

## **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. 3) Regulations 2021*

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. 3) Regulations 2021* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on certain activities administered by the Department of Education, Skills and Employment.

Funding is provided for:

- the continued delivery and expansion of the Literacy and Numeracy Test for Initial Teacher Education (LANTITE) program to deliver the LANTITE through non-online means to eligible persons with a disability (\$4.0 million over four years from 2021-22, with subsequent ongoing funding of \$1.0 million per year from 2025-26);
- the Civics and Citizenship Education Initiatives, which support civics and citizenship education in schools and help students to become active and informed citizens (\$0.4 million in 2021-22);
- the expansion of the Mid-Career Checkpoint program, which provides career guidance and training to assist persons to return to work or remain in work (\$73.4 million over three years from 2021-22, with no new funding provided for the expansion of the program);
- the expansion of the Local Jobs – COVID-19 Recovery program to support local organisations and stakeholders to develop and implement tailored approaches to accelerate re-skilling, upskilling and employment of job seekers in all 51 Employment

- Regions through the engagement of Employment Facilitators and the establishment of Local Jobs and Skills Taskforces (\$213.5 million over four years from 2021-22);
- the Digital Skills Cadetship Trial to assist cadets to undertake vocational education and training in digital skills, including education and training provided by employers, and assist cadets with future employment opportunities (\$10.7 million over three years from 2021-22); and
  - the Career Revive Initiative Expansion, which will support up to 60 medium to large businesses to develop an employer action plan to address barriers to women's full and equal participation in the employer's workforce, and to promote such full and equal participation (\$2.6 million over three years from 2021-22).

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. 3) Regulations 2021***

**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. 3) Regulations 2021*.

**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 111)**

Item 1 amends table item 111 in Part 4 of Schedule 1AB by repealing and substituting the full text of the item. The amended table item 111 establishes legislative authority for government spending on the Literacy and Numeracy Test for Initial Teacher Education (LANTITE) program, which provides for the delivery of the LANTITE online and, for eligible persons with a disability, the delivery through non-online means. The Department of Education, Skills and Employment (the department) has responsibility for the LANTITE.

The amended table item 111 covers expenditure on the LANTITE as supported by the original table item 111, as well as expenditure to deliver the test through a paper-based form to eligible candidates.

The LANTITE reflects Standard 3.5 of the ‘Accreditation of initial teacher education programs in Australia: Standards and Procedures’ (Standards and Procedures) set by Education Ministers in 2011. The test was first introduced on 1 July 2016, following a review of initial teacher education (ITE) programs across Australia conducted by the Teacher Education Ministerial Advisory Group (TEMAG) (recommendation 13 in the 2014 report *Action Now: Classroom Ready Teachers*). The report is available at [https://docs.education.gov.au/system/files/doc/other/action\\_now\\_classroom\\_ready\\_teachers\\_accessible.pdf](https://docs.education.gov.au/system/files/doc/other/action_now_classroom_ready_teachers_accessible.pdf). TEMAG found that there was significant variability in practice between ITE programs and recommended that the LANTITE be implemented to strengthen the system.

All state, territory and Commonwealth Education Ministers gave effect to TEMAG's recommendation in 2015 by agreeing to amend the Standards and Procedures from 1 July 2016. The amended Standards and Procedures require all ITE students to sit the LANTITE and demonstrate that they possess levels of personal literacy and numeracy equivalent to the top 30 per cent of the Australian adult population before graduating from an ITE program or registering as a qualified teacher.

The department oversees the administration of the test by contracting a supplier to develop, refresh and administer the test via an online test platform. The test is currently being delivered and administered by the Australian Council for Educational Research (ACER).

On 15 December 2020, the then Minister for Education, the Hon Dan Tehan MP, welcomed the Education Council decision that from 2023 ITE students will have the option to sit the LANTITE before they begin their degree (<https://ministers.dese.gov.au/tehan/more-equitable-treatment-student-teachers>). This decision offers more certainty and fairness to prospective students and gives higher education providers the opportunity to provide targeted support to students who are struggling to meet the required standard.

The LANTITE will also be expanded to include delivery through a paper-based form to eligible candidates. The paper-based form will add to the extensive range of adjustments available to candidates sitting the test and provide an additional option for test candidates with specific disabilities that require them to access reasonable adjustments to sit the test. These adjustments will comply with the obligation in the *Disability Discrimination Act 1992*.

The supplier of the LANTITE will be responsible for the development and delivery of the paper-based test forms and arranging for external testing to ensure accessibility of the paper-based form, particularly for visually impaired candidates. The supplier of the LANTITE will use their own expertise in the administration of the test and standardised testing to ensure the paper-based test format is psychometrically comparable to the online version of the test.

The supplier of the LANTITE will also be responsible for determining which test candidates are able to access the paper-based test forms. Candidates will need to provide medical documentation and recommendations with their application that demonstrate their need to access reasonable adjustments when sitting the test and that this need is best met by sitting the test using a paper-based form.

Candidates who are dissatisfied with the outcome of this process will be able to request an independent review of the decision by a review panel. The supplier of the LANTITE will be responsible for convening a review panel comprised of medical professionals and experts in the administration of standardised tests. The review process will be developed in consultation with external experts to ensure consistency with the *Disability Discrimination Act 1992* and will be subject to the department's approval.

The department procures the services of a supplier to administer the LANTITE. The procurement process will be conducted in accordance with the *Commonwealth Procurement Rules* (CPRs). The department will adhere to the standards and reporting requirements.

Funding for the supplier of the LANTITE will be provided in accordance with the department's Accountable Authority Instructions and delegations on the expenditure of relevant monies, and in accordance with the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).

Procurement decisions made in connection with the administration of the test are not considered suitable for independent merits 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 would be affected if the original decision was overturned. The Administrative Review Council (ARC) 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 re-making of a procurement decision after entry into a contractual arrangement with a successful provider is legally complex, impractical, and could result in disruptions to the availability of the test.

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 some additional avenues of redress (compensation or injunction) for dissatisfied providers or potential providers, depending on the circumstances.

The department has consulted with the current supplier of the LANTITE on the development of a paper-based test form. In 2020, the department engaged an external consultant, dandolopartners, to conduct an implementation review of the LANTITE. Part of this review required dandolopartners to consult with test candidates and higher education providers to identify possible areas for improved implementation. This engagement demonstrated that nearly 10 per cent of ITE students considered that the test should be available in a paper-based form, with many suggesting it affected their test performance. Further consultations with the supplier demonstrated that test candidates with visual processing disabilities have sought access to a paper-based form.

Funding of \$4.0 million over four years from 2021-22 (and subsequent \$1.0 million per year ongoing) for the LANTITE was included in the 2021-22 Budget under the measure 'School and Youth – supporting students, teachers and young Australians'. Details are set out in *Budget 2021-22, Budget Measures, Budget Paper No. 2 2021-22* at pages 78 to 80.

Funding for this item will come from the Supporting Australia's Teacher Workforce subprogram under Program 1.5: Early Learning and Schools Support, which is part of Outcome 1. Details are set out in the *Portfolio Budget Statements 2021-22, Budget Related Paper No. 1.4, Education, Skills and Employment Portfolio* at pages 13 and 45.

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

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

### 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 LANTITE is conducted exclusively in an online environment except where the provision of reasonable adjustments necessitates the use of a paper-based test.

### External affairs power

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

Australia has obligations under the *Convention on the Rights of Persons with Disabilities* (CRPD). Article 4(1) of the CRPD provides that ‘States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability.’

Article 24 of the CRPD provides that States Parties recognise the right of persons with disabilities to education and shall ensure an inclusive education system (Article 24(1)). To realise this right, States Parties need to ensure that:

- persons with disabilities are not excluded from the general education system on the basis of disability (Article 24(2)(a));
- reasonable accommodation of the individual’s requirements is provided (Article 24(2)(c)); and
- persons with disabilities receive the support required, within the general education system, to facilitate their effective education (Article 24(2)(d)).

Article 24(5) further provides that States Parties shall also ensure that persons with disabilities are able to access general tertiary education without discrimination and on an equal basis with others and, to that end, shall ensure that reasonable accommodation is provided to persons with disabilities.

‘Reasonable accommodation’ is defined in Article 2 of the CRPD to mean ‘necessary and appropriate modifications and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.’

The development of the paper-based test forms seeks to improve access to the test for test candidates who require adjustments to be made to the online test and/or testing environment in order to sit the test.

The paper-based test forms will help ensure that individuals with a disability have the opportunity to demonstrate their literacy and numeracy skills on an equal basis to other test candidates who can sit the test via the online platform without adjustment.

**Item 2 – Part 4 of Schedule 1AB (table item 263, column headed “Objective(s)”)**

Table item 263 in Part 4 of Schedule 1AB establishes legislative authority for government spending on the Civics and Citizenship Education Initiatives, which support civics and citizenship education in schools and help students to become active and informed citizens.

Item 2 amends table item 263 by omitting “years 11 and 12” and substituting “secondary school” in the column headed “Objective(s)”, which will extend participation in the annual National Schools Constitutional Convention to year 9 and 10 students.

**Item 3 – Part 4 of Schedule 1AB (table item 263, column headed “Objective(s)”)**

Item 3 amends table item 263 by omitting “objective also has” and substituting “objective has” in the column headed “Objective(s)”. The effect of this technical amendment to the additional operation provision is to align table item 263 with the current approach to referring to constitutional heads of power in table items in Schedule 1AB.

The department administers a number of civics and citizenship education initiatives such as the Simpson Prize, the National History Challenge and the National Schools Constitutional Convention (NSCC). Civics and citizenship education encourages students to take part and be involved in the democracy system in Australia by providing them with the knowledge, skills, values and dispositions of active and informed citizenship. The initiatives aim to increase students’ knowledge and understanding of Australia’s democratic heritage and traditions, its political and legal institutions and the shared values of freedom, tolerance, respect, responsibility and inclusion.

On 15 May 2021, the Minister for Education and Youth, the Hon Alan Tudge MP, the Minister for Employment, Workforce, Skills, Small and Family Business, the Hon Stuart Robert MP, and the Assistant Minister for Youth and Employment Services, the Hon Luke Howarth MP, jointly announced funding of \$1.0 million to strengthen civics and citizenship education and extend participation in the NSCC to year 9 and 10 students as part of the 2021-22 Budget. Media release is available at <https://ministers.dese.gov.au/tudge/morrison-government-supporting-young-australians>.

The NSCC encourages young Australians’ learning about the Australian Constitution and the role it plays in shaping Australia’s democracy, and promotes understanding of Australia’s democratic heritage and traditions. The first NSCC was held in 1995 and provided students in years 11 and 12 with an opportunity to:

- explore contemporary constitutional issues;
- become better informed about the Australian system of government and how the Australian Constitution provides the framework for our democracy; and
- take an active interest in the traditions, processes and practices of government.

The NSCC is held every year in March for approximately 120 students from all states and territories. Currently, students in years 11 and 12 are selected from state and territory feeder conventions to participate in a three-day national convention supported by the Education Ministers Meeting of Australian Governments.

Funding of \$400,000 in 2021-22 will be provided to support the establishment of a pilot program to expand the NSCC initiative to year 9 and 10 students. It is expected that by

expanding the NSCC to include additional students, this will ensure more young Australians learn skills and values to become engaged and informed citizens. The pilot will commence in 2022.

The department will conduct an open tender procurement process to engage an experienced organisation to deliver the pilot program. The contracted supplier will be required to provide a proposal and quotation for the delivery of the NSCC to year 9 and 10 students in 2022. The supplier will negotiate with the department to reach agreement regarding the delivery format.

Procurement decisions will be made in accordance with the Commonwealth resource management framework, including the PGPA Act and the CPRs. Final decision maker for the procurement will be the Assistant Secretary of the Student Learning Branch under the relevant instrument of delegation. 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](http://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 made in connection with the delivery of the NSCC, including its extension to year 9 and 10 students, are not considered suitable for independent merits review, as they are decisions relating to the allocation of a finite resource. In addition, any funding that has already been allocated would be affected if the original decision was overturned. The ARC 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 re-making of a procurement decision after entry into a contractual arrangement with a successful provider is legally complex, impractical, and could result in delays to providing services to students. The *Government Procurement (Judicial Review) Act 2018* enables suppliers to challenge some procurement processes for alleged breaches of certain procurement rules. This legislation might provide an additional avenue of redress (compensation or injunction) for dissatisfied providers or potential providers, depending on the circumstances.

Consultation with key stakeholders was not required for the pilot under the NSCC, as current year 11 and 12 students continue to be able to participate in the annual convention. Extensive consultation within the department took place to develop the approach to implement the pilot program. Expanding the cohort to include year 9 and 10 students will ensure more young Australians learn skills and values and align with stakeholder expectations of who is in scope to have access to the convention. The department will evaluate the effectiveness of the pilot program and provide advice and recommendation to the Government for consideration.

Funding for the pilot program was included in the 2021-22 Budget under the measure 'Schools and Youth – supporting students, teachers and young Australians'. Details are set out in *Budget 2021-22, Budget Measures, Budget Paper No. 2 2021-22* at pages 78 to 80.

Funding of \$400,000 in 2021-22 for this item will come from the Quality Outcomes subprogram under Program 1.5: Early Learning and Schools Support, which is part of

Outcome 1. Program details are set out in the *Portfolio Budget Statements 2021-22, Budget Related Paper No. 1.4, Education, Skills and Employment Portfolio* at page 45.

Quality Outcomes is a discretionary funding program for initiatives of importance to the Australian Government. The Minister for Education and Youth approves funding allocations under Quality Outcomes.

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

- the benefits to students aspect of the social welfare power (section 51(xxiiiA));
- the external affairs power (section 51(xxix));
- the territories power (section 122); 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 benefits to students.

The initiatives will provide funding to awards directed to recognising the academic achievements of individual students. The awards will provide prize money to winning students. The initiatives will also provide funding for selected Australian school students to attend a national student convention.

#### External affairs power

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

Australia has obligations relating to the education and cultural life of children under the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and the *Convention on the Rights of the Child* (CRC).

In particular, Australia has obligations regarding the right to take part in cultural life under Article 2 and Article 15 of the ICESCR. Article 2(1) requires each State Party to undertake to 'take steps ... to the maximum of its available resources' to progressively realise the rights recognised in the ICESCR. This includes 'the right of everyone to take part in cultural life' (Article 15(1)(a)), including steps 'necessary for the conservation, the development and the diffusion of science and culture' (Article 15(2)).

Under the CRC, States Parties are required to 'respect and promote the right of the child to participate fully in cultural and artistic life' and to 'encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity' (Article 31(2)). Article 4 of the CRC obliges States Parties to undertake 'all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention'.

The civics and citizenship education initiatives promote participation by school students in cultural life through civics and citizenship education. This assists in both the conservation and diffusion of Australian culture.

The external affairs power also empowers the Parliament to make laws in relation to places, persons, matters or things external to Australia.

As part of the Simpson Prize, funding will be provided to enable the winning students and supporting teachers to travel overseas to attend ANZAC Day celebrations.

#### Territories power

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

The initiatives will involve spending for the purposes of activities conducted in schools in the Northern Territory and the Australian Capital Territory. The initiatives will also provide funding to the NSCC held annually in Canberra.

#### 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 initiatives involves expenditure on national education initiatives and the provision of national prizes and awards.

#### **Item 4 – Part 4 of Schedule 1AB (table item 396)**

Item 4 amends table item 396 in Part 4 of Schedule 1AB by repealing and substituting the full text of the item. The amended table item 396 establishes legislative authority for government spending on the Mid-Career Checkpoint (the program), which provides funding for career guidance and training to assist persons to return to work or remain in work.

On 11 May 2021, as part of the 2021-22 Women’s Budget Statement, the Government announced it is expanding access to the existing program by reducing the requirement for participants to be out of paid employment for two or more years to only six or more months. The 2021-22 Budget also outlined that the Government was expanding the program to Victoria, beyond the existing pilots in Queensland and New South Wales, and to include existing workers at risk of unemployment, primarily targeting female-dominated, COVID-19 affected industries.

The program is a key element of the Government’s *Women’s Economic Security Statement 2020* (<https://pmc.gov.au/office-women/economic-security/wess>), and seeks to support women’s workforce participation and economic security through providing free professional skills and career advice.

The program was a 2019 election commitment to invest \$75.0 million to establish a mid-career checkpoint for caregivers who have taken time out of their career to care for their family and now seek to return to the workforce.

The program commenced as a pilot on 1 July 2020, was limited to 1,000 participants in New South Wales and Queensland and available to eligible working age Australians, in particular targeting women aged 30 to 45 years, supporting them to achieve economic security and to avoid the need to transition to income support.

Currently, the program provides two entry points:

- *Stepping Back In*: support for carers to re-enter the workforce; and
- *Stepping Up*: support to advance the careers of carers recently returned to the workforce.

Participants in *Stepping Back In* are provided with an initial discussion to assess their skills, needs and employment goals, and are provided with detailed career advice plan, including advice on professional development and skills training. Participants in *Stepping Up* are provided with a skills and employment assessment and a detailed career advice plan. All participants will also have the opportunity to engage in coaching sessions focussed on developing relevant skills, such as interview preparation, digital literacy or negotiating flexible working arrangements.

The amended table item 396 covers expenditure for the *Stepping Back In* and *Stepping Up* activities as supported by the original item 396, as well as expenditure for the new entry point for those in selected female-dominated, COVID-19 affected industries.

Currently, eligible participants must have left employment for two years or more to take up caring responsibilities, or have returned to paid employment within 18 months after a break for caring responsibilities. The amended table item 396 will expand eligibility to existing workers in female-dominated, COVID-19 affected industries (the new designated industry entry point). This group has been selected as industries most impacted by the pandemic have a traditionally predominantly female workforce. It is expected that program guidelines will designate particular industries as female-dominated, COVID-19 affected industries based on Australian Bureau of Statistics (ABS) data.

In addition, the department will implement a number of program refinements in 2021. This includes providing all program participants with access to a capped \$3,000 (GST exclusive) training grant to allow them to undertake training recommended in their career advice plan. This will provide a strong incentive for participants to access training once they have received career advice as part of the program. The department will also expand eligibility for the *Stepping Back In* component by reducing the requirement to be out of paid employment from two or more years to six or more months.

To support a comprehensive trial of the measures and allow the program to engage the maximum number of participants, the program will continue to be run as a limited pilot until 30 June 2022. The program end date will be extended by 12 months to 30 June 2024. In addition to existing pilots in Queensland and New South Wales, the program will also be piloted in Victoria from 1 July 2021. Evaluation of the Queensland and New South Wales pilots is due to be completed by 20 August 2021 and will be used to inform the national rollout of the program from July 2022.

The department will procure third party service providers to deliver the pilot in Victoria, Queensland and New South Wales. The procurement will be in accordance with applicable legislative requirements under the PGPA Act, the CPRs and the department's Accountable Authority Instructions. A range of procurement methods may be used to engage third party service providers, such as limited tenders or procurements under existing arrangements. Final spending decisions will be made by the Secretary of the department or an appropriate delegate.

The department will undertake an open procurement process to engage third party service providers to deliver the program nationally up until 2023-24. The procurement will be in accordance with applicable legislative requirements under the PGPA Act, the CPRs and the department's Accountable Authority Instructions. Final spending decisions will be made by the Secretary of the department or an appropriate delegate.

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](http://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 made in connection with the program for third party service providers are not considered suitable for independent merits 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 would be affected if the original decision was overturned. The ARC 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 re-making of a procurement decision after entry into contractual arrangements with a successful proponent is legally complex, impractical and would result in delays to commencement of the expanded initiative.

Decisions made in relation to the designated industries are not considered suitable for independent merits review. The program guidelines will designate particular industries as female-dominated, COVID-19 affected industries based on ABS data. Potential participants will be able to access the program if they are a worker in one of the designated industries.

These types of decisions are not considered suitable for external merits review as such decisions are automatic or mandatory in nature. The decision made will be very limited and procedural in nature and will not allow for significant exercise of a decision maker's discretion. The ARC has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 3.8 to 3.11 of the guide, *What decisions should be subject to merit review?*).

Decisions about potential participants are not considered suitable for independent merits review. Potential participants will be required to declare that they meet the eligibility criteria being that they meet one of the following: left employment for six months or more to take up

caring responsibilities; have returned to paid employment within 18 months after a break for caring responsibilities; or are a worker in a female-dominated, COVID-19 affected industry. The person's eligibility will be checked by the third party service provider, and if eligible the person will be able to participate. If the person is not eligible, the provider will direct the person to alternative services if available, and provide them with a complaints handling policy, which will include escalations of issues to the department. Issues escalated to the department will be investigated by the department and eligibility confirmed.

These types of decisions are not considered suitable for external merits review as such decisions are automatic or mandatory in nature. The decision made by the provider or departmental staff will be very limited and procedural in nature in relation to whether the person meets the eligibility criteria and will not allow for significant exercise of a decision maker's discretion. The ARC has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 3.8 to 3.11 of the guide, *What decisions should be subject to merit review?*).

Participation in the program will not be a compulsory requirement to receive an unemployment payment but the program may be included as a compulsory activity in an income support recipient's employment pathway plan where participation is an appropriate requirement for the person. Where participation in the program is included in a person's employment pathway plan as a compulsory activity, the person could face income support payment suspension, reduction or cancellation for not participating. Where the person has a valid reason for not participating, the suspension is ended and their payment will not be affected. Any decision to suspend, reduce or cancel a person's income support payment for failure to participate in the program may be subject to review on the merits and on questions of law, both within Services Australia and by appeal to the Administrative Appeals Tribunal.

The department conducted consultation internally within the Commonwealth, including the Office for Women in the Department of the Prime Minister and Cabinet in relation to the expansion and extension of the pilots and the program. The Office for Women supported the expansion. Informal consultation has also been undertaken with the third party service providers who supported both expanding the eligibility and the provision of the training funds.

Consultation was not undertaken with individuals or businesses likely to be affected by this program. Consultation with such persons was considered unnecessary or inappropriate as the expansion and extension of the pilots and the program provide modest refinements to the existing beneficial measure likely to be supported by affected individuals. External consultation would have also delayed the implementation of the expansion and the provision of services to affected individuals.

Funding for the expansion of the program to Victoria, expansion of eligibility for the program and training grants (to be met from within the existing resources of the department) was included in the 2021-22 Budget under the measure 'Women's Economic Security Package'. Details are set out in *Budget 2021-22, Budget Measures, Budget Paper No. 2 2021-22* at pages 81 to 82.

Funding for this item of \$73.4 million over three years from 2021-22 will come from the Skills Development subprogram under Program 3.1: Building Skills and Capacity, which

is part of Outcome 3. Details are set out in the *Portfolio Budget Statements 2021-22, Budget Related Paper No. 1.4, Education, Skills and Employment Portfolio* at pages 17 and 72.

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 unemployment benefits aspect of the social welfare power (section 51(xxiiiA)).

#### External affairs power

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

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

Article 2 of the ICESCR provides that each State Party shall take steps ‘to the maximum of its available resources’ to realise the rights within the ICESCR, including the right to work under Article 6(1). Article 6(2) sets out how the States Parties shall realise this right, including through ‘technical and vocational education programs’.

The program is intended to increase workforce participation and improve the earning potential of carers returning to work after a break to undertake caring responsibilities and workers in female-dominated, COVID-19 affected industries. By providing a range of services including skills and aptitude assessments, customised plans outlining employment goals and training suggestions (or other activities), coaching sessions on relevant employment-related skills such as digital literacy or interviewing skills, and access to a training grant to undertake recommended accredited training to upskill or re-skill, the program is designed to maximise available resources directed to achieve full realisation of the right to work.

Article 1(1) of the ILO Convention 122 requires Members to pursue ‘an active policy designed to promote full, productive and freely chosen employment.’ This obligation is supplemented by Article 2 which provides that Members shall ‘take such steps as may be needed, including when appropriate the establishment of programs’ to achieve the objectives of Article 1.

The program will provide a range of services which are directed towards promoting ‘full, productive and freely chosen employment’. These include providing a range of support services to assist people into employment, such as one-to-one assessments of skills and employment goals, the opportunity to undertake formal skills, employment suitability and/or aptitude assessments, guidance on creating employment goals and identifying necessary training (or other activities) to assist in achieving these goals. Participants will also have the opportunity to engage in coaching sessions focussed on developing relevant skills, such as interview preparation, digital literacy or negotiating flexible working arrangements. All

participants will be able to access grant funding to undertake recommended training to upskill or re-skill.

Article 1(1) of the ILO Convention 142 obliges Members to ‘adopt and develop comprehensive and co-ordinated policies and programmes of vocational guidance and vocational training, closely linked with employment, in particular through public employment services’. Article 1(2)(a) requires that the policies and programs 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.’

Article 3(1) 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.’

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

The program promotes vocational guidance and vocational training, closely linked with employment through the provision of a range of support services designed to prepare participants for the workforce, or to improve their employment participation or outcomes. The services provided under the program are designed to be tailored to meet individual’s needs and maximise people’s opportunity to obtain employment. The program is designed to take into account a particularly vulnerable group, being persons who have been out of the workforce for a period of time due to caring responsibilities and workers in female- dominated, COVID-19 effected industries where women are at risk of unemployment. The program intends to support this group to achieve economic security and find ongoing employment.

### *Social welfare power*

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

The program is open to all working age eligible Australians and is designed to support them to achieve economic security and avoid the need to transition to income support. Nevertheless, participants who are in receipt of unemployment benefits may participate in the program, provided eligibility criteria are met. Participation in the program will not be a compulsory requirement to receive an unemployment payment, but the program may be included as a compulsory activity in an income support recipient’s employment pathway plan where participation is an appropriate requirement for the person.

**Item 5 – Part 4 of Schedule 1AB (table item 433, column headed “Program”)**

Table item 433 in Part 4 of Schedule 1AB establishes legislative authority for government spending on the Local Jobs – COVID-19 Recovery Pilot, which was originally focussed on re-skilling, upskilling and employment pathways to assist people back into the workforce as the economy recovers from the COVID-19 pandemic. The Local Jobs Pilot put in place local Employment Facilitators, created Local Jobs and Skills Taskforces and provided Local Recovery Funds to support small scale projects in 25 Employment Regions.

Item 5 amends table item 433 by omitting “Pilot” in the column headed “Program”. From 1 July 2021, the Local Jobs Pilot was expanded into the Local Jobs – COVID-19 Recovery program (the Local Jobs program) to support all 51 Employment Regions across Australia. The program was also extended until 30 June 2025.

**Item 6 – Part 4 of Schedule 1AB (table item 433, column headed “Objective(s)”)**

Item 6 amends table item 433 by omitting “, on a trial basis,” in the column headed “Objective(s)”. The amended table item 433 establishes legislative authority for government spending on the Local Jobs program, which supports local organisations and stakeholders to develop and implement tailored approaches to accelerate re-skilling, upskilling and employment of job seekers in all 51 Employment Regions through the engagement of Employment Facilitators and the establishment of Local Jobs and Skills Taskforces.

A key emphasis of the Local Jobs Pilot, which is scheduled to end on 30 June 2022, is practical action to upskill job seekers into jobs in demand such as aged care, health care, and horticultural jobs. The Local Jobs Pilot brings together stakeholders such as employers, local chambers of commerce, the Regional Development Australia committees, employment services providers, and education and training providers to work towards a common objective: to meet employer needs while helping job seekers back into work or into training opportunities as quickly as possible.

An example of this is how the Local Jobs Pilot’s Employment Facilitators have collectively met around 5,000 people each month (across the 25 regions) to strengthen this coordination and connect providers and job seekers to current opportunities and upskill to meet future demand. Facilitators are focussed on employer needs with the majority of their engagements involving employers and employer groups, with most discussions focussed on workforce shortages.

The Local Jobs Pilot also effectively provides the National Skills Commission and the National Careers Institute with a regional network for them to deliver their rich data on regional labour markets directly to regional stakeholders – putting data into action to drive COVID-19 recovery in the regions.

In addition to Local Recovery Fund activities, Employment Facilitators are helping to develop and promote hundreds of local employment initiatives run by other organisations including state and local governments, employer associations and not-for-profits. These collaborative efforts help to improve the impact of existing programs and prevent duplication between employment initiatives.

On 11 May 2021, the Minister for Employment, Workforce, Skills, Small and Family Business, the Hon Stuart Robert MP announced that the Local Jobs program will be significantly expanded at a cost of \$213.5 million over four years. Media release is available at <https://ministers.dese.gov.au/robert/securing-our-economic-recovery-keeping-australians-working>.

The Local Jobs program allows more regions to coordinate employment and training solutions at a local level to assist in Australia's economic recovery from COVID-19. This is in recognition that the pandemic is affecting all communities throughout Australia and a national program will provide more equity to regional assistance and assist job seekers in the remaining communities to return to work more quickly. Job seekers with a *jobactive*, ParentsNext, Transition to Work, or New Employment Services Trial provider will be eligible to participate in projects funded under the Local Recovery Fund.

The Local Jobs Program has four mutually reinforcing elements:

- Employment Facilitators;
- Local Jobs and Skills Taskforces;
- Local Recovery Funds; and
- National Priority Fund.

#### Employment Facilitators

The Employment Facilitators are dedicated individuals who work with employers and key local stakeholders to develop employment solutions at a local level, including matching job seekers to training and employment in demand. Facilitators will chair the Local Jobs and Skills Taskforces, drive the development of a Jobs Plan (including a focus on local workforce development), engage with providers to help action the plan and work with local stakeholders to create targeted projects that meet the priorities of the plan.

#### Local Jobs and Skills Taskforces

The taskforces bring local stakeholders together, including major employers, employment services providers and training organisations to drive solutions and connections targeted to the conditions of each local labour market. Membership will be selected based on local needs and can include stakeholders such as local governments, registered training organisations, the Australian Council of Social Service, chambers of commerce, the Regional Development Australia committees, state governments (to better link to state agencies and minimise duplication), provider representatives, local Indigenous organisations and unions. One of the key roles of the taskforce is to develop Local Jobs Plans and identify regional priorities.

#### Local Recovery Fund

The Local Recovery Funds will be extended or established for each region to deliver small scale projects that place job seekers at the heart of local economic recovery. Each project is linked to priorities in the Local Jobs Plans.

#### National Priority Fund

Commencing from 1 July 2021, the \$50 million National Priority Fund will fund innovative initiatives across Australia that will address structural or other barriers to employment and

complement job creation initiatives to support Australians into work. Examples of supported initiatives may include those that:

- mitigate or remove barriers for Australian job seekers to take up work and/or meet the workforce needs of employers;
- strengthen the capacity of stakeholders, industries and local governments to identify workforce development needs, skills shortages and those occupational areas in which training or re-training might be targeted;
- complement the creation of durable employment for Australian job seekers;
- result in more efficient labour markets; and
- provide longer-term economic and social benefits for the community.

The National Priority Fund will complement and support the work of Employment Facilitators and Local Jobs and Skills Taskforces, and provide funding for larger and broader projects to address structural and other barriers to employment that may impact more than one region.

The Local Jobs program will ensure that the greatest number of people will be placed in appropriate employment or training opportunities as quickly as possible as the labour market recovers from the effects of COVID-19. It will enhance the ability of the department to respond to the differing impacts of COVID-19 on local labour markets through its existing employment programs, while supporting local decision makers' ability to understand and respond to the pandemic's impact on the labour market.

There has been a proliferation of labour market and vulnerable cohort programs by local, state and non-government sector stakeholders. The taskforces continue to play a central role in coordinating across these programs and therefore managing any risk that there will be too many unconnected programs at the local level.

Each local taskforce and Employment Facilitator will have access to data and information from the department, the National Skills Commission and the National Careers Institute on how skills can be transferred across industries and roles, as well as on new short training courses available to enable transition. Improving the use of this information at a regional level will help both job seekers and businesses to adjust to changing occupational requirements, identify transferrable skills and engage with the Vocational Education and Training (VET) sector.

Underpinning the Local Jobs program is the recognition that local communities are often best placed to quickly make decisions on their own needs and capabilities and respond to emerging opportunities at a community level. Local communities will be able to identify employment opportunities and their workforce requirements during COVID-19 recovery so that providers can best target their activities to prepare job seekers for these opportunities.

The department procures services of Employment Facilitators through an open competitive tender process. Prior to the commencement of the Local Jobs Pilot, 11 Employment Facilitators were already in place supporting the Regional Employment Trial (RET) and structural adjustment initiatives. Following the commencement of the Pilot, the remaining 14 Employment Facilitators for the initial 25 regions were engaged through procurement activities. The Request for Tender (RFT) was open between 2 to 27 October 2020 and tenderers (both successful and unsuccessful) were notified on 8 December 2020. Four Employment Facilitator positions were unfilled as a result of the first RFT.

A limited tender was then undertaken in December 2020 and closed on 7 January 2021, which resulted in the engagement of Employment Facilitators in three of the four regions. A gap filling exercise was undertaken to fill the last position, which closed on 1 February 2021 and resulted in the engagement of an Employment Facilitator. While the recruitment was undertaken, departmental representatives acted as interim Employment Facilitators.

With the announcement of the expansion of the Local Jobs program, and in keeping with the processes undertaken under the Pilot, an RFT was prepared and released in late May 2021 to engage Employment Facilitators for the additional 26 Employment Regions. Interim Employment Facilitators (departmental staff and contractors) will be in place until the permanent Employment Facilitators are engaged.

The department delivers projects under the Local Recovery Fund through an open and competitive tender process. Under the Local Jobs Pilot, stakeholders were invited to respond to a Request for Proposal (RFP). The department evaluates each proposal against the published evaluation criteria and is responsible for approving projects. All activities funded under the Local Recovery Fund must have an eligible employment services provider as a partner. For the purposes of the Local Jobs program, employment services providers include *jobactive*, New Employment Services Trial, Transition to Work and ParentsNext providers.

Applications for the first release of the Local Recovery Fund closed on 30 November 2020 and 15 projects were approved at a total cost of over \$2 million. In April 2021, the department undertook a limited tender process under the CPRs. The outcomes of this process are yet to be approved.

The expanded Local Jobs program will continue to utilise the Local Recovery Fund which 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. Applicants will continue to 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. Projects must have an employment services provider as a delivery partner.

The department will deliver funding under the National Priority Fund through an open and competitive tender process. The department intends to release a Request for Expression of Interest (REOI) to identify relevant initiatives that address structural or other barriers to employment and complement job creation. The department will promote the REOI to stakeholders, including community groups, employers, and local governments, and encourage them to engage with their local Employment Facilitator to discuss their ideas. The Employment Facilitators and the Local Jobs and Skills Taskforces will also be encouraged to promote the fund and encourage entities with suitable initiatives to apply.

The department intends to publish relevant assessment criteria with the REOI and this may include assessing the economic and social impact of the proposed initiative. The assessment criteria will be used to evaluate and shortlist proposals, and shortlisted respondents will be invited to respond to an RFT. Decisions related to shortlisting and tenders will be made by a delegate of the Secretary of the department.

The procurement processes will be undertaken in accordance with applicable requirements under the PGPA Act, the 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 ([www.tenders.gov.au](http://www.tenders.gov.au)) after signing. Decisions on successful tenderers will be made by departmental officials as delegates of the Secretary of the department.

Funding decisions relating to the Local Recovery Fund, Employment Facilitators and the National Priority Fund will not be subject to independent merits review on the grounds that these decisions are based on 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 ARC 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 *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 an 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 Employment Facilitators and will not be subject to independent merits review. Membership is not paid and so a decision not to select a person will have no adverse financial impact on a person. Persons not selected are still able to contact a taskforce or Employment Facilitator to provide their feedback and input about the Local Jobs program.

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 ARC 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 placement of a job seeker into a project under the Local Jobs program 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 program, 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. Where a participant misses out, it will be open to them to access other projects in the region under the Local Jobs program, or assistance from the suite of other employment programs.

Participating in projects may assist job seekers to maintain their eligibility for the 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. Participation in a project under the Local Jobs program 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 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. As such, consistent with paragraphs 4.56 to 4.57 of the ARC 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.

If a job seeker nonetheless considered that their ability to meet their participation requirements had been impacted by non-access to a project and were consequently subject to compliance action for failing to meet their participation requirements, 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 program 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 program or to provide relevant documents or information.

A central part of the Local Jobs Pilot was the consultation with key local stakeholders (employers, employment services providers, higher education and training organisations) by Employment Facilitators through the development of Local Jobs and Skills Taskforces. During the first six months of implementation, the Local Jobs Pilot generated a lot of public interest. This interest came from stakeholders involved in the Pilot citing its value, including strong interest in taskforce membership by business and local community members.

Feedback has also been provided by stakeholders from Employment Regions not covered by the Pilot, including local Members of Parliament, the Regional Development Australia committees and other advocacy groups, seeking clarification as to why their region was not included and enquiring about any expansion of the Pilot for the benefit of their area.

The Local Jobs Pilot was designed to cover the 25 regions most impacted by COVID-19 and experiencing long-term disadvantage. The expansion acknowledges that all regions have their own unique social and economic challenges and have been impacted by the pandemic. The expansion of the program to all 51 regions across Australia provides a more equitable approach and addresses the concerns of stakeholders previously not covered by the Pilot.

Additional funding of \$213.5 million over four years from 2021-22 was included in the 2021-22 Budget under the measure 'Getting Vulnerable Australians Back into Work –

additional support for job seekers'. Details are set out in *Budget 2021-22, Budget Measures, Budget Paper No. 2 2021-22* at page 89.

Funding for the Local Jobs program, including the Local Jobs Pilot, will come from Program 4.1: Employment Services, which is part of Outcome 4. Details are set out in the *Portfolio Budget Statements 2021-22, Budget Related Paper No. 1.4, Education, Skills and Employment Portfolio* at pages 20 and 77.

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 unemployment benefits aspect of 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 program will continue to 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 the 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.’

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 nationally coordinating employment and training solutions, the Local Jobs program will improve access to vocational education and training and employment opportunities in all Employment Regions across Australia. In doing so, the Local Jobs program 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 program is part of a broader Commonwealth response to the economic challenges presented by the COVID-19 pandemic. In particular, the program will facilitate the upskilling of job seekers into industries in demand, such as aged care and health care.

**Item 7 – In the appropriate position in Part 4 of Schedule 1AB (table)**

Item 7 adds two 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 498** establishes legislative authority for government spending on the Digital Skills Cadetship Trial (the Trial) to assist cadets to undertake vocational education and training in digital skills, including education and training provided by employers, and assist cadets with future employment opportunities.

The objective of the Trial is to deliver digital skills in a more flexible and timely manner than is available through current training options. The Trial will include up to four industry-led cadetship pilots to develop new and innovative pathways to increase the number of Australians with high level digital skills. Cadets will each undertake a cadetship that is expected to take around four to six months. The cadetships may then lead to employment or further training for the cadet. The cadetships will be driven by employer demand for skills in emerging and high technology digital fields, which may include (but are not limited to) cybersecurity, advanced manufacturing, data analytics, game design and animation.

The Trial is intended to target individuals seeking to expand existing skills to transition into new forms of employment or adapt to digitally augmented work roles. It may also potentially target school leavers and graduates looking to commence digital career pathways.

Cadetships will comprise structured education and training and on-the-job learning through an employer-sponsored work placement, alongside facilitated mentoring arrangements for cadets. The education and training component may include a combination of:

- units within an existing VET qualification that could later be used as credit towards a full qualification;
- VET and higher education units packaged into new forms of micro-credentials;
- industry accredited training (for example, training offered by global technology companies); and/or
- tailored training developed by employers or other parties involved in the pilots.

The delivery approach will be refined in consultation with key stakeholders. Contracted organisation/s will be expected to engage directly with employers, industry partners (such as relevant industry peak bodies) and employer networks to:

- determine the specific digital skills requirements of employers at the local level;
- work with education and training providers alongside employers to develop and deliver structured training programs coupled with on-the-job learning to meet employers' identified skills requirements;
- facilitate mentoring between cadets and experienced personnel; and
- build awareness of cadetship opportunities and leverage networks of employers and training providers to attract cadets and employers to the pilot projects.

Delivery organisation/s will be engaged during the second half of 2021. Cadetships will take place throughout 2022 and 2023. It is anticipated employers, who host cadets, will be responsible for employment related costs of cadets (for example, the payment of the cadet's wages/salary and other entitlements).

The Trial will generate valuable insights and approaches aimed at strengthening connections between employers and education and training providers. It will also identify opportunities to enhance Australia's national education and training qualifications. This will be achieved through the collection and analysis of data from the delivery of the Trial by the delivery organisation/s. This data will be used in an independent evaluation of the Trial to commence after the pilots have started.

The department will manage a procurement process to identify one or more delivery organisations to support delivery of the Trial. Any procurement process will be conducted in a manner consistent with the PGPA Act, the CPRs and the department's Accountable Authority Instructions.

Potential providers will need to provide detail of their proposed approach to delivering the Trial as part of the procurement process. This will include detail about the role and function of the employers and employer networks, education and training providers and mentors they intend to engage, as well as evidence that they have the necessary partnerships in place to deliver the Trial.

Following the procurement process, final spending decisions will be made by the Secretary of the department or an appropriate delegate. Information relevant to this procurement will be reported on AusTender ([tenders.gov.au](https://tenders.gov.au)), consistent with the CPRs.

Procurement decisions made in connection with the delivery of the Trial are not considered suitable for independent merits 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 would be affected if the original decision was overturned. The ARC 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 re-making of a procurement decision after entry into a contractual arrangement with a successful provider is legally complex, impractical, and could result in delays to providing services.

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

Throughout May and June 2021, the department consulted with a number of key stakeholders, including peak industry bodies, digital employers, and state and territory government departments. For example, discussions have taken place with the Business Council of Australia and the Digital Skills Organisation. Stakeholders have expressed support for the Trial and noted alignment with their own objectives to develop, upskill and re-skill individuals with the capabilities needed for digital careers. Following the procurement process for delivery of the Trial, the contracted organisation/s will also be required to engage extensively with industry and employers to design and deliver the pilots.

Funding for the Trial of \$10.7 million over three years from 2021-22 was included in the 2021-22 Budget under the measure 'Digital Economy Strategy'. Details are set out in *Budget 2021-22, Budget Measures, Budget Paper No. 2 2021-22* at page 75.

Funding for this item will come from the Digital Economy Strategy under Program 3.1: Building Skills and Capability, which is part of Outcome 3, and Program 4.1: Employment Services, which is part of Outcome 4. Details are set out in the *Portfolio Budget Statements*

2021-22, Budget Related Paper No. 1.4, Education, Skills and Employment Portfolio at pages 17 and 26.

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

External affairs power

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

Australia has obligations relating to 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 and 4.

Article 2 of the ICESCR requires Australia to take steps to achieve the ‘full realization’ of the rights enumerated within the ICESCR, including the right to work guaranteed by Article 6 of the ICESCR through the provision of ‘technical and vocational guidance and training programmes, policies and techniques’.

Article 1(1) of the ILO Convention 122 requires Australia to 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 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 requires Australia to develop and adopt ‘comprehensive and co-ordinated policies and programmes of vocational training’. Article 2 requires Australia to establish and develop ‘open, flexible and complementary systems of general, technical and vocational education, educational and vocational guidance and vocational training’. Article 4 requires Australia to gradually extend, adapt and harmonise ‘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’.

Funding the Trial would provide target groups, such as school leavers and people seeking a career change or new employment opportunities, with increased access to on-the-job training with employers in emerging and high technology digital fields. This is ultimately aimed at assisting these groups to take up employment opportunities in the digital field. Additionally, the Trial will generate valuable insights and approaches to strengthening connections between industry and training providers and identify opportunities to enhance Australia’s national education and training qualification system.

New **table item 499** establishes legislative authority for government spending on the Career Revive Initiative Expansion (the program), which will support up to 60 medium to large businesses to develop an employer action plan to address barriers to women's full and equal participation in the employer's workforce, and to promote such full and equal participation.

The program builds upon the 'Career Revive Initiative for Regional Women – supporting women to continue their careers after caring-related breaks', which started as a pilot in July 2019. The program is part of a broader range of measures under the Women's Economic Security Package aimed at increasing women's workforce participation and supporting women's economic independence.

On 1 December 2020, the then Minister for Employment, Skills, Small and Family Business, Senator the Hon Michaelia Cash, and the Minister for Women, Senator the Hon Marise Payne, jointly announced the 'Career Revive Pilot supporting Australian businesses to recruit women in regional areas', which aimed to increase women's workforce participation by supporting businesses to attract and retain women returning to work after a career break. The joint media release is available at <https://ministers.dese.gov.au/cash/career-revive-pilot-supporting-australian-businesses-recruit-women-regional-areas>.

The Career Revive Pilot is limited to 10 medium to large regional businesses per year over three years from 2019-20 across diverse industries and locations. Under the Pilot, business consultants work with selected businesses to improve workplace practices and policies to create workplaces that are supportive for women and assist those who are seeking to return to work after a career break. A full evaluation of the Pilot, including its effectiveness, is scheduled to be completed in 2021-22.

On 11 May 2021, the Minister for Employment, Workforce, Skills, Small and Family Business, the Hon Stuart Robert MP, announced the expansion of the Career Revive Pilot. Media release is available at <https://ministers.dese.gov.au/robert/securing-our-economic-recovery-keeping-australians-working>.

The program will incorporate learnings from the Pilot and expand to both regional and metropolitan areas to support up to 60 medium to large businesses over three years from 2021-22. This will see 10 additional businesses engaged in 2021-22 and 25 businesses per year in both 2022-23 and 2023-24. The expanded program will include businesses that operate within industries that experience higher levels of gender segregation. This will increase local labour market opportunities for women during the COVID-19 recovery.

Under the program, business improvement consultants will work with each business to develop a tailored action plan to identify and implement strategies to:

- better attract and recruit women (job design, advertising and selection practices, development of supported returner programs);
- improve retention of women employees (onboarding, parental leave programs); and
- enhance the foundational working environment for women employees (developing leadership support, workplace policies, social norms, and infrastructure).

The action plan and potential design of each returner program will vary depending on the size of the business, the industry it operates in, and the business' readiness to employ and support women returning to the workforce.

The business improvement consultants will also provide mentoring support to each business' leadership team to champion the implementation of identified strategies within their action plan. While no financial support will be provided by the Government to the participating employers, they will benefit from the expert advice provided by the consultant at no cost. Through participation in the program, employers will gain a competitive advantage through an increased ability to attract and retain skilled women from a wider talent pool.

The department will promote the opportunity directly to businesses through the purchase of business lists and to industry peak bodies, such as the Australian Human Resources Institute and other relevant organisations to promote the program within their networks.

The department will engage business improvement consultants through a competitive procurement process to work with selected businesses. One or more business improvement consultants will be selected through an existing panel arrangement, likely the Capability Support Services Panel managed by the Australian Federal Police. This procurement commenced in July 2021 with contracts expected to be in place by September 2021. Final procurement decisions will be made by a delegate of the Secretary of the department. Information relevant to this procurement will be reported on AusTender ([tenders.gov.au](https://tenders.gov.au)), consistent with the CPRs. All procurement decisions will be made in accordance with the Commonwealth resource management framework, including the PGPA Act and the CPRs.

The selection of business improvement consultant/s will be based on value for money for the Commonwealth and quality of the business improvement consultant's response to the request for quote. The quality of the response will be assessed against criteria including:

- the organisation's experience in delivering similar services, as well as the organisation's nominated personnel's skills, qualification and experience;
- a project plan detailing the proposed methodology and timetable for the delivery of the services; and
- pricing.

The selection of participant employers will be conducted through an online expression of interest (EOI) process managed by the department. Applicants from medium (50-199 employees) and large (200 or more employees) businesses will be invited to submit an EOI.

To ensure fairness and accountability, final decisions about participants will be made by a delegate of the Secretary of the department based on:

- the employer's capacity and willingness to work with a consultant on changes needed to make its business attractive to women returning to the workforce;
- the employer's willingness to consider implementing a returner program in its business;
- the employer's willingness to be featured in case studies and be demonstrators of best practice;
- having a reasonable distribution of businesses across industries;
- having a reasonable distribution of metropolitan and regionally based businesses across states; and
- value for money/economies of scale.

Procurement decisions made in connection with the program are not considered suitable for independent merits 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 would be affected if the original decision was overturned. The ARC 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 re-making of a procurement decision after entry into contractual arrangements with a successful proponent is legally complex, impractical and would result in delays to commencement of the program.

Decisions about which employers will participate will not be subject to independent merits review. This is because these decisions relate to the allocation of a finite resource (being the capped number of employers the consultant/s will be engaged to work with) between competing applicants (being those employers that submit an expression of interest). Merits review may affect the existing selection of other employers given the limited number of employers that can take part in the program. The ARC 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 the event an issue arises for an employer as part of the selection process or during participation in the program and the issue is raised with the department, the department will handle the matter by acknowledging receipt of the request and contacting the employer with a view to resolving any issues as soon as practicable. The department will review the issue and work with the employer (and where relevant, the consultant) to address it where needed. The relevant area of the department will investigate and undertake an independent review of the case. The department will respond to the employer regarding the outcome of its request.

An employer who is not chosen to participate in the program can also raise the matter with the Commonwealth Ombudsman.

The department conducted consultation internally within the Commonwealth, including the Office for Women in the Department of the Prime Minister and Cabinet in relation to expanding the program to non-regional locations. The Office for Women supported the expansion.

Consultation was not undertaken with individuals or businesses likely to be affected by this program. Consultation was considered unnecessary and impracticable given the modest size of the expansion from the Career Revive Pilot. Further, the Pilot has had strong interest from regional employers with each expression of interest round being fully subscribed. Early feedback from participants in the Pilot has indicated that they have found the initiative beneficial and are implementing changes to their organisations to improve women's engagement, attraction and retention despite challenges presented by COVID-19. As such, external consultation in relation to the program was considered unnecessary.

Funding for the program of \$2.6 million over three years from 2021-22 was included in the 2021-22 Budget under the measure 'Women's Economic Security Package'. Details are set out in *Budget 2021-22, Budget Measures, Budget Paper No. 2 2021-22* at page 82.

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 2021-22, Budget Related Paper No. 1.4, Education, Skills and Employment Portfolio* at pages 20 and 77.

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

### External affairs power

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

Australia has obligations relating to the following conventions:

- the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), including Articles 1, 2, 3 and 11;
- the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), including Articles 2 and 6; and
- the International Labour Organization’s *Convention concerning Employment Policy* (ILO Convention 122), including Articles 1 and 2.

### *CEDAW*

Article 1 provides that for the purposes of the CEDAW, “the term ‘discrimination against women’ shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”.

Article 2 provides that States Parties condemn discrimination against women in all its forms, and agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women.

Article 3 requires ‘States Parties to take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men’.

Article 11 provides that States Parties shall ‘take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights’.

The program will support the implementation of Australia’s obligations under the CEDAW by providing assistance to specific employers to develop an action plan to attract and recruit women, and promote the equal opportunity of women’s participation in the workforce.

*ICESCR*

Article 2(1) of the ICESCR provides that each State Party shall take steps ‘to the maximum of its available resources’ to realise the rights within the ICESCR, including the right to work recognised in Article 6(1). Article 2(2) provides that the States Parties undertake to guarantee that the rights enunciated in the ICESCR, including the right to work recognised in Article 6(1), ‘will be exercised without discrimination of any kind’ as to sex or other status.

The program is intended to assist employers to identify and address barriers in their workplace that may impact on the engagement and retention of women. The program will provide a range of services tailored to the employer to assist the employer to better attract and recruit women, improve the retention of women employees, and enhance the foundational working environment for women. The program is therefore designed to maximise available resources directed to achieve full realisation of the right to work.

*ILO Convention 122*

Article 1(1) of the ILO Convention 122 requires Members to pursue ‘an active policy designed to promote full, productive and freely chosen employment’. This obligation is supplemented by Article 2 which provides that Members shall ‘take such steps as may be needed, including when appropriate the establishment of programs’ to achieve the objectives of Article 1.

The program will provide services to employers which are directed towards promoting full, productive and freely chosen employment. These services will assist the employer to identify and address barriers in their businesses that impact women returning to work, and improve women’s engagement, attraction and retention in their chosen employment.

## **Statement of Compatibility with Human Rights**

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

### ***Financial Framework (Supplementary Powers) Amendment (Education, Skills and Employment Measures No. 3) Regulations 2021***

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 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. 3) Regulations 2021* amend Schedule 1AB to the FF(SP) Regulations to establish legislative authority for government spending on certain activities administered by the Department of Education, Skills and Employment (the department).

This disallowable legislative instrument makes the following amendments to Part 4 of Schedule 1AB:

- repeals and substitutes table item 111 ‘Literacy and Numeracy Test for Initial Teacher Education’;
- amends table item 263 ‘Civics and Citizenship Education Initiatives’;
- repeals and substitutes table item 396 ‘Mid-Career Checkpoint’;
- amends table item 433 ‘Local Jobs – COVID-19 Recovery Pilot’;
- adds table item 498 ‘Digital Skills Cadetship Trial’; and
- adds table item 499 ‘Career Revive Initiative Expansion’.

#### **Table item 111 – Literacy and Numeracy Test for Initial Teacher Education**

This disallowable legislative instrument repeals and substitutes table item 111 in Part 4 of Schedule 1AB, which establishes legislative authority for government spending on the Literacy and Numeracy Test for Initial Teacher Education (LANTITE) program. The program involves the delivery of the LANTITE online and, for eligible persons with a disability, the delivery through non-online means.

The LANTITE reflects Standard 3.5 of the ‘Accreditation of initial teacher education programs in Australia: Standards and Procedures’ (Standards and Procedures) set by Education Ministers in 2011. The test was first introduced on 1 July 2016, following a review

of initial teacher education (ITE) programs across Australia conducted by the Teacher Education Ministerial Advisory Group (TEMAG), which recommended that the LANTITE be implemented to strengthen the system.

All state, territory and Commonwealth Education Ministers gave effect to TEMAG's recommendation by agreeing to amend the Standards and Procedures from 1 July 2016. The amended Standards and Procedures require all ITE students to sit the LANTITE and demonstrate that they possess levels of personal literacy and numeracy equivalent to the top 30 per cent of the Australian adult population before graduating from an ITE program or registering as a qualified teacher.

In late 2020, Education Ministers have also decided that from 2023 ITE students will have the option to sit the LANTITE before they begin their degree. This decision offers more certainty and fairness to prospective students and gives higher education providers the opportunity to provide targeted support to students who are struggling to meet the required standard.

The department oversees the administration of the test by contracting a supplier to develop, refresh and administer the test via an online test platform. The test is currently being delivered and administered by the Australian Council for Educational Research. The supplier will be also be responsible for determining which test candidates are able to access the paper-based test forms. The paper-based form will add to the extensive range of adjustments available to candidates sitting the test and provide an additional option for test candidates with specific disabilities that require them to access reasonable adjustments to sit the test. These adjustments will comply with the obligation in the *Disability Discrimination Act 1992*.

### **Human rights implications**

The amended table item 111 engages the following rights:

- the right to education – Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), read with Article 2, and Articles 28 and 29 of the *Convention on the Rights of the Child* (CRC), read with Article 4; and
- the right to education – persons with a disability – Article 24 of the *Convention on the Rights of Persons with Disabilities* (CRPD), read with Article 4.

#### *Right to education – children*

The amended table item 111 engages the right to education in Article 13 of the ICESCR and Articles 28 and 29 of the CRC.

Article 2 of the ICESCR requires the States Parties to take steps to progressively achieve the full realisation of the rights recognised in the ICESCR by all appropriate means.

Article 13(2)(a) of the ICESCR relates to the right of everyone to primary education that is compulsory and free.

Article 4 of the CRC requires States Parties to undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the CRC. These rights include 'the right of the child to education' (Article 28).

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

The amended item 111 supports the right to education by facilitating the assessment mechanism that ensures that only individuals with an adequate level of literacy and numeracy can qualify as teachers, in turn assisting to ensure a quality education is provided to children in schools.

#### *Right to education – persons with a disability*

The amended table item 111 engages the right to education – persons with a disability – in Article 24 of the CRPD.

Article 4 of the CRPD provides that States Parties undertake to ensure and promote the full realisation of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability.

Article 24 of the CRPD provides that States Parties ‘recognize the right of persons with disabilities to education and shall ensure an inclusive education system’ (Article 24(1)). To realise this right, States Parties need to ensure that:

- persons with disabilities are not excluded from the general education system on the basis of disability (Article 24(2)(a));
- reasonable accommodation of the individual’s requirements is provided (Article 24(2)(c)); and
- persons with disabilities receive the support required, within the general education system, to facilitate their effective education (Article 24(2)(d)).

Article 24(5) further provides that States Parties shall also ensure that persons with disabilities are able to access general tertiary education without discrimination and on an equal basis with others and, to that end, shall ensure that reasonable accommodation is provided to persons with disabilities.

‘Reasonable accommodation’ is defined in Article 2 of the CRPD to mean ‘necessary and appropriate modifications and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.’

The amended table item 111 ensures students and prospective students with a disability can participate in an important component of their study without the discriminatory effect of an online-only test. This would assist to ensure that the tertiary education system is inclusive and supportive, and that it provides reasonable accommodations to students with a disability.

### **Conclusion**

The amended table item 111 is compatible with human rights because it promotes the protection of human rights.

Table item 263 – Civics and Citizenship Education Initiatives

This disallowable legislative instrument amends table item 263 in Part 4 of Schedule 1AB, which establishes legislative authority for government spending on the Civics and Citizenship Education Initiatives to support civics and citizenship education in schools and help students to become active and informed citizens. The amended table item 263 extends participation in the annual National Schools Constitutional Convention (NSCC) to year 9 and 10 students.

The department administers a number of civics and citizenship education initiatives such as the Simpson Prize, the National History Challenge and the NSCC. Civics and citizenship education encourages students to take part and be involved in the democracy system in Australia by providing them with the knowledge, skills, values and dispositions of active and informed citizenship. The initiatives aim to increase students' knowledge and understanding of Australia's democratic heritage and traditions, its political and legal institutions and the shared values of freedom, tolerance, respect, responsibility and inclusion.

The NSCC encourages young Australians' learning about the Australian Constitution and the role it plays in shaping Australia's democracy, and promotes understanding of Australia's democratic heritage and traditions. The NSCC is held every year in March for approximately 120 students from all states and territories. Currently, students in years 11 and 12 are selected from state and territory feeder conventions to participate in a three-day national convention supported by the Education Ministers Meeting of Australian Governments.

### **Human rights implications**

The amended table item 263 engages the following right:

- the right to take part in cultural life – Article 15 of the ICESCR, read with Article 2, and Article 31 of the CRC, read with Article 4.

#### *Right to take part in cultural life*

Article 2 of the ICESCR requires the States Parties to take steps to progressively achieve the full realisation of the rights recognised in the ICESCR by all appropriate means.

Article 15(1)(a) of the ICESCR provides that '[t]he States Parties to the present Covenant recognize the right of everyone to take part in cultural life'. Article 15(2) of the ICESCR provides that '[t]he steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.'

Article 4 of the CRC obliges States Parties to undertake 'all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention'.

Under Article 31(2) of the CRC, States Parties are required to 'respect and promote the right of the child to participate fully in cultural and artistic life' and to 'encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity'.

The amended table item 263 promotes participation by school students in cultural life through civics and citizenship education. This assists in both the conservation and diffusion of Australian culture.

## **Conclusion**

The amended table item 263 is compatible with human rights because it promotes the protection of human rights.

### *Table item 396 – Mid-Career Checkpoint*

This disallowable legislative instrument repeals and substitutes table item 396 in Part 4 of Schedule 1AB, which establishes legislative authority for government spending on the Mid-Career Checkpoint (the program). The program provides funding for career guidance and training to assist persons to return to work or remain in work.

The program commenced as a pilot on 1 July 2020, was limited to 1,000 participants in New South Wales and Queensland and available to eligible working age Australians, in particular targeting women aged 30 to 45 years, supporting them to achieve economic security and to avoid the need to transition to income support.

Currently, the program provides two entry points:

- *Stepping Back In*: support for carers to re-enter the workforce; and
- *Stepping Up*: support to advance the careers of carers recently returned to the workforce.

The amended table item 396 will expand the program by:

- reducing the requirement for participants to be out of paid employment for two or more years to six or more months;
- including existing workers at risk of unemployment, primarily targeting female-dominated, COVID-19 affected industries;
- providing a capped \$3,000 training grant to allow participants to undertake training recommended in their career advice plan; and
- extending the program to Victoria, beyond the existing pilots in Queensland and New South Wales.

## **Human rights implications**

The amended table item 396 engages the following rights:

- the right to work – Article 6 of the ICESCR, read with Article 2;
- the right to an adequate standard of living – Article 11(1) of the ICESCR;
- the right to education – Article 13 of the ICESCR; and
- the right to equality and non-discrimination – Articles 16 and 26 of the *International Covenant on Civil and Political Rights* (ICCPR), read with Article 2.

### *Right to work and right to an adequate standard of living*

The amended table item 396 engages the right to work in Article 6 of the ICESCR, which recognises the right of every person to the opportunity to gain a living by work which they

freely choose or accept. The amended table item 396 also engages the right to an adequate standard of living in Article 11(1) of the ICESCR, which recognises the right of everyone to an adequate standard of living and for their family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. Articles 6 and 11 should be read with Article 2 of the ICESCR which requires the States Parties to take steps to progressively achieve the full realisation of the rights recognised in the ICESCR by all appropriate means.

The amended table item 396 promotes the right to work as it is designed to increase workforce participation and improve the earning potential of Australians who have been out of the workforce attending to caring responsibilities, and provide support to Australians in designated industries to advance their chosen careers. The program is open to all working age eligible Australians, with a focus on women aged 30 to 45 years, and provides support through access to skills and employment assessment services, advice on re-entry into the workforce, and suggestions about professional and skills development or changing career paths. These measures are intended to support participants back into the workforce and as such, promote the right to work and the right to adequate standard of living.

#### *Right to education*

The amended table item 396 engages the right to education in Article 13 of the ICESCR, which recognises that secondary education, including technical and vocational secondary education, should be made generally available and accessible to all. Article 13 should be read with Article 2 of the ICESCR.

The amended table item 396 promotes the right to education as it will provide participants access to the capped \$3,000 training grant which will create strong incentive for participants, particularly women, to access training once they have received career advice as part of *Stepping Back In, Stepping Up* or the new designated industry entry point. The training incentive will also remove or reduce the financial barrier that some participants may face in accessing education, particularly noting that the measure targets people who are out of the workforce, have recently returned to employment, and workers in female-dominated, COVID-19 affected industries. The training grant is intended to support participants undertake education, including technical and vocational education, and as such promotes the right to education.

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

The amended table item 396 engages the right to equality and non-discrimination set out in Articles 2, 16 and 26 of the ICCPR, which provide that all persons are equal before the law and shall not be subject to discrimination.

The program is open to all working age eligible Australians, with a focus on women aged 30 to 45 years, supporting them to achieve economic security and to avoid the need to transition to income support. To the extent this is considered to be a limitation on the right, this is reasonable, necessary and proportionate in the circumstances. Women, particularly in this age bracket, are the demographic most likely to take time out of the workforce to be caregivers. Given the often extended break from the workforce, women are most vulnerable to not returning to the workforce and becoming dependent on income support. The program is

designed to support and assist women back into the workforce, and support equality between men and women.

The amended table item 396 is compatible with the right to equity and non-discrimination, as it promotes those rights and to the extent that it may limit those rights, those limitations are reasonable, necessary and proportionate as indicated above.

## **Conclusion**

The amended table item 396 is compatible with human rights because it promotes the protection of human rights.

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

This disallowable legislative instrument amends table item 433 in Part 4 of Schedule 1AB, which establishes legislative authority for government spending on the Local Jobs – COVID-19 Recovery Pilot (the Local Jobs Pilot). The Local Jobs Pilot was originally focussed on re-skilling, upskilling and employment pathways to assist people back into the workforce as the economy recovers from the COVID-19 pandemic. The Local Jobs Pilot put in place local Employment Facilitators, created Local Jobs and Skills Taskforces and provided Local Recovery Funds to support small scale projects in 25 Employment Regions.

The amended table item 433 supports the expansion of the Local Jobs Pilot into the Local Jobs – COVID-19 Recovery program (the Local Jobs program). The program was also extended until 30 June 2025. The Local Jobs program supports local organisations and stakeholders to develop and implement tailored approaches to accelerate re-skilling, upskilling and employment of job seekers in all 51 Employment Regions through the engagement of Employment Facilitators and the establishment of Local Jobs and Skills Taskforces.

The Local Jobs program has four mutually reinforcing elements:

- *Employment Facilitators*, dedicated individuals who work with employers and key local stakeholders to develop employment solutions at a local level, including matching job seekers to training and employment in demand;
- *Local Jobs and Skills Taskforces* bring local stakeholders together, including major employers, employment services providers and training organisations to drive solutions and connections targeted to the conditions of each local labour market;
- *Local Recovery Funds* (to be extended or established for each region) deliver small scale projects that place job seekers at the heart of local economic recovery; and
- *National Priority Fund* supports innovative initiatives across Australia to address structural or other barriers to employment and complement job creation initiatives to support Australians into work.

## **Human rights implications**

The amended table item 433 engages the following right:

- the right to work – Article 6 of the ICESCR, read with Article 2.

### *Right to work*

Article 2 of the ICESCR provides that the 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 each State Party ‘will take appropriate steps to safeguard this right’. Article 6(2) provides that the steps to be taken by each 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 amended table item 433 continues to support and promote the right to work by expanding and extending the existing Local Jobs Pilot to all 51 Employment Regions throughout Australia until 30 June 2025. This is in recognition that the COVID-19 pandemic is affecting all communities throughout Australia and a national program will provide more equity to regional assistance and assist job seekers in the remaining communities to return to work more quickly.

Under the Local Jobs program, 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 program to prioritise the funding of projects that move unemployed job seekers to employment. The National Priority Fund will further support the right to work in Article 6 by funding projects which address structural and other barriers to employment.

### **Conclusion**

The amended table item 433 is compatible with human rights because it promotes the protection of human rights.

### *Table item 498 – Digital Skills Cadetship Trial*

This disallowable legislative instrument adds a new table item 498 to Part 4 of Schedule 1AB, which establishes legislative authority for government spending on the Digital Skills Cadetship Trial (the Trial) to assist cadets to undertake vocational education and training in digital skills, including education and training provided by employers, and assist cadets with future employment opportunities.

The objective of the Trial is to deliver digital skills in a more flexible and timely manner than is available through current training options. The Trial will include up to four industry-led cadetship pilots delivered through one or more organisations who will partner with employers to deliver cadetships, which are expected to take around four to six months, and could then lead to employment or further training for cadets.

The cadetships will be driven by employer demand for skills in emerging and high technology digital fields, which may include (but are not limited to) fields such as cybersecurity, advanced manufacturing, data analytics, game design and animation.

## Human rights implications

Table item 498 engages the following rights:

- the right to work – Article 6 of the ICESCR, read with Article 2, and Article 1 of the International Labour Organization’s *Convention concerning Employment Policy* (ILO Convention 122); and
- the right to education – Article 13 of the ICESCR, and Article 1 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*

Table item 498 engages Article 2(1) of the ICESCR, which provides that each State Party to the ICESCR undertakes to take steps to progressively achieve the full realisation of the rights recognised in the ICESCR by all appropriate means, including particularly the adoption of legislative measures. Relevantly:

- Article 6(1) of the ICESCR provides that the States Parties recognise the right to work; and
- Article 6(2) of the ICESCR sets out the steps to be taken by the States Parties to achieve the full realisation of that right, including providing technical and vocational guidance and training programs, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedom to the individual.

Table item 498 also engages Article 1(1) of the ILO Convention 122, which provides that, with a view to stimulating economic growth and development, raising levels of living standards, meeting workforce requirements and overcoming unemployment and underemployment, each Member shall declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment.

Table item 498 promotes the right to work as expressed in the relevant articles of the treaties above by providing cadets with increased opportunities to access education and training that is targeted at developing skills that are increasingly valued in a rapidly digitising economy.

### *Right to education*

Table item 498 engages Article 13 of the ICESCR. Article 13(1) provides that the States Parties to the ICESCR:

- recognise the right of everyone to education;
- 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;
- agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all the nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

Article 13(2)(b) of the ICESCR provides that vocational education in its different forms, including technical and vocational secondary education, shall be made generally available

and accessible to all by every appropriate means, and in particular by the progressive introduction of free education.

Article 13(2)(c) of the ICESCR provides that higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education.

Table item 498 also engages Article 1(1) of the ILO Convention 142, which provides that each Member shall adopt and develop comprehensive and coordinated policies and programs of vocational guidance and vocational training, closely linked with employment.

## **Conclusion**

Table item 498 is compatible with human rights because it promotes the protection of human rights.

### *Table item 499 – Career Revive Initiative Expansion*

This disallowable legislative instrument adds a new table item 499 to Part 4 of Schedule 1AB, which establishes legislative authority for government spending on the Career Revive Initiative Expansion (the program), which will support up to 60 medium to large businesses to develop an employer action plan to address barriers to women’s full and equal participation in the employer’s workforce, and to promote such full and equal participation.

On 1 December 2020, the Government announced the ‘Career Revive Pilot supporting Australian businesses to recruit women in regional areas’, which aimed to increase women’s workforce participation by supporting businesses to attract and retain women returning to work after a career break. The pilot was limited to 10 medium to large regional businesses per year over three years from 2019-20 across diverse industries and locations.

The program will incorporate learnings from the pilot and expand to both regional and metropolitan areas to support up to 60 medium to large businesses over three years from 2021-22. The expanded program will include businesses that operate within industries that experience higher levels of gender segregation. This will increase local labour market opportunities for women during the COVID-19 recovery.

Under the program, business improvement consultants will work with each business to develop a tailored action plan to identify and implement strategies to:

- better attract and recruit women (job design, advertising and selection practices, development of supported returner programs);
- improve retention of women employees (onboarding, parental leave programs); and
- enhance the foundational working environment for women employees (developing leadership support, workplace policies, social norms, and infrastructure).

## **Human rights implications**

Table item 499 engages the following rights:

- the right to equality and non-discrimination – Articles 1, 2, 3 and 11 of the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW);

- the right to an adequate standard of living – Article 11 of the ICESCR, read with Article 2; and
- the right to work – Article 6 of the ICESCR and Article 11 of the CEDAW.

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

Article 1 of the CEDAW defines ‘discrimination against women’ to mean ‘any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women... on a basis of equality of men and women, of human rights and fundamental freedoms’.

Article 2 of the CEDAW requires the pursuit of the elimination of discrimination against women and Article 3 of the CEDAW requires States Parties to take all appropriate measures, including legislation, ‘to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men’.

Article 11 of the CEDAW requires States Parties to take appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights. In particular, Article 11 of the CEDAW recognises the right to work as an inalienable right of all human beings and the right to free choice of profession and employment.

While women’s labour force participation rates have increased significantly over recent decades, the factors that underpin the gap between women’s and men’s labour force participation remain. As noted in the *Women’s Economic Security Statement 2020*, Australia’s workforce is highly segregated by gender, with only 9 out of 19 industries having at least 40 per cent men and women. Women also continue to undertake significantly more unpaid domestic and care work than men, and are far more likely to take time out of the workforce and work part time.

The program seeks to work with employers to address discrepancies that exist in women’s workforce participation when returning to work and support women’s career progression in their chosen employment. The program is aimed at addressing difficulties faced by women who wish to return to work after a caring related break and increasing women’s workforce participation by providing assistance to prospective employers.

The program furthers the right to equality and non-discrimination for women re-entering the workforce after caring related breaks. While this positive discrimination in favour of women may result in discrimination against men seeking the same job opportunities, it is permissible as a means of addressing the disparity between gender employment figures.

### *Right to an adequate standard of living*

Article 11 of the ICESCR recognises the right of everyone to an adequate standard of living and to the continuous improvement of living conditions. Article 11 should be read with Article 2 of the ICESCR.

The program promotes the right to an adequate standard of living by increasing women’s workforce participation by encouraging, and providing assistance to, medium to large

businesses to employ women returning to work and support women in their workforce. This in turn promotes the continuous improvement of living conditions of women.

### *Right to work*

Article 6 of the ICESCR and Article 11 of the CEDAW recognise the right to work.

The program encourages and incentivises medium and large businesses to support, attract and retain women returning to work. The process encourages women to transition back to the workforce and engage with their right to work.

The program creates a strong incentive for medium and large employers to participate by gaining expert advice provided by the consultant at no cost. Through participation in the initiative, employers will gain a competitive advantage through an increased ability to attract and retain skilled women from a wider talent pool.

The program will support participant employers by providing assistance and resources to enable those employers to identify and address barriers in their businesses that impact or impede women returning to work.

Consultants support the participant businesses to make significant cultural changes within the workplace including establishing gender action plans and gender awareness committees to engage employers to support women in leadership positions and in male-dominated professions.

Table item 499 will therefore promote full, productive and freely chosen employment by promoting practices that support women's return to the workforce and right to work.

### **Conclusion**

Table item 499 is compatible with human rights because it promotes the protection of human rights.

**Senator the Hon Simon Birmingham  
Minister for Finance**