

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance

Financial Framework (Supplementary Powers) Act 1997

*Financial Framework (Supplementary Powers) Amendment
(Education Measures No. 5) 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 Measures No. 5) Regulations 2019* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on four initiatives that will be administered by the Department of Education.

Funding will be provided for:

- A grant to News Corp Australia Pty Limited to assist in the development of an online spelling bee (with funding of \$0.3 million for 2019-20).
- The Future Leaders Program which will identify high achieving teachers and provide them with training and support to become high quality school leaders in rural, remote or disadvantaged schools (with funding of \$7.5 million over two years from 2020-21).
- The Rural Inspire Program which will support the achievements, aspirations and career, life and learning goals of students in schools in rural and remote areas in Australia (with funding of \$2 million over three years from 2019-20).
- An online tertiary learning repository to provide higher education students with details of their education achievements through a centralised digital platform (with funding of \$2.5 million over four years from 2019-20).

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.

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 Measures No.5) Regulations 2019*

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Education Measures No. 5) 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

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

This item adds a new **table item 37** to Part 3 of Schedule 1AB to establish legislative authority for government spending on a grant that will be administered by the Department of Education (the department).

New **table item 37** establishes legislative authority for Government spending for a grant to News Corp Australia Pty Limited (News Corp) to undertake a website build for *Kids News: the PM's Spelling Bee* (the Spelling Bee).

The Spelling Bee aims to promote and encourage literacy in schools across Australia, through a free annual online spelling bee competition for Australian school students in years three to eight.

The Spelling Bee will be hosted on the Kids News website (www.kidsnews.com.au). Kids News is a website developed by News Corp to provide news to Australian children in an accessible form using age-appropriate language. Kids News is widely used by students, parents and teachers to educate and inform kids on an array of topics. The Spelling Bee will be the next addition.

The Spelling Bee will be built as a standalone product to be integrated into the Kids News website for easy access in all Year three to eight Australian classrooms in early 2020. The technology build will involve a number of phases including research and design, creative, planning, build, support and optimisation.

Government funding will cover the cost of the technology build and News Corp will bear the costs of ongoing operation, support and promotion of the Spelling Bee.

It is expected the build will take approximately three months. Once launched in March 2020, the Spelling Bee will be run annually and will be a national annual event accessible to all Australian schools, in every state and territory. The Spelling Bee will promote improved learning outcomes and literacy in Australian schools and will be available under three levels – Green (years three to four), Orange (years five to six) and Red (years seven to eight).

Students will participate in the Spelling Bee at school online, supervised by teachers. There will be winners at class level, as well as state and national finals. Certificates of participation will be awarded to all entrants and prizes given to finalists. Certificates will be available to teachers digitally as interactive PDFs and teachers will decide whether to print them out or send them digitally to the students.

The administration of the grant to News Corp will be conducted in accordance with the Commonwealth Grants Framework, including the *Commonwealth Grants Rules and Guidelines 2017* (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.

Independent review will not be available for the grant, as it will be a payment for a specific purpose and to be delivered by a specific service provider. The grant will be directly negotiated and agreed with News Corp. No third party's interests will be affected by the making of the grant to News Corp.

Funding of \$345,240 for 2019-20 will be available from Program 1.5 Early Learning and Schools Support, which is part of Quality Outcomes Program - Other. Funding details are set out in the *Portfolio Budget Statements 2019-2020, Budget Related Paper 1.5, Education portfolio* at page 34.

Quality Outcomes is a discretionary funding program for initiatives of importance to the 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 communications power (s 51(v)) of the Constitution:

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 Spelling Bee will involve the development and delivery of content to be delivered using the internet.

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

This item adds three new table items to Part 4 of Schedule 1AB to establish legislative authority for government spending on activities that will be administered by the department.

New **table item 383** establishes legislative authority for government spending on the Future Leaders Program (Future Leaders).

On 10 May 2019, the Government announced the *Our Plan for Quality Education* package, which included funding of \$15 million to be provided to Teach For Australia (TFA) to train high achieving teachers and high quality school leaders in rural, remote or disadvantaged schools.

Government funding will be provided to TFA to deliver the following two initiatives:

- extend delivery of the High Achieving Teachers Program and recruit more high achieving university graduates to complete the program and become high quality teachers in disadvantaged Australian secondary schools in 2020, 2021 and 2022. This initiative is supported by table item 278 of Part 4 of Schedule 1AB of the *Financial Framework (Supplementary Powers) Regulations 1997*; and
- deliver Future Leaders as a pilot in 2021 and 2022 by identifying high achieving teachers and providing them with the training and support to become high quality school leaders in rural, remote or disadvantaged schools.

Current data and reporting on principalship, points to a significant loss of quality and experience among principals in the near future.¹ As highlighted in the 2018 report to Government, [*Through Growth to Achievement: Report of the Review to Achieve Educational Excellence in Australian schools*](#), Australia needs to urgently expand the pool of future school leaders as there is a looming shortage due to retirement. This is compounded by a lack of qualified applicants to fill available school leadership positions.² This presents a threat to the standard of school leadership, the quality of teaching in classrooms and to student outcomes.

Future Leaders aim to address shortages in the number of aspiring school leaders and increase the quality of school leadership preparation to support the school leadership pipeline in Australian primary and secondary schools, particularly those in regional, rural and remote Australia.

TFA will be responsible for administering all aspects of Future Leaders as a pilot and in accordance with requirements in the grant guidelines and funding agreement. This will include the recruitment and selection of high achieving teachers with demonstrated school leadership potential and the delivery of ongoing training and support designed to equip participants with the skills, knowledge and experience to become high quality school leaders in regional, rural and remote primary and secondary schools.

¹ Willet M., Segal D., Walford W (Ernst and Young), *National Teaching Workforce Dataset Data Analysis Report 2014*.

² Gonski, David, et. al (2018) *Through Growth to Achievement: The Report of The Review to Achieve Educational Excellence in Australian Schools*.

TFA will be asked to develop the process for selecting program participants in consultation with the education authorities in each state and territory in which the program will operate and with the Australian Primary Principals' Association and the Australian Secondary Principals' Association. After this, it is anticipated that TFA will work with school principals to identify high achieving teachers within the school that have potential to become quality school leaders. These high achieving teachers will be encouraged to undertake Future Leaders.

As part of the application process, applicants will need to provide evidence of their capacity to become a quality school leader and evidence that their school or school principal supports their participation in Future Leaders. TFA will assess individual applications against published selection criteria, designed to measure their capacity to become quality school leaders. For example, interpersonal and communication skills, problem-solving skills and the capacity to develop the technical skills school leaders need.

TFA will provide program participants with regular and ongoing training, support and mentoring over a 12-month period. This is expected to include a combination of face-to-face and online training components as well as opportunities for development away from the classroom. The training will seek to build the fundamental skills required to become a quality school leader, such as strategic planning, coaching others and building effective teams, particularly in a regional or rural school.

TFA will work with around 40 participants in the first year, and seek to expand in the second year of Future Leaders. Future Leaders will seek to operate nationally, but this will be dependent on the support of state and territory education authorities.

The department will explore opportunities to support an independent evaluation of Future Leaders in 2022. An evaluation, if possible, will measure the extent to which Future Leaders has been successful at building the school leadership pipeline. There is potential for Future Leaders to be expanded in the future.

The department will approach TFA to submit a proposal for delivery of Future Leaders through an ad-hoc, non-competitive grant process. The proposal will need to demonstrate:

- compliance with grant guidelines for Future Leaders,
- an expertise in the recruitment and preparation of quality school leaders,
- an ability to work with the relevant program partners (including approved education authorities), and
- that their delivery of Future Leaders represents value for money to the Commonwealth.

The departmental delegate under the *Public Governance, Performance and Accountability Act 2013* will be responsible for determining successful applicants and final decisions about Commonwealth expenditure. Information about Future Leaders and successful applicants will be made available on the department's website at <https://www.education.gov.au/>. If successful, TFA will be required to publish information about Future Leaders on their website.

The administration of the grant to TFA will be conducted in accordance with the Commonwealth Grants Framework, including the *Commonwealth Grants Rules and Guidelines 2017* (CGRGs).

Decisions made in connection with Future Leaders will not be subject to independent review as TFA will be required to select a limited number of participants from a large and high-quality pool of applicants, that is all teachers in regional, rural and remote Australian secondary and primary schools. From a resourcing and timing perspective, including taking into account the finite number of places for competing high-quality applicants and the effective use of Commonwealth resources, it would not be feasible for TFA or the department to make such decisions subject to independent merits review. Also, any reversal of a decision on whether an applicant is successful or not may then cause the displacement of, and disadvantage, another successful applicant.

In addition, the relevant application process is not directly related to the provision of Commonwealth funding or other entitlement. Rather, TFA will be engaged through a funding agreement with the department to make decisions about whether the personal qualities, skills, knowledge and experience of applicants are suited to school leadership positions in regional, rural, remote primary and secondary schools. These decisions are based on the expertise of TFA as the program provider.

Finally, any decision to offer a place to an applicant, must necessarily be done with reference to the input and support of school principals at participating schools. There are scenarios where individuals who may have the characteristics to become high-quality school leaders, may nevertheless not be offered a place because their principal or school does not support their participation.

The department will also impose additional requirements on TFA to provide for enhanced administrative accountability. TFA will be required to establish a feedback and complaints process to deal with any feedback and complaints from applicants or participants.

The feedback and complaints process will:

- clearly indicates that applicants and participants may also provide feedback or complaints directly to the department;
- be underpinned by principles of fairness, accessibility, responsiveness and efficiency; and
- be developed and implemented, as far as possible, based on the *Commonwealth Ombudsman's Better Practice Guide to Complaint Handling*.

TFA will also be required to ensure that their feedback and complaints process is publicised to applicants and participants, and must keep a register that includes, but is not limited to:

- all feedback and complaints received by TFA;
- all feedback and complaints referred to TFA by, or through, the department; and
- any personnel and subcontractors (if any) which are the subject of the feedback or complaint, circumstances giving rise to the feedback or complaint, the investigation undertaken (where relevant), and any follow-up action.

The department considers that the above requirements will provide for appropriate administrative accountability by TFA and will assist to ensure that any decisions made are fair, objective and transparent.

Funding of \$15 million over three years from 2019-20 will come from Program 1.5: Early Learning and Schools Support, which is part of Outcome 1. Details will be set out in the *Mid-Year Economic and Fiscal Outlook 2019-20*.

Funding of \$7.5 million will be available for the Future Leaders Program.

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

- the external affairs power (section 51(xxix)); and
- the social welfare (benefits to students) power (section 51(xxiiiA)).

External affairs power

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

Australia has obligations under the *Convention of the Rights of the Child* [1991] ATS 4 (CRC). Article 4 of the CRC requires State Parties to undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the CRC.

These rights include ‘the right of the child to education’ (Article 28). Article 28(1) relevantly provides that States Parties recognise the right of the child to education and shall, in particular:

- (b) Make educational and vocational information and guidance available and accessible to all children; ...

Future Leaders seeks to respond to current data and reporting on principalship which points to a significant loss of quality and experience among principals in the near future and a lack of aspiring school leaders with the willingness or preparedness to fill this gap. The pursuit of available and accessible education is enhanced through high quality school leaders. By addressing the gap in aspiring school leaders Future Leaders aims to improve the accessibility and availability of education to children.

Article 29(1) of the CRC relevantly provides that ‘State Parties agree that the education of the child shall be directed to’:

- (a) The development of the child’s personality, talents and mental and physical abilities to their fullest potential; ...

Article 29(1) underlines an individual and subjective right to a specific quality of education. Australia also has relevant obligations under the *International Covenant on Economic, Social and Cultural Rights* [1976] ATS 5 (ICESCR). Article 2 of the ICESCR requires State Parties to take steps to progressively achieve the full realisation of the rights recognised in ICESCR by all appropriate means.

Relevantly, the rights under the ICESCR include access to education (Article 13). Article 13(2) provides that State Parties recognise:

(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, and in particular by the progressive introduction of free education; ...

Article 13(2)(b) of the ICESCR is, in part, directed at ensuring that the form and substance of education, including curricula and teaching methods, are acceptable, and at ensuring that education is available and accessible to all. Consistent with Future Leaders' aim to meet Australia's obligation under Article 28 of the CRC, the pursuit of available and accessible education is enhanced through high quality school leaders. By addressing the gap in aspiring school leaders the project aims to improve the accessibility and availability of education to children.

Education of the quality required by Article 29 can be achieved only if teachers and school leaders are appropriately trained to have the skills and knowledge needed to deliver such education.

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 benefits to students.

Future Leaders aims to benefit participants by delivering ongoing training and support designed to equip them with the skills, knowledge and experience to become high quality school leaders in regional, rural and remote primary and secondary schools.

New **table item 384** establishes legislative authority for government spending on the Rural Inspire Program (Rural Inspire).

On 7 May 2019, the Government announced funding of \$2 million to the Country Education Partnership's Rural Inspire as part of the *Investing in Regional Australia* package.

Rural Inspire aims to inspire young people and provide support for them to choose and achieve positive career, life and learning goals of Year 11 students in rural and remote schools.

Government funding will be provided to Country Education Partnership (CEP) to deliver and expand Rural Inspire in its entirety. This will be delivered through a staged approach, starting with South Australia and New South Wales with the aim to expand to other states and territories (aside from the ACT) by the end of 2022.

CEP, established in 1974 is a not-for-profit organisation that supports the provision of education within rural and remote communities. Rural Inspire is an initiative developed by CEP and their Rural Youth Ambassadors in 2014.

Rural Inspire will provide Year 11 students in rural and remote schools with support to build their leaderships skills, facilitate connections between rural, remote and urban areas, participate in a number of forums and have the opportunity to have discussions on education

and other career pathways with guest speakers which may include government officials, successful rural leaders and other guests chosen by the participants.

Each year, Year 11 students from across rural and remote communities will be nominated by their schools to participate in the Rural Youth Ambassador program for that school year. CEP will select up to 20 participants who must have a strong academic or vocational educational record, demonstrate leadership within their local community and have been endorsed by their school, family and community. Participants will be selected from government, Catholic and independent schools.

It is anticipated over the three-year expansion, approximately 300 young people will participate in the program (based on up to 20 program participants per year). The number of schools that will participate will be dependent on the Year 11 students who are selected.

Rural Inspire will provide participants with mentoring opportunities, connections with rural leaders, leadership development, presentation skills development and opportunities to establish and form partnerships with stakeholders. Participants will participate in workshops and discussions to explore ideas and strategies that could be used to address challenges in rural and remote Australia. They will then have the opportunity to share their ideas with Members of Parliament, and representatives from relevant government departments during the annual national forum.

Specifically, Rural Inspire will:

- Provide an avenue for rural and remote young people in Year 11 to participate in the Rural Youth Ambassador program. The Rural Youth Ambassador program aims to support young people living in rural and remote communities by developing their leadership skills and knowledge, while also exploring education challenges and opportunities.
- Provide an interactive website for rural and remote young people, offering an ‘online gateway’ to information and initiatives to foster career, life and learning aspirations.
- Connect program participants with successful people who grew up in rural and remote areas through shared stories, case studies, guest presentations, mentoring, workshops, work experience and possible employment.
- Build links between country and urban education settings by linking participants with alumni to support them in their transition from their community into an urban setting and facilitate ongoing support networks (for example, coordinating a visit to a university or TAFE).
- Enhance aspirations among rural and remote students in their transition from school to further study and/or work, by offering leadership opportunities, such as encouraging participants to undertake a leadership role within their own community so that they can implement the learnings they gain through Rural Inspire (such as being on the Board of a local organisation). As part of the forum, participants will have the opportunity to lead discussions within small groups and present findings to the larger group and other key stakeholders.
- Facilitate a network of Rural Youth Ambassador Alumni who will provide information, support and activities for program participants looking to gain a greater understanding of the higher education and career opportunities available to them.
- Hold an annual national forum, which will bring together Rural Youth Ambassadors from participating states and territories to discuss education, career pathways and regional and rural issues with Members of Parliament and Senators. Rural Youth

Ambassadors will also have the opportunity to meet with representatives from the Department of Education, and the Department of Employment, Skills, Small and Family Business.

Although Rural Inspire is primarily for Year 11 students, in some cases, Year 10 students may be selected to participate in the program.

The department will enter into a procurement with CEP through a limited tender process to deliver Rural Inspire from January 2020 and conclude on 31 December 2022.

Funding will be paid to CEP in accordance with the *Commonwealth Procurement Rules*, the Department's Secretary Instructions and delegations on the expenditure of relevant monies, in accordance with the *Public Governance, Performance and Accountability Act 2013*.

Funding decisions made in connection with Rural Inspire would not be subject to independent review, due to the non-competitive, targeted nature of the funding being provided to CEP. In accordance with usual practice, procurement decisions, once made, will be final and not subject to merits review. Re-making a procurement decision after entry into a contract with a successful proponent is legally complex, impractical and would result in delays in implementation. Given CEP's experience in delivering Rural Inspire, it is not reasonably foreseeable nor envisaged that any other organisation would receive funding in relation to this initiative.

Information about where to direct queries or complaints about the conduct of the tender will be included in the procurement documentation published on AusTender. In accordance with the department's procurement complaints processes, any complaints will be directed in the first instance to the contact officer for the procurement identified in that documentation. Unresolved complaints may then be directed to independent officers or a probity adviser in accordance with the department's procurement probity plan. This procurement will be subject to the *Government Procurement (Judicial Review) Act 2018* and the review mechanisms specified under that Act.

Funding of \$2 million over three years from 2019-20 will be available from the Rural Inspire Program, which is part of Outcome 1.5 – Early Learning and School Support. Details will be set out in the *Portfolio Additional Estimates Statements 2019–20, Education Portfolio*.

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

- the communications power (section 51(v));
- the external affairs power (section 51(xxix)); and
- the Territories power (section 122).

Communications power

Section 51(v) of the Constitution empowers the Parliament to make laws with respect to 'postal, telegraphic, telephonic and other like services'.

Rural Inspire will involve the development and delivery of content to be delivered using the internet.

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 under the *International Covenant on Economic, Social and Cultural Rights* 1976 ATS 5 (ICESCR). Article 2 of the ICESCR requires State Parties to take steps to progressively achieve the full realisation of the rights recognised in ICESCR by all appropriate means. These rights include the right to access technical and vocational secondary education (Article 13(2)).

Australia also has obligations under the *Convention on the Rights of the Child* [1991] ATS 4 (CRC). Article 4 provides that States Parties 'shall undertake all appropriate legislative, administrative, and other measures' for the implementation of the rights recognised in the Convention. These rights include 'the right of the child to education' (Article 28). Article 28(1)(d) of the CRC provides that State Parties should make educational and vocational information and guidance available and accessible to all children.

Rural Inspire supports the right to education by providing an interactive website for students in rural and remote Australia that provides access educational information and initiatives, facilitating connections between children living in rural/remote Australia and opportunities in urban areas, as well as delivering an annual national forum which will promote input on education and career pathways for young people in rural/remote areas.

Article 29(1)(a) of the CRC relevantly provides that 'State Parties agree that the education of the child shall be directed to... the development of the child's personality, talents and mental and physical abilities to their fullest potential'.

Rural Inspire will foster the development of children's personality, talents and mental abilities by developing leadership capacity of students and facilitating connections with people and opportunities in urban areas, to prepare the child to leave school equipped to face challenges in life.

Australia also has obligations under the ICESCR to recognise the right to work, and requires that the steps taken to achieve the full realisation of the right 'shall include technical and vocational guidance and training programmes, policies and techniques (Article 6(2)).

The *ILO Convention (No. 142) concerning Vocational Guidance and Vocational Training in the Development of Human Resources* (ILO 142) also provides for numerous obligations concerning the provision of policies and programmes concerning vocational guidance and training (Articles 1-4). ILO 142 provides that 'Members shall 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 children, young persons and adults' (Article 3(1)) and 'such information and guidance shall cover the choice of an occupation, vocational training and related educational opportunities' (Article 3(2)).

Rural Inspire will make educational and vocational information and guidance available and accessible to all children through providing information and guidance on an interactive website, mentors and workshops and through the annual national forum.

Territories power

Section 122 of the Constitution empowers the Parliament to ‘make laws for the government of any territory’.

Rural Inspire intends to be delivered in the Northern Territory.

New **table item 385** establishes legislative authority for government spending of \$2.5 million to develop a national Tertiary Learning Repository (TLR).

The TLR was announced as part of the Skills Package *Delivering skills for today and tomorrow* in the 2019-20 Budget.

The TLR is a centralised, digital platform that will provide higher education students with details of their achievements while undertaking an Australian Qualifications Framework qualification. It is expected that the TLR will be available to higher education students by the end of 2020.

Through the TLR, students will have ownership of their higher education records, with the ability to share their information with third parties, such as potential employers, to assist in career planning and development. Students and third parties, such as prospective employers, will be able to access the TLR through a secure online portal. The introduction of the TLR will drive the standardisation of higher education provider transcript services, making transcripts more accessible and easier for students and employers to navigate, at no cost to the student.

The TLR will support the life-long learner, who will move between higher education and vocational education and training throughout their life, to upskill and reskill to meet the evolving demands of the labour market. For example, a user will be able to login to the online repository, view their transcripts and awards, and share chosen documents with trusted parties for a nominal amount of time. The TLR enables student users to be in control of their educational attainments, within a secure and efficient online system.

The department will undertake user research to determine best concept design and functionality prior to the development of the TLR. This will be done through an open tender procurement via the Digital Transformation Agency’s *Digital Marketplace*. The user research will provide an understanding of the requirements from key stakeholders, including secondary and tertiary education students, graduates, academics, higher education providers and employers. Following this, the selected firm will undertake concept mapping, inclusive of best practice and foundational requirements to meet both stakeholder and government needs and expectations. It is anticipated that the procurement will undertake user testing to determine best practice and product.

Following the user research, a closed grant will be issued to a selected organisation providing a leading digital tertiary credentialing service. The grant will enable the organisation to expand and enhance their service to support a greater number of higher education students,

and meet the expectations outlined by the government. The user research and conceptual foundations design will help inform the government's decision on which digital credentialing platform to endorse. As the platform is an external resource, precautions will be made to ensure it meets government requirements, including the longer-term vision, through the grant funding agreement.

Funding for the TLR will take the form of an open tender procurement for user research, followed by a closed grant for ICT system development. Decisions regarding the procurement and the recipient of the grant will be made by the Deputy Secretary of Higher Education, Research and International for the department. The procurement and grant recipients will be determined based on their ability to meet the specific needs of the program within the designated budget.

The procurement will be undertaken in accordance with the *Commonwealth Procurement Rules 2019* (CPRs) and will be made publicly available on AusTender (www.tenders.gov.au). In accordance with the conditions of lodgement, the department reserves the right to not proceed with the procurement, change, vary or modify its requirements at any time with prior notification and enter into negotiations with, or seek information from, a selected respondent or selected respondents.

In accordance with usual practice, procurement decisions, once made, will be final, and not subject to merits review. Re-making a procurement decision after entry into contractual arrangements with a successful proponent is legally complex, impractical, and would result in delays to the implementation of the TLR. The *Government Procurement (Judicial Review) Act 2018* enables suppliers to challenge some procurement processes for alleged breaches of certain procurement rules. This legislation might provide an additional avenue of redress (compensation or injunction) for dissatisfied providers or potential providers, depending on the circumstances.

The administration of the grant will be conducted in accordance with the Commonwealth Grants Framework, including the *Commonwealth Grants Rules and Guidelines 2017* (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.

Independent review will not be available for the grant, as it will be a payment for a specific purpose and to be delivered by a specific service provider. The grant will be directly negotiated and agreed with the service provider. No third party's interests will be affected by the making of the grant to the chosen service provider.

The funding will be expended in accordance with the CGRGs, CPRs, 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 department will enable suppliers and tenderers to make complaints if they wish, and to receive feedback. These complaints and inquiries can be made at any time during the procurement process, and will be handled in accordance with probity requirements.

Funding of \$2.5 million over four years from 2019-20, including maintenance costs are set out in the *Budget 2019-20, Budget Measures, Budget Paper No. 2 2019-20*, at page 70

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

- the communications power (section 51(v)); and
- the social welfare power (section 51 (xxiiiA)).

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 TLR will involve obtaining and sharing information electronically (for example, computer-to-computer via the internet).

Social welfare power

Section 51(xxiiiA) of the Constitution empowers the Parliament to make laws with respect to the provision of certain social welfare benefits including benefits to students.

The TLR, through the provision of information-sharing services, will provide students access to their transcripts which will enable students to effectively use their qualifications to obtain employment.

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 Measures No. 5) 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 Measures No. 5) Regulations 2019* amend Schedule 1AB to the (FF(SP) Regulations to add four new table items to establish legislative authority for government spending on certain activities that are administered by the Department of Education.

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

- **table item 37** for a Grant to News Corp – Online Spelling Bee.

This instrument adds the following table items to Part 4 of Schedule 1AB:

- **table item 383** for the Future Leaders Program;
- **table item 384** for the Rural Inspire Program; and
- **table item 385** for the Online tertiary learning repository services.

Table item 37 – Grant to News Corp – Online Spelling Bee

Table item 37 establishes legislative authority for government spending for a Grant to News Corp – Online Spelling Bee.

The Government will provide \$345,240 in 2019-20 to assist News Corp Australia Pty Limited (News Corp) in the development of an online Prime Minister's Spelling Bee (Spelling Bee). The Spelling Bee will provide an interactive online platform for students in years three to eight to play in and improve their literacy abilities, as well as an online Spelling Bee competition held over three months annually. Students will participate at school online, supervised by teachers. There will be winners at class level, as well as state and national finals. Certificates of participation will be awarded to all entrants and prizes given to finalists.

Human rights implications

Table item 37 engages the following human right:

- the right to education – Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), and Articles 28 and 29 of the *Convention on the Rights of the Child* (CRC).

Right to education

Table item 37 engages the right to education contained in Articles 28 and 29 of the CRC, read with Article 4, and in Article 13 of the ICESCR, read with Article 2.

Article 4 of the CRC provides that States Parties ‘shall undertake all appropriate legislative, administrative, and other measures’ for the implementation of the rights recognised in the Convention. These rights include ‘the right of the child to education’ (Article 28). Article 29(1) relevantly provides that ‘States Parties agree that the education of the child shall be directed to... the development of the child’s personality, talents and mental and physical abilities to their fullest potential’.

Article 2 of the ICESCR requires States Parties to take steps to progressively achieve the full realisation of the rights recognised in the ICESCR by all appropriate means. These rights include the ‘right of everyone to education’ in Article 13.

Table item 37 promotes the right to education by developing Australian school children’s literacy by providing free access to literacy resources for school children across Australia. The Spelling Bee promotes the right to education by encouraging children to develop their literacy abilities through the Spelling Bee online resources and annual Spelling Bee competition.

Conclusion

Table item 37 is compatible with human rights because it promotes the right to education under the ICESCR and the CRC.

Table item 383 – Future Leaders Program

Table item 383 establishes legislative authority for government spending on the Future Leaders Program (Future Leaders).

Future Leaders aim to address shortages in the number of aspiring school leaders and increase the quality of school leadership preparation to support the school leadership pipeline in Australian primary and secondary schools, particularly those in regional, rural and remote Australia.

The Government will provide funding to Teach For Australia to deliver Future Leaders through the following activities:

- work with teachers and principals at schools in regional, rural and remote Australia to identify and encourage aspiring school leaders;
- select high achieving teachers with demonstrated school leadership potential to participate in the Future Leaders Program, and

- provide these high achieving teachers with ongoing training and support to equip them with the skills, knowledge and experience to become high quality school leaders.

Human rights implications

Table item 383 engages the following human right:

- the right to education – Articles 28 and 29 of the CRC, and Article 13 of the ICESCR.

Right to education

Table item 383 engages the right to education in Articles 28 and 29 of the CRC, read with Article 4, and in Article 13 of the ICESCR, read with Article 2.

Article 4 of the CRC provides that State Parties ‘shall undertake all appropriate legislative, administrative and other measures’ for the implementation of the rights recognised in the Convention. These rights include the ‘right of the child to education’ (Article 28(1)).

Article 29(1) of the CRC relevantly provides that ‘States Parties agree that the education of the child shall be directed to ... the development of the child’s personality, talents and mental and physical abilities to their fullest potential’ (Article 29(1)(a)).

Article 29(1) underlines an individual and subjective right to a specific quality of education. Education of the quality required by Article 29 can be achieved only if teachers and school leaders are appropriately trained to have the skills and knowledge needed to deliver and administer quality education. By improving the skills and number of quality school leaders the program aims to improve the quality of the education provided to children.

Article 2 of the ICESCR requires States Parties to take steps to progressively achieve the full realisation of the rights recognised in the ICESCR by all appropriate means. Article 13(2) of the ICESCR provides that State Parties recognise:

- (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, and in particular by the progressive introduction of free education; ...

Article 13(2)(b) of the ICESCR is, in part, directed at ensuring that the form and substance of education, including curricula and teaching methods, are acceptable, and at ensuring that education is available and accessible to all.

Table item 383 promotes the right to education, particularly access to education, by seeking to address the anticipated shortage of school leaders, recognising that quality school leaders enhance the accessibility and availability of education.

Conclusion

Table item 383 is compatible with the right to education and promote the right to education in the CRC and the ICESCR.

Table item 384 – Rural Inspire Program

Table item 384 establishes legislative authority for government spending on the Rural Inspire Program (Rural Inspire).

Rural Inspire aims to raise the career and study aspirations of Year 11 students in rural and remote schools, develop their motivation and increase their ability to choose and achieve positive career, life and learning goals.

Government funding will be provided to Country Education Partnership to deliver and expand Rural Inspire in its entirety.

Rural Inspire will provide participants with support to build their leadership skills; access information and initiatives to foster career, life and learning aspirations through an interactive website; connect with students and opportunities in urban areas; and to take part in forums, workshops and mentoring.

Human rights implications

Table item 384 engages the following human rights:

- the right to education – Article 13 of the ICESCR, and Articles 28 and 29 of the CRC; and
- the right to work – Article 6 of the ICESCR.

Right to education

Table item 384 engages the right to education in Articles 28 and 29 of the CRC, read with Article 4, and in Article 13 of the ICESCR read with Article 2.

Article 4 of the CRC provides that State Parties ‘shall undertake all appropriate legislative, administrative and other measures’ for the implementation of the rights recognised in the Convention. These rights include the ‘right of the child to education’ (Article 28(1)).

Article 29(1) of the CRC relevantly provides that ‘States Parties agree that the education of the child shall be directed to ... the development of the child’s personality, talents and mental and physical abilities to their fullest potential’ (Article 29(1)(a)).

Article 2 of the ICESCR requires States Parties to take steps to progressively achieve the full realisation of the rights recognised in the ICESCR by all appropriate means. These rights include the right to access technical and vocational secondary education (Article 13(2)(b)).

Table item 384 promotes the right to education by providing students in rural and remote Australia with educational and vocational information and initiatives. Rural Inspire promotes the right to education through fostering the development of children’s personality, talents and mental abilities by developing their leadership capacity and facilitating connections with people and opportunities in urban areas.

Right to work

Table item 384 engages the right to work in Article 6 of the ICESCR.

Australia has obligations under the ICESCR to recognise the ‘right to work’ (Article 6(1)), and requires that the steps taken to achieve full realisation of the right ‘shall include technical and vocational guidance and training programmes, policies and techniques’ (Article 6(2)).

Rural Inspire promotes the right to work by making educational and vocational information and guidance available and accessible to student, through an interactive website, mentors and workshops, and through an annual national forum.

Conclusion

Table item 384 is compatible with human rights as it promotes the right to education under the ICESCR and CRC and the right to work under the ICESCR.

Table item 385 – Online tertiary learning repository services

Table item 385 establishes legislative authority for government spending for online tertiary learning repository services.

The Government recognises the increasing need for individuals to access tertiary education to upskill and reskill throughout their life, in order to meet the evolving demands of the labour market. Government funding of \$2.5 million will be provide to develop a national Tertiary Learning Repository (TLR).

The TLR will provide higher education students with details of their achievements under the Australian Qualifications Framework through a centralised, digital platform. The TLR is anticipated to be available by the end of 2020.

The TLR will provide students with ownership and autonomy over their higher education attainment records, standardise higher education transcript services and make these records more accessible and easier for students and employers to navigate. Through the TLR, students will be able to share their skills and qualifications with third parties, such as potential employers, to support career planning and development.

Human rights implications

Table item 385 engages the following human rights:

- the right to privacy and reputation – Article 17 of the *International Covenant on Civil and Political Rights* (ICCPR); and
- the right to work – Article 6 of the ICESCR.

Right to privacy and reputation

Table item 385 engages Article 17 of the ICCPR, which states that ‘no one shall be subjected to arbitrary or unlawful interference with his privacy ... nor to unlawful attacks on his honour and reputation’ and that ‘everyone has the right to the protection of the law against such interference or attacks’.

The TLR will publish academic documentation such as transcripts and testamurs on an online platform, where students and authorised users will be able to access their documents through a secure log in, and share their documents to selected third parties. The owner of the records can choose who has access to their records and for how long. To ensure the protection of this information, the Government will undertake a Privacy Impact Assessment and Security Penetration Testing to mitigate any privacy risks.

Table item 385 is compatible with the right to privacy and reputation under the ICCPR, and to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

Right to work

Table item 385 supports Article 6 of the ICESCR. Article 6(1) recognises ‘the right of everyone to the opportunity to gain his living by work’ and that the State Party ‘will take appropriate steps to safeguard this right’. Article 6(2) provides that the steps to be taken by a State Party to the ICESCR ‘to achieve the full realization of this right shall include 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’.

The TLR supports the right to work by supporting individuals to gain meaningful employment, by enabling them to provide their education and training records to third parties and employers through a centralised repository. This will allow graduates to easily share their skills and qualifications with prospective employers.

The TLR also supports the right to work through the standardisation of transcript services, soft skill reporting and micro-credentials. This will improve education and skills verification for both graduates and employers, making the transition from education to employment simpler.

As the TLR will provide a digital platform for students and graduates to record and display their tertiary education attainment, the repository will allow individuals to better understand their skills and knowledge. This will make it easier for individuals to identify career pathways and education opportunities that align with their career aspirations. The TLR will make it easier for individuals to identify gaps in their education, highlighting areas to upskill and reskill in, making it easier to advance or transition into their desired career pathway.

Conclusion

Table item 385 promotes the right to work under the ICESCR. It is compatible with the right to privacy and reputation under the ICCPR, and to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

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