

## REPLACEMENT EXPLANATORY STATEMENT

**This Explanatory Statement replaces the Explanatory Statement registered on 1 November 2021 for the *Financial Framework (Supplementary Powers) Amendment (Education, Skills and Employment Measures No. 4) Regulations 2021* [F2021L01494] to provide further information about delegation of administrative powers and functions in relation to several programs included in the instrument.**

**Issued by the Authority of the Minister for Finance**

*Financial Framework (Supplementary Powers) Act 1997*

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

- a grant to MultiLit Pty Limited to provide phonics-based programs to support literacy outcomes for students, particularly Aboriginal and Torres Strait Islander students (\$8 million over four years from 2021-22);
- a grant to Together for Humanity Foundation Limited to deliver the Inclusion Education for Connected Youth and Communities Initiative, which includes intercultural solutions, programs and resources for students, teachers and school communities and related research (\$8.1 million over four years from 2021-22);

- the Explicit Instruction Teaching Program (formerly known as the Flexible Literacy Remote Primary Schools Program), which will support training for teachers at educationally disadvantaged primary schools to enable them to adopt explicit instruction teaching methods in relation to literacy, numeracy and science to improve the skills and knowledge of students, particularly Aboriginal and Torres Strait Islander students (\$9.9 million over four years from 2021-22);
- the development, implementation and maintenance of the Online Formative Assessment Initiative, which will facilitate access to online teaching resources, tools, student assessments, professional learning and other support for teachers. The Initiative is one of eight national policy initiatives under the *National School Reform Agreement* (NSRA) (\$35 million over two years from 2021-22 for the NSRA initiatives);
- school partnerships to improve educational outcomes for Indigenous students in remote schools (\$25.9 million over four years from 2021-22);
- incentives to increase the number of skilled migrants who can contribute to the Australian workforce at an appropriate skill level, by funding the development, promotion and provision of skills assessments, employability assessments and skills training (\$19.7 million over three years from 2021-22);
- the Skills for Education and Employment Program, which will provide language, literacy, numeracy and digital skills training to eligible job seekers to assist their prospects for further education and employment opportunities (\$512.5 million over four years from 2021-22); and
- improvements to the vocational education and training system, including new industry engagement arrangements (\$292.5 million over four 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. 4) 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. 4) 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 – In the appropriate position in Part 3 of Schedule 1AB (table)**

This item adds two new table items to Part 3 of Schedule 1AB to establish legislative authority for government spending on certain activities administered by the Department of Education, Skills and Employment (the department).

New **table item 53** establishes legislative authority for the Government to provide a grant to MultiLit Pty Limited (MultiLit) for the delivery of its phonics-based programs to support literacy outcomes for students, particularly Aboriginal and Torres Strait Islander students (the program).

On 5 August 2021, the Minister for Education and Youth, the Hon Alan Tudge MP, the Minister for Indigenous Australians, the Hon Ken Wyatt AM MP, and the Minister for Regionalisation, Regional Communications and Regional Education, Senator the Hon Bridget McKenzie, jointly announced a number of *Closing the Gap in school education* initiatives, including funding for the MultiLit program. The media release is available at <https://ministers.dese.gov.au/tudge/closing-gap-school-education>.

The program will be a key activity that contributes to the *Commonwealth Closing the Gap Implementation Plan* as part of a broader package of measures. The program will enable targeted efforts to improve student outcomes, to accelerate progress toward Target 5 of the *National Agreement on Closing the Gap* (by 2031, increase the proportion of Aboriginal and

Torres Strait Islander people (age 20-24) attaining Year 12 or equivalent qualification to 96 per cent).

The program will use verified tools to identify student knowledge and skill gaps, and then address these with direct, systematic and intensive teaching of the requisite skills. The program comprises four components: InitialLit for students in Foundation to Year 3, MacqLit for students in Years 4 to 6, and MiniLit Sage and LanguageLift available for students who need extra support.

Funding of \$8 million over four years from 2021-22 will be provided to support MultiLit (Making Up Lost Time in Literacy) to deliver these literacy programs to an estimated 40 majority Indigenous schools, with a focus on schools in remote areas. The number of schools will be negotiated with MultiLit, according to the quantum of funding available. Jurisdictions may also be willing to contribute given the program is likely to align with state and territory initiatives.

Commonwealth funding will enable targeted efforts to have students reading at least to a minimum level that is within the average range for a student's age and year cohort. It will assist to address the critical achievement gap between Indigenous and non-Indigenous students. For example, in Year 3 *National Assessment Program – Literacy and Numeracy* (NAPLAN) reading assessments Indigenous students are, on average, two years behind non-Indigenous students.

MultiLit has a long history of successfully working in schools and other settings to deliver reading instruction to Indigenous students. MultiLit has run tutorial centres serving large numbers of Indigenous students in Sydney and Darwin with strong results, as well as worked with the Cape York Partnership to deliver MultiLit programs from 2005 to 2010. MultiLit is also working with the Top End School of Flexible Learning to improve literacy using MacqLit.

The four components of the program are:

- InitialLit provides teachers with carefully sequenced lesson plans and accompanying resources that purposefully develop both the word decoding and language components of literacy, also incorporating morphemes, vocabulary, grammatical concepts, spelling, and handwriting. Curriculum based assessments are used regularly to monitor students' progress and identify their learning needs;
- MiniLit Sage supports young struggling readers who require extra support. It develops students' phonic decoding and automaticity in word reading and includes integrated vocabulary and comprehension elements. MiniLit Sage is delivered in small groups of three to four students for two to three terms, depending on attendance rates;
- LanguageLift is a companion to MiniLit Sage, which is designed for children with language difficulties and addresses text structure knowledge, oral narrative, vocabulary and grammatical skills, and literal and inferential comprehension. LanguageLift is delivered in small groups of three to four students for between 15 and 30 weeks, depending on the child's level of need. Lessons are delivered four times per week, 30 minutes per day. Students requiring LanguageLift intervention receive it in addition to their InitialLit instruction for extra support; and
- MacqLit provides teachers with a comprehensive sequence of lessons that includes all the key components necessary for effective reading instruction: phonemic awareness, phonics, fluency, vocabulary, and comprehension. Students are placed in small groups

according to their skill levels and group formation is monitored and changed according to student progress. Students who are making faster progress in their reading (for example, those who have higher attendance rates) can move through the program more quickly.

Implementation of the MultiLit programs in schools involves training teaching staff by professional MultiLit trainers, including providing teachers with high quality teaching materials to deliver the program. InitialLit, MacqLit, MiniLit Sage and LanguageLift all require two full days of training each, and ideally also involve follow-up coaching. Curriculum based assessments are implemented by teachers or teacher assistants at regular intervals to ensure that children are making progress.

MultiLit will deliver the program in partnership with Indigenous communities to meet the Australian Government's commitment under Priority Reform One — Formal Partnerships and Shared Decision-Making — under the *National Agreement on Closing the Gap*. The department will engage an independent party to evaluate the success of the program.

The department will provide funding to MultiLit by way of a one-off grant, as it has a well-established record of successfully delivering literacy programs. The organisation will respond to grant guidelines developed in accordance with the *Commonwealth Grants Rules and Guidelines 2017* (CGRGs). The grant expenditure decision will be made by a delegate of the Secretary of the department in line with the appropriate financial delegations. The grant awarded will be published on the GrantConnect website at [www.grants.gov.au](http://www.grants.gov.au).

It is necessary and appropriate to delegate the power to make decisions relating to the Commonwealth expenditure on the program to an appropriate financial delegate that has responsibility for overseeing the area of the department with responsibility for the program. To ensure knowledge of the program context, the Senior Executive Service (SES) Band 1 official that has been delegated the power to make decisions relating to the expenditure on the program is the Assistant Secretary, Teaching Practice Branch, Improving Student Outcomes Division, Schools and Youth Group. The Teaching Practice Branch is responsible for administering the funding agreement for the program. As an SES officer overseeing the program, the Assistant Secretary, Teaching Practice Branch has relevant understanding of the policy context under which the program operates.

Lead time will be provided for MultiLit to identify and partner with eligible schools and enter into a funding agreement with the department. It is anticipated that a significant amount of the funding will be provided early in the program to meet higher establishment and training costs.

Costs are based on an estimated 140 students per school and include comprehensive support via MultiLit's school partnerships team and provision of online tutoring by MultiLit's literacy centres for students who need them but cannot access additional support in their school settings. This will assist rural and remote schools to access skills and expertise not usually available in the local community. The department will liaise closely with MultiLit in their design of an appropriate methodology to select suitable primary schools to participate in the program.

Payments will be staggered over the length of the funding agreement to ensure deliverables are met. The Community Grants Hub, part of the Department of Social Services, will be responsible for administering the grant. The accompanying grant agreement will contain a clause requiring MultiLit to engage with school leadership teams and school communities to gain their support and agreement to participate in the program.

The grant to MultiLit will be administered in accordance with the Commonwealth resource management framework. In addition to the grant opportunity guidelines developed in accordance with the CGRGs and the publication of the grant awarded on the GrantConnect website, this will include compliance with the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), the CGRGs, the department's Accountable Authority Instructions and any other relevant financial delegations.

Independent review will not be available in relation to grant funding decision as this grant will be closed, non-competitive and for a specific purpose and entity. MultiLit has been directly selected because of its proven success in improving student outcomes. A 2019 study found that low-progress students, including Indigenous students, made an estimated gain of eight months in reading accuracy and 13 months in phonological recoding following the 18-week MultiLit programs.

The grant decision, once made, will be final and not subject to merits review. This is partly because the grant involves an allocation of a finite resource to MultiLit and overturning the decision to allocate funding to another party would affect the funding that has already been allocated to MultiLit and announced publicly. 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 4.16 of the guide, *What decisions should be subject to merit review?*).

Consultation has taken place with the National Indigenous Australians Agency (NIAA) and within the department. The department will work with MultiLit on the development and implementation of the program including how the organisation will consult with Aboriginal and Torres Strait Islander communities and school leaders.

Funding of \$8 million over four years from 2021-22 will come from Program 1.5: Early Learning and Schools Support, which is part of Outcome 1. Details are expected to be included in the 2021-22 Mid-Year Economic and Fiscal Outlook and the 2021-22 Portfolio Additional Estimates Statements.

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

- the race power (section 51(xxvi));
- the external affairs power (section 51(xxix)); and
- the territories power (section 122).

### Race power

Section 51(xxvi) of the Constitution empowers the Parliament to make laws with respect to 'the people of any race for whom it is deemed necessary to make special laws'.

The race power in section 51(xxvi) supports special measures for the benefit of a particular race including Aboriginal and Torres Strait Islander Peoples.

The program aims to address the gap in literacy between Indigenous and non-Indigenous primary school students.

#### External affairs power

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

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

Article 4 of the CRC provides that ‘States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.’

These rights include ‘the right of the child to education’ (Article 28 of the CRC).

Article 29 of the CRC provides that ‘States Parties agreed that the education of the child shall be directed to ... [t]he development of the child’s personality, talents and mental and physical abilities to their fullest potential’.

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

Article 13(2)(a) of the ICESCR provides that the ‘States Parties ... recognize that, with a view to achieving the full realization of this right ... [p]rimary education shall be compulsory and available free to all.’

The program promotes the objectives of Articles 28(1) and 29 of the CRC and Article 13(2)(a) of the ICESCR as it is directed at a basic learning need of Indigenous children in primary schools by methods appropriate to those children. The program is also directed at core educational activities that are central to the development of the talents and abilities of children.

#### Territories power

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

Given the target group, it is anticipated that the program will have substantial operation in the Northern Territory.

New **table item 54** establishes legislative authority for the Government to provide a grant to Together for Humanity Foundation Limited (TFH) to deliver the Inclusion Education for Connected Youth and Communities Initiative (the program).

TFH is a multi-faith, inclusive, educational community organisation that works with schools to foster intercultural understanding and help students learn how to deal with differences. Since 2002, TFH has supported more than 400,000 young people and teachers in school communities across Australia to manage cultural diversity.

The grant funding will enable TFH to increase the scope and impact of its existing program, which includes a number of initiatives such as school partnerships, professional development for teachers, online resources, student-led summits, and national awards celebrating achievements in civics and citizenship with a focus on fostering interfaith and intercultural understanding to support social cohesion. Some elements of the program will be delivered face-to-face and other elements online.

TFH has seen positive results in transforming attitudes and behaviours. The program contributes to developing resilience in young people when faced with extremism and encouraging them to embrace shared Australian values and to have empathy for those who are different.

Specific objectives of the program are that:

- students are aware and accepting of their multiple identities and communities, have resilience to deal with prejudice, reject stereotypes, and build and model respectful intercultural relationships;
- teachers and other educators effectively apply intercultural understanding dispositions, knowledge, skills and resources in their schools;
- Australian school communities are inclusive of diversity of culture and belief; and
- parents, carers and other school community members have a feeling of belonging together and being connected with culturally diverse people.

The grant funding will support the following deliverables (to commence in early 2022):

- 100 schools across Australia (with a reach of at least 50,000 students) will participate in the Intercultural Understanding Partnership (ICUP), which provides grants and advice to school communities to transform their school cultures with place-based solutions;
- 15,000 students and parents will participate in cross-cultural programs that bring them in contact with people from diverse backgrounds;
- 5,000 teachers (including pre-service teachers in universities) will participate in professional development;
- a National Award for Excellence will be established to recognise 50 high school student champions of ‘unity citizenship’ and 30 teachers, teams, or schools;
- four annual youth-led, religious and political leaders summits (one each year from 2022 to 2025) will enable students from different schools across the country to meet and discuss issues of identity, inclusion and societal cohesion with politicians and community leaders;
- students and teachers across Australia (40,000 minimum) will participate in online programs, drawing on learnings and resources from the above activities; and



- an action research project consisting of the above activities and academic work will inform the practice of fostering social cohesion.

Schools across all states and territories will be invited to participate in the school ICUP. TFH will assess their expressions of interest based on both need and potential benefit, prioritising projects that would facilitate sustained long-term cultural change within their school community. A TFH ICUP facilitator in the relevant state or territory will work closely with the selected school community over 12-18 months to ensure project aims are realised.

To assist in the program delivery, TFH will partner with school communities and other like-minded organisations, such as the Jewish Christian Muslim Association in Victoria, the Abraham Institute in South Australia, the Museum of Freedom and Tolerance in Western Australia, and Scripture Union in Queensland.

The program will be delivered to schools, students and parents across metropolitan, regional and remote Australia to support social cohesion. While the terms of the grant are yet to be agreed, the program has historically identified groups in need who may be prioritised for support. These include:

- school communities in regional and remote areas;
- school communities in geographical areas identified as being of greatest need;
- school communities in areas of low diversity; and
- school communities with high refugee or migrant population who are at risk of feeling disconnected from the Australian society and experiencing discrimination.

Government funding will be supplemented by community in-kind contributions (one dollar in cash or in-kind for every two dollars of government funding), allowing TFH to expand its existing Australian Curriculum aligned programs and support more schools and organisations.

The grant to TFH will be administered in accordance with the Commonwealth resource management framework. In addition to the grant opportunity guidelines developed in accordance with the CGRGs and the publication of the grant awarded on the GrantConnect website, this will include compliance with the PGPA Act, the CGRGs, the department's Accountable Authority Instructions and any other relevant financial delegations.

The decision maker for the grant will be a departmental delegate of the Secretary of the department. Information about this closed non-competitive grant opportunity, including the grant opportunity guidelines and the award of the grant, will be made available on the GrantConnect website at [www.grants.gov.au](http://www.grants.gov.au).

It is necessary and appropriate to delegate the power to make decisions relating to the Commonwealth expenditure on the program to an appropriate financial delegate that has responsibility for overseeing the area of the department with responsibility for the program. To ensure knowledge of the program context, the SES Band 1 official that has been delegated the power to make decisions relating to the expenditure on the program is the Assistant Secretary, Teaching Practice Branch, Improving Student Outcomes Division, Schools and Youth Group. The Teaching Practice Branch is responsible for administering the funding agreement for the program. As an SES officer overseeing the program, the Assistant Secretary, Teaching Practice Branch has relevant understanding of the policy context under which the program operates.

TFH was directly selected to receive this grant through the 2021-22 Budget because of its program's proven outcomes in fostering social cohesion and improving racial and religious tolerance. There is no scope for selection of other organisations and therefore no requirement for an independent review of decisions.

Funding decisions made in connection with the grant are not considered appropriate for independent merits review as these decisions relate to an allocation of a finite resource to TFH and overturning the decision to allocate funding to another party would affect the allocation that has already been made. The ARC has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.11 to 4.16 of the guide, *What decisions should be subject to merit review?*).

Further, re-making a decision after entry into an agreement is legally complex, impractical and would result in delays in implementation. Given TFH's demonstrated experience in program delivery and its historical record of government funding, it is not reasonably foreseeable nor envisaged that any other organisation would receive funding in relation to this initiative.

TFH submitted a proposal to the Government ahead of the 2021-22 Budget outlining the program objectives, scope, deliverables and benefits. The proposal is publicly available on the Department of the Treasury's website at [https://treasury.gov.au/sites/default/files/2021-05/171663\\_together\\_for\\_humanity.pdf](https://treasury.gov.au/sites/default/files/2021-05/171663_together_for_humanity.pdf).

Given TFH's position as a leading Australian organisation in its work to promote social cohesion and intercultural understanding, and its historical record of successful program delivery using government funding, consultation occurred within government only.

Funding of \$8.1 million for the grant to TFH was included in the 2021-22 Budget under the measure 'Schools and Youth — supporting students, teachers and young Australians' for a period of four years commencing in 2021-22. Details are set out in *Budget 2021-22, Budget Measures, Budget Paper No. 2 2021-22* at pages 78 to 80.

Funding for the item will come from 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 12 and 45.

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

- the communications power (section 51(v));
- the aliens power (section 51(xix));
- the race power (section 51(xxvi));
- the immigration power (section 51(xxvii));
- 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.

### Communications power

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

Some of the expenditure in relation to the program may facilitate online learning or other measures to facilitate online communications. The program includes an online program as well as other activities that are to be delivered online or developed for online use.

### Aliens power and immigration power

Section 51(xix) of the Constitution empowers the Parliament to make laws with respect to ‘naturalization and aliens’. Additionally, section 51(xxvii) empowers the Parliament to make laws with respect to ‘immigration and emigration’.

The program will include activities directed to assisting newly arrived migrants and non-citizens to enter into and participate in their communities.

### Race power

Section 51(xxvi) of the Constitution empowers the Parliament to make laws with respect to ‘the people of any race for whom it is deemed necessary to make special laws’.

The program incorporates activities that focus on promoting tolerance and acceptance of different (and specific) racial groups which are designed to benefit these racial groups by promoting an inclusive and respectful community.

### 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 CRC, the *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD), the *International Covenant on Civil and Political Rights* (ICCPR) and the ICESCR.

### ICERD

Article 2 of the ICERD requires States Parties to condemn racial discrimination and undertake ‘to pursue by all appropriate means ... a policy of eliminating racial discrimination in all its forms and promoting understanding among all races’.

Article 7 requires States Parties to ‘adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnic groups’.

The program promotes the objectives of Articles 2 and 7 of the ICERD through a variety of activities directed to preventing racial discrimination and promoting tolerance between different racial groups. For example, the ICUP aims to transform schools so that they are more culturally competent and inclusive.

## ICCPR

Article 2 of the ICCPR requires the States Parties to take measures to give effect to the rights recognised in the ICCPR.

Article 18(1) of the ICCPR provides that ‘everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or adopt a religion or belief of his choice, and freedom, either individually or in community with others in public or private, to manifest his religion or belief in worship, observance, practice and teaching.’

Further, Article 27 of the ICCPR provides that ‘minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language’.

The program activities are focused on preventing religious and racial discrimination, promoting tolerance and respect, and educating and providing services to children in relation to a number of relevant matters, including multiculturalism.

## CRC and ICESCR

Article 4 of the CRC provides that ‘States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.’

Article 29 of the CRC is concerned with the right to education and obliges States Parties to direct education towards (amongst other things):

- the development of the child’s personality, talent and mental and physical abilities to their fullest potential (Article 29(1)(a));
- the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations (Article 29(1)(b)); and
- the development of respect for the child’s ... cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own (Article 29(1)(c)).

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

Consistent with Article 29 of the CRC, Article 13(1) of the ICESCR is directed to the right to education. It states that ‘[t]he States Parties to the present Covenant recognize the right of everyone to education. They 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. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.’

The program activities are primarily aimed at school students and focus on fostering respect, tolerance and understanding of different cultures and religion and support students to exercise. Many of the activities take place in school settings and include school partnerships and a teacher professional learning course to train teachers on practical approaches to working in diverse classrooms and creating culturally competent students.

*The express incidental power and the executive 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 program includes the following relevant aspects:

- research activities into social cohesion;
- educational activities directed to educating young people (in particular) in relation to Australian civics and citizenship; and
- activities that are directed to reducing racial, cultural and religious intolerance and strengthening social cohesion between different groups, community harmony and cross-cultural understanding, to counter potential radicalisation and violence based on racial, ethnic, religious or cultural differences.

**Item 2 – Part 4 of Schedule 1AB (table item 222, column headed “Program”)**

Table item 222 in Part 4 of Schedule 1AB establishes legislative authority for government spending on the Flexible Literacy Remote Primary Schools Program, which funds training for teachers at remote primary schools to enable them to adopt explicit instruction teaching methods in relation to literacy, numeracy and science to improve the skills and knowledge of students in remote locations, particularly Aboriginal and Torres Strait Islander students.

The program received funding of \$5.8 million over four years from 2020-21 as part of the Students Support Package in the 2020-21 Budget, to include numeracy and science in up to 10 remote and very remote schools. More recently, the Government has committed additional funding of \$5 million over four years from 2021-22, as part of Closing the Gap initiatives, for the program to increase teacher pedagogical skills in literacy from 10 to 20 schools.

To facilitate this expansion, the participating schools will no longer be limited to remote and very remote locations but rather be selected on the basis of educational disadvantage, particularly targeting Aboriginal and Torres Strait Islander students. The below amendments

to table item 222 give effect to this expansion in focus and geography of the program, with an associated change to the program name.

Item 2 updates program name in column headed “Program” of table item 222. The new program name “Explicit Instruction Teaching Program” will more accurately reflect the expanded scope and nature of the program. For clarity, the Explicit Instruction Teaching Program is a continuation of the Flexible Literacy Remote Primary Schools Program (albeit in an expanded form).

**Item 3 – Part 4 of Schedule 1AB (table item 222, column headed “Objective(s)”)**

Item 3 omits “at remote” from column headed “Objective(s)” of table item 222 and substitutes “at educationally disadvantaged”. This amendment removes the limitation on participating schools to be located in remote and very remote geographical areas only and refocuses the program on educationally disadvantaged primary schools.

**Item 4 – Part 4 of Schedule 1AB (table item 222, column headed “Objective(s)”)**

Item 4 omits “in remote locations (particularly Aboriginal and Torres Strait Islander students) in the areas of literacy, numeracy and science” from column headed “Objective(s)” of table item 222 and substitutes “(particularly Aboriginal and Torres Strait Islander students)”. This amendment removes the limitation on participating students to be located in remote and very remote geographical areas only and refocuses the program on students facing educational disadvantage, particularly Aboriginal and Torres Strait Islander students.

The Explicit Instruction Teaching Program (the program) aims to improve the literacy, numeracy and science outcomes of students and increase teacher pedagogical skills in primary schools through imparting Direct Instruction and Explicit Direct Instruction teaching methodologies to primary school teachers. Since 2015, Good to Great Schools Australia (GGSA) has received Australian Government funding to deliver its teacher training program to remote schools in the Northern Territory, Western Australia and Queensland. GGSA delivers an online, self-paced Mastery Teaching Program for teachers, teacher assistants and school leaders and offers participating schools online coaching, feedback sessions and data monitoring services.

As part of addressing Target 5 of the *National Agreement on Closing the Gap*, the Australian Government has committed an additional \$5 million over four years from 2021-22 to expand the literacy arm of the program from 10 to 20 schools (beginning from Term 1, 2022). This funding was jointly announced on 5 August 2021 by the Minister for Education and Youth, the Hon Alan Tudge MP, the Minister for Indigenous Australians, the Hon Ken Wyatt AM MP, and the Minister for Regionalisation, Regional Communications and Regional Education, Senator the Hon Bridget McKenzie. The media release is available at <https://ministers.dese.gov.au/tudge/closing-gap-school-education>.

To facilitate this expansion, the program will be refocused from remote and very remote schools to schools in areas of educational disadvantage, particularly targeting Aboriginal and Torres Strait Islander students. This will provide GGSA with a broader pool of schools to engage with and optimise the program’s success.

GGSA is a not-for-profit organisation that has been operating in Australia's education sector for over a decade developing and implementing innovative education improvement services through co-design with students, families, teachers, school education systems and educational experts. Through strategic partnerships and collaborating with experts in large school implementations, GGSA's education model of school improvement is based on extensive research supported by international evidence.

Being delivered in remote and very remote locations, the program has been implemented in schools with a high percentage of Indigenous students. The program has allowed for the exploration of implementation approaches to embed the explicit instruction teaching method in remote schools which supports the Government's commitment to closing the national achievement gap and to evidence-based teaching methods.

There is a critical achievement gap between Indigenous and non-Indigenous students, as identified in recent research published by the Centre for Independent Studies. NAPLAN data shows that Indigenous students are, on average, more than two years behind their non-Indigenous peers in Year 3 and the gap grows over time.

This critical gap is not solely a factor of remote schools. In order to scale up the program, GGSA should be enabled to support schools in areas facing educational disadvantage with significant populations of Indigenous students, rather than be restricted to only working with schools from a particular geographic area.

A one-off, ad hoc grant agreement is currently in place for the delivery of the GGSA pilot program. The grant activity (program delivery) is due to cease at the end of the 2023 school year, with a final report due in August 2024. This grant limits GGSA to delivering the program in up to 10 remote or very remote schools.

Expenditure for the expanded program will be provided through a variation to the existing grant, managed in collaboration with the Community Grants Hub. The grant variation will be negotiated with GGSA for the expenditure and scope of the new activity. The grant expenditure decisions will be made by a delegate of the Secretary of the department, in line with appropriate financial delegations. Revised grant opportunity guidelines will detail the expectations of the program and will be made publicly available on the departmental website.

The grant decision, once made, will be final and not subject to merits review, as the grant involves an allocation of a finite resource to GGSA and overturning the decision to allocate funding to another party would affect the funding that has already been allocated to GGSA and announced publicly. The ARC has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.11 to 4.16 of the guide, *What decisions should be subject to merit review?*).

The department has commenced consultation with the NIAA, which leads the development and implementation of Australia's Closing the Gap measures, and will continue to work with the NIAA in the development of the program.

The department will also continue to consult with GGSA on the design and development of the program, including around changes to the policy parameters and in scaling up to ten additional schools.

The grant agreement will contain a clause requiring GGSA to engage with school leadership teams to gain school community support and agreement to participate in the pilot of the program. GGSA has also advised that it has commenced discussions with a number of schools who may be interested in participating in the program and that a number of schools are looking to undertake a needs analysis regarding the program.

Total funding of \$9.9 million over four years commencing from 2021-22 will be available for the program. This comprises funding for the program included in the 2020-21 Budget under the measure ‘Students Support Package’ and additional funding which is expected to be included in the 2021-22 Mid-Year Economic and Fiscal Outlook.

Funding for this item comes from sub-program Students Support Package 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 page 45.

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

- the external affairs power (section 51(xxix));
- the race power (section 51(xxvi)); and
- the territories power (section 122).

#### External affairs power

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

Australia is a party to the CRC. Article 4 of the CRC provides that States Parties to the Convention will undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the Convention.

Article 28(1) of the CRC provides that States Parties recognise the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity.

Article 29 of the CRC provides that States Parties agree that the education of the child shall be directed to ‘... [t]he development of the child’s personality, talents and mental and physical abilities to their fullest potential’.

Australia is also a party to the ICESCR. Article 2(1) of the ICESCR provides that each State Party to the Covenant undertakes to take steps to achieve progressively the full realisation of the rights recognised in the Covenant.

Article 13(2)(a) of the ICESCR provides that the States Parties ‘... recognize that, with a view to achieving the full realization of this right ... [p]rimary education shall be compulsory and available free to all’.



The program is directed to a basic learning need of children in primary schools by methods appropriate to those children in educationally disadvantaged schools where basic learning may be less accessible. The program is also directed to core educational activities that are central to the development of the talents and abilities of children.

Race power

Section 51(xxvi) of the Constitution empowers the Parliament to make laws with respect to ‘the people of any race for whom it is deemed necessary to make special laws’.

The program will target educationally disadvantaged schools, with a particular focus on Indigenous students, to address the gaps in literacy, numeracy and science outcomes. There will continue to be a high proportion of Indigenous students in the program.

Territories power

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

Given the target group, it is anticipated that the program will continue to operate in the Northern Territory.

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

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

New **table item 516** establishes legislative authority for government spending on the development, implementation and maintenance of the Online Formative Assessment Initiative (the Initiative), which will facilitate access to online teaching resources, tools, student assessments, professional learning and other support for teachers.

The objective of the Initiative is to ensure that teachers have the appropriate tools, resources and expertise to use formative assessments to help them understand how their individual students are learning, which addresses recommendations 6 and 11 of the *Report of the Review to Achieve Educational Excellence in Australian Schools: Through Growth to Achievement*: (Excellence Review). The Excellence review is available at <https://www.dese.gov.au/quality-schools-package/resources/through-growth-achievement-report-review-achieve-educational-excellence-australian-schools>).

The Initiative aims to support teachers to monitor individual student progress and identify individual student learning needs by providing access to an online system currently known as the Teaching Tools Network. The proposed system will assist teachers to identify what skills and knowledge a student already possesses, what each student needs to learn next, and what resources will be most useful to support that student’s progress. Use of this system will provide teachers with the information and tools they need to adapt their teaching practice to meet their student’s needs. Students will also have access to information about their own learning progress.

The Initiative was part of a wider agreement between all states, territories and the Commonwealth at the end of 2018, whereby all jurisdictions have committed to providing financial contributions to the ‘learning progressions and online formative assessment’ national policy initiative under the *National School Reform Agreement* (NSRA).

Reflecting the longstanding practice of collaboration between all government levels to deliver school education, the NSRA sets out eight national policy initiatives against three reform directions that the Commonwealth, states and territories have agreed to implement across a five-year period to December 2023. The Initiative delivers on two of the national policy initiatives against one reform direction: to support students, student learning and student achievement by enhancing the Australian Curriculum to support teacher assessment of student attainment and growth against clear descriptors.

In 2018, all Education Ministers agreed that the Initiative would be an initiative of the Education Council, being a forum of the Commonwealth and state and territory ministers with responsibility for education. They also agreed that the development of the Initiative would be based on the Digital Transformation Agency’s service design and delivery process which outlines four phases for the delivery of an IT solution: Discovery, Alpha, Beta and Live. The Initiative would not progress from one phase to the next without the agreement of Education Ministers.

The Discovery phase of the Initiative began in May 2019 and involved developing a deep understanding of users and their needs, as well as potential solutions to identified pain points. The findings of the Discovery phase were reported to Education Ministers in December 2019.

The Education Ministers then agreed to proceed to an Alpha phase that started in 2020 and included the development of a prototype and testing with users. In July 2021, Education Ministers agreed that the Initiative should proceed to its Beta phase. This phase will consider, develop and trial the proposed solution with the aim of progressively rolling it out in Australian schools from 2023. The Initiative’s Beta phase will be led by the South Australian department responsible for school education and will be financially supported by the Commonwealth and all states and territories using the standard cost sharing arrangements for education initiatives.

Table item 516 will provide legislative authority for the Commonwealth’s existing commitment of funding towards the Beta phase, as well as any potential future commitments of Commonwealth funding for the implementation and maintenance of the system which is built. It is intended that the system will make information about students’ learning progress and achievement visible to the students, teachers and school leaders in a meaningful and accessible format including:

- a user friendly dashboard for teachers and students that incorporates data visualisation and feedback tools for formative assessment;
- access to useful observational evidence that will help in the design of a teaching plan;
- access to useful digital resources for both students and teachers; and
- a suite of professional development options for teachers and school leaders to support and assist effective implementation.

In the longer term, it is intended that the Initiative will build on current good practice and support the collection of empirical evidence about effective formative assessment practices, as well as valuable classroom observations, insights and suggestions from teachers and

students. When bundled together, all elements of the Initiative will create an empirical evidence base of effective practices available to teachers across Australia.

The Initiative is jointly funded by the Commonwealth and all states and territories and in this context significant decisions in relation to the development, implementation and maintenance of the Initiative are to be made collectively by the Commonwealth and state and territory ministers with responsibility for education in each jurisdiction. Such decisions are made at the Education Ministers Meeting (EMM). The Australian Government is represented at the EMM by the Minister for Education and Youth. It is intended that the EMM will make decisions in relation to the Initiative with regard to independent advice.

While all Australian Education Ministers, through the EMM, are responsible for setting the overarching scope, vision and direction of the Initiative, the SES officials of the Improving Student Outcomes Division, Schools and Youth Group in the department are responsible for the decision making process relating to the Commonwealth's contribution to supporting and executing the direction set by the EMM for the Initiative. To ensure knowledge of the Initiative context, the departmental delegates making decisions in relation to the administration of arrangements for the Commonwealth's funding contributions for the Beta phase of the Initiative will be the First Assistant Secretary (SES Band 2), Improving Student Outcomes Division, Schools and Youth Group or the Assistant Secretary (SES Band 1), Teaching Practice Branch, Improving Student Outcomes Division, Schools and Youth Group (depending on the significance and quantum of the decision). The Teaching Practice Branch is responsible for administering the Commonwealth's funding contributions and involvement in the Initiative. As SES officers overseeing this work, these two delegates have relevant understanding of the policy context for the Commonwealth's contribution to the Initiative. The First Assistant Secretary of the Improving Student Outcomes Division is the Australian Government's representative on the Initiative's Project Management Board, which provides for an additional level of oversight.

South Australia will receive funding contributions from the Commonwealth and all states and territories to support the work involved in establishing the Beta phase, including procuring relevant services from appropriate service providers. South Australia will report on progress of this work regularly to the Australian Education Senior Officials Committee and where appropriate or requested to the EMM.

The department is currently considering what type of arrangement it will enter into with South Australia to support the provision of Commonwealth funding contributions for the Beta phase. It is anticipated that decisions in relation to entering into such an arrangement with South Australia will be made by a delegate of the Secretary of the department under the *Financial Framework (Supplementary Powers) Act 1997*.

The relevant arrangements for the Commonwealth's funding contributions for the Initiative will be administered by the delegates in accordance with the Commonwealth resource management framework, including the PGPA Act, the CGRGs and the *Commonwealth Procurement Rules* (CPRs) as applicable, and the department's Accountable Authority Instructions and any other relevant financial delegations.

Decisions taken by the EMM relating to the Initiative and the provision of Commonwealth funding to South Australia will not be subject to independent review. The Initiative involves an allocation of finite resources. Review (and potential change) of decisions would impact

allocations made to other parties and would impede timely and effective implementation of the Initiative. The ARC has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.11 to 4.16 of the guide, *What decisions should be subject to merit review?*).

Throughout the different phases of the Initiative, consultation has occurred with teachers, principals, school leaders as well as teacher unions, parents, students, and state and territory government and non-government education sectors. Experts in learning progressions and online formative assessment have also been consulted at each phase.

A key part of the Digital Transformation Agency's service design and delivery process, which the Initiative is using, is the continued role of the user throughout the design and development of the Initiative. In the Discovery phase, consultation occurred with users to get a deep understanding of the problem using a user-centred design and with a desire to own the whole user experience. In the Alpha phase of the Initiative, work continued to understand the user journey, create and test the user story map, and develop from that a minimum viable product addressing the pain points identified in the Discovery phase. In the Beta phase of the Initiative, work on user needs will continue to define and iterate workflows as the eventual solution is developed. If Education Ministers agree to proceed to the Live phase, user research and performance analysis will continue to plan improvements and additions to the system.

The Initiative is a national policy initiative under the NSRA. The NSRA has funding of \$35 million over two years from 2021-22. Funding for the item will come from 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 page 45.

Funding for national policy initiatives is not-for-publication (nfp) due to ongoing negotiations with states and territories (clause 46 and Schedule C of the NSRA refer). The amount of Commonwealth expenditure on the Initiative is also commercially sensitive information. The disclosure of this information could impact on achieving value for money when South Australia procures services needed to establish the next phase of the Initiative.

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

### Communications power

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

The Initiative is to facilitate access to an online system that integrates teaching resources, tools, student assessments, professional learning and other support.

New **table item 517** establishes legislative authority for government spending on school partnerships to improve educational outcomes for Indigenous students in remote schools. Government funding will incentivise and support large, high performing independent (non-government) schools to engage in new formal partnerships with remote, majority Indigenous schools, while maintaining consultation with local Aboriginal and Torres Strait Islander communities.

These formal partnerships aim to improve the quality of operational management and principal leadership, and increase the reach of effective teacher practices (for example, instructional coaching to teachers to lift the quality of pedagogy in remote schools). These partnerships will address key issues such as workforce shortages through enabling and encouraging teacher transfers.

Funding allocated through the Remote School Partnerships fund will also support brokerage activity to promote partnerships in the school sector and may consider opportunities to partner with local further education and training providers and employers, to enhance further education and employment pathways for students.

Funding for the initiative was jointly announced on 5 August 2021 by the Minister for Education and Youth, the Hon Alan Tudge MP, the Minister for Indigenous Australians, the Hon Ken Wyatt AM MP, and the Minister for Regionalisation, Regional Communications and Regional Education, Senator the Hon Bridget McKenzie. The media release is available at <https://ministers.dese.gov.au/tudge/closing-gap-school-education>.

The school partnerships initiative contributes toward achieving Target 5 — by 2031, increase the proportion of Aboriginal and Torres Strait Islander people (age 20-24) attaining Year 12 or equivalent qualification to 96 per cent — of the *National Agreement on Closing the Gap*. According to *Closing the Gap Report 2020* (the annual report to Parliament on progress in Closing the Gap), the proportion of Aboriginal and Torres Strait Islander people aged 20-24 years attaining Year 12 or equivalent level of education decreases with remoteness. The Year 12 attainment rate is 85 per cent in Major Cities compared with 38 per cent in Very Remote areas.

The initiative will support an estimated 2,000 Aboriginal and Torres Strait Islander students and 10 schools. The Australian Institute of Health and Welfare modelling suggests that the trend for Year 12 or equivalent attainment will reach 85 per cent by 2031, resulting in a shortfall of more than 10,000 students. Funding for the initiative will ultimately improve Aboriginal and Torres Strait Islander student attendance, achievement and attainment outcomes as the key drivers that will support a higher trajectory for Year 12 attainment over the next decade.

This initiative builds on the success of existing school partnerships, such as those between Wesley College and Yiramalay School in Kimberley and between Haileybury College and Haileybury Rendall School in Darwin. The cost of these engagements is a barrier to more independent schools engaging in these impactful city-country partnerships.

These partnerships have shown that this model is a strong mechanism to lift outcomes in remote schools which will accelerate progress toward Year 12 or equivalent attainment through:

- improving principal leadership and operational management;

- addressing workforce shortages through teacher transfers;
- providing pedagogical leadership to teachers to lift the quality of teaching in remote schools; and
- subsidising ongoing operating expenses through donations and fee revenue at the metropolitan campus.

To be successful in improving student outcomes, attendance and engagement to accelerate progress toward Target 5, partnerships will need to be enduring. As such, to apply for funding, schools must:

- provide a business plan to underpin their proposed partnership, with a demonstrated need, a clear plan to lift school outcomes, and a pathway to sustainability to embed the success of partnerships over longer term;
- provide evidence of sustained consultation and involvement by local Aboriginal and Torres Strait Islander communities;
- agree to detailed acquittal of expenditure associated with the Remote School Partnerships fund;
- demonstrate support of the appropriate state or territory government; and
- demonstrate the ability to capture and report on student outcomes, attendance, engagement and Year 12 attainment rates as part of annual reporting requirements.

Participating schools will be expected to report annually on Aboriginal and Torres Strait Islander student outcomes, attendance, engagement and Year 12 attainment rates to inform an evaluation of the initiative.

The Remote School Partnerships fund will also support brokerage activity to promote partnerships in the school sector, facilitate linkages between participating schools, and support the schools to reach formal partnership agreements. Such brokerage may also consider opportunities to partner with local further education and training providers and employers, to enhance further education and employment pathways for students. This role will vary in different locations depending on local requirements and is likely to include the approved authorities for non-government schools and association of independent schools as well as local traditional owners and Indigenous elders.

#### *Input One – Brokerage Activity (\$3.8 million)*

A broker may be employed through a third-party arrangement to support the schools to reach formal partnership agreements and consider opportunities to partner with local further education and training providers and employers, to enhance further education and employment pathways for students.

Funding under this input will include (per partnership):

- brokerage activity to promote formal partnerships in the school sector, partner with local education and training providers and employers, consult local Aboriginal and Torres Strait Islander communities with the support of the appropriate state or territory government;
- locality allowance; and
- 2-3 return airfares each year out of isolated localities.

The process for awarding the grant for brokerage activity through the third-party broker will be conducted in accordance with the CGRGs, including in relation to publishing information about the outcome of the selection process. Final sign-off on successful grantees and grant amounts to be awarded for the third-party broker role will be provided by the department, in consultation with the NIAA, and a reporting mechanism will be established for the Minister for Education and Youth and the Minister for Indigenous Australians.

The third-party broker will be responsible for administering input two and input three and the requirements for these inputs will be outlined in the grant opportunity guidelines, with the Minister (or departmental delegate) responsible for the final sign-off on recipients of these inputs. This will include ministerial sign-off on the establishment of partnerships.

In addition to the ministerial sign-off on partnerships, a reporting mechanism will be outlined for the third-party broker in the grant opportunity guidelines to ensure transparency and accountability for the funding that is administered for partnership activity under inputs two and three.

#### *Input Two – Teacher Transfers (\$1.7 million)*

This input will address workforce shortages through teacher transfers. Funding will include (per partnership):

- teacher salaries for up to 2 teachers per remote school; and
- locality allowance.

#### *Input Three – Administration and Shared Services (\$19.3 million)*

These costs include the expansion of IT equipment and services, administration improvements, teaching resources for teachers and support staff and the administration of the partnerships, including support for the school to build a sustainable partnership model to support students beyond the initial three years of funding, as well as associated evaluation costs.

Partnerships will be selected through a competitive process established by the department in consultation with the NIAA and administered by the third-party broker. To achieve this end, grant opportunity guidelines will be prepared by the department in consultation with the NIAA. The guidelines will outline the selection criteria for the third-party broker to identify potential partnerships and submit partnership agreements setting out the goals, milestones and funding of the partnership for the ministerial sign-off. Once the ministerial sign-off is received, the Community Grants Hub will administer funding to the third-party broker to administer funding for partnerships.

To support the efficient and effective administration of the partnerships, it is necessary and appropriate that decisions in relation to the Commonwealth expenditure and involvement in them be taken by the delegate with responsibility for oversight of the area of the department responsible for this program. The First Assistant Secretary (SES Band 2), Improving Student Outcomes Division, and the Assistant Secretary (SES Band 1), Student Engagement and Wellbeing Branch, Improving Student Outcomes Division, will be the delegates for this program. These delegates were chosen as they have relevant understanding of the policy context within which the program is intended to operate.

The partnerships will be administered in accordance with the Commonwealth resource management framework. In addition to the CGRGs and grant opportunity guidelines (made available via GrantConnect), this will include compliance with the PGPA Act, the department's Accountable Authority Instructions and any other relevant financial delegations. The delegate will also be subject to the APS Code of Conduct, and there will be systems of risk management and internal controls imposed to ensure only organisations that demonstrate their ability to administer the Commonwealth funding appropriately will be considered as potential recipients.

The department will invite applications from non-government schools or organisations to develop partnerships between non-government schools and remote schools with majority Aboriginal and Torres Strait Islander students. Applications will be assessed against agreed criteria, including demonstrated need, a clear plan to lift school outcomes, and a pathway to sustainability and independence. Applicants will be required to provide evidence of sustained consultation with local Aboriginal and Torres Strait Islander communities, and support of the appropriate state or territory government. It is envisaged that the selection committee responsible for selecting the grantee schools would comprise not only representatives from the department and the NIAA but also representatives from approved education bodies, for example, Independent Schools Australia, and state and territory education departments.

Under the *National Agreement on Closing the Gap*, the Australian Government is required to submit an implementation plan which sets out the Commonwealth's efforts in achieving the targets in the National Agreement (both existing actions as well as new investment and areas of future work). The school partnerships initiative is part of a broader package of measures supporting the *Closing the Gap Implementation Plan* that will be monitored by the Joint Council on Closing the Gap.

It is expected that a finite number of schools will benefit from this initiative, with the decision to provide grants to eligible schools not subject to independent merits review. In order for a remote school to be eligible for grant funding under the program, the level of need will need to be high. Overturning a decision to allocate funding to one school would affect an allocation already made to another school in need. Merits review would also cause delays in channelling funds to the initiative. The ARC has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (paragraphs 4.11 to 4.19 of the guide, *What decisions should be subject to merit review?*)

Consultation has taken place with the NIAA and within the department. The department has engaged with a small number of external non-government stakeholders who have experience in school partnerships to inform implementation of this initiative.

Funding of \$25.9 million over four years from 2021-22 for the school partnerships initiative is expected to be included in the 2021-22 Mid-Year Economic and Fiscal Outlook and 2021-22 Portfolio Additional Estimates Statements. Funding for this item will come from Program 1.5: Early Learning and Schools Support, which is part of Outcome 1.

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 race power (section 51(xxvi));
- the external affairs power (section 51(xxix)); and
- the territories power (section 122).



Race power

Section 51(xxvi) of the Constitution empowers the Parliament to make laws with respect to ‘the people of any race for whom it is deemed necessary to make special laws’.

The initiative will fund high performing independent schools so they can engage in formal partnerships with remote majority Indigenous schools to improve the operations of and the education provided by the remote school, particularly in relation to teaching. This will benefit the Indigenous students targeted by this initiative.

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 treaties to which it is a party.

Australia has obligations relating to the CRC and the ICESCR.

Article 4 of the CRC provides that States Parties to the Convention will undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the Convention.

Article 28(1) of the CRC provides that States Parties recognise the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity.

Article 29 of the CRC provides that States Parties agree that the education of the child shall be directed to ‘... [t]he development of the child’s personality, talents and mental and physical abilities to their fullest potential’.

Article 2(1) of the ICESCR provides that each State Party to the Covenant undertakes to take steps to achieve progressively the full realisation of the rights recognised in the Covenant.

Article 13(2)(a) of the ICESCR provides that the States Parties ‘... recognize that, with a view to achieving the full realization of this right ... [p]rimary education shall be compulsory and available free to all’.

The above provisions of the CRC and ICESCR are engaged by the initiative as it is directed to improving the quality and consistency of education provided to students at the participating schools.

Territories power

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

Given the initiative’s focus on remote majority Indigenous schools, it is likely that the initiative will have participating schools in the Northern Territory.

New **table item 518** establishes legislative authority for government spending on incentives to increase the number of skilled migrants who can contribute to the Australian workforce at an appropriate skill level, by funding the development, promotion and provision of skills assessments, employability assessments and skills training (the project).

The project will target particular cohorts of migrants who have a qualification and/or skills directly relevant to priority occupations identified by the National Skills Commission (NSC). Priority occupations may include those listed on the NSC's Skills Priority List (SPL) that are both in shortage and, depending on the cohort, in strong demand, or they may be in soft, moderate or strong future demand. The scope of the project will also include any occupations that the NSC has identified as important in a skilled migration context (for example, occupations 'not elsewhere classified' in the Australian and New Zealand Standard Classification of Occupations (ANZSCO) that have data available to support supplementary analysis, such as registered nurses, medical practitioners, and software and application programmers.

The overall policy objective of the project is to increase the number of onshore migrants with unrecognised or under-recognised skills who are available to contribute to the Australian workforce. The project will target three specific cohorts of skilled migrants to improve these individuals' prospects of gaining employment in priority occupations in Australia. These cohorts include:

- 1) onshore migrants in priority occupations with an active skills assessment application;
- 2) onshore migrants on a non-skilled visa with qualifications in priority occupations who have not had a skills assessment; and
- 3) onshore migrants with a previous successful skills assessment outcome who are working below their skill level.

Table item 518 establishes legislative authority for government spending related to the second and third cohorts of migrants listed above.

In this explanatory statement, the term 'assessing authority' means an entity that has been prescribed as the relevant assessing authority for specified occupations under the migration legislation (see section 2.26B of the *Migration Regulations 1994*). Assessing authorities include peak bodies (such as the Australian Computer Society), registration bodies (such as the Australian Dental Council) and government organisations (such as the Australian Institute for Teaching and School Leadership). The Trades Recognition Australia (TRA) within the department is the assessing authority for some vocational education and training occupations, such as chefs, electricians and welders with the technical and practical components of the skills assessment outsourced to registered training organisations.

The department will establish contracts with assessing authorities to support the delivery of the project. This includes:

- undertaking free skills assessments for those migrants who do not require skills assessments as a condition of their visa but whose employment prospects in a priority occupation may improve as a result of having one; and
- offering a free employability assessment to skilled migrants who have already received a suitable skills assessment outcome and are working beneath their skill level, and subsidised training if required.

*Free, fast-tracked skills assessments for migrants without a prior skills assessment*

Under this project initiative, migrants who have come to Australia through a non-skilled visa pathway but who have skills, training and/or experience in priority occupations will be given an opportunity to undergo a free, fast-tracked skills assessment.

This project initiative is expected to particularly benefit migrants who have skills or qualifications in a priority occupation, but who are potentially employed below their skill level or not in a priority occupation. Providing these individuals with a free, fast-tracked skills assessment will help to increase these individuals' prospects of obtaining employment in a priority occupation in Australia at a level commensurate with their skills and qualifications.

To support this project initiative, the department will establish contracts with relevant assessing authorities to deliver these fast-tracked skills assessments and cover the cost of the skills assessments. Assessing authorities will be required to deliver these assessments within an average of three weeks after the applicant has provided 'decision ready' documentation.

This project initiative will be promoted via targeted communications by multicultural organisations and the Department of Home Affairs (Home Affairs), and is intended to operate from November 2021 until 30 June 2024 (including project evaluation toward the end of this period).

*Free employability assessment for migrants who have previously received a successful skills assessment outcome for a priority occupation but are working below their skill level (pilot)*

Under this pilot, migrants with a previous successful skills assessment within the previous three years who are working below their skill level will be offered a free employability assessment, tailored career advice and a coaching session. They will receive a plan that details their employment goals and identifies their attributes, skills, qualifications, as well as any skill gaps. This may include employability skills (such as teamwork, problem solving and workplace English including writing, reading and oral communication) that have prevented them from securing employment in Australia commensurate with their skill level.

To support this pilot, relevant assessing authorities will be contracted to reach out to the applicants on their database who have previously completed a successful skills assessment. Migrants who self-identify as working below their skill level will be invited to register their interest in an assessment at no cost and potential training opportunity at minimal cost to improve their skilled employment prospects.

An employability tool will be developed to focus on assessing the core competency levels for occupations in Australia, such as teamwork, problem solving and oral communication. The tool will identify skill gaps and recommend necessary training to upskill and improve overall employability of applicants. The tool will be supported by a rigorous employability assessment methodology and may involve the identification of an existing Australian or international tool suitable for a fit-for-purpose modification particularly suited to skilled migrants.

Once the tool is developed and tested, a suitable approved organisation will be contracted to undertake assessments for eligible applicants. If any skill gaps are identified in the

assessment, a registered training organisation/s will be contracted to provide the gap training required. This pilot initiative is intended to be available for applicants from February 2022 until 30 June 2023.

The department will manage a procurement process to support the delivery of various initiatives under this project. Procurement will be conducted via limited tender where the department will contract with assessing authorities to deliver fast-tracked skills assessments and refer skilled migrants to further training opportunities as required. The department will also procure services for the development of an employability assessment tool, and to design and deliver ‘gap skills’ training services. The project will be evaluated in late 2023, and any extensions of the project will be determined following that evaluation process.

Operational guidelines will be made available to the contracted assessing authorities on the departmental website. Assessing authorities will be contractually required to adhere to these operational guidelines in delivering the services to support this project.

Following the procurement process, final spending decisions will be made by the Secretary of the department or an appropriate delegate of the Secretary. Final contracts will be reported on AusTender in accordance with the CPRs.

The project is primarily aimed at increasing the number of skilled workers in the Australian workforce. This will be achieved by identifying and offering free and fast-tracked skills and employability assessments to eligible migrants, and engaging providers to support the delivery of this work through a number of procurement processes. Of the expected contracts that will be established to deliver the project, only two are estimated to exceed \$1 million if application demand levels require it. The delegate has been identified in the operational guidelines for the project as the person occupying the position of the relevant Assistant Secretary (SES Band 1), Skills and Training Group in the department.

This delegation level is suitable and appropriate in the context of the project, where the individual contracts the department expects to enter into with various parties for the delivery of the services will be relatively low-value and non-contentious. The nomination of a delegate holding this particular position in the department will also ensure that the decision maker has appropriate experience, background and understanding of the skills assessment space to make spending decisions for the delivery of skills and employability assessments in relation to this project.

The delegate will make each decision about entering into arrangements and committing relevant monies in a manner consistent with the PGPA Act, the CGRGs, the CPRs and the department’s Accountable Authority Instructions.

Procurement decisions made in connection with the delivery of the project 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 the delivery of the project. The *Government Procurement (Judicial Review) Act 2018* enables providers 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.

Contracted assessing authorities will be required to provide individuals who undergo a free skills assessment with access to a review process that complies with the *Guidelines for Skilled Migration Assessing Authorities 2021*. Similarly, providers delivering employability assessments will be contractually required to provide individuals who undergo such an assessment with access to the review processes in accordance with operational guidelines.

The department has consulted the following parties to support the delivery of the project:

- delivery partners:
  - Home Affairs on the project design and delivery (in particular, to investigate the capacity for Home Affairs to reduce skilled visa application timeframes to complement the project using data held by Home Affairs); and
  - the NSC on the project design around priority occupations.
- external stakeholders:
  - a small group of four current assessing authorities to identify blockages to delivering skills assessments in shorter timeframes and to test design ideas. This group was supportive of the project and agreed that they could theoretically be delivered as intended; and
  - existing organisations that develop digital learning, badging and micro-credentials products, to ascertain delivery possibilities for employability assessments within industry. These organisations focused on the digital badging and micro-credentials part of the third cohort of migrants and were able to demonstrate how these activities could be delivered practically.

Funding of \$19.7 million over three years from 2021-22 for the project is expected to be included in the 2021-22 Mid-Year Economic and Fiscal Outlook and 2021-22 Portfolio Additional Estimates Statements. Funding for this item will come from Program 3.1: Building Skills and Capability, which is part of Outcome 3.

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

- the aliens power (section 51(xix)); and
- the immigration power (section 51(xxvii)).

### *Aliens power*

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

The target groups for this project are particular cohorts of migrants, who are ‘aliens’ for the purposes of section 51(xix) of the Constitution. The project will provide benefit to migrants by supporting and improving their employment prospects. This will help migrants to contribute to the Australian workforce at an appropriate skill level, through the provision of skills assessments, employability assessments and skills gap training.

*Immigration and emigration power*

Section 51(xxvii) empowers the Parliament to make laws with respect to ‘immigration and emigration’.

The target groups for this project are particular cohorts of migrants. The project will provide benefit to migrants by supporting and improving their employment prospects. This will help migrants to contribute to the Australian workforce at an appropriate skill level, through the provision of skills assessments, employability assessments and skills gap training.

New **table item 519** establishes (and renews) legislative authority for government spending on the Skills for Education and Employment Program (the program), which provides language, literacy, numeracy and digital skills training to eligible job seekers, boosting their prospects for further education and employment opportunities.

The program was established in 2002 when the Literacy and Numeracy program was amalgamated with the Advanced English for Migrants Program. The current program is delivered to job seekers who are:

- of working age (15 years to age pension age);
- registered as job seekers;
- not studying full-time or participating in the New Enterprise Incentive Scheme or the Adult Migrant English Program;
- deemed suitable for the program with a capacity to benefit; and
- Australian citizens or permanent residents, or otherwise have working rights in Australia.

The current program caters to various groups, including Aboriginal and Torres Strait Islander people, young people, people with disability, mature aged people and people from culturally and linguistically diverse backgrounds. Eligible job seekers are presently referred to the program by Services Australia, as well as by the Community Development Program, Disability Employment Services, jobactive, ParentsNext and Transition to Work providers.

The department has procured the services of 20 registered training organisations to deliver the current program in 58 contract regions that span the whole of Australia. These registered training organisations provide program participants with training (currently capped at 650 hours) and assess program participants against, and support them through, the Australian Core Skills Framework. Contracted registered training organisations also provide program participants with a vocational education and training (VET) qualification (up to Certificate III level) or a VET statement of attainment. The department has also procured the services of an additional provider, who quality assures the program.

In the 2021-22 Budget, the Government announced that it would increase its investment in the program over five years, allowing places in the program to be ‘uncapped’. This means that from 1 July 2021 all registered job seekers, regardless of whether they receive income support, have been able to participate in the program. This also means that from 1 January 2022 program participants will be able to access uncapped hours of training to allow them to complete a VET qualification up to Certificate III level.

On 11 May 2021, the Minister for Employment, Workforce, Skills, Small and Family Business, the Hon Stuart Robert MP, also announced that the Government would increase project funding over the next two years to accelerate the inclusion of digital skills training for job seekers in the program. Media release is available at <https://ministers.dese.gov.au/robert/securing-our-economic-recovery-keeping-australians-working>.

Digital literacy is increasingly becoming an essential skill required in most occupations on the critical skills list, as well as for entry level jobs for job seekers. Incorporating digital skills training into the program will ensure job seekers gain digital literacy skills, boosting their prospects for further education and employment opportunities. The project funding will support:

- increasing the number and scale of projects focused on digital skills delivery, including classroom trials; and
- upskilling relevant trainers to better incorporate digital skills into the program.

In 2016, the department conducted a tender process to select registered training organisations to provide program services in each contract region. Successful registered training organisations entered into deeds of standing offer with the department to provide program services for a period commencing on 1 July 2017 and ending on 20 June 2023. Each of those agreements sets out the specific contract regions in which the relevant registered training organisation may be required to provide program services.

The final decision maker who entered into those arrangements and committed those monies was the Deputy Secretary, Skills and Training Group, a delegate of the Secretary of the department. That delegate was an SES Band 3 officer with a comprehensive understanding of the program objectives and requirements, and a suitable and appropriate decision maker who could promote and safeguard the efficient, effective, economical and ethical management of the relevant public resources. The tender process and subsequent procurement decisions were conducted in a manner consistent with the PGPA Act, the CPRs and the department's Accountable Authority Instructions. Information about the tender process and the resultant agreements is available on AusTender ([www.tenders.gov.au](http://www.tenders.gov.au)) (SON ID: SON3422137).

The department intends to vary these existing agreements to facilitate the incorporation of digital literacy training into the program. The decision maker for varying these arrangements would be the Assistant Secretary (SES Band 1), Foundation and Transition Programs Branch as the SES officer who is responsible for the delivery of the program. The final decision maker approving the commitments of money relating to the digital literacy projects would be the First Assistant Secretary (SES Band 2), Apprenticeships and Workforce Skills, as a suitable and appropriate delegate of the Secretary of the department. These variations and decisions would again be conducted in a manner consistent with the PGPA Act, CPRs and the department's Accountable Authority Instructions.

Once made, procurement decisions for the program will be final and not subject to merits review. The ARC takes the view that decisions to provide one-off payments to certain service providers, over other service providers, should be excluded from merits review (see paragraph 4.16 of the guide, *What decisions should be subject to merit review?*).

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 *Expert Review of Australia's Vocational Education and Training System* (the Joyce Review) highlighted the critical importance for all Australians to have the basic language, literacy, numeracy and digital skills to allow them to participate in modern life. This has been recognised as part of the *Heads of Agreement for Skills Reform*, under which all Australian governments have committed to:

- providing stronger support for foundation skills; and
- ensuring access to that support for all Australians with low levels of language, literacy, numeracy and digital skills ability.

The Joyce Review conducted far-reaching consultation in 2018-19 and received 192 public submissions from registered training organisations, employers, governments and individuals.

The Joyce Review is available at

<https://www.pmc.gov.au/resource-centre/domestic-policy/vet-review/strengthening-skills-expert-review-australias-vocational-education-and-training-system>.

Since the 11 May 2021 Budget announcement, the department has also received positive feedback on the acceleration of the incorporation of digital skills training into the program.

Since February 2021, the House of Representatives Standing Committee on Employment, Education and Training has been conducting an inquiry into adult literacy and its importance. Much of the evidence heard, as well as submissions received, thus far has also indicated support for the importance of digital literacy skills.

Additional funding for the program of \$23.6 million over four years from 2021-22 (and subsequent \$12.6 million per year ongoing) was included in the 2021-22 Budget under the measure 'Stronger Support for Skills Reform'. Details are set out in *Budget 2021-22, Budget Measures, Budget Paper No. 2 2021-22* at pages 93 to 94.

Total funding for the program of \$512.5 million over four years from 2021-22 comes from subprogram 3.1.2 'Access to Training' under Program 3.1: Building Skills and Capability, 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 page 72.

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

#### *Social welfare power*

The social welfare power in section 51(xxiiiA) of the Constitution empowers the Parliament to make laws with respect to the provision of certain social welfare benefits including benefits to students. The program provides formal language, literacy, numeracy and digital skills training at no cost to the individual.

New **table item 520** establishes legislative authority for government spending on improvements to the VET system (the program) by enhancing the role of industry through the establishment of new Industry Clusters.



The objective of the program is to strengthen the role of industry in the VET system to further allow qualifications to be aligned to the skills that are in demand by employers, increase workforce productivity, and get more learners into jobs.

The program is part of the Australian Government's commitments under the *Heads of Agreement for Skills Reform*, where the Government has committed to supporting improvements to the VET system through the establishment of up to 15 new Industry Clusters. These Industry Clusters will ensure a strong strategic industry voice, drive collaboration across sectors by breaking down silos, address strategic workforce challenges, and improve the speed to market of training package qualifications to meet evolving industry needs.

Through a progressive transition during 2022, Industry Clusters established under the program will replace the existing 67 Industry Reference Committees and six Skills Service Organisations that currently develop training packages, as well as the three Skills Organisation (SO) Pilots. The program will support the establishment and ongoing operation of the new Industry Cluster arrangements.

The establishment of Industry Clusters builds on the 2019-20 Budget commitment *Skills Package – Delivering Skills for Today and Tomorrow* to improve the quality of the VET system, and to respond to the *Expert Review of Australia's Vocational Education and Training System* (the Joyce Review).

The three SO Pilots, established in 2020 as part of the Government's response to the Joyce Review, are trialling new approaches to industry leadership in the VET system. The program will draw and expand on the SO Pilots' successes and lessons learnt in establishing the Industry Clusters.

Once established, Industry Clusters will ensure industry has a strong, strategic voice, is empowered to address workforce challenges, and works to improve the development and delivery of training. The Industry Clusters will aim to increase the quality, relevance and responsiveness of the VET system by delivering on a range of functions, including but not limited to:

- workforce planning including across VET and higher education:
  - identifying current, emerging and future workforce challenges;
  - developing strategies to address workforce and skills needs;
  - prioritising a forward plan for training product development informed by workforce planning; and
  - drawing on and informing labour market analysis and other evidence developed by the National Skills Commissioner;
- occupational standards and training product development:
  - developing training products in accordance with relevant legislative requirements and policy guidance; and
  - testing new approaches to skills and workforce development;
- delivery and promotion:
  - building engagement in the national training system;
  - collaborating with employers and education and training providers;
  - identifying and promoting relevant career pathways, working with the department's National Careers Institute; and

- supporting end-to-end development and delivery of training;
- industry stewardship:
  - providing intelligence on industry issues;
  - establishing feedback loops across the training system;
  - providing strategic advice to Skills Ministers on workforce and skills needs, policies and standards, and system improvements; and
  - working with other Industry Clusters.

The department will provide funding for the establishment and operation of Industry Clusters through a grants process. For most Industry Clusters, funding will be provided to entities assessed as having the capacity and capability to operate as an Industry Cluster, including strong arrangements for governance and engagement.

In the event that such an entity is not assessed as having such capacity and capability for a particular cluster, the department may instead enter into contractual arrangements with other entities for the delivery of services similar to those that would have been provided by an Industry Cluster.

Funding for this item will largely be provided by way of a grants process. The first stage of this process is an open, competitive grants round that opened on 3 December 2021 and will close on 31 March 2022. The second stage of the process will be a closed, non-competitive grants round that will depend on outcomes in the first stage. The grant opportunity guidelines for the first stage are available now on GrantConnect ([www.grants.gov.au/Go/Show?GoUuid=b4bbac70-2d21-4e90-b406-bf3dc6fb80e6&keyword=GO5308](http://www.grants.gov.au/Go/Show?GoUuid=b4bbac70-2d21-4e90-b406-bf3dc6fb80e6&keyword=GO5308)).

Given the complexity and significance of this work, the final decision maker who will enter into arrangements and commit relevant monies will be the Deputy Secretary (SES Band 3), Skills and Training Group, a delegate of the Secretary of the department. An evaluation committee made up of public officials, with various expertise in the skills and training sector will consider applications and oversee relevant evaluations for the grants process. This committee will consider and assess applications against assessment criteria and provide advice to the delegate on recommended successful applicants. This delegation is suitable and appropriate in the context of the program: the delegate is an SES Band 3 officer with extensive experience and a comprehensive understanding of the skills and training sector, including insights gained as the current Chair of the Skills Senior Officials' Network. This experience will be critical in the making of final decisions, as the new Industry Clusters will operate within the national training system in accordance with policies and standards set by the Skills Ministers from all Australian governments. The seniority of the delegate also ensures they are suitable and appropriate to promote and safeguard the efficient, effective, economical and ethical management of the relevant public resources.

This grants process and final decisions about entering into arrangements and committing relevant monies will be conducted and made in a manner consistent with the PGPA Act, the CGRGs, and the department's Accountable Authority Instructions.

Any services procured in relation to the program would be procured in a manner consistent with the PGPA Act and the CPRs, as well as the department's Accountable Authority Instructions and delegations on the expenditure of relevant monies. A range of procurement

methods may be used, including open or limited tenders. The selection of which procurement method to use would depend on the activity.

Final spending decisions would be made by the Secretary of the department or an appropriate delegate. Procurement decisions would be based on achieving appropriate coverage, representation and support for all industries nationally and on value for money, including capability and capacity to deliver, price and risk considerations. Information on any tender(s) and the resultant contract(s) would be made available on AusTender ([www.tenders.gov.au](http://www.tenders.gov.au)) once the contract(s) are signed.

The department would provide an opportunity for suppliers and tenderers to make complaints if they wished, and to seek and receive feedback. Those complaints and inquiries would be able to be made at any time during the procurement process, and would be handled in accordance with probity requirements.

Decisions to grant funding to Industry Clusters, once made, will be final and not subject to independent merits review. This is because those decisions will involve:

- the allocation of a finite resource, from which all potential claims for the share of the resource cannot be met; and
- an allocation that has already been made to another party that 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?*).

Similarly, any procurement decisions, once made, will be final and not subject to merits review. The ARC takes the view that decisions to provide one-off payments to certain service providers, over other service providers, should be excluded from merits review (see paragraph 4.16 of the guide, *What decisions should be subject to merit review?*).

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.

As detailed above, the establishment of Industry Clusters builds on the Government's 2019-20 Budget commitment *Skills Package – Delivering Skills for Today and Tomorrow* to improve the quality of the VET system, and to respond to the Joyce Review. The Joyce Review conducted far-reaching consultation in 2018-19 and received 192 public submissions from training organisations, employers, governments and individuals.

Between September and December 2019, key stakeholders – employers, unions, peak bodies and representatives within the existing system – participated in a national co-design on improvements to the VET system. To inform the co-design, a discussion paper calling for submissions was published on 26 September 2019 and closed on 22 November 2019. A total of 40 submissions were received. To complement the discussion paper, over 500 people participated in 13 workshops and two small business roundtables across Australia.

Between November 2020 and April 2021, key stakeholders were again consulted through surveys, online workshops and webinars, and meetings. Submissions were also invited on the *Improving industry engagement and reforming qualifications in Vocational Education and Training* discussion paper.

Key findings from those consultations included that:

- training packages are not responsive enough to the needs of industry;
- a smaller number of industry clusters, with greater accountability and responsibility, is needed to drive improvements to training package quality and speed to market;
- there are high levels of connection between training packages, indicating the benefit of greater collaboration; and
- training package approval should focus on whether standards are met, rather than the content of qualifications.

Consultation supported the need for reform, finding that the current model for developing training packages is not responsive enough to the needs of industry. Stakeholders were supportive of establishing a smaller number of industry clusters, with greater accountability and responsibility to drive improvement to training package quality and market responsiveness.

In June 2021, at the request of Skills Ministers, a Transition Advisory Group was established to provide expert advice to support the implementation of the new industry engagement arrangements and minimise disruption to the VET system. The Group included representatives from governments, industry and unions, and met from June to August 2021. The Group provided advice on a range of elements relating to the design, implementation and transition to the new industry engagement arrangements.

Additional funding for the program of \$149.2 million over four years from 2021-22 was included in the 2021-22 Budget under the measure ‘Stronger Support for Skills Reform’. Details are set out in *Budget 2021-22, Budget Measures, Budget Paper No. 2 2021-22* at pages 93 to 94.

Total funding for the program of \$292.5 million over four years from 2021-22 comes from subprogram 3.1.3 ‘Support for the National Training System’ under Program 3.1: Building Skills and Capability, 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 page 73.

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 relevant obligations relating to the ICESCR, the ILO Convention 122, and the ILO Convention 142.

Article 2 of the ICESCR requires the States Parties 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 each Member 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 each Member to develop and adopt ‘comprehensive and co-ordinated policies and programmes of vocational training’. Article 2 requires each Member to establish and develop ‘open, flexible and complementary systems of general, technical and vocational education, educational and vocational guidance and vocational training’. Article 4 requires each Member 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 for Industry Clusters under the program is directed to improving the development and quality of VET training package qualifications and thereby helping job seekers to find 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. 4) 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. 4) 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 3 of Schedule 1AB:

- adds table item 53 ‘Grant to MultiLit Pty Limited’; and
- adds table item 54 ‘Grant to Together for Humanity Foundation Limited’.

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

- amends table item 222 ‘Explicit Instruction Teaching Program’;
- adds table item 516 ‘Online Formative Assessment Initiative’;
- adds table item 517 ‘School Partnerships to Improve Educational Outcomes for Indigenous Students in Remote Schools’;
- adds table item 518 ‘Migrant Skills Incentives’;
- adds table item 519 ‘Skills for Education and Employment Program’; and
- adds table item 520 ‘VET system improvements’.

#### **Table item 53 – Grant to MultiLit Pty Limited**

New table item 53 establishes legislative authority for the Government to provide a grant to MultiLit Pty Limited for the delivery of its phonics-based programs to support literacy outcomes for students, particularly Aboriginal and Torres Strait Islander students (the program).

The program will be a key activity that contributes to the *Commonwealth Closing the Gap Implementation Plan* as part of a broader package of measures. The program will enable targeted efforts to improve student outcomes, to accelerate progress toward Target 5 of the *National Agreement on Closing the Gap* (by 2013, increase the proportion of Aboriginal and Torres Strait Islander people (age 20-24) attaining Year 12 or equivalent qualification to 96 per cent).

The program will use verified tools to identify student knowledge and skill gaps, and then addresses these with direct, systematic and intensive teaching of the requisite skills. The program comprises four components: InitiaLit for students in Foundation to Year 3, MacqLit for students in Years 4 to Year 6, and MiniLit Sage and LanguageLift available for students who need extra support.

Funding will be provided to support MultiLit (Making Up Lost Time in Literacy) to deliver these literacy programs to an estimated 40 majority Indigenous schools, with a focus on schools in remote areas.

### **Human rights implications**

Table item 53 engages the following right:

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

#### Right to education

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’.

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.

Table item 53 supports the right to education as it is directed at a basic learning need of Indigenous primary schools by methods appropriate to those children. Table item 53 is also directed at core educational activities that are central to the development of the talents and abilities of children.

### **Conclusion**

Table item 53 is compatible with human rights because it promotes the protection of human rights.

Table item 54 – Grant to Together for Humanity Foundation Limited

Table item 54 establishes legislative authority for the Government to provide a grant to Together for Humanity Foundation Limited (TFH) to deliver the Inclusion Education for Connected Youth and Communities Initiative (the program).

The grant funding will enable TFH to increase the scope and impact of its existing program, which includes a number of initiatives such as school partnerships, professional development for teachers, online resources, student-led summits, and national awards celebrating achievements in civics and citizenship with a focus on fostering interfaith and intercultural understanding to support social cohesion.

The program will be delivered to schools, students and parents across metropolitan, regional and remote Australia to support social cohesion. Specific objectives of the program are that:

- students are aware and accepting of their multiple identities and communities, have resilience to deal with prejudice, reject stereotypes, and build and model respectful intercultural relationships;
- teachers and other educators effectively apply intercultural understanding dispositions, knowledge, skills and resources in their schools;
- Australian school communities are inclusive of diversity of culture and belief; and
- parents, carers and other school community members have a feeling of belonging together and being connected with culturally diverse people.

TFH has seen positive results in transforming attitudes and behaviours. The program contributes to developing resilience in young people when faced with extremism and encouraging them to embrace shared Australian values and to have empathy for those who are different.

**Human rights implications**

Table item 54 engages the following rights:

- the right to enjoy culture – Articles 18 and 27 of the *International Covenant on Civil and Political Rights* (ICCPR), read with Article 2;
- the right to equality and non-discrimination – Article 7 of the *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD), read with Article 2; and
- the right to education – Article 29 of the CRC, read with Article 4.

Right to enjoy culture

Article 2 of the ICCPR requires the States Parties ‘to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant’.

Article 18(1) of the ICCPR provides that ‘[e]veryone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or adopt a religion or belief of his choice, and freedom, either individually or in community with others in public or private, to manifest his religion or belief in worship, observance, practice and teaching.’



Article 27 of the ICCPR provides that ‘minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language’.

Significant parts of the program are directed toward activities that promote understanding and respect for cultures and cultural practices as well as religions and religious practices. An increase in understanding, acceptance and tolerance will foster an inclusive society in which individuals are comfortable to exercise the right to enjoy their culture.

#### Right to equality and non-discrimination

Article 2 of the ICERD requires States Parties to condemn racial discrimination and undertake ‘to pursue by all appropriate means ... a policy of eliminating racial discrimination in all its forms and promoting understanding among all races’.

Article 7 requires States Parties to ‘adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnic groups’.

The program incorporates a number of activities to promote religious tolerance and acceptance through education and partnership activities.

#### Right to education

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.

Article 29 of the CRC is concerned with the right to education. Article 29(1)(c) relevantly includes an obligation to direct education to the development of respect for the child’s ... cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilisations different from his or her own.

The program focuses on educating and promoting tolerance and acceptance of different cultural and religious practice amongst school students.

### **Conclusion**

Table item 54 is compatible with human rights because it promotes the protection of human rights.

#### Table item 222 – Explicit Instruction Teaching Program

Table item 222 establishes legislative authority for government spending on the Explicit Instruction Teaching Program, which funds training for teachers at remote primary schools to enable them to adopt explicit instruction teaching methods in relation to literacy, numeracy and science to improve the skills and knowledge of students in remote locations, particularly Aboriginal and Torres Strait Islander students.

The program received funding of \$5.8 million over four years from 2020-21 as part of the Students Support Package in the 2020-21 Budget, to include numeracy and science in up to 10 remote and very remote schools. More recently, the Government has committed additional funding of \$5 million over four years from 2021-22, as part of Closing the Gap initiatives, for the program to increase teacher pedagogical skills in literacy from 10 to 20 schools.

To facilitate this expansion, the participating schools will no longer be limited to remote and very remote locations but rather be selected on the basis of educational disadvantage, particularly targeting Aboriginal and Torres Strait Islander students. The amendments to table item 222 give effect to this expansion in focus and geography of the program, with an associated change to the program name. For clarity, the Explicit Instruction Teaching Program is a continuation of the Flexible Literacy Remote Primary Schools Program (albeit in an expanded form).

### **Human rights implications**

Table item 222 engages the following right:

- right to education – Article 13 of the ICESCR, read with Article 2, and Articles 28 and 29 of the CRC, read with Article 4.

#### *Right to education*

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 ‘... [t]he development of the child’s personality, talents and mental and physical abilities to their fullest potential’.

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.

Table item 222 supports the right to education as it is directed at a basic learning need of children (particularly Indigenous students) in primary schools in educationally disadvantaged areas by methods appropriate to those children. This table item is also directed at core educational activities that are central to the development of the talents and abilities of children.

### **Conclusion**

Table item 222 is compatible with human rights because it promotes the protection of human rights.

### Table item 516 – Online Formative Assessment Initiative

Table item 516 establishes legislative authority for government spending on the development, implementation and maintenance of the Online Formative Assessment Initiative (the Initiative), which would facilitate access to online teaching resources, tools, student assessments, professional learning and other support for teachers.

The Initiative aims to support teachers to monitor individual student progress and identify individual student learning needs by providing access to an online system currently known as the Teaching Tools Network. The proposed system will assist teachers to identify what skills and knowledge a student already possesses, what each student needs to learn next, and what resources will be most useful to support that student’s progress. Use of this system will provide teachers with the information and tools they need to adapt their teaching practice to meet their student’s needs. Students will also have access to information about their own learning progress.

The Initiative was part of a wider agreement between all states, territories and the Commonwealth at the end of 2018, whereby all jurisdictions have committed to providing financial contributions to the ‘learning progressions and online formative assessment’ national policy initiative under the *National School Reform Agreement*.

### **Human rights implications**

Table item 516 engages the following right:

- the right to education – Articles 28 and 29 of the CRC, read with Article 4, and Article 13 of the ICESCR, read with Article 2.

#### Right to education

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’.

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.

Table item 516 supports the right to education by seeking to develop the individual talents and abilities of children by facilitating online access to data and resources teachers need to identify the needs of their students and then adapt their practice to meet those needs.

### **Conclusion**

Table item 516 is compatible with human rights because it promotes the protection of human rights.

Table item 517 – School Partnerships to Improve Educational Outcomes for Indigenous Students in Remote Schools

Table item 517 establishes legislative authority for government spending on school partnerships to improve educational outcomes for Indigenous students in remote schools. Government funding will incentivise and support large, high performing independent (non-government) schools to engage in new formal partnerships with remote, majority Indigenous schools, while maintaining consultation with local Aboriginal and Torres Strait Islander communities.

These formal partnerships aim to improve the quality of operational management and principal leadership, and increase the reach of effective teacher practices (for example, instructional coaching to teachers to lift the quality of pedagogy in remote schools). These partnerships will address key issues such as workforce shortages through enabling and encouraging teacher transfers.

Funding allocated through the Remote School Partnerships fund will also support brokerage activity to promote partnerships in the school sector and may consider opportunities to partner with local further education and training providers and employers, to enhance further education and employment pathways for students.

### **Human rights implications**

Table item 517 engages the following right:

- right to education – Article 13 of the ICESCR, read with Article 2, and Articles 28 and 29 of the CRC, read with Article 4.

#### Right to education

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 ‘... [t]he development of the child’s personality, talents and mental and physical abilities to their fullest potential’.

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.

Table item 517 supports the right to education as the initiative will provide funding to high performing independent schools so they can engage in formal partnerships with remote, majority Indigenous schools, to improve the operations of and the education provided by the remote school, particularly in relation to teaching. This will benefit the Indigenous students targeted by this initiative.

## Conclusion

Table item 517 is compatible with human rights because it promotes the protection of human rights.

### Table item 518 – Migrant Skills Incentives

Table item 518 establishes legislative authority for government spending on incentives to increase the number of skilled migrants who can contribute to the Australian workforce at an appropriate skill level, by funding the development, promotion and provision of skills assessments, employability assessments and skills training (the project).

The project will target particular cohorts of migrants who have a qualification and/or skills directly relevant to priority occupations identified by the National Skills Commission (NSC). Priority occupations may include those listed on the NSC's Skills Priority List (SPL) that are both in shortage and, depending on the cohort, in strong demand, or they may be in soft, moderate or strong future demand. The overall policy objective of the project is to increase the number of onshore migrants with unrecognised or under-recognised skills who are available to contribute to the Australian workforce.

In this statement of compatibility with human rights, the term 'assessing authority' means an entity that has been prescribed as the relevant assessing authority for specified occupations under the migration legislation (see section 2.26B of the *Migration Regulations 1994*). Assessing authorities include peak bodies (such as the Australian Computer Society), registration bodies (such as the Australian Dental Council) and government organisations (such as the Australian Institute for Teaching and School Leadership).

The department will establish contracts with assessing authorities to support the delivery of the project. This includes:

- undertaking free skills assessments for those migrants who do not require skills assessments as a condition of their visa but whose employment prospects in a priority occupation may improve as a result of having one; and
- offering a free employability assessment to skilled migrants who have already received a suitable skills assessment outcome and are working beneath their skill level, and subsidised training if required.

## Human rights implications

Table item 518 engages the following right:

- 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).

### Right to work

Article 2(1) of the ICESCR 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.

Article 6(1) of the ICESCR provides that the States Parties to the ICESCR recognise the right to work. 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.

Article 1(1) of the ILO Convention 122 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. That policy should, among other things, be aimed at ensuring that there is work for all who are available and seeking work; such work is as productive as possible; and there is freedom of employment and the fullest possible opportunity for each worker to engage in work for which he is qualified and skilled to do.

Table item 518 promotes the right to work as expressed in the relevant Articles of the treaties above by providing particular classes of individuals – in this case, migrants with particular skills relevant to priority occupations – with the opportunity to overcome underemployment, freely access employment opportunities for which they are appropriately qualified, and therefore potentially improve their overall standards of living.

This measure will also contribute to a broader policy aimed at stimulating economic growth and development by supporting eligible individuals to participate as productively as possible in the workforce. This includes, as Article 6 of the ICESCR envisions, providing individuals with access to additional vocational training that complements their existing skills and qualifications to improve their overall employment prospects.

## **Conclusion**

Table item 518 is compatible with human rights because it promotes the protection of human rights.

### *Table item 519 – Skills for Education and Employment Program*

New **table item 519** establishes (and renews) legislative authority for government spending on the Skills for Education and Employment Program (the program), which provides language, literacy, numeracy and digital skills training to eligible job seekers, boosting their prospects for further education and employment opportunities.

The program was established in 2002 when the Literacy and Numeracy program was amalgamated with the Advanced English for Migrants Program. The current program caters to various groups, including Aboriginal and Torres Strait Islander people, young people, people with disability, mature aged people, and people from culturally and linguistically diverse backgrounds. Eligible job seekers are presently referred to the program by Services Australia, as well as by the Community Development Program, Disability Employment Services, jobactive, ParentsNext and Transition to Work providers.

In the 2021-22 Budget, the Government announced that it would increase its investment in the program over five years, allowing places in the program to be ‘uncapped’. The

Government further announced that it would increase project funding over the next two years to accelerate the inclusion of digital skills training for job seekers in the program. Digital literacy is increasingly becoming an essential skill required in most occupations on the critical skills list, as well as for entry level jobs for job seekers. Incorporating digital skills training into the program will ensure job seekers gain digital literacy skills, boosting their prospects for further education and employment opportunities.

### **Human rights implications**

Table item 519 engages the following rights:

- the right to education – Article 13 of the ICESCR, read with Article 2, 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); and
- the right to work – Article 6 of the ICESCR and Article 1 of the ILO Convention 122.

#### Right to education

Article 2(1) of the ICESCR provides that each State Party to the ICESCR undertakes to take steps to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in that Covenant by all appropriate means, including particularly the adoption of legislative measures.

Article 13(1) of the ICESCR provides that the States Parties to the treaty:

- 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.

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

Table item 519 promotes the right to education by providing formal language, literacy, numeracy and digital skills training at no cost to the individual, in turn boosting the individual’s prospects for further education and employment opportunities.

Right to work

Table item 519 engages Article 6 of the ICESCR, 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.

Article 1(1) of the ILO Convention 122 provides that, with a view to stimulating economic growth and development, raising levels of living, 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 519 promotes the right to work by providing formal language, literacy, numeracy and digital skills training at no cost to the individual, in turn boosting the individual's prospects for further education and employment opportunities.

**Conclusion**

Table item 519 is compatible with human rights because it promotes the protection of human rights.

Table item 520 – VET system improvements

New table item 520 establishes legislative authority for government spending on improvements to the vocational education and training (VET) system (the program) by enhancing the role of industry through the establishment of new Industry Clusters.

The objective of the program is to strengthen the role of industry in the VET system to further allow qualifications to be aligned to the skills that are in demand by employers, increase workforce productivity, and get more learners into jobs. The program is part of the Australian Government's commitments under the *Heads of Agreement for Skills Reform*, where the Government has committed to supporting improvements to the VET system through the establishment of up to 15 new Industry Clusters. These Industry Clusters will ensure a strong strategic industry voice, drive collaboration across sectors by breaking down silos, address strategic workforce challenges, and improve the speed to market of training package qualifications to meet evolving industry needs.

Through a progressive transition during 2022, Industry Clusters established under the program will replace the existing 67 Industry Reference Committees and six Skills Service Organisations that currently develop training packages, as well as the three Skills Organisation (SO) Pilots. The program will support the establishment and ongoing operation of the new Industry Cluster arrangements.



Industry Clusters will aim to increase the quality, relevance and responsiveness of the VET system, including but not limited to the following functions:

- workforce planning including across VET and higher education;
- occupational standards and training product development;
- delivery and promotion of training; and
- industry stewardship.

### **Human rights implications**

Table item 520 engages the following rights:

- the right to education – Article 13 of the ICESCR, read with Article 2, and Article 1 of the ILO Convention 142; and
- the right to work – Article 6 of the ICESCR and Article 1 of the ILO Convention 122.

#### *Right to education*

Article 2(1) of the ICESCR provides that each State Party to the ICESCR undertakes to take steps to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in that Covenant by all appropriate means, including particularly the adoption of legislative measures.

Article 13(1) of the ICESCR provides that the States Parties to the treaty:

- 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.

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

Table item 520 promotes the right to education by improving industry-led methods of qualifications development and assessment, which will improve links between training providers and industry, ensuring students receive training that equips them with the skills required by employers.

### Right to work

Table item 520 engages Article 6 of the ICESCR, 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.

Article 1(1) of the ILO Convention 122 provides that, with a view to stimulating economic growth and development, raising levels of living, 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.

The program aims to improve the quality, relevance and responsiveness of the VET system by strengthening industry's voice, driving collaboration across sectors, addressing strategic workforce challenges, and improving the speed to market of training package qualifications to meet evolving industry needs. This will mean qualifications are aligned to the skills that are in demand by employers, increase workforce productivity, and get more learners into jobs, in turn promoting the right to work.

### **Conclusion**

Table item 520 is compatible with human rights because it promotes the protection of human rights.

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