

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Education

Australian Education Act 2013

Australian Education Amendment (2022 Capital Funding Indexation) Regulations 2022

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. Subsection 68(3) provides for the regulations to prescribe a percentage that is the indexation percentage for the purposes of subsection 68(2).

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, capital funding for non-government schools is provided to the relevant block grant authority for such a school. A block grant authority is a body corporate that is approved for a non-government school by the Minister under the Act. Entities approved to receive financial assistance under the Act, including block grant authorities, must comply with 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, matters relevant to the effective and efficient administration of that assistance, and matters relevant to the provision of prescribed circumstances funding under the Act.

The Act and Principal Regulation commenced on 1 January 2014.

Purpose and operation of amendments

The purpose of the *Australian Education Amendment (2022 Capital Funding Indexation) Regulations 2022* (the Amendment Regulations) is to prescribe the capital funding indexation percentage for block grant authorities for non-government schools in 2022.

The indexation percentage for 2022 will be set at 108.75% under paragraph 68(3)(b) of the Act.

In calculating the indexation percentage for 2022, the Minister for Education considered changes in indexes of building prices and wage costs and changes in student enrolments in non-government schools.

- The indexes used for determining movement in wages prices and building costs is the Australian Bureau of Statistics (ABS) Producer Price Index Non-Residential Building Construction, and student enrolments in non-government schools is the ABS *Schools, Australia* dataset.

The capital funding amount to be allocated to block grant authorities for 2022 is \$194,492,000. This is an increase of \$15,647,000 over the 2021 base assistance amount of \$178,845,000. The indexation percentage reflects year-on-year movement, from 2020 to 2021, in building prices and wage costs and changes to full-time equivalent student enrolments in non-government schools. Annual indexation ensures the capital funding amount retains its value.

The indexation percentage was most recently prescribed in 2017. From 2018 to 2021 the base assistance amount for capital funding was updated by amendments to the Principal Regulation.

Regulation Impact Statement

The Office of Best Practice Regulation (OBPR) has agreed a Regulation Impact Statement is not required in relation to the 2022 capital funding indexation percentage (OBPR reference 21846).

Commencement

The Amendment Regulations will commence on the day after the instrument is registered on the Federal Register of Legislation.

Consultation

The Minister for Education wrote to all state and territory Education Ministers, Independent Schools Australia, and the National Catholic Education Commission (NCEC) on 6 July 2022 to formally consult on the Amendment Regulations. The Department of Education incorporated input from NCEC that resulted in a minor funding variation to the proposed update to the Principal Regulation. The Department of Education also 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 (2022 Capital Funding Indexation) Regulations 2022

The *Australian Education Amendment (2022 Capital Funding Indexation) Regulations 2022* (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 *Australian Education Act 2013* is the principal legislation by which the Australian Government provides Commonwealth financial assistance for schools.

Under the Act, capital funding for non-government schools is provided to the relevant block grant authority for such a school. A block grant authority is a body corporate that is approved for a non-government school by the Minister under the Act. Entities approved to receive financial assistance under the Act, including block grant authorities, must comply with 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, matters relevant to the effective and efficient administration of that assistance, and matters relevant to the provision of prescribed circumstances funding under the Act.

The purpose of the *Australian Education Amendment (2022 Capital Funding Indexation) Regulations 2022* (the Amendment Regulations) is to prescribe the capital funding indexation percentage for block grant authorities for non-government schools in 2022.

The indexation percentage for 2022 will be set at 108.75% under paragraph 68(3)(b) of the Act.

In calculating the indexation percentage for 2022, the Minister for Education considered changes in indexes of building prices and wage costs and changes in student enrolments in non-government schools.

- The indexes used for determining movement in wages prices and building costs is the Australian Bureau of Statistics (ABS) Producer Price Index Non-Residential Building Construction, and student enrolments in non-government schools is the ABS *Schools, Australia* dataset.

The capital funding amount to be allocated to block grant authorities for 2022 is \$194,492,000. This is an increase of \$15,647,000 over the 2021 base assistance amount of \$178,845,000. The indexation percentage reflects year-on-year movement, from 2020 to 2021, in building prices and wage costs and changes to full-time equivalent student enrolments in non-government schools. Annual indexation ensures the capital funding amount retains its value.

The indexation percentage was most recently prescribed in 2017. From 2018 to 2021 the base assistance amount for capital funding was updated by amendments to the Principal Regulation.

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

Article 13 of the ICESCR 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 increasing the amount of capital funding available for block grant authorities for use in providing financial support for capital projects at non-government schools. The Australian Government's Capital Grants Program provides funding for non-government school communities to assist primary and secondary schools to improve capital infrastructure where they otherwise may not have access to sufficient capital resources. Capital funding provides a wide range of new infrastructure and upgrades to existing facilities, such as general and specialist learning areas, libraries, STEM facilities and outdoor learning areas.

This measure will thereby 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.

The Hon Jason Clare MP
Minister for Education

Detailed explanation of the provisions of the *Australian Education Amendment (2022 Capital Funding Indexation) Regulations 2022*

Section 1 – Name

This section provides that the title of this instrument is the *Australian Education Amendment (2022 Capital Funding Indexation) Regulations 2022* (the Amendment Regulations).

Section 2 – Commencement

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

Australian Education Regulation 2013

Item 1 – At the end of regulation 24A

Section 68 of the Act sets the limit on the total amount of capital funding for block grant authorities for a year. Paragraph 68(1)(b) of the Act provides that the total amount of capital funding for a year must not exceed the base assistance amount for the year, as indexed in accordance with subsection 68(2), or the amount prescribed in the regulations as the base assistance amount for the year.

Subsection 68(2) provides that the base assistance amount for a year is indexed by multiplying the base amount for the previous year by the indexation percentage.

Subsection 68(3) provides that the ***indexation percentage*** is 100%, or another percentage (whether more or less than 100%) prescribed in the regulations for the purposes of this paragraph. This means that the limit on the total amount of capital funding for block grant authorities for 2022 is the base assistance amount for 2021, multiplied by the applicable indexation percentage.

Section 24AA of the Principal Regulation currently prescribes that the base assistance amount for 2021 is \$178,845,000.

This item amends section 24A to prescribe an indexation percentage of 108.75% for 2022.

When the indexation percentage is applied to the current capital funding amount, the amount to be allocated to block grant authorities for 2022 is \$194,492,000. This is an increase of \$15,647,000 over the 2021 base assistance amount of \$178,845,000.