

## **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. 6) 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.

Schedule 1 to the *Financial Framework (Supplementary Powers) Amendment (Education and Training Measures No. 6) Regulations 2017* (the Regulations) amends Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on five initiatives in the Education and Training portfolio. The initiatives will be administered by the Department of Education and Training.

Funding will be provided for:

- grants of financial assistance to states and territories for school education reform initiatives as part of negotiations of new intergovernmental agreements relating to school education reform;
- the Australian Institute for Teaching and School Leadership Limited for its operations; implementation of recommendations of the Teacher Education Ministerial Advisory Group; and implementation of school education reform initiatives and related national policy measures;
- Education Services Australia Limited for secretariat support provided to the Education Council of the Council of Australian Governments; the delivery of projects and initiatives identified by the Education Council; the National Schools Interoperability Program; the Student Wellbeing Hub; and the development of education and professional development resources for teachers;

- activities to improve the quality assurance of data relating to students with disabilities collected for the Nationally Consistent Collection of Data on School Students with Disability; and
- Australia's participation in two international school student assessments, namely, the Trends in International Mathematics and Science Study and the Progress in International Reading Literacy Study which assess students' achievement in mathematics, science and reading, respectively.

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 the instrument is registered 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. 6) 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. 6) Regulations 2017*.

**Section 2 – Commencement**

This section provides that the Regulations commence on the day after the instrument is registered 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 Schedule to the Regulations.

**Schedule 1 – Amendments**

**Item 1 – In the appropriate position in Part 2 of Schedule 1AB (table)**

This item adds a new table item to Part 2 of Schedule 1AB to establish legislative authority for government spending on an activity that will be administered by the Department of Education and Training (the department).

New **table item 10** establishes legislative authority for the Government to provide grants of financial assistance to states and territories for school education reform initiatives.

The Government is currently negotiating with states and territories on new intergovernmental agreements relating to school education reform, including the implementation of national policy measures on school education funding and reforms.

As part of this negotiation process, and during the implementation of any such intergovernmental agreements, the Minister for Education and Training (the Minister) may approve funding allocations to states and territories for initiatives. These initiatives must be of importance to the Government, and support school education reform including the implementation of related national policy measures.

While states and territories will normally have responsibility for funding the implementation of agreed initiatives, there may be circumstances where school education reform funding is provided to states and territories for initiatives and agreed outcomes arising from the intergovernmental agreements. As these agreements are currently being negotiated and will be informed by the Review to Achieve Educational Excellence in Australian Schools

(<https://www.education.gov.au/review-achieve-educational-excellence-australian-schools>), it is not possible to specifically identify at this point the initiatives that will be funded. The Review is expected to be completed by March 2018.

Any initiatives targeted will help ensure student educational outcomes are enhanced and schools are able to provide the best possible educational opportunities to all students. These are integral aspects of the Government's Quality Schools agenda.

School education reform funding to states and territories comes from the *National Schools Reform* subprogram in Program 1.7: Early Learning and Schools Support, which is part of Outcome 1. Details are set out in *Portfolio Budget Statements 2017-18, Budget Related Paper No. 1.5, Education and Training Portfolio* at pages 38 to 40.

As negotiation of detailed intergovernmental agreements will occur in 2018, it is not possible to specify the amount of funding expected to be provided to any one or more states and territories. Any funding allocations will not exceed the appropriation of \$77.3 million for *National Schools Reform* for 2017-18 to 2020-21.

All school education reform funding to states and territories will be provided by way of grants. Any grants to states and territories will be conducted in accordance with any applicable requirements of the *Commonwealth Grants Rules and Guidelines*, and will adhere to any applicable grant reporting requirements. States and territories will be responsible for implementing school education reform activities that are the subject of a grant.

The department will develop school education reform funding guidelines early in 2018 and publish on the department's website [www.education.gov.au](http://www.education.gov.au) during 2018.

School education reform funding to states and territories will be expended in accordance with the department's Secretary Instructions and delegations on expenditure of relevant money, and in accordance with the *Public Governance, Performance and Accountability Act 2013*. A delegate of the Secretary, authorised by the financial delegations of the department, will be responsible for entering into any grant arrangements in relation to any relevant expenditure.

Independent review will not be available for grants to the states and territories. These grants will be ad-hoc, non-competitive, and for specific entities (states, and territories). Further, these grants will be agreed between the Minister and each relevant state and territory. As such, independent review is not considered appropriate for this initiative.

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

- the power to grant financial assistance to the states (section 96); and
- the territories power (section 122).

#### *Grants of financial assistance to states*

Section 96 of the Constitution allows the Commonwealth Parliament to provide grants of financial assistance to any state on such terms and conditions as the Commonwealth Parliament sees fit. Funding may be provided to a state or states to assist in undertaking school education reform and implement national school education policy measures.

### *Territories power*

The provision of funding for activities in or in relation to a territory is supported by section 122 of the Constitution. Funding may be provided to a territory (for example, the Northern Territory or the ACT) to assist the territory in undertaking school education reform and implement national school education policy measures.

### **Item 2 – In the appropriate position in Part 3 of Schedule 1AB (table)**

This item adds two new table items to Part 3 of Schedule 1AB to establish legislative authority for government spending on certain activities that will be administered by the department.

New **table item 24** establishes legislative authority for government spending in relation to the Australian Institute for Teaching and School Leadership Limited (AITSL).

AITSL is a wholly-owned Commonwealth company established under the *Corporations Act 2001*. Table item 6 of Schedule 1B to the *Financial Framework (Supplementary Powers) Regulations 1997* specifies that the objects of AITSL are to ‘provide national leadership for the Commonwealth, state and territory governments in promoting excellence in the profession of teaching and school leadership’. AITSL’s activities fall within three key areas: initial teacher education, teaching and school leadership.

AITSL was established in 2010, and works in collaboration with the Australian, state and territory governments on improving the quality of teaching and school leadership across all Australian schools. AITSL further works to develop nationally agreed approaches to teaching and school leadership, examples include the *Australian Professional Standards for Teachers* and the *Australian Professional Standard for Principals*. These standards assist in ensuring that there is a consistent, transparent, and national approach to the professional standards expected of school teachers and school leaders in Australian schools.

AITSL’s activities support and advance the quality of teaching and leadership in Australian schools and other educational settings. AITSL develops nationally consistent approaches to:

- (a) the accreditation of initial teacher education programs through revised *Accreditation of Initial Teacher Education Programs in Australia: Standards and Procedures*;
- (b) the implementation of professional standards for teachers and school leaders;
- (c) the certification of teachers that recognise teaching expertise at the highly accomplished and lead teacher levels of the *Australian Professional Standards for Teachers*;
- (d) the registration of teachers through the development of a national framework for teacher registration that covers a range of common agreed elements including qualification, suitability and proficiency requirements;
- (e) supporting the promotion of high-quality professional learning for teachers and school leaders that is aligned to the *Australian Professional Standards for Teachers* and which is focused on improving student outcomes; and
- (f) the preparation of school leaders, including pre-appointment principal certification, through the development of a national leadership framework.

In 2014, the then Minister for Education and Training established the Teacher Education Ministerial Advisory Group (TEMAG). Following the release in 2015 of TEMAG's report *Action Now: Classroom Ready Teachers*, AITSL has been tasked with leading the implementation of TEMAG's recommendations in collaboration with states and territories, higher education providers, teacher regulators and the non-government school sector.

Key TEMAG recommendations being implemented by AITSL cover:

- (a) revising the *Accreditation of Initial Teacher Education Programs in Australia: Standards and Procedures*, including an overhauled national accreditation process, strengthened national program standards, and ongoing monitoring of effectiveness;
- (b) developing national guidelines for the selection of entrants into initial teacher education programs;
- (c) developing national guidelines for beginning teacher induction; and
- (d) a review of the graduate level of the *Australian Professional Standards for Teachers*.

From 2018, AITSL will further support elements of the Government's *Quality Schools* agenda through implementation of school education reform initiatives and related national policy measures that are within AITSL's objects and activities. Examples of these initiatives and measures include:

- principal preparation and pre-appointment certification;
- a national review of teacher registration; and
- measuring teacher impact.

To better support school principals in meeting the complex and evolving demands of their role, the Government's *Quality Schools* agenda has identified a national approach to principal preparation and pre-appointment certification as a priority to ensure:

- new principals have the skills and knowledge they need to become effective school leaders; and
- aspiring school leaders are provided with a clear pathway to the role of principal.

AITSL will help lead and coordinate this work, in collaboration and conjunction with the state and territory governments.

AITSL, in consultation with state and territory governments and other school education stakeholders, will undertake a national review of school teacher registration requirements to consider its rigour and quality, with a view to improving national consistency. The review will analyse how the *Australian Professional Standards for Teachers* are used within regulatory arrangements as a quality benchmark in teacher registration. This will help identify areas of the regulatory system that can be amended, including any enhancements to drive further improvements in teacher quality.

AITSL will also scope the development of an evaluation methodology to measure school teacher impact on school students, through a review of commissioned research, consultation with the teaching profession and other education stakeholders, and undertaking a small-scale trial of a possible methodology.

Funding will be provided to AITSL for its operations, including its baseline operational costs, implementing recommendations of the TEMAG, and implementing school education reform initiatives and related national policy measures.

Funding to AITSL for school education reform initiatives and related national policy measures, comes from the *National Schools Reform* subprogram in Program 1.7: Early Learning and Schools Support, which is part of Outcome 1. Details are set out in *Portfolio Budget Statements 2017-18, Budget Related Paper No. 1.5, Education and Training Portfolio* at pages 38 to 40. The Minister for Education and Training (the Minister) approves any such funding to AITSL.

It is not possible to specify the exact amount of funding expected to be provided to AITSL for this purpose, as relevant school education reform initiatives and related national policy measures are still to be fully negotiated, developed and agreed. However, any funding allocations will not exceed the appropriation for *National Schools Reform* of \$77.3 million for the 2017-18 to 2020-21. Funding under *National Schools Reform* will be provided over five financial years from 2017-18 to 2021-2022 in line with the intergovernmental agreements to be negotiated on school education reform with states and territories. The department will also be developing and publishing school education reform funding guidelines early in 2018, which will encompass this funding to AITSL.

Funding to AITSL for implementing recommendations of TEMAG, comes from the *Australian Government Response to TEMAG* subprogram in Program 1.7: Early Learning and Schools Support, which is part of Outcome 1. Details are set out in *Portfolio Budget Statements 2017-18, Budget Related Paper No. 1.5, Education and Training Portfolio* at pages 38 to 40.

Total funding still to be provided to AITSL from *Australian Government Response to TEMAG* is \$7.8 million, over 2017-18 to 2018-19. The Government committed \$16.9 million over four financial years (2015–16 to 2018–19) to respond to the TEMAG recommendations. The majority of this funding has been directed to AITSL to implement reforms under this initiative.

Other funding to AITSL, including for its baseline operations, comes from the *Quality Outcomes* subprogram in Program 1.7: Early Learning and Schools Support, which is part of Outcome 1. Details are set out in *Portfolio Budget Statements 2017-18, Budget Related Paper No. 1.5, Education and Training Portfolio* at pages 38 to 40.

*Quality Outcomes* is a discretionary funding program for initiatives of importance to the Government. The Minister approves funding under *Quality Outcomes*. *Quality Outcomes* is a long-standing appropriation to the department for the purposes of providing funding for a variety of initiatives and projects.

Total funding to be provided to AITSL from *Quality Outcomes* is \$15.5 million over 2017-18 to 2018-19.

Funding for AITSL will be expended in accordance with the department's Secretary Instructions and delegations on expenditure of relevant money, and in accordance with the *Public Governance, Performance and Accountability Act 2013*.

A delegate of the Secretary, authorised by the financial delegations of the department, will be responsible for making final decisions in relation to any relevant expenditure.

All funding for AITSL will be provided by way of grants. Any grants provided in relation to AITSL will be conducted in accordance with the applicable requirements of the *Commonwealth Grants Rules and Guidelines* and will adhere to applicable grant reporting requirements. Information with respect to funding for AITSL and its operations is generally available in the department's Portfolio Budget Statements.

Independent review will not be available for any grants provided in relation to AITSL, as any grants will be non-competitive, for a specific entity (AITSL) and specific purposes.

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

- the Commonwealth executive power and the express incidental power (section 61 and section 51(xxxix)); and
- the external affairs power (section 51(xxix)).

#### *Executive power and express incidental power*

The express incidental power (section 51(xxxix) of the Constitution) empowers the Parliament to make laws with respect to matters incidental to the execution of any power vested in it by the Constitution. Together with the executive power (section 61 of the Constitution), section 51(xxxix) supports activities that are peculiarly adapted to the government of a nation and cannot be carried out for the benefit of the nation otherwise than by the Commonwealth.

AITSL is an independent national body which provides advice to Commonwealth, state and territory governments and works with all Australian Education Ministers. Funding provided to AITSL will support and advance the quality of teaching and leadership in schools and other educational settings across Australian jurisdictions, and support the development and implementation of national approaches for:

- the accreditation of initial teacher education programs;
- national professional standards for teachers and school leaders;
- nationally consistent registration of teachers; and
- the promotion of professional learning for teachers and school leaders.

With respect to the executive power (section 61 of the Constitution), funding to AITSL will be used for AITSL to undertake projects and initiatives with the department for the purposes of developing Australian Government policy on quality teaching and school leadership.

#### *External affairs power*

Section 51(xxix) of the Constitution empowers the Parliament to make laws with respect to 'external affairs'. The external affairs power supports legislation implementing treaties to which Australia is a party.

Australia has international obligations regarding the right to education under Articles 2 and 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 2 of the ICESCR requires States Parties to take steps to progressively achieve the full

realisation of the rights recognised in the ICESCR by all appropriate means. Article 13 of the ICESCR states that, to achieve the full realisation of the right to education, primary and secondary education is to be made generally available and ‘the development of a system of schools at all levels shall be actively pursued’.

Australia also has international obligations regarding the right of children to education under the Convention on the Rights of the Child (CRC). Article 4 requires State Parties to undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the CRC. Article 28 of the CRC provides that States Parties shall take steps for the purpose of progressively achieving the right of the child to education, including making primary and secondary education available. Article 29 provides that the education of the child shall be directed to, amongst other things, ‘[t]he development of the child’s personality, talents and mental and physical abilities to their fullest potential’.

As noted above, AITSL will be funded to support and advance the quality of teaching and leadership in schools and other educational settings across Australian jurisdictions, and to support the development and implementation of national approaches for:

- the accreditation of initial teacher education programs;
- national professional standards for teachers and school leaders;
- nationally consistent registration of teachers; and
- the promotion of professional learning for teachers and school leaders.

These activities are directed to building a world class school system and supporting better outcomes for students to assist them to achieve their potential.

New **table item 25** establishes legislative authority for government spending relating to Education Services Australia Limited (ESA).

The Government provides funding to ESA, a company limited by guarantee established by all Australian governments, to, amongst other things, support and implement the work of the Education Council of the Council of Australian Governments (COAG). All Australian Education Ministers are members of ESA, and all jurisdictions financially contribute to its operations and agreed activities.

ESA acts as the legal entity for the Education Council to facilitate secretariat and other support services to all Education Council members, as well as coordinating projects and initiatives agreed by the Education Council to be implemented nationally, including those in line with the COAG reform agenda.

The Government will provide funding to ESA for:

- (a) the secretariat support it provides to the Education Council;
- (b) the National Schools Interoperability Program;
- (c) the Student Wellbeing Hub; and
- (d) the development of education and professional development resources.

In addition to secretariat support for the Education Council, ESA also coordinates and delivers projects and initiatives identified in the Education Council forward work plan, agreed by the Education Council. All jurisdictions support ESA’s role in relation to the Education Council through financial contributions, which are negotiated by the Australian

Education Senior Officials Committee annually in May for the forward financial year. The forward work plan includes matters relating to the school education sector, including school reform priorities. The forward work plan will be informed by the content of a new intergovernmental agreement on school education reform to be negotiated in 2018.

Examples of projects and initiatives include supporting access to national online learning services for schools; supporting safe and supportive school communities; supporting additional analysis of data from certain national surveys and assessments of school students and schools; attendance strategies for school students; support for the national implementation of the National Assessment Program – Literacy and Numeracy (NAPLAN) online; and support to coordinate and facilitate school education reform initiatives.

The National Schools Interoperability Program (NSIP) supports the development of a national digital learning infrastructure; encourages the more effective linking of digital information systems; promotes the adoption of common technical standards; and supports activities to improve the interoperability of information systems across all Australian schools and school sectors. NSIP is a national initiative, with all jurisdictions supporting ESA through financial contributions to implement NSIP.

The Student Wellbeing Hub ([www.studentwellbeinghub.edu.au](http://www.studentwellbeinghub.edu.au)) is the Government's information hub for students, parents and teachers on safety and wellbeing. The site includes information and resources covering online safety, bullying, countering violent extremism, mental health and drug and alcohol education. The Student Wellbeing Hub is underpinned by the National Safe Schools Framework (NSSF), which is a high level framework that was nationally endorsed by all Education Ministers in 2010. The NSSF provides Australian schools with a vision and a set of guiding principles to assist school communities to develop positive and practical student safety and wellbeing policies and practice.

The development of education and professional development resources is ancillary to the above initiatives. Such resources are intended to align with the *Australian Curriculum* and the NSSF, and promote the implementation of quality school education by teachers in schools. Such resources would be primarily delivered online and targeted to school teachers in order to facilitate enhanced student educational outcomes and opportunities.

School education reform funding to ESA, which represents the Government's contribution to implementing Education Council agreed projects and initiatives, comes in part from the *National Schools Reform* subprogram in Program 1.7: Early Learning and Schools Support, which is part of Outcome 1. Details are set out in *Portfolio Budget Statements 2017–18, Budget Related Paper No. 1.5, Education and Training Portfolio* at pages 38 to 40. The Minister approves funding to ESA for Education Council purposes from this funding source. *National Schools Reform* totals \$77.3 million over 2017-18 to 2020-21.

Funding to ESA also comes from the *Quality Outcomes* subprogram in Program 1.7: Early Learning and Schools Support, under Outcome 1. Details are set out in the *Portfolio Budget Statements 2017–18, Budget Related Paper No. 1.5, Education and Training Portfolio* at pages 38 to 40. The Minister approves funding to ESA for Education Council purposes, the NSIP and the Student Wellbeing Hub from this funding source. Any funding to be provided to ESA for the purposes of the Student Wellbeing Hub is for activities that are of importance to the Australian Government.

*Quality Outcomes* is a discretionary funding program for initiatives of importance to the Australian Government. The Minister approves funding under *Quality Outcomes* which is a long-standing appropriation to the department for the purposes of providing funding for a variety of initiatives and projects.

It is not possible to specify the exact amount of funding to be provided to ESA for each of the above elements. Final funding amounts are subject to a number of parameters, including negotiation and agreement of financial contributions by the Commonwealth, states and territories.

With respect to recent expenditure from *Quality Outcomes* for ESA, the following funding was provided in 2016-17:

- \$2.31 million for the Education Council secretariat, projects and initiatives;
- \$1.38 million for NSIP; and
- approximately \$40,000 for the Student Wellbeing Hub.

All funding to ESA will be provided by way of grants. Any grants to ESA will be conducted in accordance with the applicable requirements of the *Commonwealth Grants Rules and Guidelines* and will adhere to standard applicable grant reporting requirements. Relevant information will be available on the department's website ([www.education.gov.au](http://www.education.gov.au)) and the Education Council's website (<http://scseec.edu.au>).

Funding to ESA for NSIP and the Student Wellbeing Hub is subject to decision by the Minister on appropriate funding. Funding to ESA for the Education Council secretariat and projects is subject to agreement by the Minister on the Government's contribution to the secretariat costs of the Education Council and its agreed forward work plan to be implemented for the following financial year.

Funding to ESA will be expended in accordance with the department's Secretary Instructions and delegations on expenditure of relevant money, and in accordance with the *Public Governance, Performance and Accountability Act 2013*. A delegate of the Secretary, authorised by the financial delegations of the department, will be responsible for entering into any arrangements in relation to any relevant expenditure.

Independent review will not be available for any grants to ESA. These grants will be non-competitive and for a specific entity (ESA). Further to this, the specialised role and operations of ESA mean grants are only able to be provided to ESA for the purposes discussed above. As such, independent review is not considered appropriate for this initiative.

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

- the communications power (section 51(v));
- the external affairs power (section 51(xxix)); and
- the Commonwealth executive power and the express incidental power (sections 61 and 51(xxxix)).

### *Communications power*

Under section 51(v) of the Constitution, the Commonwealth has power to legislate with respect to ‘postal, telegraphic, telephonic and other like services’.

Funding provided to ESA will facilitate the development and delivery of online content connected to school education. For example, the National Schools Interoperability Program supports the development of digital learning infrastructure, and the Student Wellbeing Hub consists of content to be delivered online.

### *External affairs power*

Section 51(xxix) of the Constitution empowers the Parliament to make laws with respect to ‘external affairs’. The external affairs power supports legislation implementing treaties to which Australia is a party.

Australia has obligations regarding the right of the child to education under Articles 4, 28(1) and 29(1)(a) of the Convention on the Rights of the Child (CRC), and the right to education under Articles 2(1) and 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Article 28(1) of the CRC provides that ‘States Parties recognize the right of the child to education’. Pursuant to Article 4 of the CRC, Australia is required to ‘undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention’. Further, Article 29(1)(a) of the CRC provides:

1. States Parties agree that the education of the child shall be directed to:
  - (a) The development of the child’s personality, talents and mental and physical abilities to their fullest potential.

Article 13(1) of the ICESCR recognises the ‘right of everyone to education’. This specifically includes, pursuant to Article 13(2)(e), ‘the development of a system of schools at all levels’. Pursuant to Article 2(1), Australia relevantly undertakes to ‘take steps... to the maximum of its available resources, with a view to achieving progressively the full realization’ of this right ‘by all appropriate means, including particularly the adoption of legislative measures’.

Funding provided to ESA will help develop a world class school system by improving the quality of teaching in Australian schools which will, in turn, help improve the educational development of Australian school children and assist them to achieve their potential. Funding provided to ESA will further promote access to school education for Australian school children, as it will help ensure that schools are safe places for learning, with high-quality teaching and provision of school education.

### *Executive power and express incidental power*

The express incidental power (section 51(xxxix) of the Constitution) empowers the Parliament to make laws with respect to matters incidental to the execution of any power vested in it by the Constitution. Together with the executive power (section 61 of the Constitution), section 51(xxxix) supports activities that are peculiarly adapted to the

government of a nation and cannot be carried out for the benefit of the nation otherwise than by the Commonwealth.

ESA is a national, not-for-profit company owned by all Australian Education Ministers. The Education Council is an initiative of COAG, comprising the Commonwealth Education Minister and all state and territory Education Ministers. Funding provided to ESA will support the delivery of Education Council projects, including those in line with COAG's reform agenda. In delivering such projects, ESA coordinates between the Commonwealth and all states and territories. The delivery of Education Council projects features significant financial contributions from all jurisdictions involved (including the Commonwealth), and affects all jurisdictions nationally.

With respect to the executive power of the Commonwealth, funding to ESA may also facilitate the Commonwealth entering into and implementing intergovernmental agreements with the states and territories relating to school education reform.

### **Item 3 – 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 on certain activities that will be administered by the department.

New **table item 255** establishes legislative authority for government spending to improve the quality assurance of data relating to students with disabilities, namely, the Nationally Consistent Collection of Data on School Students with Disability (NCCD).

Under subsection 52(3A) and section 58A of the *Australian Education Regulation 2013* (the Regulation), entities that operate government and non-government schools (approved authorities) and those schools must complete the NCCD each year. The NCCD collects data about school students with disability across Australian schools in a consistent, reliable and systematic way.

The data collected for the NCCD is primarily based on the professional judgement of school teachers, supported by documented evidence. Teachers determine the levels of educational adjustment that are provided to students with disability to access and participate in school education on the same basis as other students, and report those levels of educational adjustment in the NCCD.

The primary purpose of the NCCD is to collect information about the levels of educational adjustment provided to students with disability, with reference to categories of disability and other student characteristics, in order to provide the Government with key information to inform funding and policy development.

The NCCD ensures that the Government has a reliable, consistent and transparent data source for governmental decisions related to funding and policy development for students with disability accessing school education in Australia. Further to this, the NCCD is supported by the Education Council of the Council of Australian Governments.

Further information about the NCCD is available in the NCCD Guidelines (<https://www.education.gov.au/nationally-consistent-collection-data-students-disability-guidelines>), which are updated each year and approved by the Education Council.

The NCCD is an ongoing requirement in order for approved authorities and schools to receive Commonwealth recurrent schools funding under the *Australian Education Act 2013*. From 2018, the NCCD will also inform the student with disability recurrent schools funding loading, which is calculated under section 36 of that Act. As part of the Government's *Quality Schools* agenda, schools will attract recurrent funding loadings for students with disability, on the basis of the levels of educational adjustment provided for those students. Loading amounts will be set out in the *Australian Education Regulation 2013*.

As part of ongoing quality assurance processes in relation to the NCCD, and to help ensure that NCCD data is as accurate as possible given it will inform Commonwealth recurrent schools funding from 2018, funding will be provided to improve the quality and consistency of NCCD data through a number of activities.

Total funding of \$20 million will be provided for this initiative from 2017-18 to 2020-21.

Funding will be provided for activities that contribute to a national end-to-end quality assurance program for the NCCD, including targeted activities to enhance the understanding of the NCCD collection by schools and school teachers. Funding will further help facilitate opportunities for cross-jurisdictional and cross-sectoral engagement and collaboration, in the government and non-government school sector, in relation to the NCCD.

In addition to this, through funding activities related to NCCD data moderation, data variability will be reduced as schools and school teachers collaborate, validate and learn from each other. These activities will help to regulate NCCD data collection processes, and assist schools and teachers to make consistent and reliable decisions in relation to the NCCD.

Quality assurance activities will further assist approved authorities and schools to transition to formal post-enumeration and audit activities in relation to the NCCD, and support targeted feedback and ongoing assistance in the data collection processes. As the NCCD will now inform Commonwealth recurrent schools funding, approved authorities and schools will need to adjust to changes to the nature of the data (additional demographic variables), the timing permitted for providing data, and the manner in which the data is collected. As such, funding activities will also support the provision of information and advice on the use of new data entry systems and approaches to providing the data.

The department will also work with the government and non-government school education sectors, and school education government authorities, to extend existing data quality assurance activities. This approach takes into account existing practices and jurisdictional differences.

Funding will primarily be provided to state and territory governments, representative organisations for non-government schools, and may also be provided to contracted service providers. These entities will be required to provide a proposal to the department, setting out the key activities, initiatives, and method to be undertaken, for quality assurance of the NCCD, including the ways in which cross-sectoral and cross-jurisdictional partnerships can be embedded.

Funding will also be provided for the establishment of a single, online source of information, resources and materials relating to the NCCD, the *Disability Discrimination Act 1992* and the *Disability Standards for Education*. The primary purpose for this will be to assist schools and school teachers in their compliance with the Regulation in relation to the NCCD data collection.

A single, online source of information, resources and materials relating to the NCCD will complement quality assurance activities, and will ensure that schools and school teachers can access the information they need to make evidence-based decisions when completing the NCCD data collection.

This information will encompass practical resources, fact-sheets, guides and training modules to ensure that school leaders and teachers are familiar with the requirements of the NCCD and can provide the most accurate and up-to-date information in the NCCD data collection each year. This information is essential to ensuring that schools meet the requirements of the NCCD, in particular around assessing the level of educational adjustments provided to students with disability.

Funding will primarily be provided to contracted service providers to develop the single, online source of information.

Funding to states and territories, and representative organisations for non-government schools, will be provided by way of grants. Grant agreements will be entered into with entities and will set out in detail the quality assurance activities relating to the NCCD that are to be undertaken.

Information with respect to any grants will be contained in NCCD quality assurance grants guidelines. These guidelines will be available on the department's website at [www.education.gov.au](http://www.education.gov.au). Grants are anticipated to be provided on a competitive basis.

Funding for any contracted service providers will be undertaken by way of a procurement process. A procurement contract will be entered into, which will set out in detail contracted services relating to quality assurance of the NCCD and the development of the single, online source of information. Further information about any procurement process will be available on AusTender (at [www.tenders.gov.au](http://www.tenders.gov.au)) in line with standard procurement reporting processes.

All funding for this initiative will be expended in accordance with the department's Secretary Instructions and delegations on expenditure of relevant money, and in accordance with the *Public Governance, Performance and Accountability Act 2013*. A delegate of the Secretary, authorised by the financial delegations of the department, will be responsible for making final decisions in relation to any relevant expenditure, and entering into any grant agreements and procurement contracts.

Any procurement process undertaken in relation to this initiative will be conducted in accordance with the *Commonwealth Procurement Rules*, and will adhere to applicable approach to market and other procurement requirements. In accordance with the department's procurement complaint process, any complaints in relation to a procurement will be directed, in the first instance, to the relevant contact for the procurement, with contact

information available on AusTender. Unresolved complaints may then be directed to independent officers of the department or a probity advisor.

Any expenditure of funding that relates to the procurement of services is subject to the requirements of the Commonwealth's resource management framework, including the *Commonwealth Procurement Rules* and the *Public Governance, Performance and Accountability Act 2013*.

Independent review will not be available for any funding provided by way of procurement. The department considers that current mechanisms are appropriate and reasonable for any procurement process undertaken in relation to this initiative.

Any grants provided in relation to this initiative will be conducted in accordance with the *Commonwealth Grants Rules and Guidelines* and will adhere to applicable grant selection and reporting requirements.

Where grants are provided on a competitive basis, the department will actively consider the applicability and appropriateness of review mechanisms for decisions relating to such grants.

Funding for this initiative will come from Program 1.7: Early Learning and Schools Support, which is part of Outcome 1. Details will be set out in the *Portfolio Additional Estimates Statements 2017-18, Education and Training Portfolio*.

Noting that it is not a comprehensive statement of relevant 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 external affairs power (section 51(xxix));
- the executive power of the Commonwealth and the express incidental power (section 61 and section 51(xxxix));
- the grants of financial assistance to states power (section 96); and
- the territories power (section 122).

#### *Communications power*

Under section 51(v) of the Constitution, the Commonwealth has power to legislate with respect to 'postal, telegraphic, telephonic and other like services'. Funding will be provided to develop a single source of information, resources, and materials relating to the NCCD, which will be distributed via electronic communication services such as the internet.

#### *Census and statistics power*

Section 51(xi) of the Constitution empowers the Parliament to make laws with respect to 'census and statistics'. The NCCD collects data about school students with disability across Australian schools in a consistent, reliable and systematic way. Under the program, funding will be provided to ensure the quality of data collected for the purposes of the NCCD.

### *External affairs power*

Section 51(xxix) of the Constitution empowers the Parliament to make laws with respect to ‘external affairs’. The external affairs power supports legislation implementing treaties to which Australia is a party.

Australia has obligations regarding the rights of persons with disability to education under the Convention on the Rights of Persons with Disabilities (CRPD). Article 24(1) of the CRPD provides that States Parties ‘recognize the right of persons with disabilities to education’ and with a view to realising this right ‘shall ensure an inclusive education system’.

Article 24(2) also provides:

2. In realising this right, States Parties shall ensure that:
  - (a) Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;
  - (b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;
  - (c) Reasonable accommodation of the individual’s requirements is provided;
  - (d) Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;
  - (e) Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.

Funding will be provided to facilitate the collection of accurate information under the NCCD, which in turn supports the payment of the student with disability loading under section 36 of the *Australian Education Act 2013*. In this way, funding will assist to ensure that schools receive appropriate financial resources to support students with disability.

### *Executive power and express incidental power*

With respect to the Commonwealth’s executive power and express incidental power, funding will be provided to support publishing information that assists people to understand and meet their obligations under the *Australian Education Act 2013* and the *Disability Discrimination Act 1992*.

### *Grants of financial assistance to states*

Section 96 of the Constitution allows the Commonwealth Parliament to provide grants of financial assistance to any state on such terms and conditions as the Commonwealth Parliament sees fit. Funding may be provided to a state or states to assist in undertaking activities related to quality assurance of NCCD data.

### *Territories power*

The provision of funding for activities in or in relation to a territory is supported by section 122 of the Constitution. Funding may be provided to a territory or territories (for example, the Northern Territory or the ACT) to assist in undertaking activities related to quality assurance of NCCD data.

New **table item 256** establishes legislative authority for the Government to provide funding for Australia's participation in specific international school student assessments, namely the Trends in International Mathematics and Science Study (TIMSS) and the Progress in International Reading Literacy Study (PIRLS).

Under section 43 of the *Australian Education Regulation 2013*, all government and non-government schools in Australia must participate in the National Assessment Program. As part of this program, schools must participate in all cycles of TIMSS and PIRLS.

TIMSS and PIRLS are coordinated at the international level by the International Association for the Evaluation of Educational Achievement (IEA), with Australia's involvement managed and coordinated by the Australian Government Department of Education and Training (the department) on behalf of the Commonwealth and all states and territories. TIMSS and PIRLS are supported by the Education Council of COAG.

TIMSS is undertaken every four years and assesses Year 4 and Year 8 school students to measure achievement in content and cognitive domains in mathematics and science. The next TIMSS cycle is set to occur in 2019.

PIRLS is undertaken every five years and assesses Year 4 students to measure achievement in the areas of reading for literacy experience and reading to acquire and use information. The next PIRLS cycle is set to occur in 2021.

Australia has participated in each TIMSS cycle since it began in 1995 and participated in PIRLS for the first time in 2011.

Australia's participation in TIMSS and PIRLS supports the commitment to benchmarking Australian school students' performance in key subject areas that underpin national wellbeing and productivity against the performance of school students in other countries. Results from both assessments can also be used to stimulate curriculum reform and improve teaching and learning, through research and analysis of the data. The assessments enable schools to access detailed information about student performance that is linked to curriculum.

In order to manage and coordinate the implementation of TIMSS and PIRLS in Australian schools, the department enters into a contract with a service provider to undertake this process. The department's contracted service provider liaises with the IEA, state and territory education authorities, and school sector stakeholders, on the implementation of TIMSS and PIRLS; administers the TIMSS and PIRLS assessments in Australian schools; and consolidates and reports on all data collected from the assessments.

Funding for the purposes of TIMSS and PIRLS comes from the *Quality Outcomes* subprogram in Program 1.7: Early Learning and Schools Support, which is part of Outcome 1. Details are set out in the *Portfolio Budget Statements 2017-18, Budget Related*

*Paper No. 1.5, Education and Training Portfolio* at pages 38 to 40. The Minister for Education and Training (the Minister) approves any final funding allocations for these purposes.

*Quality Outcomes* is a discretionary funding program for initiatives and projects of importance to the Australian Government, and the Minister approves funding allocations under *Quality Outcomes*. *Quality Outcomes* is a long-standing appropriation provided to the department for the purposes of providing funding for a variety of initiatives and projects.

For the next cycle of TIMSS in 2019, it is anticipated that the Australian Government will provide \$2.9 million to the contracted service provider over four years. States and territories will also contribute to TIMSS, with their contributions to be collected by the Education Council secretariat and provided directly to the contracted service provider.

Funding for PIRLS will be determined once the next cycle has been agreed by the Education Council, expected to be in 2019-20. It is anticipated that any future funding for PIRLS will also be drawn from *Quality Outcomes*.

All services and funding provided for the implementation of TIMSS and PIRLS will occur by way of a procurement process.

The procurements will be conducted in accordance with the *Commonwealth Procurement Rules* and will adhere to any applicable approach to market and other procurement requirements. Information will be available on AusTender ([www.tenders.gov.au](http://www.tenders.gov.au)). In accordance with the department's procurement complaint process, any complaints in relation to a procurement will be directed, in the first instance, to the relevant contact for the procurement, with contact information available on AusTender. Unresolved complaints may then be directed to independent officers of the department or a probity advisor, if set out in the applicable procurement probity plan.

Funding for TIMSS and PIRLS will be expended in accordance with the department's Secretary Instructions and delegations on expenditure of relevant money, and in accordance with the *Public Governance, Performance and Accountability Act 2013*. A delegate of the Secretary of the department, authorised by the financial delegations of the department, will be responsible for making final decisions in relation to any relevant expenditure. Any contract entered into in relation to TIMSS and PIRLS will be reported on AusTender.

Any expenditure of funding will, primarily, relate to the procurement of services which is subject to the requirements of the Commonwealth's resource management framework, including the *Commonwealth Procurement Rules* and the *Public Governance, Performance and Accountability Act 2013*. Independent review will not be provided for any funding provided for TIMSS and PIRLS. The department considers that current mechanisms are appropriate and reasonable for any procurement process undertaken in relation to TIMSS and PIRLS.

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

The external affairs power supports legislation with respect to places, persons, matters or things outside the geographical limits of Australia. Funding will be provided to facilitate Australia's participation in comparative international school student assessments. The assessments are coordinated by the IEA, which is established under foreign law and located geographically external to Australia. Funding will, for example, facilitate liaising with the IEA, implementing the international school student assessments in Australia and reporting the results to the IEA.

## **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) 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 five initiatives in the Education and Training portfolio. The initiatives will be administered by the Department of Education and Training.

Funding will be provided for:

- grants of financial assistance to states and territories for school education reform initiatives as part of negotiations of new intergovernmental agreements relating to school education reform;
- the Australian Institute for Teaching and School Leadership Limited for its operations; implementation of recommendations of the Teacher Education Ministerial Advisory Group; and implementation of school education reform initiatives and related national policy measures;
- Education Services Australia Limited for secretariat support provided to the Education Council of the Council of Australian Governments; the delivery of projects and initiatives identified by the Education Council; the National Schools Interoperability Program; the Student Wellbeing Hub; and the development of education and professional development resources for teachers;
- activities to improve the quality assurance of data relating to students with disabilities collected for the Nationally Consistent Collection of Data on School Students with Disability; and
- Australia's participation in two international school student assessments, namely, the Trends in International Mathematics and Science Study and the Progress in International Reading Literacy Study which assess students' achievement in mathematics, science and reading, respectively.

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

**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**