

REPLACEMENT EXPLANATORY STATEMENT

This Explanatory Statement replaces the Explanatory Statement registered on 28 March 2019 for the *Financial Framework (Supplementary Powers) Amendment (Education and Training Measures No. 2) Regulations 2019* [F2019L00347] to clarify availability of independent merits review.

Issued by the Authority of the Minister for Finance

Financial Framework (Supplementary Powers) Act 1997

*Financial Framework (Supplementary Powers) Amendment
(Education and Training Measures No. 2) Regulations 2019*

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 *Financial Framework (Supplementary Powers) Amendment (Education and Training Measures No. 2) Regulations 2019* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on four activities that will be administered by the Department of Education and Training (the department) and make one technical amendment.

Funding will be provided for:

- a grant to Educational Music Tour Bus Foundation Australia Limited to construct and operate the John Lennon Educational Bus (the Bus), which will be a not-for-profit mobile recording studio and video production facility and will be used to deliver education programs, providing school students in Australia with an opportunity to use the very latest in audio and video technology and musical instruments housed on the Bus (with funding of \$2.4 million for one year for 2018-19)
- other organisations to develop resources and products to support the implementation of vocational education and training packages developed by Skills Service

Organisations (within existing funding of \$188.2 million over five years from 2018-19 for the Training Product Development Program)

- the expansion of the Rural and Regional Enterprise Scholarships Program to cover all fields of study, instead of only science, technology, engineering or mathematics (STEM) subjects (with funding of \$54.1 million over four years from 2018-19)
- the ongoing integrated information service for Australian Apprenticeships to provide up-to-date information on over 1,300 qualifications to Australian Apprenticeship Support Network providers, apprentices, employers, training organisations, state and territory training authorities, career advisers and other stakeholders (with funding of \$5.4 million over three years from 2019-20, with \$1.9 million per annum as ongoing funding after that period).

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. 2) Regulations 2019*

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Education and Training Measures No. 2) Regulations 2019*.

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

The items in Schedule 1 provide legislative authority for government spending on activities that will be administered by the Department of Education and Training (the department).

Item 1 – In the appropriate position in Part 3 of Schedule 1AB (table item 136)

New **table item 31** establishes legislative authority for the Government to provide a grant to Educational Music Tour Bus Foundation Australia Limited (the Foundation) to construct and operate the John Lennon Educational Bus (the Bus). The Bus will be a not-for-profit mobile recording studio and video production facility that builds on successful models in the United States of America and Europe.

The first John Lennon Educational Bus, which was co-founded by Yoko Ono Lennon and Brian Rothschild, was established as a non-profit organisation in the United States in 1998, to provide students with increased access to music, audio, video, and broadcast technologies. Following the success of the Bus in the United States of America, a Bus was also launched in Europe in May 2013.

The Government will provide funding to the Foundation to construct the Bus, which will then be used to deliver education programs, providing school students in Australia with an opportunity to use the very latest in audio and video technology and musical instruments housed on the Bus. The Bus will include a crew of producers and educators who will deliver programs to school students that will teach them how to write, record and produce original songs, music videos, documentaries and live multi-camera video productions.

The Foundation will run flexible programs on the Bus that are tailored to school students' needs, levels of experience and interest. The Bus will travel continuously, visiting primary and secondary schools, and bring lively presentations of music to school students in towns and schools across regional Australia.

The Foundation will also use the Bus to provide Aboriginal and Torres Strait Islander students with an opportunity to undertake an internship program on the Bus and travel as part of the Bus crew. Guidelines for the selection, and role, of Aboriginal and Torres Strait Islander students for this internship program will be developed by the Foundation and administered by the Foundation.

The Government will fund the Foundation to construct and operate the Bus, which the Foundation will use to achieve the following educational outcomes:

- Provide professional development for teachers and educators to build their understanding, skills and expertise in working with school students to improve student learning outcomes in the arts.
- Implement flexible music-based programs for students including performances, hands-on demonstrations, remote recordings and studio sessions aligned to the Australian Curriculum.
- Enable students and teachers to see the benefits of the programs offered by the Bus as viable career pathways.

The Government funding for the Bus is in the nature of seed funding for the design and construction of the Bus, with the Foundation obtaining further funding for the Bus construction and ongoing delivery of the related education programs from other sources.

Funding for the Foundation will take the form of a closed, one-off grant to the Foundation. The administration of the grant will be conducted in accordance with the Commonwealth grants framework, including the *Commonwealth Grants Rules and Guidelines 2017* (the CGRGs). In accordance with the CGRGs, grant guidelines will be developed and made publicly available on GrantConnect (www.grants.gov.au), together with information on the grant.

The funding will be expended in accordance with the CGRGs, the department's Secretary Instructions and delegations on the expenditure of relevant monies, and in accordance with the *Public Governance, Performance and Accountability Act 2013* (the PGPA Act). All funding decisions will be made by the delegate of the Secretary.

Independent review will not be available for the grant, as it will be a closed, one-off payment, for a specific purpose and to be delivered by a specific entity, the Foundation. The grant will be directly negotiated and agreed with the Foundation. No third party's interests will be affected by the making of the grant to the Foundation.

Independent review will also not be available in relation to the selection of Aboriginal and Torres Strait Islander students for the internship program on the Bus. Government funding is being provided to the Foundation to construct and operate the Bus, which will deliver education programs, including the internship program. The Foundation will have complete oversight and management over the internship program, including the selection, and role, of Aboriginal and Torres Strait Islander students. The Foundation will develop guidelines for

the internship program, which will set out appropriate complaints mechanisms and a contact person.

Funding of \$2.4 million for one year for 2018-19 will be provided to the Foundation and will come from Program 1.7: Early Learning and Schools Support – supporting communities with the advancement of culture, Quality Outcomes, which is part of Outcome 1. Funding details are set out in the *Portfolio Additional Budget Statements 2018-19, Education and Training Portfolio*, at page 17.

Quality Outcomes is a discretionary funding program for initiatives of importance to the Australian Government. The Minister for Education (the Minister) approves funding allocations under Quality Outcomes. Quality Outcomes is a long-standing appropriation to the Department for the purposes of providing funding for a variety of initiatives. The Minister has always retained the capacity to allocate funding from Quality Outcomes.

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 races power (section 51(xxvi)).

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 international obligations under treaties to which it is a party.

Australia is a party to the Convention on the Rights of the Child [1991] ATS 4 (CRC). In particular:

- Article 4 sets out a general obligation for States Parties to implement the rights set out in the CRC.
- Article 28(1) requires States Parties to recognise the right of the child to education, and with a view to achieving the right progressively and on the basis of equal opportunity.
- Article 29(1) requires States Parties to agree that the education of the child shall be directed to the development of their personality, talents and mental and physical abilities to their fullest potential.
- Article 31(1) requires States Parties to recognise the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
- Article 31(2) requires States Parties to respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

The Foundation will deliver specialist educational activities for children, such as creating and producing original songs, videos, documentaries, interviews and live broadcasts. The Foundation will also provide school students with an opportunity to get hands-on with music instruments and the latest technology, thereby developing their personality, talents and mental and physical abilities to their fullest potential. Further, the activities delivered by the Foundation to school students will involve the provision of information about career paths in

audio, video, broadcast and technology fields. This will encourage the provision of equal opportunities for school students, in achieving the right to education and for cultural, artistic, recreational and leisure activity.

Races power

Section 51(xxvi) of the Constitution empowers the Parliament to make laws with respect to ‘the people of any race for whom it is deemed necessary to make special laws’. The Foundation will deliver some of the activities in Indigenous communities, and some activities (such as the Indigenous internship program) will be delivered only to Indigenous peoples.

Item 2 – Part 4 of Schedule 1AB (table item 136)

Item 2 amends existing **table item 136** in Part 4 of Schedule 1AB.

Table item 136 establishes legislative authority for government spending on the development of vocational education and training packages by Skills Service Organisations (SSOs) under the Training Product Development (TPD) Program.

The TPD Program, implemented in January 2016, funds a number of SSOs to develop nationally endorsed training packages to guide training and assessment in vocational education and training (VET) in Australia. On 27 January 2016, the then Minister for Vocational Education and Skills, the Hon Luke Hartsuyker MP, announced the organisations selected as SSOs to develop training packages.

Training packages are nationally endorsed, integrated sets of units (or standards) of competency, assessment guidelines and qualifications that align with the Australian Qualifications Framework for a specific industry sector. Industry-defined qualifications in the training packages outline the skills and knowledge expected of an individual to operate in the workplace to an accepted industry-wide standard. High quality training products support quality training to ensure a skilled and flexible workforce that meets the needs of Australian industry and facilitates positive employment outcomes for individuals.

The Australian and Industry Skills Committee, established by the Council of Australian Governments Industry and Skills Council in 2015, approves VET training packages for implementation. It is also responsible for prioritising, scheduling and commissioning training package development and other support services for the national training system, based on the advice of Industry Reference Committees (IRCs).

The IRCs are a critical mechanism for identifying and responding to new and emerging skills and the training needs of industry and are the formal mechanism through which industry requirements for skills are considered and defined in training packages. Under the TPD Program, SSOs are funded to support the IRCs in the development, review and maintenance of training packages in accordance with the terms of the SSOs’ funding agreements with the department.

The TPD Program will be amended to enable other organisations to be funded to develop resources and products that support industry engagement, uptake and implementation of the training packages developed by the SSOs where the SSOs do not have the technical expertise. This amendment is in accordance with the program guidelines, approved in January 2016,

which provide information about grant funding for additional activities to support the national training system.

The current legislative authority for the TPD Program refers only to funding being available for SSOs to develop the training packages. Item 1 repeals and replaces table item 136 to establish legislative authority for the changes to the program.

The additional activities will include the development of resources and products to support the implementation of training package products by VET providers, such as guidance on contextualising generic content for specific industry sectors, eLearning platforms to support delivery of outcomes of cross-sector units of competency in the national training system, and learning and assessment resources in areas of high priority for government and industry. Resources will also be developed to encourage industry, including businesses and employers, to be actively involved in the design of training packages.

The resources would be developed by a range of organisations depending on the differing expertise required for each individual activity. This may include SSOs, however there will be instances where the technical expertise is not available within the SSO structure and other organisations, such as curriculum developers, eLearning or industry experts, would be engaged. The resources and products to support implementation of training package products are not currently captured under the funding agreements with the SSOs which focus on the development of training package products.

The TPD Program commenced on 1 January 2016. Funding of \$188.2 million was included for the TPD Program in the 2018-19 Mid-Year Economic and Fiscal Outlook for a period of five years commencing in 2018-19. The TPD Program is funded under the Industry Workforce Training Program, under sub-program 2.8.4: Support for the National Training System, which is part of Outcome 2.

A combination of procurement and grants processes will be used to carry out the additional activities. Decisions about, and the process for, funding the additional activities will be made in accordance with the *Commonwealth Procurement Rules* (January 2019), when a procurement process is used, and the CGRGs, when a grants process is used, the PGPA Act, the program guidelines and associated departmental processes.

The decision-maker for selecting and funding organisations to undertake the additional activities will be determined by the value of the service, and will be managed in accordance with the PGPA Act. The decision-maker could be the Secretary or their delegate.

The TPD Program Guidelines outline the eligibility for funding for additional activities and provide that applications for funding for additional activities will be considered on their merit if the activity proposed meets one of the following principles:

- it supports better alignment of skills with jobs
- it leads to improved quality outcomes from the national training system, or
- it improves the status of VET.

The expertise required to provide the service or resources will be identified when planning for, and scoping, individual activities in accordance with the TPD Program Guidelines. In some instances, this may involve approaching an SSO and progressing an activity order for the work. In other cases, where the activity requires a technical skill set that is not held within

the SSO structure, the department may choose to directly approach a select group of consultants (where a specialist set of skills is required and not widely available), or progress an open market approach (where a broader skill set is required and is widely available).

The AISC may also, on behalf of an IRC or other key stakeholders, commission additional activities from an SSO or another organisation to meet an identified emerging or urgent need. Successful applications will be funded by the department through a funding agreement, or in the case of an SSO, commissioned through an activity order. An activity order to perform additional activities may be issued by the Commonwealth under the existing funding agreement with the SSO.

All funding agreements will be managed within a defined timeframe, with funding agreements typically not longer than 12 months in duration.

The eligibility criteria for applicants applying for funding for additional activities will be determined by the nature of the additional activity being commissioned by the department. At a minimum, all applicants will be required to have an Australian Business Number. In accordance with the TPD Program Guidelines, Commonwealth, state and local government agencies and bodies, are ineligible to apply for grant funding under the TPD Program, including for additional activities.

Delivery of the additional activities will be carried out in accordance with the funding agreement or activity order. At the completion of the work, the department will assess the work against the funding agreement or the activity order. Decisions about funding will be made publicly available in accordance with the CGRGs or the *Commonwealth Procurement Rules* (January 2019), as relevant. Grants awarded will be published on GrantConnect, and procurements on AusTender (www.tenders.gov.au) as required.

Independent review will not be available for funding provided in relation to additional activities. Some of the funding processes will be ad hoc, non-competitive, and for a specific entity and for specific purposes.

In the cases where funding processes may be competitive, finite resources are available between competing applicants. As the funding is limited and only a proportion of applications to provide additional activities can be met, any reversal of a decision on whether a party is successful or not may then cause the displacement of, and disadvantage to, another successful party. It would not be feasible for the department to make such decisions subject to independent merits review.

An applicant may also lodge a complaint with the department or the Commonwealth Ombudsman. Complaints to the department will be managed in accordance with the Commonwealth Procurement Rules and the department's complaint handling procedures.

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 express incidental power and the executive power (sections 51(xxxix) and 61).

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 international obligations under treaties to which it is a party.

Australia has obligations relating to employment under the International Labour Organization (ILO) Convention concerning Employment Policy (ILO Convention 122), the ILO Convention concerning Vocational Guidance and Vocational Training in the Development of Human Resources (ILO Convention 142) and the International Covenant on Economic, Social and Cultural Rights [1976] ATS 5 (ICESCR).

Article 1 of the ILO Convention 122 requires each Member to pursue an 'active policy designed to promote full, productive and freely chosen employment'. Article 2 further requires Members to 'decide on...the measures to be adopted for attaining the objectives specified in Article 1' and 'to take such steps as may be needed, including when appropriate the establishment of programs'.

Article 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 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'.

Article 4 of the ILO Convention 142 obliges each Member party to 'extend, adapt and harmonise its vocational training systems to meet the needs for vocational training throughout the 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 6(1) of the ICESCR obliges each States Party to recognise the right to work. Article 6(2) further provides specific steps that States Parties 'shall' take steps to achieve full realisation of this right, including the creation of 'technical and vocational guidance and training programmes'.

The funding for additional activities will develop resources to improve the implementation of training products by VET providers so that students and trainees in VET courses obtain the skills which businesses need. The additional activities will also assist industry to be involved in the design of training packages to ensure that the units of competency and qualifications developed in training packages reflect what industry desires from potential employees.

Express incidental power and the executive power

The express incidental power in 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 in section 61 of the Constitution, the express incidental power supports activities that form part of the ordinary and well-recognised functions of government. The expenditure will be on activities that promote the existence of VET programs to business and industry.

Item 3 – Part 4 of Schedule 1AB (table item 252, column headed “Objective(s)”, paragraph (a))

Item 3 amends existing **table item 252** in Part 4 of Schedule 1AB.

Table item 252 establishes legislative authority for government spending on the Rural and Regional Enterprise Scholarships Program (the RRES program).

The RRES program, which commenced in 2018, provides scholarships to undergraduate, postgraduate and vocational education and training students from regional and remote areas of Australia. Scholarship recipients are selected on the basis of financial need and capability, with additional consideration given to students from areas of high unemployment, students from remote and very remote areas, students with disability, Aboriginal and Torres Strait Islander students, women studying in fields with low female representation and students who propose to complete internships.

The program was implemented to improve access to, and completion of science, technology, engineering or mathematics (STEM) tertiary studies, including Health and Agriculture, for initially up to 1,200 students from regional and remote areas.

Under Rounds One and Two, scholarships were available for Certificate IV to PhD courses in the following STEM fields:

- Natural and Physical Sciences (including Mathematical Sciences)
- Information and Technology
- Engineering and Related Technologies
- Agriculture, Environmental and Related Studies
- Health, excluding complementary therapies.

On 12 November 2018, the Government announced the expansion of the RRES program to students. A new Round Three will be put in place for this purpose. The expansion gives effect to the Government’s commitment to strengthen higher education enrolment in regional Australia by funding additional study places, scholarships and enhanced facilities to increase accessibility.

Round Three will open in March 2019, with 1,100 scholarships for students commencing studies in Semester 2 in the 2019 academic year. Students studying in Semester 1 of the 2019 academic year may also apply. The program guidelines will be amended prior to the opening of Round Three to reflect the expansion of the program.

Scholarship recipients may receive up to \$18,000 paid in equal instalments for the duration of their course (\$18,000 for four years full-time study, with pro-rata payments for shorter qualifications or part-time students). Scholarship recipients may also receive support to undertake internships to complement their eligible study (\$500 for out-of-pocket expenses for the student and \$500 for the host organisation).

Applicants for the scholarships must:

- be an Australian citizen, permanent resident, holder of a permanent humanitarian visa or New Zealand citizen living in Australia
- have not already commenced their eligible course of study

- have a permanent home address in a regional or remote area as defined by the Australian Statistical Geography Standard.

Information on the RRES program, including the eligibility and timing of application rounds, is available at <https://www.education.gov.au/rural-and-regional-enterprise-scholarships>.

The Queensland Tertiary Admissions Centre (QTAC) operates a centralised tertiary application service for tertiary institutions in Queensland and northern New South Wales and for some private institutions. The QTAC is an independent third party that is contracted by the Commonwealth to administer the scholarships, under contract with the department, in line with the program guidelines that set out the application and selection processes, distribution of scholarship funding, continued monitoring of eligibility and compliance with scholarship conditions and reporting. The QTAC was selected by the department to administer the program through an open procurement process consistent with the *Commonwealth Procurement Rules*.

The QTAC assesses applications using each institutes entry requirements and makes offers to successful applicants during their offer rounds. It is required to promote the program, distribute scholarship funding to scholarship holders, monitor continued eligibility and compliance with scholarship conditions and report to the department at specified intervals. The department regularly liaises with the QTAC to ensure the efficient delivery of the program consistent with the program guidelines.

The QTAC will run competitive rounds to identify scholarship recipients. The promotion and marketing of each scholarship round will be conducted by the QTAC in accordance with guidance provided by the department. Applications for scholarships will be assessed by the QTAC against the selection criteria in the program guidelines and in accordance with procedures agreed with the department. The QTAC will determine which applicants will be offered scholarships.

The QTAC will notify successful and unsuccessful applicants of the outcome of their application in writing. Unsuccessful applicants will be provided feedback on why they were unsuccessful and may contact the QTAC to make inquiries, seek feedback and make complaints in relation to their application for a scholarship. As outlined in the program guidelines, if a complaint cannot be satisfactorily resolved by the QTAC, the QTAC will refer the complaint to the department for resolution. Where a complaint concerns a scholarship application outcome decision by the QTAC, the department will conduct a review of the decision. The RRES program allows for unsuccessful applicants to apply for a scholarship in subsequent funding rounds.

No further independent merits review will be available for the RRES program as there is a finite amount of funding available and it would adversely affect scholarship recipients because it would unreasonably delay the allocation of scholarships, and create uncertainty for scholarship applicants.

The success of the RRES program will be assessed by comparing the participants in the scheme with non-participants in the following areas:

- regional mobility of scholarship students
- the level of qualifications participants study
- the participants' rate of course completion

- other measures of success, as appropriate, such as the number of regional and remote students engaging with STEM disciplines for Round One and Round Two.

Funding will be expended in accordance with the department's Secretary Instructions, delegations on the expenditure of relevant monies and the PGPA Act.

The RRES program was announced in the 2017-18 Budget, with initial funding of \$24 million over four years under the measure 'Rural and Regional Enterprise Scholarships – establishment'. Details are set out in *Budget 2017-18, Budget Measures, Budget Paper No. 2 2017-18* at page 89.

On 12 November 2018, the Minister for Education, the Hon Dan Tehan MP, announced new funding for regional higher education, including \$34.1 million for an additional 1,955 scholarships for regional and remote students over four years, more than doubling the number of scholarships originally available. Of the additional scholarships, 855 were allocated to Round Two of the RRES program and 1,100 were allocated to a new Round Three. The media release is at <https://ministers.education.gov.au/tehan/more-support-regional-students>.

Funding of \$54.1 million over four years from 2018-19 was included in the 2018-19 Mid-Year Economic and Fiscal Outlook for the RRES program and will come from Program 2.3: Higher Education Support, which is part of Outcome 2. Funding details are set out in the *Mid-Year Economic and Fiscal Outlook 2018-19, Appendix A: Policy decisions taken since the 2018-19 Budget*, under the measure 'Strengthening Higher Education in Regional Australia – additional support for students and universities' at page 171 and in the *Portfolio Additional Estimates Statements, Employment and Training Portfolio* at page 36.

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

- the 'benefits to students' aspect of the social welfare power (section 51(xxiiiA))
- the external affairs power (section 51(xxix)).

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 RRES program will provide funding to offer scholarships and internships to selected students from regional and remote areas who are undertaking undergraduate, postgraduate or vocational education and training studies, to improve educational attainment and skills development opportunities.

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 international obligations under treaties to which it is a party.

Australia has obligations in relation to the right to work and the right to education under the International Covenant on Economic, Social and Cultural Rights. In particular:

- Article 6 provides that States Parties shall 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’.
- Article 13(2) provides that States Parties recognise that, with a view to achieving the full realisation of the right of everyone to education:
 - ‘(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means...
 - (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means...’.

Australia also has obligations under ILO Conventions on Employment Policy (ILO Convention 122), and 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 States Parties to pursue ‘an active policy designed to promote full, productive and freely chosen employment’.
- Articles 1 to 4 of the ILO Convention 142 oblige States Parties to adopt policies and programs of vocational guidance and training, linked with employment.

The program will also provide funding for selected scholarship holders to undertake voluntary internships relevant to their field of study, and funding to employers who provide the internships.

Item 4 – Part 4 of Schedule 1AB (table item 325, column headed “Objective(s)”)

Item 4 corrects a grammatical error in table item 325 which provides legislative authority for government spending on an advanced welding training centre in Caboolture, Queensland.

Item 5 – In the appropriate position in Part 4 of Schedule 1AB (table)

New **table item 335** establishes legislative authority for government spending on the ongoing delivery of an integrated information service for Australian Apprenticeships (the service). The service is currently delivered as the Australian Apprenticeships and Traineeships Information Service.

The service provides up-to-date information on over 1,300 qualifications to assist Australian Apprenticeship Support Network (Apprenticeship Network) providers, Registered Training Organisations, Group Training Organisations, training product development organisations, State Training Authorities, *jobactive*, career advisers, students and potential apprentices, parents/guardians and employers. The service provides information and support to all stakeholders within the Australian Apprenticeships system by providing key data and resource material that is integral to decision-making by those stakeholders. The service includes a website, a mobile application, social media presence and enquiry services through an 1800 free-call service and email.

The service is the pre-eminent source of information on apprenticeships and traineeships, and brings together significant amounts of information from a multitude of sources into one easily accessible, central information service. Having all this information in one location allows

stakeholders to access all the material they need to make informed decisions in relation to participating in an apprenticeships pathway. The Apprenticeship Network utilises the service to both assist in the delivery of support to Australian Apprentices and their employers by providing information on the availability of appropriate courses to provide the off-the-job aspects of the apprenticeship, and to administer payments through the Australian Apprenticeships Incentives Program. The service is also the single source of information for populating the apprenticeships components of the Government's My Skills website.

The service is supported by an Advisory Committee that meets quarterly and comprises a broad representation of key stakeholders, including state and territory governments, industry and the training and apprenticeships sector. The Advisory Committee receives and agrees to comprehensive reports on the development and delivery of the service. The Advisory Committee also provides advice on current developments to enhance the information service.

The department will conduct a competitive open tender early in 2019 and select one provider to deliver the service from 1 July 2019. The successful tenderer will be approved by a delegate of the Secretary of the department with appropriate delegations under the PGPA Act.

A delegate of the Secretary of the department will be responsible for making final decisions in relation to any relevant expenditure. Funding decisions will be made in accordance with the Secretary Instructions and delegations on expenditure of relevant money, and in accordance with the Commonwealth's resource management framework including the PGPA Act and the *Commonwealth Procurement Rules*. Information about the tender and the resultant contract will be available on AusTender (www.tenders.gov.au).

The process of selecting a provider to deliver the service will be a "covered procurement" for the purposes of section 5 of the *Government Procurement (Judicial Review) Act 2018* and is expected to occur after the commencement of that Act. As a result, the procurement would be subject to independent review under that Act.

Funding of \$5.4 million was included in the 2018-19 Mid-Year Economic and Fiscal Outlook under the measure 'Integrated Information Service', for a period of three years (and \$1.9 million per year ongoing), commencing in 2019-20. Details are set out in the *Mid-Year Economic and Fiscal Outlook 2018-19*, Appendix A: Policy decisions taken since the 2018-19 Budget, at page 167.

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

- the communications power (section 51(v))
- the census and statistics power (section 51(xi))
- the express incidental power and the executive power (sections 51(xxxix) and 61).

Communications power

Section 51(v) of the Constitution empowers the Parliament to make laws with respect to 'postal, telegraphic, telephonic and other like services'. The integrated information service for Australian Apprenticeships develops, maintains and promotes resources that are provided via a website, mobile application, social media channels, the 1800 free-call service and email enquiry service.

Census and statistics power

Section 51(xi) of the Constitution supports the making of laws supporting activities that involve the collection of information for statistical purposes (that is, to compile and analyse data) and the dissemination of that compiled or analysed data (that is, statistics). The service collects and provides data on apprenticeships to the department.

Executive power

The express incidental power in 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 in section 61 of the Constitution, the express incidental power supports activities that form part of the ordinary and well-recognised functions of government. The service collects and provides data on apprenticeships to the department and has an Advisory Committee, which assists the department to inform itself on particular matters, including the development, enhancement and management of the delivery aspects of the integrated information service.

Statement of Compatibility with Human Rights

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

Financial Framework (Supplementary Powers) Amendment (Education and Training Measures No. 2) Regulations 2019

This disallowable legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

Section 32B of the *Financial Framework (Supplementary Powers) Act 1997* (the FF(SP) Act) authorises the Commonwealth to make, vary and administer arrangements and grants specified in the *Financial Framework (Supplementary Powers) Regulations 1997* (the FF(SP) Regulations) and to make, vary and administer arrangements and grants for the purposes of programs specified in the FF(SP) 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 *Financial Framework (Supplementary Powers) Amendment (Education and Training Measures No. 2) Regulations 2019* amend Schedule 1AB to the FF(SP) Regulations to establish legislative authority for government spending on four activities that will be administered by the Department of Education and Training (the department) and to make one technical amendment.

This instrument adds the following table item to Part 3 of Schedule 1AB:

- table item 31 for a grant to Educational Music Tour Bus Foundation Australia Limited to construct and operate the John Lennon Educational Bus, which will deliver education programs to school students in Australia.

This instrument amends Part 4 of Schedule 1AB by:

- amending existing table item 136 to provide legislative authority for the funding of further parties to develop resources and products to support the translation and implementation of training packages by VET providers, in accordance with program guidelines approved in January 2016
- amending existing table item 252 to provide legislative authority for the expansion of the Rural and Regional Enterprise Scholarships Program to cover all fields of study, instead of only science, technology, engineering or mathematics (STEM) subjects
- adding new table item 335 to provide legislative authority for the ongoing integrated information service for Australian Apprenticeships to provide up-to-date information on over 1,300 qualifications to Australian Apprenticeship Support Network Providers, apprentices, employers, training organisations, state and territory training authorities, career advisers and other stakeholders.

The instrument also makes a technical amendment to existing table item 325 in Part 4 of Schedule 1AB to correct a grammatical error.

Table item 31 - Grant to Educational Music Tour Bus Foundation Australia Limited

The Government will provide a grant to the Educational Music Tour Bus Foundation Australia Limited (the Foundation) to construct and operate the John Lennon Educational Bus (the Bus). The Bus will be a not-for-profit mobile recording studio and video production facility that builds on successful models in the United States of America and Europe.

The first John Lennon Educational Bus, which was co-founded by Yoko Ono Lennon and Brian Rothschild, was established as a non-profit organisation in the United States of America in 1998, to provide students with increased access to music, audio, video, and broadcast technologies. Following the success of the Bus in the United States of America, a Bus was also launched in Europe in May 2013.

The Government will provide funding to the Foundation to construct the Bus, which will then be used to deliver education programs, providing school students in Australia with an opportunity to use the very latest in audio and video technology and musical instruments housed on the Bus. The Bus will include a crew of producers and educators who will deliver programs to school students that will teach them how to write, record, and produce original songs, music videos, documentaries and live multi-camera video productions.

The Foundation will run flexible programs on the Bus that are tailored to school students' needs, levels of experience and interest. The Bus will travel continuously, visiting primary and secondary schools, and bring lively presentations of music to school students in towns and schools across regional Australia.

The Foundation will also use the Bus to provide Aboriginal and Torres Strait Islander students with an opportunity to undertake an internship program on the Bus and travel as part of the Bus crew. Guidelines for the selection, and role, of Aboriginal and Torres Strait Islander students for this internship program will be developed, and administered by the Foundation.

The Government will fund the Foundation to construct and operate the Bus, which the Foundation will use to achieve the following educational outcomes:

- Provide professional development for teachers and educators to build their understanding, skills and expertise in working with school students to improve student learning outcomes in the arts.
- Implement flexible music-based programs for students including performances, hands-on demonstrations, remote recordings and studio sessions aligned to the Australian Curriculum.
- Enable students and teachers to see the benefits of the programs offered by the Bus as viable career pathways.

The Government funding for the Bus is in the nature of seed funding for the design and construction of the Bus, with the Foundation obtaining further funding for the Bus construction and ongoing delivery of the related education programs from other sources.

Human Rights implications – Grant to Educational Music Tour Bus Foundation Australia Ltd

Table item 31 engages the following human rights:

- the right to education – Articles 4, 28 and 29 of the Convention on the Rights of the Child (CRC)
- the right to enjoy and benefit from culture – Article 31 of the CRC.

Right to education

Table item 31 engages the right to education in Articles 4, 28 and 29 of the CRC.

Article 28(1) of the CRC recognises the right of the child to education, with a view to making educational and vocational information and guidance accessible to all children.

Article 29(1)(a) of the CRC provides for the education of the child to be directed to the development of the child’s personality, talents and mental and physical abilities to their fullest potential.

Table item 31 promotes the right to education by enabling the construction and operation of the Bus, which will deliver educational activities to school students including:

- the opportunity for school students to create and produce original songs, videos, documentaries, interviews and live broadcasts;
- the opportunity for school students to benefit from an overview of career paths in the audio, video, broadcast and technology fields; and
- the opportunity for Aboriginal and Torres Strait Islander school students to undertake an internship program on the Bus.

Right to enjoy and benefit from culture

Table item 31 engages the right to enjoy and benefit from culture in Article 31 of the CRC.

Article 31(1) recognises the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in culture, life and the arts.

Table item 31 promotes the right to enjoy and benefit from culture by enabling the construction and operation of the Bus, which will:

- implement flexible music-based programs for school students including performances, hands-on demonstrations, remote recordings and studio sessions
- provide school students with an opportunity to tour the Bus and learn about the professional studios on board.

Conclusion

Table item 31 is compatible with human rights because it promotes the right to education and right to enjoy and benefit from culture under the CRC.

Amended table item 136 – Development of vocational education and training (VET) packages

The Training Product Development Program (TPD Program) funds a number of Skills Service Organisations (SSOs) to develop nationally endorsed training packages to guide training and assessment in vocational education and training (VET) in Australia.

Training packages are nationally endorsed, integrated sets of units of competency, assessment guidelines and Australian Qualifications Framework (AQF) qualifications for a specific industry sector. This instrument seeks to provide funding to technical experts (which may or may not be SSOs) to develop resources and products to support industry engagement, uptake and implementation of training packages by VET providers.

This instrument amends table item 136 of Part 4 of Schedule 1AB to support the expenditure to other organisations to provide additional activities to support the national training system.

The Minister for Small and Family Business, Skills and Vocational Education has portfolio responsibility for this matter.

Human rights implications –Development of vocational education and training (VET) packages

Table item 136 engages the following human rights:

- the right to education – Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)
- the right to work – Article 6 of the ICESCR.

Right to education

Table item 136 engages the right to education, contained in Article 13 of the ICESCR. Article 13 provides that vocational education is a part of secondary education (Article 13(2)(b)), and secondary education must be available and accessible to all on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education (Article 13(2)(c)).

Table item 136 promotes the right of all people to education by:

- developing resources and products to support industry engagement, uptake and implementation of training packages to assist VET providers to design their curricula and tailor their programs to meet individual learner's needs
- encouraging involvement from industry in the design of training packages to improve links between VET providers and industry, and ensure VET students receive training which equips them with the skills required by employers.

Table item 136 is compatible with and promotes the right to education.

Right to work

Table item 136 engages the right to work set out in Article 6 of the ICESCR. Article 6 recognises the right to work which includes the right of everyone to have the opportunity to gain their living by work which they freely choose or accept. Article 6(2) provides the steps

to be taken by States Parties to achieve the full realisation of this right including providing technical and vocational education and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding political and economic freedom to the individual.

Table item 136 promotes the right to work by:

- supporting the establishment of training packages that reflect the skills and knowledge expected of an individual to operate in the workplace to an accepted industry-wide standard
- contributing to a skilled and flexible workforce that meets the needs of employers and achieves better employment outcomes for individuals.

Table item 136 is compatible with and promotes the right to work.

Conclusion

Table item 136 is compatible with human rights because it promotes the right to education and the right to work under the ICESR.

Table item 252 – Rural and Regional Enterprise Scholarships program

The Rural and Regional Enterprise Scholarships (RRES) program was announced as part of the 2017-18 Budget, and has been providing scholarships to undergraduate, postgraduate and vocational education and training students from regional and remote areas of Australia since the start of 2018. To date, eligibility for scholarships under the RRES program has been limited to students undertaking study in science, technology, engineering or mathematics (STEM) fields, and the expenditure authority for the program in the previous table item 252 of Schedule 1AB reflected this limitation. The Government has opened access to scholarships under the RRES program to all students from regional and remote areas from March 2019, no matter their field of study. Table item 252, as amended, establishes legislative authority for government spending on the expanded RRES program.

The Minister for Education has portfolio responsibility for the RRES program.

Human rights implications – Rural and Regional Enterprise Scholarships program

Table item 252 engages the following human rights:

- the right to education under Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)
- the right to self-determination under Article 1 of the ICESCR and Article 1 of the International Covenant on Civil and Political Rights (ICCPR).

Right to education

Table item 252 engages the right to education, set out in Article 13 of the ICESCR. This right recognises the important personal, societal, economic and intellectual benefits of education.

In particular, table item 252 engages this right because it increases the access of regional and remote students to education through the provision of scholarships to undergraduate, postgraduate and vocational education and training students across all fields of study.

Right to self-determination

Table item 252 engages the right to self-determination, set out in Article 1 of the ICESCR and Article 1 of the ICCPR.

In particular, table item 252 engages this right because it will allow students in regional and remote areas greater choice in their education, which is compatible with, and promotes the right to self-determination. The right to self-determination, as it intersects with the right to education, is promoted by table item 252 because it addresses regional barriers to access to education. The table item, as amended, allows a greater cross-section of students to participate in a wider range of educational programs.

Conclusion

Table item 252 is compatible with, and promotes, human rights because it enables the provision of Commonwealth funding for purposes that are compatible with the right to education and the right to self-determination.

Table item 325 – Advanced Welding Training Centre

The instrument corrects a grammatical error in existing table item 325. The amendment does not engage any human rights.

Table item 335 – Integrated information service for Australian Apprenticeships

New table item 335 establishes legislative authority for government spending on the delivery of an integrated information service for Australian Apprenticeships (the service).

Table item 335 will ensure that legislative authority is in place for ongoing delivery of delivery of necessary apprenticeships information services as part of an integrated information service for Australian Apprenticeships beyond 30 June 2019. The service is currently delivered under the Australian Apprenticeships and Traineeships Information Service .

The service is the pre-eminent source of information and key data on apprenticeships and traineeships in Australia, offering services that are unique within the Australian Apprenticeships system. The key function of the service is to provide client focussed marketing, information and advice on Australian Apprenticeships pathways, qualifications and apprenticeships arrangements. The service allows significant amounts of valuable information from a multitude of sources to be located and accessible in one central information service. Apprentices, employers and other key stakeholders all access apprenticeships pathways information through the service.

The Minister for Small and Family Business, Skills and Vocational Education has portfolio responsibility for this matter.

Human rights implications –Integrated information service for Australian Apprenticeships

Table item 335 engages the following human rights:

- the right to education – Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and Articles 4, 6, 17 and 28 of the Convention on the Rights of the Child (CRC)
- the right to work – Article 6 of the ICESCR.

Right to education

Table item 335 engages the right to education in Article 13 of the ICESCR. Article 13 recognises the right of everyone to education, which is directed towards the full development of the human personality and the sense of dignity, and to enable all persons to participate effectively in society. Articles 13(2)(b) and 13(2)(c) of the ICESCR provide that vocational education is a part of secondary education and secondary education must be available and accessible to all on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education. These Articles recognise the important personal, societal, economic and intellectual benefits of education, and provide that technical and vocational education should enable students to acquire knowledge and skills which contribute to their employability and enhance their productivity.

Table item 335 also engages the right of children to education in Articles 4, 6, 17 and 28 of the CRC, by making educational and vocational information and guidance on Australian Apprenticeships available and accessible to all. In particular, the service will inform the apprenticeships sector about available apprenticeships information through the provision of a website, mobile application, social media presence, enquiry service (1800 free-call referral and an email enquiry service) and the delivery of information sessions for stakeholders.

The measures in table item 335 are compatible with the right to education and promote the right to education.

Right to work

Table item 335 engages the right to work in Article 6 of the ICESCR, which includes the right of everyone to the opportunity to gain their living by work which he freely chooses or accepts. Article 6(2) provides that the steps to be taken by States Parties to achieve the full realisation of this right include providing 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 freedom to the individual.

Table item 335 promotes the right to work by providing up-to-date information on apprenticeships and traineeships from a multitude of sources in one readily accessible central location, at no cost to users. It is expected that users of the service will be students and potential apprentices, Australian Apprenticeship Support Network providers, Registered Training Organisations, Group Training Organisations, training product development organisations, State Training Authorities, *jobactive*, career advisers, parents and guardians, employers and other interested parties.

The measures in table item 335 are compatible with the right to freely chosen work and promote the right to freely chosen work.

Conclusion

Table item 335 is compatible with human rights because it promotes the right to education under the ICESCR and CRC as well as the right to work under the ICESCR.

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