

## **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. 7) 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. 7) 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 temporary modification of the existing Relocation Assistance to Take Up a Job Program (the program) to make it available to eligible individuals who relocate to other areas of Australia to take up short-term agricultural work, including for the purpose of addressing labour shortages resulting from the coronavirus known as COVID-19 (\$17.4 million over two years from 2020-21 for the program, including \$15.4 million for the program modification); and
- the expansion of the New Enterprise Incentive Scheme to provide existing micro-business owners impacted by COVID-19 with access to small business assistance services (\$5.7 million over two years from 2020-21).

The temporary modification of the Relocation Assistance to Take Up a Job Program and the expansion of the New Enterprise Incentive Scheme 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. 7) 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. 7) 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***

**Items 1 and 2**

Item 1 repeals and substitutes the cell in the column headed “Objective(s)” at table item 33 in Part 4 of Schedule 1AB. Table item 33 deals with the Relocation Assistance to Take Up a Job Program (the program).

Item 2 repeals and substitutes table item 128 in Part 4 of Schedule 1AB, which deals with the Harvest Trail Services and Harvest Trail Information Service.

The amended table items 33 and 128 in Part 4 of Schedule 1AB provide legislative authority for government spending on the program and its temporary modification to make it available to eligible individuals who relocate to take up short-term agricultural work, including for the purpose of addressing labour shortages resulting from the coronavirus known as COVID-19 (the measure). The program and the measure are administered by the Department of Education, Skills and Employment (the department).

Australia’s agricultural sector is experiencing challenges securing workers as a result of the COVID-19 pandemic. The measure will extend relocation assistance to individuals who relocate to harvest and regional areas to take up short-term agricultural work, including Australians who are not receiving income support and those with the right to work in Australia. Agricultural work includes both horticultural and other agricultural work, for example crop related work, maintaining or breeding animals, and processing animal products.

The existing program, which started on 1 July 2014, assists job seekers in accepting work outside of their area by helping address financial barriers to relocating. Participants can receive up to \$6,000 if relocating to a regional area, and an additional \$3,000 if relocating with a dependent to support a range of relocation costs (for example rent, removalist costs, travel costs, food during relocation and some employment related expenses).

Currently, the program is only available to job seekers who have been in receipt of JobSeeker Payment (formerly Newstart Allowance), Youth Allowance (Other) or Parenting Payment for 12 months or more, and the purpose of the relocation must be to take up full-time, ongoing work. The sort of work which attracts relocation assistance is work of at least 30 hours per week (or 15 hours for participants who have been assessed as having partial capacity to work) and at least six months in duration. A person is eligible for relocation assistance under the existing program if they apply before they move and start their job and:

- are registered as a fully eligible job seeker with a *jobactive* provider, an intensive stream participant with a ParentsNext provider, or a participant in Disability Employment Services;
- have mutual obligation requirements under the social security law at the time of obtaining the job; and
- have been receiving JobSeeker Payment, Youth Allowance (other than as a full-time student or apprentice) or Parenting Payment for the last 12 months.

Employment services providers pre-approve the assistance and provide it as a reimbursement to a job seeker or a direct payment to a supplier (for example, a removalist), or in advance where necessary. Further information about the program is available at <https://www.employment.gov.au/relocation-assistance-take-job>.

Job seekers and other individuals are connected with harvest jobs at horticulture and viticulture enterprises across the country through 'Harvest Trail', which is an initiative of the Australian Government. The Harvest Trail is a pathway in regional Australia that follows harvesting of fresh fruit, vegetables and wine grapes. Workers can find information about harvest jobs in Australia through the Harvest Trail Information Service (HTIS) website and contact centre. The HTIS is a no-cost service funded by the Australian Government and managed by a service provider contracted by the department.

Under existing arrangements, the department also engages a number of Harvest Trail Services (HTS) providers to help connect workers with employers in specified harvest areas. Services may include advice to workers about local accommodation options and access to transport, safety inductions for undertaking work on a particular crop, or assistance to growers with their seasonal workforce needs. All services are at no cost. Access to these HTS providers is not limited to people receiving income support payments. Further information about HTS and HTIS is available at [www.harvesttrail.gov.au](http://www.harvesttrail.gov.au).

From 1 July 2020, HTS services are delivered in 16 harvest areas (previously 11 areas), which cover the majority of horticulture production in Australia including:

- the whole of Tasmania;
- the following regions of Victoria:
  - Goulburn Valley;
  - Gippsland;
  - Mid-Murray;

- the following regions of New South Wales:
  - Hunter-Central West;
  - Riverina;
  - Northern Coast;
- Sunraysia in New South Wales and Victoria;
- the following regions of Queensland:
  - Sunshine-Moreton;
  - Wide Bay;
  - Southern Queensland (crosses into New South Wales);
  - Far North Queensland;
- the following regions of South Australia:
  - Adelaide Hills-Barossa;
  - South East;
- Western Australia South West; and
- the Top End in Northern Territory and Western Australia (including Kimberley).

From 1 November 2020 to 31 December 2021, more people will be eligible for assistance under the measure on a trial basis, when they have relocated to take up short-term agricultural work of at least six weeks' duration, and have completed such work. Some participants in financial hardship will receive payments to help them relocate, before they commence the work. These changes would be capped at 4,913 places.

Australians on income support, as well as Australian citizens and permanent residents not on income support, such as students and grey nomads (older people, mostly over 55 years of age, who travel extensively within Australia often using motorhomes, campervans or caravans) will be eligible to claim a reimbursement of up to \$6,000. Individuals who have a right to work in Australia, such as working holiday maker visa holders and international students, will be eligible to claim a reimbursement of up to \$2,000. The Seasonal Worker Programme and the Pacific Labour Scheme participants will not be eligible for relocation assistance under the measure. For short-term agricultural work, eligible individuals will only be able to access one of the payments every six months.

The payment will be delivered through three complementary channels:

- employment services providers (such as *jobactive*, Transition to Work, New Employment Services Trial (NEST) Enhanced Services, Disability Employment Services and ParentsNext) will administer the payment for job seekers on their caseload;
- HTS providers will administer the payment in the 16 harvest areas where workers are relocating to take up horticultural or crop related work. Under existing arrangements, HTS providers are contracted to mobilise potential harvest workers from locations outside a HTS region to help ensure there is sufficient and timely supply of harvest workers. HTS providers are well placed to deliver the payment due to their specialised knowledge of the horticulture sector, their existing connections with employers, and their experience in placing temporary visa holders and people not on income support into horticulture or crop related work; and
- the HTIS provider or one of the existing HTS providers will administer the payment where workers are not connected to an employment services provider that administers the program (including participants registered with the Community Development Program, Online Employment Services and NEST Digital Employment Services administered by the department), and are relocating to a regional area to take up

agricultural work which is outside the current remit of HTS providers (including relocating to a harvest area for a non-harvest job). The department will seek to amend the contract of one of the existing service providers to perform this additional work. An incentive payment will be negotiated with the provider as compensation for the delivery of this additional service.

Apart from this additional work to be contracted, employment services providers and HTS providers will not receive additional fees for administering the payment, but will be able to claim payments in line with existing arrangements. For example, *jobactive* providers will be able to claim Outcome Payments for job seekers on their caseload who achieve eligible employment of 4, 12 or 26 weeks. HTS providers will be able to claim placement fees for placing job seekers into horticultural jobs, as well as 4, 12 or 26 week Outcome Payments for Australian job seekers on income support.

Providing relocation assistance will give employment services and HTS providers additional tools to place more job seekers into work to satisfy employers' labour demand, thus improving providers' performance. As per existing arrangements, employment services and HTS providers will make payments from their own funds before seeking reimbursement from the department. Each HTS provider services their own area and works with employment services providers, such as *jobactive* providers, to refer people to agricultural work. The above Outcome Payments for *jobactive* providers will be put in place specifically for the measure and will encourage collaboration, rather than competition, between *jobactive* and HTS providers, which will both assist people into agricultural work.

The measure will further encourage Australian citizens and permanent residents, whether in receipt of income support or not, to undertake agricultural work by helping to offset the costs and barriers of doing so. A job seeker will be eligible to claim a reimbursement payment from the relevant provider once they have been employed in agricultural work for six weeks, and worked at least 120 hours over that six week period. The requirements to stay in a job for at least six weeks will support farmers' need to have workers for the duration of peak periods. For example, harvest is a peak period and can take around six to 10 weeks depending on the weather. For other types of agricultural work, staying in a job for at least six weeks will mean that the participant can make a meaningful contribution to the work.

People in hardship will be able to claim the payment upfront to assist with relocating. This will be at the discretion of the provider, which must be satisfied that payments will be used as agreed with the eligible individual, obtain and retain at least two quotes for the costs where possible, and ensure that upfront payments represent value for money.

In line with the current program, providers must ensure the relocation is at least 90 minutes away from the participant's current residence (using their regular mode of transport) and not within the same capital city. While regional areas are by definition outside of capital cities, some harvest areas cover capital cities. For example, Tasmania as a whole is a harvest area, and the Swan Valley in Western Australia is in suburban Perth and is included in the Western Australia South West harvest area.

The measure will be actively promoted to the target cohorts via updates on employment program websites, such as JobSearch and Harvest Trail, and news items, communication and marketing by the employment services and HTS and HTIS providers, social media, including posts targeted to subscribers in regional and harvest areas and direct SMS messaging to job

seekers about available vacancies in agriculture and relocation assistance. Program factsheets for job seekers and employers will be available on the departmental website.

New or updated guidelines for employment services providers will be developed to reflect the expanded parameters. Specific guidelines will also be developed for HTS/HTIS providers to cover eligibility criteria, including eligible individuals, allowable expense categories and the procedures to submit a claim for reimbursement payment. Both the employment services provider and HTS/HTIS provider guidelines will be published on the departmental website.

It is expected that the department will approach the current HTIS provider, MADEC Australia, with an invitation to respond to a limited tender. MADEC Australia was established more than 50 years ago and is a viable organisation with expertise in providing services to people in regional Australia. Its expertise is relevant to delivering the measure in the timeframe required. The decision to approach MADEC was made by the department. The limited tender approach is justified due to urgency, consistently with paragraph 10.3(b) of the *Commonwealth Procurement Rules*.

If necessary, the department may seek to obtain a suitable provider through varying existing arrangements with one or more HTS providers, as the department explicitly reserved the right to procure additional related services from these providers when the market was previously tested.

The HTIS deed and/or the HTS deed will be varied (subject to agreement with any relevant provider/s) to include assisting targeted cohorts with relocation to a regional area, paying eligible expenses and claiming reimbursement from the department. It is envisaged that a payment (to be negotiated) would be offered for the additional services.

Responses to the limited tender will be assessed by experienced departmental staff against pre-determined criteria for suitability to deliver the service. The decision on which provider will be used will be made by a departmental official, as a delegate of the Secretary of the department. Information about the tender and the resulting contract variation will be published on AusTender at [www.tenders.gov.au](http://www.tenders.gov.au).

Providers will make the decisions about eligibility for the relocation assistance and whether payments are eligible to be reimbursed. They are best placed to make decisions on who can access the support offered under the measure, including an individual's capacity to deliver on their obligations under the relocation agreement. Providers are supported in these decisions by departmental account and contract managers who can provide advice and guidance as required.

Providers are also responsible for discussing their decisions with individual participants. If a participant or potential participant is unhappy with the decision, they can contact the department's National Customer Service Line for assistance. Information about the National Customer Service Line is available on the departmental website.

Employment services providers and HTS/HTIS providers will be required to assess each individual's suitability for employment in agriculture to ensure that potential workers are physically and mentally prepared to the requirements of work on the farm. Providers will be making an informed judgement about job seekers' relocation assistance after assessment of their needs and readiness to take up a job in agriculture.

In some cases, for example where the person is not sufficiently physically or mentally fit, a provider may determine that an individual is not suited to undertake agricultural work and will not offer relocation assistance. Employment service providers will work with these participants to help them consider alternative employment options, just as they do with all job seekers on their caseload.

Subject to assessment by providers, all eligible individuals will be able to participate if they will be willing to relocate to undertake an agricultural job in the harvest and regional areas and to stay in that job (or another agricultural job) for at least six weeks and work 120 hours over those six weeks. Individuals will be required to enter into a relocation agreement with the provider before they relocate, to ensure both parties have a common understanding of the expenses to be covered and the participant understands their obligations before claiming reimbursement.

While the service will be offered to farmers/employers on a 'first come first served' basis to support their workforce requirements at seasonal peaks, the employers' workplace relations compliance and their reputation as a safe workplace will be major factors the department considers when undertaking assurance activities in relation to the measure.

Procurement decisions will be made by departmental officials as delegates of the Secretary of the department, with all activities conducted and reported in accordance with the *Public Governance, Performance and Accountability Act 2013*, the *Commonwealth Procurement Rules* and the department's Accountable Authority Instructions. As is the case with all other decisions made under this legislation, decision making is subject to complaints mechanisms and judicial review of breaches of that legislation.

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 tenderer would be legally complex, impractical and result in unacceptable delays to the implementation of the measure.

Decisions about provider/s to deliver the measure are not considered suitable for independent review, as they are decisions relating to the allocation of a finite resource, from which all potential claims for a share of the resource cannot be met. In addition, any funding that has already been allocated to a selected service provider would be affected if the original decision was overturned. 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 4.19 of the guide, *What decisions should be subject to merit review?*).

Decisions about which individuals will receive assistance under the measure are not considered suitable for independent review, as they are also decisions relating to the allocation of a finite resource, from which all potential claims for a share of the resource cannot be met. The measure will be capped at 4,913 places, meaning that an allocation which has already been made to one party could be affected if the original decision was overturned. 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 4.19 of the guide, *What decisions should be subject to merit review?*).



In practice, there is no prospect that denying a job seeker access to the measure would affect their eligibility to receive their social security payment, as they could meet their mutual obligation requirements in other ways.

However, if a job seeker did consider that their ability to meet their participation requirements had been impacted by not accessing the measure, 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 merits 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 merits review of the decision by the Administrative Appeals Tribunal (AAT). If dissatisfied by the AAT decision they could, on questions of law, appeal to the Federal Court.

Decisions about which farmers/employers will receive workers under the measure are not considered suitable for independent review, as they are decisions relating to the allocation of a finite resource, from which all potential claims for a share of the resource cannot be met. Once a decision has been made that a particular farmer or employer will receive certain workers, it would be highly impractical or impossible for those workers to be re-allocated to another farmer or employer and, if that was done, the initial farmer/employer would not receive the benefit of the labour. 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 4.19 of the guide, *What decisions should be subject to merit review?*).

The department encourages participants to try to resolve any issues with their provider before contacting the department. The department will review decisions in connection with the measure if requested by a person or provider who is dissatisfied with a decision to exclude them from participating or with the level of assistance they receive under the measure. In the event the request is made to the department, the department will handle the matter by acknowledging receipt of the request and contact the individual with a view to resolving any issues as soon as practicable. The department will review the issue and work with the complainant to address it where needed. The department will respond to the complainant regarding the outcome of their request for review.

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 parties, depending on the circumstances.

Any person or organisation dissatisfied with a decision in connection with the measure, or dissatisfied with their dealings with a provider as part of the measure, could raise the matter with the Commonwealth Ombudsman. The Ombudsman has the power to ask the department to answer questions about the treatment of the person or organisation, or to provide relevant documents or information. The department gives weight to the Ombudsman's recommendations and is required to respond to the Ombudsman regarding what it has done in response to any recommendations. Failure to adequately respond could lead to adverse public reporting by the Ombudsman.

The department consulted with the Department of Agriculture, Water and the Environment, the Department of Home Affairs, the Department of Social Services and the Attorney-General's Department to develop the measure. Information and stakeholder

feedback collected through the department's existing programs (for example, the program, Harvest Trail and *jobactive*) also assisted in informing the development of the measure.

Due to the urgency of the measure and the need for Budget confidentiality, external consultation on this measure was not possible. However, it was developed with close consideration given to the known views of industry stakeholders such as the National Farmers' Federation, AUSVEG and the Australian Fresh Produce Alliance which have been expressed in media releases issued by these organisations.

This measure aligns with proposals by industry stakeholders:

- in its submission to the Joint Standing Committee on Migration inquiry into the Working Holiday Maker Program, the Australian Fresh Produce Alliance proposed a 'Relocation Support' payment of \$1,200 to be paid to job seekers after three months of horticulture work to help offset the costs of relocating to a regional area and incentivise workers to the industry;
- the Australian Fresh Produce Alliance also proposed an 'Induction Support' payment of \$1,200 per worker to be paid to employers after three months of agriculture work to subsidise employers' costs of additional induction, training and support for new workers;
- the stated objective for these proposals was 'to incentivise Australians and permanent residents that have become unemployed due to COVID-19 to work in the fresh produce industry'; and
- other industry stakeholders such as the National Farmers' Federation and AUSVEG have publicly expressed similar views with respect to the \$1,200 relocation support payment for displaced workers.

The announcement of the measure as part of the 2020-21 Budget has been well received by these major industry peak bodies.

Funding of \$17.4 million for the program was included in the 2020-21 Budget under the measure 'Employment Services' for a period of two years commencing in 2020-21, including \$15.4 million for the temporary modification of the program. Details are set out in *Budget 2020-21, Budget Measures, Budget Paper No. 2 2020-21* at pages 74 to 76.

Funding for this item will come from Program 4.1: Employment Services, which is part of Outcome 4. Details are set out in the *Portfolio Budget Statements 2020-21, Budget Related Paper No. 1.4, Education, Skills and Employment Portfolio* at pages 18, 24 and 73.

Noting that it is not a comprehensive statement of relevant constitutional considerations, the objective of the amended table item 33 references the following powers of the Constitution:

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

Noting that it is not a comprehensive statement of relevant constitutional considerations, the objective of the amended table item 128 references the following powers of the Constitution:

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

The measure will utilise both HTS providers for the 16 dedicated harvest areas and a contracted service provider for other regional areas. Using telephonic and online platforms, the providers can inform and support potential participants to identify suitable opportunities in regional areas in the agricultural industry.

### Aliens power

Section 51(xix) of the Constitution empowers the Parliament to make laws with respect to ‘naturalization and aliens’.

Provision of more assistance for agricultural workers to relocate will benefit certain temporary visa holders, including international students and working holiday makers, by providing them with greater access to employment opportunities in the agricultural sector in regional Australia. Incentives of up to \$2,000 will assist participants to afford the cost of relocating to take advantage of the demand for regional agricultural work. The incentives will assist with costs such as transport and accommodation.

HTS providers for the 16 dedicated harvest areas and a contracted service provider for other regional areas can inform and support eligible temporary visa holders to identify suitable opportunities in regional areas. These providers will harness existing and new relationships within the agricultural industry to deliver information, opportunities and ongoing support to eligible temporary visa holders.

### 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.

Provision of more assistance for agricultural workers to relocate will benefit Australians in receipt of the relevant income support payments (and/or who are participating in relevant employment services programs) by helping them to obtain employment in the agricultural sector in harvest and regional areas of Australia. Such support will assist with the costs of relocating to take up the employment opportunities and with work related costs that may ordinarily deter job seekers from seeking such work.

The measure will benefit those in receipt of social welfare and those seeking employment, through the provision of information and support concerning agricultural work opportunities, including information about the nature of the work and requirements of employers in the sector.

### 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*, particularly Articles 2 and 6. Article 2 requires that each State Party to the Covenant undertakes to take steps to the maximum of its available resources, especially economic and technical, to realise the rights recognised in the Covenant, particularly through legislative measures. Article 6 recognises the right to work and provides that the States Parties will take appropriate steps to achieve the realisation of the right to work, including through technical and vocational training;
- the International Labour Organization’s *Convention concerning Employment Policy*, including Article 1, which provides that Members shall pursue policies designed to promote full, productive and freely chosen employment;
- the International Labour Organization’s *Convention concerning the Organisation of the Employment Service*, particularly Article 1, which provides that Members shall maintain a free public employment service, which in co-operation with other public and private bodies concerned, ensures the best possible organisation of the employment market to achieve and maintain full employment and the productive use of resources; and
- the International Labour Organization’s *Convention concerning Vocational Guidance and Vocational Training in the Development of Human Resources*, including Articles 1 to 4 which relate to the adoption and development of comprehensive and coordinated policies and programs of vocational guidance and training, including providing broadest possible information and guidance, which are closely linked with employment for all people.

The expanded relocation assistance under the measure will help promote the right to work by incentivising the uptake of agricultural work in regional Australia and in harvest areas. Participants will strengthen and broaden their skill sets and capabilities by undertaking such work, expanding their opportunities in the sector and more broadly in the labour market.

HTS providers and a contracted service provider will collaborate with employers and industry leaders in regional areas to gather information to provide to participants concerning the roles available and the expectations of the industry. The incentives provided will encourage the take-up of a variety of industry specific work, which will entail on-the-job training, guidance, learning and development for participants involved.

Regional work in the agricultural sector is typically harder to access compared with work in metropolitan areas due to its regional location. The expanded relocation assistance promotes participants’ access to full, productive and freely chosen employment by helping address the barriers to access. The financial incentive of up to \$2,000 for certain temporary visa holders

and up to \$6,000 for Australian citizens, promotes access to agricultural employment opportunities by assisting workers with the costs of relocating, commuting and living in regional Australia. This enhances employment opportunities which may otherwise have been perceived as inaccessible.

*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.

Commonwealth involvement through the program, HTS and HTIS is necessary to address the national economic impacts of COVID-19. The modification of the program will help address such impacts as part of a whole-of-government coordinated strategy to address the economic effects of the pandemic, through existing Commonwealth programs.

*Territories power*

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

Individuals will be able to obtain assistance to relocate to participate in agricultural work in the Territories. HTS providers and the contracted service provider will be in part delivering services to participants or potential participants who relocate from Territories.

**Item 3 – In the appropriate position in Part 4 of Schedule 1AB (table)**

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

New **table item 446** establishes legislative authority for government spending on the expansion of the New Enterprise Incentive Scheme (NEIS) to provide existing micro-business owners impacted by COVID-19 with access to small business assistance services (New Business Assistance).

NEIS is a highly successful government program that has helped more than 180,000 people to start a small business over the last 35 years. In an environment where there are fewer traditional jobs available and record numbers of participants in *jobactive*, NEIS can assist job seekers to start a small business and create their own employment.

NEIS helps people turn a viable business idea into a small business. The program provides its participants with New Business Assistance, which includes accredited small business training, help to develop a business plan, and personalised mentoring and small business advice for 52 weeks.

Currently, New Business Assistance with NEIS helps people not in employment, education or training to start a small business. There are 18 NEIS providers contracted under a deed with the department to deliver NEIS services. Under those deeds, each NEIS provider delivers

services tailored to a specific Employment Region/s according to a number of factors, such as location, job seeker population and the number of other providers.

Support for individuals under current NEIS arrangements will continue to be available, with a minor expansion of eligibility so that individuals undertaking part-time work or study or who have caring responsibilities may receive NEIS assistance if they wish to do so and meet the eligibility requirements. Further information on NEIS is available at [www.dese.gov.au/neis](http://www.dese.gov.au/neis).

Item 127 of Part 4 of Schedule 1AB to the *Financial Framework (Supplementary Powers) Regulations 1997* provides legislative authority for government spending on the current NEIS, including the minor expansion of eligibility.

The expansion of NEIS will allow current NEIS providers to deliver small business advice to individuals who may already have an existing micro-business that has been impacted by COVID-19. Micro-businesses are businesses with a very small number of employees, or sole traders, freelance workers and gig workers.

The NEIS provider will assess whether the existing micro-business owner would benefit from completing accredited NEIS training, such as a Certificate III in Micro-Business Operations, or completing discrete elements of this training as required. A key part of this training includes assisting the micro-business to develop or update a business plan. NEIS providers would arrange training through registered training organisations at no cost to the micro-business owner.

The NEIS provider will then assist the existing micro-business to retain and refocus their business to remain operational post COVID-19. This could include helping the business adapt to an online environment or to generate new sales markets and meet new areas of demand. For example, a NEIS provider may help the micro-business owner develop a strategy to expand its business to an area of the economy experiencing growth and then help them to design a website or social media page to generate online sales in the new market.

The NEIS expansion recognises both the value of self-employment in the current economic environment and the role of small business in the post COVID-19 economic recovery. It also recognises that many micro-businesses do not have a large financial buffer to draw on during a difficult economic climate but have been contributing to the economy before the COVID-19 pandemic emerged. Assistance for existing micro-businesses under the NEIS expansion will commence in the beginning of December 2020 and cease at the end of June 2022.

The expansion of NEIS does not involve a new procurement or any extension of the deeds which the current NEIS providers have entered into with the department. Assistance to existing micro-businesses can be delivered within the existing number of places in the NEIS program. Guidelines issued by the department under those deeds will be amended to reflect the expansion and made available on the departmental website and the provider portal (for communication between the department and providers, which is not publicly accessible).

NEIS providers deliver services under the *jobactive* Deed 2015-2022. Procurement decisions are made in accordance with the Commonwealth resource management framework, including the *Public Governance, Performance and Accountability Act 2013* and the *Commonwealth Procurement Rules*.

A delegate of the Secretary of the department was responsible for determining the successful tenderers. Information on the tender and the final contracts is available on AusTender at <https://www.tenders.gov.au/>.

NEIS providers are responsible for assessing participant eligibility and managing their participation in the program. For the NEIS expansion, providers will assess the eligibility of micro-businesses by considering the number of employees in the business and the extent of their loss of turnover due to the COVID-19 impacts, as demonstrated by documentary evidence provided by the micro-business. NEIS providers will also assess whether the program will benefit the micro-business owner, for example, if the business may benefit from more sophisticated or high-growth industry support. Providers will also determine the extent or type of accredited training and small business advice that is to be provided to the existing micro-business.

Assisting existing micro-businesses who may benefit from NEIS assistance will be at the discretion of the provider and can be accommodated within their existing service offering and program places. If required, the NEIS provider can also refer the micro-business to other services or businesses in the area. The department will be monitoring the number of individuals and existing micro-businesses to ensure the assistance aligns with their business needs and that NEIS providers are able to service existing micro-businesses to maximise opportunities in new markets.

A key outcome of any training delivered to micro-businesses through NEIS would be a business plan which is practical and will help ensure the success of the business. Micro-businesses that do not wish to attend training, develop a business plan or participate in mentoring can seek support from Entrepreneurship Facilitators and Business Enterprise Centres which are well-positioned to help micro-businesses achieve their goals.

Decisions by NEIS providers about the eligibility of a micro-business for NEIS assistance, or the nature of that assistance, are not subject to independent merits review. This is because there would be such limited impact on the micro-businesses that the costs of independent merits review could not be justified. As outlined above, if such a business cannot access NEIS assistance it could be referred to other very similar assistance. The Administrative Review Council has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.56 and 4.57 of the guide, *What decisions should be subject to merit review?*).

As with all employment services, there are existing processes in place to support participants who have concerns about the service they receive. Any participant or potential participant in NEIS, whether an individual or a micro-business, who is dissatisfied with a decision by a NEIS provider not to offer them assistance can request a review of that decision by contacting the department's National Customer Service Line. Information about the National Customer Service Line is available on the departmental website. Similarly, if there are concerns with the amount or type of assistance received during servicing, participants could also seek assistance and support by contacting the National Customer Service Line. Where the participant (including a micro-business) still has concerns they can raise the matter with the Commonwealth Ombudsman, as can any program participant or potential participant.

The department consults regularly with the National NEIS Association (NNA) using face-to-face, telephone and email communication. The NNA is the peak body representing the majority of NEIS providers. Recent discussions have revolved around how NEIS can provide assistance to existing micro-businesses to help them recover from the economic impacts of COVID-19. The NNA is supportive of expanding NEIS assistance to existing micro-businesses. This is a temporary measure which will operate until 30 June 2022 as economic recovery is expected to take some time. During this time, the department will continue to engage with relevant stakeholders, including NEIS providers, micro-business participants, the Australian Chamber of Commerce and Industry, and other relevant organisations to determine if existing micro-businesses need more intensive and longer term support as COVID-19 eases.

Funding of \$5.7 million for the expansion of NEIS was included in the 2020-21 Budget under the measure 'Employment Services' for a period of two years commencing in 2020-21. Details are set out in *Budget 2020-21, Budget Measures, Budget Paper No. 2 2020-21* at pages 74 to 76.

Funding for this item will come from Program 4.1: Employment Services, which is part of Outcome 4. Details are set out in the *Portfolio Budget Statements 2020-21, Budget Related Paper No. 1.4, Education, Skills and Employment Portfolio* at pages 18, 24 and 73.

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 express incidental power and the executive power (sections 51(xxxix) and 61), including the nationhood aspect.

#### External affairs power

Section 51(xxix) of the Constitution empowers the Parliament to make laws with respect to 'external affairs'. The external affairs power supports legislation implementing 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*, including Articles 2, 6 and 13. Article 2 requires that each State Party to the Covenant undertakes to take steps to the maximum of its available resources, especially economic and technical, to realise the rights recognised in the Covenant, particularly through legislative measures. Article 6 recognises the right to work and provides that the States Parties will take appropriate steps to achieve the realisation of the right to work, including through technical and vocational training. Article 13 recognises the right to education, including technical and vocational education;
- the International Labour Organization's *Convention concerning Employment Policy*, including Articles 1 and 2, which provide that Members shall pursue policies designed to promote full, productive and freely chosen employment, and determine measures for achieving those objectives; and
- the International Labour Organization's *Convention concerning Vocational Guidance and Vocational Training in the Development of Human Resources*, including Articles 1 to 4 which relate to the adoption and development of comprehensive and coordinated policies and programs of vocational guidance and training, including



providing broadest possible information and guidance, which are closely linked with employment for all people .

The NEIS expansion will promote the right to work by supporting the owners of existing micro-businesses to participate in the program and learn to refocus their business and remain financially viable.

NEIS providers will deliver accredited small business training to assist the participating micro-businesses to retain and refocus their business to remain operational during the COVID-19 recovery. The provision of this accredited training represents a strong commitment to vocational education and training. Guidance and support by NEIS providers will involve personalised mentoring to micro-businesses and the provision of tailored strategies to adapt to and overcome the challenges presented by COVID-19. For example, NEIS providers may review existing business plans, help businesses to develop new business plans and assist participating micro-businesses to refocus their business and to ensure their commercial viability.

*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.

Commonwealth involvement is necessary to address the national economic impacts of COVID-19. The NEIS expansion will help address such impacts as part of a whole-of-government coordinated strategy to address the economic effects of the pandemic, through an existing Commonwealth program.

## **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. 7) 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. 7) 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 items 33 and 128 in Part 4 of Schedule 1AB for the temporary modification of the existing Relocation Assistance to Take Up a Job Program; and
- adds table item 446 in Part 4 of Schedule 1AB for the Extended New Enterprise Incentive Scheme – COVID-19 response.

#### **Amendments to table items 33 and 128 – temporary modification of the existing Relocation Assistance to Take Up a Job Program**

The amended table items 33 and 128 in Part 4 of Schedule 1AB provide legislative authority for government spending on the existing Relocation Assistance to Take Up a Job Program (the program) and its temporary modification to make it available to eligible individuals who relocate to take up short-term agricultural work, including for the purpose of addressing labour shortages resulting from the coronavirus known as COVID-19 (the measure).

Australia's agricultural sector is experiencing challenges securing workers as a result of the COVID-19 pandemic. The measure will extend relocation assistance to individuals who relocate to harvest and regional areas to take up short-term agricultural work, including Australians who are not receiving income support and those with the right to work in

Australia. Agricultural work includes both horticultural and other agricultural work, for example crop related work, maintaining or breeding animals, and processing animal products.

The existing program assists job seekers in accepting work outside of their area by helping address financial barriers to relocating. Program participants can receive up to \$6,000 if relocating to a regional area, and an additional \$3,000 if relocating with a dependent, to assist with a range of relocation costs (for example rent, removalist costs, travel costs, food during relocation and some employment related expenses).

Currently, the program is only available to job seekers who have been in receipt of JobSeeker Payment, Youth Allowance (Other) or Parenting Payment for 12 months or more, and the purpose of the relocation must be to take up full-time, ongoing work. Employment services providers pre-approve the assistance and provide it as a reimbursement to a job seeker or a direct payment to a supplier (for example, a removalist), or in advance where necessary.

Job seekers and other individuals are connected with harvest jobs at horticulture and viticulture enterprises across the country through 'Harvest Trail', which is an initiative of the Australian Government. The Harvest Trail is a pathway in regional Australia that follows harvesting of fresh fruit, vegetables and wine grapes. Workers can find information about harvest jobs in Australia through the Harvest Trail Information Service (HTIS) website and contact centre. The HTIS is a no-cost service funded by the Australian Government and managed by a service provider contracted by the department.

Under existing arrangements, the department also engages a number of Harvest Trail Services (HTS) providers to help connect workers with employers in specified harvest areas. Access to these HTS providers is not limited to people receiving income support payments. From 1 July 2020, HTS services are delivered in 16 harvest areas (previously 11 areas), which cover the majority of horticulture production in Australia.

From 1 November 2020 to 31 December 2021, more people will be eligible for assistance under the measure on a trial basis, when they have relocated to take up short-term agricultural work of at least six weeks' duration, and have completed such work. Some participants in financial hardship will receive payments to help them relocate, before they commence the work. These changes would be capped at 4,913 places.

Australians on income support, as well as Australian citizens and permanent residents not on income support, such as students and grey nomads (older people, mostly over 55 years of age, who travel extensively within Australia often using motorhomes, campervans or caravans) will be eligible to claim a reimbursement of up to \$6,000. Individuals who have a right to work in Australia, such as working holiday maker visa holders and international students, will be eligible to claim a reimbursement of up to \$2,000. Eligible individuals will only be able to access one of the payments every six months.

The payment will be delivered through three complementary channels:

- employment services providers (such as *jobactive*, Transition to Work, New Employment Services Trial (NEST) Enhanced Services, Disability Employment Services and ParentsNext) will administer the payment for job seekers on their caseload;
- HTS providers will administer the payment in the 16 harvest areas where workers are relocating to take up horticultural or crop related work. Under existing arrangements,

HTS providers are contracted to mobilise potential harvest workers from locations outside a HTS region to help ensure there is sufficient and timely supply of harvest workers. HTS providers are well placed to deliver the payment due to their specialised knowledge of the horticulture sector, their existing connections with employers, and their experience in placing temporary visa holders and people not on income support into horticulture or crop related work; and

- the HTIS provider or one of the existing HTS providers will administer the payment where workers are not connected to an employment services provider that administers the program (including participants registered with the Community Development Program, Online Employment Services and NEST Digital Employment Services administered by the department), and are relocating to a regional area to take up agricultural work which is outside the current remit of HTS providers (including relocating to a harvest area for a non-harvest job). The department will seek to amend the contract of one of the existing service providers to perform this additional work. An incentive payment will be negotiated with the provider as compensation for the delivery of this additional service.

### **Human rights implications**

The amended table items 33 and 128 engage the following rights:

- the right to work in Article 6 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), read with Article 2 of the ICESCR; Article 1 of the International Labour Organization's *Convention concerning Employment Policy* (ILO Convention 122); Article 1 of the International Labour Organization's *Convention concerning the Organisation of the Employment Service* (ILO Convention 88); and Articles 1 to 4 of the International Labour Organization's *Convention concerning Vocational Guidance and Vocational Training in the Development of Human Resources* (ILO Convention 142); and
- the right to equality and non-discrimination in Article 26 of the *International Covenant on Civil and Political Rights* (ICCPR), read with Article 2 of the ICCPR.

#### *Right to work*

Article 2 of the ICESCR requires that each State Party to the Covenant undertakes to take steps to the maximum of its available resources, especially economic and technical, to realise the rights recognised in the Covenant, particularly through legislative measures. Article 6 of the ICESCR recognises the right to work and provides that the States Parties will take appropriate steps to achieve the realisation of the right to work, including through technical and vocational training.

Article 1 of the ILO Convention 122 provides that 'each Member shall declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment'.

Article 1 of the ILO Convention 88 provides that Members shall maintain a free public employment service, which in co-operation with other public and private bodies concerned, ensures the best possible organisation of the employment market to achieve and maintain full employment and the productive use of resources.

Articles 1 to 4 of the ILO Convention 142 relate to the adoption and development of comprehensive and coordinated policies and programs of vocational guidance and training, including providing broadest possible information and guidance, which are closely linked with employment for all people.

The measure will promote the right to work by incentivising the uptake of agricultural work in regional Australia and in harvest areas. Participants will strengthen and broaden their skill sets and capabilities by undertaking such work, expanding their opportunities in the sector and more broadly in the labour market.

HTS providers and a contracted service provider will gather information from employers and industry leaders in harvest and regional areas to provide to participants concerning the nature of the roles available and the skills and capabilities that agricultural employers seek. The incentives provided will encourage the uptake of a variety of industry specific work to help meet labour needs. The program further promotes the maintenance of a free public employment service, demonstrating a commitment to achieving full employment and the productive use of resources.

Short-term agricultural work typically presents greater barriers to access, particularly in regional areas, when compared with work in metropolitan areas (for example, this is due to travel distance and also accommodation and transport issues for prospective workers in some Australian regions).

The measure promotes participants' access to full, productive and freely chosen employment. The financial incentive of up to \$2,000 for certain temporary visa holders and up to \$6,000 for Australian citizens and permanent residents promotes access to agricultural employment opportunities by assisting workers with the costs of relocating, commuting and living in harvest areas and regional Australia. This enhances employment opportunities which may otherwise have been perceived as inaccessible.

#### *Right to equality and non-discrimination*

Article 2 of the ICCPR requires that each State Party to the Covenant undertakes to respect and ensure the rights recognised in the Covenant, adopt laws or other measures to give effect to these rights, and ensure an effective remedy to any person whose rights recognised in the Covenant are violated. Article 26 of the ICCPR recognises the right to equality and non-discrimination on, among other grounds: race, sex, colour, language, national origin or 'other status'.

As outlined below, to the extent that the measure may involve differential treatment based on nationality, that is whether a participant is a temporary visa holder such as a working holiday maker or international student, compared with an Australian citizen, this can be justified because it is for a legitimate aim, based on reasonable and objective criteria, and proportionate to the aims of the measure.

Australian citizens and permanent residents will be entitled to a higher rate of reimbursement (up to \$6,000) because unlike temporary visa holders, they might still need to maintain their permanent place of residence while moving to the harvest or regional area to undertake temporary seasonal work.

The higher reimbursement rate is also designed to achieve broader policy objectives. The current shortfall of labour in the agricultural sector is due a reduction in the number of temporary visa holders in Australia as a result of the COVID-19 travel restrictions. The Government aims to encourage more Australians to work in the sector to help meet this immediate labour shortfall but also to help the sector reduce its reliance on temporary migrants and meet its labour needs in the longer term. More Australians taking up short-term agricultural work can lead to more of them building a long-term career in the agricultural sector.

The Government also aims to help job seekers reduce their reliance on income support. Taking up a short-term job can help job seekers remain connected to the labour market, gain work experience, and build confidence and financial independence.

The reimbursement of up to \$2,000 is an incentive to encourage temporary working visa holders to leave the cities, where most are normally based, and travel to a harvest or regional area that has a high demand for agricultural workers to seek employment.

Temporary visa holders with general work rights (for example, working holiday makers) are not sponsored by employers, do not have a guaranteed job, and do not have their travel costs pre-paid. They themselves are responsible for finding a job, temporary accommodation and making the necessary transport arrangements.

## **Conclusion**

The amended table items 33 and 128 are compatible with human rights because they promote human rights and to the extent that they may limit human rights, those limitations are reasonable, necessary and proportionate.

### *Table item 446 – Extended New Enterprise Incentive Scheme – COVID-19 response*

Table item 446 establishes legislative authority for government spending on the expansion of the New Enterprise Incentive Scheme (NEIS) to provide existing micro-business owners impacted by COVID-19 with access to small business assistance services (New Business Assistance).

NEIS is a highly successful government program that has helped more than 180,000 people to start a small business over the last 35 years. The program provides its participants with New Business Assistance, which includes accredited small business training, help to develop a business plan, and personalised mentoring and small business advice for 52 weeks. Currently, New Business Assistance with NEIS helps people not in employment, education or training to start a small business.

The expansion of NEIS will allow current NEIS providers to deliver small business advice to individuals who may already have an existing micro-business that has been impacted by COVID-19. Micro-businesses are businesses with a very small number of employees, or sole traders, freelance workers and gig workers.

The NEIS provider will assess whether the existing micro-business owner would benefit from completing accredited NEIS training, such as a Certificate III in Micro-Business Operations, or completing discrete elements of this training as required. A key part of this training

includes assisting the micro-business to develop or update a business plan. NEIS providers would arrange training through registered training organisations at no cost to the micro-business owner.

The NEIS provider will then assist the existing micro-business to retain and refocus their business to remain operational post COVID-19. This could include helping the business adapt to an online environment or to generate new sales markets and meet new areas of demand. For example, a NEIS provider may help the micro-business owner develop a strategy to expand its business to an area of the economy experiencing growth and then help them to design a website or social media page to generate online sales in the new market.

The NEIS expansion recognises both the value of self-employment in the current economic environment and the role of small business in the post COVID-19 economic recovery. It also recognises that many micro-businesses do not have a large financial buffer to draw on during a difficult economic climate but have been contributing to the economy before the COVID-19 pandemic emerged. Assistance for existing micro-businesses under the NEIS expansion will commence in the beginning of December 2020 and cease at the end of June 2022.

### **Human rights implications**

Table item 446 engages the following rights:

- the right to work in Article 6 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), read with Article 2 of the ICESCR, and Articles 1 and 2 of the International Labour Organization's *Convention concerning Employment Policy* (ILO Convention 122); and
- the right to education in Article 13 of the ICESCR, read with Article 2 of the ICESCR, and Articles 1 to 4 of the International Labour Organization's *Convention concerning Vocational Guidance and Vocational Training in the Development of Human Resources* (ILO Convention 142).

#### *Right to work*

Article 2(1) of the ICESCR recognises that 'each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures'.

Article 6(1) of the ICESCR recognises the right to work, which includes the right to the opportunity to gain a living by work which a person freely chooses or accepts. Article 6(2) provides that the States Parties recognise the right to work and will take appropriate steps to achieve the realisation of this right including through 'technical and vocational guidance and training programmes, policies and techniques... '.

Article 1 of the ILO Convention 122 provides that 'each Member shall declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment.'

Article 2 of the ILO Convention 122 provides that each Member shall determine the measures for achieving the objectives specified in Article 1. This includes the establishment of programs for the application of these measures.

### *Right to education*

Article 2(1) of the ICESCR recognises that ‘each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures’.

Article 13 of the ICESCR relevantly provides that with a view to achieving the full realisation of the right to education, each State Party should ensure that, education in its different forms, including technical and vocational education shall be generally accessible to all by every appropriate means.

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

Article 2 of the ILO Convention 142 provides that ‘each Member shall 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 provides that ‘each Member 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, including appropriate programmes for all handicapped and disabled persons.’ Article 3(2) relevantly provides that such information shall include ‘the choice of an occupation, vocational training and related educational opportunities, the employment situation and employment prospects...’.

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.’

### *Promotion of the right to work and the right to education*

The NEIS program is uniquely positioned to assist people to create their own employment. The objective of table item 446 is the expansion of the NEIS program through the broadening of eligibility requirements to include existing micro-businesses. The NEIS expansion will promote the right to work by supporting the owners of existing micro-businesses to participate in the program and learn to re-focus their business and remain financially viable.



NEIS providers will deliver accredited small business training to assist the participating micro-businesses to retain and refocus their business to remain operational during the COVID-19 recovery. The provision of this accredited training represents a strong commitment to vocational education and training. Guidance and support by NEIS providers will involve personalised mentoring to micro-businesses and the provision of tailored strategies to adapt to and overcome the challenges presented by COVID-19. For example, NEIS providers may review existing business plans, help businesses to develop new business plans and assist participating micro-businesses to refocus their business and ensure their commercial viability.

### **Conclusion**

Table item 446 is compatible with human rights because it promotes the protection of human rights.

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