

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. 1) Regulations 2018*

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. 1) Regulations 2018* (the Regulations) amends Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on six initiatives in the Education and Training portfolio. The initiatives will be administered by the Department of Education and Training.

Funding will be provided for:

- the Dorothea Mackellar Memorial Society to conduct the Dorothea Mackellar Poetry Awards;
- the civics and citizenship education initiatives including the Simpson Prize; the National History Challenge; and the National Schools Constitutional Convention;
- the National Career Education Strategy to support schools and parents to prepare students for life beyond school, including developing the skills they will need for jobs in the future;
- the Australian Academy of Science to further develop the Primary Connections online curriculum resources for students and teachers and conduct professional learning workshops for teachers;
- the Australian Academy of Science to further develop the Science by Doing online curriculum resources for students and teachers; and
- the In Home Care support agencies to facilitate appropriate access for individuals or families to care provided to their child or children in their home.

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. 1) Regulations 2018*

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Education and Training Measures No. 1) Regulations 2018*.

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 3 of Schedule 1AB (table)

This item adds a new table item to Part 3 of Schedule 1AB to establish legislative authority for government spending on an initiative administered by the Department of Education and Training (the department).

New **table item 26** establishes legislative authority for the Government to fund the Dorothea Mackellar Memorial Society to conduct the Dorothea Mackellar Poetry Awards.

The Dorothea Mackellar Poetry Awards is a national competition conducted by the Dorothea Mackellar Memorial Society that recognises an Australian literary icon, promotes interest in poetry at a national level and lifts its profile, and highlights the importance and promotes excellence in literacy. The Dorothea Mackellar Poetry Awards, which are aligned with the literature strand of the Australian Curriculum in English, also strengthen the literacy skills of school-aged children and encourage engagement and participation in the Awards in states and territories with lower rates of participation, including by inviting schools in regional and remote areas to participate.

Funding for this initiative 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 page 40.

Quality Outcomes is a discretionary funding program for initiatives of importance to the Government. The Minister for Education and Training 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 that will be provided to the Dorothea Mackellar Memorial Society. Final funding amounts are subject to a number of parameters, including negotiation and agreement of financial contributions by the Government and the cost of conducting the competition. Over the period 2015-16 to 2017-18, the Government provided \$150,000 to the Dorothea Mackellar Memorial Society.

Funding to the Dorothea Mackellar Memorial Society for the Dorothea Mackellar Poetry Awards will be provided by way of a grant. The grant process, including the grant administration, will be conducted in accordance with the *Commonwealth Grants Rules and Guidelines 2017*, and will be subject to applicable grant selection and reporting requirements.

Grant funding will be expended in accordance with the department's Secretary Instructions and delegations on expenditure of relevant money, and the *Public Governance, Performance and Accountability Act 2013*. A delegate of the Secretary of the department will be responsible for making final decisions in relation to the grant expenditure.

Decisions made in connection with a grant to the Dorothea Mackellar Memorial Society will not be subject to independent review. The grant will be ad hoc, non-competitive and for a specific purpose and entity. Further to this, as the grant recipient has been responsible for conducting the Dorothea Mackellar Poetry Awards since 1984, it is not envisaged that another organisation would receive funding in relation to this initiative. The grant will be negotiated and agreed directly with the Dorothea Mackellar Memorial Society.

Information about the grant will be published on GrantConnect at www.grants.gov.au once an agreement has been signed with the Dorothea Mackellar Memorial Society.

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 external affairs power (section 51(xxix)); and
- the Commonwealth executive power and the express incidental power (sections 61 and 51(xxxix)), including the nationhood aspect.

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 rights to education under the Convention on the Rights of the Child (CRC) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

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'. Article 28(1) of the CRC provides that 'States Parties

recognize the right of the child to education'. Further, Article 29(1)(a) of the CRC provides that States Parties agree that the education of the child shall be directed to '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 includes 'the development of a system of schools at all levels' (Article 13(2)(e)). Each State Party 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' (Article 2(1)).

Funding provided to the Dorothea Mackellar Memorial Society will be directed to the development of school students' literacy skills.

Commonwealth executive power and express incidental power, including the nationhood aspect

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.

Funding to the Dorothea Mackellar Memorial Society will reward and encourage literacy engagement through a national competition.

Item 2 – In the appropriate position in Part 4 of Schedule 1AB (table)

This item adds five new table items to Part 4 of Schedule 1AB to establish legislative authority for government spending on certain initiatives administered by the department.

New **table item 263** establishes legislative authority for government spending on the civics and citizenship education initiatives.

The civics and citizenship education initiatives include:

- the Simpson Prize;
- the National History Challenge; and
- the National Schools Constitutional Convention.

Simpson Prize

The Simpson Prize, which began as a government initiative in 1998, is a national annual competition conducted by the History Teachers' Association of Australia. The Simpson Prize encourages students in years 9 and 10 to submit essays and audio-visual presentations on an Anzac-related theme. One student winner from each state and territory and two accompanying teachers receive an opportunity to attend Anzac Day commemorations overseas in Gallipoli or other destinations.

In addition, along with eight student runners-up from each state and territory, the student winners will attend a two-day Anzac-related educational program at national institutions in Canberra, including the Simpson Prize presentation ceremony at Parliament House.

The Simpson Prize supports implementation of the Australian Curriculum in History and helps students in years 9 and 10 understand the making of the modern world through exploring the significance of World War I. Year 9 and 10 students are encouraged to focus on the history of Australian involvement in World War I and to think and talk about what Anzac Day means to them and their country. In reflecting upon the significance of Anzac Day and the Anzac Spirit, students are encouraged not only to conduct historical research but also to explore links between the past and present. The Simpson Prize is named in honour of John Simpson Kirkpatrick, the ‘man with the donkey’, whose bravery and compassion is said to epitomise the Anzac Spirit.

National History Challenge

The National History Challenge is another annual competition conducted by the History Teachers’ Association of Australia. Primary and secondary school students participate in a history research challenge, with a number of student winners selected including a Young Historian of the Year.

The National History Challenge commenced in 1995 through a partnership between the Australian Broadcasting Corporation and the History Teachers’ Association of Australia. The competition encourages inquiry-based learning and the use of primary and secondary historical sources. The National History Challenge allows a variety of approaches such as research essays, multimedia presentations and museum exhibits that cater to individual learning styles.

The National History Challenge supports implementation of the Australian Curriculum in History and helps students become active and informed citizens with an understanding of Australia’s system of government, history and culture.

There are three categories of prizes awarded through the National History Challenge:

- year level prizes (levels 5-6, 7, 8, 9, 10 and 11-12);
- young historians; and
- special category prizes.

Each category has winners at the local, state/territory, and national levels. Winners at the state/territory and national levels receive prizes, and a Young Historian of the Year receives an award at a national presentation ceremony at Parliament House in Canberra.

National Schools Constitutional Convention

The National Schools Constitutional Convention is held every year in March in Canberra for approximately 120 students from all states and territories. Students in years 11 and 12 are selected from state and territory feeder conventions to participate in a three-day national convention supported by the Education Council of the Council of Australian Governments. The Convention encourages learning about the Australian Constitution and the role it plays in shaping Australia’s democracy, and promotes understanding of Australia’s democratic heritage and traditions.

Funding for the civics and citizenship education initiatives 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 page 40.

Quality Outcomes is a discretionary funding program for initiatives of importance to the Government. The Minister for Education and Training 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 that will be provided for the civics and citizenship education initiatives. Final funding amounts are subject to a number of parameters, including negotiation and agreement of financial contributions by the Government and the cost of delivering the initiatives. Over the period 2015-16 to 2017-18, the Government provided \$606,000 for the Simpson Prize, \$365,000 for the National History Challenge, and \$965,409 for the National Schools Constitutional Convention.

Funding for the Simpson Prize and the National History Challenge will be provided by way of grants to the History Teachers' Association of Australia. The grant process, including the grant administration, will be conducted in accordance with the *Commonwealth Grants Rules and Guidelines 2017*, and will be subject to applicable grant selection and reporting requirements.

Grant funding will be expended in accordance with the department's Secretary Instructions and delegations on expenditure of relevant money, and the *Public Governance, Performance and Accountability Act 2013*. A delegate of the Secretary of the department will be responsible for making final decisions in relation to the grant expenditure.

Decisions made in connection with grants to the History Teachers' Association of Australia will not be subject to independent review. The grants will be ad hoc, non-competitive and for a specific purpose and entity. Further to this, as the grant recipient has been responsible for conducting the National History Challenge and the Simpson Prize competitions since 1996 and 1998 respectively, it is not envisaged that another organisation would receive funding in relation to these initiatives. The grants will be negotiated and agreed directly with the History Teachers' Association of Australia.

Information about the grants will be published on GrantConnect at www.grants.gov.au once agreements have been signed with the History Teachers' Association of Australia.

Funding for the National Schools Constitutional Convention will be provided by way of procurement which primarily relates to services. The department will conduct an open tender process to select a service provider responsible for the organisation, program development, management and staging of the National Schools Constitutional Convention. Funding will be used for the service fee, travel, accommodation and food for student delegates and teacher chaperones, venue hire and cost of speakers where necessary.

The procurement process will be conducted in accordance with the *Commonwealth Procurement Rules* including the applicable approach to market and other procurement requirements. Information about the procurement opportunity will be available on

AusTender at www.tenders.gov.au. The contract with a successful supplier will also be reported on AusTender.

Funding will be expended in accordance with the department's Secretary Instructions and delegations on expenditure of relevant money, and the *Public Governance, Performance and Accountability Act 2013*. A delegate of the Secretary of the department will be responsible for making final decisions in relation to the procurement expenditure.

Procurement decisions will not be subject to independent review. In accordance with the procurement complaints process which is generally undertaken by the department, information about where complaints should be directed will be made available as part of the procurement documentation on AusTender. Any complaints in relation to a procurement will be directed, in the first instance, to the relevant contact officer for the procurement. Unresolved complaints may then be directed, if considered appropriate, to an independent departmental official or a probity adviser for review. Given the nature and purpose of the expenditure, the current mechanisms are considered appropriate and reasonable for the procurement process to be undertaken in relation to this civics and citizenship education initiative.

The procurement process will be 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*.

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 external affairs power (section 51(xxix));
- the Commonwealth executive power and the express incidental power (sections 61 and 51(xxxix)), including the nationhood aspect;
- the social welfare power (section 51(xxiiiA)); and
- the territories power (section 122).

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 relating to the education and cultural life of children under the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC).

In particular, Australia has obligations regarding the right to take part in cultural life under Article 2 and Article 15 of the ICESCR. These Articles require States Parties to take steps necessary for the full realisation of 'the right of everyone to take part in cultural life' (Article 15(1)(a)), including steps 'necessary for the conservation, the development and the diffusion of science and culture' (Article 15(2)).

Under the CRC, States Parties are required to 'respect and promote the right of the child to participate fully in cultural and artistic life' and to 'encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity' (Article 31(2)).

Article 4 of the CRC obliges States Parties to undertake ‘all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention’.

The civics and citizenship education initiatives promote participation by school students in cultural life through civics and citizenship education. This assists in both the conservation and diffusion of Australian culture.

The external affairs power also empowers the Parliament to make laws in relation to places, persons, matters or things external to Australia. As part of the Simpson Prize, funding will be provided to enable the winning student and supporting teachers to travel overseas to attend ANZAC day celebrations.

Commonwealth executive power and express incidental power, including the nationhood aspect

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.

This program involves expenditure on national education initiatives and the provision of national prizes and awards.

Social welfare power

Section 51(xxiiiA) of the Constitution empowers the Parliament to make laws with respect to the provision of various social welfare benefits and services, including benefits to students. The program will provide funding to awards directed to recognising the academic achievements of individual students. The awards will provide prize money to winning students. The program will also provide funding for selected Australian school students to attend a national student convention.

Territories power

The provision of funding for activities in or in relation to a territory is supported by section 122 of the Constitution. This program will involve spending for the purposes of activities conducted in schools in the Northern Territory and the Australian Capital Territory. The program will also provide funding to the National Schools Constitutional Convention held annually in Canberra.

New **table item 264** establishes legislative authority for government spending on the National Career Education Strategy (NCES).

In May 2016, the Government committed \$3 million for the NCES as part of the Quality Schools, Quality Outcomes policy (now the Quality Schools package). The Quality Schools package aims to ensure the Government’s investment in schools is used effectively. This includes a focus on quality teaching and the programs that evidence shows will boost

school and student results. It also includes giving students the skills and knowledge that they need to live and work in an increasingly globalised and digital world.

The purpose of the NCES is to support schools and parents to prepare students for life beyond school, including developing the skills they will need for jobs in the future. The NCES will focus on developing school students' 21st century skills and encouraging stronger employer, industry and school collaboration to better equip school students with the necessary skills to navigate complex careers across a range of industries and professions (www.education.gov.au/news/national-career-education-strategy).

A national working group was established in 2017 to provide initial advice to the Government on improving career education for school students in order to better prepare them to successfully transition to further education, training or work. In December 2017, the working group provided its report to the Government for consideration.

The working group's discussion focussed on three key areas where national consistency and leadership can support school students to make informed study and career choices through:

- building students' skills and capabilities for the future through a planned program of learning;
- strengthened school and employer collaboration; and
- improved career management and navigation skills.

The working group defined career education as 'the development of knowledge, attitudes and skills through a planned program of learning experiences in school education and training settings, which will assist students to make informed decisions about their study and work options, and enable effective participation in working life'.

On the basis of the working group's recommendations, the Government intends to provide funding for the development and delivery of targeted professional development training and resources for school leaders, school teachers and parents to support delivery of quality career education in schools. The professional development training and resources will link to the Australian Curriculum and build on existing best practice examples.

It is envisaged that professional development training and resources will be made available online. However, there will also be face-to-face components in order to support implementation at the school level. Professional development would include, for example, advice to schools and parents on the value of collaborating with business and industry to support student preparedness for work.

Funding for the NCES of \$3 million over four years from 2016-17 comes from the Quality Outcomes subprogram in Program 1.7: Early Learning and Schools Support, which is part of Outcome 1. Program details are set out in the *Portfolio Budget Statements 2017-18, Budget Related Paper No. 1.5, Education and Training Portfolio* at page 40.

Quality Outcomes is a discretionary funding program for initiatives of importance to the Government. The Minister for Education and Training 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.

Implementation of the NCES involves procurement of the development and delivery of targeted professional development training and resources for school leaders, school teachers and parents with respect to career education. These services are anticipated to be procured by direct source, either via an existing panel arrangement with the department (standing offer) or by approaching other suppliers directly. The procurement process will be conducted in accordance with the *Commonwealth Procurement Rules* including any applicable procurement requirements. Information about the procurement undertaken will be available on AusTender at www.tenders.gov.au.

Funding will be expended in accordance with the department's Secretary Instructions and delegations on expenditure of relevant money, and the *Public Governance, Performance and Accountability Act 2013*. A delegate of the Secretary of the department will be responsible for making final decisions in relation to the procurement expenditure.

Procurement decisions will not be subject to independent review. In accordance with the procurement complaints process which is generally undertaken by the department, information about where complaints should be directed will be made available as part of the procurement documentation on AusTender. Any complaints in relation to a procurement will be directed, in the first instance, to the relevant contact officer for the procurement. Unresolved complaints may then be directed, if considered appropriate, to an independent departmental official or a probity adviser for review. Given the nature and purpose of the expenditure, the current mechanisms are considered appropriate and reasonable for the procurement process to be undertaken in relation to the NCES.

The procurement process will be 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*.

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

Communications power

Section 51(v) of the Constitution empowers the Parliament to legislate with respect to 'postal, telegraphic, telephonic and other like services'. Professional development training and resources funded under the NCES will predominantly be provided 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 under the Convention on the Rights of the Child (CRC). Article 28(1) of the CRC provides that 'States Parties recognize the right of the child to education'. The CRC requires States Parties to:

- ‘undertake all appropriate legislative, administrative, and other measures’ for the implementation of the rights recognised in the Convention (Article 4);
- ‘make educational and vocational information and guidance available and accessible to all children’ (Article 28(1)(d)); and
- recognise that the education of the child shall be directed to the development of the child ‘to their fullest potential’ (Article 29(1)(a)).

The purpose of the NCES is to improve vocational learning, including career education for school students.

Australia has obligations in relation to employment and vocational education. Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) requires the States Parties to take steps to realise the right to work, including ‘technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual’. Further, Article 2 of the ICESCR requires each State Party to undertake 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’.

Australia has obligations under the International Labour Organization’s Convention concerning Employment Policy (ILO Convention 122) and the Convention concerning Vocational Guidance and Vocational Training in the Development of Human Resources (ILO Convention 142). In particular, Articles 1 and 2 of the ILO Convention 122 require Members to pursue ‘an active policy designed to promote full, productive and freely chosen employment’. Further, Articles 1 to 4 of the ILO Convention 142 oblige Members to adopt policies and programs of vocational guidance and training, linked with employment.

The NCES program will fund the creation and delivery of professional development training and resources to support quality career education in schools.

Territories power

The provision of funding for activities in or in relation to a territory is supported by section 122 of the Constitution. Some NCES activities will take place in territories, for example the Northern Territory and the Australian Capital Territory.

New **table item 265** establishes legislative authority for government spending on the Primary Connections initiative.

The Government has provided long-term support to the Australian Academy of Science to deliver the Primary Connections initiative which includes high-quality student and teacher resources aligned to the Science component of the Australian Curriculum that are freely available to school teachers and students.

The Primary Connections initiative aligns with the policy intent of the Inspiring All Australians in Digital Literacy measure under the Government’s National Innovation and Science Agenda. This measure aims to increase the participation of all school students in the

disciplines of Science, Technology, Engineering and Mathematics (STEM), and improve their digital literacy.

The Primary Connections initiative is an innovative approach to teaching and learning which aims to enhance primary school teachers' confidence and competence for teaching science. It focuses on developing students' knowledge, understanding and skills in both science and literacy through the provision of online learning resources. Its key features include:

- an inquiry-based and investigative approach;
- a comprehensive professional learning program;
- online curriculum resources linking science with literacy; and
- an ongoing research and evaluation program.

The grant funding to the Australian Academy of Science will be used to further adapt, develop and enhance the Primary Connections online curriculum resources for primary schools, and hold learning workshops for primary school teachers to support effective use of these online resources and promote their use in schools.

Funding for the Primary Connections initiative of \$1 million over two years from 2018-19 will come from the Inspiring All Australians in Digital Literacy and STEM subprogram in Program 1.7: Early Learning and Schools Support, which is part of Outcome 1. Program details are set out in the *Portfolio Budget Statements 2017-18, Budget Related Paper No. 1.5, Education and Training Portfolio* at page 40.

Funding to the Australian Academy of Science for the Primary Connections initiative will be provided by way of a grant. The grant process, including the grant administration, will be conducted in accordance with the *Commonwealth Grants Rules and Guidelines 2017*, and will be subject to applicable grant reporting requirements.

Grant funding will be expended in accordance with the department's Secretary Instructions and delegations on expenditure of relevant money, and the *Public Governance, Performance and Accountability Act 2013*. A delegate of the Secretary of the department will be responsible for making final decisions in relation to the grant expenditure.

Decisions made in connection with a grant to the Australian Academy of Science will not be subject to independent review. The grant will be ad hoc, non-competitive and for a specific purpose. The grant will be negotiated and agreed directly with the Australian Academy of Science.

Information about the grant will be published on GrantConnect at www.grants.gov.au once an agreement has been signed with the Australian Academy of Science.

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.

Section 51(v) of the Constitution empowers the Parliament to legislate with respect to 'postal, telegraphic, telephonic and other like services'. Funding provided in relation to the Primary Connections initiative will facilitate the development and delivery of online resources to primary students and teachers. Professional learning workshops for teachers will support teachers to effectively use and promote the online resources in schools.

New **table item 266** establishes legislative authority for government spending on the Science by Doing initiative.

The Science by Doing initiative is a comprehensive online science program for students in years 7 to 10 supported by professional learning modules and a research-based professional learning approach. The program provides a practical way of implementing the Australian Curriculum in Science, with online curriculum units and professional learning modules available free to all Australian students and teachers. The Government has provided long-term support to the Australian Academy of Science to develop and deliver the Science by Doing curriculum resources.

The Science by Doing initiative aligns with the policy intent of the Inspiring All Australians in Digital Literacy measure under the Government's National Innovation and Science Agenda. The initiative aims to improve science learning by:

- better engaging secondary school students through a guided inquiry approach; and
- supporting teachers with relevant resources using innovative technology.

The grant funding to the Australian Academy of Science will be used to further develop and enhance the Science by Doing online curriculum resources for secondary schools.

Funding for the Science by Doing initiative of \$1 million over two years from 2018-19 will come from the Inspiring All Australians in Digital Literacy and STEM subprogram in Program 1.7: Early Learning and Schools Support, which is part of Outcome 1. Program details are set out in the *Portfolio Budget Statements 2017-18, Budget Related Paper No. 1.5, Education and Training Portfolio* at page 40.

Funding to the Australian Academy of Science for the Science by Doing initiative will be provided by way of a grant. The grant process, including the grant administration, will be conducted in accordance with the *Commonwealth Grants Rules and Guidelines 2017*, and will be subject to applicable grant reporting requirements.

Grant funding will be expended in accordance with the department's Secretary Instructions and delegations on expenditure of relevant money, and the *Public Governance, Performance and Accountability Act 2013*. A delegate of the Secretary of the department will be responsible for making final decisions in relation to the grant expenditure.

Decisions made in connection with a grant to the Australian Academy of Science will not be subject to independent review. The grant will be ad hoc, non-competitive and for a specific purpose. The grant will be negotiated and agreed directly with the Australian Academy of Science.

Information about the grant will be published on GrantConnect at www.grants.gov.au once an agreement has been signed with the Australian Academy of Science.

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.

Section 51(v) of the Constitution empowers the Parliament to legislate with respect to ‘postal, telegraphic, telephonic and other like services’. Funding provided in relation to the Science by Doing initiative will facilitate the development and delivery of online resources to secondary students and teachers.

New **table item 267** establishes legislative authority for the Government to fund the In Home Care (IHC) support agencies to facilitate the implementation of the IHC program.

From 2 July 2018, new arrangements will replace the existing IHC program and the Interim Home Based Care Subsidy (‘Nanny Pilot’) Program will be ceased as part of the Government’s *Jobs for Families* Child Care Package. Under the new arrangements, certain eligible individuals or families will receive a child care subsidy for care provided to their dependent child or children in their home.

The revised IHC program will be a capped program of up to 3,000 places, providing up to 50 hours of subsidised care per child per week, subject to the Child Care Subsidy (CCS) and Additional Child Care Subsidy eligibility criteria. Other changes to the program include tightened eligibility criteria; introduction of a CCS hourly rate cap of \$25 per family for up to five children at a time; and a stronger focus on the provision of quality early childhood education and care through the requirement for those providing care to the children (IHC educators) to hold, or be working towards, a minimum Certificate III qualification.

The revised program will be delivered through a brokerage model of IHC support agencies. The Government will fund these agencies to facilitate appropriate access to IHC services for individuals or families for whom other types of child care are unsuitable or unavailable, and who:

- work non-standard or variable hours; or
- face geographical isolation from other care types, particularly those in rural or remote locations where alternative mainstream care types are not available; or
- experience challenging situations where mainstream child care is not available or does not meet the needs of the child or individual.

One or more IHC support agencies will be funded to provide services in each state or territory, including:

- helping eligible families access IHC services;
- ensuring the integrity of the program by focusing on child care needs;
- establishing referral pathways to other support services;
- providing information to individuals who are interested in accessing IHC; and
- monitoring compliance of IHC services with the *A New Tax System (Family Assistance) (Administration) Act 1999* and the *A New Tax System (Family Assistance) Act 1999* (the family assistance law).

In addition, the IHC support agencies will:

- assist eligible individuals to assess the suitability of home-based care for their circumstances;
- support the department to administer the program by assisting the Secretary to appropriately allocate IHC places;
- support service providers and educators to develop high-quality care arrangements under the IHC program through a range of mechanisms such as guidance and resource

materials for educators about providing education in the family home and working with families with complex needs;

- provide training materials and support for educators, and establish a community of practice support network for IHC educators within the jurisdiction; and
- be an independent party with whom educators can discuss concerns relating to the safety of the physical environment in which they are working.

Funding of \$146.9 million for the IHC program was included in the 2017-18 Mid-Year Economic and Fiscal Outlook under the measure 'Jobs for Families Package – In Home Care' for a period of four years commencing in 2017-18. Details are set out in the *Mid-Year Economic and Fiscal Outlook 2017-18*, Appendix A: Policy decisions taken since the 2017-18 Budget at page 144.

The department is currently undertaking an open, competitive tender process to procure the services of the IHC support agencies. The procurement will be conducted in accordance with the *Commonwealth Procurement Rules* including the applicable approach to market and other procurement requirements. Information about this procurement opportunity is available on AusTender at www.tenders.gov.au (Approach to Market ID: RFT IHC AD17/006155). The outcome of the procurement will also be published on AusTender within 42 days of the relevant contracts having been signed.

Funding will be expended in accordance with the department's Secretary's Instructions and delegations on expenditure of relevant money, and the *Public Governance, Performance and Accountability Act 2013*. A delegate of the Secretary of the department will be responsible for making final decisions in relation to the procurement expenditure.

Procurement decisions will not be subject to independent review. In accordance with the department's procurement complaints process, information about where complaints should be directed has been included as part of the procurement documentation on AusTender. Any complaints arising from the procurement process will be directed for review to an independent departmental official or a probity adviser overseeing the procurement. All tenderers will receive a debriefing on the outcome of their application on request. Given the nature and purpose of the expenditure, the current mechanisms are considered appropriate and reasonable for the procurement process undertaken in relation to the IHC support agencies.

The procurement process will be 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*.

The IHC support agencies will be the primary conduit between families and services. They will advocate for families and monitor service provision to ensure services remain primarily focused on education and care, and that fee charging practices are appropriate. Funding to an individual support agency will be proportional to the number of IHC places it manages. Payments will be linked to performance reporting which will be set out in contracts with the IHC support agencies.

Decisions made by the IHC support agencies will not be subject to independent review. The Secretary of the department or the Minister for Education and Training will retain responsibility for all administrative decisions made under the family assistance law, including

the allocation of places. Such administrative decisions are generally subject to internal review by the Secretary, or an authorised departmental official, and in some instances, external review by the Administrative Appeals Tribunal (the AAT). For example, the allocation of IHC places is subject to both internal review and review by the AAT.

Once the department enters into contracts with the IHC support agencies, any disputes relating to those contracts will be subject to the ordinary contractual dispute resolution processes, under which there is ultimate recourse to the courts.

Funding for the IHC program comes from Program 1.1: Support for the Child Care System, which is part of Outcome 1. Details are set out in the *Portfolio Additional Estimates Statements 2017-18, Education and Training Portfolio* at pages 17, 22 and 25.

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 external affairs power (section 51(xxix)); and
- the power with respect to matters incidental to the provision of child endowment and family allowances within the meaning of section 51(xxiiiA).

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 Australia’s obligations under international treaties to which it is a party.

Australia has obligations regarding the rights of the child under the Convention on the Rights of the Child (CRC). Article 3(3) provides that States Parties shall ensure that child care services and facilities ‘conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision’.

The IHC support agencies will assist child care providers to improve their health and safety standards by acting as an independent third party with whom educators can discuss health and safety concerns. The IHC support agencies will also assist with developing the competence of educators and child care providers by providing best practice guidance material and establishing a community of practice amongst educators.

Article 18(2) of the CRC requires States Parties to ‘render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities’ and to ‘ensure the development of institutions, facilities and services for the care of children’.

The IHC support agencies will facilitate individuals’ access to IHC services and support the provision of quality in home care for children who would otherwise be unable to access early childhood education and care.

In addition, Article 18(3) of the CRC requires States Parties to take ‘all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible’. In many cases, the IHC support agencies will assist in the provision of care to the children of working parents.

Express incidental power and social welfare 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, relevantly including the social welfare power in section 51(xxiiiA), which enables the Parliament to make laws with respect to the provision of particular social welfare benefits. Some aspects of the activities carried out by the IHC support agencies may assist to provide child endowment and family allowances by both facilitating access to in home care and supporting the department to deliver in home care effectively and appropriately.

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. 1) Regulations 2018

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 six initiatives in the Education and Training portfolio. The initiatives will be administered by the Department of Education and Training.

Funding will be provided for:

- the Dorothea Mackellar Memorial Society to conduct the Dorothea Mackellar Poetry Awards;
- the civics and citizenship education initiatives including the Simpson Prize; the National History Challenge; and the National Schools Constitutional Convention;
- the National Career Education Strategy to support schools and parents to prepare students for life beyond school, including developing the skills they will need for jobs in the future;
- the Australian Academy of Science to further develop the Primary Connections online curriculum resources for students and teachers and conduct professional learning workshops for teachers;
- the Australian Academy of Science to further develop the Science by Doing online curriculum resources for students and teachers; and
- the In Home Care support agencies to facilitate appropriate access for individuals or families to care provided to their child or children in their home.

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**