

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Education

Australian Education Act 2013

Australian Education Amendment (Schools Upgrade Fund) 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 130(3) of the Act provides that those regulations may allow the Minister to determine matters in relation to anything in relation to which regulations may be made.

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, the Commonwealth provides financial assistance to States and Territories for distribution to approved authorities for government and non-government schools. Entities approved to receive Commonwealth financial assistance under the Act, including States and Territories in their capacity as approved authorities for government schools, must meet and maintain the conditions of approval outlined in the Act.

The *Australian Education Regulation 2013* (the Principal Regulation) contains a number of provisions concerning conditions and calculations of Commonwealth financial assistance for schools, matters relevant to the effective and efficient administration of that financial 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 (Schools Upgrade Fund) Regulations 2022* (the Amendment Regulations) is to support the implementation of the Schools Upgrade Fund. The Schools Upgrade Fund would provide \$50 million for schools to upgrade their learning facilities to support students.

The Schools Upgrade Fund is intended to help support more equitable access to resources for students and schools, to help keep students safe and get their education back on track after disruptions caused by the COVID-19 pandemic. Funding would be provided through an \$18 million Targeted Round, and an \$32 million Open Round. The Targeted Round would provide additional financial assistance for schools in relation to election commitments made to those schools. The Open Round would provide financial assistance for schools to provide improved learning facilities to support students in a COVID-19 safe environment such as to improve ventilation and air quality and make other small-scale improvements to school facilities and equipment. All schools that receive funding under the Act and have students enrolled at the time of application, including both government and non-government schools, are eligible to apply for the Open Round.

This additional funding is to be delivered under section 69A of the Act. Section 69A of the Act provides for funding in prescribed circumstances. The Minister may, in writing, determine an amount of financial assistance that is payable to a State or Territory for a school for a year under subsection 69A(1) of the Act if the Minister is satisfied that prescribed circumstances apply in relation to the school for that year.

The Amendment Regulations amends the Principal Regulation to enable the Minister to determine, under subsection 69A(1) of the Act, an amount of financial assistance payable to a State or Territory for a school for a year, if the Minister is satisfied that the school is located in a State or Territory that has been affected by the COVID-19 pandemic and there is a need for capital expenditure in relation to the school.

The Amendment Regulations do this by inserting a new Part 8 into Schedule 1 to the Principal Regulation to support the Schools Upgrade Fund. Division 1 of the new Part 8 supports implementation of the Targeted Round School Upgrades. Division 2 of the new Part 8 supports implementation of the Open Round School Upgrades. Each of these divisions would prescribe the following matters in relation to each round:

- the new circumstance, that the ‘the school is located in a State or Territory that has been affected by the COVID-19 pandemic and there is a need for capital expenditure in relation to the school’
- a limit to the amount of financial assistance that may be determined in relation to that new circumstance,
- requirements for how that financial assistance must be spent or committed to be spent, and
- a requirement for information, relating to that additional financial assistance, to be provided to the Secretary.

Regulation Impact Statement

The Office of Best Practice Regulation (OBPR) has assessed the Schools Upgrade Fund as having no regulatory impact and agreed a Regulation Impact Statement is not required in relation to the Schools Upgrade Fund (OBPR reference 22-02803).

Commencement

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

Consultation

The Program Guidelines for the Open and Targeted Rounds will be made available on the Department of Education's website.

The Schools Upgrade Fund election commitment was announced before the general election in 2022 as part of Labor's Plan to Help our Schoolkids Bounce Back.

In letters dated 21 October 2022, the Minister for Education wrote individually to all state and territory Education Ministers, Independent Schools Australia (ISA) and the National Catholic Education Commission (NCEC) to formally consult on the proposed Regulations.

Responses were received from NCEC, ISA, ACT, WA, QLD and VIC. Department officials engaged in further discussions with jurisdictions where requested which included WA, ISA and NCEC. The jurisdictions were broadly supportive of the regulation amendments and no changes 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 (Schools Upgrade Fund) Regulations 2022

The *Australian Education Amendment (Schools Upgrade Fund) 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.

The purpose of the *Australian Education Amendment (Schools Upgrade Fund) Regulations 2022* (the Amendment Regulations) is to support the implementation of the Schools Upgrade Fund. The Schools Upgrade Fund would provide \$50 million for schools to upgrade their learning facilities to support students.

The Schools Upgrade Fund is intended to help support more equitable access to resources for students and schools, to help keep students safe and get their education back on track after disruptions caused by the COVID-19 pandemic. Funding would be provided through an \$18 million Targeted Round, and an \$32 million Open Round. The Targeted Round would provide additional financial assistance for schools in relation to election commitments made to those schools. The Open Round would provide financial assistance for schools to provide improved learning facilities to support students in a COVID-19 safe environment such as to improve ventilation and air quality and make other small-scale improvements to school facilities and equipment.

This additional funding is to be delivered under section 69A of the Act. Section 69A of the Act provides for funding in prescribed circumstances. The Minister may, in writing, determine an amount of financial assistance that is payable to a State or Territory for a school for a year under subsection 69A(1) of the Act if the Minister is satisfied that prescribed circumstances apply in relation to the school for that year.

The Amendment Regulations amends the Principal Regulation to enable the Minister to determine, under subsection 69A(1) of the Act, an amount of financial assistance payable to a State or Territory for a school for a year, if the Minister is satisfied that the school is located in a State or Territory that has been affected by the COVID-19 pandemic and there is a need for capital expenditure in relation to the school.

The Amendment Regulations do this by inserting a new Part 8 into Schedule 1 of the Principal Regulation to support the Schools Upgrade Fund. Division 1 of the new Part 8 support implementation of the Targeted Round School Upgrades. Division 2 of the new Part 8 supports implementation of the Open Round School Upgrades. Each of these divisions would prescribe the following matters in relation to each round:

- the new circumstance that the ‘the school is located in a State or Territory that has been affected by the COVID-19 pandemic and there is a need for capital expenditure in relation to the school’
- a limit to the amount of financial assistance that may be determined in relation to that new circumstance,

- requirements for how the financial assistance must be spent or committed to be spent, and
- a requirement for information, relating to the additional financial assistance, to be provided to the Secretary.

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 supporting the implementation of the Schools Upgrade Fund, which will provide funding to upgrade their learning facilities to support students. It will provide additional support to both government and non-government schools in delivering quality education and will help to ensure Australia can continue to have functioning and sufficiently supported educational institutions. This measure will thereby have a beneficial impact on the right to education.

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 (Schools Upgrade Fund) Regulations 2022*

Section 1 – Name

This section provides that the title of this instrument is the *Australian Education Amendment (Schools Upgrade Fund) Regulations 2022* (the Amendment Regulations).

Section 2 – Commencement

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 terms.

Schedule 1 – Amendments

Australian Education Regulation 2013

Item 1 inserts new Part 8 into Schedule 1 of the Principal Regulation to provide for additional financial assistance for schools to upgrade their learning facilities to support students through the Schools Upgrade Fund.

Schedule 1, Part 8, Division 1 – Targeted Round School Upgrades

Division 1 of new Part 8 of Schedule 1 provides for additional financial assistance to be provided for schools, through the Targeted Round School Upgrades.

New clause 30 of Schedule 1 sets out the circumstance that the Minister must be satisfied apply in relation to a school, for this financial assistance under subsection 69A(1) of the Act. The circumstance is that the school is located in a State or Territory that has been affected by the COVID-19 pandemic and there is a need for capital expenditure in relation to the school.

New clause 31 of Schedule 1 prescribes the amount, for the purposes of paragraph 69A(4)(a) of the Act for 2022 and 2023, taken together, in relation to the circumstance mentioned above, to be \$18 million. The effect is that the total of the amounts that the Minister determines under subsection 69A(1) of the Act for 2022 and 2023, in relation to the circumstance mentioned above must not exceed the prescribed amount.

New subclause 32(1) sets out, for the purposes of paragraph 78(2)(a) of the Act, that an approved authority for a school must spend, or commit to spend, financial assistance that is payable for the school under subsection 69A(1) of the Act, in the circumstance mentioned in clause 30 of Schedule 1:

- on a project to upgrade the school that was a funding commitment made before the general election in 2022 by the party that formed government after that election; or
- in accordance with any written directions given by the Minister.

New subclause 32(2) provides that financial assistance mentioned in subclause 32(1) must be spent, or committed to be spent, before 1 January 2024, or as otherwise directed in writing by the Minister.

New subclause 32(3) provides that for the purposes of paragraphs 32(1)(b) and 32(2)(b) of the clause, the Minister may give written directions to an approved authority.

New subclause 32(4) provides that any interest earned on financial assistance mentioned in subclause 32(1) must be spent, or committed to be spent, in the same way as the financial assistance.

Any instrument made under new clause 32 of Schedule 1 that is of a legislative character would be registered in accordance with the *Legislation Act 2003*.

New subclause 33(1) sets out, for the purposes of paragraph 77(2)(f) of the Act, that an approved authority for a school must provide to the Secretary information determined, in writing, by the Minister.

New subclause 33(2) provides that information mentioned in subclause 33(1) must be provided to the Secretary in the manner, and by the day, determined by the Minister.

New subclause 33(3) provides that, for the purposes of subclauses 33(1) and 33(2) of the clause, the Minister may determine:

- information for a specified school or for a class of schools, which must relate to financial assistance that is payable under subclause 69A(1) of the Act in circumstance mentioned in clause 30 of Schedule; and
- the manner in which, and the day by which, such information is to be provided.

Any instrument made under new clause 33 of Schedule 1 that is of a legislative character would be registered in accordance with the *Legislation Act 2003*.

Schedule 1, Part 8, Division 2 – Open Round School Upgrades

Division 2 of new Part 8 of Schedule 1 provides for additional financial assistance for schools, through the Open Round School Upgrades.

Section 69A of the Act provides for funding in prescribed circumstances. The Minister may, in writing, determine an amount of financial assistance that is payable under subsection 69A(1) of the Act to a State or Territory for a school for a year if the Minister is satisfied that prescribed circumstances apply in relation to the school for that year.

New clause 34 of Schedule 1 sets out the circumstance for a school that the Minister must be satisfied apply in relation to a school, for this financial assistance under subsection 69A(1) of the Act. The circumstance is that the school is located in a State or Territory that has been affected by the COVID-19 pandemic and there is a need for capital expenditure in relation to the school.

New clause 35 of Schedule 1 prescribes the amount for the purposes of paragraph 69A(4)(a) of the Act for 2022 and 2023, taken together, in relation to these circumstance mentioned above, to be \$32 million. The effect is that the total of the amounts that the Minister determines under subsection 69A(1) for 2022 and 2023 in relation to the circumstance mentioned above must not exceed the prescribed amount.

New subclause 36(1) sets out, for the purposes of paragraph 78(2)(a) of the Act, that an approved authority for a school must spend, or commit to spend, financial assistance that is

payable for the school under subsection 69A(1) of the Act, in the circumstance mentioned in clause 34 of Schedule 1, in accordance with any written directions given by the Minister.

New subclause 36(2) provides that financial assistance mentioned in subclause 36(1) must be spent, or committed to be spent, before 1 January 2024, or as otherwise directed in writing by the Minister.

New subclause 36(3) provides that for the purposes of paragraphs 36(1) and 36(2)(b) of the clause, the Minister may give written directions to an approved authority.

New subclause 36(4) provides that any interest earned on financial assistance mentioned in subclause 36(1) must be spent, or committed to be spent, in the same way as the financial assistance.

Any instrument made under new clause 36 of Schedule 1 that is of a legislative character would be registered in accordance with the *Legislation Act 2003*.

New subclause 37(1) sets out, for the purposes of paragraph 77(2)(f) of the Act, that an approved authority for a school must provide to the Secretary information determined, in writing by the Minister.

New subclause 37(2) provides that information mentioned in subclause 37(1) must be provided to the Secretary in the manner, and by the day, determined by the Minister.

New subclause 37(3) provides that, for the purposes of subclauses 37(1) and 37(2) of the clause, the Minister may determine:

- information for a specified school or for a class of schools, which must relate to financial assistance that is payable under subsection 69A(1) of the Act in circumstance mentioned in clause 34 of Schedule; and
- the manner in which, and the day by which, such information is to be provided.

Any instrument made under new clause 37 of Schedule 1 that is of a legislative character would be registered in accordance with the *Legislation Act 2003*.