

## **EXPLANATORY STATEMENT**

### **Issued by the authority of a delegate of the Minister for Education**

#### *Australian Education Regulations 2023*

#### *Australian Education Regulations (Revised Written Arrangements with Non-government Representative Bodies) Amendment Determination 2025*

### **AUTHORITY**

The *Australian Education Regulations (Revised Written Arrangements with Non-government Representative Bodies) Amendment Determination 2025* (the Amendment Determination) is made under subparagraphs 31(1)(d)(ii) and 36(7)(c)(ii) of the *Australian Education Regulations 2023* (the Regulations).

Subsection 130(3) of the *Australian Education Act 2013* (Act) provides that the regulations may allow the Minister for Education (the Minister) to determine matters in relation to anything in relation to which regulations may be made.

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

Subsection 129(1) of the Act empowers the Minister to, by written instrument, delegate any of their powers and functions under ‘this Act’ (except for the powers and functions mentioned at subsection 129(2) of the Act) to the Secretary or an APS employee of the Department of Education (Department). Section 6 of the Act provides that references to ‘this Act’ includes the Regulations. In accordance with subsection 129(1) of the Act, the Minister has delegated their powers under subparagraphs 31(1)(d)(ii) and 36(7)(c)(ii) of the Regulations to certain persons, including SES employees in the Schools Group in the Department.

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.

Subsection 13(1) of the *Legislation Act 2003* provides that where enabling legislation confers power to make a legislative instrument, the *Acts Interpretation Act 1901* applies to that instrument as if it were an Act, unless a contrary intention appears. As subparagraphs 31(1)(d)(ii) and 36(7)(c)(ii) confer such a power, section 33(3) of the *Acts Interpretation Act 1901* applies, enabling the Minister to repeal, rescind, revoke, amend or vary the instrument accordingly.

## PURPOSE AND OPERATION OF AMENDMENTS

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 and matters relevant to the effective and efficient administration of that assistance.

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

The *Australian Education Regulations (Prescription of Guidelines and Documents) Determination 2024* (the Principal Determination) prescribes certain guidelines, documents and written arrangements for the purposes of the Regulations that are prepared and published specifically for the purposes of the Regulations. Section 7 of the Principal Determination determines, 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 representative body that financial assistance payable to the body under Division 4 of Part 5 of the Act must be spent, and reports must be given, in accordance with.

Certain bodies were approved as a non-government representative body for Catholic schools in the Australian Capital Territory and the Northern Territory on 1 January 2025, in place of bodies who were previously approved for these schools and the Secretary entered new written arrangements with each of those newly approved non-government representative body. The purpose of Schedule 1 to the Amendment Determination is to amend section 7 of the Principal Determination to determine for the purposes of subparagraphs 31(1)(d)(ii) and 36(7)(c)(ii) of the Regulations, the written arrangement that each new body must be spend financial assistance payable to the body under Division 4 of Part 5 of the Act, and give reports, in accordance with.

## CONSULTATION

The Department of Education wrote to the non-government representative body for Catholic schools in the Australian Capital Territory and the non-government representative body for Catholic schools in the Northern Territory on 26 August 2025 to formally consult on the Amendment Determination. The Amendment Determination was also provided to the other 14 non-government representative bodies. No issues concerning the Amendment Determination were raised with the Department of Education, and no changes to the Amendment 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 (Revised Written Arrangements with Non-government Representative Bodies) Amendment Determination 2025*

The *Australian Education Regulations (Revised Written Arrangements with Non-government Representative Bodies) Amendment Determination 2025* (the Amendment 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 *Australian Education Regulations (Prescription of Guidelines and Documents) Determination 2024* (the Principal Determination) prescribes certain guidelines, documents and written arrangements for the purposes of the *Australian Education Regulations 2023* (the Regulations) that are prepared and published specifically for the purposes of the Regulations.

Section 7 of the Principal Determination determines, for the purposes of purposes of subparagraphs 31(1)(d)(ii) and 36(7)(c)(ii) of the Regulations, written arrangements between the Secretary and a non-government representative body that financial assistance payable to the body under Division 4 of Part 5 of the *Australian Education Act 2013* (Act) must be spent, and reports must be given, in accordance with.

Certain bodies were approved as a non-government representative body for Catholic schools in the Australian Capital Territory and the Northern Territory on 1 January 2025, in place of bodies who were previously approved for these schools and written arrangements with former non-government representative bodies were novated to the newly approved non-government representative body. The Amendment Determination amends section 7 of the Principal Determination to determine for the purposes of purposes of subparagraphs 31(1)(d)(ii) and 36(7)(c)(ii) of the Regulations, the written arrangement that each new body must be spend financial assistance payable to the body under Division 4 of Part 5 of the Act, and give reports, in accordance with.

### Human rights implications

The Amendment Determination engages 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* (CRC).

#### *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.

Subparagraphs 31(1)(d)(ii) and 36(7)(c)(ii) of the Regulations empower the Minister to 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 representative body relating to financial assistance payable for 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. In particular, this measure facilitates the provision of financial assistance to non-government schools, thereby supporting the liberty of parents and legal guardians to choose non-government schools for their children's education.

### **Conclusion**

The Amendment Determination is compatible with human rights because it promotes the right to education under the ICESCR and the UNCRC.

**Delegate for the Minister for Education, Thea Richardson**

# AUSTRALIAN EDUCATION REGULATIONS (REVISED WRITTEN ARRANGEMENTS WITH NON-GOVERNMENT REPRESENTATIVE BODIES) AMENDMENT DETERMINATION 2025

## EXPLANATION OF PROVISIONS

### Section 1 – Name

This section provides that the title of this instrument is the *Australian Education Regulations (Revised Written Arrangements with Non-government Representative Bodies) Amendment Determination 2025* (the Amendment Determination).

### Section 2 – Commencement

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

### Section 3 – Authority

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

### 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.

The only instrument that is specified in the Schedule is the *Australian Education Regulations (Prescription of Guidelines and Documents) Determination 2024* (the Principal Determination).

### Schedule 1 – Amendments

*Australian Education Regulations (Revised Written Arrangements with Non-government Representative Bodies) Amendment Determination 2025*

#### **Items [1] to [5] – Section 7**

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 of the Principal Determination 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*. Section 7 of the Principal Determination prescribes the written arrangements by way of reference to a table. The non-government representative body named in column 2 of the table must spend financial assistance in accordance with and give reports in accordance with the written arrangements named in column 3 of the table.

*Item [1] – cell at table item 7, column 2 headed “Body”*

This item repeals the cell referring to “Trustees for Catholic Education Office Archdiocese of Canberra & Goulburn” and substitutes “Catholic Archdiocese of Canberra and Goulburn Education Limited”.

This amendment reflects the revocation of the approval of Trustees for Catholic Education Office Archdiocese Canberra & Goulburn, and the approval of Catholic Archdiocese of Canberra and Goulburn Education Limited, as the non-government representative body for Catholic schools in the Australian Capital Territory.

*Item [2] – cell at table item 7, column 3 headed “Written Arrangement”*

This item omits the words “revised 15 January 2024” and substitutes the words “revised 1 January 2025”.

This amendment reflects the novation of the *Choice and Affordability Fund Agreement 2020 to 2029* to Catholic Archdiocese of Canberra and Goulburn Education Limited on 1 January 2025.

*Item [3] – cell at table item 8, column 2 headed “Body”*

This item repeals the cell referring to “Catholic Education Office (Northern Territory)” and substitutes the “Catholic Church Diocese of Darwin Education Property Trust”.

This amendment reflects the revocation of the approval of Catholic Education Office (Northern Territory), and the approval of Catholic Church Diocese of Darwin Education Property Trust, as the non-government representative body for Catholic schools in the Northern Territory.

*Item [4] – cell at table item 8, column 3 headed “Written Arrangement”*

This item omits the words “revised 15 January 2024” and substitutes “revised 1 January 2025”.

This amendment reflects the novation of the *Choice and Affordability Fund Agreement 2020 to 2029* to Catholic Church Diocese of Darwin Education Property Trust on 1 January 2025.

*Item [5] – note 1 to table*

Note 1 to the table in section 7 explains that in 2024, the written arrangements in column 3 of the table in section 7 could be found on the Department’s website at [www.education.gov.au](http://www.education.gov.au)

Item 5 repeals note 1 to the table and substitutes it with a new note 1 to reflect that the written arrangements referred to in the amended table can be found on the Department’s website.