

## **EXPLANATORY STATEMENT**

Issued by the authority of the delegate of the Minister for Education and Youth

*Australian Education Act 2013; Australian Education Regulation 2013*

### ***Australian Education (Required Information – Student with Disability Loading Settings Review) Amendment (Information Date) 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. Subsection 52(3A) of the Regulations provides that information specified 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.

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.

This instrument has been made by a delegate of the Minister relying on the power of delegation in subsection 129(1) of the Act by an instrument of delegation dated 11 November 2020 (Instrument No. 20-048). The instrument of delegation does not contain any applicable directions to delegates about the exercise of this power.

#### **PURPOSE AND OPERATION**

The *Australian Education (Required Information – Student with Disability Loading Settings Review) Amendment (Information Date) Determination 2021* (the Amendment Determination) amends the *Australian Education (Required Information – Students with Disability Loading Settings Review) Determination 2021* (the Determination). The Amendment Determination extends the date by which approved authorities for certain schools are required to provide information for the purposes of the Student with Disability Loading Settings Review (the Review).

#### **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 Settings Review**

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 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>).

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

The requirement for an approved authority to provide information under paragraph 77(2)(f) of the Act includes providing 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. This is to ensure that, 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) (the Privacy Act).

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.

### **Extended timeframe for providing information for the Review**

The Amendment Determination amends the Determination outlined above to extend the date by which approved authorities for certain schools are required to provide information for the purposes of the Review from 29 October 2021 to 30 June 2022.

The extension takes account of delays caused by COVID-19 and provides the opportunity for refinement of the sample of schools from which the information will be collected.

In making this Amendment Determination, the delegate has had regard to the Nationally Consistent Collection of Data on School Students with Disability (NCCD) Guidelines in accordance with subsection 52(3B) of Regulations.

### **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 will have an ongoing consultative role for the term of the Review and meets at key decision points.

Thus far, the Group has:

- 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
- provided input to the Project Plan and Data Collection Plan, which include details around the nature of data proposed to be collected from schools and how and when the data will be collected
- had access to a practice version of the survey to be used to collect the information, as well as results from pilots of the survey and feedback from the implementation of the survey in the Catholic system
- agreed to facilitate data collection in schools under their purview
- been consulted on the development of the Amendment Determination.

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

## 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) Amendment (Information Date) Determination 2021

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

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. Subsection 52(3A) of the Regulations provides that information specified 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.

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 Student with Disability Loading Settings Review (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>).

The Amendment Determination amends the *Australian Education (Required Information – Students with Disability Loading Settings Review) Determination 2021* (the Determination). The Amendment Determination extends the date by which approved authorities for certain schools are required to provide information for the purposes of the Review.

#### **Human rights implications**

The Amendment 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 Amendment 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 contained in Articles 28 and 29 of the CRC. The Amendment Determination will extend the timeframe for providing information under the Determination for the purposes of the Review. This 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 Amendment 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 which includes ensuring adaptable learning environments that meet the diverse needs of all learners.

The Amendment Determination will extend the timeframe for providing data for the purposes of the Review to 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 authorises 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). The Amendment Determination extends the timeframe for the collection of this information for the purposes of the Review.

In accordance with subsection 58A(3) of the *Australian Education Regulation 2013*, the information collected under the 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 the 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 Amendment Determination does not unreasonably impact on, nor disproportionately limit the right to privacy contained in Article 17 of the ICCPR or Article 16 of the CRC.

The Amendment Determination is compatible with the right to privacy because, to the extent that it may result in any interference in privacy by extending the timeframe for the collection of information for the purposes of the Review, that interference is reasonable and proportionate to achieve the beneficial purposes of the Determination (that is, better assessment of the costs of educating students with disability to inform funding decisions).

### **Conclusion**

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

**Kathleen Aguirre**

**Delegate of the Minister for Education and Youth**

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

## EXPLANATION OF PROVISIONS

### **Section 1: Name**

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

### **Section 2: Commencement**

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

### **Section 3: Authority**

This section provides that the Amendment Determination is made under subsection 52(3A) of the *Australian Education Regulation 2013* (the Regulations).

### **Section 4: Schedules**

This section provides that each instrument that is specified in a Schedule to the Amendment Regulations 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**

This schedule specifies the *Australian Education (Required Information – Student with Disability Loading Settings Review) Determination 2021* (the Determination) as the instrument amended.

Item 1 amends the Determination to omit the date by which information is required to be provided for the purposes of the Student with Disability Loading Settings Review and substitute a later date.