

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Education

Australian Education Act 2013

***Australian Education (Prescription of Guidelines and Documents) Amendment
(Prescription of Ministerial Council Disability Guidelines) Determination 2025***

AUTHORITY

The *Australian Education (Prescription of Guidelines and Documents) Amendment (Prescription of Ministerial Council Disability Guidelines) Determination 2025* (the Amendment Determination) is made under subsection 5A(1) of the *Australian Education Regulations 2023* (the Regulations).

Subsection 130(3) of the *Australian Education Act 2013* (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 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.

A determination made under subsection 5A(1) of the Regulations is a legislative instrument for the purposes of the *Legislation Act 2003*.

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* extends this principle to legislative instruments, unless otherwise stated. Subsection 130(3) of the Act authorises the making of regulations, which are legislative instruments under paragraph 10(1)(a) of the *Legislation Act 2003*. Accordingly, subsection 33(3) permits the Minister to amend or repeal instruments made under the Regulations, including those made under subsection 5A(1).

The amendments to the *Australian Education Regulations (Prescription of Guidelines and Documents) Determination 2024* (the Principal Determination) made by the Amendment Determination rely on subsection 33(3) of the *Acts Interpretation Act 1901* as applied by subsection 13(1) of the *Legislation Act 2003*.

PURPOSE AND OPERATION

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.

The Principal Determination prescribes certain guidelines and documents for the purposes of the Regulations. Section 5 of the Principal Determination prescribes certain guidelines for the purposes of the definitions in subsection 4(1) of the Regulations.

The purpose of the Amendment Determination is to amend section 5 of the Principal Determination so that the *Nationally Consistent Collection of Data on School Students with Disability Guidelines: Effective 2026 Onward* (NCCD Guidelines) are prescribed for the purposes of the definition of ‘Ministerial Council Disability Guidelines’ in subsection 4(1) of the Regulations.

COMMENCEMENT

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

CONSULTATION

The Department of Education (the department) has formally consulted with representatives of all state and territory governments, Independent Schools Australia (ISA) and the National Catholic Education Commission (NCEC) on the NCCD Guidelines. Jurisdictional and sector representatives had the opportunity to provide feedback on two drafts of the NCCD Guidelines between June and August 2025, and endorsed the final version on 8 August 2025. Consultation with jurisdictional and sector representatives was via the department’s Nationally Consistent Collection of Data on School Students with Disability Community of Practitioners, a group comprising officer-level representatives from all state and territory education departments, ISA and NCEC. The NCCD Guidelines have also been considered by the Schools Policy Group and approved without change by the Australian Education Senior Officials Committee.

The Minister is satisfied that additional consultation in respect of the Amendment Determination was not necessary, because the department has already consulted in respect of the NCCD Guidelines and it is those guidelines that provide for matters relevant to the collection of information from approved authorities, which are the entities approved to receive funding under the Act, in relation to students with disability. The substantive requirements for data collection and provision are contained within the NCCD Guidelines. The Amendment Determination is a simple, technical amendment that prescribes the NCCD Guidelines for the purposes of the Regulations.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Australian Education (Prescription of Guidelines and Documents) Amendment (Prescription of Ministerial Council Disability Guidelines) Determination 2025

The *Australian Education (Prescription of Guidelines and Documents) Amendment (Prescription of Ministerial Council Disability Guidelines) 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 of the Legislative Instrument

The *Australian Education (Prescription of Guidelines and Documents) Determination 2024* (the Principal Determination) prescribes certain guidelines and documents for the purposes of the *Australia Education Regulations 2023* (the Regulations). The Amendment Determination amends section 5 of the Principal Determination so that the *Nationally Consistent Collection of Data on School Students with Disability Guidelines: Effective 2026 Onward* (the NCCD Guidelines) are prescribed for the purposes of the definition of ‘Ministerial Council Disability Guidelines’ in subsection 4(1) of the Regulations.

Human rights implications

The Amendment Determination engages the following rights:

- 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)
- the rights of persons with disabilities under Articles 9 and 24 of the *Convention on the Rights of Persons with Disabilities* (CRPD).

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. The right to education for children is also found in Articles 28 and 29 of the UNCRC.

The NCCD Guidelines provide for matters relevant to the collection of information from approved authorities, which are the entities authorised to receive funding under the *Australian Education Act 2013* (the Act), in relation to students with disability. This data enables the Commonwealth to accurately calculate student with disability loadings for the purposes of the Act. Student with disability loadings ensure that the funding which a school attracts under the Act accurately reflects the needs of the school and its students.

This measure promotes the right to education by prescribing the NCCD Guidelines, which is part of the framework necessary to give effect to funding arrangements for school education under the Act.

Rights of persons with disabilities

Article 9 of the CRPD recognises the right of persons with disabilities to live independently and participate fully in all aspects of life. Article 24 of the CRPD recognises the right of persons with disabilities to inclusive education. In realising this right, States Parties shall ensure that:

- persons with disabilities are not excluded from the general education system on the basis of disability (Article 24(2)(a))
- reasonable accommodation of the individual's requirements is provided (Article 24(2)(c))
- persons with disabilities receive the support required, within the general education system, to facilitate their effective education (Article 24(2)(d)).

'Reasonable accommodation' is defined in Article 2 of the CRPD as meaning 'necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms'.

The Amendment Determination will prescribe the NCCD Guidelines under subsection 5A(1) of the Regulations. The NCCD Guidelines provide that school teams use their professional judgement, based on evidence, to determine the level of adjustment provided to students with disability to access and participate in education on the same basis as students without disability. Such levels of adjustment are used to calculate student with disability loadings for the purposes of the Act. These additional loadings ensure that schools are appropriately resourced to provide school education to students with disability on the same basis as students without disability.

This measure promotes the rights of persons with disability by facilitating the mechanism through which school communities ensure that students with disability can access and participate in education on the same basis as students without disability.

Conclusion

The Amendment Determination is compatible with human rights because it promotes the right to education under the ICESCR and the UNCRC. The Amendment Determination is compatible with the rights of persons with disabilities and will promote the right of persons with disabilities to participate in education.

The Hon Jason Clare MP
Minister for Education

Australian Education (Prescription of Guidelines and Documents) Amendment (Prescription of Ministerial Council Disability Guidelines) Determination 2025

EXPLANATION OF PROVISIONS

Section 1: Name

1. This is a provision that provides that the name of the instrument is the *Australian Education (Prescription of Guidelines and Documents) Amendment (Prescription of Ministerial Council Disability Guidelines) Determination 2025* (the Amendment Determination).

Section 2: Commencement

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

Section 3: Authority

3. This is a provision that provides that the Amendment Determination is made under subsection 5A(1) of the *Australian Education Regulations 2023* (the Regulations).

Section 4: Schedules

4. This is a technical provision that provides that the instrument that is specified in a Schedule to the Amendment Determination, being the *Australian Education Regulations (Prescription of Guidelines and Documents) Determination 2024* (the Principal Determination), is amended as set out in the applicable items in the Schedule concerned.

Schedule 1 – Amendments

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

Item 1

5. Item 1 amends the cell in item 3, column 3, in the table in section 5 of the Principal Determination to omit ‘Nationally Consistent Collection of Data on Students with Disability: 2025 Guidelines’ and substitute ‘*Nationally Consistent Collection of Data on School Students with Disability Guidelines: Effective 2026 Onward*’.

6. The cell in item 3, column 3 of the table in section 5 of the Principal Determination prescribes, for the purposes of subsection 5A(1) of the Regulations, the Ministerial Council disability guidelines.
7. Subsection 5A(1) of the Regulations provides that, for the purposes of a definition in subsection 4(1) of the Regulations, the Minister may, by legislative instrument, determine that guidelines are prescribed for the purposes of the Regulations.
8. Subsection 4(1) of the Regulations provides in the definition of 'Ministerial Council disability guidelines' that those guidelines are approved by the Ministerial Council and prescribed by the Minister for the purposes of the Regulations from time to time.
9. The effect of item 1 is that, for the purposes of subsection 5A(1) of the Regulations, the *Nationally Consistent Collection of Data on School Students with Disability Guidelines: Effective 2026 Onward* are prescribed for the purposes of the definition of 'Ministerial Council disability guidelines' in subsection 4(1) of the Regulations.

Item 2

10. Item 2 repeals note 2 in section 5 of the Principal Determination and substitutes a new note to reflect that the Ministerial Council disability guidelines could be found on the website of the Nationally Consistent Collection of Data on School Students with Disability at www.nccd.edu.au in 2025.
11. These guidelines are published, may be used by members of the public and can be freely accessed.