

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. 2) Regulations 2017

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.

The Regulations amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on a number of initiatives administered by the Department of Education and Training.

Funding will be provided for:

- the Vocational Education and Training Information Strategy to improve the status and raise awareness of the career pathways available through a vocational education and training qualification;
- the Flexible Literacy for Remote Primary Schools Program to increase teacher pedagogy and improve literacy results for students in remote and very remote schools; and
- the Australian Early Development Census to collect information on how young children have developed by the time they start their first year of full-time school.

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

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*. The Regulations commence 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 Regulations only apply to non-corporate Commonwealth entities and do not adversely affect the private sector.

Details of the *Financial Framework (Supplementary Powers) Amendment (Education and Training Measures No. 2) Regulations 2017*

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Education and Training Measures No. 2) Regulations 2017*.

Section 2 – Commencement

This section provides that the Regulations commence on the day after registration on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the Regulations are 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 Regulations.

Schedule 1 – Amendments

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

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

New **table item 221** establishes legislative authority for government spending on the Vocational Education and Training (VET) Information Strategy.

In 2014, the Government announced a package of reforms for the VET system which aims to deliver a highly-skilled and adaptable workforce aligned with employer needs. This reform package included a communication campaign to improve the perceived value of vocational education and apprenticeships and raise the status of apprenticeships as a first-class post-school option. The VET reforms have been progressively implemented since 2014. Further information on the VET reform package is available at www.education.gov.au/vocational-education-and-training-reform.

Research commissioned by the Government over the past years has consistently indicated that many Australians do not perceive VET as a first choice career pathway and the general community is not aware of the many potential benefits VET can offer its participants. This research recommended that a long-term, sustained approach to the promotion of VET be implemented and supported by targeted advertising.

The VET Information Strategy provides the Government with the opportunity to lead the way in promoting the benefits of VET. The Strategy has been developed to improve the status and raise awareness of the career pathways available through a vocational education and training qualification.

The VET Information Strategy will target potential consumers of VET (young people and people thinking about a career change), influencers (including career advisers and parents), employers, schools, and industry. The Strategy will aim to:

- raise awareness of the range of VET opportunities and career pathways;
- raise awareness of the value and benefits of participation in, and completion of, industry-focused training;
- inform potential school leavers, job seekers, employers, and training providers of new skills-related government services available; and
- address perceived misconceptions about VET.

The VET Information Strategy proposes an ongoing or ‘always on’ approach to enhance an existing central online resource, www.myskills.gov.au, by supporting and underpinning it through a package of activities, products and services as well as collaboration with key stakeholders.

Funding will be provided for a range of communication activities, including:

- updating factsheets, user guides and videos;
- face-to-face interaction with target groups at events, including career expositions, workshops, the National Skills Week and a dedicated national skills conference; and
- partnerships with industry and sporting organisations to exploit existing channels.

The funding aims to raise long-term awareness of what VET is and its broad offering, with a focus on ‘real life stories’ (case studies, profiles) to illustrate pathways and career outcomes through VET.

The Department of Education and Training will manage the enhancement of collateral material (factsheets and user guides), career expositions and conference attendance, social media, a national newsletter and the distribution of key messages and VET tagline. The Department will also continue to build on existing partnerships with industry and national sporting associations to promote VET pathways through their online presence and social media.

Partnerships with national sporting associations, including the National Rugby League and the Australian Football League, assist with the identification of past and current players who have undertaken VET qualifications. These players join the VET Alumni program and promote VET pathways through their club’s promotional channels.

General information relating to the implementation of the VET Information Strategy will be available on the Department of Education and Training’s website at www.education.gov.au/skills-and-training. The material for the Strategy will be available at www.myskills.gov.au.

Funding of \$10 million was included in the 2016-17 Budget under the measure ‘Vocational Education and Training – information campaign’ for a period of two years commencing in 2015-16. Details are set out in the *Budget 2016-17, Budget Measures, Budget Paper No. 2 2016-17* at page 81.

Spending decisions in connection with the VET Information Strategy will involve procurement of goods and services. The Department of Education and Training will procure communications goods and services under the whole-of-government panel supplier arrangements for government communications (see www.finance.gov.au/advertising). Procurement decisions for the development of video content and the implementation of a Career Adviser Workshop and a National Skills Conference will be made through an open tender process. These tenders will be published on the AusTender website at www.tenders.gov.au. The resultant contracts will also be published on the AusTender website after signing.

Procurement decisions will be made by delegates of the Secretary of the Department. The procurements will be conducted and reported in accordance with the *Public Governance, Performance and Accountability Act 2013*, the *Commonwealth Procurement Rules*, the Secretary’s Instructions, and the applicable whole-of-government advertising panel policies and requirements to ensure that they are robust, transparent, and provide value for money to the Commonwealth.

Procurement decisions, once made, will not be subject to external merits review. Such decisions are not decisions under enactments and do not affect persons’ legal rights or liabilities. As the Strategy is due to be delivered within a limited time frame, re-making of a procurement decision after entering into a contract with a successful proponent is impractical, resulting in unacceptable delays in implementation of the relevant activity under the VET Information Strategy. However, the Department of Education and Training will provide an opportunity for suppliers and tenderers to make inquiries and complaints, should they wish to do so, and provide feedback to unsuccessful tenderers.

Funding for this item will come from Sub-program 2.8.4: Support for the National Training System, as part of the Industry Workforce Training Program of Outcome 2. Details are set out in the *Portfolio Budget Statements 2016-17, Budget Related Paper No. 1.5, Education and Training* at page 20.

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 communications power (section 51(v)); and
- the external affairs power (section 51(xxix)).

With respect to the communications power, the VET Information Strategy will promote the benefits of VET through a dedicated website, as well as social media and online multimedia such as videos, podcasts and vodcasts that will be available on the website. The VET Information Strategy will also include a ‘mail out’.

With respect to the external affairs power, relevant treaty obligations are:

- Article 1 of the *Convention Concerning Employment Policy* [1970] ATS 17 (ILO Convention 122) which requires member States to declare and pursue an active policy designed to promote full, productive and freely chosen employment. Article 2 of the Convention obliges member States to take such steps as may be needed, including when appropriate the establishment of programs, for the application of these measures. The VET Information Strategy will raise awareness of the value and benefits of industry-focused training, and facilitate the informed choice of a productive career pathway.
- Article 1 of the *Convention Concerning Vocational Guidance and Vocational Training in the Department of Human Resources* [1986] ATS 2 (ILO Convention 142) which obliges each state party to ‘adopt and develop comprehensive and co-ordinated policies and programmes of vocational guidance and vocational training, closely linked with employment, in particular through employment services’. Articles 2-5 outline further obligations on States parties in relation to vocational guidance and training, including the obligation to ensure that comprehensive information and the broadest possible guidance are available to children, young persons and adults. The VET Information Strategy will disseminate information to a wide audience in relation to new skills-related government services.
- Article 6 of the *International Covenant on Economic, Social and Cultural Rights* [1976] ATS 5 (ICESCR) which recognises ‘the right of everyone to the opportunity to gain his living by work’ and provides for States to take appropriate steps to safeguard this right, including through the provision ‘of technical and vocation guidance and training programmes’. The VET Information Strategy will raise awareness of VET opportunities and career pathways.

New **table item 222** establishes legislative authority for government spending on the Flexible Literacy for Remote Primary Schools Program.

The aim of the Program is to increase teacher pedagogy and improve literacy results for students in remote and very remote schools through piloting two explicit teaching approaches: Direct Instruction and Explicit Direct Instruction. Direct Instruction has a focus on teaching core literacy skills through step-by-step lessons with clear scripts for teachers. Under the Direct Instruction approach, students are grouped by ability and undertake continuous weekly assessments. Through Explicit Direct Instruction, students receive clear statements about the purpose for learning new skills and systematic guidance through the process with explanations, demonstrations, feedback and practice until the skill is mastered. Students are grouped by year level and are assessed every six weeks.

The Government’s ‘Students First’ policy introduced the Program in 2013-14. Support for the Program was re-affirmed in the Government’s 2016 ‘Quality Schools, Quality Outcomes’ policy.

Program delivery began in schools in 2015. In 2017, there are 34 remote and very remote primary schools across the Northern Territory, Queensland and Western Australia participating in the Program. Participating schools have:

- NAPLAN results for Year 3 across 2012 and 2013 that show 30 per cent or more students were below the National Minimum Standard in reading and writing;
- high vulnerability in the first year of schooling (as measured by the Australian Early Development Index) and/or schools with high socio-educational disadvantage (as measured by the Index of Community Socio-Educational Advantage); and
- parental and community support for participation in the Program.

The Program is a pilot, and schools are participating with the agreement of their state or territory education authorities. There are no direct payments to schools under the Program.

Good to Great Schools Australia has a grant agreement to undertake the Program, including conducting teacher training, data reporting and providing in-school coaching and resources. It is also responsible for providing secretariat support to the Program Advisory Committee. Good to Great Schools Australia will receive an additional \$1.6 million in 2017-18 to allow the Program to run to the end of 2017 to align with the school year to avoid disruption to staff and students mid-year.

The Program is being independently evaluated by the Centre for Program Evaluation at The University of Melbourne to help inform future policy.

Funding of \$22 million was included in the 2013-14 Mid-Year Economic and Fiscal Outlook under the measure ‘Students First – Flexible literacy learning for remote primary schools’ for a period of four years commencing in 2013-14. Details are set out in the *Mid-Year Economic and Fiscal Outlook 2013-14*, Appendix A: Policy decisions taken since the 2013-14 Budget at page 131.

Further funding of \$1.8 million to extend the Program for six months until the end of 2017 was included in the 2016-17 Mid-Year Economic and Fiscal Outlook under the measure ‘Flexible Literacy in Remote Primary Schools Programme – extension’. Details are set out in the *Mid-Year Economic and Fiscal Outlook 2016-17*, Appendix A: Policy decisions taken since the 2016 PEFO at page 144.

Program guidelines are available on the Department of Education and Training’s website at www.education.gov.au/flexible-literacy-remote-primary-schools-0. The guidelines include information regarding the eligibility criteria for participating schools.

A grant agreement for the purposes of the Program was entered into on 27 June 2014 between Good to Great Schools Australia and the relevant delegate of the Secretary of the Department of Education and Training, on behalf of the Commonwealth. This followed a competitive grant process where Good to Great Schools Australia was selected as the successful grant recipient. The grant agreement was published, as required by the *Commonwealth Grants Rules and Guidelines*, for two years on the Department of Education and Training’s Grants Register at <http://education.gov.au/grants>.

The relevant delegate of the Secretary of the Department will extend the existing agreement for a further six months and approve the additional funding.

Funding will be spent 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 the additional funding associated with the Program, as it is not appropriate due to the non-competitive, targeted and discretionary nature of the funding being provided to Good to Great Schools Australia to continue the Program and to The University of Melbourne to complete the evaluation.

Funding for this item will come from Program 1.3: Early Learning and Schools Support, which is part of Outcome 1. Details are set out in the *Portfolio Additional Estimates Statements 2016-17, Education and Training Portfolio* at page 28.

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 races power (section 51(xxvi));
- the external affairs power (section 51(xxix)); and
- the territories power (section 122).

With respect to the races power, the Program aims to address the gap in literacy outcomes between remote and metropolitan students, particularly in very remote areas which often have a high proportion of Aboriginal and Torres Strait Islander students. A high proportion of students in the program are Aboriginal and Torres Strait Islander children.

With respect to the external affairs power, relevant treaty articles include:

- Article 13(2)(a) of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) which provides that 'States Parties...recognize that, with a view to achieving the full realization of this right...[p]rimary education shall be compulsory and available free to all. Article 28(1) of the *Convention on the Rights of the Child* (CROC) is in similar terms. The Program is directed at a basic learning need of children in remote primary schools by methods appropriate to those children.
- Article 29 of the CROC which provides that the 'States Parties agreed that the education of the child shall be directed to ... [t]he development of the child's personality, talents and mental and physical abilities to their fullest potential'. The Program is directed at core educational activities that are central to the development of the talents and abilities of children.

With respect to the territories power, a significant proportion of the schools participating in the Program are in the Northern Territory.

New **table item 223** establishes legislative authority for government spending on the Australian Early Development Census (AEDC).

The aim of the AEDC is to collect information on how young children have developed by the time they start their first year of full-time school. It is a nationwide census of early childhood development and provides evidence that helps inform, support and evaluate national priorities and policies on improving early childhood and school education. The AEDC data is

collected through teachers completing the Australian version of the Early Development Instrument for each child in their class, based on the teacher's observations of the child. De-identified data is made publicly available for research purposes through a rigorous process outlined in the AEDC Data Guidelines at <http://www.aedc.gov.au/data-users/aedc-data-guidelines>. Parents are advised of their privacy rights and are given the opportunity to opt-out.

The AEDC was a 2007 election commitment (known then as the Australian Early Development Index) and a key part of the then Government's *Plan for Early Childhood*. It was further endorsed by the Council of Australian Governments as a national progress measure in 2008 and first conducted in 2009.

The AEDC has a three-year cycle with the next cycle to commence in July 2017. The Department of Education and Training will provide funding to states and territories, a contracted service provider, and an additional organisation to be selected through an open tender process. The AEDC data is used in a number of policy settings across all levels of government, including evaluation of programs, funding allocation and program design, location and delivery.

Delivery of the 2018 AEDC will involve both procurement and grants processes. Grants will be provided by the Department of Education and Training to all states and territories to continue work, in partnership with the Department, to deliver the 2018 AEDC and support the use of results in forming early childhood and school policy and service delivery. Aims of the grants include reaching a higher participation rate for the AEDC data collection in 2018 than 2015, greater awareness of the AEDC among stakeholders, increased government and community utilisation of AEDC results, and supporting communities with relatively high levels of developmental vulnerability to respond to the results.

Grant agreements with the states and territories are currently being negotiated. Grant amounts provided to states and territories will be made publicly available on the Department's website at www.education.gov.au/grants, with all decisions on grant amounts to be made by a delegate of the Secretary of the Department.

A procurement contract was entered into between the Department and a service provider in order to support the delivery of previous AEDC cycles. The Department intends to continue to fund this contracted service provider, by way of limited tender, to deliver the 2018 AEDC data collection through an online platform, provide data management services, host and maintain the www.aedc.gov.au website, and re-develop the data release products for the 2018 AEDC data collection.

A further procurement contract will be entered into between the Department and a support organisation, which will be selected through open tender. The selected organisation will provide support to the states and territories and the Department in relation to the 2018 AEDC. This includes providing expert advice on the Early Development Instrument (the methodology on which the AEDC is based). Information with respect to this open tender process will be made available on the AusTender website at www.tenders.gov.au and decisions with respect to this tender process will be made by a delegate of the Secretary of the Department.

Funding will be spent in accordance with the *Commonwealth Grants Rules and Guidelines*, the *Commonwealth Procurement Rules*, 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 the AEDC, as it is not considered appropriate due to the nature of the funding provided to the states and territories, the Department's contracted service provider and the additional organisation to be selected through open tender. The funding provided to states and territories is non-competitive, targeted and discretionary in nature. In providing funding by way of procurement, the Department will comply with the *Commonwealth Procurement Rules*, including principles relating to probity.

Funding for the AEDC comes from Program 1.3: Early Learning and Schools Support, which is part of Outcome 1. Details are set out in the *Portfolio Budget Statements 2016-17, Budget Related Paper No. 1.5, Education and Training Portfolio* at page 34.

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 communications power (section 51(v));
- the census and statistics power (section 51(xi));
- the Commonwealth executive power (section 61);
- the states grants power (section 96); and
- the territories power (section 122).

With respect to the communications power, several aspects of the AEDC are conducted by means of online technology. Delivery of the AEDC data collection will be through a secure online platform, and a website will be hosted and maintained for the AEDC.

With respect to the census and statistics power, the AEDC is a population measure of how young children have developed by the time they begin their first year of full-time school. It is a nationwide census of early childhood development which involves the collection and management of data that can be used in early childhood policy development and service delivery.

With respect to the executive power, the AEDC informs the Commonwealth on matters of early childhood development in order to assist in making decisions on the evaluation of programs, funding allocation, program design, location and delivery.

With respect to the states grants and territories powers, in conducting the AEDC, the Australian Government will provide grants to the States and Territories.

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. 2) Regulations 2017

These Regulations are 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*.

The Regulations amend Schedule 1AB to the FF(SP) Regulations to establish legislative authority for government spending on a number of initiatives administered by the Department of Education and Training.

Funding will be provided for:

- the Vocational Education and Training Information Strategy to improve the status and raise awareness of the career pathways available through a vocational education and training qualification;
- the Flexible Literacy for Remote Primary Schools Program to increase teacher pedagogy and improve literacy results for students in remote and very remote schools; and
- the Australian Early Development Census to collect information on how young children have developed by the time they start their first year of full-time school.

The Minister for Education and Training has responsibility for the Flexible Literacy for Remote Primary Schools Program and the Australian Early Development Census. The Assistant Minister for Vocational Education and Skills has responsibility for the Vocational Education and Training Information Strategy.

Human rights implications

The Regulations do not engage any of the applicable rights or freedoms.

Conclusion

These Regulations are compatible with human rights as they do not raise any human rights issues.

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