



Australian Government

Department of Education and Training

Post-Implementation Review

**Australian Education Regulation 2013
(August 2016)**



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The document must be attributed as the Post-Implementation Review – Australian Education Regulation 2013.

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1. Executive Summary

This Post-Implementation Review (PIR) outlines the intention, impact and effectiveness of the *Australian Education Regulation 2013* (the Regulation¹) in so far as it introduced new regulation requirements from previous legislation. The Regulation is subordinate legislation to the *Australian Education Act 2013* (the Act²). The Act and Regulation commenced on 1 January 2014 and supersede the *Schools Assistance Act 2008* and the *Schools Assistance Regulations 2009*.

The Act and the Regulation provide for Commonwealth funding for government and non-government schools. The Act provides the broad structure for the provision of funding (e.g. funding formulae and conditions of funding) and the Regulation provides additional detail (e.g. the actual percentages and dollar amounts used in the funding formulae, purposes for which funding may be spent or committed and specific educational and reporting obligations).

While the conditions and requirements for funding remain largely unchanged from the previous legislative framework, the introduction of the new legislation included the following new requirements:

- preparing implementation plans;
- preparing school improvement plans (yet to come into effect); and
- putting in place processes and procedures for enhancing principal and teacher performance and professional development consistent with nationally agreed standards.

A compliant Regulation Impact Statement (RIS) was not completed prior to the passage of the legislation. Therefore, a PIR is now required to assess the impact of the Regulation, whether the Regulation remains appropriate, and how effective and efficient the Regulation has been in meeting its objectives.

Extensive consultations with key stakeholders during the development of the Act and the Regulation and subsequent consultations on the legislative framework indicated a strong preference for school autonomy and the reduction of impediments from the Commonwealth Government. In response, the government extended the commencement date of the school improvement plan requirements to 1 January 2017 through legislative arrangements. As this requirement is yet to be implemented, the school improvement plans are out of scope for this PIR. Consequently, the implementation plans and enhancing principal and teacher performance and professional development are the subject of the PIR.

The implementation plan requirements under the Act are inconsistent with the Australian Government supporting greater school autonomy and decision making. This requirement will be addressed through the Australian Government's *Quality Schools, Quality Outcomes* school reform agenda.

¹ *Australian Education Regulation 2013 No. 195 of 2013* www.comlaw.gov.au/Details/F2015C00002

² *Australian Education Act 2013 No. 67 of 2013* www.comlaw.gov.au/Details/C2015C00112

The requirements supporting enhanced principal and teacher performance and professional development are nationally agreed by state and territory education ministers, and support existing state and territory requirements relating to teacher quality. The inclusion of these does not impose any additional regulatory burden on schools.

2. Background

Under the Australian Constitution, state and territory governments have responsibility for school education in their jurisdiction. This includes the registration and regulation of schools and teachers, parameters around student attendance, implementing curriculum and setting school hours. The Commonwealth does not own or operate any schools and does not register or regulate teachers or students, but works in cooperation with state and territory governments – through the Education Council (a ministerial council set up under the auspices of the Council of Australian Governments (COAG)) – to develop and maintain national consistency in schooling.

The Australian Education Act 2013

The Act commenced on 1 January 2014. The Act is the principal legislation for the provision of Australian Government recurrent funding for schooling, and capital funding for non-government schools.

Funding under the Act is provided to state and territory governments for distribution to approved authorities for government and non-government schools, block grant authorities, capital grant authorities, and non-government representative bodies. Entities in receipt of Commonwealth funding under the Act must meet and continue to comply with the conditions of financial assistance outlined in the Act.

The Australian Education Regulation 2013

The Regulation provides the necessary detail to allow the formulae and funding requirements of the Act to work. The majority of funding requirements in the Act and Regulation are long standing from previous Commonwealth schools funding arrangements. There were, however, some new requirements and these related to implementation plans, school improvement plans and enhancing principal and teacher performance and professional development.

School sector regulation

The delivery of school education is primarily the responsibility of states and territories, non-government school systems and independent schools. These consist of approximately 9,400 schools, comprising 6,700 government schools, 1,700 Catholic schools and 1,000 independent schools. The Commonwealth provides funding through school funding legislation and attaches conditions to its financial assistance to encourage consistency and performance improvements across jurisdictions, in line with nationally agreed education reforms to support delivery of quality schooling.

Australian Government responsibilities

The Commonwealth has limited constitutional powers with regard to school education. These include to:

- make grants to the states and territories (under sections 96 and 122 of the Constitution);
- make laws for Indigenous Australians (section 51 (xxvi) of the Constitution);
- provide benefits to students (section 51 (xxiiiA) of the Constitution); and
- collect and publish national statistics (section 51 (xi) of the Constitution).

While the Commonwealth Parliament has power to legislate in relation to some aspects of schooling, successive Commonwealth governments have limited the use of these powers, electing instead to reach agreement with the states and territories on these matters.

State and territory regulatory responsibilities

States and territories have constitutional responsibility to ensure the delivery of quality schooling to all children of school age. The education acts and related legislation in each state and territory give effect to this.

State and territory education legislation governs such things as curriculum standards, issuing of school level qualifications, school safety and teacher registration. These regulatory controls extend to both government and non-government schools.

School funding legislation in states and territories includes financial accountability controls that ensure funding to schools is used for the purpose provided and enable monitoring and audit of schools.

Conditions of financial assistance to states and territories

It is a long standing practice for the Australian Government to attach conditions to the financial assistance paid to states and territories for schooling. This practice has been used to encourage national consistency and performance improvements across jurisdictions and sectors, to support delivery of quality schooling. For example, this approach has helped deliver consistent national standards for school quality in areas such as teacher training and accreditation; literacy and numeracy assessment; curriculum; and basic statistical and performance information on Australian schooling.

Commonwealth school funding legislation includes educational and financial obligations that require the owners and operators of government and non-government schools to give effect to agreed national policies and practices, as well as to ensure financial accountability.

These obligations focus on the delivery of strong national performance measures, reporting requirements and the implementation of national standards in curriculum and teaching.

3. Problem and Policy Objective

Enhancing principal and teacher performance and professional development

Teacher quality and effective leadership are the most significant factors affecting student outcomes and teacher performance. These areas can improve through better appraisal, coaching and feedback. Evidence shows that better appraisal and feedback for teachers can improve their effectiveness by 20 to 30 per cent. Australian teachers reported in 2008 that many of them did not receive regular appraisal and feedback on their classroom practice, and that of those who did, many viewed it largely as an administrative exercise.

Objectives

Section 77(2)(a) of the Act includes an ongoing policy requirement for approved authorities to have in place processes and procedures for enhancing principal and teacher performance and professional development at their schools, in accordance with the Regulation. Section 41 of the Regulation requires that an approved authority must:

- implement the *Australian Teacher Performance and Development Framework*; and
- provide access to ongoing professional development consistent with the *Australian Charter for the Professional Learning of Teachers and School Leaders*.

The *Australian Teacher Performance and Development Framework*, developed by the Australian Institute for Teacher and School Leadership (AITSL) and endorsed by Commonwealth, State and Territory Education Ministers, outlines the critical factors for creating a performance and development culture in schools. Teachers undergo an annual performance review and are trained to meet the Australian Professional Standards for Teachers. The Framework includes essential elements that should be present in all Australian schools, while recognising that implementation will look different in different school contexts.

The *Australian Charter for the Professional Learning of Teachers and School Leaders* (the Charter) developed by AITSL and endorsed by Commonwealth, State and Territory Education Ministers articulates the expectation that all teachers and school leaders actively engage in professional learning throughout their careers and describes the characteristics of effective learning.

Implementation plans

Section 99 of the Act outlines the policy requirement for approved authorities for more than one school to have an implementation plan in place. This is to ensure the Australian Government’s national education policy reform areas are realised within the strategic planning of school authorities.

The table below provides examples of programmes under implementation plans, and which of the five reform directions they represent:

Reform direction	Programme example
Quality teaching	Implementation of the Australian Professional Standards for Teachers.
Quality learning	Deliver parent courses and workshops in supporting numeracy and literacy development at points of community need.
Empowered school leadership	Incorporate the National School Improvement Tool within improvement and accountability frameworks.
Transparency and accountability	Work with non-government education sectors to implement improvements in regulatory arrangements agreed for the state or territory.
Meeting student need	Continue to implement a needs-based funding model.

Objectives

The objective of the implementation plan was to ensure the former Government’s five reform directions of quality teaching, quality learning, empowered school leadership, transparency and accountability, and meeting student need were realised.

The intent of the legislation was to require the authority to explain how it intended to implement education reforms. The requirements of the legislation are that an implementation plan must set out activities, programmes and initiatives, including implementation milestones and timelines, and mechanisms for measuring progress. The legislation also requires a cycle for implementation plans to be reviewed, evaluated and published.

Government policy

Consistent with its policies, the Government believes schools are best run by those on the ground who can make decisions, deal with local issues and be accountable to their communities for these decisions. This means Commonwealth Government recurrent funding obligations should avoid prescribing:

- how education to students should be delivered in the classroom;
- school level planning and resource allocation;
- how system authorities manage their schools; and
- other matters that are best addressed by the relevant education authority or at the school level.

The implementation plan requirements under the Act are inconsistent with these principles. These requirements are not supported by owners and operators of schools as leading to improved delivery of education outcomes for students.

The Australian Government is keeping the school funding arrangements, as outlined in the current Act, until the end of 2017. After this, the *Quality Schools, Quality Outcomes* reform agenda will address the implementation plan requirements under the Act.

4. Impact Analysis

Enhancing principal and teacher performance and professional development

The principal and teacher performance and professional development requirements came into effect on 1 January 2014, upon commencement of the Act and Regulation. These obligations enhanced existing requirements for schools (relating to professional development imposed by state and territory regulations) by referencing agreed national standards. All state and territory education ministers have endorsed national policies around teacher and principal professional standards and professional learning³; this was agreed via COAG and the Education Council. The obligations in the Regulation bring it into line with agreed national policy and ensure that existing practices align with new national standards.

Australian schools are highly compliant with this requirement, with 97 per cent of authorities approved under the Act reporting compliance for the 2014 school year. Non-compliant authorities reported implementation delays; full compliance is expected for the 2015 school year.

There are no material cost implications or regulatory impacts on states, territories, non-government education systems and schools for aligning existing practices to meet these requirements, as the Framework and the Charter provide guidance to schools on how to manage performance and development in line with best practice.

It is not possible to assess the impact of the teacher performance and professional development requirement in isolation from other Commonwealth, state and territory and school level reforms and activities. The overall performance of the national education system, including the performance of principals and teachers, is measured through national monitoring arrangements including the National Report on Schooling in Australia⁴.

Implementation plans

The implementation plan requirements came into effect on 1 January 2014. While the Act stipulates the matters to be covered in the implementation plans, it does not impose an obligation for the relevant approved authorities to submit the plans to the Commonwealth.

Under the Act, the implementation plan requirements are complied with as follows:

- Participating states and territories (New South Wales, Australian Capital Territory and South Australia) under the National Education Reform Agreement have bilateral agreements with the Commonwealth and confirm they have current implementation plans.
- Non-participating states and territories (Queensland, Western Australia, Victoria, Tasmania and Northern Territory) are not required under the Act to have implementation plans.
- For the non-government sector, the department wrote to approved authorities for more than one school, to whom this requirement applies, to advise them of the implementation planning requirements. Additionally, approved authorities for more than one school that are also

³ www.aitsl.edu.au/about-us/national-policies

⁴ www.acara.edu.au/reporting/reporting

Approved System Authorities have provided written responses to the department to confirm that implementation plans are in place.

The implementation plans have resulted in an estimated regulatory cost of \$0.764 million a year for the non-government sector. This cost is based on the effort required by approved authorities to prepare and update implementation plans. This figure is derived from the number of approved authorities involved, the frequency of preparing and updating the plans and the cost for each interaction.

Currently school authorities manage their own business planning and improvement processes to support their local needs, consistent with the principles adopted by the Australian Government. Given the self-serving nature of the programmes and initiatives outlined in the implementation plans, schools are delivering these initiatives irrespective of whether the implementation plans are required under the regulatory framework. The prescriptive nature of current arrangements does not improve the delivery of these initiatives.

From a policy perspective, implementation planning requirements are inconsistent with the collaborative approach (through the ministerial council) for the Australian Government, state and territories to agree implementation and monitoring arrangements for important national reforms.

Risks from the removal of these planning requirements are minimal. Prescriptive controls relating to implementation planning were not part of previous arrangements that existed under the *Schools Assistance Act 2008* or the National Education Agreement, and nor do they have national support through the Education Council.

Removal of implementation planning requirements would not undermine the Act's accountability framework, which includes financial accountability and delivery of nationally agreed education activities and transparency provisions.

5. Consultation

The measures assessed in this PIR were implemented on 1 January 2014.

As part of implementing its election commitment to amend the Act to reduce regulatory burden, the Government undertook a targeted consultation process to confirm its understanding of the amendments stakeholders wanted to make to the Act. This consultation process commenced on 2 April 2014 when the Minister wrote to key education stakeholders inviting submissions on the removal of prescriptive aspects of the Act and Regulation.

Stakeholders were selected to participate in the consultation process and to provide written submissions as they are, collectively, representative of the Australian schooling system. These stakeholders include the majority owners and operators of government and non-government schools, as well as the representative bodies for teachers, parents, principals and special interest groups. These stakeholders were:

- Anglican Schools Australia
- Association of Heads of Independent Schools Australia
- Australian Association of Christian Schools
- Australian Association of Distance Education Schools
- Australian Association of Special Education
- Australian Capital Territory Government
- Australian Catholic Primary Principals Association
- Australian Council of Jewish Schools
- Australian Council of State School Organisations
- Australian Education Union
- Australian Parents Council
- Australian Primary Principals Association
- Australian Secondary Principals Association
- Australian Special Education Principals' Association
- Catholic Secondary Principals Association
- Children with Disabilities Australia
- Christian Schools Australia
- Independent Education Union of Australia
- Independent Primary School Heads of Australia
- Independent Schools Council of Australia
- Lutheran Education Australia
- Montessori Education Foundation
- National Aboriginal and Torres Strait Islander Principals Association
- National Catholic Education Commission
- National Independent Special Schools Association
- New South Wales Government
- Northern Territory Government

- Queensland Government
- South Australia Government
- Steiner Education Australia
- Tasmania Government
- Victoria Government
- Western Australian Government

The consensus view was the implementation planning requirements of the Act and Regulation are:

- overly directive in regard to business planning details that should be handled by systems and states;
- impose significant regulatory burden due to the level of detail required to be documented; and
- undermine the autonomy of education authorities and their schools to manage reform activity and improvement planning in a flexible manner that meets local needs.

Subsequent to the written submissions, the Australian Government Department of Education and Training held multilateral consultations on amendments to the Act with state and territory governments, the National Catholic Education Commission and the Independent Schools Council of Australia. These were held on 12 September 2014, 11 December 2014 and 5 February 2015. There is unanimous support from these stakeholders to remove implementation planning requirements.

Stakeholders did not express any strong opinions regarding the enhancing principal and teacher performance and professional development requirement, as the Framework and the Charter were developed collaboratively with stakeholders. The new requirements bring the Regulation up-to-date and have no material impact on approved authorities.

6. Conclusion

The Regulation does not ‘regulate’ schools in the traditional sense, as this is the constitutional responsibility of state and territory governments. The Regulation allows the Commonwealth to impose conditions on the receipt of Commonwealth funding and to collect information to inform its funding model. The Act and the Regulation ensure authorities adhere to nationally agreed requirements as mandated through the Education Council. The Regulation also ensures the proper acquittal of funds by authorities that receive Commonwealth funding to maintain the robust accountability requirements of the Act.

The Australian Government’s *Quality Schools, Quality Outcomes* paper sets out its commitment to negotiate new funding arrangements with states for payments from January 2018, as well as a range of education reforms, using the following principles:

- focus on what makes the difference – ensure future funding investments are targeted to the things that evidence shows make the most difference for students;
- support those who need it most – ensure that students who need it are able to access the support they need to succeed and that teachers are equipped to tailor their teaching practice to individual student need;
- ensure students are equipped for a globalised world – ensure that young people are leaving school with the skills they need to succeed in the workplace, further education and as active and involved citizens; and
- increase accountability through transparency – ensure that students, teachers, parents and the community are able to access information about how students and schools are performing, what funding is being spent on and support the sharing of information about what works to improve outcomes.

The Government’s *Quality Schools, Quality Outcomes* school reform agenda will address the implementation plan requirements under the Act to ensure greater school autonomy.

The requirements for supporting enhanced principal and teacher performance and professional development have been agreed to by state and territory education ministers, and support existing state and territory requirements relating to teacher quality. The inclusion of these brings the Regulation up-to-date. This requirement remains appropriate going forward and it does not impose any material regulatory burden on schools.