

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Education

Australian Education Regulations 2023

Australian Education Regulations (Prescription of Guidelines and Documents) Determination 2024

AUTHORITY

The *Australian Education Regulations (Prescription of Guidelines and Documents) Determination 2024* (the Determination) is made under section 5A and subparagraphs 31(1)(d)(ii) and 36(7)(c)(ii) of the *Australian Education Regulations 2023* (the Regulations).

A determination made under section 5A of the Regulations is a legislative instrument for the purposes of the *Legislation Act 2003*.

PURPOSE AND OPERATION

The *Australian Education Act 2013* (the Act) is the principal legislation by which the Australian Government provides Commonwealth financial assistance for schools.

The Regulations contain a number of provisions concerning the conditions and calculations 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.

Section 5A of the Regulations empowers the Minister to determine by legislative instrument that guidelines and documents are prescribed for the purposes of the Regulations. Subparagraphs 31(1)(d)(ii) and 36(7)(c)(ii) empowers the Minister to determine by legislative instrument that financial assistance must be spent in accordance with any written arrangements between the Secretary and a non-government representative body relating to financial assistance payable to the body.

The Determination prescribes certain guidelines and documents for the purposes of the Regulations.

The Determination prescribes certain guidelines and documents that are referenced in the Regulations. These guidelines and other documents variously set out ways of doing things for the purposes of the Regulations; set out requirements for collection and provision of data for the purposes of the Regulations; and set out requirements, practices and procedures for administering funding under the Act. These documents are prepared and published specifically for the purposes of the Regulations.

IMPACT ANALYSIS

The Office of Impact Analysis (OIA) has advised no Impact Analysis is required for the Determination because it will have no more than a minor regulatory impact (OIA23-06289).

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 this Determination. The Department of Education received responses that were supportive of the Determination, and no changes to the Determination were requested.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Australian Education Regulations (Prescription of Guidelines and Documents) Determination 2024

The *Australian Education Regulations (Prescription of Guidelines and Documents) Determination 2024* (the Determination) 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 Determination prescribes certain guidelines and documents that are referenced in the Regulations. These guidelines and other documents variously set out ways of doing things for the purposes of the Regulations; set out requirements for collection and provision of data for the purposes of the Regulations; and set out requirements, practices and procedures for administering funding under the Act. These documents are prepared and published specifically for the purposes of the Regulations.

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 *Australian Education Regulations 2023* (the Regulations) under section 5A empowers the Minister to prescribe, by legislative instrument, certain guidelines and other documents that are referenced in the regulations. The Determination prescribes under section 5A 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.

Subparagraphs 31(1)(d)(ii) and 36(7)(c)(ii) also empower the Minister to determine by legislative instrument that financial assistance must be spent in accordance with a written arrangements between the Secretary and a non-government representative body relating to financial assistance payable to the body.

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 Determination is 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 REGULATIONS (PRESCRIPTION OF GUIDELINES AND DOCUMENTS) DETERMINATION 2024

EXPLANATION OF PROVISIONS

Section 1 – Name

This section provides that the title of this instrument is the *Australian Education Regulations (Prescription of Guidelines and Documents) Determination 2024* (the Determination).

Section 2 – Commencement

This section provides that the Determination commences on the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the Determination is made under section 5A, and subparagraphs 31(1)(d)(ii) and 36(7)(c)(ii) of the *Australian Education Regulations 2023* (the Regulations).

Section 4 – Definition

This section provides that in the Determinations ‘Regulations’ means the *Australian Education Regulations 2023*.

Section 5 – Guidelines

This section prescribes, for the purposes of subsection 5A(1) of the Regulations, the following guidelines:

- Capital Grants Program Guidelines;
- Choice and Affordability Fund Guidelines;
- Ministerial Council disability guidelines;
- Non-Government Reform Support Fund Guidelines.

Subsection 5A(1) of the Regulations provides that, for the purposes of a definition in subsection 4(1), the Minister may, by legislative instrument, determine that guidelines are prescribed for the purposes of the Regulations.

Subsection 4(1) of the Regulations provides in the definitions for Capital Grants Program Guidelines, Choice and Affordability Fund Guidelines and Non-Government Reform Support Fund Guidelines that these guidelines are issued by the Department and are prescribed by the Minister for the purposes of the Regulations from time to time. All of these guidelines are published, may be used by members of the public and can be freely accessed on the Department of Education’s website (www.education.gov.au).

For the Ministerial Council disability guidelines, the definition in subsection 4(1) provides that these guidelines are the guidelines for the Nationally Consistent Collection of Data on School Students with Disability approved by the Ministerial Council and prescribed by the Minister for the purposes of the Regulations from time to time. These guidelines are published, may be used by members of the public and can be freely accessed on the

Nationally Consistent Collection of Data on School Students with Disability's website (www.nccd.edu.au).

Subsection 130(4) of the *Australian Education Act 2013*, the enabling legislation for the Regulations, provides that despite subsection 14(2) of the *Legislation Act 2003*, 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.

The notes to section 5 provide details of the websites where the prescribed guidelines are published and can be freely accessed and used by members of the public.

Section 6 – Documents

This section prescribes, for the purposes of subsection 5A(2) of the Regulations, the following documents:

- Capacity to Contribute Data Validation and Quality Assurance Process;
- DMI methodology document;
- NAPLAN Online Data Extract Dictionary.

Subsection 5A(2) of the Regulations provides that, for the purposes of a definition in subsection 4(1), the Minister may, by legislative instrument, determine that guidelines are prescribed for the purposes of the Regulations.

Subsection 4(1) provides in the definition for the Capacity to Contribute Data Validation and Quality Assurance Process that this document is published by the Department and prescribed by the Minister for the purposes of the Regulations from time to time. This document is published, may be used by members of the public and can be freely accessed on the Department of Education's website (www.education.gov.au).

Subsection 4(1) provides in the definition for the DMI methodology document that this document is issued by the Department and prescribed by the Minister for the purposes of the Regulations from time to time. This document is published, may be used by members of the public and can be freely accessed on the Department of Education's website (www.education.gov.au).

Subsection 4(1) provides in the definition for the NAPLAN Online Data Extract Dictionary that this document is issued by ACARA and prescribed by the Minister for the purposes of the Regulations from time to time. This document is published, may be used by members of the public and can be freely accessed on ACARA's website (www.acara.edu.au).

Subsection 130(4) of the *Australian Education Act 2013*, the enabling legislation for the Regulations, provides that despite subsection 14(2) of the *Legislation Act 2003*, 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.

The notes to section 6 provide details of the websites where the prescribed documents are published and can be freely accessed and used by members of the public.

Section 7 – Written arrangements with non-government representative bodies

Subparagraphs 31(1)(d)(ii) and 36(7)(c)(ii) of the Regulations provide that the Minister may determine, by legislative instrument, that financial assistance must be spent and reports must be given in accordance with a written arrangement between the Secretary and a non-government body.

Section 7 prescribes, for the purposes of subparagraphs 31(1)(d)(ii) and 36(7)(c)(ii) of the Regulations, written arrangements between the Secretary and a non-government body relating to financial assistance payable to the body under Division 4 of Part 5 of the *Australian Education Act 2013*. This section prescribes arrangements relating to spending financial assistance and providing reports with the following non-government representative bodies:

- Catholic Schools NSW Limited;
- Catholic Education Commission of Victoria Ltd;
- Queensland Catholic Education Commission;
- Catholic Education Western Australia Limited;
- South Australian Commission for Catholic Schools;
- Catholic Education Centre (Tasmania);
- Trustees for Catholic Education Office Archdiocese of Canberra & Goulburn
- Catholic Education Office (Northern Territory);
- Association of Independent Schools of NSW;
- Independent Schools Victoria;
- Independent Schools Queensland;
- Association of Independent Schools of Western Australia;
- Association of Independent Schools of South Australia (AISSA);
- Independent Schools Tasmania;
- Association of Independent Schools of the ACT;
- Association of Independent Schools of the Northern Territory.

These agreements are incorporated as in force at 15 January 2024. Additionally, the agreements are published, may be used by members of the public and can be freely accessed on the Department of Education's website (www.education.gov.au).

The note to section 7 provides details of the website where prescribed written arrangements are published and can be freely accessed and used by members of the public.