A National Reference Group (the Group) has been formed by the Department to facilitate consultation on the Review. The Group includes representatives from all state and territory

departments of education, the National Catholic Education Commission, and Independent Schools Australia. The Group is chaired by the Department's representative.

The Group provided input to the statement of requirements included in the request for quote offered by the Department under the Commonwealth Procurement Rules to secure a supplier.

The Group has an ongoing consultative role for the life of the Review and meets at key decision points. To date, the Group has provided input to the Project Plan and Data Collection Plan. These Plans include details around the nature of data proposed to be collected from schools and how and when the data will be collected. The Group has agreed to facilitate data collection in schools under their purview.

No concerns have been raised by the Group on the nature of the data to be collected from schools.

## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### Australian Education (Required Information – Student with Disability Loading Settings Review) Determination 2021

The *Australian Education (Required Information – Student with Disability Loading Settings Review) Determination 2021* (the Determination) 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 Instrument**

The Determination requires approved authorities participating in the Student with Disability Loading Settings Review (the Review) to provide information for the purposes of the Review, and provides how and when the information is to be provided.

#### **Human rights implications**

The Determination engages the following 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* (CRC)
- the rights of persons with disabilities – Articles 9 and 24 of the *Convention on the Rights of Persons with Disabilities* (CRPD), and
- the right to privacy – Article 17 of the *International Covenant on Civil and Political Rights* (ICCPR) and Article 16 of the CRC.

#### Right to education

The Determination 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. The right to education for children is also found in Articles 28 and 29 of the CRC. The information required to be provided under the Determination will promote more effective and accessible engagement in education for students with disability by accurately quantifying the cost of educational adjustments required for these students so they can access education on the same basis as other students.

This measure is compatible with the right to education.

#### Rights of persons with disabilities

The Determination engages Articles 9 and 24 of the CRPD. Article 9 recognises the right of persons with disabilities to participate fully in all aspects of life, and Article 24 recognises the right of persons with disabilities to an inclusive education.

The data will inform the development of a refined costing model for the disability loading. This will allow Commonwealth school funding to more effectively provide for students with disability and promote their right to fully participate in education.

This measure is compatible with the rights of persons with disabilities, and will promote the right of persons with disabilities to participate in education.

#### Right to privacy

The right to privacy is set out in Article 17 of the ICCPR and Article 16 of the CRC.

The Determination will authorise the collection of personal information (including the collection from someone other than the individual) for the purposes of the *Privacy Act 1988* (Cth) (the Privacy Act).

In accordance with subsection 58A(3) of the *Australian Education Regulation 2013*, the information collected under this Determination will not explicitly identify a student. The Review will not collect student names, but in some circumstances where there is a small number of students receiving adjustments at a particular school, a student may be 'reasonably identifiable'. Information about a 'reasonably identifiable' individual is personal information protected by the Privacy Act. Personal information relating to disability may also be 'sensitive information' under the Privacy Act.

To the extent personal information is collected, it may only be used and disclosed in accordance with the Privacy Act. In addition, the consultant engaged to conduct the Review and collect the information determined under this Determination is subject to contractual obligations to protect personal information.

The purpose of collecting the information (including any personal information) is to support policy development relating to funding settings for students with disability. This is a legitimate and important social policy objective of Government. The Determination does not unreasonably impact on the right to privacy contained in Article 17 of the ICCPR or Article 16 of the CRC.

This measure is compatible with the right to privacy because, to the extent that it may result in an interference in privacy, that interference is reasonable and proportionate to achieve the beneficial purposes of the measure (that is, better assessment of the costs of educating students with disability to inform funding decisions).

#### **Conclusion**

The Determination is compatible with human rights because it promotes the protection of human rights. To the extent the Determination may limit human rights, those limitations are reasonable, necessary and proportionate.

**Alan Tudge**

**Minister for Education and Youth**

# AUSTRALIAN EDUCATION (REQUIRED INFORMATION – STUDENT WITH DISABILITY LOADING SETTINGS REVIEW) DETERMINATION 2021

## EXPLANATION OF PROVISIONS

### Section 1: Name

1. This is a formal provision specifying the name of the instrument as the Australian Education (Required Information – Student with Disability Loading Settings Review) Determination 2021 (the Determination).

### Section 2: Commencement

2. This section provides that the Determination commences the day after registration.

### Section 3: Authority

3. This section provides that the Determination is made under subsection 52(3A) and paragraph 58A(2)(e) of the *Australian Education Regulation 2013* (the Regulations).

### Section 4: Definitions

4. This section sets out definitions for the purpose of the Determination, including ***nominated person*** and ***Review***. Other terms used in the Determination have the same meaning as they do in the Regulations; a Note to section 4 highlights terms in the Determination that are defined in the Regulations.

### Section 5: Additional required information about students with disability

5. **Subsection 5(1)**: Paragraph 58A(1) of the Regulations provides that the information in paragraph 58A(2) must be provided, as mentioned in section 52, in relation to each student with disability at the school. The information in paragraph 58A(2) includes any other information determined by the Minister, by legislative instrument, for the purposes of paragraph 58A(2)(e).

Subsection 5(1) determines information to be provided for the purposes of the Review. The information to be provided by an approved authority for a school nominated by the department relates to the costs of adjustments provided to students with disability at the school. These adjustments are measures provided to allow a student with disability to participate in education on the same basis as a student without disability, for example:

- provision of specialised equipment such a technology to assist hearing impaired students
- additional staff time taken to amend learning materials
- additional staff time taken to develop specific learning plans.

6. **Subsection 5(2):** Subsection 52(3A) of the Regulations provides that the information in section 58A of the Regulations must be given to the Department, or a person determined by the Minister, by the day, and in the way, determined by the Minister (having regard to the NCCD Guidelines).

Subsection 5(2) prescribes that the information to be provided for the purposes of the Review is to be provided to a nominated person, by 29 October 2021. The information is to be provided by completing a survey or participating in a school visit. The nominated person will undertake surveys and school visits.

A nominated person is personnel of PricewaterhouseCoopers Consulting engaged to undertake the Review (see definition in section 4). Appropriately qualified staff will undertake the surveys and school visits.