# EXPLANATORY STATEMENT

Issued by the authority of the Minister for Education and Youth

*Australian Education Act 2013*

*Australian Education Amendment (**South Australia Year 7 Schools) Regulations 2021*

## 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, financial assistance is provided 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.

Subsection 15(1) 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. Subsection 15(2) of the Act provides that before the Governor-General makes regulations for the purposes of subsection 15(1) for a State or Territory, the Minister must have regard to the arrangements made for providing education at government schools located in the State or Territory.

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 2021* (Amendment Regulations) is to prescribe Year 7 as secondary education for schools in South Australia and ensure that Year 7 students at South Australian schools attract secondary level Schooling Resource Standard (SRS) funding from 1 January 2022. The Amendment Regulations also updates the list of schools in South Australia providing Year 7 as secondary education to include schools that began delivering Year 7 as secondary education from 2020 and 2021 to ensure the correct calculation of the funding entitlement for those schools.

**Background**

The Amendment Regulations reflect that as of 2021, Cardijn College Galilee, Edmund Rice Flexi School and as of 2020 FAME (Flexible Accredited Meaningful Engagement) and Pedare Christian College deliver Year 7 as secondary education, and that as of 2022, all schools in South Australia will deliver Year 7 as secondary education.

The Minister has had regard to the arrangements made for providing education at government schools located in the State or Territory.

## 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 44391 and 24347).

## Commencement

Sections 1 to 4 and Part 1 of Schedule 1 to the Amendment Regulations will commence on the day after they are registered on the Federal Register of Legislation. Part 2 of Schedule 1 to the Amendment Regulations will commence on 1 January 2022.

## Consultation

Consultation occurred with all the State and Territory education departments and with the National Catholic Education Commission and Independent Schools of Australia. The Department of Education, Skills and Employment received responses that were supportive of the proposed update to 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 (South Australia Year 7 Schools) Regulations 2021*

The *Australian Education Amendment (South Australia Year 7 Schools) Regulations 2021* (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 *Australian Education Amendment (South Australia Year 7 Schools) Regulations 2021* (Amendment Regulations) is to prescribe Year 7 as secondary education for schools in South Australia and ensure that Year 7 students at South Australian schools attract secondary level Schooling Resource Standard (SRS) funding from 1 January 2022. The Amendment Regulations also update the list of schools in South Australia providing Year 7 as secondary education to include schools that began delivery of Year 7 as secondary education from 2020 and 2021 to ensure the correct calculation of the funding entitlement for those schools.

## 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).

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 ensure Australia can continue to have functioning and well-resourced educational institutions. The Amendment Regulations will prescribe Year 7 as secondary education for schools in South Australia and ensure these schools delivering Year 7 education will attract secondary level of Schooling Resource Standard (SRS) funding from 2022, being a higher level of funding than the primary level. The Amendment Regulations will also ensure that schools in South Australia that began delivery of Year 7 as secondary education in 2020 and 2021 will attract secondary level of SRS funding. 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.

**Alan Tudge**

**Minister for Education and Youth**

## 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 2021.*

Section 2 – Commencement

This section provides that Sections 1 to 4 and Part 1 of Schedule 1 to the Amendment Regulations will commence on the day after they are registered on the Federal Register of Legislation. It also provides that Part 2 of Schedule 1 to the Amendment Regulations will commence on 1 January 2022.

Section 3 – Authority

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

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

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. However, the Year 7 curriculum is the same throughout Australia, and, since 2018, a number of non‑government schools in South Australia have begun delivering Year 7 in a secondary environment. From 2022, Year 7 will constitute a secondary level of education in South Australia. This provides national consistency with Year 7 students in every other State and territory, where Year 7 constitutes secondary education and students attract the secondary Schooling Resource Standard amount under the Act.

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, section 7 of the Principal Regulation currently provides that Year 7 constitutes primary education for schools in South Australia other than those specified in the table in clause 1 of Schedule 3. For those specified schools, Year 7 constitutes secondary education.

**Part 1** of Schedule 1 to the Amendment Regulations inserts additional schools that began delivery of Year 7 as secondary education in 2020 and 2021 to the table in clause 1 of Schedule 3 to the Principal Regulation.

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.

**Part 2** of Schedule 1 to the Amendment Regulations amends section 7 of the Principal Regulation to provide that foundation to year 6 constitutes primary education and years 7 to 12 constitutes secondary education for a school other than a special school. Part 2 also removes the current arrangements for Year 7 in South Australia set out in section 7 and Schedule 3. The Amendment Regulation will provide national consistency with Year 7 students in every other State where Year 7 is delivered in secondary school and these students attract the secondary Schooling Resource Standard amount.

Part 2 also provides that despite the repeal of section 7 and Schedule 3 from 1 January 2022, these provisions as in force immediately before the repeal continue to apply in relation to financial assistance for the years before 2022.