

## **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. 1) Regulations 2021*

The *Financial Framework (Supplementary Powers) Act 1997* (the FF(SP) Act) confers on the Commonwealth, in certain circumstances, powers to make arrangements under which money can be spent; or to make grants of financial assistance; and to form, or otherwise be involved in, companies. The arrangements, grants, programs and companies (or classes of arrangements or grants in relation to which the powers are conferred) are specified in the *Financial Framework (Supplementary Powers) Regulations 1997* (the Principal Regulations). The powers in the FF(SP) Act to make, vary or administer arrangements or grants may be exercised on behalf of the Commonwealth by Ministers and the accountable authorities of noncorporate 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. 1) Regulations 2021* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on certain activities administered by the Department of Education, Skills and Employment.

Funding will be provided for:

- a grant to The Smith Family to provide financial and other support to disadvantaged primary and high school students and their families aimed at increasing the students' long-term participation in education, including attendance at, and completion of, school, and expanding their opportunities for work and training post-school (\$38.2 million over four years from 2020-21);
- a grant to Anti-Defamation Commission Incorporated to create, promote and maintain the National Holocaust Education Digital Platform, including educational resources for the platform, and provide training to education professionals to use the platform and resources (\$3.0 million over four years from 2020-21);
- a grant to Islamic Museum of Australia to support an upgrade and expansion of their existing online education program to service all Australian schools, including virtual tours, 3D videos and an upgrade of galleries to a digital platform (\$3.0 million over four years from 2020-21);

- the Foundation to Year 2 expansion of the Early Learning STEM Australia program, which aims to engage children in science, technology, engineering and mathematics in the preschool and primary school years (\$5.7 million over five years from 2020-21);
- the expansion of the Flexible Literacy Remote Primary Schools Program to support teachers at remote primary schools through training in explicit instruction teaching methods in the areas of literacy, numeracy and science to improve the skills and knowledge of students, particularly Aboriginal and Torres Strait Islander students (\$5.8 million over four years from 2020-21);
- the support to the Australian Education Working Group within the International Holocaust Remembrance Alliance to promote Holocaust education during Holocaust Memorial Week (\$30,000 in 2020-21); and
- the Emerging Priorities Program to address the impacts of emerging priorities on school education (\$25.0 million over five 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. 1) Regulations 2021***

**Section 1 – Name**

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Education, Skills and Employment Measures No. 1) Regulations 2021*.

**Section 2 – Commencement**

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

**Section 3 – Authority**

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

**Section 4 – Schedules**

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

**Schedule 1 – Amendments**

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

**Item 1 – Part 3 of Schedule 1AB (table item 13, column headed “Purpose”)**

This item amends **table item 13** in Part 3 of Schedule 1AB by expanding the purpose of grants to The Smith Family to include support for students through opportunities for work and training post-school. The grant program is administered by the Department of Education, Skills and Employment (the department).

The amendment to table item 13 provides legislative authority for the Government to provide grant funding to The Smith Family to deliver the Careers Suite program for disadvantaged students in Years 8 to 12 that will build young people’s social and cultural capital by equipping them with the skills, knowledge, attitude and behaviours they need to thrive post-school, in work, training or further study.

On 6 October 2020, the then Minister for Education, the Hon Dan Tehan MP, announced a \$146.3 million school package as part of the Government’s *Investing in Education and Research* initiative, to deliver a range of projects to help support students, families, and school communities affected by the COVID-19 pandemic. The school package includes funding of \$38.2 million over four years from 2020-21 to support an additional 76,000 disadvantaged young Australians to complete secondary school and move into work, training or further study through The Smith Family’s Learning for Life program. The media release is available at <https://ministers.dese.gov.au/tehan/budget-2020-21-investing-education-and-research>.

The Smith Family was founded in 1922 and is now Australia's largest national education-oriented charity, supporting disadvantaged Australian children to participate fully in their education. The Smith Family provides disadvantaged children and young people with the support and resources they need to achieve their full potential and to give them the best chance at breaking the cycle of disadvantage. The Smith Family's learning support and mentoring programs help children in need to fit in at school, keep up with their peers, and build aspirations for a better future for themselves. The Learning for Life is The Smith Family's largest program.

Since 2016, the Australian Government has provided \$51.0 million to The Smith Family to deliver the Learning for Life program, comprising of:

- \$48.0 million to expand the Learning for Life to an additional 24,000 disadvantaged students by June 2020 (this was a 2016 election commitment). This target was achieved, with 24,225 additional students as at 30 June 2020; and
- \$3.0 million was provided in June 2020 to further support students on the Learning for Life program with access to wraparound programs:
  - the Passport to Success Program, which supports students to successfully transition to secondary school; and
  - the Learning Clubs, which provides students with out-of-school-hours activities that develop their academic and social skills.

The Learning for Life program provides financial, practical and emotional support to help disadvantaged children and young people with their education. This includes support from a Learning for Life coordinator who works directly with the family and student to support their long-term participation in education, and access to out-of-school educational opportunities including The Smith Family's learning and mentoring programs.

Parent engagement is at the core of the program with families supported to hold high expectations of their children and accept shared responsibility for student attendance and educational outcomes. Families must enter into a Family Partnership Agreement which acknowledges a shared commitment to student's participation in education.

Students that attend one of the Learning for Life partner schools in approximately 90 disadvantaged areas can receive support through the Learning for Life, as long as they are at school, attend regularly, complete Year 12 (or equivalent), and move onto further education and employment post-school.

Additional funding will be provided for The Smith Family's Careers Suite program, which will operate in parallel to the Learning for Life program and enable eligible recipients (students) who are already attending a Learning for Life partner school to also be able to access the Careers Suite. However, students accessing the Careers Suite do not need to be on the Learning for Life program.

The Smith Family in consultation with the school communities will select the students that are suitable to access the Careers Suite. The Smith Family also manages the eligibility criteria to access the Learning for Life program, which includes families holding a health care card or a pension concession card.

The objective of the Careers Suite is to support approximately 76,000 disadvantaged high school students in Years 8 to 12 (or equivalent) to acquire the skills, knowledge, attitude and behaviours for work, training and further study. The Careers Suite also supports the *Alice Springs (Mparntwe) Education Declaration*, which commits all Australian governments to supporting all young Australians at risk of disadvantage and supporting senior years of schooling.

The Careers Suite will be delivered by The Smith Family in its 91 Learning for Life partner communities across all Australian states and territories, including many from regional and outer metropolitan communities and from Aboriginal and Torres Strait Islander backgrounds.

The Careers Suite will be delivered from early 2021 until the end of 2024, and will provide disadvantaged students with access to The Smith Family's programs as follows:

- Futurepreneurs (available to Year 8) – a curriculum aligned entrepreneurship program;
- Work inspiration (available to Years 9 to 10) – an employer led initiative to ensure young people's first experience of the world of work is meaningful, inspiring and exposes them to a broad range of employment opportunities;
- Post-school options activities (available to Year 9) – a range of experiences to ensure students gain understanding of career pathways, training and study options. Includes experiential careers, vocational education and training and university days;
- iTrack (available to Year 10) – an online career mentoring program, which connects students to those in employment and explores career goals and pathways and the actions needed to achieve them;
- SmArts (available to Year 10) – enrichment programs for students with interest in and/or talent for the creative arts. Boosts students' creative skills, self-confidence, knowledge of post-school options and engagement in learning;
- Job Read-e (available to Years 10 to 12) – a mobile based tool (app) which helps young people build their skills in seeking and applying for work. A series of jobseeking activities are undertaken and they receive personalised feedback from a careers adviser;
- Exploring education pathways (available to Years 10 to 11) – showcases post-school training and education options, both vocational and higher education; and
- Career coaching (available to Years 10 to 12) – targets students at risk of leaving school early. Provides intensive and tailored support to help them stay at school and complete Year 12. Where this is not achievable, a tailored and structured post-school pathway is developed, including into employment or further study.

The Smith Family's Careers Suite leverages its long-term relationships with disadvantaged students and families, and extensive partnerships with schools, businesses, philanthropy, employers, community organisations and education and training institutions.

The Smith Family will partner with its Learning for Life partner schools which have a low Index of Community Socio-educational Advantage. These schools have students on the Learning for Life scholarship. Some programs in the Careers Suite may be targeted at students on the Learning for Life program, while other Careers Suite programs may be delivered to all students attending that partner school.

The department will use a closed non-competitive selection process to award grant funding to The Smith Family through a new grant agreement. The administration of the grant to the Smith Family will be conducted in accordance with the Commonwealth resource management framework, including the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and the *Commonwealth Grants Rules and Guidelines 2017* (CGRGs).

Grant opportunity guidelines will be developed and published in accordance with the CGRGs and information about the grant will be made available on the GrantConnect website ([www.grants.gov.au](http://www.grants.gov.au)). Grant funding will be administered by the Department of Social Services' Community Grants Hub. A delegate of the Secretary of the department will be responsible for approving Commonwealth funding provided to The Smith Family for the program. Information on the Careers Suite and who can access it will be made available on the departmental and The Smith Family websites.

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

Further, changing a funding decision is legally complex, impractical and would result in delays in implementation. Given the Careers Suite is The Smith Family's established program, The Smith Family has a demonstrated service delivery experience, and the Government made a decision to award funding to The Smith Family, it is not reasonably foreseeable nor envisaged that any other organisation would receive funding in relation to this program.

The department has continued to consult with the Smith Family on the design and development of the Careers Suite given The Smith Family's long-established expertise and proven record in delivering quality services to disadvantaged children and young people.

Funding of \$38.2 million was included in the 2020-21 Budget under the measure 'Students Support Package' for a period of four years commencing in 2020-21. Details are set out in *Budget 2020-21, Budget Measures, Budget Paper No. 2 2020-21* at pages 81 to 82.

Funding for this item will come from Program 1.5: Early Learning and Schools Support, which is part of Outcome 1. Details are set out in the *Portfolio Budget Statements 2020-21, Budget Related Paper No. 1.4, Education, Skills and Employment Portfolio* at pages 12 and 32.

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

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

### External affairs power

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

Australia has obligations relating to the *Convention on the Rights of the Child* (CRC), the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and the International Labour Organization’s *Convention concerning Employment Policy* (ILO Convention 122).

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

Article 6(2) of the CRC provides that ‘States Parties shall ensure to the maximum extent possible the survival and development of the child.’

Article 18(2) encourages States Parties to assist parents in discharging their responsibilities in relation to their child’s upbringing and development.

Article 28(1)(e) requires States Parties to promote school attendance.

Article 29(1)(a) of the CRC provides that education is directed to ‘... [t]he development of the child’s personality, talents and mental and physical abilities to their fullest potential’.

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

Article 6 of the ICESCR recognises the right to work and provides that a State Party will take appropriate steps to achieve to realisation of the right to work (steps ‘include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development’).

Article 1 of the ILO Convention 122 provides that Members shall pursue policies designed to promote full, productive and freely chosen employment. Article 2(a) requires Members to ‘decide on and keep under review, within the framework of a co-ordinated economic and social policy, the measures to be adopted for attaining the objectives specified in Article 1’. Members must also ‘take such steps as may be needed, including when appropriate the establishment of programmes, for the application of these measures’ (Article 2(b)).

The program helps disadvantaged children continue in education with a view to realising their personal potential. The program also promotes school students’ skills, knowledge and social resources with a view to improving their employment opportunities.

### Communications power

Section 51(v) of the Constitution empowers the Parliament to make laws with respect to ‘postal, telegraphic, telephonic and other like services’. Certain aspects of the program will be delivered by electronic communication tools.

### Social welfare power

The social welfare power in section 51(xxiiiA) of the Constitution empowers the Parliament to make laws with respect to the provision of certain social welfare benefits including benefits to students. This item covers programs that provide material aid to identified students to satisfy their wants arising from their being students.

### **Item 2 – In the appropriate position in Part 3 of Schedule 1AB (table)**

This item adds two new table items to Part 3 of Schedule 1AB to establish legislative authority for government spending on certain activities that will be administered by the department.

New **table item 47** establishes legislative authority for the Government to provide a grant to Anti-Defamation Commission Incorporated (ADC) to develop and deliver a National Holocaust Education Digital Platform (the program).

On 6 October 2020, the then Minister for Education, the Hon Dan Tehan MP, announced a \$146.3 million school package as part of the Government’s *Investing in Education and Research* initiative, to deliver a range of projects to help support students, families, and school communities affected by the COVID-19 pandemic. The school package includes funding of \$3.0 million over four years from 2020-21 to ADC to create a Holocaust education platform. The media release is available at <https://ministers.dese.gov.au/tehan/budget-2020-21-investing-education-and-research>.

The ADC, established in 1979, is a not-for-profit Australian civil rights organisation whose mission is to combat anti-Semitism, all forms of racism and to promote respect and understanding between people of all religions and backgrounds.

The ADC focuses on:

- monitoring and responding to incidents of bigotry, racism and prejudice;
- employing instruments of research, fact finding, education and the law to counter racism and discrimination;
- countering delegitimisation and defamation of Israel and the Jewish people;
- combating Holocaust denial;
- developing educational materials to deal with the proliferation of online anti-Semitism, bigotry and hatred;
- educating the public about the dangers of anti-Semitism and racism in all its forms; and
- building bridges of understanding and friendship among racial, religious and ethnic groups.



The program, to be delivered by ADC, will create an online Holocaust education platform that builds on the funding announced in 2019–20 for ADC’s Click Against Hate platform, as detailed in the *Economic and Fiscal Update July 2020*.

The objective of the Holocaust education platform is to shape the minds of students and their school communities to become tolerant, inclusive and respectful of differences. It will also help students to learn the value of democracy and explore issues of moral decision making, hate, racism, civic duty and responsible citizenship, ultimately facilitating social cohesion.

The program aims to provide a fully accessible interactive experience for students to creatively engage in the subject area, enhancing their retention of the material. Teachers engage with the program through a digital onboarding training program. Their students will then be able to participate in the program, predominantly via the digital platform.

Grant funding of \$3.0 million will support ADC to deliver the following activities:

- build a digital platform that can be utilised by students on a range of devices, catering for a broad range of accessibility needs;
- complete production of new educational resources and integrate them into the platform, providing unique interactive experiences for students; and
- develop a digital onboarding and training program for teachers.

The program will also create a national network of certified Holocaust educators, leveraging Australian teachers to roll out the digital education program in classrooms and connect into other schools involved across the nation. The national network of educators will play an integral role in supporting the implementation of the program. Certified Holocaust educators will be those teachers who naturally emerge as early adopters of the program and have an interest in developing a deeper knowledge of the program. Such educators will be considered as being certified upon developing a robust understanding of the program, which will be developed through attending one to two day program workshops and webinars. Certified Holocaust educators will essentially be program ‘super users’, who can amplify the program messaging within their educator networks, opting in to be program champions and ambassadors.

The Holocaust education platform will build on ADC’s existing educational program Click Against Hate, which was developed in 2010. The Click Against Hate program is currently delivered by ADC in over 170 primary and secondary schools in Victoria.

The National Holocaust Education Digital Platform is expected to be available in early 2021 and will target students in upper primary to Year 10 and the school community across Australia.

The department will use a closed non-competitive selection process to award grant funding to ADC. The administration of the grant to ADC will be conducted in accordance with the Commonwealth resource management framework, including the PGPA Act and the CGRGs.

Grant opportunity guidelines will be developed and published in accordance with the CGRGs and information about the grant will be made available on the GrantConnect website ([www.grants.gov.au](http://www.grants.gov.au)). Grant funding will be administered by the Community Grants Hub. A delegate of the Secretary of the department under the *Financial Framework (Supplementary*

*Powers) Act 1997* (the FF(SP) Act) will be responsible for approving Commonwealth funding provided to ADC for the online platform.

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

Further, re-making a decision after entry into an agreement is legally complex, impractical and would result in delays in implementation. Given ADC's ownership of the complementary Click Against Hate program and demonstrated experience in program delivery and that the Government made a decision to award funding to ADC, it is not reasonably foreseeable nor envisaged that any other organisation would receive funding in relation to this initiative.

Given ADC's unique position as a leading Australian civil rights organisation in its work to counter anti-Semitism and its related work on delivering the Click Against Hate program, the department has continued to consult with ADC on the design and development of the National Holocaust Education Digital Platform.

Funding of \$3.0 million was included in the 2020-21 Budget under the measure 'Students Support Package' for a period of four years commencing in 2020-21. Details are set out in *Budget 2020-21, Budget Measures, Budget Paper No. 2 2020-21* at pages 81 to 82.

Funding will come from Program 1.5: Early Learning and Schools Support, which is part of Outcome 1. Details are set out in the *Portfolio Budget Statements 2020-21, Budget Related Paper No. 1.4, Education, Skills and Employment Portfolio* at pages 12, 13 and 32.

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

### Communications power

Section 51(v) of the Constitution empowers the Parliament to make laws with respect to 'postal, telegraphic, telephonic and other like services'. The program will create and promote an online digital education platform, and content for that platform. The program will be available to teachers and students online and will be accessible on a range of electronic communication devices.

New **table item 48** establishes legislative authority for the Government to provide a grant to Islamic Museum of Australia (IMA) to support an upgrade and expansion of their existing online education program to service all Australian schools, including virtual tours, 3D videos and an upgrade of galleries to a digital platform.

On 6 October 2020, the then Minister for Education, the Hon Dan Tehan MP, announced a \$146.3 million school package as part of the Government's *Investing in Education and Research* initiative, to deliver a range of projects to help support students, families, and school communities affected by the COVID-19 pandemic. The school package includes funding of \$3.0 million over four years from 2020-21 to IMA to develop educational

resources and online learning platforms to support social cohesion, multiculturalism and community harmony. The media release is available at <https://ministers.dese.gov.au/tehan/budget-2020-21-investing-education-and-research>.

The IMA is Australia's first and only Islamic museum. Located in Melbourne and opened in 2014, IMA has built a reputation as a cultural and educational institution designed to highlight Islamic art and Muslim heritage in Australia.

The objectives of IMA are to:

- highlight Islamic culture in Australia;
- provide opportunities to showcase Islamic art; and
- offer and develop an educational model that promotes excellence and equity for all Australian students.

The purpose of the program is to immerse students in an interactive, educational and cross-cultural experience showcasing the cultural heritage of Muslims in Australia, contribute to social cohesion and foster continued cultural exchange and academic achievement.

There are currently seven educational packages which can be accessed by teachers and students at IMA. These are:

- primary package;
- secondary package;
- Ottomans package;
- Medieval Europe and Islam package;
- Boundless Plains package;
- Art package; and
- Life Skills.

These have been developed into online packages and are delivered via an education portal which was launched in 2018.

In 2020, there was increased demand and interest in the online packages from schools throughout Australia. The IMA were able to provide the program to 220 schools within Victoria but were unable to extend the program further due to lack of funds. Additional funds are required to increase the capacity of the education portal and develop additional materials to provide a secure and supportive package to a larger number of schools across Australia.

Grant funding will allow IMA to expand and upgrade the museum's online education program, enabling an upgraded platform to provide Year 4 to 10 students from primary and secondary schools across Australia with an Australian Curriculum aligned education package. This online platform will include the ability to virtually link schools, students and communities and allow students to access resources if learning from home.

The online platform will also make professional development resources accessible to a wide range of stakeholders including education departments, primary and high school teachers, school leaders and other school support staff. Resources will support teachers and school communities to address religious, racial and cultural intolerance as well as support the overall wellbeing of Muslim students.

Grant funding will also enable IMA to employ six additional staff responsible for promotion of the program in each state and territory. These staff will provide support to schools in their regions and develop networks of schools that will enhance social cohesion across diverse communities.

The program will commence in early 2021 and be available to Year 4 to 10 students from schools in all states and territories.

The department will use a closed non-competitive selection process to award grant funding to IMA. The administration of the grant to IMA will be conducted in accordance with the Commonwealth resource management framework, including the PGPA Act and the CGRGs.

Grant opportunity guidelines will be developed and published in accordance with the CGRGs and information about the grant will be made available on the GrantConnect website ([www.grants.gov.au](http://www.grants.gov.au)). Grant funding will be administered by the Community Grants Hub. A delegate of the Secretary of the department under the FF(SP) Act will be responsible for approving Commonwealth funding provided to IMA for the program. Information on the educational resource and who can access it will be made available on the departmental website and the IMA website.

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

Further, re-making a decision after entry into an agreement is legally complex, impractical and would result in delays in implementation. Given IMA's ownership of the education program and demonstrated experience in program delivery and that the Government made a decision to award funding to IMA, it is not reasonably foreseeable, nor envisaged that any other organisation would receive funding in relation to this initiative.

The department has consulted with IMA on the design and development of the online education platform, given their unique position of being Australia's only Islamic museum.

Funding of \$3.0 million was included in the 2020-21 Budget under the measure 'Students Support Package' for a period of four years commencing in 2020-21. Details are set out in *Budget 2020-21, Budget Measures, Budget Paper No. 2 2020-21* at pages 81 to 82.

Funding for this item will come from Program 1.5: Early Learning and Schools Support, which is a part of Outcome 1. Details are set out in the *Portfolio Budget Statements 2020-21, Budget Related Paper No. 1.4, Education, Skills and Employment Portfolio* at pages 12, 13 and 32.

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

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

- the express incidental power and the executive power (sections 51(xxxix) and 61), including the nationhood aspect.

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

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

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

Article 2 of the ICERD requires States Parties to condemn racial discrimination and undertake 'to pursue by all appropriate means ... a policy of eliminating racial discrimination in all its forms and promoting understanding among all races'. Article 7 requires States Parties to 'adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnic groups'.

Article 27 of the ICCPR provides that 'minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language'. Article 2 of the ICCPR requires States Parties to 'to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant'.

The program aims to promote understanding of the Islamic faith and combat prejudice through education. A significant part of the program is also directed to education of young Muslims about the history, culture and languages of Islamic cultures. Furthermore, the program's educational activities will be directed to students from all backgrounds.

### Communications power

Section 51(v) of the Constitution empowers the Parliament to make laws with respect to 'postal, telegraphic, telephonic and other like services'. Much of the program's expenditure will be on the design, administration and delivery of educational resources that are to be delivered online.

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

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

**Item 3 – Part 4 of Schedule 1AB (table item 150)**

This item amends **table item 150** in Part 4 of Schedule 1AB by repealing and substituting the full text of the item. The amended table item 150 establishes legislative authority for government spending on the Early Learning STEM (science, technology, engineering and mathematics) Australia (ELSA) program, which aims to engage children in STEM in the preschool and primary school years. The ELSA program is administered by the department.

On 6 October 2020, the then Minister for Education, the Hon Dan Tehan MP, announced a \$146.3 million school package as part of the Government's *Investing in Education and Research* initiative, to deliver a range of projects to help support students, families, and school communities affected by the COVID-19 pandemic. The school package includes funding of \$27.3 million to improve STEM skills in early learners and school students through a range of STEM programs, including the ELSA program. The media release is available at <https://ministers.dese.gov.au/tehan/budget-2020-21-investing-education-and-research>.

The Commonwealth established the ELSA pilot for preschool children and early learning educators in 2016. The objective of the pilot was to inspire curiosity and engagement in STEM concepts in preschool children and increase early learning educators' confidence and capacity to deliver STEM learning experiences.

Funding was provided to the University of Canberra for their STEM Education Research Centre (the centre) to develop and implement the preschool pilot program over four years from 2016-17. The centre was established in 2014 with the aim of influencing policy and practice through applied social and cognitive research in areas of STEM pedagogy, practice, policy, school cultures, design processes and technologies. It focuses on innovations in technology and STEM education research.

Under the ELSA preschool pilot, the University of Canberra developed play-based digital learning environments in science, technology, engineering and mathematics concepts, delivered through a series of apps for tablet devices, complemented by non-digital support materials and training and technical support for teachers. The pilot was implemented in approximately 200 preschool services across Australia in 2018 and 2019, and continued as a research project in 2020 and 2021 under a contract with the department, which ends on 31 December 2021. The department is negotiating a deed of licence with the University of Canberra which will allow the university to continue to offer preschool ELSA to preschools, including on a fee-for-service basis. This will support the widespread uptake of resources developed in the ELSA preschool pilot, without the need for further Commonwealth funding.

Under the Foundation to Year 2 trial expansion of the ELSA program, funding will be provided to adapt the ELSA preschool materials for students in the first three years of primary school. Similar to the preschool pilot, the ELSA Foundation to Year 2 trial will inspire curiosity and increase engagement of early primary school children in STEM focused learning, and increase teacher confidence and capacity to deliver STEM learning experiences in a play-based environment.

To achieve this objective, the University of Canberra will adapt the preschool materials to align with the Australian Curriculum for Foundation to Year 2; conduct an Expression of Interest process to identify primary schools to participate in the trial; develop training materials to support teachers in the pilot schools (for online delivery); and provide a technical helpline for schools through the trial.

The ELSA Foundation to Year 2 trial supports the *National STEM School Education Strategy 2016-2026* (the strategy), endorsed by the Education Council in 2015 to focus efforts on ensuring all young Australians are equipped with the necessary STEM skills and knowledge they will need to be successful in Australia's future economy. It will contribute to two of the five areas for national action under the strategy: increasing student STEM ability, engagement, participation and aspiration; and increasing teacher capacity and STEM teaching quality. It will also contribute to improving Australia's results under the OECD's Programme for International Student Assessment (PISA) by strengthening the development of foundational STEM skills in the earliest years of education. The strategy is available at <https://www.dese.gov.au/australian-curriculum/support-science-technology-engineering-and-mathematics-stem/national-stem-school-education-strategy-2016-2026>.

The department engaged the University of Canberra to deliver the ELSA preschool pilot through an open tender in 2016. Due to the expertise demonstrated by the University of Canberra in the preschool pilot, the department will procure the University of Canberra's services to deliver the ELSA Foundation to Year 2 trial through a limited tender, in accordance with section 10.3(d) and (e) of the *Commonwealth Procurement Rules* (CPRs). This will enable existing work to be leveraged providing coherence and efficiency in delivery. An external evaluation of the Foundation to Year 2 trial will be procured through an open tender or panel process in the final year of the trial.

The procurement processes will be administered in accordance with the Commonwealth resource management framework, including the PGPA Act and the CPRs. Information about the procurements, including procurement outcomes, will be available on the departmental website, with the relevant documents published on AusTender in line with the CPRs.

The delegate of the Secretary of the department will be responsible for final decisions about the expenditure in accordance with the Accountable Authority Instructions. Payments will be made in accordance with the CPRs, the Accountable Authority Instructions and delegations on the expenditure of relevant monies, in accordance with the PGPA Act.

Funding decisions in relation to the Foundation to Year 2 trial, once made, will be final and not subject to merits review, due to the non-competitive, targeted nature of the funding being provided to the University of Canberra. Merits review is not considered appropriate as the process involves allocation of finite resources and an allocation that has already been made to the University of Canberra would be affected by overturning the original decision.

Further, re-making a decision after entry into an agreement is legally complex, impractical and would result in delays in implementation. Given the University of Canberra's experience in delivering the ELSA preschool pilot, it is not reasonably foreseeable nor envisaged that any other organisation would receive funding to implement the Foundation to Year 2 trial. 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 4.16 of the guide, *What decisions should be subject to merit review?*).

Funding decisions made in connection with the evaluation will also not be subject to independent merits review. This is because the decisions relate to the allocation of finite resources, and overturning a decision to allocate funding would affect an allocation that has already been made to another party. 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 4.16 of the guide, *What decisions should be subject to merit review?*).

The department has undertaken consultation with key stakeholders during the development and implementation of the ELSA Foundation to Year 2 trial. The possibility of developing a version of ELSA for use in early primary school was discussed with the University of Canberra in late 2018, and the University of Canberra subsequently provided an indicative plan. The NSW Department of Education has trialled the preschool ELSA apps in a small number of Foundation Year classrooms, and has indicated its interest in being involved in the new ELSA Foundation to Year 2 trial.

The University of Canberra conducted an internal evaluation which evaluated the design, development and delivery of the preschool pilot program. The Commonwealth also engaged the Australian Council for Educational Research to conduct an independent evaluation of the ELSA preschool pilot program. This evaluation found that the University of Canberra had achieved its program objectives, which led to high levels of interest and engagement amongst children and educators, an increase in educator confidence in teaching, and an increase in interest and time spent by families on STEM. The department will continue to consult with the University of Canberra to progress the development of the ELSA Foundation to Year 2 trial.

Funding of \$5.7 million was included in the 2020-21 Budget under the measure 'Students Support Package' for a period of five years commencing in 2020-21. Details are set out in *Budget 2020-21, Budget Measures, Budget Paper No. 2 2020-21* at pages 81 to 82.

Funding for this item will come from Program 1.5: Early Learning and Schools Support, which is part of Outcome 1. Details are set out in the *Portfolio Budget Statements 2020–21, Budget Related Paper No. 1.4, Education, Skills and Employment Portfolio* at pages 12 and 32.

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 territories power (section 122).



### External affairs power

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

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

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

Article 28(1)(a) of the CRC specifically refers to making ‘primary education compulsory and available free for all’.

Article 29 of the CRC provides that the education of the child shall be directed to the development of the child’s personality, talents and mental and physical abilities to their fullest potential.

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

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

The program seeks to develop the individual talents and abilities of children. The program also consists of activities directed towards improving STEM teaching and engaging children in STEM, as a core educational activity in a technology dependent society.

### Communications power

Section 51(v) of the Constitution empowers the Parliament to make laws with respect to ‘postal, telegraphic, telephonic and other like services’. Some of the activities of the program involve preparing and supplying content through an online service, and assisting people to use an online service.

### Territories power

Section 122 of the Constitution empowers the Parliament to make laws ‘for the government of any territory’. As the funding recipient is the University of Canberra, the activities to be funded would be substantially connected to the Australian Capital Territory.

#### Item 4 – Part 4 of Schedule 1AB (table item 222)

This item amends **table item 222** in Part 4 of Schedule 1AB by repealing and substituting the full text of the item. The amended table item 222 establishes legislative authority for government spending on the expansion of the Flexible Literacy Remote Primary Schools Program (the Flexible Literacy Program) to support teachers at remote primary schools through training in explicit instruction teaching methods in the areas of literacy, numeracy and science to improve the skills and knowledge of students, particularly Aboriginal and Torres Strait Islander students. The Flexible Literacy Program is administered by the department.

The Flexible Literacy Program supports the *Quality Schools* education policy and is in keeping with the intent of the Government's election commitment – *Our Plan to Support Indigenous Australians* released in May 2019.

On 6 October 2020, the then Minister for Education, the Hon Dan Tehan MP, announced a \$146.3 million school package as part of the Government's *Investing in Education and Research* initiative, to deliver a range of projects to help support students, families, and school communities affected by the COVID-19 pandemic. The school package includes funding of \$5.8 million over four years from 2020-21 for Good to Great Schools Australia to expand their direct instruction literacy model to include numeracy and science, and to evaluate its impact on student learning in remote communities. The media release is available at <https://ministers.dese.gov.au/tehan/budget-2020-21-investing-education-and-research>.

Since 2014, the Government has provided funding for Good to Great Schools Australia (GGSA) to deliver its direct instruction model, the Flexible Literacy Program, in remote primary schools in Northern Territory (NT), Western Australia (WA) and Queensland (QLD). GGSA is a not-for-profit organisation, based in Cairns, QLD and has worked for more than ten years providing school improvement implementation support in metropolitan and remote Australian schools. GGSA was founded and is co-chaired by Mr Noel Pearson.

The objective of the Flexible Literacy Program is to fund training for teachers at remote primary schools to enable them to adopt explicit instruction teaching methods in relation to literacy to improve the literacy skills of students in remote locations, particularly Aboriginal and Torres Strait Islander students. GGSA provides support that is tailored to the target school's specific needs and utilises face-to-face and online teacher training modules and monitoring/coaching sessions.

The additional funding will allow the Flexible Literacy Program to expand from literacy alone to also include science and numeracy. The expanded program will initially commence as a three-year pilot in up to ten remote/very remote schools. The pilot is expected to commence in the 2021 school year and conclude at the end of the 2023 school year, with final deliverables expected to be provided to the department in early 2024.

The pilot's main objectives are to build on the existing literacy program to develop teacher pedagogical skills in science and numeracy to improve student outcomes. Schools already participating in the Flexible Literacy Program will be offered an opportunity to expand delivery into the science and numeracy subject areas. GGSA will also offer the pilot to new schools which are considered suitable to participate in the science and numeracy program.

Funding also supports an independent evaluation of the program over three financial years, commencing from 2021-22.

The Flexible Literacy Program has allowed for the exploration of implementation approaches to embed the explicit instruction teaching method in remote schools, which supports the Government's commitment to closing the national achievement gap between remote and metropolitan schools. Students in remote and very remote communities face barriers to literacy skill acquisition that their peers in major cities do not. In 2018, only 61.9 per cent of Year 3 students and 53.7 per cent of Year 5 students in very remote schools met national minimum standard in NAPLAN reading assessments. In contrast, achievement levels for Year 3 and Year 5 students in major cities were 96.5 per cent and 95.8 per cent, respectively.

Under the expanded Flexible Literacy Program, GGSA will collaborate with education authorities to recruit up to ten remote primary schools, from any jurisdiction, to participate in the pilot. Schools must be classified as 'remote or very remote' according to the Australian Bureau of Statistics' Accessibility and Remoteness Index of Australia (ARIA+) classification. Schools from any education sector will be eligible to participate. Given the geographical distribution of remote and very remote schools, it is anticipated that participating schools will be recruited from locations in QLD, NT, WA, New South Wales and/or South Australia. GGSA has to date delivered the Flexible Literacy Program in QLD, WA and NT, but has suggested they are working to recruit schools from other jurisdictions.

GGSA will implement their direct instruction or explicit direct instruction teaching model through a mixture of online teaching and modules, face-to-face coaching sessions, ongoing school liaison, data capture and data reviews. GGSA will also work with school leadership teams to develop and implement school plans, mutual goal setting and program monitoring and reporting arrangements. If a school withdraws from the program, GGSA will liaise with education authorities in participating jurisdictions to recruit replacement schools.

A grant agreement is currently in place for the delivery of the Flexible Literacy Program, which will end following the final payment in February 2021. Funding for the expanded program will be provided via a new one-off ad hoc grant, managed in collaboration with the Community Grants Hub. The new grant opportunity guidelines will detail the expectations of the program and these will be made publicly available on the departmental website. A new grant agreement will be negotiated with GGSA.

The administration of the grant to GGSA will be conducted in accordance with the Commonwealth resource management framework, including the PGPA Act and the CGRGs. The grant expenditure decision will be made by the delegate of the Secretary of the department in line with the appropriate financial delegations.

The decision to provide funds to GGSA, once made, will be final and not subject to merits review. This is partly because the grant involves an allocation of a finite resource to GGSA and overturning the decision to allocate funding to another party would affect the allocation that has already been made to GGSA. 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 4.16 of the guide, *What decisions should be subject to merit review?*). In addition, paragraph 4.18 of the guide specifies that 'programs as a whole are not suitable for review, as they are budgetary decisions of a policy nature, rather than decisions immediately affecting any particular person's interests. Those decisions are subject to parliamentary

scrutiny, and the Minister who makes them will be held politically accountable for any consequences.’

Given GGSA’s existing stewardship of the program, demonstrated experience in program delivery and the Government decision to award funding to GGSA, it is not reasonably foreseeable, nor envisaged that any other organisation would be selected to receive funding in relation to this initiative.

The department has continued to consult with GGSA on the design and development of the Flexible Literacy Program. GGSA has further expressed its commitment to continue collaborating with the Government on piloting an expanded model of its current program and advised that they are prepared to roll out a direct and/or explicit instruction model in the subjects of mathematics and science that is compatible in structure and systems to the existing program.

The grant agreement will contain a clause requiring GGSA to engage with school leadership teams and school communities to gain their support and agreement to participate in the pilot program. GGSA has also advised that they have commenced discussions with state and territory departments of education and participating and interested schools regarding the 2020-21 Budget announcement.

Funding of \$5.8 million was included in the 2020-21 Budget under the measure ‘Students Support Package’ for a period of four years commencing in 2020-21. Details are set out in *Budget 2020-21, Budget Measures, Budget Paper No. 2 2020-21* at pages 81 to 82.

Funding for this item comes from Program 1.5: Early Learning and Schools Support, which is part of Outcome 1. Details are set out in the *Portfolio Budget Statements 2020-21, Budget Related Paper No. 1.4, Education, Skills and Employment Portfolio* at pages 12 and 32.

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 races power (section 51(xxvi)); and
- the territories power (section 122).

#### External affairs power

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

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

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

Article 28(1) of the CRC is in similar terms to Article 13(2)(a) of the ICESCR.

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

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

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

The program is directed at a basic learning need of children in remote primary schools by methods appropriate to those children. The program is also directed at core educational activities that are central to the development of the talents and abilities of children.

#### Races power

Section 51(xxvi) of the Constitution empowers the Parliament to make laws with respect to ‘the people of any race for whom it is deemed necessary to make special laws’. The program aims to address the gap in literacy, numeracy and science outcomes between remote and metropolitan students, particularly in very remote areas which often have a high proportion of Aboriginal and Torres Strait Islander students. A high proportion of students in the program (as evolved) are expected to continue to be Aboriginal and Torres Strait Islander children.

#### Territories power

Section 122 of the Constitution empowers the Parliament to make laws ‘for the government of any territory’. Given the target group, it is anticipated that the program (as evolved) would operate in the Northern Territory.

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

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

New **table item 463** establishes legislative authority for government spending to support the Australian Education Working (AEW) Group within the International Holocaust Remembrance Alliance (IHRA) to promote Holocaust education during Holocaust Memorial Week (the initiative). This initiative will allow the Australian Government to meet its obligation to demonstrate clear public policy commitment to Holocaust education as per Australia’s membership of the IHRA.

The IHRA was initiated in 1998 as an international platform that unites governments and experts from all over the world to strengthen, advance and promote Holocaust education, research and remembrance and to uphold the commitments to the 2000 Stockholm Declaration. Today the IHRA’s membership consists of 34 member countries, each of whom recognises that international political coordination is imperative to strengthen the moral commitment of societies and to combat growing Holocaust denial and anti-Semitism.

The Declaration of the Stockholm International Forum on the Holocaust (or ‘Stockholm Declaration’) is the founding document of the IHRA and it continues to serve as an ongoing affirmation of each member country’s commitment to shared principles. The IHRA members are committed to the Stockholm Declaration, which states that:

*We pledge to strengthen our efforts to promote education, remembrance and research about the Holocaust, both in those of our countries that have already done much and those that choose to join this effort. We share a commitment to encourage the study of the Holocaust in all its dimensions. We will promote education about the Holocaust in our schools and universities, in our communities and encourage it in other institutions.*

The main objective of the initiative is for Australia to meet its commitment under the Stockholm Declaration by implementing a Holocaust Memorial Day or similar. In addition to this, students and teachers will have access to high quality digital resources on the Holocaust to ensure education on this important topic is robust, respectful and relevant.

A one-off grant funding of \$30,000 will be provided to the AEW Group through Deakin University to implement a Holocaust Memorial Week. The AEW Group is part of the IHRA and comprises of Australian academic experts in Holocaust education, research and remembrance, namely: Dr Donna-Lee Frieze (Deakin University), Dr Avril Alba (University of Sydney), Ms Suzanne Hampel OAM (Monash University) and Dr Andre Oboler (La Trobe University). The responsibility of the AEW Group includes assisting Australia meet its obligations under the conditions of the IHRA membership.

The funding will be used to develop, implement and promote digital resources on the Holocaust, which will be collated on a website. Funding will also support development of a database for tracking engagement with schools and project management which will include monitoring the number of schools engaged and anonymous feedback regarding the resources.

Specifically, the AEW Group will work with academic and technical experts to develop the online platform and associated resources, establish the target audience and disseminate communications. The department will monitor and manage the delivery of the initiative, in collaboration with the AEW Group, as per standard funding agreements undertaken by the department.

Key activities to be funded as part of the initiative include but are not limited to:

- source and/or write online materials on Australian content relevant to Holocaust Memorial Week for use by teachers in the classroom;
- curate materials in line with the Australian Curriculum;
- design and deliver a website that meets the Australian Government’s web accessibility requirements (WCAG2.0);
- contact other member countries (for example, Canada, Ireland and the United Kingdom) to discuss how they implement their annual Holocaust Education Week; and
- create a database for tracking engagement with schools.

The department will use a one-off selection process to award grant funding to the AEW Group through Deakin University. The funding will be provided to Deakin University to allocate appropriately to the AEW Group within the IHRA.

The administration of the grant will be conducted in accordance with the Commonwealth resource management framework, including the PGPA Act and the CGRGs, and will adhere to standard grant selection and reporting requirements. The funding will also be expended in accordance with the Accountable Authority Instructions and delegations on the expenditure of relevant monies, and in accordance with the PGPA Act.

Grant opportunity guidelines will be developed in accordance with the CGRGs and information about the grant will be made available on the GrantConnect website ([www.grants.gov.au](http://www.grants.gov.au)). The ad hoc one-off grant funding will be administered by the department.

Independent review will not be available for the grant provided to the recipient as this grant will be one-off and for a specific purpose and entity.

Funding for Holocaust Memorial Week is provided via Deakin University to the AEW Group within the IHRA as a non-competitive grant due to Australia's international obligations and the IHRA membership. Australia became a member of the IHRA in June 2019. The IHRA brings together governments and experts to combat Holocaust denial and anti-Semitism, and to share best practice on Holocaust education and remembrance. As the IHRA member, Australia is expected to demonstrate clear public policy commitment to Holocaust education, and one of the required commitments is to implement a Holocaust Memorial Day or similar. It is not reasonably foreseeable nor envisaged that any other organisation would receive funding in relation to this initiative.

As such, the grant decision, once made, will be final and not subject to merits review. The grant involves an allocation of a finite resource to Deakin University and overturning the decision to allocate funding to another party would affect the allocation that has already been made to Deakin University. 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 4.16 of the guide, *What decisions should be subject to merit review?*).

The department regularly consults with the Department of Foreign Affairs and Trade on the Government's commitment to the IHRA and on the establishment of an annual Holocaust Memorial Week. The department also regularly liaises with the AEW Group to monitor the status of the Australian Government's commitments to the IHRA. The AEW Group has an expert member from Deakin University who has confirmed that Deakin University can receive and manage the grant.

Funding of \$30,000 in 2020-21 will come from the Quality Outcomes sub-program under Program 1.5: Early Learning and Schools Support, which is part of Outcome 1. Details are set out in the *Portfolio Budget Statements 2020-21, Budget Related Paper No. 1.4, Education, Skills and Employment Portfolio* at page 42.

Quality Outcomes is a discretionary funding program for initiatives of importance to the Australian Government approved by the Minister for Education and Youth. Quality Outcomes is a longstanding appropriation to the department for the purposes of providing funding for a variety of initiatives to improve quality teaching and learning, promote national collaboration on curriculum and assessment and reporting outcomes, promote good practice in schools and promote greater consistency in schooling.

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

### Communications power

Section 51(v) of the Constitution empowers the Parliament to make laws with respect to ‘postal, telegraphic, telephonic and other like services’. The initiative will develop online educational resources and a promotional social media campaign. The initiative also includes supporting activities such as promotion of the online material and the creation of a database regarding the delivery and evaluation of the initiative.

New **table item 464** establishes legislative authority for government spending on the Emerging Priorities Program (the program) to address the impacts of emerging priorities and improve educational outcomes, including provision of resources, support for learning, engagement or wellbeing of school students, teachers, school leaders and families. The program will also provide for the identification, research or analysis of the impacts of emerging priorities on school education, including the COVID-19 pandemic.

On 6 October 2020, the then Minister for Education, the Hon Dan Tehan MP, announced a \$146.3 million school package as part of the Government’s *Investing in Education and Research* initiative, to deliver a range of projects to help support students, families, and school communities affected by the COVID-19 pandemic. The school package includes funding of \$25.0 million over five years from 2020-21 to respond to education priorities arising from the COVID-19 pandemic. The media release is available at <https://ministers.dese.gov.au/tehan/budget-2020-21-investing-education-and-research>.

The objective of the program is to fund rapid and flexible initiatives that improve educational outcomes for school students in Australia as a response to emerging priorities such as the COVID-19 pandemic. While it is not possible to anticipate what future emerging priorities might be, circumstances that have a negative impact on school students in Australia will be considered to be classified as emerging priorities for the purposes of the program.

States and territories are responsible for the operation of schools as they are best placed to implement targeted programs to address negative learning outcomes and student and school leader wellbeing as a result of the pandemic. Initiatives funded must be designed to be national and to complement jurisdiction-led initiatives. Organisations will be required to demonstrate, through an evaluation report, how their project has improved educational outcomes for school students as a response to emerging priorities such as the COVID-19 pandemic.

Initiatives that can support the National School Reform Agreement, other research priorities identified by the Australian Government and the Education Council, or the refreshed Closing the Gap targets, will be prioritised.

The program will operate from financial year 2020-21 to 2024-25 with a minimum of one funding round conducted each year. The department will undertake research at the beginning of each round to identify significant emerging issues impacting school communities, including priority areas and current pressure points, and relevant actions being undertaken at a state and territory level.



Organisations with an established record of delivering positive outcomes for school communities will be approached to apply for Round One funding for initiatives that focus on the following priority areas:

- engagement of school students and families of students with school education;
- wellbeing of school leaders, teachers and school students; and
- improved educational outcomes for school students.

Round One proposals will be considered against the following criteria:

- *effectiveness* – the project design demonstrates links to improve the priority areas of student wellbeing, engagement and/or educational outcomes;
- *clarity* – the project is clearly defined, costed and fully scoped with clear milestones, completion details and any required approvals in place, applied for, or otherwise expected to be received in the necessary timeframe to complete the proposed project;
- *informed by evidence* – the project has articulated and evidenced need for investment including consideration of existing initiatives being implemented by states and territories;
- *relevance* – the project responds to unforeseen challenges raised by the COVID-19 pandemic and associated issues;
- *value for money* – the project clearly defines the anticipated outcomes that can be delivered and measured;
- *eligibility/suitability* – the project is to be delivered by a reputable provider/recipient; and
- *risk considerations clear and considered* – the proposed project and its implementation is manageable and/or acceptable. This includes identifying any risks to delivery due to use of new technology, scale and/or complexity of the proposal/project.

Priority areas for Round One have been informed by six pieces of research commissioned by the Australian Government into the impact of remote learning at home on vulnerable cohorts of students. The research papers are available at [www.dese.gov.au/covid-19/schools](http://www.dese.gov.au/covid-19/schools).

Initiatives that receive funding will be required to produce outcomes that address at least one of the specified priority areas. Priority areas will be reviewed each year prior to commencement of funding rounds to take account of new research and evidence.

Projects will be varied, and may include:

- professional development or learning for school leaders and teachers to support school education;
- online or face-to-face resources for school leaders, teachers, school students and families of students;
- supporting school students with pathways for post-school destinations; and
- identification, research or analysis of the impacts of emerging priorities on school education, including the COVID-19 pandemic.

The target group is school age students who are under 18 years old, as all initiatives that receive funding will be required to improve educational outcomes for Australian school students.

Expenditure on the program may be in the form of grants or procurement. For example, Round One is anticipated to involve the department inviting submissions from select organisations and then assessing those submissions and awarding one-off, ad hoc grants to proposals that address identified priority areas and eligibility criteria. If there are any residual funds following this process, the department may seek to undertake a limited or open tender procurement as part of that funding round.

For Round One, proposals that can be completed within 12 months will be considered to support the rapid and flexible objective of the program. As such, there is no requirement to engage the Community Grants Hub to administer Round One grants.

For future rounds, where targeted or restricted competitive grants are used as the appropriate financial arrangement, the Community Grants Hub will administer grants to the successful organisations in accordance with the Commonwealth resource management framework, including the PGPA Act and the CGRGs.

The grants will be developed and administered in accordance with the CGRGs. Funding applications will be assessed by a panel of at least two internal stakeholders, and at least one external stakeholder, with recommendations for grants provided to the Minister for Education and Youth (the responsible Minister) for final decision. Membership of the panel will be determined by senior executive officers in the department.

The outcomes of all grants awarded and funding rounds will be published on GrantConnect at [www.grants.gov.au](http://www.grants.gov.au) no later than 21 working days after the grant agreement takes effect, in accordance with the CGRGs. Grant applicants will be notified in writing of the outcomes of their applications. Unsuccessful applicants will be offered feedback on their application. Persons affected by these administrative decisions would have recourse to the Commonwealth Ombudsman where appropriate.

Where a procurement process is used as the appropriate financial arrangement, it will be administered in accordance with the PGPA Act and the CPRs. Procurement funding decisions will be made by the responsible Minister or relevant delegate. The outcomes of all tenders subject to the CPRs will be published on AusTender ([www.tenders.gov.au](http://www.tenders.gov.au)) where the expenditure meets the reporting thresholds as defined in the CPRs.

For procurements, suppliers will be able to make a written complaint about contraventions that affect the supplier's interests in line with the *Government Procurement (Judicial Review) Act 2018*, which establishes an independent complaint mechanism for alleged breaches of the CPRs in relation to covered procurements.

Overarching guidelines that provide an outline of the program, its application, assessment and approval processes and other probity related information will be published on the departmental website, pending approval from the responsible Minister.

Funding decisions made in connection with the program are not subject to an independent merits review. Submissions recommended for approval by the responsible Minister will be based on current research evidence, and recommendations will be made by a panel of internal and external stakeholders and therefore will not be subject to further independent review.

The program also involves an allocation of a finite resource and review (and potential change) of decisions would impact allocations made to other parties and would impede timely and effective implementation of the program. Any delay to the funding administration would undermine the grant or procurement process and negatively impact the security of future funding for the successful applicant or supplier. Furthermore, review of decisions once funding agreements have been entered into would be difficult and legally complex. 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 4.16 of the guide, *What decisions should be subject to merit review?*).

In April 2020, the Australian Government commissioned six pieces of research into the impact of remote learning at home on vulnerable cohorts of students. The research was conducted by: Professor Natalie Brown, the Peter Underwood Centre; Professor Geoff Masters, the Australian Council for Educational Research; Professor Janet Clinton, the Centre for Program Evaluation, the Melbourne Graduate School of Education; Professor Stephen Lamb, the Centre for International Research on Education Systems; Professor Sarah O'Shea, the National Centre for Student Equity in Higher Education, and Dr Alan Finkel AO FAA FTSE FAHMS, the Rapid Research Information Forum.

The research identified consistent findings that while online courses were effective for some students, others faced major challenges and disruptions that are likely to lead to widening gaps in school learning that would not have occurred when compared to face-to-face learning arrangements.

The Australian Government has worked with states and territories to monitor student outcomes data as it emerges. While the impact of the pandemic has not been consistent across jurisdictions, early data – particularly from New South Wales and Victoria where students undertook the longest periods of remote learning – has shown there were issues for students which impacted on their learning outcomes. It appears that the move to remote learning exacerbated existing divides, increasing achievement and engagement gaps for already disadvantaged students. While students were able to continue their development during the period of remote learning, the progress made was not as large as would have been expected if they were learning face-to-face in the classroom.

Attendance was also reportedly lower for some at-risk or vulnerable groups, including students in low socioeconomic areas, rural and regional areas, and students otherwise at risk of disengaging from school. Existing evidence shows a clear negative correlation between absence and achievement, which is cumulative and affects academic achievement in future years.

Emerging evidence also suggests that the effects of the COVID-19 pandemic on the mental health and wellbeing of students, teachers and school leaders, will continue to have a significant effect on the schooling sector, even while the period of intense social distancing and remote learning has eased for most.

Through the findings from the research, the department will design and ensure the program seeks to ameliorate these issues, as well as any other emerging priorities over the next five years, by supporting education outcomes for school students in Australia.

Funding of \$25.0 million was included in the 2020-21 Budget under the measure ‘Students Support Package’ for a period of five years commencing in 2020-21. Details are set out in *Budget 2020-21, Budget Measures, Budget Paper No. 2 2020-21* at page 82.

Funding for the item will come from Program 1.5: Early Learning and Schools Support, which is part of Outcome 1. Details are set out in the *Portfolio Budget Statements 2020-21, Budget Related Paper No. 1.4, Education, Skills and Employment Portfolio* at pages 12 and 13.

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 social welfare power (section 51(xxiiiA));
- the races power (section 51 (xxvi));
- the express incidental power and the executive power (sections 51(xxxix) and 61), including the nationhood aspect; and
- the territories power (section 122).

#### External affairs power

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

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

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

Article 24(1) of the CRC provides that ‘States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. State Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.’

Article 28(1)(a) of the CRC specifically refers to making ‘primary education compulsory and available free for all’.

Article 29 of the CRC provides that the education of the child shall be directed to the development of the child’s personality, talents and mental and physical abilities to their fullest potential.

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

Article 6(1) of the ICESCR provides that the States Parties '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 provides that '[t]he steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual'.

Article 12(1) of the ICESCR provides that '[t]he States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.'

Article 12(2) of the ICESCR provides that '[t]he steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

- (a) the provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
- (b) the improvement of all aspects of environmental and industrial hygiene;
- (c) the prevention, treatment and control of epidemic, endemic, occupational and other diseases;
- (d) the creation of conditions which would assure to all medical service and medical attention in the event of sickness.'

Consistent with Article 28(1)(a) of the CRC, Article 13(2)(a) of the ICESCR provides that 'States Parties...recognize that, with a view to achieving the full realization of this right...[p]rimary education shall be compulsory and available free to all.'

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

Article 2 of the ILO Convention 122 provides that '[e]ach Member shall by such methods and to such extent as may be appropriate under national conditions:

- (a) decide on and keep under review...the measures to be adopted for attaining the objectives specified in Article 1;
- (b) take such steps as may be needed including when appropriate the establishment of programmes, for the application of these measures.'

Articles 1 to 4 of the ILO Convention 142 concern the development of a system of vocational guidance and training (career guidance).

The purpose of the program is to support activities that improve educational outcomes, and that support career development (including pathways for post-school destinations), for school students. The program also seeks to address health issues of children.

#### Communications power

Section 51(v) of the Constitution empowers the Parliament to make laws with respect to ‘postal, telegraphic, telephonic and other like services’. Some of the expenditure in relation to the program may facilitate online learning or other measures to facilitate online communications.

#### Social welfare power

The social welfare power in section 51(xxiiiA) of the Constitution empowers the Parliament to make laws with respect to the provision of certain social welfare benefits including benefits to students. Some of the expenditure may provide benefits to identified or identifiable students.

#### Races power

Section 51(xxvi) of the Constitution empowers the Parliament to make laws with respect to ‘the people of any race for whom it is deemed necessary to make special laws’. Some of the expenditure in relation to the program is directed at supporting improved educational outcomes for Indigenous persons.

#### The express incidental power and the executive power, including the nationhood aspect

The express incidental power in section 51(xxxix) of the Constitution empowers the Parliament to make laws with respect to matters incidental to the execution of any power vested in the Parliament, the executive or the courts by the Constitution. Section 61 of the Constitution supports activities that are peculiarly adapted to the government of a nation and cannot be carried out for the benefit of the nation otherwise than by the Commonwealth. Some of the expenditure under the program may be for short-term projects to address the impact of COVID-19.

#### Territories power

Section 122 of the Constitution empowers the Parliament to ‘make laws for the government of any territory’. Some of the projects under the program will be carried out in territories.

## **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. 1) Regulations 2021***

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

### **Overview of the legislative instrument**

Section 32B of the *Financial Framework (Supplementary Powers) Act 1997* (the FF(SP) Act) authorises the Commonwealth to make, vary and administer arrangements and grants specified in the *Financial Framework (Supplementary Powers) Regulations 1997* (the FF(SP) Regulations) and to make, vary and administer arrangements and grants for the purposes of programs specified in the 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. 1) Regulations 2021* amend Schedule 1AB to the FF(SP) Regulations to establish legislative authority for government spending on certain activities administered by the Department of Education, Skills and Employment (the department).

This instrument:

- amends table item 13 in Part 3 of Schedule 1AB for Grants to The Smith Family;
- adds a new table item 47 to Part 3 of Schedule 1AB for a Grant to Anti-Defamation Commission Incorporated – National Holocaust Education Digital Platform;
- adds a new table item 48 to Part 3 of Schedule 1AB for a Grant to Islamic Museum of Australia;
- repeals and substitutes table item 150 in Part 4 of Schedule 1AB for the Early Learning STEM Australia program;
- repeals and substitutes table item 222 in Part 4 of Schedule 1AB for the Flexible Literacy Remote Primary Schools Program;
- adds a new table item 463 to Part 4 of Schedule 1AB for the Holocaust Memorial Week; and
- adds a new table item 464 to Part 4 of Schedule 1AB for the Emerging Priorities Program.

### **Table item 13 – Grants to The Smith Family**

The amended table item 13 provides legislative authority for the Government to provide grant funding to The Smith Family to deliver the Careers Suite program for disadvantaged students in Years 8 to 12 that will build young people's social and cultural capital by equipping them

with the skills, knowledge, attitude and behaviours they need to thrive post-school, in work, training or further study.

The Smith Family was founded in 1922 and is now Australia's largest national education-oriented charity, supporting disadvantaged Australian children to participate fully in their education. The Smith Family provides disadvantaged children and young people with the support and resources they need to achieve their full potential and to give them the best chance at breaking the cycle of disadvantage. The Smith Family's learning support and mentoring programs help children in need to fit in at school, keep up with their peers, and build aspirations for a better future for themselves.

The objective of the Careers Suite program is to support approximately 76,000 disadvantaged high school students in Years 8 to 12 (or equivalent) to acquire the skills, knowledge, attitude and behaviours for work, training and further study. The Careers Suite also supports the *Alice Springs (Mparntwe) Education Declaration*, which commits all Australian governments to supporting all young Australians at risk of disadvantage and supporting senior years of schooling.

The Careers Suite will be delivered by The Smith Family in its 91 Learning for Life partner communities across all Australian states and territories, including many from regional and outer metropolitan communities and from Aboriginal and Torres Strait Islander backgrounds. The Learning for Life is The Smith Family's largest support program, which helps disadvantaged children and young people with their education.

The Careers Suite will be delivered from early 2021 until the end of 2024, and will provide disadvantaged students with access to The Smith Family's programs as follows:

- Futurepreneurs (available to Year 8) – a curriculum aligned entrepreneurship program;
- Work inspiration (available to Years 9 to 10) – an employer led initiative to ensure young people's first experience of the world of work is meaningful, inspiring and exposes them to a broad range of employment opportunities;
- Post-school options activities (available to Year 9) – a range of experiences to ensure students gain understanding of career pathways, training and study options. Includes experiential careers, vocational education and training and university days;
- iTrack (available to Year 10) – an online career mentoring program, which connects students to those in employment and explores career goals and pathways and the actions needed to achieve them;
- SmArts (available to Year 10) – enrichment programs for students with interest in and/or talent for the creative arts. Boosts students' creative skills, self-confidence, knowledge of post-school options and engagement in learning;
- Job Read-e (available to Years 10 to 12) – a mobile based tool (app) which helps young people build their skills in seeking and applying for work. A series of jobseeking activities are undertaken and they receive personalised feedback from a careers adviser;
- Exploring education pathways (available to Years 10 to 11) – showcases post-school training and education options, both vocational and higher education; and
- Career coaching (available to Years 10 to 12) – targets students at risk of leaving school early. Provides intensive and tailored support to help them stay at school and complete Year 12. Where this is not achievable, a tailored and structured post-school pathway is developed, including into employment or further study.



The Smith Family will partner with its Learning for Life partner schools which have a low Index of Community Socio-educational Advantage. These schools have students on the Learning for Life scholarship. Some programs in the Careers Suite may be targeted at students on the Learning for Life program, while other Careers Suite programs may be delivered to all students attending that partner school.

### **Human rights implications**

Table item 13 engages the following human rights:

- the right to education – Articles 28 and 29 of the *Convention on the Rights of the Child* (CRC), read with Article 4, and Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), read with Article 2; and
- the right to work – Article 6 of the ICESCR, read with Article 2.

#### *Right to education*

Table item 13 engages the right to education in Articles 28 and 29 of the CRC, read with Article 4, and Article 13 of the ICESCR, read with Article 2.

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

Article 28(1)(a) of the CRC specifically refers to making ‘primary education compulsory and available free for all’.

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

Article 2 of the ICESCR requires States Parties to take steps to progressively achieve the full realisation of the rights recognised in the ICESCR by all appropriate means. Article 13(2)(a) of the ICESCR relates to the right of everyone to primary education that is compulsory and free.

Table item 13 supports the right to education by seeking to help disadvantaged children continue in education with a view to realising their personal potential.

#### *Right to work*

Table item 13 engages the right to work 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(1) of the ICESCR recognises ‘the right of everyone to the opportunity to gain his living by work’ and that a State Party ‘will take appropriate steps to safeguard this right’.

Article 6(2) provides that the steps to be taken by a State Party to the ICESCR ‘to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual’.

Table item 13 supports the right to work by promoting school students’ skills, knowledge and social resources with a view to improving their employment opportunities.

## **Conclusion**

Table item 13 is compatible with human rights because it promotes the right to education and right to work under the CRC and the ICESCR.

### *Table item 47 – Grant to Anti-Defamation Commission Incorporated – National Holocaust Education Digital Platform*

Table item 47 establishes legislative authority for the Government to provide a grant to Anti-Defamation Commission Incorporated (ADC) to develop and deliver a National Holocaust Education Digital Platform.

The objective of the education platform is to shape the minds of students and their school communities to become tolerant, inclusive and respectful of differences. It will also help students to learn the value of democracy and explore issues of moral decision making, hate, racism, civic duty and responsible citizenship, ultimately facilitating social cohesion.

The education platform will provide a fully accessible interactive experience for students to creatively and actively engage in the subject area, enhancing their understanding and retention of the material. Teachers will engage with the platform through a digital onboarding training program, which will equip them with the relevant knowledge and skills to assist in the students’ participation in the program.

The program will also create a national network of certified Holocaust educators, leveraging Australian teachers to roll out the digital education program in classrooms and connect into other schools involved across the nation.

Grant funding of \$3.0 million will support ADC to deliver the following activities:

- build a digital platform that can be utilised by students on a range of devices, catering for a broad range of accessibility needs;
- complete production of new education resources and integrate them into the platform, providing unique interactive experiences for students; and
- develop a digital onboarding and training program for teachers.

The program will build on ADC’s existing educational program Click Against Hate, which was developed in 2010. The Click Against Hate program is currently delivered by ADC in over 170 primary and secondary schools in Victoria.

## Human rights implications

Table item 47 engages the following human rights:

- the right to education of children – Articles 28 and 29 of the *Convention on the Rights of the Child* (CRC), read with Article 4 and the right to education – Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), read with Article 2; and
- the right to freedom of thought, conscience and religion or belief – Article 18 of the *International Covenant on Civil and Political Rights* (ICCPR), read with Article 2.

### *Right to education*

Table item 47 engages the right to education in Articles 28 and 29 of the CRC, read with Article 4, and in Article 13 of the ICESCR, read with Article 2.

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

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

Article 2 of the ICESCR requires States Parties to take steps to progressively achieve the full realisation of the rights recognised in the ICESCR by all appropriate means. Article 13(2)(a) of the ICESCR relates to the right of everyone to primary education that is compulsory and free.

Table item 47 promotes the right to education by providing funding to support the development and delivery of the National Holocaust Education Digital Platform to support both government and non-government schools in delivering quality education by teaching the importance of inclusiveness, civility and respect within the historical context of the Holocaust.

### *Right to freedom of thought, conscience and religion or belief*

Table item 47 engages the right to freedom of thought, conscience and religion or belief in Article 18 of the ICCPR, read with Article 2.

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

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

Table item 47 promotes these rights by supporting the implementation of the National Holocaust Education Digital Platform to provide resources through which students can

explore issues of racism and discrimination, and of freedom of religion or belief within a democracy, with the aim of promoting a tolerant, inclusive and respectful society.

## **Conclusion**

Table item 47 is compatible with human rights because it promotes the right to education and the right to freedom of thought, conscience and religion or belief under the CRC, ICESCR and ICCPR.

### *Table item 48 – Grant to Islamic Museum of Australia*

Table item 48 establishes legislative authority for the Government to provide a grant to Islamic Museum of Australia to support an upgrade and expansion of their existing online education program to service all Australian schools, including virtual tours, 3D videos and an upgrade of galleries to a digital platform.

The purpose of the program is to immerse students in an interactive, educational and cross-cultural experience showcasing the cultural heritage of Muslims in Australia, contribute to social cohesion and foster continued cultural exchange and academic achievement.

This grant will allow IMA to expand and upgrade the museum’s online education program, enabling an upgraded platform to provide Year 4 to 10 students from primary and secondary schools across Australia with an Australian Curriculum aligned education package. This online platform will include the ability to virtually link schools, students and communities and allow students to access resources if learning from home.

The online platform will also make professional development resources accessible to a wide range of stakeholders including education departments, primary and high school teachers, school leaders and other school support staff. Resources will support teachers and school communities to address religious, racial and cultural intolerance as well as support the overall wellbeing of Muslim students.

## **Human rights implications**

Table item 48 engages the following human rights

- the right to education – Articles 28 and 29 of the *Convention on the Rights of the Child* (CRC), read with Article 4; and
- minorities to not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language – Article 27 of the *International Covenant on Civil and Political Rights* (ICCPR), read with Article 2.

### *Right to education*

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

Article 29 of CRC is concerned with the right to education. Article 29(1)(c) relevantly includes an obligation to direct education to the development of respect for the child’s ...

cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own.

A significant part of the program is directed to the education of young Muslims about the history, culture and languages of Islamic cultures. Furthermore, the program's educational activities will be directed to students from all backgrounds.

*Minorities to not be denied the right, in community and other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language education*

Article 2 of the ICCPR requires each State Party 'to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant'.

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

Table item 48 promotes the right in Article 27 of the ICCPR as a significant part of the measure is directed to the education of young Muslims about the history, culture and languages of Islamic cultures. The program also seeks to raise awareness amongst others increasing tolerance so that minorities are less likely to be denied this right.

## **Conclusion**

Table item 48 is compatible with human rights because it promotes the right to education under the CRC and the right for minorities to not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language under the ICCPR.

### *Table item 150 – Early Learning STEM Australia*

This item amends table item 150 in Part 4 of Schedule 1AB by repealing and substituting the full text of the item. The amended table item 150 establishes legislative authority for government spending on the Early Learning STEM (science, technology, engineering and mathematics) Australia (ELSA) programs, which aims to engage children in STEM in the preschool and primary school years.

The Commonwealth established the ELSA pilot for preschool children and early learning educators in 2016. The objective of the pilot was to inspire curiosity and engagement in STEM concepts in preschool children and increase early learning educators' confidence and capacity to deliver STEM learning experiences.

Funding was provided to the University of Canberra for their STEM Education Research Centre to develop and implement the preschool pilot program over four years from 2016-17. The University of Canberra developed play-based digital learning environments in science, technology, engineering and mathematics concepts, delivered through a series of apps for tablet devices, complemented by non-digital support materials and training and technical support for teachers.

The pilot was implemented in approximately 200 preschool services across Australia in 2018 and 2019, and continued as a research project in 2020 and 2021 under a contract with the department which ends on 31 December 2021. The department is negotiating a deed of licence with the University of Canberra which will allow the university to continue to offer preschool ELSA to preschools, including on a fee-for-service basis. This will support the widespread uptake of resources developed in the ELSA preschool pilot, without the need for further Commonwealth funding.

Under the Foundation to Year 2 trial expansion of the ELSA program, funding will be provided to adapt the ELSA preschool materials for students in the first three years of primary school. Similar to the preschool pilot, the ELSA Foundation to Year 2 trial will inspire curiosity and increase engagement of early primary school children in STEM focused learning, and increase teacher confidence and capacity to deliver STEM learning experiences in a play-based environment.

The Foundation to Year 2 trial will adapt mobile apps and resources developed in the ELSA preschool pilot to align with the Australian Curriculum for Foundation to Year 2, and develop and refine them with selected primary schools.

### **Human rights implications**

Table item 150 engages the following human right:

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

#### *Right to education*

Table item 150 engages the right to education in Articles 28 and 29 of the CRC, read with Article 4, and in Article 13 of the ICESCR, read with Article 2.

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

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

Article 2 of the ICESCR requires States Parties to take steps to progressively achieve the full realisation of the rights recognised in the ICESCR by all appropriate means. Article 13(2)(a) of the ICESCR relates to the right of everyone to primary education that is compulsory and free.

Table item 150 supports the right to education by seeking to develop the individual talents and abilities of children. Table item 150 also supports activities directed towards improving STEM teaching and engaging children in STEM, as a core educational activity in a technology dependent society.

## Conclusion

Table item 150 is compatible with human rights because it promotes the right to education under the CRC and the ICESCR.

### Table item 222 – Flexible Literacy Remote Primary Schools Program

This item amends table item 222 in Part 4 of Schedule 1AB by repealing and substituting the full text of the item. The amended table item 222 establishes legislative authority for government spending on the expansion of the Flexible Literacy Remote Primary Schools Program (the Flexible Literacy Program) to support teachers at remote primary schools through training in explicit instruction teaching methods in the areas of literacy, numeracy and science to improve the skills and knowledge of students, particularly Aboriginal and Torres Strait Islander students. The Flexible Literacy Program is delivered by Good to Great Schools Australia (GGSA).

The additional funding will allow the Flexible Literacy Program to expand from literacy alone to also include science and numeracy. The expanded version of the program will initially commence as a three-year pilot in up to ten remote/very remote schools. The pilot is expected to commence in the 2021 school year and conclude delivery at the end of the 2023 school year, with final deliverables expected to be provided to the department in early 2024.

The pilot's main objectives are to build on the existing literacy program to develop teacher pedagogical skills in science and numeracy to improve student outcomes. Funding also supports an independent evaluation of the program over three financial years, commencing from 2021-22.

The Flexible Literacy Program has allowed for the exploration of implementation approaches to embed the explicit instruction teaching method in remote schools which supports the Government's commitment to closing the national achievement gap between remote and metropolitan schools.

## Human rights implications

Table item 222 engages the following human right:

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

### *Right to education*

Table item 222 engages the right to education in Articles 28 and 29 of the CRC, read with Article 4, and in Article 13 of the ICESCR, read with Article 2.

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

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

Article 2 of the ICESCR requires States Parties to take steps to progressively achieve the full realisation of the rights recognised in the ICESCR by all appropriate means. Article 13(2)(a) of the ICESCR relates to the right of everyone to primary education that is compulsory and free.

Table item 222 promotes the right to education, provided for in Article 28(1)(a) of the CRC and Article 13(2)(a) of the ICESCR, as it is directed at a basic learning need of children in remote primary schools by methods appropriate to those children. Table item 222 is also directed at core educational activities that are central to the development of the talents and abilities of children.

## **Conclusion**

Table item 222 is compatible with human rights because it promotes the right to education under the CRC and the ICESCR.

### *Table item 463 – Holocaust Memorial Week*

Table item 463 establishes legislative authority for government spending to support the Australian Education Working (AEW) Group within the International Holocaust Remembrance Alliance (IHRA) to promote Holocaust education during Holocaust Memorial Week (the initiative).

The objective of the initiative is to demonstrate clear public policy commitment to Holocaust education and remembrance, which is a commitment made by the Australian Government to the IHRA when applying for membership. In addition to this, students and teachers will have access to high quality digital resources on the Holocaust to ensure education on this important topic is robust, respectful and relevant.

A one-off grant funding of \$30,000 in 2020-21 will be provided to the AEW Group through Deakin University to implement a Holocaust Memorial Week. The AEW Group will work with academic and technical experts to develop the online platform and associated resources, establish the target audience and disseminate communications. The department will monitor and manage the delivery of the initiative, in collaboration with the AEW Group, as per standard funding agreements undertaken by the department.

Grant funding will support the AEW Group to deliver the following activities:

- source and/or write online materials on Australian content relevant to Holocaust Memorial Week for use by teachers in the classroom;
- curate materials in line with the Australian Curriculum;
- design and deliver a website that meets the Australian Government’s web accessibility requirements (WCAG2.0);
- contact other member countries (for example, Canada, Ireland and the United Kingdom) to discuss how they implement their annual Holocaust Education Week; and
- create a database for tracking engagement with schools.



## Human rights implications

Table item 463 engages the following human rights:

- the right to education of children – Articles 28 and 29 of the *Convention on the Rights of the Child* (CRC), read with Article 4, and the right to education – Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), read with Article 2; and
- the right to freedom of thought, conscience and religion or belief – Article 18 of the *International Covenant on Civil and Political Rights* (ICCPR), read with Article 2.

### *Right to education*

Table item 463 engages the right to education in Articles 28 and 29 of the CRC, read with Article 4, and in Article 13 of the ICESCR, read with Article 2.

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

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

Article 2 of the ICESCR requires States Parties to take steps to progressively achieve the full realisation of the rights recognised in the ICESCR by all appropriate means. Article 13(2)(a) of the ICESCR relates to the right of everyone to primary education that is compulsory and free.

Table item 463 promotes the right to education by providing funding to support the development, implementation and promotion of digital resources regarding the Holocaust targeted at school age students.

### *Right to freedom of thought, conscience and religion or belief*

Table item 463 engages the right to freedom of thought, conscience and religion or belief in Article 18 of the ICCPR, read with Article 2.

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

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

Table item 463 promotes these rights by supporting the development, implementation and promotion of digital resources regarding the Holocaust in a manner which is robust, respectful and relevant to promote a more tolerant, inclusive and respectful society.

## Conclusion

Table item 463 is compatible with human rights because it promotes the right to education, the right to freedom of thought, conscience and religion or belief, and the right to freedom and opinion and expression under the CRC, ICESCR and ICCPR.

### Table item 464 – Emerging Priorities Program

Table item 464 establishes legislative authority for government spending on the Emerging Priorities Program (the program) to address the impacts of emerging priorities and improve educational outcomes, including provision of resources, support for learning, engagement or wellbeing of school students, teachers, school leaders and families. The program will also provide for the identification, research or analysis of the impacts of emerging priorities on school education, including the COVID-19 pandemic.

The objective of the program is to fund rapid and flexible initiatives that improve educational outcomes for school students in Australia as a response to emerging priorities such as the COVID-19 pandemic.

Funding of \$25.0 million over five years from 2020-21 will be provided to organisations that can support school communities to respond to emerging priorities in areas such as:

- engagement of school students and families of students with school education;
- wellbeing of school leaders, teachers and school students; and
- improved educational outcomes for school students.

## Human rights implications

Table item 464 engages the following human rights:

- the right to education of children – Articles 28 and 29 of the *Convention on the Rights of the Child* (CRC), read with Article 4, and the right to education – Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), read with Article 2;
- the right to health – Article 24 of the CRC, read with Article 4; and
- the right to work – Article 6 of the ICESCR, read with Article 2.

### *Right to education*

Table item 464 engages the right to education in Articles 28 and 29 of the CROC, read with Article 4 and Article 13 of the ICESCR, read with Article 2.

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

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

Article 2 of the ICESCR requires States Parties to take steps to progressively achieve the full realisation of the rights recognised in the ICESCR by all appropriate means. Article 13(2)(a)

of the ICESCR relates to the right of everyone to primary education that is compulsory and free.

Table item 464 promotes the right to education as the purpose of the program is to support activities that improve educational outcomes, and that support career development, for school students.

### *Right to health*

Table item 464 engages the right to health in Article 24 of the CRC, read with Article 4.

Article 4 of the CRC requires States Parties to undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the CRC. These rights include the right of the child to the enjoyment of the highest attainable standard of health (Article 24).

Article 24(1) of the CRC provides that ‘States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.’

Table item 464 supports the right to health as the purpose of the program includes supporting activities that improve the wellbeing of students (including mental health), and that support career development, for school students.

### *Right to work*

Table item 464 engages the right to work in Article 6 of the ICESCR, read with Article 2.

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(1) of the ICESCR recognises ‘the right of everyone to the opportunity to gain his living by work’ and that States Parties ‘will take appropriate steps to safeguard this right’.

Article 6(2) provides that the steps to be taken by a State Party to the ICESCR ‘to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual’.

Table item 464 supports the right to work as the program aims to support career development (including pathways for post-school destinations) for school students.

**Conclusion**

Table item 464 is compatible with human rights because it promotes the right to education under the CRC and the ICESCR, the right to health under the CRC, and the right to work under the ICESCR.

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