

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2013 No. 48**

*Indigenous Education (Targeted Assistance) Act 2000*

*Indigenous Education (Targeted Assistance) Amendment Regulation 2013 (No. 1)*

#### **Authority**

The *Indigenous Education (Targeted Assistance) Act 2000* (the Act) provides for Commonwealth financial assistance to advance the education of Indigenous persons.

Section 18 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 14B of the Act sets out the appropriations for non-ABSTUDY payments for the period from 1 January 2009 to 30 June 2013. Non-ABSTUDY payments are payments (other than ABSTUDY payments) made for the purposes of the Act to organisations, institutions and individuals. Payments are made under a number of Indigenous education programs.

Subsection 14B(2) of the Act allows the making of regulations to increase the appropriations provided in subsection 14B(1) by reference to changes in a specified index. The index specified for this purpose in the *Indigenous Education (Targeted Assistance) Regulations 2001* (the Principal Regulations) is the Wage Cost Index Number 1 (WCII) for 2012.

#### **Purpose and operation**

The purpose of the *Indigenous Education (Targeted Assistance) Amendment Regulation 2013 (No. 1)* (the Regulation) is to make provision for an increase in the amounts that may be payable to organisations, institutions and individuals under section 14B of the Act in order to supplement the cost of delivering educational services to Indigenous students for the period 1 January 2012 to 30 June 2013 in line with changes in the WCII. The WCII for 2012 is 1.7 per cent.

The Regulation amends the Principal Regulations to provide for increases in the appropriations for non-ABSTUDY payments set out in subsection 14B(1) of the Act. The Regulation has the effect of increasing the amount stated in item 4 of the table in subsection 14B(1) by a factor of 1.073. Due to budget modelling which draws on original funding decisions, some of the underpinning programs do not attract indexation. Ninety per cent of the programs under the Act are however indexed. This increase reflects the change in the WCII for the 2012 calendar year and has the effect of providing an additional \$7.73 million to the appropriation in the 1 January 2012 to 30 June 2013 period.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

### Commencement

The Regulation commences on the day after it is registered on the Federal Register of Legislative Instruments.

### Consultation

The Regulation has the effect of increasing the funding amounts payable under the Act. As the increase in funding amounts has a beneficial effect on stakeholders, consultation was not undertaken as it was not considered necessary.

## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

*Indigenous Education (Targeted Assistance) Amendment Regulation 2013 (No. 1)*

This legislative instrument 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 of the Legislative Instrument

The legislative instrument makes provision for an increase in the amounts that may be payable to organisations, institutions and individuals under section 14B of the *Indigenous Education (Targeted Assistance) Act 2000* (the Act) in order to supplement the cost of delivering educational services to Indigenous students for the period 1 January 2012 to 30 June 2013 in line with changes in the Wage Cost Index Number 1 (WC11) 2012, which is 1.7 per cent.

The legislative instrument amends the *Indigenous Education (Targeted Assistance) Regulations 2001* (the Principal Regulations) to provide for increases in the appropriations for non-ABSTUDY payments set out in subsection 14B(1) of the Act. The legislative instrument has the effect of increasing the amount stated in item 4 of the table in subsection 14B(1) by a factor of 1.073.

Because of budget modelling which draws on original funding decisions, some of the underpinning programs do not attract indexation. Some 90% of the programs under the Act are indexed. This increase reflects the change in the WC11 for the 2012 calendar year and has the effect of providing an additional \$7.73 million to the appropriation in the 1 January 2012 to 30 June 2013 period.

### Human Rights Implications

#### Right to education

The legislative instrument engages the right to education contained in Article 13 of the International Covenant on Economic, Social and Cultural Rights. In particular, the amendment to the Principal Regulations will provide an additional \$7.73 million of funding for non-ABSTUDY payments for the period 1 January 2012 to 30 June 2013. This will have the effect of increasing the funding provided by the Australian Government to improve educational outcomes for Indigenous Australians.

To the extent that the right to education is engaged, this right is promoted as the legislative instrument will enable an increased level of funding to be available for non-ABSTUDY payments to be made under the Act.

#### Equality and Non-discrimination

The Regulation, to an extent, also engages the rights of equality and non-discrimination which are contained in articles 2 and 26 of the International Covenant on Civil and Political

Rights as funding arising from the Regulation will be directed to educational programs which specifically target and benefit Indigenous Students.

### *Special Measures*

Article 1(4) of the International Convention on the Elimination of All Forms of Racial Discrimination provides however that ‘special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence lead to the maintenance of separate rights for different racial groups and they shall not be continued after the objectives for which they were taken have been achieved’.

The direction of funds to education based programs for Indigenous students is a ‘special measure’ which is not discriminatory as it is an initiative designed to benefit and ensure the improved educational attainment of Indigenous students. The education programs funded under the Act and supplemented by the indexation arising from the Regulation are appropriate, legitimate and necessary in a democratic society and respect the principles of fairness and proportionality while being temporary as they are aligned with the national Aboriginal and Torres Strait Islander Education Policy, and the Australian Government’s Indigenous Reform Agenda through the nationally integrated ‘Closing the Gap’ strategy agreed to by the Council of Australian Governments (COAG). COAG has agreed to specific timeframes for achieving six ‘Closing the Gap’ targets relating to, amongst other things, Indigenous education.

### **Conclusion**

The legislative instrument is compatible with human rights because it promotes the right to education by supporting the improvement of educational outcomes through the provision of additional funding for non-ABSTUDY payments under the Act. It is also a special measure designed to ensure the improved educational attainment of Indigenous students.