

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance

Financial Framework (Supplementary Powers) Act 1997

Financial Framework (Supplementary Powers) Amendment (Education, Skills and Employment Measures No. 4) Regulations 2020

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 powers in the FF(SP) Act to make, vary or administer arrangements or grants may be exercised on behalf of the Commonwealth by 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, Skills and Employment Measures No. 4) Regulations 2020* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on certain activities that will be administered by the Department of Education, Skills and Employment.

Funding will be provided for:

- the Destination Australia Cheung Kong Exchange Program, which will increase the number of university students with an offshore study experience through grants to Australian universities to provide two-way, short-term mobility scholarships for domestic and international university students (grant funding of \$10.6 million over 10 years from 2020-21 will be contributed by CK Infrastructure Holdings Ltd and the Australian Government, with total program funding of \$13.6 million over 12 years from 2019-20);
- the delivery of the Reading Writing Hotline, a national advisory and referral service, which links people seeking English language, literacy or numeracy assistance to appropriate training opportunities (\$1.9 million over three years from 2020-21);
- the delivery of Adult Learners' Week to raise awareness of adult education and promote participation by adults in further learning (\$0.6 million over three years from 2020-21).

- the School Leaver Program, comprising a targeted career information kit and hotline, to be delivered by the National Careers Institute which will provide information, advice and referral services to support school leavers in 2020 and 2021, who will be disproportionately affected by the COVID-19 pandemic, to make informed decisions about their career or transition to further learning or employment (\$0.9 million in 2020-21); and
- the Local Jobs – COVID-19 Recovery Pilot, which will support local organisations and stakeholders to develop and implement tailored approaches to accelerate reskilling, upskilling and employment of job seekers in selected Employment Regions through the engagement of Employment Facilitators and the establishment of Local Jobs and Skills Taskforces (\$56.7 million over two years from 2020-21).

The School Leaver Program and the Local Jobs – COVID-19 Recovery Pilot are part of the Government's economic response to the COVID-19 pandemic. It is appropriate to include these programs in the Principal Regulations as government spending on them will be time limited and not recurrent, and has a limited purpose and clear expenditure criteria, such as eligibility.

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, Skills and Employment.

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, Skills and Employment Measures No. 4) Regulations 2020*

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Education, Skills and Employment Measures No. 4) Regulations 2020*.

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

Financial Framework (Supplementary Powers) Regulations 1997

Item 1 – Part 4 of Schedule 1AB (table item 407, column headed “Program”)

This item amends table item 407 in Part 4 of Schedule 1AB by omitting “Pilot” and substituting “Program” in the column headed “Program”. The amended table item 407 provides legislative authority for government spending on the Destination Australia Cheung Kong Exchange Program (the Program), instead of the Destination Australia Cheung Kong Exchange Pilot (the Pilot).

The Program was originally intended to be an expansion of the Pilot which was to be delivered in 2019-20. However, its implementation was delayed by the need to respond to the COVID-19 situation and the ongoing international travel restrictions. The funding originally intended to be spent under the Pilot will now be available for spending under the Program. Therefore, legislative authority for government spending on the Pilot is no longer needed.

Item 2 – Part 4 of Schedule 1AB (table item 407, column headed “Objective(s)”)

This item amends table item 407 in Part 4 of Schedule 1AB by omitting “on a trial basis” in the column headed “Objective(s)”. The amended table item 407 establishes legislative authority for government spending on the Program, which will provide grant funding to Australian universities to establish their own two-way mobility schemes and provide scholarships for domestic and international university students, commencing in 2020-21 for a period of 10 years.

The Program builds on a longstanding partnership with CK Infrastructure Holdings Ltd (the Cheung Kong Group) to support student mobility to and from Australia. Funding for the Program will be provided by the Cheung Kong Group and the Department of Education, Skills and Employment (the department) on behalf of the Australian Government.

The Cheung Kong Group is a global infrastructure company based in Hong Kong. The department will establish an agreement concerning the Program with the Cheung Kong Group's Australian representative, Powercor Australia Ltd. Under a previous agreement, the Cheung Kong Group contributed \$7.5 million from 2009 to 2019 to student scholarships through the Endeavour Leadership Program. Since the 2019 cessation of the Endeavour Leadership Program, there is no mechanism to continue this longstanding partnership.

Co-funding with a foreign investor minimises the Government's investment in such programs and may pave the way for similar collaboration with other major industry partners in the future. It also helps achieve the Government's policy goal of increasing student mobility in accordance with the department's Program 2.7: International Education Support, the objective of which is to support the sustainable growth of Australia's high quality international education, training and research through strong government-to-government engagement, international mobility, strategic policy and legislation, and Goal 6: Enhancing mobility of the *National Strategy for International Education 2025* which is available at <https://nsie.education.gov.au/>.

Australian universities listed in Table A and Table B of the *Higher Education Support Act 2003*, including some private universities, will be eligible to opt in to receive grants under the Program. These grants must be used to support their students, and students of their partner universities in Asia, to undertake a short-term study opportunity in one of 16 select Asian countries or Australia, respectively.

The 16 identified countries, selected in consultation with the Cheung Kong Group, are: the People's Republic of China, Hong Kong, Brunei Darussalam, Cambodia, India, Indonesia, Japan, Republic of Korea, Laos, Malaysia, Mongolia, Myanmar, Republic of the Philippines, Singapore, Thailand and Vietnam.

The Program funding will be evenly distributed between those Australian universities that opt in to participate. Australian universities will undertake their own processes to award mobility scholarships to individual students they deem eligible.

Each mobility scholarship will be worth an average of \$5,500 to support either short-term mobility, including study tours, or a semester exchange. The Australian university will determine the exact scholarship amount per student. The mobility scholarships will be available for both undergraduate and postgraduate university students from 2020-21. The Program will conclude on 30 June 2030.

It is expected that the first application round for the Program will be held in 2020, but that students will not travel until 2021 at the earliest due to the COVID-19 travel restrictions.

Universities will be required to ensure an even allocation of the number of opportunities between incoming international and outgoing Australian students. There will be flexibility to

allow universities to further co-invest, including providing additional funding to their scholars.

The Community Grants Hub, part of the Department of Social Services, will be responsible for managing the Program, including:

- advertising the Program to all Australian universities;
- evenly distributing funding to Australian universities that opt in; and
- managing grant agreements with those Australian universities, in consultation with the department.

Grant funding to Australian universities will be provided using a closed non-competitive grant process, in accordance with applicable legislative requirements under the *Public Governance, Performance and Accountability Act 2013* (the PGPA Act) and the *Commonwealth Grants Rules and Guidelines 2017* (CGRGs). The Community Grants Hub will develop grant opportunity guidelines for universities, in partnership with the department. The grant opportunity guidelines and information on the grants awarded will be published on the Community Grants Hub website (www.communitygrants.gov.au) and on GrantConnect (www.grants.gov.au).

The department and the Cheung Kong Group will enter into an agreement on the implementation and delivery of the Program. The Cheung Kong Group will have no decision making power over which students or universities are supported by the Program. The Minister for Education will be the decision maker for Commonwealth expenditure. The department will evaluate the Program to inform future policy on student mobility and strengthen the development of any future agreement with the Cheung Kong Group.

The Government has decided to award the Program funds equally to each participating Australian university that elects to participate, removing the need for a formal selection process. It is not appropriate for this government decision to be subject to independent merits review as these decisions are automatic decisions which apply to any Australian university that opts in to participate in the Program. It is not appropriate for merits review to apply to an automatic decision of this kind which is based on the factual determination of whether a participant is a university. The Administrative Review Council has recognised that it is justifiable to exclude merits review in relation to automatic or mandatory decisions of this nature (see paragraphs 3.8 to 3.12 of the guide, *What decisions should be subject to merit review?*).

Each participating Australian university will be responsible for awarding the mobility scholarships to students and will report all decisions regarding award of the mobility scholarships to the department. Universities will use their own processes for making decisions regarding the award of the scholarships, and the department will have no part in determining which students are awarded scholarships.

These decisions by universities to award scholarships to students will not be subject to independent merits review. This is because the decisions relate to the allocation of a finite resource, and overturning a decision to allocate funding to one student would affect an allocation that has already been made to another student. The Administrative Review Council has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.11 to 4.15 of the guide, *What decisions should be subject to merit review?*).

The department has had initial discussions with the Cheung Kong Group on the establishment of the Program, as well as with some trusted stakeholders in the higher education and international education fields.

Total funding for the Program of \$13.6 million over 12 years from 2019-20 will be included in the 2020-21 Budget and the 2020-21 Portfolio Budget Statements for the Education, Skills and Employment Portfolio. Funding will come from Program 2.7: International Education Support, which is part of Outcome 2. Total funding includes the funding originally allocated to the Pilot.

The Cheung Kong Group will contribute approximately \$8.2 million, and the Commonwealth will provide approximately \$5.4 million. Out of the total funding, \$10.6 million over 10 years from 2020-21 will be available in grant funding to Australian universities.

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 aliens power (section 51(xix));
- the student benefits aspect of the social welfare power (section 51(xxiiiA)); and
- the external affairs power (section 51(xxix)).

Aliens power

Section 51(xix) of the Constitution empowers the Parliament to make laws with respect to ‘naturalization and aliens’. The Program will provide funding for grants to be paid to universities which will then be distributed as scholarships to students that are not Australian citizens.

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. The Program will provide funding for grants to be paid to identified students to meet the educational needs of those students.

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 with respect to matters or things outside the geographical limits of Australia. The Program will provide funding for grants to support activities geographically external to Australia (i.e. overseas study).

Item 3 – Part 4 of Schedule 1AB (table item 407, column headed “Objective(s)”)

This item amends table item 407 in Part 4 of Schedule 1AB by omitting “also has the effect” and substituting “has the effect” in the column headed “Objective(s)”. The effect of this technical amendment is to remove a redundant word “also” from the chapeau to the constitutional bases paragraphs of this table item.

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

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

New **table item 430** establishes legislative authority for government spending to support the delivery of the Reading Writing Hotline (the Hotline), a national advisory and referral service, which links people seeking English language, literacy or numeracy assistance to appropriate training opportunities.

The objectives of the Hotline are to provide a national focus on improving outcomes for working age Australians and help individuals overcome language, literacy and numeracy issues by connecting them to the training opportunities that they need. These are essential skills for individuals to be able to have access to, and participate in, employment and further education opportunities.

The Hotline is a free service, which supports individuals, teachers, employers looking to support their employees, employment services, librarians, tutors, community services, educational institutions, literacy councils, and government organisations.

The Hotline services include:

- referral to training providers, including distance education options;
- development of resources for distribution to low level literacy learners;
- access to specialist literacy teachers who can provide people seeking to improve their language, literacy or numeracy skills with learning strategies, discuss strategies and options for study, and post hardcopy English writing, reading and numeracy learning material;
- referral to literacy tutors or other literacy programs; and/or
- provision of resources or specific strategies to support adult learners with special needs.

The Hotline also provides information and advice regarding successful models of English literacy and numeracy provision, statistics on the needs of callers, learning resources and referrals.

The Hotline is the only national advisory and referral service of its kind, which has operated for over 20 years. It contributes to the priority areas and objectives of the Council of Australian Governments' *National Foundation Skills Strategy for Adults* (the Strategy), a ten-year framework that brings a national focus to improving education and employment outcomes for working age Australians with low levels of foundation skills: language, literacy, numeracy, and employability skills. The Strategy was endorsed by all Australian governments in 2012 and is available at https://docs.employment.gov.au/system/files/doc/other/national-foundation-skills-strategy-for-adults_0.pdf.

The Strategy aims to achieve a nationally consistent environment within which Australian governments can work together to improve the foundation skills development of working age Australian through four priority areas for action:

- raising awareness and commitment to action – building an understanding of foundation skills in the workplace and the community and removing the stigma associated with low adult foundation skills;
- adult learners have high quality learning opportunities and outcomes – providing a variety of foundation skills development opportunities that can be tailored to individual needs;
- strengthening foundation skills in the workplace – establishing strong and lasting partnerships between government, industry, employers and unions and providing foundation skills training that is responsive to employers and industry needs; and
- building the capacity of the education and training workforces to deliver foundation skills – building the skills of specialist language, literacy and numeracy practitioners, developing the workforce to enable the effective teaching of employability skills and supporting vocational trainers to better integrate foundation skills with vocational training.

The Hotline was created, and is managed by the Technical and Further Education Commission New South Wales (trading as TAFE NSW) via a telephone hotline and digital platform. TAFE NSW continues to operate the Hotline.

Funding will ensure:

- continued delivery of the Hotline, as the national advisory and referral service for people seeking to improve their language, literacy and numeracy skills;
- improved operation of the Hotline, including enhancements to the Hotline database to maximise visibility through web searches;
- continued provision of accurate information and resources for employers on workplace language, literacy and numeracy training opportunities;
- implementation of a range of peer support and mentoring for Hotline practitioners to build best practice in the delivery of its services;
- continued public promotion of the Hotline (for example, through industry specific newsletters and digital media);
- attendance at key state/territory and national literacy conferences, and travel to state/territory based stakeholders to ensure continued engagement;
- continued support for activities that will contribute to the strategic enhancement of the Hotline; and
- enhanced referral processes.

Funding will be provided to TAFE NSW, an organisation managing the Hotline, as a non-competitive grant. The administration of the grant to TAFE NSW will be conducted in accordance with the Commonwealth resource management framework, including the *Public Governance, Performance and Accountability Act 2013* and the *Commonwealth Grants Rules and Guidelines 2017*.

Information about the grant will be made available on the GrantConnect website (www.grants.gov.au), and the grant will be administered by the Community Grants Hub, which is part of the Department of Social Services. A delegate of the Secretary of the department under the *Financial Framework (Supplementary Powers) Act 1997* will be responsible for approving Commonwealth funding provided to TAFE NSW for the Hotline.

The grant decision, once made, will be final and not subject to merits review. This is partly because the grant involves an allocation of a finite resource to TAFE NSW and overturning the original decision would affect the allocation that has already been made to TAFE NSW. The Administrative Review Council has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.11 to 4.14 of the guide, *What decisions should be subject to merit review?*).

Further, re-making a decision after entry into an agreement is legally complex, impractical and would result in delays in implementation. Given TAFE NSW's management, and over 20 year experience in delivery, of the Hotline, and the Government's decision to provide funding to TAFE NSW, it is not reasonably foreseeable nor envisaged that any other organisation would receive funding in relation to this initiative.

Given the longstanding operation of the Hotline, no additional consultation was undertaken in relation to the upcoming grant.

Departmental officials are members of the Hotline Steering Committee, which currently has 21 representatives from both federal and state Departments of Education and Industry, Foundation Skills providers in TAFE, Adult Community Education (ACE) and university sectors, and Councils for Adult Literacy and Industry. The Committee meets a few times a year to discuss matters affecting both the Hotline and its operations as well as the English language, literacy and numeracy (LLN) field more generally. All Committee members provide state or sector based updates as well as feedback and advice on the operations of the Hotline and its projects.

Funding for this item of \$1.9 million over three years from 2020-21 will come from the National Training System Commonwealth Own Purpose Program (NTS COPE) under Program 3.1: Building Skills and Capability, which is part of Outcome 3. Details are set out in the *Portfolio Additional Estimates Statements 2019-20, Education, Skills and Employment Portfolio* at page 54.

The NTS COPE funds essential national infrastructure that underpins the operation of the national training system. For example, the NTS COPE funds the National Centre for Vocational Education Research (NCVER), the National Register of VET (training.gov.au), and the Office of the Unique Student Identifier Registrar.

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

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 Hotline is delivered via telephone and a digital platform, and provides a national advisory and referral service for people seeking English language, literacy and numeracy assistance.

New **table item 431** establishes legislative authority for government spending to support the delivery of Adult Learners' Week, which raises awareness of adult education and promotes participation by adults in further learning.

Adult Learners' Week is a long-running international event held in September each year. It was first held in the United Kingdom in 1992, then included in the Hamburg Declaration on Adult Learning in 1997 of which Australia is a signatory.

The Hamburg Declaration on Adult Learning and Agenda for the Future was signed as part of UNESCO's Fifth International Conference on Adult Education, 14-18 July 1997. It was significant, as it not only declared adult education to be a right but also 'the key to the twenty-first century.' As a signatory, the Australian Government committed itself to the principles of lifelong learning outlined in the Declaration and 'to take the necessary measures to support individuals in expressing their educational needs and aspirations'. It also represented a commitment to a 'United Nations Week of Adult Learning', turning the disparate adult learning festivals of seven countries into a truly international event that incorporated prior international literacy events, such as UNESCO's International Literacy Day on 8 September.

Adult Learners' Week consists of activities that raise awareness of adult education and promotes participation by adults in further learning. Adult Learners' Week includes events and activities designed to promote the benefits of adult learning and highlight the many options available for such learning in the home, at work and in the community.

Adult Learners' Week promotes the role that the Adult Community Education (ACE) sector has in lifelong learning. Adult Learners' Week aligns with the priorities for adult learning and education outlined in the 2008 *Ministerial Declaration on Adult Community Education*. This Declaration acknowledges the role of the ACE sector in the provision of vocationally focused education and training; fostering skills development and economic and community participation; and providing pathways to further education and training or employment.

Adult Learners' Week also supports the objectives of the Government's \$585.3 million skills package *Delivering Skills for Today and Tomorrow* (details of which are available at www.employment.gov.au/delivering-skills-today-and-tomorrow), by increasing the opportunities for Australians to benefit from the Vocational Education and Training (VET) sector.

Some examples of Adult Learners' Week activities are informal social events including library morning teas, the official Ministerial launch and free classes such as workshops on financial literacy. There are also learning scholarships provided to a selection of students nominated by providers for their exceptional commitment to overcoming learning challenges.

Adult Learners' Week is organised and conducted by Adult Learning Australia Ltd (Adult Learning Australia), an Australian public company that is a non-government organisation and registered charity. Adult Learning Australia is the peak national body for adult and community education in Australia, and has been involved in managing and organising Adult Learners' Week since 1995.

The objective of Adult Learners' Week is to promote lifelong learning, which can support improved workforce participation and productivity for adults through increased participation in education and training. Funding will be provided to Adult Learning Australia to organise and manage a national promotional campaign as well as an official launch for Adult Learners' Week.

Adult Learners' Week will be conducted in September 2020. While it is unclear what the COVID-19 restrictions will be at that time, Adult Learners' Week is able to adapt and host events and activities online and using other virtual environments.

The target group for the promotional campaign and official launch are adults with some or all of the following characteristics:

- negative past experiences of formal education;
- low levels of literacy or numeracy skills;
- lack of engagement in formal or non-formal learning activities either in the workplace or community; and
- lack of understanding of the learning options available to them.

Adult Learners' Week's objectives also include:

- media and promotional activities that seek to raise awareness of adult learning opportunities on a national scale, and encourage adult learners to connect or re-connect with training and learning;
- promoting the range of adult learning possibilities;
- making adult learning options relevant and accessible to learners;
- creating a culture of lifelong learning, and
- building a bridge between basic, vocational and general adult education (including literacy and numeracy).

Funding for Adult Learners' Week will be provided to Adult Learning Australia as a non-competitive grant. The administration of the grant to Adult Learning Australia will be conducted in accordance with the Commonwealth resource management framework, including the *Public Governance, Performance and Accountability Act 2013* and the *Commonwealth Grants Rules and Guidelines 2017*.

Information about the grant will be made available on the GrantConnect website (www.grants.gov.au), and the grant will be administered by the Community Grants Hub, which is part of the Department of Social Services. A delegate of the Secretary of the department under the *Financial Framework (Supplementary Powers) Act 1997* will be responsible for approving Commonwealth funding provided to Adult Learning Australia for Adult Learners' Week.

The grant decision, once made, will be final and not subject to merits review. This is partly because the grant involves an allocation of a finite resource to Adult Learning Australia and overturning the original decision would affect the allocation that has already been made to Adult Learning Australia. The Administrative Review Council has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.11 to 4.14 of the guide, *What decisions should be subject to merit review?*).

Further, re-making a decision after entry into an agreement is legally complex, impractical and would result in delays in implementation. Given Adult Learning Australia's existing role in managing and organising Adult Learners' Week over a significant period of time, and the Government's decision to provide funding to Adult Learning Australia, it is not reasonably foreseeable nor envisaged that any other organisation would receive funding in relation to this initiative.

Given the longstanding operation of Adult Learners' Week, no additional consultation was undertaken in relation to the upcoming grant. The department consults with Adult Learning Australia around March each year on proposals that Adult Learning Australia has for funding as part of Adult Learners' Week. The department also works with the relevant Ministers each year to assist with promotion of the event. For example, in 2019 the Assistant Minister for Vocational Education, Training and Apprenticeships, the Hon Steve Irons MP, opened the week at an event in Western Australia.

Funding for this item of \$0.6 million over three years from 2020-21 will come from the Industry Workforce Training Program under Program 3.1: Building Skills and Capability, which is part of Outcome 3. Details are set out in the *Portfolio Additional Estimates Statements 2019–20, Education, Skills and Employment Portfolio* at page 54.

Noting that it is not a comprehensive statement of relevant constitutional considerations, the objective of the item references the express incidental power and the executive power (sections 51(xxxix) and 61) of the Constitution, including the nationhood aspect.

Executive power and express incidental power, including the nationhood aspect

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 the Parliament, the executive or the courts by the Constitution. Section 61 of the Constitution supports activities that are peculiarly adapted to the government of a nation and cannot be carried out for the benefit of the nation otherwise than by the Commonwealth.

Adult Learners' Week is an internationally recognised event of national scope and significance, arising from Australia being a signatory to the Hamburg Declaration on Adult Learning.

New **table item 432** establishes legislative authority for government spending on a targeted career information kit and hotline for school leavers (the School Leaver Program) to be delivered by the National Careers Institute (NCI), part of the department. Under the School Leaver Program, the NCI will provide information and support services to school leavers (Years 10 to 12) in 2020 and 2021, who will be disproportionately affected by the COVID-19 pandemic, to assist them to navigate post-school pathways and make informed decisions about their future and transition to post-school employment.

The School Leaver Program will be a national service consisting of two components: a targeted career information kit and a hotline service. The information kit will provide school leavers with a clear understanding of the post-school education and training and employment pathways that closely align with jobs in demand. The hotline will provide referral services for school leavers requiring additional support to make informed decisions about their future or other support.

The targeted career information kits will reach an estimated 250,000 school leavers in 2020 as a prompt for discussions with parents and influencers. The targeted information kits will encourage school leavers to seek additional material from the NCI website, which will hold a range of resources on career pathways for people of all ages and stages of their career and tools to help them make work and learning decisions.

The NCI, which was announced as part of the 2019-20 Budget, was established to ensure Australians of all ages and career stages have access to accurate and up to date career information and support. As recommended by the *Strengthening Skills: Expert Review of Australia's Vocational Education and Training System* (<https://www.pmc.gov.au/resource-centre/domestic-policy/vet-review/strengthening-skills-expert-review-australias-vocational-education-and-training-system>), the NCI will provide a single, independent and impartial government source of careers information, with a particular focus on marketing and promoting vocational careers and pathways.

The School Leaver Program will draw on the National Skills Commission's (NSC) skills and labour market forecasts, along with the career pathways information on the NCI website, to outline the pathways that will enable school leavers to attain skills and/or a qualification that will support them to pursue current and future jobs available in the labour market. The Program will provide a timely intervention to direct this more vulnerable cohort of school leavers toward an education pathway, enabling them to attain skills and/or a qualification that will support them to pursue employment at a time when the labour market has stabilised.

The targeted career information kits, which will be developed in partnership with relevant experts and draw on the NSC's labour demand information, will include:

- postcards highlighting work areas in demand at both national and localised levels;
- details of skills and qualifications where employment outcomes are high and government subsidies are in place;
- promotion of vocational education and training (VET) pathways including Australian Apprenticeships and skills sets; and
- information on the importance of career planning and management, including the value of pursuing post-school skills development and further learning while the post-COVID-19 labour market stabilises.

The targeted career information kits and supporting materials for the hotline (such as an operations manual, scripts and training modules) will be developed through a procurement of services. Quotes will be sought from members of the department's Research and Evaluation Panel who have pre-existing, demonstrated expertise in designing and delivering career intervention of this sort.

To oversee rapid implementation of this initiative, the NCI will establish a steering group made up of internal experts who can advise on the most effective and efficient method to deliver key project milestones, including delivery of the kits to schools, training processes for hotline staff, and methodologies for communicating effectively with young people.

To support rollout of the NCI website in September 2020, a hotline will provide a triage and connection service to help users navigate the NCI's web-based career information. The hotline will provide career information and referrals to existing available services that guide and connect school leavers, including wage and training subsidies and other government programs and support services, along with referrals to an established list of industry endorsed professional careers advisers for a short career counselling session.

The department will procure a number of services to deliver the School Leaver Program, in accordance with applicable legislative requirements under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), the *Commonwealth Procurement Rules* (CPRs) and the department's Accountable Authority Instructions. A range of

procurement methods may be used such as open and limited tenders or procurements under existing arrangements. The selection of which procurement method to use will depend on the activity. Final spending decisions will be made by the Secretary of the department or an appropriate delegate.

The department will procure the following services:

- the design, development, production and distribution of the information kits;
- the design, development and production of an operations manual for the hotline, including a training module for hotline operators;
- in-house, contracted hotline staff; and
- consultation with key career sector stakeholders.

The department will:

- manage all contracts for the above services;
- contract, train and manage in-house hotline operators;
- facilitate escalation and referral process from the hotline; and
- report on performance of the hotline and evaluate the School Leaver Program in its entirety.

Procurement decisions will be made in accordance with the Commonwealth resource management framework, including the PGPA Act and the CPRs. The department will provide an opportunity for 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. Information about the tender and the resultant contracts will be made available on AusTender (www.tenders.gov.au) once the contracts are signed. Procurement decisions will be based on value for money, including capability and capacity to deliver, and price and risk considerations.

Procurement decisions, once made, will be final, and not subject to merits review. The Administrative Review Council takes the view that decisions to provide one-off payments to certain service providers, over other service providers, should be excluded from merits review (see paragraph 4.16 of the guide, *What decisions should be subject to merit review?*). Re-making a procurement decision after entry into contractual arrangements with a successful provider is legally complex, impractical, and could result in delays to providing services to school leavers.

The *Government Procurement (Judicial Review) Act 2018* enables suppliers to challenge some procurement processes for alleged breaches of certain procurement rules. This legislative framework may provide an additional avenue of redress (compensation or injunction) for dissatisfied providers or potential providers, depending on the circumstances.

The School Leaver targeted information kit and hotline will be developed in collaboration and consultation with youth, employers and experts in labour market and career practice (for example, NSC, VET Stakeholder Committee, the Career Industry Council of Australia and Year 13) to ensure the content and advice provided is based on contemporary best practice in a way that will resonate and be effective in communicating with young people. Stakeholders are expected to welcome the School Leaver Program, noting it is in alignment with feedback gathered through a comprehensive, national consultation process between October and December 2019 to engage stakeholders in a process of co-designing roles and functions of the NCI.

Funding for the School Leaver Program of \$0.9 million in 2020-21 was included in the July Economic and Fiscal Update under the measure ‘COVID-19 Response Package – JobTrainer Fund – establishment’. Details are set out in the *Economic and Fiscal Update July 2020*, Appendix A: Policy decisions taken since the 2019-20 MYEFO at page 117.

Funding will come from Program 3.1: Building Skills and Capability, which is part of Outcome 3. Details will be set out in the 2020-21 Portfolio Budget Statements for the Education, Skills and Employment Portfolio.

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 communications power (section 51(v)).

External affairs power

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

Article 3(1) of the International Labour Organization’s *Convention concerning Vocational Guidance and Vocational Training in the Development of Human Resources* requires Australia to extend its systems of vocational guidance, including continuing employment information. Article 3(2) provides that such guidance is to cover choice of occupation and VET opportunities, among other things.

The information kit and hotline to be delivered under the School Leaver Program will provide school leavers with information and support services to navigate post-school education and training and employment pathways, including guidance in relation to their choice of occupation and promoting the range of career opportunities to which vocational education and training can lead.

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 School Leaver Program will include a hotline delivered via telephone and information kits provided predominantly through internet services.

New **table item 433** establishes legislative authority for government spending on the Local Jobs – COVID-19 Recovery Pilot (the Local Jobs Pilot), which will support local organisations and stakeholders to develop and implement tailored approaches to accelerate reskilling, upskilling and employment of job seekers in selected Employment Regions in Australia through the engagement of Employment Facilitators and the establishment of Local Jobs and Skills Taskforces.

The aim of the Local Jobs Pilot is to ensure that, from July 2020, as many people as possible are placed in appropriate employment or training opportunities, as quickly as possible, as the labour market recovers from the COVID-19 pandemic.

Under the Local Jobs Pilot, there will be:

- one or two Employment Facilitators engaged in each Employment Region involved;
- Local Jobs and Skills Taskforces established in each Employment Region involved;
- a Local Jobs Plan for each Employment Region, developed by the Local Jobs and Skills Taskforces through engagement with their members, local stakeholders and other organisations where appropriate; and
- projects in each Employment Region, funded through a Local Recovery Fund.

Recognising that the impact of the COVID-19 pandemic has been different across labour markets, information will be provided by the National Skills Commission and the National Careers Institute to each Taskforce so that they can understand the changing occupational requirements of their region, and drive and coordinate local projects that identify transferable skills and equip persons seeking employment ('job seekers') to meet labour market demand.

The National Skills Commission and the National Careers Institute (part of the department) both have a role in the analysis of skills forecasting data and dissemination of careers information to support identifying skills gaps and employment opportunities. The national scope of these organisations will support the provision of local-level intelligence to the Taskforces and their appointed Employment Facilitators, which will be used to inform the development of a Local Jobs Plan for their region. The Taskforce for instance may leverage digital platforms designed by the National Careers Institute to assist job seekers navigate and use information available in an in-demand sector or industry in their region.

Employment Facilitators

The key role of each Employment Facilitator is to support the delivery of place-based training and employment outcomes under the Local Jobs Pilot. Employment Facilitators will be responsible for liaising with the wider community to connect job seekers with employment and training programs and providers, including employment services providers. Employment Facilitators will work with employers to improve job seeker participation in government funded programs. They will build and sustain productive working relationships with employment services providers, training and peak body organisations, community organisations and education providers that will maximise support to the unemployed and align with local economic recovery priorities.

The Employment Regions under the Local Jobs Pilot will be selected from the 51 functional economic regions used by *jobactive* and other employment services programs. These Employment Regions will be selected based on the impact of COVID-19 on local labour market conditions. Regions with a large number of job seekers on their employment services caseload will receive two Employment Facilitators. Employment Regions where there are smaller numbers of job seekers will receive one Employment Facilitator.

The services of Employment Facilitators will be procured through an open competitive tender. Funds will also be made available through the Local Recovery Fund to procure projects that address the training and employment needs of the local community.

Local Jobs and Skills Taskforces (the Taskforces)

The key role of the Taskforces is to develop a Local Jobs Plan and drive local projects that meet the employment priorities identified in this plan, as well as bring together key organisations involved in local economic development, social support organisations, local and state governments, and employment services providers.

Each Employment Region will have a Taskforce comprised of a maximum of 10 members and will be chaired or co-chaired by the Employment Facilitator(s). The decision on the membership of each Taskforce will be made by a departmental official, the delegate of the Secretary of the department, based on recommendations from the relevant Employment Facilitator(s). Members will consist of key stakeholders who can support local employment facilitation, such as representatives from local and state governments, Chambers of Commerce, Regional Development Australia Committees, Registered Training Organisations, social support organisations, unions, and employment services providers.

The Taskforces will run from their establishment (between July and October 2020) until the end of the Pilot (June 2022). They will be governed by terms of reference, which will set out quorum, meeting frequency, changes in membership and administrative requirements, including how meetings will be documented. The chair or co-chairs may, on advice from members, invite additional observers, project proposers and expert advisers to attend Taskforce meetings.

Members of the Taskforce will not be paid for their involvement. The department will be responsible for both the provision of secretariat support and the overarching management of the Taskforces, to ensure they fulfil the functions outlined in their terms of reference.

Development of Local Jobs Plans

A Local Jobs Plan will be developed by each Taskforce to identify key employment priorities for each region and opportunities to improve the skills of job seekers in order to better meet employer demand. The plans will be presented to the department for approval.

Once a plan has been approved, the Employment Facilitators will work with the broader community, including local and state governments, employers, training organisations, employment services providers, Regional Development Australia Committees and other community organisations or stakeholders to drive, identify and develop employment-related projects to assist job seekers.

Where necessary, the department will provide administrative support to Employment Facilitators.

Local Recovery Fund

A Local Recovery Fund (up to \$14 million over two years from 2020-21) will be available across the Employment Regions for projects that meet the employment and training priorities identified in the Local Jobs Plans, which will be tailored to the opportunities and needs identified in each region.

An open competitive tender process will be run by the department to determine how funding will be allocated for the projects identified in the Local Jobs Plans. It is envisaged that applicants will be local not-for-profit organisations, for-profit employers and training providers. For example, a local council may develop an aged care training course, or providers may work with employers to upskill job seekers for an upcoming infrastructure project.

It is anticipated that all projects will need to have at least one employment services provider as a delivery partner. For the purposes of the Local Jobs Pilot, employment services providers include *jobactive*, Transition to Work, New Employment Services Trial and ParentsNext providers. The department will be responsible for engaging and managing contracts with project proponents. The contracted party will be responsible for delivering their projects, which will align with the priorities set out in each region's Local Jobs Plan.

The department will procure services of Employment Facilitators and deliver projects under the Local Recovery Fund through an open competitive tender process. The procurement process will be undertaken in accordance with applicable requirements under the *Public Governance, Performance and Accountability Act 2013*, the *Commonwealth Procurement Rules* (CPRs) and the department's Accountable Authority Instructions, to ensure a robust and transparent procurement decision making process that provides value for money to the Commonwealth. The resultant contracts will be reported on the AusTender website after signing.

Decisions on successful tenderers will be made by a departmental official, the delegate of the Secretary of the department. In accordance with usual practice, and paragraphs 4.11 to 4.19 of the Administrative Review Council's guide, *What decisions should be subject to merit review?*, 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 tenderer would be legally complex, impractical (given that an allocation which has already been made to one party would be affected by overturning the original decision) and result in unacceptable delays to the implementation of the Local Jobs Pilot.

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 for redress (compensation or injunction) for dissatisfied tenderers, depending on the circumstances.

The department will provide opportunity for tenderers to make inquiries and complaints, and provide feedback to unsuccessful tenderers. These complaints and inquiries can be made at any time during the procurement process, and will be handled in accordance with the probity processes for the procurement which will be made available on AusTender.

The decisions to select members for the Taskforces will be made by the department in consultation with the Employment Facilitators and will not be subject to independent merits review. Membership is not paid so not being on the Taskforce would have no adverse financial impact on a person. Also, if they wished to do so, these persons could nonetheless contact a Taskforce or Employment Facilitator to provide their feedback and input about the Local Jobs Pilot.

Accordingly, a decision that a particular person will not be a Taskforce member would have such limited impact on the person that the costs of review could not be justified. Therefore, consistently with paragraphs 4.56 to 4.57 of the Administrative Review Council's guide, *What decisions should be subject to merit review?*, merits review of decisions about whether a person could be selected to be a member of a local Taskforce is not needed.

The decisions relating to funding projects under the Local Recovery Fund, including funding for Employment Facilitators, will not be subject to independent merits review on the grounds that they will be decisions allocating a finite resource between competing applicants. This means there is a likelihood that only a proportion of applications in each Employment Region will be met, and therefore an allocation which has already been made to one party would be affected by overturning the original decision. The Administrative Review Council has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.11 to 4.14 of the guide, *What decisions should be subject to merit review?*).

The decisions relating to placement of a job seeker into a project under the Local Jobs Pilot are not subject to independent merits review. Employment services providers may make decisions about whether particular job seekers can participate in projects funded under the Local Jobs Pilot, such as a project involving mentoring or an internship. In practice, providers are very likely to encourage job seekers to participate in these projects, rather than prevent them from doing so, as the projects will be generally relevant to their need to find and keep paid work. However, where a participant misses out, it will be open to them to access other projects in the region under the Local Jobs Pilot, or assistance from the suite of other employment programs.

Job seekers who are participating in *jobactive*, ParentsNext, New Employment Services Trial or Transition to Work programs will be able to participate in projects funded under the Local Jobs Pilot. Participating in projects may assist job seekers to maintain their eligibility for their JobSeeker Payment, Youth Allowance (other) or Parenting Payment under the social security law. These payments, sometimes known as participation payments, involve participation requirements which recipients need to meet to maintain eligibility to receive their payments. However, participation in a project under the Local Jobs Pilot is not the only way a job seeker could meet their participation requirements. There is a wide range of other ways in which they could do so.

A decision to deny a job seeker access to participation is unlikely to occur in practice, and would not substantially affect that job seeker's interests, whether or not the job seeker was subject to participation requirements at the time. This is because of the availability of other activities and programs that provide similar employment experience and training opportunities. These include programs such as *jobactive*, work experience, Youth Jobs Path and Work for the Dole. These may be used not only to help the job seeker find and keep paid work, but also to assist the job seeker meet any applicable participation requirements and therefore maintain their eligibility to receive participation payments while looking for work.

Accordingly, not participating in the Local Jobs Pilot would not prevent a job seeker from participating in other similar programs to improve their chances of finding and keeping a job, and would not prevent them from completing any participation requirements they may need to complete to maintain eligibility for their social security payment. Therefore, consistently with paragraphs 4.56 to 4.57 of the Administrative Review Council's guide, *What decisions should be subject to merit review?*, a decision whether a job seeker could participate in a

project would have such limited impact on the person that the costs of review could not be justified.

In practice, there is no prospect that denying a job seeker access to a project under the Local Jobs Pilot would affect their eligibility to receive participation payments, as they could meet their participation requirements in other ways as noted above. However, if a job seeker nonetheless considered that their ability to meet their participation requirements had been impacted by non-access to a project, for example because they were required to participate in an alternative activity which they considered was not suitable to their circumstances, and they were consequently subject to compliance action for failing to participate, they could seek review by Services Australia of any decision to reduce, cancel or suspend their payment. If dissatisfied by the Services Australia's decision, they could seek review of the decision by the Administrative Appeals Tribunal.

Any party dissatisfied with any aspect of the Local Jobs Pilot or the selection of Employment Facilitators or projects could raise the matter with the Commonwealth Ombudsman. The Ombudsman is independent of the department and has the power to ask the department to answer questions about the Local Jobs Pilot or to provide relevant documents or information.

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

The Local Jobs Pilot builds on the successful local engagement that occurred under the current Regional Employment Trials (RET) program which operates in 10 disadvantaged regions. The department has undertaken extensive consultation with the Social Research Centre, which provides the Australian social research community with access to world class research and evaluation services. The consultation involved face-to-face discussions with local stakeholders, including Employment Facilitators and members of Regional Development Australia Committees in the relevant regions. The consultation process for the RET program has informed the design for the Local Jobs Pilot, which will involve the most successful elements of the RET program and apply them more widely with a focus on the COVID-19 recovery.

Funding for the Local Jobs Pilot of up to \$56.7 million over two years from 2020-21 will be included in the 2020-21 Budget and the 2020-21 Portfolio Budget Statements for the Education, Skills and Employment Portfolio. Funding will come from Program 4.1: Employment Services, which is part of Outcome 4.

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

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

Social welfare power

The social welfare power in section 51(xxiiiA) of the Constitution empowers the Parliament to make laws with respect to the provision of certain social welfare benefits including unemployment benefits.

The Local Jobs Pilot will benefit individuals who are receiving unemployment benefits by providing them with assistance to upskill, retrain and locate suitable employment 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 obligations under international treaties to which it is a party.

Australia has obligations relating to the following conventions:

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

Article 2 of the ICESCR provides that States Parties shall take steps to adopt legislative measures to realise the rights within the ICESCR including, relevantly, the right to work under Article 6(2) which includes ‘technical and vocational guidance and training programmes, policies and techniques to achieve... full and productive employment.’

Article 1(1) of the ILO Convention 122 obliges each Member to ‘declare and pursue... an active policy designed to promote full, productive and freely chosen employment.’ Article 1(2) specifies that this policy shall aim to ensure that (among other things) ‘there is work for all who are available for and seeking work’. Article 2 further requires Members to ‘decide on and keep under review ... the measures to be adopted for attaining the objectives specified in Article 1’, and to ‘take such steps as may be needed ... for the application of these measures’.

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

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

Article 3(1) of the ILO Convention 142 obliges each Member to ‘gradually extend its systems of vocational guidance, including continuing employment information, with a view to ensuring that comprehensive information and the broadest possible guidance are available to all children, young persons and adults, including appropriate programmes for all handicapped and disabled persons.’ Articles 3(2) and 3(3) provide additional details about what information, guidance and supplementary material should be provided.

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

By coordinating employment and training solutions at a local level, the Local Jobs Pilot will improve access to vocational education and training and employment opportunities in Employment Regions across Australia. In doing so, the Local Jobs Pilot will also promote full, productive and freely chosen employment by broadening the employment opportunities for individuals, as well as helping to address employment needs and regional and industry skills shortages.

Executive power and express incidental power, including the nationhood aspect

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 the Parliament, the executive or the courts by the Constitution. Section 61 of the Constitution supports activities that are peculiarly adapted to the government of a nation and cannot be carried out for the benefit of the nation otherwise than by the Commonwealth.

The Local Jobs Pilot is part of a broader Commonwealth response to the economic challenges presented by the COVID-19 pandemic. Commonwealth involvement is necessary to respond to those national challenges.

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, Skills and Employment Measures No. 4) Regulations 2020

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 powers in the FF(SP) Act to make, vary or administer arrangements or grants may be exercised on behalf of the Commonwealth by 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, Skills and Employment Measures No. 4) Regulations 2020* amend Schedule 1AB to the FF(SP) Regulations to establish legislative authority for government spending on certain activities that will be administered by the Department of Education, Skills and Employment (the department).

This instrument:

- amends table item 407 in Part 4 of Schedule 1AB to replace the Destination Australia Cheung Kong Exchange Pilot with the Destination Australia Cheung Kong Exchange Program;
- adds table item 430 to Part 4 of Schedule 1AB for the Reading Writing Hotline;
- adds table item 431 to Part 4 of Schedule 1AB for the Adult Learners' Week;
- adds table item 432 to Part 4 of Schedule 1AB for the School Leaver Program; and
- adds table item 433 to Part 4 of Schedule 1AB for the Local Jobs – COVID-19 Recovery Pilot.

Amendment to table item 407 – Destination Australia Cheung Kong Exchange Program

The amended table item 407 provides legislative authority for government spending on the Destination Australia Cheung Kong Exchange Program (the Program), instead of the Destination Australia Cheung Kong Exchange Pilot (the Pilot). The Program was originally intended to be an expansion of the Pilot which was to be delivered in 2019-20. However, its implementation was delayed by the need to respond to the COVID-19 situation and the ongoing international travel restrictions. The funding originally intended to be spent under the Pilot will now be available for spending under the Program. Therefore, legislative authority for government spending on the Pilot is no longer needed.

The Program will provide grant funding to Australian universities to establish their own two-way mobility schemes and provide scholarships for domestic and international university students, commencing in 2020-21 for a period of 10 years. The Program builds on a longstanding partnership with CK Infrastructure Holdings Ltd (the Cheung Kong Group) to support student mobility to and from Australia. Funding for the Program will be provided by the Cheung Kong Group and the department on behalf of the Australian Government.

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. By supporting the brightest young academic minds in Australia and Asia to study at leading universities in Australia and overseas, the Program will allow students to gain knowledge and build academic skills which they will bring into the Australian higher education system.

Australian universities listed in Table A and Table B of the *Higher Education Support Act 2003*, including some private universities, will be eligible to opt in to receive grants under the Program. These grants must be used to support their students, and students of their partner universities in Asia, to undertake a short-term study opportunity in one of 16 select Asian countries or Australia, respectively.

The 16 identified countries, selected in consultation with the Cheung Kong Group, are: the People's Republic of China, Hong Kong, Brunei Darussalam, Cambodia, India, Indonesia, Japan, Republic of Korea, Laos, Malaysia, Mongolia, Myanmar, Republic of the Philippines, Singapore, Thailand and Vietnam.

The Program funding will be evenly distributed between those Australian universities that opt in to participate. Australian universities will undertake their own processes to award mobility scholarships to individual students they deem eligible.

Each mobility scholarship will be worth an average of \$5,500 to support either short-term mobility, including study tours, or a semester exchange. The Australian university will determine the exact scholarship amount per student. The mobility scholarships will be available for both undergraduate and postgraduate university students from 2020-21. The Program will conclude on 30 June 2030.

Human rights implications

The amended table item 407:

- engages the right to education – Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), read with Article 2 of the ICESCR; and
- supports the recognition of benefits of scientific and cultural co-operation – Article 15(4) of the ICESCR.

Right to education

The amended table item 407 engages the right to education recognised in Article 13 of the ICESCR, read with Article 2 of the ICESCR.

Article 2 of the ICESCR requires States Parties to take steps to progressively achieve the full realisation of the rights recognised in the ICESCR by all appropriate means. Article 13(1) of the ICESCR provides that States Parties shall ‘recognise the right of everyone to education’ and ‘agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms ... education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.’ Article 13(2)(c) of the ICESCR states that ‘higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means...’

The amended table item 407 will support the right of Australian and overseas students to access higher education and enable them to undertake study that will facilitate their participation in society and an increasingly international labour market, and promote understanding and friendship between nations. The Program will also support access to higher education for students who otherwise may not be able to afford to undertake overseas study.

Recognition of benefits of scientific and cultural co-operation

The amended table item 407 supports the recognition of benefits of scientific and cultural co-operation under Article 15 of the ICESCR.

Article 15(4) of the ICESCR provides that States Parties shall ‘recognise the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.’

By supporting Australian and overseas students to undertake study at leading Australian and overseas universities, the Program will support the development of international contacts and co-operation in scientific and cultural fields.

Conclusion

The amended table item 407 is compatible with human rights because it promotes the right to education under the ICESCR and supports the recognition of benefits of scientific and cultural co-operation under the ICESCR.

Table item 430 – Reading Writing Hotline

Table item 430 establishes legislative authority for government spending to support the delivery of the Reading Writing Hotline (the Hotline), a national advisory and referral service, which links people seeking English language, literacy or numeracy assistance to appropriate training opportunities.

The objectives of the Hotline are to provide a national focus on improving outcomes for working age Australians and help individuals overcome language, literacy and numeracy issues by connecting them to the training opportunities that they need. These are essential skills for individuals to be able to have access to, and participate in, employment and further education opportunities.

The Hotline is the only national advisory and referral service of its kind, which has operated for over 20 years. It contributes to the priority areas and objectives of the Council of Australian Governments' *National Foundation Skills Strategy for Adults* (the Strategy), a ten-year framework that brings a national focus to improving education and employment outcomes for working age Australians with low levels of foundation skills: language, literacy, numeracy, and employability skills. The Strategy was endorsed by all Australian governments in 2012.

The Hotline was created, and is managed by the Technical and Further Education Commission New South Wales (trading as TAFE NSW) via a telephone hotline and digital platform. TAFE NSW continues to operate the Hotline.

Human rights implications

Table item 430 engages the following human rights:

- the right to education – Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), read with Article 2 of the ICESCR; and
- the right to work – Article 6 of the ICESCR.

Right to education

Table item 430 engages the right to education contained in Article 13 of the ICESCR, read with Article 2 of the ICESCR. Article 2 of the ICESCR requires States Parties to take steps to progressively achieve the full realisation of the rights recognised in the ICESCR by all appropriate means. Article 13 recognises that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms.

In addition, paragraph 13(2)(b) recognises that secondary education, in all 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.

Right to work

Table item 430 engages the right to work contained in Article 6 of the ICESCR. Article 6 recognises that in order to fully achieve the realisation of the right to work, there should be available technical and vocational guidance and training programs, policies and techniques.

The Hotline provides a national advisory and referral service for people seeking English language, literacy or numeracy assistance.

The Hotline promotes both the right to education and the right to work, by linking those who require additional vocational education and training assistance in English language, literacy and numeracy with appropriate training providers, and by promoting resources that assist in English language, literacy and numeracy. These are essential skills for individuals to be able to have access to, and participate in, employment and further education opportunities.

Conclusion

Table item 430 is compatible with human rights because it promotes the right to education as well as the right to work under the ICESCR.

Table item 431 – Adult Learners’ Week

Table item 431 establishes legislative authority for government spending to support the delivery of Adult Learners’ Week, which raises awareness of adult education and promotes participation by adults in further learning.

Adult Learners’ Week is a long-running international event held in September each year. It was first held in the United Kingdom in 1992, then included in the Hamburg Declaration on Adult Learning in 1997 of which Australia is a signatory.

Adult Learners’ Week consists of activities that raise awareness of adult education and promotes participation by adults in further learning. Adult Learners’ Week includes events and activities designed to promote the benefits of adult learning and highlight the many options available for such learning in the home, at work and in the community.

Adult Learners’ Week is organised and conducted by Adult Learning Australia Ltd, the peak national body for adult and community education in Australia, which has been involved in managing and organising Adult Learners’ Week since 1995.

The objective of Adult Learners’ Week is to promote lifelong learning, which can support improved workforce participation and productivity for adults through increased participation in education and training. Funding is provided to Adult Learning Australia Ltd to organise and manage a national promotional campaign, as well as an official launch for Adult Learners’ Week.

Human rights implications

Table item 431 engages the following human rights:

- the right to education – Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), read with Article 2 of the ICESCR; and
- the right to work – Article 6 of the ICESCR.

Right to education

Table item 431 engages the right to education contained in Article 13 of the ICESCR, read with Article 2 of the ICESCR. Article 2 of the ICESCR requires States Parties to take steps to progressively achieve the full realisation of the rights recognised in the ICESCR by all appropriate means. Article 13 recognises that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms.

In addition, paragraph 13(2)(b) recognises that secondary education, in all 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.

Right to work

Table item 431 engages the right to work contained in Article 6 of the ICESCR. Article 6 recognises that in order to fully achieve the realisation of the right to work, there should be available technical and vocational guidance and training programs, policies and techniques.

Adult Learners' Week consists of activities that raise awareness of adult education and promotes participation by adults in further learning. Adult Learners' Week includes events and activities designed to promote the benefits of adult learning and highlight the many options available for such learning in the home, at work and in the community.

Adult Learners' Week promotes both the right to education and the right to work, by promoting and raising awareness of the importance and value of further learning. Adult Learners' Week promotes increased participation in education and training, thereby supporting improved workforce participation and productivity.

Conclusion

Table item 431 is compatible with human rights because it promotes the right to education as well as the right to work under the ICESCR.

Table item 432 – School Leaver Program

New table item 432 establishes legislative authority for government spending on a targeted career information kit and hotline for school leavers (the School Leaver Program) to be delivered by the National Careers Institute (NCI), part of the department. Under the School Leaver Program, the NCI will provide information and support services to school leavers (Years 10 to 12) in 2020 and 2021, who will be disproportionately affected by the COVID-19 pandemic, to assist them to navigate post-school pathways and make informed decisions about their future and transition to post-school employment.

The School Leaver Program will be a national service consisting of two components: a targeted career information kit and a hotline service. The information kit will provide school leavers with a clear understanding of the post-school education and training and employment pathways that closely align with jobs in demand. The hotline will provide referral services for school leavers requiring additional support to make informed decisions about their future or other support.

The School Leaver Program will draw on the National Skills Commission's (NSC) skills and labour market forecasts, along with the career pathways information on the NCI website, to outline the pathways that will enable school leavers to attain skills and/or a qualification that will support them to pursue current and future jobs available in the labour market. The Program will provide a timely intervention to direct this more vulnerable cohort of school leavers toward an education pathway, enabling them to attain skills and/or a qualification that will support them to pursue employment at a time when the labour market has stabilised.

Human rights implications

Table item 432 engages the following human rights:

- the right to education – Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), read with Article 2 of the ICESCR;
- the right to work – Article 6 of the ICESCR; and
- the right of the child to education – Articles 28 and 29 of the *Convention on the Rights of the Child* (CRC).

Right to education

Table item 432 engages the right to education contained in Article 13 of the ICESCR, read with Article 2 of the ICESCR. Article 2 of the ICESCR requires States Parties to take steps to progressively achieve the full realisation of the rights recognised in the ICESCR by all appropriate means. Article 13 recognises that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms.

Article 13 further says that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups and further the maintenance of peace.

In addition, paragraph 13(2)(b) recognises that secondary education, in all 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.

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.

Right to work

Table item 432 engages the right to work contained in Article 6 of the ICESCR. Article 6 recognises that in order to fully achieve the realisation of the right to work, there should be available technical and vocational guidance and training programs, policies and techniques.

The targeted career information kit and hotline will promote both the right to education and the right to work, by supporting school students to make informed decisions about their career or transition to employment or further learning.

Right of the child to education

Table item 432 engages the right of the child to education contained in Article 28 of the CRC. Article 28 of CRC contains similar provisions to Article 13 of the ICESCR, and Article 29 of the CRC provides 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.

Conclusion

Table item 432 is compatible with human rights because it promotes the right to education as well as the right to work under the ICESCR, and the right of the child to education under the CRC.

Table item 433 – Local Jobs – COVID-19 Recovery Pilot

Table item 433 establishes legislative authority for government spending on the Local Jobs – COVID-19 Recovery Pilot (the Local Jobs Pilot), which will support local organisations and stakeholders to develop and implement tailored approaches to accelerate reskilling, upskilling and employment of job seekers in selected Employment Regions in Australia through the engagement of Employment Facilitators and the establishment of Local Jobs and Skills Taskforces.

The aim of the Local Jobs Pilot is to ensure that, from July 2020, as many people as possible are placed in appropriate employment or training opportunities, as quickly as possible, as the labour market recovers from the COVID-19 pandemic.

Under the Local Jobs Pilot, there will be:

- one or two Employment Facilitators engaged in each Employment Region involved;
- Local Jobs and Skills Taskforces established in each Employment Region involved;
- a Local Jobs Plan for each Employment Region, developed by the Local Jobs and Skills Taskforces through engagement with their members, local stakeholders and other organisations where appropriate; and
- projects in each Employment Region, funded through a Local Recovery Fund.

The key role of each Employment Facilitator is to support the delivery of place-based training and employment outcomes under the Local Jobs Pilot. Employment Facilitators will be responsible for liaising with the wider community to connect job seekers with employment and training programs and providers, including employment services providers.

The key role of the Local Jobs and Skills Taskforces is to drive local projects and bring together key organisations involved in local economic development, social support organisations, local and state governments, and employment services providers.

A Local Jobs Plan will be developed by each Taskforce to identify key employment priorities for each region and opportunities to improve the skills of job seekers in order to better meet employer demand.

A Local Recovery Fund will be available across the Employment Regions for projects that meet the employment and training priorities identified in the Local Jobs Plans, which will be tailored to the opportunities and needs identified in each region.

Human rights implications

Table item 433 engages the right to work (Articles 2 and 6 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR)).

Right to work

Table item 433 supports Articles 2 and 6 of the ICESCR. Article 2 provides that States Parties shall take steps to adopt legislative measures to realise the rights within the ICESCR including, relevantly, the right to work under Article 6.

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 Local Jobs Pilot supports the right to work by funding projects that are intended to increase the human capital of participants, to enable them to take advantage of local employment opportunities. Under the Local Jobs Pilot, Employment Facilitators will work with local stakeholders on the Local Jobs and Skills Taskforces to develop Local Jobs Plans. These plans will be used to identify the employment and training priorities for each Employment Region and will allow the Local Jobs Pilot to prioritise the funding of projects that move unemployed job seekers to employment.

Conclusion

Table item 433 is compatible with human rights because it promotes the right to work under the ICESCR.

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