

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance

Financial Framework (Supplementary Powers) Act 1997

*Financial Framework (Supplementary Powers) Amendment
(Jobs and Small Business Measures No. 2) 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 the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

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

The purpose of the *Financial Framework (Supplementary Powers) Amendment (Jobs and Small Business Measures No. 2) Regulations 2018* (the Regulations) is to amend table item 175 of Part 4 of Schedule 1AB to the Principal Regulations to establish legislative authority for the expansion of the Entrepreneurship Facilitators program administered by the Department of Jobs and Small Business. From January 2019, at least 20 additional Entrepreneurship Facilitators will be appointed to encourage entrepreneurship and self-employment particularly among mature age Australians (those over 45 years of age) who are at risk of unemployment due to structural changes in the economy. Funding of \$17.7 million will be available over four years from 2018-19 for this initiative.

The Regulations also establish legislative authority for government spending on the Regional Employment Trials program administered by the Department of Jobs and Small Business, which will trial localised approaches to delivering employment services in 10 selected disadvantaged regions. An additional five Employment Facilitators (five are already in place) will be engaged and a Local Employment Initiative Fund will be established in each of the selected regions, with \$18.4 million available over three years from 2018-19 for this initiative.

These initiatives were announced in the 2018-19 Budget.

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 they are 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 Jobs and Small Business.

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 (Jobs and Small Business Measures No. 2) Regulations 2018*

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Jobs and Small Business Measures No. 2) Regulations 2018*.

Section 2 – Commencement

This section provides that the Regulations commence on the day after they are 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

Table item 175 of Part 4 of Schedule 1AB provides legislative authority for government spending on the Entrepreneurship Facilitators program (the program) administered by the Department of Jobs and Small Business (the department). Items 1 to 5 amend table item 175 to establish legislative authority for government spending on the expansion of the program. The current program commenced in December 2016, and the additional Entrepreneurship Facilitators are scheduled to commence from January 2019.

Under the current program, Entrepreneurship Facilitators support business growth in three selected locations around Australia by encouraging entrepreneurial activity and providing support to individuals considering starting their own business or expanding an existing business. The Entrepreneurship Facilitators engage with the community, increasing awareness of the opportunities available through self-employment, and encourage people to consider self-employment as an alternative to traditional employment.

The Entrepreneurship Facilitators:

- provide mentoring and business support to individuals interested in starting or growing their own business;
- provide general assistance to individuals and groups, including through running workshops and networking events, attending career expos and other events, delivering presentations and making referrals to other support services such as the New Enterprise Incentive Scheme, co-working spaces and micro-finance opportunities; and
- engage with stakeholders and help develop the local entrepreneurial community, including improving connections between local entrepreneurial/small business

stakeholders, relevant service providers, local government representatives and people seeking help to start or run their own business.

There are currently three Entrepreneurship Facilitators who focus on increasing youth self-employment. They are located in:

- Cairns, Queensland;
- the Hunter region (including Newcastle), New South Wales; and
- Launceston and North-East Tasmania.

Under the expanded program, additional Entrepreneurship Facilitators will be appointed in 20 selected locations. These Entrepreneurship Facilitators will have an increased focus on encouraging entrepreneurship and self-employment, particularly among mature age Australians (those over 45 years of age) who are at risk of unemployment due to structural changes in the economy. This includes the provision of business mentoring to people interested in starting a business or who want to expand an existing business, by helping new self-employed business operators to become viable. While focusing on mature age Australians, the Entrepreneurship Facilitators will also assist anyone interested in starting or growing their own business in the additional 20 selected locations.

Further information about the program is available at www.jobs.gov.au/entrepreneurship-facilitators.

Funding of \$17.7 million was included in the 2018-19 Budget under the measure 'More Choices for a Longer Life – jobs and skills for mature age Australians' for a period of four years commencing in 2018-19. Details are set out in *Budget 2018-19, Budget Measures, Budget Paper No. 2 2018-19* at page 157.

The department will select the additional Entrepreneurship Facilitators through an open tender, which was released at the end of July 2018. Information on this process, including outcomes, will be published on AusTender (www.tenders.gov.au). Final procurement decisions will be made by the relevant Deputy Secretary of the department as a delegate of the Minister for Jobs and Innovation.

Procurement decisions will be made in accordance with the Commonwealth's resource management framework, including the *Public Governance, Performance and Accountability Act 2013* and the *Commonwealth Procurement Rules*. The department will provide the opportunity for suppliers and tenderers to make inquiries and complaints and provide feedback to unsuccessful tenderers. These complaints and inquiries can be made at any time during the procurement process, and will be handled in accordance with the probity processes for the procurement which will be made available on AusTender.

Procurement decisions, once made, will be final and not subject to merits review. Remaking a procurement decision after entry into contractual arrangements with a successful proponent is legally complex, impractical, and would result in delays in the commencement of the additional facilitators.

Entrepreneurship Facilitators will be subject to contractual arrangements with the department as well as guidelines that articulate the services they must provide. As part of the services, Entrepreneurship Facilitators provide mentoring support to individuals interested in starting or growing their small business. The mentoring may be delivered by the Entrepreneurship

Facilitators themselves, through a network of external mentors engaged by the facilitator or through other referral services such as the New Enterprise Incentive Scheme. The Entrepreneurship Facilitator's decision about who will deliver the mentoring will be based on availability and suitability of appropriate mentors, including the facilitator's availability or suitability. If an individual is not able to access external mentoring following referral, the Entrepreneurship Facilitators will endeavour to provide the support themselves.

Entrepreneurship Facilitators may refer persons to other services and programs offered by public or private entities. Eligibility and/or acceptance in such programs is not a matter for the Entrepreneurship Facilitators and is reliant upon the relevant rules, guidelines, legislation or decision-making process for the relevant entity to whom the individual is referred. A decision by an Entrepreneurship Facilitator to refer or not refer a person to another service is of a preliminary or procedural nature. Non-referral would not mean the person could not access other services, or otherwise have a substantive impact on their interests.

Decisions by Entrepreneurship Facilitators as to whether or how to deliver support would not have a substantive impact on the interests of any specific individual.

If an individual is not satisfied with an Entrepreneurship Facilitator's services, the individual may request that a decision made by a facilitator be reviewed by the facilitator or the department. Contact details are available at www.jobs.gov.au/contact-department.

In the event the request for review is made to the department, the department will review the issue and work with the individual and Entrepreneurship Facilitator to seek to resolve any issues as soon as practicable. The department will independently review the issue and work with the individual and Entrepreneurship Facilitator to address it where needed. Where appropriate, the department will check whether the individual gives it permission to contact the Entrepreneurship Facilitator prior to doing so. The department will investigate and undertake an independent review of the case. The department will then respond to the individual regarding the outcome of their request.

A person dissatisfied with a decision by a facilitator or the department can raise the matter with the Commonwealth Ombudsman (the Ombudsman). The Ombudsman is independent of the department and Entrepreneurship Facilitators. The Ombudsman has the power to ask the department to answer questions about the treatment of the person by a facilitator or the department, or to provide records about the person's dealings with the facilitator or the department, or other relevant documents or information.

If the Ombudsman decides to investigate in response to a complaint and makes any recommendations, the department could require the facilitator to implement the recommendations. The department gives weight to the Ombudsman's recommendations and is required to respond to the Ombudsman as to what it has done in response to any recommendations. Failure to adequately respond could lead to adverse public reporting by the Ombudsman.

Funding for this item comes from Program 1.1: Employment Services, which is part of Outcome 1. Details are set out in the *Portfolio Budget Statements 2018-19, Budget Related Paper No. 1.13B, Jobs and Innovation Portfolio (Jobs and Small Business)* at page 23.

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

Social welfare power

The social welfare power in section 51(xxiiiA) of the Constitution empowers the Parliament to make laws with respect to the provision of certain social welfare benefits including unemployment benefits. The program benefits unemployed people, including by providing mentoring and referral services. Other benefits to unemployed people are described below.

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.

Through providing additional Entrepreneurship Facilitators in 20 locations and making Entrepreneurship Facilitators' services available to job seekers and others, including individuals seeking to expand an existing business, the program gives effect to Australia's obligations under the following international conventions:

- the International Labour Organization's Convention concerning Employment Policy (ILO Convention 122), particularly Articles 1 and 2;
- the International Labour Organization's Convention concerning Vocational Guidance and Vocational Training in the Development of Human Resources (ILO Convention 142), particularly Articles 1, 2, 3 and 4;
- the International Labour Organization's Convention concerning the Organisation of the Employment Service (ILO Convention 88), particularly Articles 1 and 2; and
- the International Covenant on Economic, Social and Cultural Rights (ICESCR), particularly Articles 2, 6 and 13.

Article 1 of the ILO Convention 122 provides that Members shall pursue 'an active policy designed to promote full, productive and freely chosen employment' that aims to ensure, among other things, that 'there is work for all who are available for and seeking work' and 'freedom of choice of employment'.

Article 2 of the ILO Convention 122 requires that the measures adopted for the purpose of Article 1 are kept 'under review within the framework of a co-ordinated economic and social policy' and that, where needed, programs be established to promote the objectives in Article 1.

Article 1(1) of ILO Convention 142 obliges each Member to 'adopt and develop comprehensive and co-ordinated policies and programmes of vocational guidance and vocational training, closely linked with employment, in particular through public employment services.' Article 1(2) requires the policies and programmes adopted for the purposes of article 1(1) to take due account of matters including 'employment needs, opportunities and problems, both regional and national' (article 1(2)(a)).

Article 2 of ILO Convention 142 obliges each Member to ‘establish and develop open, flexible and complementary systems of general, technical and vocational education, educational and vocational guidance and vocational training, whether these activities take place within the system of formal education or outside it.’

Article 3 of ILO Convention 142 obliges each Member to ‘gradually extend its systems of vocational guidance, including continuing employment information, with a view to ensuring that comprehensive information and the broadest possible guidance are available to all... adults’ (article 3(1)). Such information and guidance is required to cover matters including ‘vocational training and related educational opportunities’ (article 3(2)).

Article 4 of ILO Convention 142 obliges each Member to ‘gradually extend, adapt and harmonise its vocational training systems to meet the needs for vocational training throughout life of both young persons and adults in all sectors of the economy and branches of economic activity and at all levels of skill and responsibility’.

Article 1 of ILO Convention 88 requires Members to maintain or ensure the maintenance of a free public employment service with the essential duty of the employment service to ensure, in co-operation where necessary with other public and private bodies concerned, the best possible organisation of the employment market as an integral part of the national programme for the achievement and maintenance of full employment and the development and use of productive resources.

Article 2 of ILO Convention 88 requires the employment service to consist of a national system of employment offices under the direction of a national authority.

Article 2 of ICESCR sets out a general obligation for States Parties to implement the rights set out in the ICESCR.

Article 6 of the ICESCR provides that States Parties recognise the right to work and will take appropriate steps to achieve the realisation of this right including through ‘technical and vocational guidance and training programmes, policies and techniques’.

Article 13(1) of the ICESCR recognises ‘the right of everyone to education’. With a view to achieving full realisation of this right, States Parties recognise that ‘secondary education in its different forms ... shall be made generally available and accessible to all by every appropriate means’ (Article 13(2)(b)).

The expanded program is part of a broader suite of measures designed to promote full, productive and freely chosen employment. The expanded program will assist workers, particularly older workers, who are considering establishing or expanding their own business by increasing awareness of the opportunities available through self-employment, providing mentoring support, facilitating networking and making referrals to other support services such as the New Enterprise Incentive Scheme.

The program increases participants’ awareness of opportunities and support to achieve self-employment, as well as increasing their awareness of networking, support and employment opportunities generally. The program thereby helps to increase the likelihood that participants will remain in productive work, have freedom of choice about their work,

have work which is suited to their skills, and to minimise the duration of any period of unemployment.

The expanded program will extend the existing system of vocational education and guidance by improving the availability of comprehensive information mentoring and referral services for individuals considering establishing or expanding their own business. The focus on mature age workers seeks to address the particular employment needs, opportunities and problems relating to this group.

Territories power

Section 122 of the Constitution empowers the Parliament to ‘make laws for the government of any territory’. Under the program, funding may be provided to participants in the territories.

Item 1 – Part 4 of Schedule 1AB (table item 175, column headed “Objective(s)”)

The purpose of item 1 is to expand the objective of table item 175 to reflect the availability of facilitators’ services under the program to job seekers and others, including individuals seeking to expand an existing business.

Item 2 – Part 4 of Schedule 1AB (table item 175, column headed “Objective(s)”, paragraph (b))

Item 2 makes a technical amendment to paragraph (b) of table item 175 to reflect the technical amendments made by items 3 and 4.

Item 3 – Part 4 of Schedule 1AB (table item 175, column headed “Objective(s)”, subparagraph (b)(i))

Item 3 makes a technical amendment to subparagraph (b)(i) of table item 175 to clarify the name of the relevant international convention and the applicable articles under that convention.

Item 4 – Part 4 of Schedule 1AB (table item 175, column headed “Objective(s)”, after subparagraph (b)(i))

Item 4 makes a technical amendment to subparagraph (b)(i) of table item 175 to clarify the names of the relevant international conventions and the applicable articles under those conventions.

Item 5 – Part 4 of Schedule 1AB (table item 175, column headed “Objective(s)”, subparagraph (b)(ii))

Item 5 makes a technical amendment to subparagraph (b)(ii) of table item 175 to clarify the applicable articles under the International Covenant on Economic, Social and Cultural Rights.

Item 6 – In the appropriate position in Part 4 of Schedule 1AB (table)

This item adds a new table item to Part 4 of Schedule 1AB to establish legislative authority for government spending on the Regional Employment Trials (RET) program administered by the department – new **table item 304**.

The RET program will trial localised approaches to delivering employment services. This approach aligns with *Regions 2030 – Unlocking Opportunity* policy statement which indicated that a ‘one-size-fits-all’ approach to regional development does not work, and that decisions about the future of individual regions should be made by local people and supported by government, not the other way around. This policy statement is available at www.regional.gov.au/regional/publications/regions_2030/.

The RET program will operate in 10 selected disadvantaged regions and fund the engagement of five Employment Facilitators (five are already in place) and a Local Employment Initiative Fund of \$1 million per region.

On 22 June 2018, the Minister for Jobs and Innovation, Senator the Hon Michaelia Cash, announced the following 10 Regional Development Australia (RDA) regions selected for the RET program:

- Northern Inland (New South Wales);
- Far South Coast (New South Wales);
- Melbourne (Western Melbourne/North Western Melbourne Employment Region only) (Victoria);
- Gippsland (Victoria);
- Townsville and North West (Townsville Employment Region only) (Queensland);
- Wide Bay Burnett (Queensland);
- Murraylands and Riverland (South Australia);
- Yorke and Mid North (South Australia);
- Peel (Western Australia); and
- Tasmania (North and North Western Tasmania Employment Region only) (Tasmania).

The regions for the RET program were chosen from the 52 RDA regions, in consultation with stakeholders who have a knowledge of local conditions across Australia. The regions were selected based on key labour market information, the desire to distribute regions across the states, the availability of RDA Committees, and where existing Employment Facilitators were already in place. RDA Committees are made up of local leaders who work with all levels of government, business and community groups to support the development of their regions. RDA Committees’ charter includes a focus on facilitating economic development by creating local jobs, attracting investment and driving innovation. The charter is available at www.rda.gov.au/files/RDA-charter.pdf.

Employment Facilitators, engaged by the department, will work with RDA Committees to enable local stakeholders to address employment issues. Employment Facilitators will promote awareness of the RET program in the region, work as an adviser to the relevant RDA Committee on employment matters, keep abreast of ongoing and future local development and employment opportunities, and oversee and assist the department with the contract management of projects funded under the RET program. Employment Facilitators

will work with RDA Committees to develop project proposals tailored to the opportunities and needs in the regions.

Grant funding of \$1 million will be available under a Local Employment Initiative Fund in each region for projects and activities to better connect employers with regional Australians looking for work, identify future employment, training or work experience opportunities, and help address local skills gaps. These projects will be co-funded by grant recipients.

Local stakeholders in the selected regions (including local governments, employers, training organisations, not-for-profit organisations and employment services providers) can apply for funding for projects.

Examples of projects that may receive funding under the RET program include:

- pre-apprenticeship placement programs;
- mentoring and support services;
- using mature aged residents and local business leaders in a mentoring program;
- preparing job seekers for upcoming infrastructure projects;
- training and reskilling job seekers in view of local job opportunities;
- intern programs in organisations;
- planning and delivering community events; and
- developing work experience initiatives that provide local employment opportunities.

RDA Committees may also submit proposals for funding from the Local Employment Initiative Fund. These proposals must pass a conflict of interest assessment made by the relevant Employment Facilitator.

To ensure a strong connection with employment programs, all proponents of projects will need to partner with at least one employment services provider. Employment services providers may also put forward projects for consideration on their own, however they will not be involved in the recommendation or approval process.

Funding applications will be considered by the local RDA Committee. They will then be submitted to the Business Grants Hub for assessment and the department for funding approval. Employment Facilitators, in consultation with the department's state offices, will be responsible for monitoring projects and ensuring their successful completion.

In addition to the tailored services provided through the national *jobactive* employment services program, which provides support for people in non-remote areas across Australia to find employment, the department also delivers ParentsNext and Transition to Work programs in various locations across the country. ParentsNext helps eligible parents to plan and prepare for employment by the time their children go to school. On 1 July 2018, it was expanded from 10 locations to all non-remote areas of Australia. Transition to Work is a service to support young people aged 15 to 21 years on their journey to employment. The service provides intensive, pre-employment support to improve the work readiness of young people and help them into work or education.

Participants in *jobactive*, ParentsNext or Transition to Work within a trial region will be able to participate in projects funded under the RET program, where the projects involve job seeker participation. This participation will count toward their participation requirements, if applicable, under the social security law.

In trial regions, eligible job seekers will also have earlier access to assistance under the Relocation Assistance to Take up a Job program. Stream A job seekers will be able to access relocation assistance after three months of being on income support. Stream B and C job seekers will be able to access assistance immediately after commencement in *jobactive*, instead of one year, as is currently the case.

Job seekers are placed in a *jobactive* service ‘stream’ depending on their readiness for work. Stream A job seekers are the most job ready, Stream B job seekers need their provider to play a greater role to help them become job ready, and Stream C job seekers need the most support from their providers to address barriers to work.

Further information about the RET program is available at www.jobs.gov.au/regional-employment-trials-program.

Funding of \$18.4 million was provided in the 2018-19 Budget under the measure ‘Regional Employment Trials Program — establishment’ for a period of three years commencing in 2018-19. Details are set out in *Budget 2018-19, Budget Measures, Budget Paper No. 2 2018-19* at page 159.

For those trial regions with an existing Employment Facilitator, employment facilitator services will be provided under current contracting arrangements. For trial regions without a current Employment Facilitator, the department will select providers through an open tender process. Information on this process, including outcomes, will be published on AusTender at www.tenders.gov.au.

Procurement decisions will be made in accordance with the Commonwealth’s resource management framework, including the *Public Governance, Performance and Accountability Act 2013* and the *Commonwealth Procurement Rules*. The department will provide opportunities for suppliers and tenderers to make inquiries and complaints and provide feedback to unsuccessful tenderers. These complaints and inquiries can be made at any time during the procurement process, and will be handled in accordance with the probity processes for the procurement which will be made available on AusTender.

Procurement decisions, once made, will be final and not subject to merits review. Remaking a procurement decision after entry into contractual arrangements with a successful proponent is legally complex, impractical, and would result in delays in the commencement of the additional facilitators.

The grant program will be open for continual assessment by the Business Grants Hub throughout its duration. Funding proposals will be assessed against the criteria outlined in the grant guidelines which will be developed by the Business Grants Hub in consultation with the department and published prior to the RET program commencing. Grant opportunities, grant guidelines and final grant decisions will be published on the GrantConnect website at www.grants.gov.au.

The relevant RDA Committee will review project proposals against the identified regional priorities. Endorsed projects will be submitted to the Business Grants Hub for assessment. The Business Grants Hub will further assess the proposals and make recommendations to the department.

Funding for specific projects will be approved by departmental officials in accordance with program guidelines. Business Grant Hub officials will be delegated the power to enter into funding arrangements consistent with that approval. A person dissatisfied with a funding decision under the RET program can raise the matter with the Commonwealth Ombudsman.

The department's funding decisions will not be subject to merits review by an independent body or tribunal. Each region's Local Employment Initiative Fund is limited to \$1 million. This means that not all applications may be able to be funded and an allocation that has already been made to another party, or decisions relating to other projects, could be affected by overturning a decision not to fund a particular project or initiative.

The key role of Employment Facilitators is to support the delivery of the RET program including by advising the local RDA Committee on employment matters and working with stakeholders and the local RDA Committee to identify, promote and review projects for funding. Employment Facilitators will also assist the department to manage activities and projects funded under the RET program, including by performing site visits to monitor the progress of funded activities. Employment Facilitators' decisions about how these services are provided are of a preliminary or procedural nature and do not have a substantive impact on the interests of any specific individual. The amount of assistance an Employment Facilitator provides to a stakeholder is not defined or limited. Individuals generally receive such assistance according to their needs.

Decisions around job seekers' participation in funded projects do not involve significant discretionary elements. Broadly, job seekers will be able to participate in projects where the project involves participation (for example, a mentoring program). Decisions about eligibility for early access to the Relocation Assistance to Take up a Job program are based on objective criteria. These decisions are mandatory or procedural in nature, that is, based on an obligation to act on the existence of specified circumstances.

Funding for this item will come from Program 1.1: Employment Services, which is part of Outcome 1. Details are set out in the *Portfolio Budget Statements 2018-19, Budget Related Paper No. 1.13B, Jobs and Innovation Portfolio (Jobs and Small Business)* at pages 18, 19 and 23.

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

Social welfare power

The social welfare power in 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 unemployment benefits.

The RET program benefits unemployed people, by giving eligible job seekers earlier access to the assistance under the Relocation Assistance to Take up a Job program. In addition, eligible participants in *jobactive*, *ParentsNext* or *Transition to Work* within a trial region will

benefit by being able to participate in funded projects and having this participation count toward their participation requirements, if applicable, under the social security law.

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.

The RET program, through the provision of funding for projects, gives effect to Australia’s obligations under the following international conventions:

- the International Covenant on Economic, Social and Cultural Rights (ICESCR), particularly Articles 2(1) and 6(2);
- the International Labour Organization’s Convention Concerning Employment Policy (ILO Convention 122), particularly Articles 1 and 2; and
- the International Labour Organization’s Convention concerning Vocational Guidance and Vocational Training in the Development of Human Resources (ILO Convention 142), particularly Articles 1, 2, 3 and 4.

Article 2(1) of the ICESCR provides that States Parties will take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the ICESCR by all appropriate means, including particularly the adoption of legislative measures.

Article 6(2) of the ICESCR provides that States Parties will take appropriate steps to achieve the realisation of the right to work including through ‘technical and vocational guidance and training programmes, policies and techniques’.

The RET program, through the funding of projects aimed at addressing a region’s employment needs (for example, mentoring programs and work experience programs) will assist in the realisation of the right to work.

Article 1 of the ILO Convention 122 provides that Members shall pursue ‘an active policy designed to promote full, productive and freely chosen employment’ that aims to ensure, among other things, that ‘there is work for all who are available for and seeking work’ and ‘freedom of choice of employment’.

Article 2 of the ILO Convention 122 requires that the measures adopted for the purpose of Article 1 are kept ‘under review within the framework of a co-ordinated economic and social policy’ and that, where needed, programs be established to promote the objectives in Article 1.

The RET program is designed to promote full, productive and freely chosen employment. It will do this by assisting job seekers, trialling localised approaches to delivering employment services, and by the funding of projects aimed at identifying future employment, training or work experience opportunities in the 10 selected regions.

Article 1(1) of the ILO Convention 142 obliges Members to ‘adopt and develop comprehensive and co-ordinated policies and programmes of vocational guidance and vocational training, closely linked with employment, in particular through public employment services.’ Article 1(2) requires the policies and programmes adopted for the purposes of Article 1(1) to take due account of matters including ‘employment needs, opportunities and problems, both regional and national’ (Article 1(2)(a)).

Article 2 of the ILO Convention 142 obliges each Member to ‘establish and develop open, flexible and complementary systems of general, technical and vocational education, educational and vocational guidance and vocational training, whether these activities take place within the system of formal education or outside it.’

Article 3 of the ILO Convention 142 obliges each Member to ‘gradually extend its systems of vocational guidance, including continuing employment information, with a view to ensuring that comprehensive information and the broadest possible guidance are available to all... adults’ (Article 3(1)). Such information and guidance is required to cover matters including ‘vocational training and related educational opportunities’ (Article 3(2)).

Article 4 of the ILO Convention 142 obliges each Member to ‘gradually extend, adapt and harmonise its vocational training systems to meet the needs for vocational training throughout life of both young persons and adults in all sectors of the economy and branches of economic activity and at all levels of skill and responsibility’.

The RET program will extend the existing system of vocational education and guidance through the funding of projects and activities expected to better connect employers with regional Australians looking for work, identify future employment, training or work experience opportunities, and help address local skills gaps. Examples of projects which may receive funding under the RET program are set out above.

Territories power

Section 122 of the Constitution empowers the Parliament to ‘make laws for the government of any territory’. The RET program may provide funding for activities in or in relation to a territory.

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 (Jobs and Small Business Measures No. 2) 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 purpose of the *Financial Framework (Supplementary Powers) Amendment (Jobs and Small Business Measures No. 2) Regulations 2018* (the Regulations) is to amend table item 175 of Part 4 of Schedule 1AB to the FF(SP) Regulations to establish legislative authority for the expansion of the Entrepreneurship Facilitators program administered by the Department of Jobs and Small Business. At least 20 additional Entrepreneurship Facilitators will be appointed in 20 locations to encourage entrepreneurship and self-employment particularly among mature age people over 45 years of age who are at risk of unemployment due to structural changes in the economy. Funding of \$17.7 million will be available over four years from 2018-19 for this initiative.

The Regulations also establish legislative authority for government spending on the Regional Employment Trials program administered by the Department of Jobs and Small Business, which will trial localised approaches to delivering employment services in ten selected disadvantaged regions. An additional five Employment Facilitators will be engaged and a Local Employment Initiative Fund will be established in each selected region, with \$18.4 million available over three years from 2018-19 for this initiative.

These initiatives were announced in the 2018-19 Budget.

The Minister for Jobs and Innovation 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**