

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance

Financial Framework (Supplementary Powers) Act 1997

*Financial Framework (Supplementary Powers) Amendment
(Education and Training Measures No. 4) Regulation 2016*

The *Financial Framework (Supplementary Powers) Act 1997* (the FF(SP) Act) confers on the Commonwealth, in certain circumstances, powers to make arrangements under which money can be spent; or to make grants of financial assistance; and to form, or otherwise be involved in, companies. The arrangements, grants, programs and companies (or classes of arrangements or grants in relation to which the powers are conferred) are specified in the *Financial Framework (Supplementary Powers) Regulations 1997* (the Principal Regulations). The FF(SP) Act applies to Ministers and the accountable authorities of non-corporate Commonwealth entities, as defined under section 12 of the *Public Governance, Performance and Accountability Act 2013*.

Section 65 of the FF(SP) Act provides that the Governor-General may make regulations prescribing matters required or permitted by that Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to that Act.

Section 32B of the FF(SP) Act authorises the Commonwealth to make, vary and administer arrangements and grants specified in the Principal Regulations. Section 32B also authorises the Commonwealth to make, vary and administer arrangements for the purposes of programs specified in the Principal Regulations. Schedule 1AA and Schedule 1AB to the Principal Regulations specify the arrangements, grants and programs.

Schedule 1 to the Regulation amends the Principal Regulations to establish legislative authority in Schedule 1AB for spending by the Government on two initiatives which will be administered by the Department of Education and Training.

Funding will be provided for:

- the licensing of vocational education and training courses developed for delivery to international students offshore; and
- the expansion of the Early Learning Languages Australia initiative nationally to early childhood education and care services, with the aim of providing preschool aged children with early experiences in language learning in order to encourage those children to pursue learning a language in primary and secondary schooling.

The vocational education and training initiative was included in the *Mid-Year Economic and Fiscal Outlook 2015-16*, released on 15 December 2015. The expansion of the early learning languages initiative was included in the 2016-17 Budget.

Details of the Regulation are set out at [Attachment A](#). A Statement of Compatibility with Human Rights is at [Attachment B](#).

The Regulation is a legislative instrument for the purposes of the *Legislation Act 2003*. The Regulation commences on the day after registration on the Federal Register of Legislation.

Consultation

In accordance with section 17 of the *Legislation Act 2003*, consultation has taken place with the Department of Education and Training.

A regulation impact statement is not required as the Regulation only applies to non-corporate Commonwealth entities and does not adversely affect the private sector.

Details of the *Financial Framework (Supplementary Powers) Amendment (Education and Training Measures No. 4) Regulation 2016*

Section 1 – Name

This section provides that the title of the Regulation is the *Financial Framework (Supplementary Powers) Amendment (Education and Training Measures No. 4) Regulation 2016*.

Section 2 – Commencement

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

Section 3 – Authority

This section provides that the Regulation is made under the *Financial Framework (Supplementary Powers) Act 1997*.

Section 4 – Schedules

This section provides that the *Financial Framework (Supplementary Powers) Regulations 1997* are amended as set out in the Schedules to the Regulation.

Schedule 1 – Amendments

Item 1 – In the appropriate position in Part 4 of Schedule 1AB (table)

This item adds two new table items to Part 4 of Schedule 1AB to establish legislative authority for government spending for certain activities administered by the Department of Education and Training.

New **table item 168** establishes legislative authority for government spending on the licensing of international vocational education and training courses.

The Government will introduce a licensing fee for vocational education and training courses developed for delivery to international students offshore.

The measure will seek to grow Australia's international technical vocational education and training (TVET) market activity offshore; address international workforce competency gaps and global skills demands; as well as support Australia's bilateral and multilateral relations and capacity building efforts in relation to skills development and training. The intention is to assist Australian registered training organisations (RTOs) in expanding their business operations in the international TVET market and Australian multinational businesses by enabling access to quality skilled labour.

Funding will be provided for the development of a series of courses and support materials (such as learner guides, assessment materials and an online assessment platform) which will form the products provided to RTOs under licence from the Commonwealth.

The measure will raise administered revenue through the collection of a licence fee. This (per course) fee will be paid by RTOs which apply and are approved to deliver the courses. The licence will entitle approved RTOs to access the course materials, support materials and product branding developed by the Department of Education and Training. The fee will act as a cost recovery measure and will contribute to meeting the cost of the online assessment platform which supports the delivery of the courses in the medium- to long-term.

Further information about the measure can be found at:

www.education.gov.au/internationalskillstraining or www.education.gov.au/itac.

Information is also available in the joint media release of 6 April 2016 by the former Minister for International Education and Tourism, Senator the Hon Richard Colbeck, and the former Special Envoy for Trade, the Hon Andrew Robb AO MP.

The total budget for the measure of \$5.4 million (2015-16 to 2018-19) was included in the *Mid-Year Economic and Fiscal Outlook 2015-16*, with details under the 'Department of Education and Training – charging opportunities' measure at page 108. Of the total, \$2.1 million (allocated to staffing) is to be sourced from existing departmental resourcing.

Funding decisions will be made by officials of the Department of Education and Training holding relevant financial delegations from the Secretary. Dependant on the level of expenditure, the relevant delegate will approve funding for developing the series of courses and related support products under this initiative. Funding decisions will be made in accordance with the Department of Education and Training's Secretary Instructions and delegations on the expenditure of relevant monies in accordance with the *Public Governance, Performance and Accountability Act 2013*.

The Department intends to run a tender process for the development of the online assessment platform and course assessment materials under the measure. The tender will be made available on Austender, and guidelines will be developed as part of this process. The Department has not determined whether the tender will be an open or limited tender. The resultant contract will be available to view on Austender after signing.

Spending decisions regarding the course materials will not be made publicly available. Due to the specialist expertise required to develop the course materials, the Department will likely source a supplier directly or through a limited tender process. The resultant contract and approved supplier will be listed on Austender after signing.

There will be no merits review of funding for the measure. Merits review would be unsuitable as the Department will be running a tender process to provide the funding, in accordance with the *Commonwealth Procurement Rules*.

The expenditure will be funded under Sub-program 2.8.4: Support for the National Training System, which is part of Program 2.8: Building Skills and Capability. Program 2.8 comes under Outcome 2: Promote growth in economic productivity and social wellbeing through access to quality higher education, international education and international quality research, skills and training. Details are set out in the *Portfolio Budget Statements 2016-17, Budget Related Paper No. 1.5, Education and Training Portfolio* at page 75.

Noting that it is not a comprehensive statement of relevant constitutional considerations, the objective of the item references the following powers of the Constitution:

- the trade and commerce power (section 51(i)); and
- the external affairs power (section 51(xxix)).

New **table item 169** establishes legislative authority for the Government to provide funding of \$5.9 million over two years to make the Early Learning Languages Australia (ELLA) initiative nationally available to early childhood education and care services.

The aim of ELLA is to provide preschool aged children with early experiences in language learning in order to encourage those children to pursue learning a language in primary and secondary schooling. This supports the Government's aim to better prepare students for a globalised world by increasing the number of students studying languages during schooling.

ELLA consists of a suite of play-based online applications (ELLA applications), designed for preschool aged children to experience languages learning. The ELLA applications can be downloaded by participating early childhood education and care services onto tablet devices for use by children, with associated guidance provided to educators on using those applications.

Funding was included in the 2016-17 Budget and will be provided to Education Services Australia Limited (ESA) over two years to facilitate this process. Further details about this initiative are set out in the measure 'Early Learning Languages Australia – expansion' in *Budget 2016-17, Budget Measures, Budget Paper No. 2 2016-17*, at page 76.

ELLA will be made available to early childhood education and care services nationally from 2017. This will allow more preschool aged children, nationally, to access the ELLA applications and will further promote continued engagement in language learning.

Funding will also be provided to ESA to assist early childhood education and care services (located in low socio-economic regions throughout Australia) to access tablet devices so that those services can also be afforded the opportunity to participate in ELLA.

Funding will be expended in accordance with the *Commonwealth Grants Rules and Guidelines*, the Department's Secretary Instructions and delegations on the expenditure of relevant monies, and in accordance with the *Public Governance, Performance and Accountability Act 2013*.

Merits review will not be available for any funding associated with ELLA, as it is not appropriate due to the non-competitive, targeted and discretionary nature of the funding being provided to ESA.

Funding will be drawn from Program 1.3: Early Learning and Schools Support, which is part of Outcome 1: Improved early learning, schooling, student educational outcomes and transitions to and from school through access to quality support, parent engagement, quality teaching and learning environments. Funding details are set out in the *Portfolio Budget Statements 2016-2017, Budget Related Paper No. 1.5, Education and Training Portfolio* at pages 14 and 34.

Noting that it is not a comprehensive statement of relevant constitutional considerations, the objective of the item references the communications power (section 51(v)) of the Constitution.

Statement of Compatibility with Human Rights

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

Financial Framework (Supplementary Powers) Amendment (Education and Training Measures No. 4) Regulation 2016

This Regulation 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

Section 32B of the *Financial Framework (Supplementary Powers) Act 1997* (the FF(SP) Act) authorises the Commonwealth to make, vary and administer arrangements and grants specified in the *Financial Framework (Supplementary Powers) Regulations 1997* (the FF(SP) Regulations) and to make, vary and administer arrangements and grants for the purposes of programs specified in the Regulations. Schedule 1AA and Schedule 1AB to the FF(SP) Regulations specify the arrangements, grants and programs.

The FF(SP) Act applies to Ministers and the accountable authorities of non-corporate Commonwealth entities, as defined under section 12 of the *Public Governance, Performance and Accountability Act 2013*.

Schedule 1 to the Regulation amends the Principal Regulations to establish legislative authority in Schedule 1AB for spending by the Government on two initiatives which will be administered by the Department of Education and Training.

Funding will be provided for:

- the licensing of vocational education and training courses developed for delivery to international students offshore; and
- the expansion of the Early Learning Languages Australia initiative nationally to early childhood education and care services, with the aim of providing preschool aged children with early experiences in language learning in order to encourage those children to pursue learning a language in primary and secondary schooling.

The vocational education and training initiative was included in the *Mid-Year Economic and Fiscal Outlook 2015-16*, released on 15 December 2015. The expansion of the early learning languages initiative was included in the 2016-17 Budget.

The Minister for Education and Training has portfolio responsibility for these programs.

Human rights implications

The Regulation does not engage any of the applicable rights or freedoms.

Conclusion

This Regulation is compatible with human rights as it does not raise any human rights issues.

**Senator the Hon Mathias Cormann
Minister for Finance**