

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Education

Australian Education Act 2013

Australian Education Amendment (CTC Scores and Other Measures) Regulations 2025

AUTHORITY

Subsection 130(1) of the *Australian Education Act 2013* (the Act) provides that the Governor-General may 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 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. 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. Subsection 130(5) of the Act provides that, before the Governor-General makes a regulation for the purposes of a provision listed at paragraphs 130(5)(a) or (b), the Minister must consult with the Ministerial Council.

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 is the principal legislation by which the Australian Government provides Commonwealth financial assistance for schools.

Under the Act, financial assistance is provided to states and territories for distribution to entities approved to receive financial assistance under the Act, including approved authorities for government and non-government schools, block grant authorities for non-government schools (in order to provide capital funding for capital projects at such schools), and non-government representative bodies for non-government schools. Recurrent funding is provided to approved authorities for government and non-government schools.

The *Australian Education Regulations 2023* (the Principal Regulations) contain provisions concerning the calculation, indexation and setting of Commonwealth financial assistance to states and territories for schools, and for the effective and efficient administration of that financial assistance.

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

The purpose of the *Australian Education Amendment (CTC Scores and Other Measures) Regulations 2025* (Amendment Regulations) is to insert a new mechanism into Division 3 of Part 3 of the Principal Regulations for working out the capacity to contribute (CTC) score for a school for 2026. Division 2 of Part 3 of the Act contains the funding formula which produces the Commonwealth share of the total amount of recurrent funding for a school for a year. The school's 'base amount' for the year is an element of the funding formula, and is worked out with reference to the school's CTC percentage. A school's CTC percentage for a year reduces the amount of recurrent funding payable for the school for the year.

A school's CTC percentage is worked out by reference to the school's CTC score, as determined under section 52 of the Act. The CTC score is based on the ability of persons responsible for students at the school to contribute financially to the operation of the school. Section 52 does not apply in relation to government schools, special schools, special assistance schools, a school that is a majority Aboriginal and Torres Strait Islander school for a year, and sole provider schools. Instead, the CTC percentage for these schools is 0%.

The Amendment Regulations also amends the definition of "foundation" in section 4 of the Principal Regulations to put the term's interpretation beyond doubt. "Foundation" is a year (meaning 12 months) in the course of primary education. The definition of foundation is relevant to working out the number of primary students at a school. In relation to this measure, for the purposes of subsection 15(2) of the Act, the Minister has had regard to arrangements made for providing education at government schools located in each State and Territory.

COMMENCEMENT

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

CONSULTATION

The Minister wrote to all State and Territory Education Ministers, Independent Schools Australia, and the National Catholic Education Commission on 6 August 2025 to consult on an exposure draft of the Amendment Regulations. The department received varying responses to the proposed amendments.

Stakeholders were broadly supportive of the CTC score measure, with concerns raised by some stakeholders about the measure's potential broader implications for schools and the long-term arrangements. The department intends to continue to engage with stakeholders to address any concerns as the measure is implemented.

For the definition of "foundation" measure, stakeholders raised concerns about students who need to repeat for educational attainment purposes and broader implications for extended Foundation programs. The department considers, and will engage with stakeholders to clarify, that this measure will not affect students repeating for educational attainment purposes. Further, the department maintains this measure will clarify the intended meaning of "foundation". This meaning aligns provisions relating to the working out of a school's recurrent funding entitlement under the Principal Regulations to the

needs-based funding model for school education established by the Act. The department will engage with stakeholders to manage their concerns as the measure is implemented.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Australian Education Amendment (CTC Scores and Other Measures) Regulations 2025

The *Australian Education Amendment (CTC Scores and Other Measures) Regulations 2025* (the 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 of the Legislative Instrument

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

Under the Act, financial assistance is provided to states and territories for distribution to entities approved to receive financial assistance under the Act, including approved authorities for government and non-government schools, block grant authorities for non-government schools (in order to provide capital funding for capital projects at such schools), and non-government representative bodies for non-government schools. Recurrent financial assistance is provided to approved authorities for government and non-government schools.

The *Australian Education Regulations 2023* (the Principal Regulations) contain provisions concerning the calculation, indexation and setting of Commonwealth financial assistance to states and territories for schools, and for the effective and efficient administration of that financial assistance. The Amendment Regulations amend the Principal Regulations.

The purpose of the Amendment Regulations is to insert a new mechanism into Division 3 of Part 3 of the Principal Regulations for working out the capacity to contribute (CTC) score for a school for 2026. Division 2 of Part 3 of the Act contains the funding formula which produces the Commonwealth share of the total amount of recurrent funding for a school for a year. The school's 'base amount' for the year is an element of the funding formula, and is worked out with reference to the school's CTC percentage. A school's CTC percentage for a year reduces the amount of recurrent funding payable for the school for the year.

A school's CTC percentage is worked out by reference to the school's CTC score, as determined under section 52 of the Act. The CTC score is based on the ability of persons responsible for students at the school to contribute financially to the operation of the school. Section 52 does not apply in relation to government schools, special schools, special assistance schools, a school that is a majority Aboriginal and Torres Strait Islander school for a year, and sole provider schools. Instead, the CTC percentage for these schools is 0%.

The purpose of the Amendment Regulations is also to amend the definition of "foundation" in section 4 of the Principal Regulations to put the term's proper interpretation beyond doubt. "Foundation" is a year (meaning 12 months) in the course of primary education. The definition of foundation is relevant to working out the number of primary students at a school.

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 inserting a new mechanism for working out the CTC score for a school for 2026. This mechanism will provide greater funding certainty for non-government schools. This will support non-government schools to continue to financially plan and will ensure Australia can continue to have functioning and well-resourced educational institutions. This measure also supports the liberty of parents and legal guardians to choose non-government schools for their children by ensuring non-government schools receive targeted Commonwealth financial assistance according to a school community's capacity to financially contribute to a school.

The Amendment Regulations also promote the right to education by clarifying the definition of "foundation". This measure will simplify the process of interpreting the Principal Regulations for schools, thereby lessening the resource burden on schools in complying with the Principal Regulations.

This measure will thereby have a beneficial impact on the right to education by helping to ensure Australia continues to have efficient, functioning and sufficiently supported educational institutions.

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 (CTC SCORES AND OTHER MEASURES) REGULATIONS 2025

EXPLANATION OF PROVISIONS

Section 1 – Name

This section provides that the title of this instrument is the *Australian Education Amendment (CTC Scores and Other Measures) Regulations 2025* (the Amendment Regulations).

Section 2 – Commencement

This section provides that the Amendment Regulations commence on the day after they are 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.

Only the *Australian Education Regulations 2023* is specified in Schedule 1 to the instrument.

Schedule 1 – Amendments

Part 1 – CTC scores

Australian Education Regulations 2023 (the Principal Regulations)

Items [1] and [2] – Subsection 21(3) (heading and subsection 21(3))

Section 21 of the Principal Regulations provides, for the purposes of subsection 52(4) of the Act, the method for working out the number that the Minister for Education (the Minister) must determine as the capacity to contribute (CTC) score for a school for a year under subsection 52(1) of the Act (absent the exceptions set out in subsections 52(4) and (6) of the Act). The heading to subsection 21(3) of the Principal Regulations is “*CTC score for 2022 or later years*”. Subsection 21(3) provides that the number that the Minister must determine as the CTC score for a school for a year is either the average DMI score for the school for the year (worked out in accordance with section 22 of the Principal Regulations), or, if the Minister is satisfied of the circumstances described in subparagraphs 21(3)(b)(i) and (ii), the refined area based score for the school for the year (worked out in accordance with section 23 of the Principal Regulations).

Item 1 of the Amendment Regulations inserts “*(other than 2026)*” at the end of the heading to subsection 21(3) of the Principal Regulations. Item 2 of the Amendment Regulations

amends subsection 21(3) of the Principal Regulations by omitting “In working out” and substituting “Subject to subsection (4), in working out”. The purpose of these items is to exclude the usual mechanism for working out the CTC score for a school for 2026.

Item [3] – after subsection 21(3) (before the note)

Item 3 of the Amendment Regulations inserts a new subsection 21(4) after subsection 21(3) of the Principal Regulations, and before the note. New subsection 21(4) provides that the number that is to be determined as the CTC score for a school for 2026 is either:

(a) if the Minister has determined a number that is the CTC score for the school for 2025—that number; or

(b) if the Minister has not determined a number that is the CTC score for the school for 2025, the refined area based score for the school for 2026 worked out in accordance with subsections 23(2), (3), (5) and (6).

The purpose of this item is to give effect to the Australian Government’s commitment at the 2025 Federal Election that a school would have the same CTC score for 2025 and 2026. This election commitment was made in response to concerns from the non-government school sector about their ability to factor funding changes related to CTC score determinations into their operational budgets, particularly as CTC scores are determined in November of the previous year. This temporary measure is intended to enhance funding certainty for non-government schools for 2026 while the Commonwealth improves its processes to allow the CTC scores for schools for a year to be determined and published earlier than November of the previous year.

In certain circumstances, a school will need a CTC score for 2026 when they did not have a CTC score for 2025. This includes where the school is a new school in 2026 and where the school was a CTC score exempt school (i.e. a school that is listed in subsection 54(1) of the Act) for 2025 but is not a CTC score exempt school for 2026. Item 3 of the Amendment Regulations provides that such a school’s CTC score for 2026 is to be calculated by reference to the school’s refined area based score for 2026, rather than the school’s average DMI score for 2026, because it will generally not be reasonably practicable to calculate an average DMI score for a school for 2026 where it did not have a CTC score for 2025.

Item [4] – at the end of subsection 22(1)

Item 4 of the Amendment Regulations inserts a note to subsection 22(1) of the Principal Regulations that provides, for the avoidance of doubt, that a school’s DMI score for 2026 is worked out in accordance with the usual method for working out a school’s DMI score for a year under subsection 22(4) of the Principal Regulations. The DMI score for a school for 2026 is still relevant to working out the school’s average DMI scores, and therefore its CTC scores, for 2027, 2028 and 2029. The purpose of this amendment is to put beyond doubt that the Amendment Regulations do not affect the calculation of a school’s DMI score for 2026 for the purposes of calculating CTC scores for 2027, 2028 and 2029.

Item [5] – after subsection 22(3) and item [6] - after subsection 23(4)

Item 5 of the Amendment Regulations inserts a new subsection 22(3A) to the Principal Regulations, and item 6 of the Amendment Regulations inserts a new subsection 23(4A) to the Principal Regulations. New subsections 22(3A) and 23(4A) provide that, in applying subsections 22(3) and 23(4) respectively, for a small or a very small school for 2027, the school's CTC score for 2026 is taken to be the number that would, but for new subsection 21(4) as inserted by item 3 of the Amendment Regulations, have been the school's CTC score for 2026.

Subsections 22(3) and 23(4) of the Principal Regulations provide that, if the average DMI score or the refined area based score respectively, of a small school or a very small school, is three or more higher or lower than the school's CTC score for the previous year, it is taken to be either two higher or two lower (as applicable) than the school's CTC score for the previous year. These provisions cap the annual change in average DMI and refined area based scores (and as a result, CTC scores) for a small or very small school to provide greater funding stability for these schools.

The purpose of items 5 and 6 of the Amendment Regulations is to apply the cap to the annual change in CTC scores for a small or very small school to the amount that would have been the CTC score for the school but for new subsection 21(4) as inserted by item 3 of the Amendment Regulations. This ensures that a small or very small school for 2026 will be in the same position for 2027 that they would have otherwise been but for the change to the CTC score for 2026.

Part 2 – Meaning of foundation

Australian Education Regulations 2023

Item [7] – subsection 4(1) (definition of foundation)

The definition of foundation in subsection 4(1) of the Principal Regulations is “the year of schooling immediately before year 1”. Item 7 of the Amendment Regulations inserts “(which must not be longer than 12 months)” into this definition after “year of schooling”.

Section 7 of the Principal Regulations provides that, for the purposes of section 15 of the Act, “foundation” is a level of education in the course of primary education for a school other than a special school. This means students who are receiving the foundation level of education are “primary students” for the purposes of the Act and Principal Regulations. The number of primary students at a government or non-government school under subsections 9A(1) and 9B(1) of the Principal Regulations is relevant to working out the number of students at a school for a year. This number is an element of the formula for the school's “base amount” for the year in section 33 of the Act. The school's “base amount” is an element of the funding formula under section 32 of the Act which works out the amount of recurrent funding payable for the school for the year.

The purpose of item 7 is to put beyond doubt that a foundation student can only attract recurrent financial assistance for the period of 12 months that immediately precedes year 1. Item 7 is not intended to prevent a school from offering a foundation program that is longer

than 12 months, but rather to put beyond doubt that a foundation student will only attract recurrent financial assistance for the final 12 months of such a program.

In relation to item 7, for the purposes of subsection 15(2) of the Act, the Minister has had regard to arrangements made for providing education at government schools located in each State and Territory.