

## **EXPLANATORY STATEMENT**

### **Issued by the Authority of the Minister for Finance and the Public Service**

#### *Financial Framework (Supplementary Powers) Act 1997*

#### *Financial Framework (Supplementary Powers) Amendment (Education and Training Measures No. 1) Regulations 2019*

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 FF(SP) Act applies to 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 and Training Measures No. 1) Regulations 2019* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on three activities that will be administered by the Department of Education and Training (the department).

Funding will be provided for:

- the Australian Apprenticeships Incentives Program (AAIP) and the Australian Apprentice Wage Subsidy (AAWS) - the AAIP provides financial incentives to employers and training providers and personal benefits for apprentices, to encourage the continued training and development of a highly skilled Australian workforce through Australian apprenticeships (with funding of \$1.6 billion over four years from 2018-19). This will include a trial of the AAWS to support rural and regional employers to take on new apprentices (with funding of \$60 million over four years from 2018-19 to come from the existing AAIP funding)
- the Positive Partnerships program, an initiative to build partnerships between schools and families to improve the educational outcomes of school students on the autism spectrum (with funding of \$24.5 million over four years from 2019-20)
- two music and arts education initiatives that promote participation and engagement in music education in schools and improve the quality of music and arts education - the Music: Count Us In program, delivered by Music Australia (with funding of \$500,000 over two years from 2018-19), and the Engaged Learning through the Arts project,

delivered by The Song Room Limited (with funding of \$500,000 per annum over four years from 2015-16).

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 and Training.

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 and Training Measures No. 1) Regulations 2019***

**Section 1 – Name**

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Education and Training Measures No. 1) Regulations 2019*.

**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**

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

This item adds three new table items to Part 4 of Schedule 1AB to establish legislative authority for government spending on activities that will be administered by the Department of Education and Training (the department).

New **table item 330** establishes legislative authority for government spending on the Australian Apprenticeships Incentives Program (AAIP) and a trial of the Australian Apprentice Wage Subsidy (AAWS).

The AAIP, a long-standing program that was introduced in 1998, is intended to encourage the continued training and development of a highly skilled Australian workforce through Australian apprenticeships by providing a range of financial incentives to employers and training providers and personal benefits for apprentices over the life of an apprenticeship. The trial of the AAWS, delivered through the AAIP, aims to encourage rural and regional employers to take on new apprentices.

The financial incentives to employers who employ eligible Australian apprentices and to training providers encourages genuine opportunities for skills-based training and development of employees. The personal benefits to Australian apprentices encourage people to enter into skills-based training through an Australian apprenticeship.

The AAIP links into the industries and occupations traditionally associated with the apprenticeship system. In addition, the AAIP particularly targets trades experiencing a skills shortage identified on the National Skills Needs List.

The AAIP is an uncapped, demand-driven program. Employers may be eligible for a range of incentives, including up to \$4,000 through standard incentives paid at commencement and completion of an apprenticeship. Under the Living Away from Home Allowance, eligible Australian apprentices can receive payments of \$77.17 per week in their first year of an apprenticeship, \$38.59 per week in their second year and \$25.00 per week in their third year. Under the Assistance for Australian Apprentices with Disability, eligible Registered Training Organisations (RTOs) can also receive up to \$11,000 per year to provide additional support and assistance to an eligible Australian apprentice.

Details of the incentives available under the AAIP are available at:  
[www.australianapprenticeships.gov.au](http://www.australianapprenticeships.gov.au)

An Australian apprenticeship is a contracted employment and training arrangement between an Australian apprentice and an employer. The formal training component of an apprenticeship or traineeship is funded by state and territory governments under contracted arrangements between RTOs and the state and territory training authorities. An RTO is an organisation that is registered by the appropriate registering body to deliver training, conduct assessments and issue nationally recognised qualifications in accordance with the Vocational Educational and Training (VET) Quality Framework.

Each incentive payment has a number of eligibility criteria. Eligibility for incentives is assessed by Australian Apprenticeship Support Network (AASN) providers on behalf of the Australian Government.

The AASN commenced on 1 July 2015. AASN providers are engaged by the department under an open tender procurement process. AASN providers are contracted to provide services to Australian apprentices and their employers, including providing advice to employers and Australian apprentices in relation to eligibility for assistance under the AAIP. Eleven providers deliver services in more than 400 locations nationally, including in rural and remote areas. Further information on the AASN is available at [www.australianapprenticeships.gov.au](http://www.australianapprenticeships.gov.au) and in the explanatory statement for the *Financial Framework (Supplementary Powers) Amendment (2015 Measures No. 6) Regulation 2015*.

From 1 January 2019, a trial of the AAWS to support rural and regional employers to take on new apprentices will be conducted. The wage subsidy will be funded under the AAIP. Under the AAWS, payments will be made to employers of 1,630 eligible Australian apprentices who are new workers undertaking full-time apprenticeships at the Certificate III and IV levels in occupations on the National Skills Needs List in rural and regional areas.

Under the AAWS, an eligible employer hiring a new eligible apprentice will receive a wage subsidy for that apprentice. Payments will be based on the relevant Award wage rates, subsidising 75 per cent of the first year's wage, 50 per cent in the second year and 25 per cent in the third year. This payment would be in addition to the existing standard incentive payments currently available through the AAIP. Apprenticeship durations of four years would have no subsidy provided for the fourth year. The AAWS trial will cease on 30 June 2023.

Each state and the Northern Territory has been allocated a share of the total number of apprentices, based on regional and rural population distribution. The Australian Capital Territory is excluded as it is considered a metropolitan area for the purposes of the AAIP.

Guidelines for the AAWS are outlined in the AAIP Program Guidelines.

The AAWS is not available to employers receiving any other form of Australian Government or State Government wage subsidy or equivalent assistance for an individual apprentice.

The AAWS is being administered by the AASN. AASN providers will assess employer eligibility at six monthly intervals throughout the three years that the incentives payments are made. AASN providers will also be responsible for making the subsidy payments.

A joint announcement of the trial of the AAWS was made on 31 October 2018 by the Deputy Prime Minister and Minister for Infrastructure, Transport and Regional Development, the Hon Michael McCormack MP, and the Minister for Small and Family Business, Skills and Vocational Education, Senator the Hon Michaelia Cash.

Funding of \$1.6 billion over four years from 2018-19 for the AAIP comes from Program 2.8: Building Skills and Capability, which is part of Outcome 2. Details are set out in the *Portfolio Budget Statements 2018-19, Budget Related Paper No. 1.5, Education and Training Portfolio*, at page 59.

Funding of \$60 million over four years from 2018-19 for the AAWS will come from within the existing AAIP funding from Program 2.8: Building Skills and Capability, which is part of Outcome 2. Details for the AAIP are set out in the *Portfolio Budget Statements 2018-19, Budget Related Paper No. 1.5, Education and Training Portfolio*, at page 59.

The administration and delivery of the AAIP, including the AAWS, is the responsibility of AASN providers who provide advice and assess the eligibility of employers, RTOs and Australian apprentices for assistance under the program. Where an employer, RTO or Australian apprentice is assessed as eligible to receive a payment available under the AAIP, the AASN provider will process the payment through the department's IT system and the payment will be made directly to the recipient. Decisions regarding employer, apprentice and RTO eligibility for payments available under the AAIP are not publicly available. In circumstances where the employer, RTO or Australian apprentice is assessed as being ineligible to receive a payment available under the AAIP, the AASN provider will write to the applicant advising that they are not eligible, including a clear and concise explanation of the decision and outline of the policy's intent. These processes are outlined in the AASN Operating Guidelines.

For the AAWS, eligibility will be assessed at six monthly intervals throughout the three years that the incentive payments are made. Pro-rata payments will not be made to employers where apprentices cease their apprenticeship part-way through a six-month period. Suspension of contracts will be assessed on a case-by-case basis. In all other circumstances, the AAWS operates under the same arrangements as the AAIP.

The AAIP Guidelines, produced by the department, outline current incentives and eligibility requirements for payments or assistance under the AAIP. AASN providers are required to determine eligibility for AAIP payments in line with the AAIP Guidelines. The guidelines are available online at: [www.australianapprenticeships.gov.au](http://www.australianapprenticeships.gov.au)

Information on the AAWS, including guidelines outlining eligibility conditions, is available at: [www.australianapprenticeships.gov.au](http://www.australianapprenticeships.gov.au)

Decisions by the AASN providers as to whether an employer, Australian apprentice or RTO is eligible for an incentive, including whether an employer is eligible for the AAWS, are not subject to independent merits review. These decisions are considered automatic or mandatory decisions and limited discretion is exercised by the decision-maker. In addition, AAWS decisions relate to the allocation of finite resources between competing applicants due to the limited number of places available.

Under the AAIP, assessments of whether an employer is eligible for incentive payments is largely based on objective matters of fact and do not involve significant discretionary elements. An example of an eligibility criterion would be evidence that the apprentice is enrolled to study a particular course. There is limited scope for disagreement about whether or not the particular facts have occurred.

Assessing whether an apprentice or RTO is eligible for an incentive payment is also largely based on objective matters of fact. An example of an eligibility criteria would be evidence that the apprentice is within the first three years of their apprenticeship, or evidence that the apprentice is undertaking an accredited training program with an RTO. There are some additional eligibility requirements for such payments which require independent assessments or reports from professionals, such as medical practitioners or social workers. The decision-maker relies on these professional statements to make such decisions.

AAWS decisions allocate finite resources between competing applicants. Payments will be limited to employers of 1,630 eligible Australian apprentices. The number of places allocated to Australian apprentices in each State and the Northern Territory is based on the regional and rural population distribution. As the number of places available is finite, any reversal of a decision on whether an applicant is successful or not may then cause the displacement of, and disadvantage to, another successful applicant. From a resource and timing perspective, including taking into account the finite number of places and the effective use of Commonwealth resources, it would not be feasible for the AASN provider(s) or the department to make such a decision subject to independent merits review.

The following points demonstrate that there is also sufficient administrative accountability without merits review by an external body independent of the department in relation to both the AAIP and the AASN:

- the eligibility criteria around the availability of the AAIP and the AASN are publicly available
- AASN providers are subject to contractual arrangements with the department which govern the way providers must conduct the services. Under the contract:
  - all AASN providers are required to have in place a free, easily accessible complaints resolution process to deal fairly with complaints
  - all AASN providers are required to ensure that employers, Australian apprentices and other persons are aware of the complaints resolution process

- the AAIP Guidelines contain a detailed section regarding the process for the review of decisions, namely:
  - all decisions by AASN providers should be consistent, equitable and transparent within the limits and constraints of the approved policies for the AAIP
  - where it is deemed that an Australian apprentice, RTO or employer is not eligible for a payment and the claimant considers that an incorrect decision has been made, a claimant may seek review from the AASN provider in the first instance. The decision will be re-examined by the AASN provider based on the policies and procedures of the AAIP, taking into consideration the reasons for review put forward by the claimant and any additional information provided by the claimant. Where the AASN provider upholds the original decision, the department will review the decision
  - alternatively, if the Australian apprentice, RTO or employer considers that exceptional circumstances apply to their situation, a claimant may seek a review of the decision by the AASN provider. Exceptional circumstances are circumstances that are unusual, uncommon, unexpected or unplanned. This review is performed by the department
- a claimant may make a complaint to the Commonwealth Ombudsman.

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

- the external affairs power (section 51(xxix))
- the social welfare power (section 51(xxiiiA)).

#### External affairs power

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

Australia has obligations relating to employment under the Convention on the Rights of Persons with Disabilities (CRPD), the International Labour Organization's Convention concerning Vocational Guidance and Vocational Training in the Development of Human Resources (ILO Convention 142), the International Labour Organization's Convention concerning Employment Policy (ILO Convention 122) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Article 4 of the CRPD sets out a general obligation for Member parties to implement the rights provided for by the CRPD.

Article 27 of the CRPD obliges each Member party to enable persons with disabilities to have effective access to general technical and vocational guidance programs, placement services and vocational and continuing training; promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment; and promote vocational and professional rehabilitation, job retention and return-to-work programs for persons with disabilities.

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

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

Article 3 of ILO Convention 142 obliges each Member to ‘gradually extend its systems of vocational guidance, including continuing employment information, with a view to ensuring that comprehensive information and the broadest possible guidance are available to all... adults’ (Article 3(1)). Such information and guidance is required to cover matters including ‘vocational training and related educational opportunities’ (Article 3(2)).

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

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

Article 2(1) of the ICESCR obliges each State Party to take steps ‘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’. In particular, Article 6(1) of the ICESCR provides that States Parties recognise the ‘right to work’ and Article 6(2) provides that States Parties shall take steps to ‘achieve full realization of this right’ including ‘technical and vocational guidance and training programmes, policies and techniques to achieve... full and productive employment.’

The AAIP contributes to the vocational guidance and vocational training program and is closely linked with employment. The incentives are designed to promote full, productive and freely chosen employment, in the form of apprenticeships, by encouraging employers to commence and retain apprentices until they successfully complete their apprenticeship.

Under the AAIP, there are a range of incentives available to eligible employers who employ an Australian apprentice. These incentives aim to broaden the employment opportunities for eligible individuals and help address employment needs and industry skills shortages, particularly occupations on the National Skills Needs List.



AAIP payments to Australian apprentices with disabilities will enable access to VET training and promote employment opportunities. These incentives will also assist apprentices and trainees with disabilities in finding, obtaining, maintaining and returning to employment.

### *Social welfare power*

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

The AAIP provides assistance to apprentices to assist with living expenses where they are required to move away from their parent’s or guardian’s home in order to take up or remain in an Australian apprenticeship. The AAIP also provides assistance to encourage employers to provide Australian apprenticeships to people with disabilities and provide assistance to RTOs to provide services to support apprentices with disabilities, including tutorial, mentoring and interpretation services.

New **table item 331** establishes legislative authority for government spending on the Positive Partnerships program (Positive Partnerships).

The Australian Government has funded Positive Partnerships since 2008 through the ‘Helping Children with Autism’ package. Commonwealth expenditure on Positive Partnerships is intended to build partnerships between schools and families to improve the educational outcomes of students on the autism spectrum. The program supports productive relationships to benefit school students with autism by developing and delivering evidence-based content and practical resources for their teachers, parents and carers, through workshops, webinars and online learning on the Positive Partnerships website.

The Positive Partnerships website ([www.positivepartnerships.com.au](http://www.positivepartnerships.com.au)) includes an online learning platform and comprehensive range of resources, including fact sheets and videos. There is also material in a range of languages for parents and carers from culturally and linguistically diverse backgrounds and resources developed in consultation with Aboriginal and Torres Strait Islander communities.

The three core components of the program are: professional learning for teachers; workshops for parents and carers; and the online learning and resources on the Positive Partnerships website. Following an evaluation of Phase 3, due to end in June 2019, the Government will make a decision on the continuation of the funding. The funding for Phase 4, which runs from 2019 to 2023, would continue the work of the program across the core components. The Government will procure and fund a service provider to:

- provide professional development for teachers, principals and other school staff to build their understanding, skills and expertise in working with school students on the autism spectrum
- conduct workshops and information sessions for parents and carers of school students on the autism spectrum
- maintain and further develop the existing Positive Partnerships website providing online learning modules and other resources.

Positive Partnerships is a national program available to schools from all sectors. The location of workshops is determined by state and territory planning groups comprising representatives from government and non-government education authorities, members of state and territory autism associations and health professionals with a background in autism. The online learning modules can be accessed by teachers directly, irrespective of their school.

Funding of \$24.5 million for Phase 4 of Positive Partnerships will come from Program 1.7: Early Learning and Schools Support, Quality Outcomes, which is part of Outcome 1. Funding details are set out in the *Portfolio Budget Statements 2018-19, Budget Related Paper No. 1.5, Education and Training Portfolio*, at page 37.

The Minister for Education (the Minister) approves any funding allocations for the purpose of Positive Partnerships from this funding source. Quality Outcomes is a discretionary funding program for initiatives of importance to the Australian Government. The Minister approves funding allocations under Quality Outcomes. Quality Outcomes is a long-standing appropriation to the Department for the purposes of providing funding for a variety of initiatives. Some of this funding is for the elements discussed above in relation to Positive Partnerships. The Minister has always retained the capacity to allocate funding from Quality Outcomes.

Decisions about the Commonwealth expenditure on Phase 4 of the Positive Partnerships program will be made as part of a procurement process. There will be one Request for Tender as part of an open competitive process for a service provider to provide all aspects of the program including professional learning for teachers, workshops for parents and carers, and the online learning and resources of the website. The funding will be expended in accordance with the department's Secretary Instructions and delegations on the expenditure of relevant monies, and in accordance with the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). The procurement will be conducted in accordance with the Commonwealth Procurement Rules and the PGPA Act and will adhere to applicable approach to market and other procurement requirements. Information about the tender and the successful tender and contract will be available on AusTender ([www.tenders.gov.au](http://www.tenders.gov.au)).

The Minister may approve the continuation of funding for Phase 4 and the scope of Phase 4 on the advice of the department, as informed by the evaluation of Phase 3. The Minister's delegate would approve the appointment of the service provider to implement Phase 4 based on the recommendations of the assessment panel at the completion of the tender process.

As Positive Partnerships will be delivered through a procurement process, it is subject to the requirements of the Commonwealth's resource management framework, including the Commonwealth Procurement Rules and the PGPA Act. Independent review will not be provided for any procurement decisions made in connection with Positive Partnerships. The department considers that current mechanisms are appropriate and reasonable for any procurement process undertaken in relation to this initiative. Should the procurement take place after the commencement of the *Government Procurement (Judicial Review) Act 2018*, then decisions with respect to the procurement will be subject to review under that legislation.

In accordance with the department's procurement complaint process, any complaints in relation to the procurement will be directed, in the first instance, to the relevant contact officer for the procurement. Unresolved complaints may then be directed, if considered appropriate, to an independent officer of the department or a probity adviser.

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

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

### Communications power

Section 51(v) of the Constitution empowers the Parliament to make laws with respect to 'postal, telegraphic, telephonic and other like services'. Elements of professional development training and resources funded under the Positive Partnerships program will be provided online through the Positive Partnerships website.

### 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 Convention on the Rights of the Child [1991] ATS 4 (CRC). In particular:

- Article 4 sets out a general obligation for States Parties to implement the rights set out in the CRC
- Article 6(2) notes that States Parties shall ensure to the maximum extent possible, the survival and development of the child
- Article 18(2) sets out that, for the purpose of guaranteeing and promoting the rights in the CRC, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child rearing responsibilities
- Article 23(1) relates to children with a physical or mental disability and requires States Parties to recognise that children with a disability should enjoy a full and decent life, in conditions that ensure dignity, promote self-reliance, and facilitate active participation in the community
- Article 28(1) specifies that States Parties recognise the right of the child to education
- Article 29(1) notes that States Parties agree that the education of the child shall be directed to the development of their personality, talents and mental and physical abilities to their fullest potential.

Positive Partnerships will deliver professional development and resources to teachers, principals, school staff and families of children with autism, with a view to improving their wellbeing and development. Positive Partnerships will seek to improve the educational outcomes of children with autism to ensure that they enjoy a full and decent life, and by directing education to the development of the children to their fullest potential.

Australia is a party to the Convention on the Rights of Persons with Disabilities [2008] ATS 12 (CRPD). In particular:

- Article 4 provides for States Parties to adopt appropriate legislative, administrative or other measures for the implementation of the rights recognised in the CRPD
- Article 5(4) notes that specific measures necessary to achieve de facto equality for persons with disabilities are not discriminatory
- Article 7 sets out that States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human and fundamental freedoms on an equal basis with other children
- Article 8 requires States Parties to foster, at all levels of the education system, including children from an early age, an attitude of respect for the rights of persons with disabilities
- Article 24 requires States Parties to recognise the right of persons with disabilities to education and ensure an inclusive education system at all levels.

The relevant workshops, training and resources provided by the Positive Partnerships program will help ensure that children with autism enjoy all human and fundamental freedoms on an equal basis with other children. It will also help school staff and families of children with autism create and ensure an inclusive education system at all levels for those children, and foster an attitude of respect for the children's rights.

New **table item 332** establishes legislative authority for government spending on two long-standing music and arts education initiatives: the Music: Count Us In (MCUI) program and the Engaged Learning through the Arts project.

Commonwealth expenditure on both these continuing programs is intended to promote participation and engagement in music education in schools, and improve the quality of music and arts education.

### *Music: Count Us In*

The first of these initiatives, the MCUI program, provides professional support for music classes, digital resources and support services, and an opportunity to engage in music education programs and a national event at which students across Australia sing a song at the same time.

Funding will be provided to Music Council of Australia Pty Limited (trading as Music Australia) to continue to deliver the MCUI program. Music Australia is the national umbrella body for all music organisations and companies, music professionals, teachers and musicians. Its music education program, MCUI, is Australia's largest music participation program. It also offers memberships at different levels to organisations and individuals which fund their other activities such as the contemporary music roundtable, music information hub and advocacy resources.

The MCUI program is available to teachers and students at all primary and secondary schools in every state and territory in Australia. All schools are eligible to register.

Registered schools are given access to the 'Program Song', written by students, for students, and to accompanying educational resources, including lesson plans, demonstration videos, musical ensemble arrangements and Auslan and Braille resources. At the annual 'Celebration

Day', students from all registered schools around the country sing the Program Song at the same time. One main event is held and live-streamed across Australia.

At the teaching level, the MCUI program helps build the capacity and confidence of teachers to integrate music and arts learning across the Australian Curriculum's eight learning areas. The national Foundation to Year 10 Australian Curriculum has three dimensions: learning areas, general capabilities and cross-curriculum priorities. The eight learning areas are English, Mathematics, Science, Health and Physical Education, Humanities and Social Sciences, the Arts, Technologies and Languages.

The MCUI program will be delivered through a closed, non-competitive grant to Music Australia.

The Minister for Education, the Hon Dan Tehan MP, announced the extension of funding for the MCUI program on 7 December 2018.

Funding of \$500,000 over two years from 2018-19 for the delivery of the MCUI program by Music Australia will come from Program 1.7: Early Learning and Schools Support, Quality Outcomes, which is part of Outcome 1. Funding details are set out in *Mid-Year Economic and Fiscal Outlook 2018-19*, Appendix A: Policy decisions taken since the 2018-19 Budget, at page 171 under the measure 'School Funding – additional support for students'.

### Engaged Learning through the Arts project

The second initiative, the Engaged Learning through the Arts project, involves the development of online curriculum music and arts resources for all schools provided through a digital education platform, ARTS:LIVE, and the provision of face-to-face arts education workshops in disadvantaged schools.

The Engaged Learning through the Arts project is delivered by The Song Room Limited (trading as The Song Room (TSR)). TSR is a national, not-for-profit organisation that provides tailored, long-term music and arts-based programs for children in disadvantaged and high-need communities. Its programs have helped schools to create and sustain their own music and arts programs and have been demonstrated to improve educational and social outcomes.

The project aims to:

- provide opportunities through the delivery of quality arts education materials and resources for all schools
- improve student learning outcomes in the arts
- improve teachers' skills and knowledge in the arts and so their capacity to develop and deliver arts education programs
- implement targeted arts-based programs in school communities throughout Australia without specialist music or arts teachers.

The online platform, ARTS:LIVE, is a national arts education portal delivering curriculum aligned digital arts education resources from Foundation to Year 10 level. The resources available on ARTS:LIVE cover all five elements of the arts curriculum: Dance; Music; Drama; Visual Arts; and Media Arts. These online resources are particularly valuable to schools that do not have specialist music or arts teachers.

The face-to-face arts education workshops are conducted at schools with a high proportion of children who are disadvantaged due to social, economic or geographic circumstances, disability or due to their recent immigration. TSR conducts consultations, including liaising with state and territory authorities, to determine suitable schools for inclusion in this aspect of the project, and takes into account whether the school lacks arts specialists and has a low Index of Community Socio-Educational Advantage score.

TSR uses locally employed teaching artists (who are experienced and accomplished musicians with teaching experience) to work with teachers to create a safe and enabling learning environment and give every child the skills to be creative, connected and engaged. Teaching artists develop individualised program plans with generalist teachers at the schools. These program plans include specific objectives across learning, social and personal development outcomes.

The Engaged Learning through the Arts project will be delivered through a closed, non-competitive grant to TSR.

The former Minister for Education, the Hon Christopher Pyne MP, approved funding of \$500,000 per annum for the Engaged Learning through the Arts project over four years from 2015-16 to come from the Quality Outcomes Program. Quality Outcomes is a discretionary funding program for initiatives of importance to the Australian Government. The Minister approves funding allocations under Quality Outcomes. Quality Outcomes is a long-standing appropriation to the department for the purposes of providing funding for a variety of initiatives.

The Commonwealth expenditure for the MCUI program and the Engaged Learning through the Arts project will take the form of closed, non-competitive grants to Music Australia and TSR, respectively. The process for, and the administration of the grants will be conducted in accordance with the Commonwealth grants framework, including the *Commonwealth Grants Rules and Guidelines 2017* (CGRGs). In accordance with the CGRGs, grant guidelines will be developed for both programs and made publicly available on GrantConnect ([www.grants.gov.au](http://www.grants.gov.au)), together with information on the grants, once awarded.

The funding will be expended in accordance with the CGRGs, the department's Secretary Instructions and delegations on the expenditure of relevant monies, and in accordance with the PGPA Act.

Independent review will not be available for the grants for either program, as both will be closed, non-competitive, for a specific purpose and to be delivered by a specific entity – the Music Council of Australia Pty Limited and The Song Room Limited. Furthermore, as these organisations have been responsible for delivery of the MCUI program and the Engaged Learning through the Arts project, respectively, since 2006 and have a well-established record of delivering these initiatives, it is not reasonably foreseeable nor envisaged that any other organisation would receive funding in relation to either initiative. The grants will be directly negotiated and agreed with Music Council of Australia Pty Limited and The Song Room Limited.

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

- the external affairs power (section 51(xxix))
- the executive power and express incidental power (sections 61 and 51(xxxix))
- the social welfare power (section 51(xxiiiA))
- the territories power (section 122)
- the communications power (section 51(v)).

### 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 Article 15 of the International Covenant on Economic, Social and Cultural Rights [1976] ATS 5 to take steps necessary to the full realisation of the right to take part in cultural life.

Article 15 of the International Covenant on Economic, Social and Cultural Rights provides:

- '1. The States Parties to the present Covenant recognize the right of everyone:
  - (a) To take part in cultural life;
  - (b) To enjoy the benefits of scientific progress and its applications;
  - (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.
3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.
4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.'

Australia also has an obligation under Article 31 of the Convention on the Rights of the Child [1991] ATS 4 to recognise the right of the child to rest and leisure, and engage in play and recreational activities. It is also required under Article 31 to promote the right of the child to participate fully in cultural and artistic life and encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity. Article 31 of the Convention on the Rights of the Child provides:

- '1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.'

The MCUI program and the Engaged Learning through the Arts project would be appropriate and adapted to implementing these obligations as the programs promote the participation of school children in cultural and artistic life through music and arts education.

Executive power and express incidental power

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 it by the Constitution. Together with the executive power in section 61 of the Constitution, the express incidental power 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 MCUI program involves expenditure on measures involving the implementation of a national event.

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 and services, including benefits to students. Both programs will involve the provision of a benefit aimed at meeting the educational needs or wants of an identifiable group of students.

Territories power

Section 122 of the Constitution empowers the Parliament to ‘make laws for the government of any territory’. Both programs will involve spending for the purposes of activities conducted in schools in the Northern Territory and the Australian Capital Territory.

Communications power

Section 51(v) of the Constitution empowers the Parliament to make laws with respect to ‘postal, telegraphic, telephonic and other like services’. Both programs will involve the development of measures which will operate on, or rely on, electronic communications services such as the internet.



## **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 and Training Measures No. 1) Regulations 2019***

This disallowable legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### **Overview of the Legislative Instrument**

Section 32B of the *Financial Framework (Supplementary Powers) Act 1997* (the FF(SP) Act) authorises the Commonwealth to make, vary and administer arrangements and grants specified in the *Financial Framework (Supplementary Powers) Regulations 1997* (the FF(SP) Regulations) and to make, vary and administer arrangements and grants for the purposes of programs specified in the FF(SP) Regulations. Schedule 1AA and Schedule 1AB to the FF(SP) Regulations specify the arrangements, grants and programs. The FF(SP) Act applies to 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 and Training Measures No. 1) Regulations 2019* amend Schedule 1AB to the FF(SP) Regulations to add three new table items to establish legislative authority for government spending on certain activities that are administered by the Department of Education and Training.

This instrument adds the following table items to Part 4 of Schedule 1AB:

- table item 330 for the Australian Apprenticeships Incentives Program (AAIP), including the Australian Apprentice Wage Subsidy (AAWS), to provide financial incentives to employers and training providers and personal benefits for apprentices, to encourage the continued training and development of a highly skilled Australian workforce through Australian apprenticeships and trial the AAWS to support rural and regional employers to take on new apprentices
- table item 331 for the Positive Partnerships program to build partnerships between schools and families to improve the educational outcomes of school students on the autism spectrum
- table item 332 for two music and arts education initiatives that promote participation and engagement in music education in schools and improve the quality of music and arts education - the Music: Count Us In program and the Engaged Learning through the Arts project.

### **Table item 330 – Australian Apprenticeships Incentives Program**

The AAIP provides a range of financial incentives and personal benefits to encourage the continued training and development of Australian apprentices.

The AAIP is an uncapped and demand-driven program. The AAIP encourages genuine opportunities for skills-based training and development of Australian apprentices by providing:

- incentive payments, in the form of AAWS, to support rural and regional employers to take on new apprentices
- incentives to employers who engage eligible Australian apprentices, including standard incentives paid at commencement and completion of an apprenticeship. Additional incentives are available where an employer engages an eligible Australian apprentice from a targeted group (for example, apprentices with a disability and Indigenous Australians) or a targeted occupation or qualification
- Registered Training Organisations (RTOs) with a financial incentive to provide additional support and assistance for off-the-job training to eligible Australian apprentices with a disability
- individuals who enter into skills-based training through an Australian apprenticeship with a living away from home allowance if they are required to move away from their parent's or guardian's home to take up or remain in an Australian apprenticeship.

### **Human rights implications – Australian Apprenticeships Incentives Program**

Table item 330 engages the following rights:

- the right to education – Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and Articles 4, 6 and 28 of the United Nations Convention on the Rights of the Child (CRC)
- the right of equality and non-discrimination – Article 1, 2, 5 and 7 of the International Convention on the Elimination of all Forms of Racial Discrimination (CERD)
- the right to work – Article 6 of the ICESCR
- the rights of people with disability – Articles 4, 5, 8, 24 and 27 of the Convention on the Rights of Persons with Disabilities (CRPD).

#### *Right to education*

Table item 330 engages:

- the right to education in Article 13 of the ICESCR. Article 13 recognises the right of everyone to education. Article 13 provides that vocational education is a part of secondary education (Article 13(2)(b)), and secondary education must be available and accessible to all on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education (Article 13(2)(c))
- the right of children to education in Articles 4, 6 and 28 of the CRC. Article 28 encourages:
  - the development of different forms of secondary education, including general and vocational education
  - making vocational education information and guidance available and accessible to all children

- taking appropriate measures such as the introduction of free education and offering financial assistance in case of need.

Table item 330 promotes the right of all people (including children) to education through the provision of financial assistance to:

- employers to assist with the cost of employing an Australian apprentice in their organisation
- employers to employ and retain secondary school students participating in an Australian school-based apprenticeship
- employers to encourage the commencement and completion of Australian apprentices from targeted groups including job seekers with severe barriers to employment, adult and mature aged Australian apprentices, Australian apprentices working in rural and regional areas, or Australian apprentices with disability
- RTOs so that they can provide additional support and assistance to Australian apprentices with disability with the completion of the off-the-job component of their Australian apprenticeship.

Table item 330 is compatible with and promotes the right to education.

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

Table item 330 engages the right of equality and non-discrimination through special measures recognised in Articles 1 and 2 of the CERD. Table item 330 supports Australian apprentices from nominated equity groups, including Indigenous Australians, to commence an Australian apprenticeship. Table item 330 promotes the rights outlined in Articles 5 and 7 of the CERD for Indigenous Australians by providing employers with a financial incentive to employ Indigenous Australians undertaking Certificate II qualifications. More generally, these incentives are restricted to Certificate III and IV qualifications and, in certain circumstances, a Diploma or Advanced Diploma qualification.

Table item 330 is compatible with and promotes the right of equality and non-discrimination.

#### *Right to work*

Table item 330 engages the right to work in Article 6 of the ICESCR. Article 6 recognises the right to work which includes the right of everyone to have the opportunity to gain their living by work which they freely choose or accept. Article 6(2) provides that the steps to be taken by States Parties to achieve the full realisation of this right include providing technical and vocational guidance and training programs, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedom to the individual.

Table item 330 promotes the right to work by financially supporting employers to engage and support Australian apprentices in the workplace while the apprentice undertakes vocational education and training, which is freely chosen by the apprentice, meets workplace needs, and improves the apprentice's employment opportunities and outcomes. This contributes to the development of a highly skilled and relevant Australian workforce that supports economic, social and cultural development.

Table item 330 is compatible with and promotes the right to work.

### *Rights of people with disability*

Table item 330 engages the rights of persons with disability in Article 4 of the CRPD. Article 4 seeks the promotion and full realisation of human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. The rights of people with disability are also found in Articles 5, 8, 24 and 27 of the CRPD.

Table item 330 promotes the rights of persons with disability by:

- providing employers with wage support incentives where those employers provide Australian apprenticeships to people with disabilities
- providing RTOs with financial assistance so that they can provide additional tutorial, mentoring and interpreter assistance to Australian Apprentices with a disability.

Table item 330 is compatible with and promotes the rights of people with disability.

### **Conclusion**

Table item 330 is compatible with human rights because it promotes the right to education under the ICESCR and the CRC; the rights of equality and non-discrimination under the CERD; the right to work under the ICESCR; and the rights of people with disability under the CRPD.

### **Table item 331 – Positive Partnerships Program**

The Australian Government has funded the Positive Partnerships program ('Positive Partnerships') since 2008 through the 'Helping Children with Autism' package. The aim of Positive Partnerships is to build partnerships between schools and families to improve the educational outcomes of school students on the autism spectrum. It does this by supporting productive relationships for school students with autism by developing and delivering evidence-based content and practical resources for teachers, parents and carers of students with autism, through workshops, webinars and online learning on the Positive Partnerships website.

The Positive Partnerships website ([www.positivepartnerships.com.au](http://www.positivepartnerships.com.au)) includes an online learning platform and comprehensive range of resources including fact sheets and videos. There is also material in a range of languages for parents and carers from culturally and linguistically diverse backgrounds. The website also includes resources developed in consultation with Aboriginal and Torres Strait Islander communities.

The first phase of the program ran from 2008 to 2012, the second from 2012 to 2015, and the current phase, Phase 3, is from 2015 to 2019. An evaluation of Phase 3 is scheduled to be completed in June 2019, and will inform the planning for Phase 4 (from 2019 to 2023).

Phase 4 of Positive Partnerships is scheduled to begin in 2019-20. It would continue the work of the program across three core components: professional learning for teachers; workshops for parents and carers; and the online learning and resources of the website, as informed by the evaluation of Phase 3.

The Government will procure and fund a service provider to continue the delivery of Phase 4 of Positive Partnerships. The relevant service provider will use the funding to:

- provide professional development for teachers, principals and other school staff to build their understanding, skills and expertise in working with school students on the autism spectrum
- conduct workshops and information sessions for parents and carers of school students on the autism spectrum
- develop and maintain a website providing online learning modules and other resources.

### **Human rights implications – Positive Partnerships Program**

Table item 331 engages the following human rights:

- the right to education – Article 13 of the ICESCR, and Articles 4, 6, 18, 23, 28 and 29 of the CRC
- the rights of people with disability – Articles 4, 5, 7, 8 and 24 of the CRPD.

#### Right to education

Table item 331 engages the right to education in Article 13 of the ICESCR. Article 13 recognises the right of everyone to education, which is directed towards the full development of the human personality and the sense of its dignity, and to enable all persons to participate effectively in society. The right to education for children is also found in Articles 4, 6, 17, 23, 28 and 29 of the CRC.

Table item 331 promotes the right to education by:

- delivering professional development and resources to teachers, principals, school staff and families of children with autism, with a view to improving the children's wellbeing and development
- aiming to improve the educational outcomes of children with autism to ensure that they enjoy a full and decent life
- enabling the education of children with autism by directing education to the development of those children's personality, talents and mental and physical abilities to their fullest potential.

Table item 331 is compatible with the right to education and promotes the right to education.

#### Rights of people with disability

Table item 331 engages the rights of persons with disability in Article 4 of the CRPD. Article 4 seeks the promotion and full realisation of human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. The rights of people with disability are also found in Articles 5, 7, 8 and 24 of the CRPD.

Table item 331 promotes the rights of persons with disability by:

- providing workshops, training and resources to help ensure that children with autism enjoy all human and fundamental freedoms on an equal basis with other children
- assisting school staff and families of children with autism create and ensure an inclusive education system at all levels for those children, and foster an attitude of respect for the children's rights.

Table item 331 is compatible with the rights of people with disability and promote the rights of people with disability.

## **Conclusion**

Table item 331 is compatible with human rights because it promotes the right to education under the ICESCR and the CRC and the rights of people with disability under the CRPD.

## **Table item 332 – Music and arts education initiatives**

Table item 332 establishes legislative authority for government spending on two music and arts education initiatives: Music: Count Us In and the Engaged Learning through the Arts project.

### *Music: Count Us In*

Music: Count Us In (MCUI) is a program that supports participation and engagement in music education in schools, and improves student learning in music and the skills of music teachers, by providing professional support for music classes, digital resources and support services, and an opportunity to engage in music education programs. The program also includes a national event at which students sing a song at the same time.

The MCUI program is available to teachers and students at all primary and secondary schools in every state and territory in Australia. It involves a 'Program Song' written by students for students to perform in an annual Celebration Day, and provides accompanying educational resources, including lesson plans, demonstration videos, musical ensemble arrangements and Auslan and Braille resources. The MCUI program also helps to build the capacity of teachers to have the confidence to integrate music and arts learning across the Australian Curriculum's eight learning areas.

The Government will provide funding to Music Council of Australia Pty Limited (trading as Music Australia) to continue delivering the MCUI program from 2018-19 to 2019-20.

### *Engaged Learning through the Arts project*

The Engaged Learning through the Arts project involves the development of online curriculum music and arts resources for all schools provided through a digital education platform, ARTS:LIVE, and the provision of face-to-face arts education workshops in disadvantaged schools. The online curriculum resources are available for Foundation to Year 10 in all schools.

The project is delivered by The Song Room Limited (trading as The Song Room).

The resources available on ARTS:LIVE cover all five elements of the arts curriculum: Dance, Music, Drama, Visual Arts and Media Arts, and are particularly valuable for schools that do not have specialist music or arts teachers.

The face-to-face workshops are conducted at schools with a high proportion of children who are disadvantaged due to social, economic or geographical circumstances, disability or recent immigration. The Song Room conducts extensive consultations, including liaising with state and territory authorities, to determine suitable schools for inclusion in this aspect of the project, and takes into account whether the school lacks arts specialists and has a low Index of Community Socio-Educational Advantage score.

The Song Room uses locally employed teaching artists, who are experienced and accomplished musicians with teaching experience, to work with teachers to create a safe and enabling learning environment and give every child the skills to be creative, connected and engaged. Teaching artists develop individualised program plans with generalist teachers at the schools. These program plans include specific objectives across learning, social and personal development outcomes.

The Government will provide funding to The Song Room to continue to deliver the project for 2018-19.

### **Human rights implications – Music and arts education initiatives**

Table item 332 engages the following human rights:

- the right to education – Article 13 of the ICESCR, and Articles 28 and 29 of the CRC
- the right to culture – Article 15 of the ICESCR and Article 31 of the CRC.

#### *Right to education*

Table item 332 engages the right to education in Article 13 of the ICESCR. Article 13 recognises the right of everyone to education, which is directed towards the full development of the human personality and the sense of its dignity, and to enable all persons to participate effectively in society. The right to education for children is also found in Articles 28 and 29 of the CRC.

Table item 332 promotes the right to education by:

- supporting participation and engagement in music education in schools
- supporting teachers with educational resources to enhance their music education programs
- improving educational outcomes in the arts by providing online curriculum resources for Foundation to Year 10 to all schools
- providing materials and resources to enhance arts education programs and the capacity of teachers to deliver these programs.

Table item 332 is compatible with the right to education and promotes the right to education.

### Right to culture

Table item 332 engages the right to culture in Article 15 of the ICESCR and Article 31 of the CRC. Article 15 of the ICESCR recognises the right of everyone to take part in cultural life. Article 31 of the CRC recognises the right of the child to participate freely in cultural life and the arts, and encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Table item 332 promotes the right to culture by:

- providing resources and professional support to enhance music education in schools
- promoting participation in music by providing a national singing event for students
- improving student learning outcomes in the arts
- improving teachers' skills and knowledge in the arts, increasing their capacity to develop and deliver arts education programs
- implementing targeted arts-based programs in school communities throughout Australia without specialist music or arts teachers.

Table item 332 is compatible with the right to culture and promotes the right to culture.

### **Conclusion**

Table item 332 is compatible with human rights because it promotes the right to education and the right to culture under the ICESCR and the CRC.

**Senator the Hon Mathias Cormann  
Minister for Finance and the Public Service**