

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Education

Australian Education Act 2013

*Australian Education Amendment (Capital Funding Indexation and Other Measures)
Regulations 2024*

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 130(3) of the Act, the regulations may allow the Minister for Education (the Minister) to determine matters in relation to anything for which regulations may be made. Subsection 130(4) of the Act provides that the regulations may provide in relation to a matter by applying, adopting or incorporating any matter contained in any other instrument or other writing as in force or existing from time to time.

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.

PURPOSE AND OPERATION

The Act provides a framework for the Australian Government to provide Commonwealth financial assistance as grants to states and territories for distribution to approved authorities for government and non-government schools, and to block grant authorities. 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.

Capital funding for non-government schools is distributed to the relevant block grant authority for a school. A block grant authority is a body corporate that is approved for a non-government school by the Minister under the Act.

The *Australian Education Regulations 2023* (the Principal Regulations) contain provisions concerning the conditions and calculations of Commonwealth financial assistance to states and territories for schools and matters relevant to the effective and efficient administration of that assistance.

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

The purpose of the proposed *Australian Education Amendment (Capital Funding Indexation and Other Measures) Regulations 2024* (the Amendment Regulations) is to prescribe the

indexation percentage for capital funding for block grant authorities for non-government schools for 2024. Subsection 68(3) of the Act provides that the indexation percentage is 100% or, if the regulations prescribe another percentage for the purposes of paragraph 68(3)(b), that percentage. The indexation percentage for 2024 will be set at 108.85% for the purposes of paragraph 68(3)(b) of the Act. This means the capital funding amount available to be allocated for block grant authorities for 2024 is \$234,865,000. This is an increase of \$19,096,000 from the 2023 amount of \$215,769,000. The indexation percentage was most recently prescribed in 2023.

In calculating the indexation percentage for 2024, the Minister for Education considered changes in indexes of building prices and wage costs, and changes in student enrolments in non-government schools, as required under subsection 68(4) of the Act. The indexes of building prices and wage costs are prescribed in section 24B of the Principal Regulations.

The Amendment Regulations also empower the Minister to prescribe, by legislative instrument, certain guidelines and documents that are referenced in the Principal Regulations; and to make determinations in relation to those documents. This will ensure that they are effectively incorporated into the Principal Regulations and have effect as required.

IMPACT ANALYSIS

The Office of Impact Analysis (OIA) has agreed an Impact Analysis is not required in relation to the Amendment Regulations (OIA23-06289).

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 July 2024 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 (Capital Funding Indexation and Other Measures) Regulations 2024

The *Australian Education Amendment (Capital Funding Indexation and Other Measures) Regulations 2024* (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) provides a framework for providing grants of Commonwealth financial assistance to states and territories for distribution to approved authorities for government and non-government schools, including block grant authorities. 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) contain provisions concerning the conditions and calculations of Commonwealth financial assistance to States and Territories for schools and matters relevant to the effective and efficient administration of that assistance.

The purpose of the proposed Amendment Regulations is to prescribe the indexation percentage for capital funding for block grant authorities for non-government schools for 2024.

The indexation percentage for 2024 will be set at 108.85% for the purposes of paragraph 68(3)(b) of the Act.

In calculating the indexation percentage for 2024, the Minister for Education considered changes in indexes of building prices and wage costs and changes in student enrolments in non-government schools, as required under subsection 68(4) of the Act.

The capital funding amount available to be allocated for block grant authorities for 2024 is \$234,865,000. This is an increase of \$19,096,000 from the 2023 amount of \$215,769,000.

The indexation percentage was most recently prescribed in 2023.

The purpose of the proposed Amendments Regulations is also to empower the Minister to prescribe, by legislative instrument, certain guidelines and documents that are referenced in the regulations; or to make determinations in relation to those documents.

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.

The Amendment Regulations empower the Minister to prescribe, by legislative instrument, certain guidelines and other documents that are referenced in the regulations. The documents authorised to be incorporated by the Amendment Regulations are the *Capacity to Contribute Data Validation and Quality Assurance Process*, the *Capital Grants Program Guidelines*, the *Choice and Affordability Fund Guidelines*, the *DMI methodology document*, the *Ministerial Council disability guidelines*, the *NAPLAN Online Data Extract Dictionary* and the *Non-Government Reform Support Fund Guidelines*. These documents provide for matters relevant to providing grants for recurrent funding for schools, capital funding and funding for non-government representative bodies. They also provide for matters relevant to the collection of information from approved authorities, which are the entities authorised to receive funding under the Act, in relation to students with disability and students undertaking the National Assessment Program – Literacy and Numeracy assessments. These documents are published and can be freely accessed and used by members of the public.

This measure promotes the right to education by providing the necessary framework to give effect to the funding arrangements for school education under the Act.

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

AUSTRALIAN EDUCATION AMENDMENT (CAPITAL FUNDING INDEXATION AND OTHER MEASURES) REGULATIONS 2024

EXPLANATION OF PROVISIONS

Section 1 – Name

This section provides that the title of this instrument is the *Australian Education Amendment (Capital Funding Indexation and Other Measures) Regulations 2024* (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 – Capital funding indexation

Australian Education Regulations 2023

Item 1 – At the end of section 24A

This item will amend section 24A of the *Australian Education Regulations 2023* to prescribe, for paragraph 68(3)(b) of the Act, an indexation percentage of 108.85% for 2024.

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 paragraph 68(3)(b). This means that to calculate the total amount of capital funding available for block grant authorities for non-government schools for a year (the base assistance amount), the indexation percentage is multiplied by the base assistance amount for the previous year. For 2024, the base assistance amount will therefore be the 2023 base assistance amount multiplied by 108.85%.

When the indexation percentage of 108.85% is applied to the 2023 base assistance amount, the amount available to be allocated for block grant authorities for 2024 (rounded to the nearest multiple of \$1000 in accordance with subsection 68(5) of the Act) is \$234,865,000. This will be an increase of \$19,096,000 over the 2023 base assistance amount of \$215,769,000.

Schedule 2 – Guidelines and other documents

Items 1 to 7 – Definitions in subsection 4(1)

Items 1 to 7 of Schedule 2 to the Amendment Regulations will insert a new definition and repeal and replace six existing definitions of guidelines and other documents that are referred to in the regulations. These are the definitions of the following documents:

1. ***Capacity to Contribute Data Validation and Quality Assurance Process;***
2. ***Capital Grants Program Guidelines;***
3. ***Choice and Affordability Fund Guidelines;***
4. ***DMI methodology document;***
5. ***Ministerial Council disability guidelines;***
6. ***NAPLAN Online Data Extract Dictionary;***
7. ***Non-Government Reform Fund Guidelines.***

In each case, the amended definition replicates the existing definition for the document, but replaces reference to the document as existing from time to time with reference to the Minister prescribing the document for the purposes of the regulations. This refers to the new powers for the Minister to prescribe guidelines and documents in section 5A (see item 9). These documents can be freely accessed and used by member so the public. With the exception of the Ministerial Council disability guidelines and the NAPLAN Online Data Extract Dictionary, the documents are published on the Department of Education website (www.education.gov.au); the Ministerial Council disability guidelines are published on the Nationally Consistent Collection of Data on School Students with Disability website (www.nccd.edu.au); and the NAPLAN Online Data Extract Dictionary is published on the website of the Australian Curriculum Assessment and Reporting Authority (www.acara.gov.au).

Item 8 – Definition in subsection 4(1)

This item will repeal and replace the existing definition of ‘student with a disability’. The amended definition replicates the existing definition, but removes reference to the Ministerial Council disability guidelines being prescribed for a year, as these guidelines may be prescribed for multiple years.

Item 9 – After section 5

This item will insert section 5A, which provides that for the purposes of a definition in subsection 4(1), the Minister may, by legislative instrument, determine that guidelines or other documents are prescribed for the purposes of the regulations. This will ensure that documents that may have legislative effect when incorporated into the regulations are

subject to the publication and scrutiny processes for legislative instruments set out in the *Legislation Act 2003*.

Items 10 and 11 – Section 17A

These items will amend section 17A to remove and amend references to the Ministerial Council disability guidelines being prescribed for a year, as these guidelines may be prescribed for multiple years.

Items 12 and 13 – Paragraph 23(1)(c) and note

These items will amend paragraph 23(1)(c) of the Principal Regulations and repeal the note to the paragraph as a consequence of the insertion of the new definition of the *Capacity to Contribute Data Validation and Quality Assurance Process* document and its prescription under new section 5A (see items 1 and 8).

Item 14 – Paragraph 25B(1)(c)

Subsection 25B(1) of the Principal Regulations sets out matters relevant to the Minister or their delegate determining an amount of financial assistance under section 70 of the Act (Funding for non-government representative bodies). One relevant consideration is any written arrangement entered between the Secretary and the non-government representative body relating to that financial assistance (paragraph 25B(1)(c)).

Item 14 will repeal and replace the paragraph with a new paragraph in much the same terms, but stipulates that the relevant arrangement is one determined by the Minister. The purpose of the additional language is to make it clear that the Minister is determining a matter as permitted under subsection 130(3) of the Act. This ensures that the relevant arrangements are properly incorporated into the regulations as relevant considerations for the exercise of the power in section 70 of the Act.

Items 15 and 16 – Paragraph 31(1)(d) and paragraph 36(7)(c)

Subsection 31(1) of the Principal Regulations requires a non-government representative body to spend, or commit to spend, financial assistance under the Act in accordance with several requirements specified in that subsection, including any written arrangement between the Secretary and the non-government representative body (paragraph 31(1)(d)).

Item 15 will repeal paragraph 31(1)(d) and substitute it with a paragraph that requires a non-government representative body to spend or commit to spend financial assistance in accordance with any arrangement between the Secretary and the non-government representative body, if the Minister has determined by legislative instrument that financial assistance must be spent in accordance with that arrangement.

Subsection 36(7) of the Principal Regulations requires a non-government representative body to give the Secretary a report or reports in accordance with several requirements specified in that subsection, including any written arrangement between the Secretary and the non-government representative body (paragraph 36(7)(c)).

Item 16 will repeal paragraph 36(7)(c) and substitute it with a paragraph that requires a non-government representative body to give the Secretary a report or reports in accordance with any arrangement between the Secretary and the non-government representative body, if the Minister has determined by legislative instrument that reports must be given in accordance with that arrangement.

As for the amendments made by items 9 and 14, these amendments will enable the proper incorporation, publication and scrutiny of documents that may have legislative effect for the purposes of the regulations.

Items 17, 18 and 19 – subsection 52(5), paragraph 58A(2)(e) and subsection 58A(6)

These items will amend subsection 52(5), paragraph 58A(2)(e) and subsection 58A(6) of the Principal Regulations to remove references to the Ministerial Council disability guidelines being prescribed for a year, as these guidelines may be prescribed for multiple years.