

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance

Financial Framework (Supplementary Powers) Act 1997

Financial Framework (Supplementary Powers) Amendment (Education Measures No. 2) Regulations 2022

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*.

The Principal Regulations are exempt from sunseting under section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (item 28A). If the Principal Regulations were subject to the sunseting regime under the *Legislation Act 2003*, this would generate uncertainty about the continuing operation of existing contracts and funding agreements between the Commonwealth and third parties (particularly those extending beyond 10 years), as well as the Commonwealth's legislative authority to continue making, varying or administering arrangements, grants and programs.

Additionally, the Principal Regulations authorise a number of activities that form part of intergovernmental schemes. It would not be appropriate for the Commonwealth to unilaterally sunset an instrument that provides authority for Commonwealth funding for activities that are underpinned by an intergovernmental arrangement. To ensure that the Principal Regulations continue to reflect government priorities and remain up to date, the Principal Regulations are subject to periodic review to identify and repeal items that are redundant or no longer required.

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. Section 32D of the FF(SP) Act confers powers of delegation on Ministers and the accountable authorities of non-corporate Commonwealth entities, including subsection 32B(1) of the Act. Schedule 1AA and Schedule 1AB to the Principal Regulations specify the arrangements, grants and programs.

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.

The *Financial Framework (Supplementary Powers) Amendment (Education Measures No. 2) Regulations 2022* (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 (the department).

Funding will be provided for:

- a grant to Clontarf Foundation to support the education and employment prospects of Aboriginal and Torres Strait Islander young men (\$32.4 million over two years from 2022-23, no new funding is provided);
- the High Achieving Teachers Program to deliver alternative pathways into teaching, to address teacher shortages and increase the quality of teaching (\$68.3 million in administered funding over four years from 2022-23);
- bursaries to attract students into teaching to address the serious national teacher workforce shortages by encouraging high-quality candidates into teaching (\$56.2 million in administered funding over four years from 2022-23); and
- the First Nations Educators in primary schools program, which aims to place First Nations Educators to teach First Nations languages and First Nations cultures in primary schools (\$14 million over four years from 2022-23).

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 registration on the Federal Register of Legislation.

Consultation

In accordance with section 17 of the *Legislation Act 2003*, consultation has taken place with the Department of Education.

A regulation impact statement is not required as the Regulations only apply to non-corporate Commonwealth entities and do not adversely affect the private sector.

Details of the *Financial Framework (Supplementary Powers) Amendment (Education Measures No. 2) Regulations 2022*

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Education Measures No. 2) Regulations 2022*.

Section 2 – Commencement

This section provides that the Regulations commence on the day after registration 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)

Item 1 adds one new table item to Part 3 of Schedule 1AB to establish legislative authority for government spending on a certain activity administered by the Department of Education (the department).

New **table item 60** establishes legislative authority for the Government to provide a grant to Clontarf Foundation to expand and extend its existing program. The program aims to increase year 12 attainment and improve post-school pathways for Aboriginal and Torres Strait Islander boys through participation in activities, including sport and promotion of healthy lifestyles, designed to increase educational engagement.

In the 2020-21 Budget, the Australian Government committed to providing \$146.3 million over five years from 2020-21 for a package of initiatives to improve education outcomes of young Australians, particularly disadvantaged students and those most impacted by the COVID-19 pandemic, and to contribute to social cohesion (Student Support Package).

Part of the Student Support Package includes administered funding of \$39.8 million over four years from 2020-21 for the Clontarf Foundation (Clontarf) to expand and extend its existing program. The grant funding to Clontarf is administered jointly by the National Indigenous Australians Agency (\$7.7 million) and the department (\$32.2 million).

Supports to be delivered through the National Indigenous Australians Agency (NIAA) was to expand Clontarf's funded places from the existing 10,500 funded participants in 138 academies across Australia, to enable an additional 1,000 places in 2021 and a further 1,000 in 2022 (bringing the total number of funded places to 12,500). Legislative authority supporting spending activities administered by the NIAA was provided through existing table item 36 in Part 4 of Schedule 1AB.

From 2023, Clontarf's funding will be administered by the department. Legislative authority under new table item 60 is required to support Clontarf in expanding the program to enable 12,500 students to participate in 2023 and increase year 12 attainment and post-school pathways for participants.

Clontarf aims to provide a school-engagement mechanism, by using students' existing passion for sports to encourage school attendance and participation for at risk Indigenous boys. Clontarf partners with schools and communities to create 'Clontarf Academies' which are embedded within the school grounds and education program. Clontarf Academies are primarily in High Schools and Colleges across Australia, and accept any Aboriginal and Torres Strait Islander boy enrolled in a participating school.

The program's overarching goal is to increase Year 12 attainment and enable positive post-school pathways. The primary data measurements are school attendance (the 2021 Annual Report reported 79 per cent attendance average, with 60 per cent of participants having a school attendance rate of 80 per cent or above, against a targeted average of 80 per cent) and to achieve a retention rate of 90 per cent with boys either still in school, or in employment or training (the 2021 Annual Report reported 89 per cent average).

Clontarf works closely with schools and teachers to keep students engaged, with teachers reporting to the Academy about a participant's progress. The partnership between schools and their Clontarf Academies allows Clontarf staff to provide positive reinforcements to encourage and promote good behaviour in line with their Code of Conduct, which includes good behaviour, school attendance and participation, and the display of a "real commitment to [their] timetable and schoolwork". The Code of Conduct also states that if the contract is broken at any stage, members may be temporarily withdrawn from the Academy until reassessment.

In addition to encouraging school attendance and retention, the program provides annual health checks, breakfast and lunch, and an 'Academy room' which provides the boys a "safe, fun and positive space in school."

As students approach Year 10, Clontarf assists participants with employment in their senior years through workplace visits each term and assistance with obtaining important paperwork and ID needed for employment, such as tax file numbers, bank accounts and a Medicare card. The program also helps the boys to obtain a driver's license through support with Learner's training and the cost of lessons and Practical Driving Assessments. Clontarf also undertakes significant community engagement to support identification and establishment of new academy locations.

The department will provide funding to Clontarf as a closed, non-competitive grant. 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 the First Assistant Secretary of the Improving Student Outcomes Division (as the delegate of the Secretary of the department in line with the appropriate financial delegations).

The department will be responsible for administering grant payments to Clontarf, which will be staggered over the length of the funding agreement to ensure deliverables are met.

Independent review will not be available for the grant provided to the recipient as this grant will be closed, non-competitive and for a specific purpose and entity. Clontarf has been directly selected because of its proven success in improving student outcomes.

The grant decision, once made, will be final and not subject to merits review. This grant involves an allocation of a finite resource to Clontarf. Review (and potential change) of decisions would impact allocations made to other parties and would impede timely and effective implementation of the program. 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?* (ARC's guide)).

The department has consulted with the NIAA to understand their existing grant arrangement with Clontarf. The department has met with and will continue to work with Clontarf on the progress of the program's expansion. Further consultation was not deemed necessary as the decision to extend delivery of an existing program remains in line with its current scope.

The program remaining funding of \$32.4 million (including indexation) over two years from 2022-23 will be included in the 2022-23 Portfolio Budget Statements for the Education Portfolio. Funding for the 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 purpose of the item references the race power (section 51(xxvi)) of the Constitution.

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 expenditure for the program is directed at supporting education and employment prospects of Aboriginal and Torres Strait Islander young men.

Item 2 – Part 4 of Schedule 1AB (table item 278, column headed “Objective(s)”, paragraph (b) (first occurring))

Table item 278 in Part 4 of Schedule 1AB establishes legislative authority for government spending on the High Achieving Teachers Program (HAT program), which is administered by the department.

Item 2 amends table item 278 by omitting “program participants in” and substituting “those individuals in preschools, primary schools and” at paragraph (b) in the column headed “Objective(s)”. The amendment reflects the expansion in the scope of the HAT program to

allow teachers to be placed in primary schools and preschools in addition to secondary schools.

Item 3 – Part 4 of Schedule 1AB (table item 278, column headed “Objective(s)”, paragraph (c))

Item 3 amends table item 278 by omitting “program participants” and substituting “the individuals” at paragraph (c) in the column headed “Objective(s)” to maintain a consistent language in describing individuals participating in the program.

Item 4– Part 4 of Schedule 1AB (table item 278, column headed “Objective(s)”

Item 4 amends table item 278 by omitting “also” in the column headed “Objective(s)”. The effect of this technical amendment to the operation provision is to align table item 278 with the current approach to referring to constitutional heads of power in table items in Schedule 1AB.

The HAT program commenced in 2020 to support the growth and emergence of alternative, employment-based pathways into teaching as a mechanism for improving access to quality teaching and education for all Australian students, regardless of their location. High-quality mid-career professionals, including Science, Technology, Engineering and Math (STEM) specialists, are supported to study a post-graduate teaching qualification while being employed in schools experiencing difficulties filling staff vacancies. This includes schools in disadvantaged or regional, rural and remote areas.

Over 500 participants have been supported in the HAT program since its establishment. These participants have been placed in schools across five jurisdictions in Australia. Participant completions are tracking consistent with – or higher than – average completions for postgraduate initial teacher education (ITE) courses in Australia.

Teacher shortages are expected to grow significantly. For example, New South Wales’ (NSW) Teacher Supply Strategy shows that an additional 3,700 teachers over the ten years to 2031 is required to meet growing teacher demand in NSW alone. The COVID-19 pandemic has exacerbated existing teacher shortages and resulted in increased numbers of teachers reporting burnout.

In line with the Government’s election commitment on *Labor’s Plan to Fix Teacher Shortages and Stop the Slide in School Results*, more high-quality candidates will be supported into the teaching profession through expansion of the HAT program by offering up to 1,500 additional places in employment-based pathways into teaching for high-quality mid-career changers, including STEM specialists.

The amendment to table item 278 provides legislative authority for the Government to deliver on its election commitment to expand the HAT program. The HAT program’s objective remains unchanged in that funding will be made available to providers to deliver alternative pathways into teaching, to address teacher shortages and increase the quality of teaching.

Under the current HAT program, participants are supported to complete a post-graduate teaching qualification while being employed in a secondary school. An approach to market will be undertaken to engage ITE providers to deliver more employment-based pathways into

teaching under the expanded HAT program. The HAT program currently places ITE students in secondary schools only. The scope of the HAT program will be expanded to allow teachers to be placed in primary schools and preschools, particularly in hard-to-staff locations including disadvantaged or regional, rural and remote areas.

Proposals will be sought from ITE providers and partnerships with state and territory government and non-government education sectors will be encouraged. The HAT program will include a focus on innovative delivery of ITE within the current regulatory framework. For example, ITE providers could formalise Permission to Teach arrangements for final year students as an employment-based pathway, providing more structured support for these students so they are prepared to manage classrooms and can also complete their qualifications. Pathways could also be developed, for example, to upskill teacher aides and assistants, or to develop specific pathways for First Nations teachers.

The role and responsibilities of successful ITE providers will include:

- program administration and design;
- recruiting and selecting high-achieving individuals to be trained as teachers;
- partnering with education authorities to place those individuals in preschools, primary schools and secondary schools with identified needs;
- providing training and support to the individuals; and
- retention activities.

The department will procure providers to deliver employment-based pathways into teaching under the HAT program, in accordance with applicable legislative requirements under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), the *Commonwealth Procurement Rules* (CPRs) and the department's Accountable Authority Instructions. Successful tenderers will be expected to demonstrate that their program will meet the objectives of the HAT Program. A range of procurement methods may be used such as limited tenders or procurements under existing arrangements. The selection of which procurement method to use will depend on the activity. Final spending decisions will be made by the First Assistant Secretary, National Schools Reform Division, a delegate of the Secretary of the department with relevant understanding of the policy and operational context for Commonwealth spending on the HAT program.

The procurement process will be undertaken during 2022 and early 2023 to engage HAT program providers to deliver employment-based pathways into teaching, in line with the arrangements for the existing HAT program. From mid-2023, the successful funding recipients will enter into legally binding agreements with the Commonwealth, with clear performance requirements. From 2024, successful programs will be in operation and participants will commence in schools.

The department will manage all contracts for the successful providers. The programs will be subject to approval by the Minister for Education.

Procurement decisions will be made in accordance with the Commonwealth resource management framework, including the PGPA Act and the CPRs. The department will provide an opportunity for suppliers and tenderers to make complaints if they wish, and to receive feedback. These complaints and inquiries can be made at any time during the procurement process and will be handled in accordance with probity requirements. Information about the tender and the resultant contracts will be made available on AusTender (www.tenders.gov.au)

once the contracts are signed. Procurement decisions will be based on value for money, including capability and capacity to deliver, and price and risk considerations.

Procurement decisions made in connection with the HAT program are not considered suitable for independent merits review, as they are decisions relating to the allocation of a finite resource, from which all potential claims for a share of the resource cannot be met. In addition, any funding that has already been allocated would be affected if the original decision was overturned. The ARC has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.11 to 4.19 of the ARC's guide).

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

The HAT program expansion responds to the Quality Initial Teacher Education Review (QITE Review), which was undertaken by a panel of experts in 2021 to examine how best to attract, select and prepare high-quality teaching candidates. Following an extensive consultation process, including through surveys and focus groups, the panel found the loss of earnings while studying to be a significant barrier to well-qualified, mid-career professionals in taking up teaching and recommended greater support for employment-based pathways.

Internal modelling has shown that the schooling system is struggling to attract new teachers to meet demand. This is due to:

- an increasing student population, growing 10 per cent between 2022 to 2031;
- an ageing teacher workforce, with 30 per cent of teachers aged 50 or more; and
- the number of students commencing an ITE course falling six per cent between 2015 and 2020, while the number of students graduating from an ITE course fell 16 per cent between 2015 and 2020.

The early childhood education sector is also experiencing teacher shortages, for many of the same reasons experienced by schools.

Consultation will be undertaken with state and territory governments to ensure the HAT program meets the desired outcome of increasing the number of high-quality, mid-career and diverse entrants into the teaching profession. The Government will work with states and territories to consider employment-related aspects of the proposal, including identifying positions for participants in schools. Higher education providers will be encouraged to enter into partnerships with state and territory teacher employers in developing their proposals in response to the approach to market.

Administered funding of \$68.3 million over four years from 2022-23 for this item is included in the October 2022-23 Budget and the Portfolio Budget Statements for the Education Portfolio. 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 external affairs power (section 51(xxix)) of the Constitution.

External affairs power

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

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

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

Article 13 of the ICESCR relates to the right of everyone to education, and the required steps to be taken by States Parties to achieve the full realization of this right.

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 28 of the CRC requires States Parties to recognize the right of the child to education, and outlines steps to be taken by States Parties to achieve the full realization of this right.

Article 29 of the CRC refers to the States Parties’ agreement that education should develop each child’s personality and talents to the fullest potential; and should encourage children to respect their parents, their cultures and other cultures.

The HAT program promotes the objectives of Article 13(2)(a) of the ICESCR and Articles 28(1) and 29 of the CRC as it is directed at meeting the learning needs of children by ensuring that anticipated shortages of teachers are proactively addressed through encourage the enrolment of high quality students into ITE, thus ensuring the continuing of provision of education by skilled teachers.

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

Item 5 adds two new table items to Part 4 of Schedule 1AB to establish legislative authority for government spending on certain activities administered by the department.

New **table item 563** establishes legislative authority for government spending on the bursaries to attract students into teaching initiative (the initiative). The initiative aims to increase the number of students entering teaching by funding, as benefits to students, bursaries to support students who are undertaking study for a recognised ITE qualification.

The initiative responds to the Government's election commitment on *Labor's Plan to Fix Teacher Shortages and Stop the Slide in School Results* for a new bursary program, which will be offered to attract more high-quality candidates into teaching and contribute to addressing serious national teacher workforce shortages.

Bursaries of \$10,000 each year will be provided to students enrolling in either undergraduate or postgraduate accredited ITE programs in the following target cohorts:

- high achieving students with an adjusted Australian Tertiary Admissions Rank of 80 or above or equivalent;
- First Nations students; and
- students from regional, rural and remote areas.

The total bursary amount paid per participant will be \$40,000 for undergraduate ITE students (four-year qualification) and \$20,000 for postgraduate ITE students (two-year qualification), with payments contingent upon successful completion of units each semester.

A top up payment of \$2,000 will also be available for students who undertake their final year professional experience placement in remote areas, to attract talented teachers to remote areas and help to close the regional education gap.

ITE students in receipt of other scholarships or participating in Government-supported employment-based pathways, such as Teach For Australia, will not be eligible to receive a bursary.

Following the program design and establishment during 2023, it is expected that the first round of bursaries will be offered to students commencing ITE programs in 2024. Successful bursary providers will be required to make payments to the first cohort of students on successful completion of their first semester in 2024.

The initiative includes a program evaluation component to determine the impact and effectiveness of the program. The evaluation will cover five student cohorts to 2030-31 and will include linking bursary applications with ITE data for estimating the degree to which bursaries attract new teachers.

Prospective Providers will be able to submit proposals to administer bursaries in line with the program guidelines which will be evaluated against assessment criteria by a panel and approved by the Minister for Education. Funding will be provided as competitive grants. Targeted or restricted competitive funding rounds may be used where appropriate.

All prospective provider proposals will be subject to approval by the Minister for Education. The initiative will be managed by the department in accordance with the Commonwealth resource management framework, including the PGPA Act and the CGRGs.

Information about the grants, including grant opportunity guidelines will be made available on the GrantConnect website (www.grants.gov.au), and the grants will be administered by the Community Grants Hub within the Department of Social Services. An SES Band 2 will be responsible for approving Commonwealth funding to the successful provider(s), in their capacity as an authorised delegate of the Secretary of the department under the *Financial Framework (Supplementary Powers) Act 1997* (FF(SP) Act).

Merits review of decisions made in connection with the grants would not be considered appropriate because these decisions relate to the provision of one-off grants to a certain service provider, over other service providers. The ARC has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.16 to 4.19 of the ARC's guide).

Prospective Providers that are assessed as suitable organisations following a due diligence process will receive a one-off, ad hoc grant. This process will involve the verification of claims outlined in proposals, consideration of the suitability of other Prospective Providers and development of a multi-stage assessment methodology.

The initiative responds to the QITE Review undertaken by a panel of experts in 2021 to examine how best to attract, select and prepare high-quality teaching candidates. Following an extensive consultation process, including through surveys and focus groups, the panel found that more should be done to attract high-quality candidates into teaching, including high-achieving school leavers, mid-career professionals, First Nations peoples and those in rural, regional and remote areas. Commissioned research found that financial incentives would attract more high-achieving school leavers and mid-career professionals than now.

State and territory governments and the non-government school sector will be consulted to ensure the program meets the objectives of increasing the number of high-achieving students entering the teaching profession and complements existing state and territory scholarship initiatives. The Government will work with states and territories to consider employment-related aspects of the proposal, including employment of bursary recipients following graduation and options for bursary recipients to undertake paid work as teachers' aides during their degree.

Administered funding of \$56.2 million over four years from 2022-23 for the initiative is included in the October 2022-23 Budget and the Portfolio Budget Statements for the Education Portfolio. 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 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 will attract high-quality candidates to undertake ITE. The program directly supports students enrolled in ITE through the payment of bursaries to those students.

New **table item 564** establishes legislative authority for government spending on the First Nations Educators in primary schools program (the program), which aims to place First Nations Educators in primary schools to teach First Nations languages and First Nations cultures.

The program responds to the Government's election commitment on *Labor's Plan to Teach First Nations Languages in Schools* to partner with primary schools around the country to teach local Indigenous languages and cultural knowledge in schools.

The program's objectives are to:

- increase the uptake of First Nations language learning by primary schools and students across Australia, thereby helping to keep First Nations languages alive;
- improve school attendance and engagement for First Nations students, by fostering a stronger sense of identity, self-esteem and belonging;
- boost First Nations academic results and contribute to 'Closing the Gap' in their educational attainment;
- enable more young Australians to develop a deeper understanding and appreciation of First Nations cultures and languages, and experience the cognitive advantages of learning a language; and
- increase employment opportunities and pathways for First Nations people, by creating local jobs that recognise their existing skills and cultural knowledge.

The Australian Government will provide grant funding of up to \$12.2 million to an organisation (or multiple organisations, if required) with appropriate language and cultural expertise to consult on, design and implement the approach to place First Nations Educators in Australian primary schools.

The successful organisation(s) will be responsible for:

- overseeing the development and implementation of the program. The program's success may require the engagement of multiple grant recipients (or a primary recipient to sub-contract elements) to oversee quality development and delivery of individual components, where this cannot be satisfied by a single organisation. This may involve, for example, a national First Nations languages or culture organisation, a registered training organisation, and a communications organisation;
- undertaking stakeholder consultation, to refine and finalise the approach to delivery;
- engaging with First Nations communities to determine whether they want to share their language and culture with local primary schools and, where community support is secured, working with schools and regional co-ordinators to appoint First Nations Educators to receive the Education Support training. The department will liaise with the states and territories to select the primary schools to participate in the program, based on an agreed set of criteria developed, refined and agreed to during stakeholder consultations to settle the program's final approach;
- liaising with the vocational education and training sector, First Nations communities and organisations, language centres and other experts to identify/develop suitable online courses in Education Support, and other relevant training, that meet the needs of First Nations Educators and equip them with the requisite language teaching competencies (training is expected to take between 6 to 12 months to complete);
- overseeing the placement of First Nations Educators (once appropriately trained) in primary schools, including managing their employment and monitoring their tenure in the school as part of project management due diligence; and
- reporting to the department on how the program met its intended objectives, with reporting nature and frequency determined by the terms of the grant agreement and to include the provision of a final project report.

Approximately 60 primary schools will be supported to participate in the program, with priority given to primary schools with high First Nations student enrolments and based on need. Criteria and other key considerations for school selection will be developed by the grant recipient in consultation with key stakeholders, including the department, other Commonwealth entities, and states and territories, during activities to scope and finalise the approach to the program's design and implementation. Scoping activities on design and delivery will also provide for stakeholder input on how schools can be best supported in their participation and the specific outputs required from the grant recipient to ensure the needs of schools will be met during their First Nations Educator partnership.

First Nations communities that decide to participate in the program will work with the grant recipient's regional coordinators and schools in their region to identify First Nations Educators. These First Nations Educators will receive training in Education Support and other relevant training (as determined necessary through stakeholder consultations undertaken by the grant recipient) to complement their existing skills and cultural knowledge, and then placed in a local primary school. The grant recipient will be responsible for administering the process to identify and fund the training of First Nations Educators and their salaries over the life of the program. Schools will not be involved in covering costs relating to the employment of the First Nations Educators.

The First Nations Educators will work with teachers to teach local First Nations languages to students, as well as embed knowledge of local cultures across the curriculum – through classes such as art, science, and storytelling. Their specific role will be individual to the local primary school in which they are placed, and determined in discussion with the leadership and teaching staff they will support and work with. This will include decisions on the most appropriate means for embedding the learning and teaching of First Nations languages and cultures within the existing curriculum framework in operation at the school, noting curriculum development and delivery is ultimately a matter governed at the state and local level. The First Nations Educators will be placed in schools for a period of up to two years.

An independent expert evaluation of the program will be undertaken to measure the effectiveness and inform Government decisions about extension and/or expansion of the program.

The department will select a recipient/s to deliver the program through an open competitive or a closed non-competitive grant process, with the department working with the Community Grants Hub to administer the selection process. The grants process and grant opportunity guidelines will be designed to identify and select a grant recipient/s who have the expertise in First Nations languages and/or cultures, comprehensive stakeholder networks and strong project management capability needed to deliver this program.

Information about the grant will be made available on the GrantConnect website (www.grants.gov.au). The final decision in relation to the selection of the grant recipient/s and the terms of their arrangements will be made by the First Assistant Secretary, National School Reform Division as a delegate of the Secretary of the department under the FF(SP) Act. As the senior executive officer responsible for the program, the delegate has the relevant understanding of the policy and operational context for Commonwealth spending on the program. The delegate also has the requisite knowledge, skills and expertise to ensure

accountable and appropriate administration, in view of experience managing other national (and/or) education-related policies, programs and grant arrangements.

The grant will be administered in accordance with the Commonwealth resource management framework, including the PGPA Act and the CGRGs. It will also be administered in accordance with the department's Accountable Authority Instructions and any other relevant financial delegations.

Information about the program will be made publicly available on the department's website at www.education.gov.au.

Funding decisions taken in relation to the program will not be subject to independent merits review. The entity chosen will be directly selected because of its expertise in First Nations languages and/or cultures, comprehensive stakeholder networks, and project management capabilities.

The grant decision, once made, will be final. The grant process involves an allocation of a finite resource made to the selected recipient/s. Review (and potential change) of decisions would impact allocations made to other parties and would impede timely and effective implementation of the program. The ARC has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.11 to 4.16 of the ARC's guide).

The grant recipient/s will need to consult with relevant stakeholders throughout the program. First Nations communities will be consulted to refine and finalise the approach to delivery, and to confirm their appetite for sharing their language and culture with local primary schools. Where communities decide to participate, the grant recipient/s will work to enrol First Nations Educators in Education Support training and then place them in local primary schools. The department will review and endorse the grantee's proposed delivery approach to ensure it aligns with the program's policy intent prior to the grantee commencing implementation.

States and territories and non-government school systems will be consulted by the department, in partnership with the grant recipient, during the process to identify the 60 primary schools to participate in the program, to ensure that schools with high First Nations student enrolments and greatest need are prioritised. Selection will be consistent with the set of criteria developed, refined and finalised through stakeholder engagement on the program's design and delivery, and endorsed by the department. The identification of potential individuals to become First Nations Educators is likely to involve a mix of First Nations individuals, First Nations communities and organisations, schools, and the grant recipient regional co-ordinators. This identification will be facilitated by the program's national communications campaign and the expression of interest/application process. The grant recipient/s will be responsible for administering the process to fund the training and employment of the First Nations Educators.

Primary schools and First Nations Educators that are selected to participate in the program will be encouraged to provide feedback to the grant recipient/s on the program's approach and progress at various stages, and into the independent evaluation.

Funding for the program of \$14 million over four years from 2022-23 is included in the October 2022-23 Budget and the Portfolio Budget Statements for the Education Portfolio. Funding for this item will come from Program 1.5: Early Learning and School 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)); and
- the external affairs power (section 51(xxix)).

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 expenditure for the program is directed at supporting school attendance and engagement for First Nations students and employment prospects of First Nations people.

External affairs power

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

Australia has obligations under the *Convention on the Rights of the Child* [1991] ATS 4 (CRC). Article 4 provides that States Parties ‘shall undertake all appropriate legislative, administrative, and other measures’ for the implementation of the rights recognised in the Convention.

These rights include ‘the right of the child to education’ (Article 28). Article 29(1) relevantly provides that ‘States Parties agree that the education of the child shall be directed to’:

- a) The development of the child's personality, talents and mental and physical abilities to their fullest potential; ...
- c) The development of respect for the child's parents, his or her own 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; ...

The program will foster the development of children’s personality, talents and mental abilities by supporting the teaching and learning of First Nations languages in Australian classrooms. For First Nations students, learning First Nations languages will enhance their respect for their cultural identity, language and values. For non-Indigenous students, this will develop respect for the national values of the country in which the child is living and for civilisations different from his or her own.

Australia also has relevant obligations under the *International Covenant on Civil and Political Rights* [1980] ATS 23 (ICCPR). Article 2 provides that each State Party ‘undertakes to take the necessary steps ... to adopt such laws or other measures as may be necessary’ to give effect to the rights recognised in the Covenant. Article 27 provides that ‘in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities

shall not be denied the right, in community with the other members of their group, to enjoy their own culture' and 'to use their own language'.

By expanding the provision of First Nations language education, the program will support First Nations students to practise their language and culture in the classroom.

Statement of Compatibility with Human Rights

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

Financial Framework (Supplementary Powers) Amendment (Education Measures No. 2) Regulations 2022

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 Measures No. 2) Regulations 2022* amend Schedule 1AB to the FF(SP) Regulations to establish legislative authority for government spending on certain activities administered by the Department of Education (the department).

This disallowable legislative instrument makes the following amendments to Part 3 of Schedule 1AB:

- adds table item 60 ‘Grant to Clontarf Foundation’.

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

- amends table item 278 ‘High Achieving Teachers Program’;
- adds table item 563 ‘Bursaries to attract students into teaching’; and
- adds table item 564 ‘First Nations Educators in primary schools program’.

Table item 60 – Grant to Clontarf Foundation

New table item 60 establishes legislative authority for the Government to provide a grant to Clontarf Foundation (Clontarf) to expand and extend its existing program. The program aims to increase year 12 attainment and improve post-school pathways for Aboriginal and Torres Strait Islander boys through participation in activities, including sport and promotion of healthy lifestyles, designed to increase educational engagement.

Clontarf partners with schools and communities to create ‘Clontarf Academies’ which are embedded within the school grounds and education program. Clontarf works closely with schools and teachers to keep students engaged, with teachers reporting to the Academy about

a participant's progress. Through supportive relationships and environments, the boys develop improved self-esteem and confidence which enables them to participate in education, employment and society in a more positive way.

Clontarf Academies are primarily provided in high schools and colleges across Australia, and accept any Aboriginal and Torres Strait Islander boy enrolled in a participating school. In addition to encouraging school attendance and retention, the program provides annual health checks, breakfast and lunch, and an 'Academy room' which provides the boys a "safe, fun and positive space in school."

As students approach Year 10, Clontarf assists participants with employment in their senior years through workplace visits each term and assistance with obtaining important paperwork and ID needed for employment, such as tax file numbers, bank accounts and a Medicare card. The program also helps the boys to obtain a driver's license through support with Learner's training and the cost of lessons and Practical Driving Assessments. Clontarf also undertakes significant community engagement to support identification and establishment of new academy locations.

Funding of \$32.4 million (including indexation) over two years from 2022-23 will be available to the program.

Human rights implications

Table item 60 engages the following right:

- the right to education of children – Articles 28 and 29 of the *Convention on the Rights of the Child* (CRC), read with Article 4, and the right to education – 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 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)-(b) of ICESCR relates to the right of everyone to primary education that is compulsory and free and to secondary education that is generally available and accessible to all. Article 13(3) relates to the liberty of parents and guardians to choose schools for their children provided those schools conform to minimum educational standards.

Table item 60 supports the right to education by supporting the implementation of a program that will improve retention of young men in school and their educational outcomes and development. Table item 60 also directed at core educational activities that are central to the development of the talents and abilities of children.

Conclusion

Table item 60 is compatible with human rights because it promotes the protection of human rights.

Amended table item 278 – High Achieving Teachers Program

The amended table item 278 in Part 4 of Schedule 1AB establishes legislative authority for government spending on the High Achieving Teachers (HAT) program, which aims to deliver alternative pathways into teaching, to address teacher shortages and increase the quality of teaching.

The HAT program commenced in 2020 to support the growth and emergence of alternative, employment-based pathways into teaching as a mechanism for improving access to quality teaching and education for all Australian students, regardless of their location. High-quality mid-career professionals, including Science, Technology, Engineering and Math specialists, are supported to study a post-graduate teaching qualification while being employed in schools experiencing difficulties filling staff vacancies. This includes schools in disadvantaged or regional, rural and remote areas.

The HAT program currently places initial teacher education students in secondary schools only. The amended table item 278 will expand the HAT program to allow teachers to be placed in primary schools and preschools, particularly in hard-to-staff locations including disadvantaged or regional, rural and remote areas.

Funding of of \$68.3 million over four years from 2022-23 will support an initial procurement process during 2022 and early 2023 to engage HAT program providers to deliver employment-based pathways into teaching, in line with the arrangements for the existing HAT program. It is expected that from 2024, successful programs will be in operation and participants will commence in schools.

Human rights implications

The amended table item 278 engages the following right:

- the right to education of children – Articles 28 and 29 of the CRC, read with Article 4, and the right to education – 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 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)-(b) of ICESCR relates to the right of everyone to primary education that is compulsory and

free and to secondary education that is generally available and accessible to all. Article 13(3) relates to the liberty of parents and guardians to choose schools for their children provided those schools confirm to minimum educational standards.

The amended table item 278 supports the right to education by ensuring that anticipated shortages of teachers are proactively addressed through encouraging high quality students to enter the teaching profession, thus ensuring the continuing provision of education by skilled teachers. The recruitment and training of high-achieving individuals as teachers will ensure that students remain able to access quality education.

Conclusion

The amended table item 278 is compatible with human rights because it promotes the protection of human rights.

Table item 563 – Bursaries to attract students into teaching

Table item 563 establishes legislative authority for government spending on the bursaries to attract students into teaching initiative (the initiative). The initiative aims to increase the number of students entering teaching by funding, as benefits to students, bursaries to support students who are undertaking study for a recognised initial teacher education qualification (ITE).

The initiative responds to the Government’s election commitment on *Labor’s Plan to Fix Teacher Shortages and Stop the Slide in School Results* for a new bursary program, which will be offered to attract more high-quality candidates into teaching and contribute to addressing serious national teacher workforce shortages.

Bursaries of \$10,000 each year will be provided to students enrolling in either undergraduate or postgraduate accredited ITE programs in the following target cohorts:

- high achieving students with an adjusted Australian Tertiary Admissions Rank of 80 or above or equivalent;
- First Nations students; and
- students from regional, rural and remote areas.

The total bursary amount paid per participant will be \$40,000 for undergraduate ITE students (four-year qualification) and \$20,000 for postgraduate ITE students (two-year qualification), with payments contingent upon successful completion of units each semester. A top up payment of \$2,000 will also be available for students who undertake final-year professional experience placements in remote areas, to attract talented teachers to remote areas and help to close the regional education gap.

Human rights implications

Table item 563 engages the following right:

- the right to education of children – Articles 28 and 29 of the CRC, read with Article 4, and the right to education – 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 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)-(b) of ICESCR relates to the right of everyone to primary education that is compulsory and free and to secondary education that is generally available and accessible to all. Article 13(3) relates to the liberty of parents and guardians to choose schools for their children provided those schools conform to minimum educational standards laid down or approved by the State.

Table item 563 supports the right to education by ensuring that high-quality candidates are attracted to ITE in order to produce highly effective teachers. The expenditure authorised by this item is intended to increase the supply of teachers and therefore ensure that children continue to be able to access quality education.

Conclusion

Table item 563 is compatible with human rights because it promotes the protection of human rights.

Table item 564 – First Nations Educators in primary schools program

Table item 564 establishes legislative authority for government spending on the First Nations Educators in primary schools program (the program), which aims to place First Nations Educators in primary schools to teach First Nations languages and First Nations cultures.

The program responds to the Government’s election commitment on *Labor's Plan to Teach First Nations Languages in Schools* to partner with primary schools around the country to teach local Indigenous languages and cultural knowledge in in approximately 60 primary schools.

The program’s objectives are to:

- increase the uptake of First Nations language learning by primary schools and students across Australia, thereby helping to keep First Nations languages alive;
- improve school attendance and engagement for First Nations students, by fostering a stronger sense of identity, self-esteem and belonging;
- boost First Nations academic results and contribute to ‘Closing the Gap’ in their educational attainment;
- enable more young Australians to develop a deeper understanding and appreciation of First Nations cultures and languages, and experience the cognitive advantages of learning a language; and
- increase employment opportunities and pathways for First Nations people, by creating local jobs that recognise their existing skills and cultural knowledge.

The Australian Government will provide grant funding of up to \$12.2 million to an organisation (or multiple organisations, if required) with appropriate language and cultural expertise to consult on, design and implement the approach to place First Nations Educators in Australian primary schools.

Human rights implications

Table item 564 engages the following right:

- the right to education of children – Articles 28 and 29 of the CRC, read with Article 4, and the right to education – 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 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)-(b) of ICESCR relates to the right of everyone to primary education that is compulsory and free and to secondary education that is generally available and accessible to all. Article 13(3) relates to the liberty of parents and guardians to choose schools for their children provided those schools confirm to minimum educational standards.

Table item 564 supports the right to education by supporting the implementation of a program that aims to improve school attendance, and educational engagement and achievement by First Nations students by fostering a stronger sense of identity, self-esteem and belonging through learning First Nations language and culture. Table item 564 is also directed at core educational activities that are central to the development of the talents and abilities of children.

Conclusion

Table item 564 is compatible with human rights because it promotes the protection of human rights.

**Senator the Hon Katy Gallagher
Minister for Finance**