

## EXPLANATORY STATEMENT

Issued by the authority of the Minister for Employment, Workforce, Skills, Small & Family Business

*Australian Education Act 2013*

*Australian Education Amendment (Capped CTC Score Methodology) 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.

Under section 33 of the Act, one of the factors in calculating the base amount of annual recurrent funding for a school is the school's capacity to contribute (CTC) percentage. The higher a school's CTC percentage, the lower its base amount of annual recurrent funding, and conversely, the lower a school's CTC percentage, the higher its base amount of annual recurrent funding.

In accordance with subsection 54(1) of the Act, the CTC percentage of government, special, special assistance, majority Aboriginal and Torres Strait Islander, and sole provider non-government schools is zero. For most non-government schools, however, the table in subsection 54(3) of the Act sets out the school's CTC percentage by reference to the school's CTC score.

Subsection 52(1) provides that the Minister must determine a CTC score for most non-government schools. Subsection 52(4) provides that the Minister must determine a CTC score in accordance with the regulations unless satisfied that this would result in a CTC score that does not accurately reflect the capacity of persons responsible for students at the school to contribute financially to the operation of the school.

The *Australian Education Regulation 2013* (the Principal Regulation) provides for the calculation and administration of Commonwealth financial assistance for schools, including a

methodology for working out a school's CTC score. From 2022, an average Direct Measure of Income (DMI) score based on the median income of parents and guardians of students at the school will generally be used. A Refined Area Based (RAB) score will apply where it is not reasonably practicable to use a DMI score.

Under section 32 of the Act, one of the factors in calculating a school's annual Commonwealth recurrent funding is its Commonwealth share. For many schools, the change to the way the CTC score is worked out will affect their recurrent funding from 2022. To manage these changes, the Commonwealth share for these schools will also be adjusted over time, in accordance with the Principal Regulation.

Ordinarily, the Commonwealth share of a non-government school is 80 per cent (paragraph 35A(b) of the Act). However, under section 35C of the Act, the Commonwealth share for a non-government school for a transition year is the percentage prescribed in, or the percentage worked out in accordance with, the Principal Regulation. Existing non-government schools will transition to a Commonwealth share of 80 per cent either by 2023 (for those schools with a Commonwealth share below 80 per cent) or 2029 (for those schools with a Commonwealth share above 80 per cent).

Sections 19A, 19B, 19C and 19D of the Principal Regulation prescribe methods to work out a non-government school's Commonwealth share for different transition years using notional starting shares (defined in section 19E). This is a percentage worked out using a formula that includes the 'CTC-adjusted amount' for the school, for the year defined in section 19F. This CTC-adjusted amount takes into account a school's CTC score.

To manage the changes to a CTC score based on an average DMI score or RAB score in 2022, the Commonwealth share for an affected school will be adjusted according to section 19C of the Principal Regulation and reset the school's transition path. This new pathway will offset the fluctuation in recurrent funding from CTC score change and smooth out any funding volatility over the transition period.

The Act and Principal Regulation commenced on 1 January 2014.

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

The *Australian Education Amendment (Capped CTC Score Methodology) Regulations 2021* (Amendment Regulations) introduce two measures to limit funding volatility resulting from the changes to the way CTC scores are worked out and applied from 2022 for small and very small schools. 'Small schools' and 'very small schools' are defined in subsection 43(1) of the Act.

#### *Extending the cap on movement in CTC scores from year to year*

To reduce funding changes from year to year for small and very small schools, the Principal Regulation contains a cap and floor on movement in CTC scores based on the average DMI methodology from 2022.

However, RAB scores are inherently more volatile than average DMI scores as RAB scores are based on annual data so annual changes to student enrolments have a direct impact on a school's recurrent funding for the year. In contrast, average DMI scores are based on a three year rolling average which smooths the impact of annual enrolment changes.

Small and very small schools are also more likely to have a RAB score applied on the basis that the number of persons responsible for students at the school for the year is too low to ensure that the information required to calculate a CTC score does not identify information

relating to a particular student or a person responsible for that student (see paragraph 23(1)(b) of the Principal Regulation).

Accordingly, the purpose of the Amendment Regulations is to apply the existing cap and floor on changes in a school's CTC score from year to year to cover RAB scores as well as DMI scores for small and very small schools from 2022 onwards. This will limit funding volatility for small and very small schools.

#### *Ensuring a smooth transition pathway for affected schools*

The Act enables the Principal Regulation to set out the Commonwealth share for non-government schools and adjust the transition pathways of these schools to the nationally consistent Commonwealth share of 80 per cent of the Schooling Resource Standard (SRS).

To manage the impact of moving to a CTC score based on an average DMI score or RAB score in 2022, the Commonwealth share will be adjusted in accordance with the Principal Regulation and reset the school's transition path. This is intended to offset the fluctuation in recurrent funding from the CTC score change and smooth out any funding volatility over the transition period. However, the use of a capped score would distort this transition path.

To ensure a more beneficial pathway for affected schools, the Amendment Regulations set the transition pathway before the application of the cap to CTC scores.

#### **Regulation Impact Statement**

The Office of Best Practice Regulation has agreed a Regulation Impact Statement is not required in relation to the Amendment Regulations (OBPR reference 44462).

#### **Commencement**

The Amendment Regulations will commence on the day after they are registered on the Federal Register of Legislation.

#### **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 (Capped CTC Score Methodology) Regulations 2021*

The *Australian Education Amendment (Capped CTC Score Methodology) Regulations 2021* (Amendment Regulations) are 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 *Australian Education Act 2013* (the Act) came into force on 1 January 2014 and is the principal legislation for 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.

One of the factors in calculating the base amount of annual recurrent funding for a school is the school's capacity to contribute (CTC) percentage. The higher a school's CTC percentage, the lower its base amount of annual recurrent funding, and conversely, the lower a school's CTC percentage, the higher its base amount of annual recurrent funding.

In accordance with the Act, the CTC percentage of government, special, special assistance, majority Aboriginal and Torres Strait Islander, and sole provider non-government schools is zero. For most non-government schools, however, the Act sets out the school's CTC percentage by reference to the school's CTC score.

The *Australian Education Regulation 2013* (the Principal Regulation) provides for the calculation and administration of Commonwealth financial assistance for schools, including a methodology for working out and applying a school's CTC score. From 2022, an average Direct Measure of Income (DMI) score based on the median income of parents and guardians of students at the school will generally be used. A Refined Area Based (RAB) score will apply where it is not reasonably practicable to use a DMI score. To reduce funding volatility from year to year for small and very small schools, the Principal Regulation contains a cap and floor on movement in CTC scores based on the average DMI methodology.

### **Extending the cap on movement in CTC scores from year to year**

RAB scores are inherently more volatile than average DMI scores as RAB scores are based on annual data so annual changes to student enrolments have a direct impact on a school's recurrent funding for the year. In contrast, average DMI scores are based on a three-year average which smooths the impact of annual enrolment changes. Small and very small schools are also more likely to have a RAB score applied on the basis that the number of persons responsible for students at the school for the year is too low to ensure that the CTC score does not identify information relating to a particular student or a person responsible for that student.

Accordingly, the purpose of the Amendment Regulations is to apply the existing cap and floor on changes in a school's CTC score from year to year to cover RAB scores as well as DMI scores for small and very small schools from 2022 onwards.

## **Ensuring a smooth transition pathway**

For many non-government schools, the change to the way the CTC score is worked out will affect their recurrent funding. To manage these changes, the Commonwealth share for these schools will also be adjusted over time, in accordance with the Principal Regulation. The Commonwealth share for a school for a year is another factor in the calculation of recurrent funding.

The Act enables the Principal Regulation to set out the Commonwealth share for non-government schools and adjust the transition pathways of these schools to the nationally consistent Commonwealth share of 80 per cent of the Schooling Resource Standard (SRS). To manage the impact of moving to a CTC score based on an average DMI score or RAB score in 2022, the Commonwealth share will be adjusted in accordance with the Principal Regulation and reset the school's transition path. This is intended to offset the fluctuation in recurrent funding from the CTC score change and smooth out any funding volatility over the transition period. However, the use of a capped score would distort this transition path. To ensure a more beneficial pathway for affected schools, the Amendment Regulations set the transition pathways before the application of the cap to CTC scores.

## **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 UNCRC contains similar provisions to article 13 of ICESCR, and also provides that the education of the child shall be directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential.

The Amendment Regulations promote the right to education by helping to ensure Australia can continue to have functioning and well-resourced educational institutions. In particular, the Amendment Regulations will apply the existing cap and floor on changes in a school's CTC score from year to year to cover RAB scores as well as DMI scores for small and very small schools. This measure will reduce funding volatility for small and very small schools.

In addition, the Amendment Regulations will set the transition pathway prior to the application of the cap which will ensure a smooth transition for the affected schools by distributing the full impact of the uncapped score over the whole transition period.

By supporting funding stability for small and very small non-government schools, this measure will assist in promoting the liberty of parents and guardians to choose non-government schools.

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.

**Stuart Robert**

**Minister for Employment, Workforce, Skills, Small & Family Business**

# AUSTRALIAN EDUCATION AMENDMENT (CAPPED CTC SCORE METHODOLOGY) REGULATIONS 2021

## EXPLANATION OF PROVISIONS

### Section 1 – Name

This section provides that the title of the Amendment Regulations is the *Australian Education Amendment (Capped CTC Score Methodology) Regulations 2021*.

### Section 2 – Commencement

The table in this section provides that the Amendment Regulations commence on the day after they are 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

Under section 33 of the Act, one of the factors in calculating the base amount of annual recurrent funding for a school is the school's capacity to contribute (CTC) percentage. The higher a school's CTC percentage, the lower its base amount of annual recurrent funding, and conversely, the lower a school's CTC percentage, the higher its base amount of annual recurrent funding.

In accordance with subsection 54(1) of the Act, the CTC percentage of government, special, special assistance, majority Aboriginal and Torres Strait Islander, and sole provider non-government schools is zero. For most non-government schools, however, the table in subsection 54(3) of the Act sets out the school's CTC percentage by reference to the school's CTC score.

Subsection 52(1) of the Act provides that the Minister must determine a CTC score for most non-government schools. Subsection 52(4) provides that the Minister must determine a CTC score in accordance with the regulations unless satisfied that this would result in a CTC score that does not accurately reflect the capacity of persons responsible for students at the school to contribute financially to the operation of the school.

The Principal Regulation provides that for the purposes of subsection 52(4) of the Act, a school's CTC score must be worked out in accordance with section 21 of the Principal Regulation. Under section 21 of the Principal Regulation, non-government schools will generally have a CTC score based on an average Direct Measures of Income (DMI) score from 2022. Where it is not reasonably practicable to use the average DMI score for the school for the year, a Refined Area Based (RAB) score worked out in accordance with section 23 of the Principal Regulation will be used.

The Commonwealth share for a school for a year is also taken into consideration in the calculation of recurrent funding in accordance with section 32 of the Act. For many schools, the change to the way the CTC score is worked out will affect their recurrent funding from 2022. To manage these changes, the Commonwealth share for these schools will also be adjusted over time, in accordance with the Principal Regulation.

Ordinarily, the Commonwealth share of a non-government school is 80 per cent of the Schooling Resource Standard—see paragraph 35A(b) of the Act. Existing non-government schools will transition to a Commonwealth share of 80 per cent either by 2023 (for those schools with a Commonwealth share below 80 per cent) or 2029 (for those schools with a Commonwealth share above 80 per cent).

Under section 35C of the Act, the Commonwealth share for a non-government school for a transition year is the percentage prescribed in, or the percentage worked out in accordance with, the regulations. Sections 19A, 19B, 19C and 19D of the Principal Regulation prescribe methods to work out a non-government school's Commonwealth share for different transition years using notional starting shares (defined in section 19E). This is a percentage worked out using a formula that includes the 'CTC-adjusted amount' for the school for the year defined in section 19F. This CTC-adjusted amount takes into account a school's CTC score.

To manage the changes to a CTC score based on an average DMI score or RAB score in 2022, the Commonwealth share for an affected school will be adjusted according to section 19C of the Principal Regulation and reset the school's transition path. This new pathway will offset the fluctuation in recurrent funding from CTC score change and smooth out any funding volatility over the transition period. However, the use of a capped CTC score would distort this transition path.

**Item 1 and 2** adds subsection 19F(2) into the Principal Regulation. This provision will ensure that the transition pathway for non-government schools is set prior to the application of the cap and floor on year on year changes in CTC scores for small and very small schools. This will provide a smooth transition for the affected schools by distributing the full impact of the uncapped score over the whole transition period.

Currently, section 22(3) of the Principal Regulation limits the movement of average DMI scores for small and very small schools by imposing a cap and floor of two points from 2022 and onwards. 'Small schools' and 'very small schools' are defined in subsection 43(1) of the Act.

RAB scores are more volatile than average DMI scores as RAB scores are based on annual data. Average DMI scores are based on a three year rolling average which smooths the impact of annual enrolment changes on a school's recurrent funding. Small and very small schools are also more likely to have a RAB score applied on the basis that the number of persons responsible for students at the school for the year is too low to ensure that the CTC score does not identify information relating to a particular student or a person responsible for that student.

**Item 3** amends section 23 of the Principal Regulation to extend the existing two-point cap and floor on year-on-year changes to CTC scores to cover RAB scores as well as DMI scores.

This will reduce the negative impacts on small and very small schools likely to experience greater funding volatility due to annual changes in the student cohort.