

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Education

Australian Education Act 2013

Australian Education Amendment (2023 Capital Funding) Regulations 2023

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 block grant authorities for non-government schools. Capital funding for non-government schools is distributed to the relevant block grant authority for such schools. 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 Commonwealth financial assistance under the Act, including block grant authorities, must meet and maintain the conditions of approval outlined in the Act.

The *Australian Education Regulations 2023* (the Principal Regulations) contain 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 commenced on 1 January 2014. The Principal Regulations commenced on 21 July 2023, repealing the *Australian Education Regulations 2013* and replacing it in substantially the same form.

Purpose and operation of amendments

The purpose of the *Australian Education Amendment (2023 Capital Funding) Regulations 2023* (the Amendment Regulations) is to prescribe the indexation percentage for capital funding for block grant authorities for non-government schools for 2023.

The indexation percentage for 2023 will be set at 110.94% under paragraph 68(3)(b) of the Act.

In calculating the indexation percentage for 2023, the Minister for Education considered changes in indexes of building prices and wage costs, and changes in student enrolments in non-government schools.

The capital funding amount available to be allocated for block grant authorities for 2023 is \$215,769,000. This is an increase of \$21,277,000 from the 2022 amount of \$194,492,000.

The indexation percentage was most recently prescribed in 2022.

Regulation Impact Statement

The Office of Impact Analysis (OIA) has agreed a Regulation Impact Statement is not required in relation to the 2023 capital funding indexation percentage (OIA23-04957).

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 on 23 May 2023 to formally consult on the Amendment Regulations. The Department of Education received responses that were supportive of the proposed amendments, and no changes to the proposed amendments were requested.

Statement of Compatibility with Human Rights

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

Australian Education Amendment (2023 Capital Funding) Regulations 2023

The *Australian Education Amendment (2023 Capital Funding) Regulations 2023* (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* (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 block grant authorities for non-government schools. Capital funding for non-government schools is distributed 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 Regulations 2023* (the Principal Regulations) 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 (2023 Capital Funding) Regulations 2023* (the Amendment Regulations) is to prescribe the indexation percentage for capital funding for block grant authorities for non-government schools for 2023.

The indexation percentage for 2023 will be set at 110.94% under paragraph 68(3)(b) of the Act.

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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 legal guardians to choose non-government schools for their children's education, provided those schools conform to minimum educational standards as may be laid down or approved by the government. 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, Science, Technology, Engineering and Mathematics 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 (2023 Capital Funding) Regulations 2023*

Section 1 – Name

This section provides that the title of this instrument is the *Australian Education Amendment (2023 Capital Funding) Regulations 2023* (the Amendment Regulations).

Section 2 – Commencement

The table in this section provides that the Amendment Regulations commence on the day after it is 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 term.

Schedule 1 – Amendments

Australian Education Regulations 2023

Item 1 – At the end of section 24A

This item amends section 24A of the *Australian Education Regulations 2023* to prescribe, for paragraph 68(3)(b) of the Act, an indexation percentage of 110.94% for 2023.

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) of the Act 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 prescribed in the regulations for the purposes of that paragraph. This means that to calculate the total amount of capital funding available for block grant authorities for non-government schools for a year, the indexation percentage is multiplied by the base assistance amount for the previous year. For 2023, the base assistance amount will therefore be the 2022 base assistance amount multiplied by 110.94%.

When the indexation percentage of 110.94% is applied to the 2022 base assistance amount and the outcome of that calculation is rounded to the nearest multiple of \$1000 in accordance with subsection 68(5) of the Act, the amount available to be allocated for block grant authorities for 2023 is \$215,769,000. This is an increase of \$21,277,000 over the 2022 base assistance amount of \$194,492,000.