**EXPLANATORY STATEMENT**

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

*Financial Framework (Supplementary Powers) Act 1997*

*Financial Framework (Supplementary Powers) Amendment*

*(Education, Skills and Employment Measures No. 6) Regulations 2020*

The *Financial Framework (Supplementary Powers) Act 1997* (the FF(SP) Act) confers on the Commonwealth, in certain circumstances, powers to make arrangements under which money can be spent; or to make grants of financial assistance; and to form, or otherwise be involved in, companies. The arrangements, grants, programs and companies (or classes of arrangements or grants in relation to which the powers are conferred) are specified in the *Financial Framework (Supplementary Powers) Regulations 1997* (the Principal Regulations). The powers in the FF(SP) Act to make, vary or administer arrangements or grants may be exercised on behalf of the Commonwealth by Ministers and the accountable authorities of non‑corporate Commonwealth entities, as defined under section 12 of the *Public Governance, Performance and Accountability Act 2013*.

Section 65 of the FF(SP) Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 32B of the FF(SP) Act authorises the Commonwealth to make, vary and administer arrangements and grants specified in the Principal Regulations. Section 32B also authorises the Commonwealth to make, vary and administer arrangements for the purposes of programs specified in the Principal Regulations. Schedule 1AA and Schedule 1AB to the Principal Regulations specify the arrangements, grants and programs.

The *Financial Framework (Supplementary Powers) Amendment (Education, Skills and Employment Measures No. 6) Regulations 2020* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on certain activities administered by the Department of Education, Skills and Employment.

Funding is provided for:

* the PaTH Business Placement Partnerships program, which will trial the development and delivery, in collaboration with industry and employer groups, of measures to assist young people to find employment, including apprenticeships, traineeships and other work experience opportunities ($11.9 million over three years from 2019-20);
* the Australian Training Awards, the peak, national awards program for the vocational education and training sector ($1.1 million per financial year, with current funding levels in place until 2023-24);
* the National Careers Institute digital platform, a national website that will provide careers information to support individuals and organisations to access, understand and compare post-compulsory skills development pathways, occupation choices and labour market needs ($9.4 million over five years from 2019-20); and
* certain projects and activities under the National Training System Commonwealth Own Purpose Expenditure (NTS COPE) Program, including statistical and research services provided by the National Centre for Vocational Education Research, the Vocational Education and Training Data Streamlining project, the National Register for vocational education and training (training.gov.au), and the Performance Information for Vocational Education and Training (PIVET) projects (total NTS COPE Program funding is $107.1 million over three years from 2020-21).

Details of the Regulations are set out at Attachment A. A Statement of Compatibility with Human Rights is at Attachment B.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003.* The Regulations commence on the day after the instrument is registered on the Federal Register of Legislation.

**Consultation**

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

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

**Details of the *Financial Framework (Supplementary Powers) Amendment   
(Education, Skills and Employment Measures No. 6) Regulations 2020***

**Section 1 – Name**

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Education, Skills and Employment Measures No. 6) Regulations 2020*.

**Section 2 – Commencement**

This section provides that the Regulations commence on the day after the instrument is registered on the Federal Register of Legislation.

**Section 3 – Authority**

This section provides that the Regulations are made under the *Financial Framework (Supplementary Powers) Act 1997*.

**Section 4 – Schedules**

This section provides that the *Financial Framework (Supplementary Powers) Regulations 1997* are amended as set out in the Schedule to the Regulations.

**Schedule 1 – Amendments**

***Financial Framework (Supplementary Powers) Regulations 1997***

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

This item adds four new table items to Part 4 of Schedule 1AB to establish legislative authority for government spending on certain activities administered by the Department of Education, Skills and Employment (the department).

New **table item 435** establishes legislative authority for government spending on the PaTH Business Placement Partnerships program (the program).

The program aims to connect young job seekers to employers with significant workforce needs in growing industries through trialling a co-design of employment pathways (workforce solutions) by the department and selected industry associations, using elements of existing Commonwealth-funded employment and training programs and services and other supports directly related to helping job seekers move into employment.

The program will help address high rates of youth unemployment by engaging with industries and employers looking for staff during the impacts of the COVID-19 pandemic and beyond. The program will prepare young job seekers for employment and help them access it through supported pathways.

Young people are particularly vulnerable during periods when the labour market is soft, as they tend to have fewer skills and less experience than their older counterparts. Accordingly, they are often the first to be retrenched by employers in times of economic difficulty. In addition, those who have never worked before will face challenges securing a foothold in the labour market, as they too will compete with the more highly skilled job seekers.

The program was announced by the Minister for Employment, Skills, Small and Family Business, Senator the Hon Michaelia Cash, on 23 July 2020. Media release is available at https://ministers.dese.gov.au/cash/new-pathways-help-young-australians-gain-jobs.

The department will partner with industry associations through a procurement process to leverage the strong relationships that these associations have with their employer members. The involvement of the department is critical because although industry associations have access to employment opportunities through their members, they are unlikely to have strong relationships with employment services providers, or detailed knowledge of the existing Commonwealth-funded employment and training programs which could be combined to design and deliver a pathway for their industry.

Young job seekers, who are registered with *jobactive*, Transition to Work, New Employment Services Trial or Disability Employment Services providers and eligible for Youth Jobs PaTH, will be eligible to participate in the workforce solutions delivered under the program.

Youth Jobs PaTH is an Australian Government employment service that helps young people gain skills and experience they need to get and keep a job. It also supports businesses to trial young people in the workplace and offers a financial incentive when they hire. Youth Jobs PaTH has three elements: Prepare, Trial and Hire. Further information about this service is available at https://www.employment.gov.au/youth-jobs-path.

All participants in the program will be registered with a *jobactive*, Transition to Work, New Employment Services Trial or Disability Employment Services provider, and be on income support and have mutual obligation requirements under the social security law, also known as participation requirements.

It is expected that program participants will be able, through participation in the program, to fully or partly meet any mutual obligation requirements to maintain eligibility for their social security payments. Where participants cannot fully meet their requirements through participation in the program, there will be other options for them to do so in accordance with usual arrangements regarding mutual obligations.

The Employment Fund may also be used to contribute towards meeting program costs. The Employment Fund is a flexible pool of funds that can be used to help job seekers, who are registered with *jobactive* and New Employment Services Trial providers, build the skills and experience to obtain and keep jobs.

The program will trial the co-design of workforce solutions which:

* maximise the use and effectiveness of the above existing programs and other services, such as mentoring, support to address non-vocational barriers to employment, medical checks, criminal checks, and vaccinations (for example, those needed for work at a meat processing plant), to support young people into work, by ensuring these programs and services are aligned to employer and industry needs;
* offer employers ready access to young people who, with industry approved training and work experience pathways, are able to meet their needs;
* provide access to large numbers of apprenticeships and/or traineeships, work experience and ongoing employment opportunities for eligible young people with suitable employers in specific industries, which have anticipated workforce demand during the economic recovery from COVID-19 and beyond;
* link key players in the youth labour market, including but not limited to employment services providers, the Australian Government, industry associations and employers; and
* achieve employment outcomes which can be replicated on a national scale.

There is flexibility under the program in relation to the scale and nature of workforce solutions because, over the life of the program, there may be a need to respond to not only further COVID-19 impacts but also the impact of other disasters or other labour market factors which affect the prospects of young job seekers. All jobs created or filled under the program must meet the National Employment Standards and workplace health and safety requirements.

Partnerships with industry associations will be established using the following approach:

* establishment of the panel;
* concept discussion;
* co-design; and
* work orders.

*Establishment of the panel*

A limited tender process will be used to engage suitable industry associations, creating a panel arrangement. Industry associations whose members have a national footprint and potential workforce demand (that is, whose members have demand for a large number of young workers such as those in construction, retail and hospitality industries) will be invited to tender for the PaTH Business Placement Partnerships Panel.

Panel members will be required to enter into a deed of standing offer (the Deed). Being on the panel does not guarantee a particular amount of business or any business at all. The department may not issue a work order to every panel member over the life of the panel.

*Concept discussion*

Either party to the Deed may initiate a ‘concept discussion’ about a potential workforce solution if a labour force development opportunity and/or need is identified. The party which initiates the concept discussion will describe the concept in writing. This will include information about job opportunities suitable for young job seekers, a commitment from relevant employers to participate, evidence of support by employment services providers, the proposed scale and timing of the workforce solution, and an indication of the elements of the workforce solution. The department may invite multiple panel members to participate, on an individual basis, in a concept discussion and may seek to proceed to co-design with a single panel member, or with multiple panel members in an agreed collaborative approach.

Successful industry workforce solutions (to be agreed and described in a work order issued under the Deed) could include, for example, any or all of the following:

* project management (that is, overall management of the workforce solution);
* coordination of employers, employment services providers and job seekers, and any other stakeholders, such as subcontractors, involved in the workforce solution;
* brokerage of services to be included in a pathway where those services are not the employment services administered by the department or the disability employment services administered by the Department of Social Services;
* industry specific pre-employment training design and delivery;
* training or training materials;
* work experience;
* mentoring of job seekers by personnel from a panel member or a suitable sub‑contractor agreed through the co-design process, or non-vocational job seeker supports such as access to drug and alcohol counselling, emergency housing or domestic violence assistance;
* stakeholder engagement and employer liaison;
* venue and equipment hire;
* support to employers to ensure readiness of workplaces to recruit young unemployed people, for example cultural competency training where diversity groups are a focus, and strategies to engage and retain young people for employers with traditionally older workforces;
* items for job seekers to ensure readiness for workplaces, for example personal protective equipment, criminal or medical checks, and vaccinations if relevant; and
* post job placement services to job seekers and employers such as dispute resolution to help maintain a person’s job, facilitation of access to post placement non-vocational services, or further skills development.

*Co-design*

Co-design will only occur where the department agrees with a proposed concept and there is demonstrated value for money. A co-design fee of $3,000 will be paid to each panel member which participates in co-design and is intended to compensate for the time and expertise dedicated to the co-design process. Co-design of each industry workforce solution will prioritise using existing programs, supports and services to help job seekers find and maintain employment and will take account of the needs of industry and employers.

Effective collaboration with employment services providers is expected to be a key element of any workforce solution. Employment services providers will continue to provide services to job seekers participating in the program, including monitoring of their compliance with the mutual obligation requirements under the social security law and, where Youth Jobs PaTH forms part of an industry workforce solution, management of work health and safety issues. Any other work experience arrangements that form part of an industry workforce solution must be agreed by the department through the co‑design process. Administrative requirements for alternative work experience arrangements will be the responsibility of the panel member, including in particular management of work health and safety issues.

*Work orders*

If and when the parties are satisfied with the design of a proposed industry workforce solution and the department is of the view that it adequately reflects labour market conditions, the department will issue a work order with negotiated terms so that the panel member can deliver the agreed industry workforce solution. The amount of funding the department will provide under a work order for each industry workforce solution will depend on the individual nature of the solution.

The procurement process to implement the program will occur in accordance with the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), the *Commonwealth Procurement Rules* (CPRs) and the department’s Accountable Authority Instructions, to ensure a robust and transparent procurement decision making that provides value for money to the Commonwealth.

Certain industry associations have been invited by the department to submit a response to the limited tender to become a member of the panel. The associations the department invited were selected on the basis of their extensive footprint, their position as an industry peak body, and expected entry level opportunities available for young people during the life of the program. Decisions about which organisations to invite were made by the Minister for Employment, Skills, Small and Family Business.

Panel members were recommended based on their demonstrated capacity to collaborate with key stakeholders, including the department, and influence their members to access opportunities for young job seekers to meet the industry’s expected demand for employees; the extent to which they are likely to have the commitment and ability to access suitable employment opportunities for young job seekers at a large scale; and their capacity to develop and deliver workforce solutions.

Decisions about which tenderers will be appointed to the panel will be made by a delegate of the Secretary of the department. It is possible that all organisations invited to submit a response to the limited tender will become panel members following assessment of the tenders, given that invitations to tender are based on likely ability to successfully participate in the program.

Organisations which were not initially invited to submit a tender, or which do not become a panel member as a result of submitting a response to the limited tender, may still be able to participate in the program for a number of reasons.

First, the department reserves the right to refresh the panel by making further approaches to market to appoint additional panel members, if the department considers it appropriate to do so in order to meet its requirements or for any other reason. Any further approach to market would be done consistently with the CPRs.

Second, the panel established through the limited tender process will be a non-exclusive panel. This means that the department may also obtain relevant services through other processes, if funding is available for that purpose. This will afford the department the flexibility to address the needs and respond to the Government’s priorities as they arise, if the panel or any refreshed version of it does not meet relevant needs and priorities.

Third, an unsuccessful tenderer, or an organisation not invited to submit a response to the limited tender, may be able to participate in the program in collaboration with a panel member, through invitation to participate in the co-design process; potential to subcontract service delivery where appropriate; and/or access of their employer members to the workforce solutions developed.

The decision to engage in co-design or to offer a work order will be made by a departmental official as a delegate of the Secretary based on analysis of the concept against program objectives. The decision to offer a work order to a panel member will be made by the department based on the merit of the industry workforce solution, including the extent to which it provides value for money, creates jobs and meets program objectives. The department may decline to engage in co-design with a panel member or decline to offer a work order. However, this would not necessarily prevent the panel member from participating in the program as it would be open to the panel member to modify their proposed workforce solution or develop a new solution for consideration by the department.

The Administrative Review Council’s guide, *What decisions should be subject to merit review?*, indicates that where a decision has such limited impact that the costs of review cannot be justified, then merits review may be excluded (see paragraphs 4.56 and 4.57 of the guide). For the following reasons, the above decisions would have such limited impact that the costs of independent merits review could not be justified and therefore will not be subject to such review.

Not being on the panel will not necessarily prevent an organisation from participating in the program or from collaborating with the department through other processes, and being on the panel does not guarantee any business at all. Decisions not to offer panel members co-design or a work order will also not preclude them from future collaboration with the department as outlined above.

Further, irrespective of any collaboration with the department, not being on the panel or not being offered a work order will not prevent an industry association from continuing to advocate for and support its members or pursuing its own commercial interests. The purpose of the program is to provide value-for-money workforce solutions to help young job seekers into employment, not to provide profit for industry associations, which in any case could not be considered for the panel if not independently financially viable.

In relation to decisions about whether to engage in co-design with an organisation, not receiving the $3,000 co-design fee would have little impact on the organisation given that it is a relatively small amount and intended to compensate for time and expertise spent during the co-design process. Even if an organisation received a $3,000 fee, the direct financial benefit could be wholly, partly or more than offset by the need for it to pay its own expenses to participate in the co-design process.

In relation to decisions about whether to offer a work order to a panel member, a further reason supporting the absence of independent merits review is that the decisions will involve the allocation of finite resources between competing parties. Overturning a decision not to offer a work order to one party would mean that less money is available for work orders for other parties. The Administrative Review Council’s guide indicates that decisions involving the allocation of finite resources between competing parties are generally considered to be inappropriate for merits review (see paragraphs 4.11 to 4.14 of the guide). This reason also applies in relation to the $3,000 co-design fee, although given the small amount of that fee it is potentially of lesser significance in relation to it.

The department will review their decisions where requested by a person who is dissatisfied with a decision to exclude them from participating as a panel member, or a decision not to engage in co-design or offer a work order. In the event the request is made to the department, the department will handle the matter by acknowledging receipt of the request and contact the individual with a view to resolving any issues as soon as practicable. The department will review the issue and work with the complainant to address it where needed. The department will respond to the complainant regarding the outcome of their request for review.

Any person or organisation dissatisfied with one of the above decisions by the department, or dissatisfied with their dealings with a panel member as part of the program, could raise the matter with the Commonwealth Ombudsman. The Ombudsman has the power to ask the department to answer questions about the treatment of the person by a facilitator or the department, or to provide records about the person’s dealings with the facilitator or department, or other relevant documents or information. The department gives weight to the Ombudsman’s recommendations and is required to respond to the Ombudsman regarding what it has done in response to any recommendations. Failure to adequately respond could lead to adverse public reporting by the Ombudsman.

The *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 tenderers, depending on the circumstances.

Employment services providers may make decisions about whether particular job seekers can participate in the program. In practice, providers are very likely to encourage job seekers to participate in these projects, rather than prevent them from doing so, as the projects will be generally relevant to their need to find and keep paid work. However, where a job seeker misses out, or is not satisfied with the level of assistance they receive under the program, it will be open to them to access other workforce solutions in their area under the program, or assistance from the suite of other employment programs.

A decision to deny a job seeker access to participation is unlikely to occur in practice, and would not substantially affect that job seeker’s interests, whether or not the job seeker was subject to mutual obligation requirements at the time. This is because of the availability of other activities and programs that provide similar employment experience and training opportunities. Depending on the particular employment services program that the job seeker is participating in, these could include activities such as the National Work Experience Programme, Youth Jobs PaTH and Work for the Dole. These may be used not only to help the job seeker find and keep paid work, but also to assist the job seeker to meet any applicable mutual obligation requirements and therefore maintain their eligibility to receive their social security payment.

Accordingly, and consistently with paragraphs 4.56 and 4.57 of the Administrative Review Council’s guide, merits review of decisions about whether a job seeker could participate in a program is not needed. This is because, as noted above, a job seeker unable to participate in this program or a particular project under this program could obtain similar assistance through the suite of other employment programs and activities or potentially through participation in another project under this program. A job seeker who is dissatisfied for any reason in connection with the program could raise the matter with the department or the Commonwealth Ombudsman as set out above.

In practice, there is no prospect that denying a job seeker access to the program would affect their eligibility to receive their social security payment, as they could meet their mutual obligation requirements in other ways, as noted above. However, if a job seeker did consider that their ability to meet their participation requirements had been impacted by not accessing the program, for example because they were required to participate in an alternative activity which they considered was not suitable to their circumstances, and they were consequently subject to compliance action for failing to participate, they could seek merits review by Services Australia of any decision to reduce, cancel or suspend their payment. If dissatisfied by the Services Australia’s decision, they could seek merits review of the decision by the Administrative Appeals Tribunal (AAT). If dissatisfied by the AAT’s decision they could, on questions of law, appeal to the Federal Court of Australia.

The development of the program was informed by ongoing feedback from industry and employers over the duration of Youth Jobs PaTH, feedback from PaTH Industry Pilots stakeholders and the extensive consultation undertaken with young job seekers in the development of Youth Jobs PaTH. From that consultation, the department is aware that young job seekers struggle to find employment due to their lack of work experience and the perception of employers that they lack the required employability skills. This program, by utilising the Youth Jobs PaTH service, will support young job seekers to build their work experience and employability skills. It will also increase the opportunities available to young job seekers as a result of Business Partnership Providers designing and facilitating industry workforce solutions that lead to identified employment opportunities.

Funding for the program of $11.9 million over three years from 2019-20 comes from Program 4.1: Employment Services, which is part of Outcome 4. This funding includes $1.9 million for the program administration and evaluation. Details will be set out in the 2020-21 Budget and the 2020-21 Portfolio Budget Statements for the Education, Skills and Employment Portfolio.

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 communications power (section 51(v)); and
* the power with respect to the provision of unemployment benefits (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 obligations under international treaties to which it is a party.

Australia has obligations relating to the following conventions:

* the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), particularly Articles 2 and 6. Article 2 requires that each State Party to the Covenant undertakes to the maximum of its available resources, especially economic and technical, to realise the rights recognised in the Covenant, particularly through legislative measures. Article 6 recognises the right to work and provides that the States Parties will take appropriate steps to achieve the realisation of the right to work, including through technical and vocational training.
* the International Labour Organization’s *Convention concerning Employment Policy* (ILO Convention 122), including Articles 1 and 2, which provide that Members shall pursue policies designed to promote full, productive and freely chosen employment, and determine measures for achieving those objectives; and
* the International Labour Organization’s *Convention concerning Vocational Guidance and Vocational Training in the Development of Human Resources* (ILO Convention 142), including Articles 1, 2 and 4, which relate to the adoption and development of comprehensive and coordinated policies and programs of vocational guidance and training, which are closely linked with employment for all people.

The program will promote the right to work by supporting young job seekers to obtain productive employment, through the development of workforce solutions between the Australian Government, employment services providers, industry groups and employers.

Workforce solutions will be designed around supporting young job seekers and focus on improving vocational training outcomes and job readiness while identifying and establishing employment pathways and opportunities such as work experience placements and apprenticeships.

This will assist job seekers to obtain employment in both an uncertain economic environment created by COVID-19 and in future periods of uncertainty, for example following natural disasters.

*Communications power*

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

The program will maximise the efficiency of existing programs through the creation of co‑designed workplace solutions. The program will take advantage of technological platforms such as the internet to deliver the workplace solutions to job seekers. Examples could include the delivery of mentoring, industry accredited training and coursework, and job opportunities through online platforms.

*Power with respect to the provision of unemployment benefits*

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 the provision of unemployment benefits.

The program will provide continued support to young job seekers who are, or may require, unemployment benefits during their pursuit of an employment opportunity. The program will provide employment opportunities and pathways to job seekers, through activities such as mentoring, work experience and training. All participants in the program will be registered with *jobactive*, Transition to Work, New Employment Services Trial or Disability Employment Services providers, and be on income support and have mutual obligation requirements under the social security law.

New **table item 436** establishes legislative authority for government spending on the Australian Training Awards, to ensure this program has the same legislative authority as other programs administered by the department. The Australian Training Awards are the peak, national awards program for the vocational education and training (VET) sector.

The Australian Training Awards commenced in 1994, and have been in continuous operation since that time. The Australian Training Awards program transitioned into the then Department of Education and Training as a result of the abolition of the Australian National Training Authority as announced by the then Prime Minister, the Hon John Howard MP, on 22 October 2004.

The Australian Training Awards aim to recognise and promote excellence in skills development by apprentices and trainees, vocational students and VET teachers and practitioners, and highlight the provision of high quality nationally recognised training by businesses and registered training organisations (RTOs).

The Australian Training Awards are divided into three different award categories, with a number of awards under each category. These categories are:

* awards for individuals;
* awards for businesses; and
* awards for RTOs.

The Australian Training Awards program has different selection processes depending on the award and category. Entries to the program are made through either a state and territory training awards process, with winners from each state and territory becoming eligible to compete at the national level in aligned categories, or by entering the Australian Training Awards directly via the online nomination portal (https://www.australiantrainingawards.gov.au/). All applicants must meet the eligibility requirements and address the selection criteria for the applicable award.

In 2020, there will be up to 18 awards presented, comprising nine for individuals, five for businesses and four for RTOs. Eleven of the 18 awards are entered through the state and territory training awards process. Seven awards are entered directly to the Australian Training Awards, of which five are nominated by the Australian Government Skills Minister (the Australian Government categories).

A judging panel, chaired by a departmental senior executive, is appointed to each of the awards. Each panel has three or four members, representing industry, state and territory governments, and past award winners. The panel determines the winner for the applicable award. For six awards, the panel also determines a runner-up. For business and RTO categories, judging panels determine the shortlisted applicants who are considered finalists. Judging panels are not remunerated, although costs associated with judging, including travel and accommodation, may be covered. The Skills Ministers endorse the award winner for the Lifetime Achievement Award.

All award winners (except for the Lifetime Achievement Award and the National Achievement Award) receive $5,000 prize money, a trophy and a framed certificate. The runners-up for the six applicable awards receive $2,500 prize money, a trophy and a framed certificate. The Lifetime Achievement Award and the National Achievement Award recipients receive a trophy and a framed certificate.

Annual funding for the Australian Training Awards is provided for the following activities:

* expenses associated with the judging process, including venue hire and the cost of independent evaluators who support the judging process for organisational categories;
* expenses associated with conducting the event, including venue hire, staging, entertainment, photography, audio-visual services, displays and hospitality;
* transport, accommodation and hospitality costs for finalists and judging panels;
* printing of materials (certificates and dinner programs);
* trophies and prize money; and
* promotion of winners and finalists of the Australian Training Awards (for example, online promotion through social media).

The Australian Training Awards are held annually in November and in a different state or territory each year.

Finalists of the Australian Training Awards are required to participate in the Finalist Week program, which may include a judging interview as well as the opportunity to establish networks with fellow category finalists from around Australia. Finalists also learn about the Australian VET Alumni, as all Australian Training Awards finalists are invited to become members of this exclusive program. The Australian VET Alumni are national ambassadors for the VET sector.

Winners of an Australian Training Award are recognised nationally as a leader in their field of study, training or a national leader in skills, training and workforce development. The Australian Training Award winners showcase best practice in VET and provide inspiration for people to gain real skills for a better career, or provide the best practice that businesses and training providers need to improve their training outcomes and ensure sustainable growth.

Information about the Australian Training Awards is regularly provided through the Australian Training Awards website at www.australiantrainingawards.gov.au and social media accounts. Public announcements are made relating to opening and closing of nomination periods, selection of finalists and the announcement of winners.

Government expenditure in connection with the Australian Training Awards involves procurement activities in accordance with the Commonwealth resource management framework, including the *Public Governance, Performance and Accountability Act 2013* and the *Commonwealth Procurement Rules*, including publishing information on AusTender as required at www.tenders.gov.au.

The procurement of goods and services is undertaken through a limited tender process and, subject to the value, a competitive process is undertaken for venue hire, hospitality, staging, audio-visual services, photography, trophies and evaluation services for judging. Evaluation panels consisting of officials from the department are established to assess and determine successful suppliers against the relevant criteria.

The department procures independent evaluation services to support the judging process for business and RTO (organisational) award categories through a direct source arrangement due to the uniqueness of the services required. The independent evaluators support the judging process for organisational categories by assessing applications against the award selection criteria and ensure adherence and compliance to the application standards for each award category. This includes attending judging panel meetings, conducting site visits, scribing panel discussions and decisions, and preparing reports. Evaluators do not have a decision making role on the judging panel.

Procurement decisions are made by departmental officials as delegates of the Secretary of the department. Decisions are subject to judicial review. The *Government Procurement (Judicial Review) Act 2018* enables suppliers to challenge some procurement processes for alleged breaches of certain procurement rules. This legislation might provide an avenue for redress (compensation or injunction) for dissatisfied providers or potential providers, depending on the circumstances.

The granting of awards, and procurement decisions made in connection with the Australian Training Awards, are not considered suitable for independent merits review, as they are decisions relating to the allocation of a finite resource, from which all potential claims for a share of the resource cannot be met. In addition, any funding that has already been allocated would be affected if the original decision was overturned. The Administrative Review Council has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.11 to 4.14 of the guide, *What decisions should be subject to merit review?*).

Since the establishment of the awards, the department has had ongoing engagement with relevant stakeholders including state and territory Senior Skills Officials and state and territory Skills Ministers on the awards and their ongoing appropriateness. Other stakeholders may provide feedback to states and territories, which would then be provided to the department.

Funding for the Australian Training Awards program of $1.1 million per financial year comes from Program 3.1: Building Skills and Capability, which is part of Outcome 3. Current funding levels are in place until 2023-24. Program details are set out in the *Portfolio Additional Estimates Statements 2019-20, Education, Skills and Employment Portfolio* at page 54.

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 express incidental power and the executive power (sections 51(xxxix) and 61), including the nationhood aspect; and
* the social welfare power (section 51(xxiiiA)).

*Executive power and the express incidental power, including the nationhood aspect*

The express incidental power in section 51(xxxix) of the Constitution empowers the Parliament to make laws with respect to matters incidental to the execution of any power vested in the Parliament, the executive or the courts by the Constitution. Section 61 of the Constitution supports activities that are peculiarly adapted to the government of a nation and cannot be carried out for the benefit of the nation otherwise than by the Commonwealth.

The Australian Training Awards showcase best practice in vocational education and training, promoting high achievement in education and training and supporting the advancement of national interests.

*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 various social welfare services including benefits to students.

The Australian Training Awards are presented to apprentices and trainees, and the monetary prize is awarded directly to those students as a consequence of their status and performance as a student.

New **table item 437** establishes legislative authority for government spending on the National Careers Institute (NCI) digital platform (the platform), which will be a national website that provides careers information to support individuals (such as those making career decisions, people who assist individuals to make those decisions, career practitioners, education and training providers, employers and human resources practitioners) and peak organisations to access, understand and compare post-compulsory skills development pathways, occupation choices and labour market trends.

The NCI, which was announced as part of the 2019-20 Budget,was established to ensure Australians have access to accurate and up to date careers information and support regardless of their age and stage. As recommended by the *Strengthening Skills: Expert Review of Australia’s Vocational Education and Training System* (https://www.pmc.gov.au/resource-centre/domestic-policy/vet-review/strengthening-skills-expert-review-australias-vocational-education-and-training-system), the NCI will provide a single, independent and impartial government source of careers information, with a particular focus on marketing and promoting vocational careers and pathways. The creation of a digital platform to provide an interface to existing career services and information sources and facilitate improved access to the National Skills Commission’s data-driven careers information is one of the key functions of the NCI.

The National Skills Commission (part of the department) is working to develop intelligence on Australia’s labour market, workforce changes and current and emerging skills needs. The Commission will drive long-term improvements across the skills system to bring together existing data and develop new capability in skills analysis, and improved data and advice on vocational education and training pricing and outcomes.

The NCI will design and deploy the platform, through contracts with external service providers, over multiple stages in 2020-21 and 2021-22. This will enable the integration of new technologies and enhanced data integration capability into the platform, and the adaptation of the platform to suit evolving user needs. Ongoing user centred research and user testing will be conducted, and new data sources and/or linkages will be integrated into the platform to enhance user experience and respond to user preferences.

The platform will assist users to make more informed choices about their learning, training and employment options, in turn equipping them with the knowledge, skills and attributes to experience the wellbeing and economic benefits that quality education, skills and employment provide. The platform will target a wide audience of people of all ages and stages of their career. Initial releases will have an increased focus on support for job seekers and young people and will complement other government support initiatives following the economic downturn caused by the COVID-19 pandemic.

Content on the platform will be drawn from information and labour market data developed by the department and the National Skills Commission, and will consolidate a number of existing departmental websites that presently provide information about learning, training and employment. These departmental websites will be decommissioned and redirected, and a new domain and associated trademarks will be acquired for the platform. A one-off national survey will also be completed to better understand the experiences and use of careers information. The survey will be delivered online and will target individuals, influencers, career advisers and employers. Web statistics, user research and surveys will be used to evaluate performance of the platform in providing relevant and simple careers information for users.

Government expenditure on the platform will be allocated by conducting procurement activities, in accordance with the Commonwealth resource management framework including the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), the *Commonwealth Procurement Rules* (CPRs) and the departmental Accountable Authority Instructions. Information on tenders and final contracts will be made available on AusTender at www.tenders.gov.au as required. Procurement decisions will be based on value for money, including capability and capacity to deliver, price and risk considerations.

The department may use a range of procurement methods, such as open and limited tenders or procurements from existing arrangements, depending on the activity. Final spending decisions, including the determination of successful tenderers, will be made by the Secretary of the department or a delegate of the Secretary.

The department will procure services to assist with the following activities:

* building, maintaining and hosting the platform;
* acquiring a domain and associated trademarks for the platform;
* decommissioning and redirecting existing departmental websites that presently provide information about learning, training and employment;
* data and information technology management;
* conducting a one-off national survey to better understand the experiences and use of careers information;
* raising awareness of the platform to ensure that people can easily navigate it to obtain the information they need;
* conducting user centred research and user testing to ensure the platform is delivering on user needs and preferences;
* obtaining new data sources and/or linkages to enhance user experience and respond to user needs and preferences; and
* evaluating the performance of the platform.

The department will:

* manage contracts for the above activities;
* manage the design and approval of all content and data to be included in the platform;
* consult with stakeholders on the project; and
* report on performance and evaluate the platform.

The department will provide an opportunity for suppliers and tenderers to make complaints and 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.

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

The re-making of a procurement decision after entry into a contractual arrangement with a successful provider is legally complex, impractical, and could result in delays to providing services to platform users. 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 department conducted an extensive user research to understand the landscape the platform will exist within, as well as how users will engage with the platform. That exercise highlighted the value the platform will bring. Individuals at all life and career stages were involved in the research, including employees, employers, parents and career advisors. Specifically:

* interviews were conducted with individuals;
* focus groups were held with employers, parents and career advisors;
* a survey was completed by over 5,000 individuals across Australia; and
* a digital hackathon was held to build digital platform prototypes that responded to user needs and preferences.

The department will conduct further consultation with individuals, influencers, career advisers and employers throughout the development of the digital platform and during the design and delivery of the one-off national survey to ensure the platform continues to meet the needs of users.

Funding for the platform of $7.6 million over four years from 2019-20 was included in the 2019-20 Budget under the measure ‘Skills Package – delivering skills for today and tomorrow’. Details are set out in *Budget 2019-20, Budget Measures, Budget Paper No. 2 2019-20* at pages 69 to 70.

Further funding for the platform of $1.8 million over four years from 2020-21 will be included in the 2020-21 Budget and the 2020-21 Portfolio Budget Statements for the Education, Skills and Employment Portfolio. Funding will come from Sub-program 3.1.4: Support for the National Training System under Program 3.1: Building Skills and Capability, which is part of Outcome 3.

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

Section 51(v) of the Constitution empowers the Parliament to make laws with respect to ‘postal, telegraphic, telephonic and other like services’. The program will involve expenditure on the distribution of material via the internet as well as funding for the development of content for distribution by those means.

New **table item 438** establishes consolidated legislative authority for government spending on certain projects and activities under the National Training System Commonwealth Own Purpose Expenditure (NTS COPE) Program.

The NTS COPE Program funds a number of projects of national significance that support the infrastructure and governance of the national training system. Funding for the NTS COPE is identified in the *National Agreement for Skills and Workforce Development*, and quarantined from the National Specific Purpose Payment each year, in accordance with clause 15 of the Agreement. Major funding recipients include research organisations, consultants and service providers.

The *National Agreement for Skills and Workforce Development* was agreed by the Council of Australian Governments (COAG) in 2012. The Agreement is an ongoing national agreement under the *Intergovernmental Agreement of Federal Financial Relations*, and is available at http://www.federalfinancialrelations.gov.au/content/national\_agreements.aspx.

New table item 438 provides legislative authority for government spending on the following projects and activities under the NTS COPE Program:

* the National Centre for Vocational Education Research (NCVER) for statistical services and research services;
* the VET Data Streamlining project;
* the National Register for VET (training.gov.au); and
* the Performance Information for VET (PIVET) projects.

*NCVER statistical services*

The NCVER is a not-for-profit company owned by the Australian Government, state and territory Skills Ministers, which was established in 1981. It is the national professional body responsible for collecting, managing, analysing and communicating research and statistics on the Australian VET sector. It provides statistical services to support access to comprehensive, accurate and contemporary statistics and information on the national VET system.

The NCVER receives funding under the NTS COPE Program, which is administered by the department under the NCVER Statistical Services Funding Agreement and the NCVER Research Services Funding Agreement. Current agreements are in place for a three-year period from 2019-20, and are supported by Annual Implementation Plans that specify the deliverables for each financial year.

The purpose of the NCVER Statistical Services Funding Agreement is to ensure continued and enhanced provision of statistical services to support access to comprehensive, accurate and contemporary data and information on the Australian VET system for all stakeholders; inform choice, policy making and best practice; and promote transparency in how the VET sector and market operates. This is achieved through three broad funding objectives:

* provide VET activity data collection services to enhance transparency and performance of the national training system;
* provide data and publication services that inform efficient operation of the VET market; and
* produce statistics to inform consumer choice and services that streamline the collection of VET data.

The collection of data from registered training organisations (RTOs) and state/territory training authorities (and Boards of Studies) is through digital submission. The statistics produced by NCVER are used extensively by the department, states and territories, the Student Identifiers Registrar (for the Unique Student Identifier Transcript service), researchers and the general public. The data is made publicly available on the NCVER website.

*NCVER research services*

Under the NCVER Research Services Funding Agreement, NCVER is funded to undertake research to support and inform VET sector stakeholders about national VET policy and practice. Research needs to be timely and relevant to the industry, the VET sector, governments and other stakeholders. This is achieved through two broad funding objectives:

* deliver a high quality, timely and relevant program of research and data analysis, including identification, prioritisation and management of projects to provide an evidence base of applied research to support policy development, add new knowledge about VET, and support decisions being informed by objective, relevant and trusted research; and
* provide information dissemination services and engagement activities to support access to and promote VET research that enables stakeholders to have a greater understanding of VET and the VET sector.

A suite of research projects is developed in consultation with stakeholders and endorsed by the Senior Skills Officials’ Network (SSON). The SSON commissions approximately 10 to 12 research projects each year, ranging from about six months to two years. Each individual project has specific research questions developed and addressed. The research is generally made publicly available on the NCVER website and has a wide range of users, including governments and academics. The NCVER also hosts an annual research conference to share VET research and increase engagement on VET research, and maintain a comprehensive VET research database. These activities come under the second broad funding objective.

*VET Data Streamlining*

The VET Data Streamlining project will modernise and simplify the collection and reporting of VET data to enable real-time transparency and management of the national VET system. The project is developing ICT systems and processes that enable near real-time, event-based, system-to-system exchange of VET data that is used for multiple purposes.

The project will impact all 4,500 RTOs and their third party student management system (SMS) providers, and exchange information with VET regulators, government training authorities, and VET sector users and stakeholders.

Initially, funding will go towards the procurement of ICT development services, and the delivery and maintenance services in the forward years. As part of the national roll-out, grant funding may be provided to help RTOs and SMS providers adapt to the new systems. Discovery and enterprise architecture work has been completed, and work is currently underway to review VET information standards and develop a proof of concept for new ICT infrastructure. This work will underpin a national roll-out that is likely to be staged over several years, to align with state and territory government investment plans. Core development will be undertaken over three years from 2020-21, with additional funding to support the final transition of jurisdictions and then maintenance of the new system in the out years.

*Training.gov.au*

Training.gov.au (TGA) is the National Register for VET required by section 216 of the *National Vocational Education and Training Regulator Act 2016*. TGA provides authoritative information on nationally recognised training and RTOs that deliver that training. It is used as a reference source by VET regulators, governments, NCVER, RTOs and other VET professionals.

The department uses the NTS COPE Program funding to procure services for the continued delivery of the suite of TGA related websites (TGA, the Training Package Content Management System and VETNet). The Training Package Content Management System allows training package developers to author and publish training packages. VETNet is the VET document repository and provides a central storage facility for current and historical materials relevant to the national VET sector.

Funding for this activity includes hosting, maintenance and enhancement of TGA related websites, as well as contracting of specialised business analysis services to support this work.

*PIVET*

In November 2016, the Council of Australian Governments (COAG) Industry and Skills Council (predecessor to the COAG Skills Council) endorsed the PIVET initiative to transform the data available to consumers, governments and regulators. PIVET achieves this objective by funding projects which seek to increase the outcome and pathway information available about the VET market.

In November 2019, Skills Ministers agreed to four major PIVET projects (the fourth project being the VET Data Streamlining project described above), including:

* the *Reforming Student and Employer Surveys* project, which aims to improve the student and employer surveys to gain a greater understanding of student outcomes and satisfaction and employer perspectives on VET. These two surveys are central to understanding the VET sector and experiences of its users (students and employers). The surveys are conducted by NCVER as part of their statistical services, with the National Student Outcomes Survey conducted annually and the Survey of Employer Use and Views of the VET System conducted biennially;
* the *Creating Enduring Data Linkages* project, which incorporates VET data into large‑scale linked datasets, such as the Multi-Agency Data Integration Project under the Australian Government’s Data Integration Partnership for Australia, to optimise funding of VET student outcomes; and
* the *Improving Market Information* project, which reviews the future needs of VET users, providers, training product developers, regulators and governments to ensure that information collected and published drives system performance.

As part of the *Improving Market Information* project, the PIVET funding will support the rebuild of the My Skills website. Following a procurement process via the Digital Transformation Agency’s panel, an external vendor has been appointed to:

* design, develop, test and release a new version of the My Skills website, including a secure portal for RTOs; and
* provide hosting, maintenance and support services for the new My Skills website and RTO portal during Beta stage.

Funding for this project also includes contracting of specialised business analysis services to support the department and vendor progress the project. The rebuild of the My Skills website will improve the experience of over 2.6 million users when they search and compare VET qualifications and RTOs. The portal for RTOs will affect approximately 4,000 RTOs who will be able to both provide and receive a range of VET data, which has not been possible previously.

Commonwealth expenditure on the above projects and activities is undertaken in the form of grants and procurements.

Funding to NCVER for statistical services and research services is provided as closed, non‑competitive grants. The Funding Agreements and Annual Implementation Plans are agreed by the responsible First Assistant Secretary within the department, a delegate of the Secretary of the department. Information about the grants is published on the GrantConnect website. Grant opportunity guidelines are under development and will be published when finalised.

If grant funding is approved as part of the business case for the national roll-out of the VET Data Streamlining project, grant opportunity guidelines will be prepared for agreement by the Minister for Employment, Skills, Small and Family Business. Approval of individual grants will be the responsibility of a delegate of the Secretary of the department.

Procurements for the VET Data Streamlining, TGA and PIVET projects will be undertaken by the department in accordance with the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), the *Commonwealth Procurement Rules* (CPRs) and the Accountable Authority Instructions. A range of procurement methods may be used, such as open and limited tenders or procurements from existing arrangements. The selection of which procurement method to use will depend on the activity. Procurement decisions will be based on value for money, including capability and capacity to deliver and price and risk considerations. Final spending decisions, including the determination of successful tenderers, will be made by the Secretary of the department or a delegate of the Secretary.

The department will procure the following services:

* the development of ICT systems and processes;
* the design, development, hosting, enhancement, maintenance and support services for the websites; and
* specialised business analysis services.

The department will provide an opportunity for suppliers and tenderers to make complaints and 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 on tenders and final contracts will be made available on AusTender (www.tenders.gov.au) once the contracts are signed.

Decisions to grant funding to NCVER, once made, are final and not subject to merits review. This is partly because the grant involves an allocation of a finite resource, and an allocation that has already been made to NCVER would be affected by overturning the original decision. Decisions of this nature are generally considered by the Administrative Review Council to be inappropriate for merits review (see paragraphs 4.11 to 4.14 of the guide, *What decisions should be subject to merit review?*).

Another reason for excluding merits review is related to the longstanding and integral function that NCVER performs in Australia’s VET system. NCVER, which is owned by the Australian Government, state and territory Skills Ministers, was established for a specific purpose of providing statistical services to support access to comprehensive, accurate and contemporary statistics and information on the national VET system. It is not reasonably foreseeable nor envisaged that any other organisation would receive funding in relation to this function.

Similarly, procurement decisions for the VET Data Streamlining, TGA and PIVET projects, once made, will be final and not subject to merits review. These decisions involve an allocation of finite resources, and an allocation that has already been made to another provider would be affected by overturning the original decision. Decisions of this nature are generally considered by the Administrative Review Council to be inappropriate for merits review (see paragraphs 4.11 to 4.19 of the guide, *What decisions should be subject to merit review?*).

Re-making a decision after entry into an agreement with a successful provider is legally complex, impractical, and could result in delays to providing services. The *Government Procurement (Judicial Review) Act 2018* enables providers to challenge some procurement processes for alleged breaches of certain procurement rules. This legislation might provide an additional avenue of redress (compensation or injunction) for dissatisfied providers or potential providers, depending on the circumstances.

The projects and activities under the NTS COPE Program are developed and delivered by the Australian Government on behalf of the whole VET sector. There is ongoing consultation with relevant state and territory agencies, VET regulators and VET authorities, such as the Student Identifiers Registrar, at both working and senior executive levels. To ensure that products and services meet the needs of all users, consultation is undertaken with the VET sector stakeholders, including representatives of the VET sector peak bodies, RTOs, SMS providers, and other supporting organisations. Where relevant, students and employers are also engaged in requirements gathering and user testing activities.

The statistical services delivered by NCVER have developed over time through extensive consultation with states and territories, to ensure the statistics produced are relevant and meet stakeholder needs. In relation to research services delivered by NCVER, specific research projects are developed in consultation with stakeholders and endorsed by the SSON.

Enhancements to TGA are largely made in response to legislative or regulatory changes, with state and territory governments and VET regulators consulted in relation to these changes. Other enhancements are made in response to the TGA user review, which was undertaken in late 2018 and consulted broadly with TGA users including VET regulators, RTOs, Skills Service Organisations, and state and territory governments.

Consultation in relation to the My Skills website redevelopment has included state and territory governments, VET regulators, industry peak bodies, RTOs and their peak bodies, NCVER, and potential VET students.

Funding for this item comes from the National Training System COPE component of Sub‑program 3.1.4: Support for the National Training System under Program 3.1: Building Skills and Capability, which is part of Outcome 3. Funding of $107.1 million over three years from 2020-21 for the National Training System COPE component is set out in the *Portfolio Additional Estimates Statements 2019-20, Education, Skills and Employment Portfolio* at page 54.

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 communications power (section 51(v));
* the census and statistics power (section 51(xi)); and
* the executive power (section 61).

*External affairs power*

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

Australia has obligations relating to the following treaties:

* the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), including Articles 2 and 6;
* the International Labour Organization’s *Convention concerning Employment Policy* (ILO Convention 122), including Articles 1 and 2; and
* the International Labour Organization’s *Convention concerning Vocational Guidance and Vocational Training in the Development of Human Resources* (ILO Convention 142), including Articles 1 and 2.

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

Articles 1 and 2 of the ILO Convention 122 require Australia to promote full, productive and freely chosen employment.

Articles 1 and 2 of the ILO Convention 142 require Australia to develop and adopt ‘comprehensive and co-ordinated policies and programmes of vocational training’ and establish and develop ‘open, flexible and complementary systems of general, technical and vocational education, educational and vocational guidance and vocational training’.

The NTS COPE Program contemplates funding for the costs of supporting the development, maintenance, hosting and specialist support services associated with IT systems and websites that will be used for the effective operation of the VET sector. Further, the research aspects of the NTS COPE Program include the capture of accurate and comprehensive VET sector information to identify current and emerging issues and their impact on various stakeholders. Overall, the NTS COPE Program contemplates funding for the development of the VET sector.

*Communications power*

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

The NTS COPE Program will involve the delivery of information and services over the internet.

*Census and statistics power*

Section 51(xi) of the Constitution provides that the Parliament has the power to make laws with respect to ‘census and statistics’.

The NTS COPE Program will involve the collection and dissemination of VET activity data and other statistical research by NCVER.

*Executive 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 the Parliament, the executive or the courts by the Constitution. The executive power in section 61 of the Constitution extends to a range of matters, including:

* the execution and maintenance of the Constitution, and the laws of the Commonwealth; and
* activities that form part of the ordinary and well-recognised functions of government.

The NTS COPE Program will include funding for the maintenance of the National Register for VET required by section 216 of the *National Vocational Education and Training Regulator Act 2011*.

The Commonwealth will be informed by research funded under the NTS COPE Program.

**Statement of Compatibility with Human Rights**

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

***Financial Framework (Supplementary Powers) Amendment (Education, Skills and Employment Measures No. 6) Regulations 2020***

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

**Overview of the legislative instrument**

Section 32B of the *Financial Framework (Supplementary Powers) Act 1997* (the FF(SP) Act) authorises the Commonwealth to make, vary and administer arrangements and grants specified in the *Financial Framework (Supplementary Powers) Regulations 1997* (the FF(SP) Regulations) and to make, vary and administer arrangements and grants for the purposes of programs specified in the FF(SP) Regulations. Schedule 1AA and Schedule 1AB to the FF(SP) Regulations specify the arrangements, grants and programs. The powers in the FF(SP) Act to make, vary or administer arrangements or grants may be exercised on behalf of the Commonwealth by Ministers and the accountable authorities of non‑corporate Commonwealth entities, as defined under section 12 of the *Public Governance, Performance and Accountability Act 2013*.

The *Financial Framework (Supplementary Powers) Amendment (Education, Skills and Employment Measures No. 6) Regulations 2020* amend Schedule 1AB to the FF(SP) Regulations to establish legislative authority for government spending on certain activities administered by the Department of Education, Skills and Employment (the department).

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

* table item 435 for the PaTH Business Placement Partnerships;
* table item 436 for the Australian Training Awards;
* table item 437 for the National Careers Institute – Digital Platform; and
* table item 438 for the National Training System Commonwealth Own Purpose Expenditure Program.

*Table item 435 – PaTH Business Placement Partnerships*

Table item 435establishes legislative authority for government spending on the PaTH Business Placement Partnerships program (the program).

The program aims to connect young job seekers to employers with significant workforce needs in growing industries through trialling a co-design of employment pathways (workforce solutions) by the department and selected industry associations, using elements of existing Commonwealth-funded employment and training programs and services and other supports directly related to helping job seekers move into employment.

The program will help address high rates of youth unemployment by engaging with industries and employers looking for staff during the impacts of the COVID-19 pandemic and beyond. The program will prepare young job seekers for employment and help them access it through supported pathways.

The department will partner with industry associations through a procurement process to leverage the strong relationships that these associations have with their employer members.

Job seekers, who are registered with *jobactive*, Transition to Work, New Employment Services Trial or Disability Employment Services providers and eligible for Youth Jobs PaTH, will be eligible to participate in the workforce solutions delivered under the program.

Partnerships with industry associations will be established using the following approach:

* establishment of the panel;
* concept discussion;
* co-design; and
* work orders.

A limited tender process will be used to engage suitable industry associations, creating a panel arrangement. Industry associations whose members have a national footprint and potential workforce demand (that is, whose members have demand for a large number of young workers such as those in construction, retail and hospitality industries) will be invited to tender for the PaTH Business Placement Partnerships Panel. Panel members will be required to enter into a deed of standing offer (the Deed).

Either party to the Deed may initiate a ‘concept discussion’ about a potential workforce solution if a labour force development opportunity and/or need is identified. Successful industry workforce solutions (to be agreed and described in a work order issued under the Deed) could include, for example, any or all of the following:

* project management (that is, overall management of the workforce solution);
* coordination of employers, employment services providers and job seekers, and any other stakeholders, such as subcontractors, involved in the workforce solution;
* brokerage of services to be included in a pathway where those services are not the employment services administered by the department or the disability employment services administered by the Department of Social Services;
* industry specific pre-employment training design and delivery;
* training or training materials;
* work experience;
* mentoring of job seekers by personnel from a panel member or a suitable sub‑contractor agreed through the co-design process, or non-vocational job seeker supports such as access to drug and alcohol counselling, emergency housing or domestic violence assistance;
* stakeholder engagement and employer liaison;
* venue and equipment hire;
* support to employers to ensure readiness of workplaces to recruit young unemployed people, for example cultural competency training where diversity groups are a focus, and strategies to engage and retain young people for employers with traditionally older workforces;
* items for job seekers to ensure readiness for workplaces, for example personal protective equipment, criminal or medical checks, and vaccinations if relevant; and
* post job placement services to job seekers and employers such as dispute resolution to help maintain a person’s job, facilitation of access to post placement non-vocational services, or further skills development.

Co-design will only occur where the department agrees with a proposed concept and there is demonstrated value for money. Co-design of each industry workforce solution will prioritise using existing programs, supports and services to help job seekers find and maintain employment and will take account of the needs of industry and employers.

If and when the parties are satisfied with the design of a proposed industry workforce solution and the department is of the view that it adequately reflects labour market conditions, the department will issue a work order with negotiated terms so that the panel member can deliver the agreed industry workforce solution. The amount of funding the department will provide under a work order for each industry workforce solution will depend on the individual nature of the solution.

**Human rights implications**

Table item 435 engages the following human rights:

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

*Right to work*

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

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

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

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

The program is well positioned to assist young people to, through involvement with training and work experience opportunities, gain employment in what is otherwise an uncertain economic environment brought about by COVID-19. The objective and purpose of the program centres on assisting young people to gain employment through the co-design and implementation of workforce solutions, created by the department, industry associations and employment services providers.

The industry workforce solutions which are designed and delivered under the program will benefit young job seekers by enhancing their skill sets and readiness to participate in a variety of industries. At the same time the industry workforce solutions designed under the program will seek to harness the value of existing programs such as *jobactive* to create more employment pathways identified by industry associations who are well placed to recognise emerging employment opportunities.

*Right to education*

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

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

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

The program will provide several vocational guidance, training and other learning opportunities for program participants, specifically designed to reflect and address the needs of young job seekers looking for work. The program will provide both short and long-term educational value for participants. In particular, the vocational training opportunities provided by the program will act as a complementary system to enable young job seekers to gain employment through design and delivery of industry workforce solutions.

The department will seek to leverage its relationships with industry associations and employment services providers to co-design the industry workforce solutions which enhance the offerings already provided by numerous programs to support young job seekers, such as *jobactive*. In doing so, the program aims to advance the right to education, through the provision of more apprenticeship, work experience and training opportunities, which are tailored to support young job seekers to enhance their ability and readiness to step into or return to the workforce.

**Conclusion**

Table item 435 is compatible with human rights because it promotes the right to work under the ICESCR and the ILO Convention 122, as well as the right to education under the ILO Convention 142.

*Table item 436 – Australian Training Awards*

Table item 436establishes legislative authority for government spending on the Australian Training Awards.

The Australian Training Awards are the peak, national awards program for the vocational education and training sector (VET). The Australian Training Awards aim to recognise and promote excellence in skills development by apprentices and trainees, vocational students and VET teachers and practitioners, and highlight the provision of high quality nationally recognised training by businesses and registered training organisations.

**Human rights implications**

Table item 436 engages the right to education (Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), read with Article 2 of the ICESCR). The right to education requires functioning educational programs to be available in sufficient quantity within a country and within safe physical reach.

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

recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

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.

The purpose of the Australian Training Awards is to promote best practice in VET and awareness of education opportunities. The program promotes high functioning education and informs prospective students of the education opportunities within their reach.

**Conclusion**

Table item 436 is compatible with human rights because it promotes the right to education under the ICESCR.

*Table item 437 – National Careers Institute – Digital Platform*

Table item 437establishes legislative authority for government spending on the National Careers Institute (NCI) digital platform (the platform), which will be a national website that provides careers information to support individuals (such as those making career decisions, people who assist individuals to make those decisions, career practitioners, education and training providers, employers and human resources practitioners) and peak organisations to access, understand and compare post-compulsory skills development pathways, occupation choices and labour market trends.

The platform will assist users to make more informed choices about their learning, training and employment options, in turn equipping them with the knowledge, skills and attributes to experience the wellbeing and economic benefits that quality education, skills and employment provide. The platform will target a wide audience of people of all ages and stages of their career. Initial releases will have an increased focus on support for job seekers and young people and will complement other government support initiatives following the economic downturn caused by the COVID-19 pandemic.

**Human rights implications**

Table item 437 engages the following rights:

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

*Right to work*

Table item 437 engages Article 1(1) of the ILO Convention 122, which provides that, with a view to stimulating economic growth and development, raising levels of living, meeting manpower requirements and overcoming unemployment and underemployment, each Member shall declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment.

Table item 437 also engages Article 2(1) of the ICESCR which provides that each State Party to the ICESCR undertakes to take steps to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in that Covenant by all appropriate means, including particularly the adoption of legislative measures.

Article 6(1) of the ICESCR provides that the States Parties to the present Covenant:

recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

Article 6(2) of the ICESCR sets out the steps to be taken by the States Parties to the present Covenant to achieve the full realisation of that right which shall include

technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedom to the individual.

Table item 437 aims not only to better connect users to tailored open employment opportunities, but also to improve the link between the training available to individuals through Australia’s education and training systems and the skills that employers need. The platform will contribute to full, productive and freely chosen employment by increasing the opportunity for users to use their skills in a job to which they are well suited, thereby helping to reduce unemployment.

*Right to education*

Table item 437 engages Article 1(1) of the ILO Convention 142, which provides that each Member shall adopt and develop comprehensive and coordinated policies and programs of vocational guidance and vocational training, closely linked with employment.

Table item 437 also engages Article 13 of the ICESCR. Article 13(1) of the ICESCR provides that the States Parties to the present Covenant:

recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

Article 13(2)(b) provides that vocational education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education.

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

Table item 437 promotes the right to education, connecting users to tailored information about generally available and accessible options to acquire new knowledge, skills and attributes, by way of both Australia’s higher education and vocational education and training sectors. This, in turn, will assist users to participate in society and promote understanding, tolerance and friendship among all the nations and all racial, ethnic or religious groups.

**Conclusion**

Table item 437 is compatible with human rights because it promotes the right to work and the right to education under the ICESCR and the ILO Conventions listed above.

*Table item 438 – National Training System Commonwealth Own Purpose Expenditure Program*

Table item 438establishes legislative authority for government spending on certain projects and activities under the National Training System Commonwealth Own Purpose Expenditure (NTS COPE) Program.

The NTS COPE Program funds a number of projects of national significance that support the infrastructure and governance of the national training system. New table item 438 provides legislative authority for government spending on the following projects and activities under the NTS COPE Program:

* the National Centre for Vocational Education Research (NCVER) for statistical services and research services;
* the Vocational Education and Training (VET) Data Streamlining project;
* the National Register for VET (training.gov.au); and
* the Performance Information for VET (PIVET) projects.

The NCVER is an independent, not-for-profit company owned by the Australian Government, state and territory Skills Ministers. It is the national professional body responsible for collecting, managing, analysing and communicating research and statistics on the Australian VET sector. The NCVER receives funding under the NTS COPE Program for the delivery of statistical services and research services.

The VET Data Streamlining project is developing ICT systems and processes that enable real-time, event-based and system-to-system exchange of VET data to modernise and simplify data collection and reporting, and improve the transparency and management of the national VET system.

Training.gov.au is the National Register for VET in Australia. It provides authoritative information on nationally recognised training and registered training organisations (RTOs) that deliver that training, and is used as a reference source by VET regulators, governments, NCVER, RTOs and other VET professionals.

The PIVET initiative aims to transform the data available to consumers, governments and regulators, by funding projects which seek to increase the outcome and pathway information available about the VET market. In addition to the VET Data Streamlining project, the following three PIVET projects are currently funded under the NTS COPE Program: Reforming Student and Employer Surveys; Creating Enduring Data Linkages; and Improving Market Information.

**Human rights implications**

Table item 438 engages the following human rights:

* the right to education (Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), read with Article 2 of the ICESCR);
* the right to work (Article 6 of the ICESCR, read with Article 2 of the ICESCR); and
* the right to privacy (Article 17 of the *International Covenant on Civil and Political Rights* (ICCPR), read with Article 2 of the ICCPR).

*Right to education*

Table item 438 engages the right to education contained in Article 13 of the ICESCR, read with Article 2 of the ICESCR.

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 recognises that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. Article 13 further states that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups and further the maintenance of peace.

In addition, paragraphs 13(2)(b) and (c) recognise that secondary education in all its forms including technical and vocational secondary education shall be made generally available and accessible to all, and higher education shall be made equally accessible to all, by every appropriate means and in particular by the progressive introduction of free education.

These Articles recognise the important personal, societal, economic and intellectual benefits of education, and provide that technical and vocational education should enable students to acquire knowledge and skills which contribute to their employability and enhance their productivity.

Table item 438 promotes the right to education by supporting projects which improve the collection, sharing, use and availability of VET data and information to inform and improve the VET system and thereby benefit current and future learners.

*Right to work*

Table item 438 engages the right to work contained in Article 6 of the ICESCR, read with Article 2 of the ICESCR.

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 6 recognises that in order to fully achieve the realisation of the right to work, technical and vocational guidance and training programs, policies and techniques should be available to achieve steady economic, social and cultural development and full and productive employment.

Table item 438 will promote the right to work by funding projects which provide key infrastructure to support the national VET system centred on work-based competency. It will support research to improve use and sharing of data and information availability to ensure that VET meets the skills needs of students, employers, industry and governments, supporting a work-ready skills base and broader economic development.

*Right to privacy*

Table item 438 engages the right to privacy contained in Article 17 of the ICCPR, read with Article 2 of the ICCPR.

Under Article 2 of the ICCPR, each State Party undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the ICCPR, without distinction of any kind. Article 17 recognises that no one shall be subjected to arbitrary or unlawful interference with their privacy and everyone has the right to the protection of the law against such interference. Australia has accepted these principles stated in Article 17 without prejudice to the right to enact and administer laws which, insofar as they authorise action which impinges on a person’s privacy, are necessary in a democratic society in the interests of national security, public safety, the economic wellbeing of the country, the protection of public health or morals, or the protection of the rights and freedoms of others.

Projects that will be supported by expenditure under table item 438 will involve the collection, use, storage and disclosure of personal information. However, to the extent that those activities impinge on persons’ privacy, it will be reasonable, necessary and proportionate to improve the data available to learners, employers, consumers, governments and regulators and support quality, evidence-based action and transparency in the VET sector. On these grounds, the activities serve a legitimate interest and are demonstrably justifiable.

Further, the projects relate to measures spanning across the VET system, which services approximately 4 million students per year, and in this sense apply equally to broad classes of citizens (for example, VET system users, students, employers and RTO officers) rather than singling out particular individuals. Projects that are administered by the department must also comply with the *Privacy Act 1988* and Australian Privacy Principles, including provisions on the collection, use, disclosure and storage of personal information, limiting the danger of those projects impinging on an individual’s privacy in an unfairly oppressive manner.

**Conclusion**

Table item 438 is compatible with human rights because it promotes the right to education as well as the right to work under the ICESCR, and is reasonable, necessary and proportionate to the extent that it may infringe on the right to privacy under the ICCPR.

**Senator the Hon Mathias Cormann**

**Minister for Finance**