

## **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. 2) Regulations 2022*

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

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

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

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

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

The *Financial Framework (Supplementary Powers) Amendment (Education, Skills and Employment Measures No. 2) Regulations 2022* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on certain activities administered by the Department of Education, Skills and Employment.

Funding is provided for:

- amendments to the Work for the Dole program to reflect the removal of the jobactive program and the New Employment Services Trial, which are being replaced by Workforce Australia by 1 July 2022 (\$134.9 million over three years from 2022-23);
- the Competitive fund for micro-credentials (pilot program) to develop micro-credentials for international delivery by tertiary education providers (\$8.0 million over two years from 2022-23);
- the Scaling up Success in Remote Schools program to provide funding to improve educational outcomes of Aboriginal and Torres Strait Islander students in regional and remote areas (\$10.0 million over five years from 2021-22); and
- Workforce Australia (previously known as the New Employment Services Model), which will replace jobactive from 1 July 2022. (\$4.9 billion over four years from 2021-22).

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

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

### **Consultation**

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

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

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

**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. 2) Regulations 2022*.

**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 4 of Schedule 1AB (cell at table item 34, column headed “Objective(s)”)**

This item amends table item 34 in Part 4 of Schedule 1AB by repealing and substituting the full text of the cell. The amended table item 34 establishes legislative authority for government spending on the Work for the Dole program, which is administered by the Department of Education, Skills and Employment (the department).

The amended table item 34 will update the reference to jobactive and the New Employment Services Trial, which are being replaced by Workforce Australia by 1 July 2022.

Work for the Dole is a long standing program, established in 1997 with the aim to bring young people out of isolation, to give them some opportunity to contribute to their communities, to lift their self-esteem, rebuild their motivation and establish contacts that may help them find work.

The program’s objective remains similar since inception, with changes over time predominantly focused on expanding the target group from youth. For example in the 2015 jobactive Request for Tender which similarly articulated the program’s purpose as enhancing participants’ ability to work independently, be guided by a supervisor, improve or enhance their communication skills, motivation, dependability and, where relevant, work as part of a team.

Participants may be required to undertake Work for the Dole in order to remain qualified for certain income support payments such as the Job Seeker payment. It places participants into activities where they can gain skills and experience, thereby improving their employment prospects while making a positive contribution to their community.

Post Program Monitoring survey results shows that, of participants who undertook Work for the Dole in jobactive:

- 72.7 per cent reported an improvement in self-confidence;
- 77.4 per cent reported an increase in their desire to find a job;
- 73.5 per cent reported an improvement in their communication skills;
- 75.7 per cent reported an improvement in their ability to work with others.

A strengthened Work for the Dole program under Workforce Australia will incorporate the formalised achievement of core competencies (such as team work or communication skills) and other, lower complexity, qualifications (such as a forklift licence, or white card) for participants in provider-led services. Work for the Dole will be the default activity for eligible participants not engaged in work, training or work experience at the 6-month activation point or within 3 months for participants moving from Workforce Australia Online Services (Online Services) to Workforce Australia Services, which are provider-led services, if they transferred after 12 months of digital servicing.

The amended Work for the Dole program will also include two sub-activities: ‘Placements’ – involving placing a single or multiple participants within an existing function of the Host Organisation, and ‘Projects’ – involving specific projects developed for the purpose of providing a work-like experience for groups of job seekers. Work for the Dole activities may involve attainment of a licence, qualification or other recognised skill or core competency.

The department is undertaking a procurement process to establish a panel of organisations for the delivery of employment services as part of Workforce Australia, which will include the delivery of numerous employment programs including Work for the Dole. Further information relating to the relevant procurement process is discussed in table item 547 (Workforce Australia).

Only Providers administering provider-led services will be able to deliver Work for the Dole activities in conjunction with eligible Host Organisations. Work for the Dole must only be hosted by:

- not-for-profit charities/organisations;
- local, state, territory or Australian Government agencies; or
- a not-for-profit arm of a for-profit organisation.

Providers and Host Organisations are encouraged to work together to develop suitable Work for the Dole activities based on the needs of eligible participants on the Provider’s caseload. Providers may also partner with registered training organisations to deliver training elements of Work for the Dole.

Providers need to satisfy themselves that the potential Host Organisation is:

- eligible to host a Work for the Dole activity;
- of a good reputation, can demonstrate they have the capacity to undertake a Work for the Dole activity satisfactorily;

- able to meet program requirements (including safety requirements); and
- able to deliver the proposed activity as agreed.

There is no guarantee that Host Organisations will be offered continued business to deliver Work for the Dole activities as this will depend upon whether they continue to meet the requirements to be a Host Organisation in accordance with program guidelines, as well as the needs of individual participants on a Provider's caseload.

The department is not a party to the establishment of a Work for the Dole activity between a Provider and a potential Host Organisation. The department is also unable to direct a Provider to establish a Work for the Dole activity with a particular Host Organisation.

Only job seekers aged 18 and over, in receipt of an eligible income support payment (e.g. Job Seeker payment), participating in Workforce Australia and receiving provider-led services are eligible to participate in a Work for the Dole activity.

Providers are responsible for arranging a Participant Risk Assessment to ensure that a Work for the Dole activity is safe/suitable based on a job seeker's individual circumstances. If the activity is not deemed safe/suitable for the participant, then they will not be referred to the activity.

The number of fortnightly hours required for a participant while on a Work for the Dole activity will depend upon the job seeker's age, whether they are the principal carer parent of a child, or have a partial capacity to work. Job seekers may exit from Work for the Dole prior to their expected end date should their circumstances change, for example if they commence work or study or receive an exemption from Services Australia.

A job seeker is able to seek a merits review by Services Australia of any decision to reduce, cancel, or suspend their payment due to not participating in Work for the Dole. If dissatisfied by the Services Australia's decision, they could seek merits review of the decision by the Administrative Appeals Tribunal (AAT). If dissatisfied by the AAT's decision they could, on questions of law, appeal to the Federal Court of Australia.

The department has a complaints handling process in place for all employment services programs should a job seeker wish to raise concerns or a complaint in relation to their request to participate or their participation in Work for the Dole.

Job seekers should first raise any issues with the Provider to determine if they can be resolved. If the issue cannot be resolved, or the job seeker cannot raise the issue with the Provider, the job seeker may contact the department's National Customer Service Line. A customer service officer will treat the job seeker's complaint seriously and objectively. The department will follow the process outlined in the department's complaints handling fact sheet (<https://www.dese.gov.au/about-us/resources/complaints-factsheet>).

Funding decisions made in relation to Work for the Dole will not be subject to merits review. Justification on the exclusion of a merits review is provided under table item 547 (Workforce Australia).

The enhancements to the Work for the Dole program that will operate as part of Workforce Australia were informed by feedback received from Work for the Dole Host Organisations

(primarily not-for-profit community organisations), jobactive/NEST Providers, and the peak bodies representing Providers.

The department regularly receives feedback from these stakeholders in a variety of ways, including through site visits, ministerial correspondence, stakeholder meetings, evaluation reports and program assurance activities.

The feedback received has helped inform several enhancements to Work for the Dole under Workforce Australia including:

- streamlining administrative requirements;
- simplifying the payment model;
- introducing more flexible participation requirements for participants; and
- allowing participants the ability to attain micro-credentials, including tickets, licences, and other lower complexity qualifications as part of the Work for the Dole program.

Funding of \$134.9 million for the program was included in the 2021-22 Budget under the measure ‘New Employment Services Model’ for a period of three years commencing in 2022-23. Details are set out in *Budget 2021-22, Budget Measures, Budget Paper No. 2* 2021-22 at pages 92-93.

Funding for this item will come from Program 4.1: Employment Services, which is part of Outcome 4. Details are set out in the *Budget 2021-22, Portfolio Budget Statements 2021-22, Budget Related Paper No. 1.4, Education, Skills and Employment Portfolio* at page 77.

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

#### 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 the provision of unemployment benefits.

Work for the Dole places recipients of unemployment benefits into projects and activities where they can gain skills and experience, thereby improving their employment prospects while making a positive contribution to their community.

#### External affairs power

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

Australia has obligations relating to the International Labour Organization’s *Convention concerning the Organisation of the Employment Service* (ILO Convention 88), 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). The applicable Articles are detailed under table item 547 (Workforce Australia).

The reforms to the Work for the Dole program are part of a policy package designed to promote full, productive and freely chosen employment, one which would promote the extension and adoption of vocational guidance training, which are closely linked with employment.

## **Item 2 – In the appropriate position in Part 4 of Schedule 1AB (table)**

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

New **table item 545** establishes legislative authority for government spending on the Competitive fund for micro-credentials (pilot program).

The pilot program responds to Recommendation 4 of the *University-Industry Collaboration in Teaching and Learning Review* (the Review) for a development and delivery of industry-focused micro-credentials targeting global skills gaps and national priority areas.

On 7 December 2021, the acting Minister for Education and Youth, the Hon Stuart Robert MP, made the announcement *Bringing together universities and industry*, which includes the proposed Higher Education and Offshore micro-credentials policy. The media release is available at <https://ministers.dese.gov.au/robert/bringing-together-universities-and-industry>.

The Review (<https://www.dese.gov.au/higher-education-reviews-and-consultations/university-industry-collaboration-teaching-learning-review>), which was undertaken by Emeritus Professors Martin Bean CBE and Emeritus Professor Peter Dawkins AO made seven key recommendations to build closer ties between universities and industry.

The Review considered how universities, industry and government can increase industry engagement in teaching and learning through improved course curricula, more systemic engagement and expanded opportunities for learners to gain industry relevant skills. The Review also aligns with the Government's strategy to support skills development to meet domestic skills gaps.

In addition to addressing the Review's key findings and recommendations, industry-led micro-credentials delivered offshore will strategically align with key priorities detailed in the *Australian Strategy for International Education 2021-2030* (<https://www.dese.gov.au/australian-strategy-international-education-2021-2030>). These include:

- assisting in diversifying education offerings and recover from a loss of revenue by tapping into the global online learning market,
- addressing critical skill shortages and gaps, and
- supporting international education's growth offshore and increasing interest in Australian learning opportunities.

The program for offshore micro-credentials will be trailed for a period of two years from 2022 and will terminate on 30 June 2024, with an independent evaluation of the pilot to be undertaken in early 2025.

Funding of \$8.0 million under the pilot program will be used to develop up to 70 micro-credentials. They will be developed through partnerships and collaboration between Australian industry and tertiary education institutions.

Industry bodies applying for funding would need to outline how they would develop a micro-credential in an area they identify as being of domestic and global skill need, such as an occupation on the National Skills Commission (NSC) Priority List, the Priority Skilled Migration Occupation List (PMSOL), or that identified by the International Labour Organisation (ILO). The micro-credential would need to be deliverable fully online (but may be delivered face-to-face or in a blended environment) and be a maximum duration of three months equivalent full-time study. It would also be 'stackable' (contribute credit) towards a recognised Australian qualification.

The target groups for the pilot program are Australian industry and tertiary education collaborators, and international students who are interested in Australian industry learning opportunities but are not interested in studying a conventional, multi-year qualification. The micro-credentials will be mapped to domestic micro-credentials, placements or courses, in order to address the above priorities.

The department will deliver the pilot program through a competitive tender (procurement) process. The selection process will involve tenders being assessed against a statement of requirements and associated selection criteria.

It is envisaged that an industry body (with insight into skills demand) would collaborate with a higher education provider (with experience in curriculum design) to develop a relevant micro-credential to a standard that meets Australian quality requirements. The intellectual property in the course materials would be owned by the Commonwealth, to be licensed to Australian tertiary providers willing and able to teach the material and provide their learners with credit towards a recognised qualification.

The procurement process 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 and the relevant documents published on AusTender ([www.tenders.gov.au](http://www.tenders.gov.au)) in accordance with the CPRs.

The decision maker of the open tender process is anticipated to be the Assistant Secretary, International Quality Branch, in line with delegations approved by the Secretary of the department. The delegate 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.

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. This legislation may also provide an additional avenue of redress (compensation or injunction) for dissatisfied suppliers or potential suppliers, depending on the circumstances.

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

The pilot program was created in response to the research findings by Emeritus Professor Martin Bean CBE and Emeritus Professor Peter Dawkins AO, former Vice-Chancellors of RMIT University and Victoria University, respectively.

The reviewers convened a reference group of industry leaders and tertiary sector experts. Written submissions were received from a range of universities, professional associations, employers and government agencies. A 2020 World Economic Forum survey found that the majority of Australian employers seek to reskill workers in under 6 months (but preferably in under 3 months). In another survey by the Ai Group, universities were identified as least likely to provide such short courses. However, the universities provided the Review case studies of micro-credentials and short courses intended to upskill learners. Further, as part of responding to COVID-19, demand for shorter qualification types increased, and the Government strongly encourages that momentum to continue. To this end, pilot program is to give effect to Recommendation 4 of the Review.

Consultations with external industry bodies and professionals on the pilot program are also being arranged. The purpose of these consultations will be to encourage industry and tertiary sector collaboration as well as to provide advice to the department.

An *Industry Advisory Board* is being considered to advise the department. The body is envisaged to consist of representatives of peak bodies, professional associations and private individuals with relevant expertise and would provide oversight and facilitate departmental consultation with industry.

Funding allocations will be recommended through the competitive procurement process, and the funding would support industry linkages to tertiary education providers developing content for micro-credentials.

Funding for the pilot program was included in the 2021-22 Mid-Year Economic and Fiscal Outlook under the measure ‘Supporting Australia’s Research and Higher Education Sectors’ for a period of four years commencing in 2021-22. Details are set out in the *Mid-Year Economic and Fiscal Outlook 2021-22, Appendix A: Policy decisions taken since the 2021-22 Budget* at page 224.

Funding of \$8.0 million over two years from 2022-23 for this item will come from Program 2.3: Higher Education Support, which is part of Outcome 2. Details are expected to be included in the 2021-22 Portfolio Additional Estimates Statements for the Education, Skills and Employment portfolio.

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

- the trade and commerce power (section 51(i)); and
- the communications power (section 51(v)).

#### Trade and commerce power

Section 51(i) of the Constitution empowers the Parliament to make laws with respect to ‘trade and commerce with other countries, and among the states’. The program will provide funding to develop micro-credentials that may be offered by Australian higher education providers overseas.

#### Communications power

Section 51(v) of the Constitution empowers the Parliament to make laws with respect to ‘postal, telegraphic, telephonic and other like services’. A number of the micro-credentials will be offered online by higher education providers.

New **table item 546** establishes legislative authority for government spending on the Scaling up Success in Remote Schools (the program).

The program is one of three existing programs under the Scaling Up Proven Primary Reading Programs measure which have demonstrated success in making progress against Target 5 (increasing the proportion of Aboriginal and Torres Strait Islander people (age 20-24) attaining year 12 or equivalent qualification to 96 percent) under the Australia Government’s National Agreement on Closing the Gap in remote and very remote locations.

On 5 August 2021, the Minister for Education and Youth, the Hon Alan Tudge MP, the Minister for Indigenous Australians, the Hon Ken Wyatt AM, MP and the Minister for Regionalisation, Regional Communications and Regional Education, Senator the Hon Bridget McKenzie, jointly announced the Closing the Gap in school education package. This included the announcement of the Scaling Up Proven Primary Reading Programs, stating ‘This new package builds on existing successful education partnerships and programs that support the needs of Aboriginal and Torres Strait Islander communities, to improve outcomes, particularly the attainment of Year 12 or equivalent qualifications.’ The Media Release is available at <https://ministers.dese.gov.au/tudge/closing-gap-school-education>.

Under the program, the Government will invest \$10.0 million over five years from 2021-22 to expand the models and learnings from the Kimberley Schools Project (KSP) into remote Western Australia (WA), with an option to expand into outer regional WA. The expansion of the KSP aims to support remote schools with a high proportion of Indigenous students to implement targeted teaching practices and to increase student attendance rates.

The KSP is currently a WA Government funded program that includes coaching and advice for school leaders and teachers, as well as the provision of learning and assessment resources that are evidence-based.

The KSP, proven to enable Indigenous students to reach their potential across remote WA, is a strong mechanism to lift outcomes in remote schools, achieved through:

- targeted teaching: evidence-based literacy teaching strategies and quality materials with frequent measurement of progress to inform planning and delivery;
- better early years learning and care: community co-design initiatives that build on and improve existing services, and engage families as first teachers;
- regular attendance: community partnerships to deliver strategies that aim to resolve issues of student non-attendance in particular communities; and
- increased student and community engagement: co-designed community initiatives that build positive relationships between the school and the community.

The program will support an estimated 10 schools with a high proportion of Indigenous students to implement the models and learnings from the KSP, such as its targeted teaching practices (including explicit instruction) to increase student attendance and responsiveness to community needs and aspirations. Locations will be confirmed through further consultation between the department, WA Government and relevant Indigenous communities.

A consultant will work with the department, the WA Government and KSP stakeholders to establish key areas of its success; undertake meaningful consultation with Indigenous communities in targeted regions to identify potential implementation sites; and propose design and delivery solutions. The deliver partner(s) will implement these in partnership with selected sites, communities and the department.

This program invests in developing a fit-for-purpose model(s) that commits to partnerships with Aboriginal and Torres Strait Islander communities and educators to improve education, outcomes, and Year 12 attainment. The program targets Aboriginal and Torres Strait Islander primary students through scaling up evidence-based literacy programs to accelerate progress toward Target 5 of the National Agreement on Closing the Gap.

The proportion of Aboriginal and Torres Strait Islander peoples aged 20–24 years attaining Year 12 or equivalent level of education decreases with remoteness. The Year 12 attainment rate is 85 per cent in Major Cities compared with 38 per cent in Very Remote areas (Closing the Gap Report 2020).

In Year 3 National Assessment Program – Literacy and Numeracy (NAPLAN) reading assessments, Indigenous students are on average, two years behind non-Indigenous students.

Australian Institute for Health and Welfare (AIHW) modelling suggests the trend for Year 12 or equivalent attainment will reach 85 per cent by 2031—a shortfall of more than 10,000 students, according to Australian Bureau of Statistics student numbers. This program ultimately aims to improve Aboriginal and Torres Strait Islander student attendance, achievement and attainment outcomes as the key drivers that will support a higher trajectory for Year 12 attainment over the next decade.

Program measures of success will include increased attendance rates, improved NAPLAN performance and Year 12 attainment. Participating schools will be expected to report annually with Aboriginal and Torres Strait Islander student outcomes, including attendance, engagement, and Year 12 attainment rates, to inform an evaluation of the program.

The department will deliver the program through a grant process in accordance with the Commonwealth resource management framework, including the PGPA Act, the CGRGs and other relevant financial delegations, including Accountable Authority Instructions. Following

stakeholder engagement on delivery model(s), the grant process will likely be via a targeted or closed non-competitive process, reflecting the specialised nature of the program.

Grants under the program will be administered through the Community Grants Hub. The supplier(s) will respond to grant guidelines developed by the department and the National Indigenous Australians Agency (NIAA) in accordance with the CGRGs and the grant details posted on the GrantsConnect website at [www.grants.gov.au](http://www.grants.gov.au).

The grants guidelines will outline the selection criteria for a supplier(s) to deliver this program, and applications will be assessed against agreed criteria. Applicants will be required to provide evidence of sustained consultation with local Aboriginal and Torres Strait Islander communities, and support of the appropriate state or territory government.

The process for awarding the grants will be conducted in accordance with the CGRGs, including in relation to publishing information about the outcome of the selection process.

Final sign off will be sought from the Minister for Education and Youth (or a delegate of the Secretary of the department) with a reporting mechanism to include the Minister for Indigenous Australians and the NIAA. The delegate is the First Assistant Secretary (SES Band 2), Improving Student Outcomes Division. The First Assistant Secretary has responsibility for oversight of the program and has the relevant understanding of the policy context within which the program is intended to operate.

Payments will be staggered over the length of the funding agreement to ensure deliverables are met, with the Community Grants Hub remaining responsible for administering the grant.

Under the National Agreement on Closing the Gap, the Australian Government is required to submit an implementation plan that will be monitored by the Joint Council on Closing the Gap and outlines initiatives and funding of measures. This proposal is identified as an activity that will support the Government's Closing the Gap Implementation Plan as part of a broader package of measures.

Grant decisions made under the program are not considered suitable for independent merits review. It is expected that a finite number of schools (approximately 10 in total) will benefit from this program and overturning a decision to allocate funding to one or more schools would affect an allocation already made to another school in need. Further, it is expected that a cluster of schools within a region will be selected to participate in the program, increasing the interconnectedness of decisions and impact of an independent review. The availability of an independent review would also cause further delays in channelling funds into the program as for a school to be selected, their level of need will need to be assessed as high.

The ARC has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (paragraphs 4.11 to 4.19 of the ARC guide).

Consultation has taken place with the WA Department of Education and key stakeholders involved in the delivery of KSP on the implementation of this program. Consultation has also been undertaken at the Commonwealth Government level with the NIAA and within the department. The Commonwealth Government's Closing the Gap Implementation Plan, of which this program is a part, was developed in consultation with the Coalition of Peak Aboriginal and Torres Strait Islander organisations.

Consultations were generally supportive of the program to provide support for remote Aboriginal and Torres Strait Islander students and provided constructive feedback regarding the possible locations for the program.

Funding for the program was included in the 2021-22 Mid-Year Economic and Fiscal Outlook under the measure ‘Closing the Gap Package’ for a period of five years commencing in 2021-22. Details are set out in the *Mid-Year Economic and Fiscal Outlook 2021-22, Appendix A: Policy decisions taken since the 2021-22 Budget* at pages 214-216.

Funding of \$10.0 million over five years from 2021-22 for this item will come from Program 1.5: Early Learning and Schools Support, which is part of Outcome 1. Details are expected to be included in the 2021-22 Portfolio Additional Estimates Statements for the Education, Skills and Employment portfolio.

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

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

#### Race power

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

The program aims to accelerate progress against increasing the proportion of Aboriginal and Torres Strait Islander people (age 20-24) attaining year 12 or equivalent qualification to 96 per cent. This is Outcome 5 under the National Agreement on Closing the Gap.

To achieve this, the program will focus on improving student outcomes and attendance rates and school responsiveness to community needs and aspirations. As an expansion of the KSP, the program will continue to target schools located in remote and regional areas that have a high proportion of Aboriginal and Torres Strait Islander students.

#### External affairs power

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

Australia has obligations relating to the ICESCR and the CRC.

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

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

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

Article 28 of the CRC is in similar terms to Article 13 of the ICESCR.

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

This program is directed at improving student attendance, achievement and attainment outcomes. The program seeks to achieve this through implementing targeted teaching practices, delivering strategies to resolve student non-attendance and increasing student and community engagement.

New **table item 547** establishes legislative authority for government spending on Workforce Australia.

As part of the 2021-22 Budget, the Australian Government announced the New Employment Services Model that would replace jobactive from 1 July 2022. The new employment services available under the new model will be known as Workforce Australia and will be administered by the department. The media release is available at <https://ministers.dese.gov.au/robert/securing-our-economic-recovery-keeping-australians-working>.

Workforce Australia will consist of online services and provider-led services. Workforce Australia Online (Online Services) will make better use of digital technology to support job seekers to find work. In addition to the full online service for fully eligible participants a new base online employment service will be made available to all Australians, including for volunteer job seekers.

Workforce Australia Services, which are provider-led services, will be available for job seekers assessed as being at greater risk of becoming long-term unemployed, including having Vocational or Non-vocational barriers to work. This is an intensive service incorporating in-person Provider support – job seekers will be able to choose their Provider, receive individually tailored case management, and undertake a range of activities to help them prepare for, and transition into work.

Under Workforce Australia, specialist Providers will be engaged for their expertise to tailor services to meet the needs of specific groups, such as Indigenous Australians, ex-offenders, Culturally and Linguistically Diverse and refugee job seekers. Specialist Providers will operate under the same program settings as generalist Providers, but will only work with job seekers from their target cohort.

Delivery of employment services is increasingly being supported by technology. From July 2018 the Government began trialling online employment services, which allowed job-ready

job seekers to enter into an employment pathway plan and report job search activity online. In response to COVID-19, online employment services were significantly expanded.

A key feature of the new model will be job-ready job seekers being able to access the Points Based Activation System (PBAS). PBAS is a new approach to activation, recommended by the Employment Services Expert Advisory Panel, to improve the way job seekers meet their mutual obligation requirements – for job seekers participating in online services and job seekers receiving the services of a Provider. While job search remains a core element, job seekers will be able to access other activities on their pathway to employment and be rewarded for their active effort and engagement.

Job seekers with mutual obligation requirements will need to meet a certain number of points per reporting period as a requirement in their employment pathway plan. They will be able to do this by undertaking tasks and activities that support their connection to the labour market, and will meet their points target through undertaking approved tasks such as job search, attending interviews, study and training, voluntary work or other activities.

Job seekers who are assessed as job-ready and able to use and access Online Services, without being serviced by a Provider. Job seekers will still need to meet requirements commensurate with their capacity, similar to those in provider-led servicing, but how they report those requirements will change.

Departmental evidence shows that online servicing is effective. As at 31 January 2021, over 400,000 referrals to Online Employment Services since 20 March 2020 have exited and not returned to employment services. In addition, departmental post-program monitoring surveys have shown that:

- 73 per cent of participants were employed three months after exiting Online Employment Services;
- 80 per cent of participants were in work and/or study three months after exiting Online Employment Services; and
- for participants who exited the New Employment Services Trial (NEST) Digital Services, 86.4 per cent were employed and 89.3 per cent had a positive outcome three months later.

These results demonstrate job-ready job seekers can effectively achieve their pathway back to employment using online services and are willing to do so. Supporting effective evidence-based mutual obligation requirements, which maximise the likelihood that job seekers will find work as quickly as they are able, therefore supports and promotes the right to work.

Importantly, online servicing does not mean that computers will not make decisions about the content of employment pathway plans – and nor will computers be delivering employment services to job seekers. Human oversight and assistance also remain an integral part of all employment services and will continue to do so. At any time, job seekers can contact a person in the Digital Services Contact Centre who is trained to answer their questions and assist them with any difficulties. Job seekers are also able to move to a Provider of their choice at any time if they feel the online service is not meeting their needs.

Provider-led services will involve upfront, early investment in an intensive individually tailored case management service for job seekers assessed as being at risk of becoming long-term unemployed and having Vocational or Non-vocational barriers to work. Under provider-

led services, job seekers will be supported by their Provider to access a range of services, activities and complementary programs to address their barriers and move job seekers into work.

Provider-led services will provide job seekers with intensive face-to-face servicing, and individually tailored case management to assist job seekers to address barriers, improve their employability and move into work. The services will be flexible and innovative service delivery methods that maximise accessibility and ensure that support is appropriate to each job seeker's individual circumstances.

Job seekers will have access to work trial opportunities, through Youth Jobs PaTH Internships and a National Work Experience Program and other assistance such as through 'Hire' – Youth Bonus Wage Subsidy will be targeted to disadvantaged job seekers with Providers (Transition to Work and ParentsNext).

Job seekers will also have support through the Employment Fund that will be available to Providers to assist job seekers to access the support that is best suited to their individual needs and is responsive to the needs of employers in the local labour market.

Job seekers receiving provider-led services will also have access to a range of support available through the Digital Employment Services Platform. Providers will be paid under a payment structure which helps them to deliver intensive support to job seekers who need the most assistance, including:

- up-front engagement payments to support early investment in job seekers;
- outcome payments to reward moving job seekers into employment;
- progress payments to recognise the completion of milestones towards employment;
- and
- a very long-term unemployment bonus to encourage finding employment for the most disadvantaged job seekers.

A national panel of organisations approved to deliver provider-led services will be established through a Request for Proposal process. Sub-panels will sit under the national panel and align to each employment region. Licences will be allocated to select panel members (becoming Providers) in each employment region, initially for a period of three years, and as a generalist or specialist Provider. High performing Providers will have their licences extended whereas Providers which consistently fail to meet standards will exit the market.

The system was recommended by the independent Employment Services Expert Advisory Panel. The licencing system will reduce red tape and simplify the approach for Providers to enter and exit the market. It will ensure high quality services for job seekers and employers, including allowing for tailored specialist services to be delivered by specialist Providers for identified cohorts of job seekers. It will also encourage competition and diversity in the Provider market, and result in the establishment of a market of suitable organisations that can assist the Government's capacity to flexibly and responsively meet the needs of changing labour markets



### *Employment Fund*

An Employment Fund will be established as part of Workforce Australia, which is a pool of funds that is used by Providers and the department's Digital Services Contact Centre to support participants to build experience, develop skills and prepare for work.

Participants eligible for the full level of services in Online Services will attract a limited amount of Employment Fund credits from the notional funding pool - \$300 - allocated after two months. These participants will be eligible to access the Employment Fund immediately on commencement in full online services. Participants in provider-led services will attract larger credits of \$1,600.

Purchases may be for things such as work-related licensing, transport, training, clothes, tools, books, equipment and mobile phones. Providers will also be able to offer wage subsidies, through the Employment Fund. Employment Fund purchases must be in accordance with the Guidelines, provide value for money, comply with any laws that may apply, withstand public scrutiny and not bring the Government into disrepute.

The Employment Fund will continue to be demand driven with credits allocated to a provider's notional bank balance as new participants enter the caseload. These credits are not quarantined to any one participant but can be used flexibly to provide support to any participant being serviced by the same Provider. Any unused Employment Fund credits cannot be retained by the Provider.

Transition credits will be made to the Provider when a participant transitions from jobactive or the NEST to Workforce Australia. Transition credit amounts will vary between \$400 and \$1,200, based on the participant's period of unemployment.

Participants in full online services will receive support through the Employment Fund for some of the commonly used items required to connect a participant to employment, such as a police checks. A streamlined Employment Fund will progressively increase automation, reduce red-tape, and offers relocation assistance for job ready participants in full online services.

Providers will be required to proactively help job seekers to prepare for work and build their experience and develop skills to meet the needs of employers and their current job vacancies. Employment Fund credits can be used by Providers to access the services that job seekers need. The flexibility of the Employment Fund enables assistance to be targeted to individual circumstances, employer requirements and changing labour market conditions in their local regions. Over time, the system will increase automation to reduce administration for users.

Providers will continue to have discretion to provide tailored support to participants through the Employment Fund. Providers will be required to first pay for goods and services before seeking reimbursement.

Relocation Assistance will be available as a category of the Employment Fund and offered at the Digital Services Contact Centre or the Providers' discretion. Participants are eligible immediately. If a participant accepts an employment position more than 90 minutes away from their current residence, enhanced services Providers or the Digital Services Contact Centre have the discretion to offer relocation assistance.

This can include reimbursing the participant for costs directly related to their relocation or making payments directly to suppliers, for example removalists, including ahead of the person's move. There will be no minimum requirements regarding the number of hours worked per week or the duration of the employment placement for the participant to be eligible for assistance. Providers will be expected to make defensible decisions on the amount of relocation assistance provided to a participant, proportionate to their individual circumstances.

### *Workforce Specialist*

Under Workforce Australia, a panel of Workforce Specialists will be established from July 2022 to deliver a range of projects to connect suitable job seekers in Workforce Australia including those in Online Services, provider-led services and Transition to Work with industries and occupations with identified workforce needs. Further information about Workforce Specialists is available on the department's website (<https://www.dese.gov.au/new-employment-services-model/workforce-specialists>).

The Workforce Specialists initiative aims to:

- connect job seekers to labour market opportunities in identified industries and occupations, providing a pathway to support job seekers to gain or build on the skills and attributes needed to take up these opportunities;
- provide project-based solutions to meet the workforce needs of industries identified in the Framework or other emerging needs as identified by the department, through connection to suitable job seekers in employment services; and
- provide project-based solutions across a broad geographical or industry/occupation focus, leveraging existing initiatives at the national and state and territory government level to support job seekers connect with labour market opportunities in identified industries and occupations.

The Workforce Specialists panel will commence July 2022 following the outcomes of a Request for Proposal. The initiative is ongoing, with the panel engaged under a Deed of Standing Offer for an initial period of six years, with the option to extend the panel for up to four years. The panel may also be refreshed when required. Panel members will be engaged on an as-needed basis to provide tailored project-based solutions respond to labour market opportunities for job seekers in identified industries and occupations.

Workforce Specialists may put forward project concepts/ideas to the department for consideration. The department may also approach one or more Workforce Specialists with a project concept for discussion.

Workforce Specialist projects will actively target identified industries and occupations with significant labour market opportunities for job seekers in Online Services, Workforce Australia Services and Transition to Work. Projects will assist job seekers prepare for and/or move into work to assist with meeting the workforce needs of identified industries and occupations. Projects may also support job seekers to identify, access and engage with:

- labour market opportunities within these industries;
- the skills and training pathways to connect with these opportunities;
- work trials (i.e. PaTH Internships or National Work Experience Program) placements to develop and demonstrate skills to a potential employer;

- potential areas for career progression; and/or
- the support available to prepare for and take up these employment opportunities.

The design of projects delivered by Workforce Specialists will be informed and guided by the Framework, align with the objectives of the Workforce Specialists initiative, and represent value for money. Projects will vary in size and duration and one or more Workforce Specialists could be engaged on any one project.

Projects could potentially include increasing awareness of opportunities for job seekers within an industry, improving job seeker job readiness, creating industry specific pre-employment pathways for job seekers including targeted training, assessment centres and induction training to support job seekers to access large scale recruitment opportunities, opportunities for job seekers to gain work experience, and providing post-placement support to job seekers starting a new job to support sustainability of the placement.

Projects will complement other services and, where possible, will leverage existing programs and initiatives in design and operation. This includes (but is not limited to) Online Services, Workforce Australia Services, Transition to Work, the Local Jobs Program, Employer Liaison Officers, complementary employment services programs (such as Youth Jobs PaTH, the National Work Experience Program) and other initiatives, including those funded by state and territory governments. Workforce Specialist projects will generally support responses to workforce needs that are not delivered by other existing programs and/or where additional capacity is required.

A Workforce Specialist project may include, but is not limited to, a Workforce Specialist delivering one or more of the following services:

- industry information sessions and activities which increase awareness of opportunities for job seekers within an industry;
- the development of digital tools and resources for job seekers or other stakeholders to meet industry workforce needs;
- pre-employment and tailored training courses to support job seekers prepare for roles within an industry or occupation;
- events and networks that connect job seekers to businesses with vacancies;
- assessment centres and induction training that support job seekers connect to large scale recruitment exercises;
- identify and facilitate PaTH Internship and National Work Experience Program placements for job seekers;
- providing post placement support to job seekers following placement into employment;
- project management and assessment/trial of new recruitment approaches for job seekers; and
- other services that will support job seekers prepare for and/or move into employment to meet the workforce needs of identified industries.

As part of the project approval process, the department will consider whether the project concept or idea aligns with the objectives of the Workforce Specialists initiative. This will include consideration of whether the project concept should be delivered through another program or through the ordinary functioning of the labour market. Projects must also meet the following core project criteria:

- a) responds to industry or occupation priorities identified in the Framework or other emerging priorities as assessed by the department;
- b) connects business and industry (and associated employment opportunities) with job seekers and/or prepares job seekers for employment;
- c) provides value for money; and
- d) can be delivered according to the proposed timeframe and within the scope and budget of the proposed Workforce Specialist project.

The project approval process will include an initial assessment of the project concept and, where appropriate, discussions with one or more Workforce Specialists. Project concepts may progress to a co-design stage (if approved by the department) where the Workforce Specialist(s) and the department will further refine the project concept prior to final approval. If the Workforce Specialist(s) and the department agree in writing to engage in co-design, the department will pay the Workforce Specialist a co-design fee of \$3,000. Other stakeholders may also be engaged during co-design, particularly employers or training providers involved in the delivery of the proposed project.

During co-design, the Workforce Specialist(s) and the department will develop a Workforce Specialist project plan, which will set out the relevant project details, deliverables and requirements, including payments, milestones and key performance indicators. If, following discussion and co-design, the department approves the project for delivery, the Workforce Specialist will be engaged to deliver the project under a work order. The final Workforce Specialist project plan will be attached to the project work order. The Workforce Specialist will deliver the approved Workforce Specialist project in accordance with the relevant work order, Deed of Standing Offer and associated guidelines and other relevant documentation.

Job seekers registered in Workforce Australia (including Online Services and provider-led services) or Transition to Work are eligible to participate in a Workforce Specialist Project. Eligibility for Workforce Specialist Projects will expand to other job seekers from July 2023 including participants in Disability Employment Services and ParentsNext, and volunteer job seekers (including those not on income support).

The majority of participants will be on income support and have mutual obligation requirements under the social security law. It is expected that participation in a Workforce Specialist project will partly or fully meet a participant's mutual obligation requirements to maintain eligibility for social security payments. Where participants cannot fully meet their requirements through participation in the initiative, there will be other options for them to do so in accordance with usual arrangements regarding mutual obligations.

Individual projects may have additional eligibility considerations that the Workforce Specialist will need to agree with the department as part of the work order and attached Workforce Specialist project plan. Participation in Workforce Specialist Projects is voluntary for Participants. They can use participation in a Workforce Specialist Project to contribute to meeting their mutual obligation requirements.

The *Workforce Connections: Workforce Specialist Project Framework* (the Framework) identifies the key industries and occupations with significant labour market opportunities for job seekers to inform delivery of Workforce Specialist projects. The Framework's objective is to inform and guide the delivery of projects by Workforce Specialists.

The Framework has been developed by the department in consultation with various stakeholders including industry, employers, government agencies and the National Skills Commission. The Framework is designed to support and complement industry-specific workforce strategies and plans.

The Framework will be reviewed regularly to respond to changes in the labour market. Workforce Specialists may also be used to respond to emerging workforce opportunities or challenges. This may include an immediate need for support in response to a rapidly emerging labour market opportunity or challenge, or an emerging and significant labour market opportunity for job seekers outside of the identified industries, that the department determines a Workforce Specialist Project would be beneficial.

The department provides no guarantee of the number or value of projects for each industry identified in this Framework. Each project concept will be considered in line the project approval process outlined above, of which the Framework is one element.

The department is undertaking a procurement process to establish a panel of organisations for the delivery of employment services as part of Workforce Australia, which includes various employment programs such as Work for the Dole. Successful tenderers will be able to enter a deed with the department under which they make an irrevocable standing offer to supply Workforce Australia services to the department in accordance with any Work Order issued by the department.

A Head Licence is formed when the department issues a Work Order. Under a Head Licence, the Panel Member will be required to deliver Enhanced Services in particular Employment Regions.

For each Employment Region, the department will establish a Sub-panel with Panel Members appointed for the particular Employment Region. The rights and obligations that the Panel Member has under a Head Licence, and that relate to the delivery of provider-led services in a particular Employment Region, are referred to as a 'Licence'. Under a Licence, the Panel Member will be either a Specialist Provider or a Generalist Provider. In particular, the Panel Member will be a Specialist Provider or a Generalist Provider with respect to the particular Site(s) covered by the relevant Licence. However, the Provider may be both a Generalist Provider and a Specialist Provider at a particular Site (covered by two separate Licences).

In order to maintain its membership of the Panel, the Panel Member must comply with certain minimum requirements, whether or not the Panel Member has been issued with a Head Licence.

The Workforce Specialists panel will be established through a procurement exercise in the first half of 2022. Following the Request for Proposal process, the panel is anticipated to commence from July 2022. Panel members will enter into a Deed of Standing Offer with the department for the duration of their appointment to the panel.

Organisations will be appointed to the Workforce Specialist panel based on their demonstrated capacity to deliver Workforce Specialists services. This will include consideration of their ability to tailor services to support job seekers prepare for and/or take up employment, their capacity to engage and collaborate with stakeholders to deliver Workforce Specialist projects (including business, industry, service providers and other key

stakeholders), and their industry knowledge and connections to access labour market opportunities for job seekers.

Decisions in relation to which organisations are appointed to the relevant panel will be made by a delegate of the Secretary of the department, the Deputy Secretary (SES Band 3) responsible for Workforce Australia and the Workforce Specialists initiative. Procurement decisions will be made in accordance with the Commonwealth resource management framework, including the PGPA Act, the CPRs, and the department's Accountable Authority Instructions.

The decisions to appoint Workforce Australia or Workforce Specialists panel members will not be subject to an independent merits review process. In accordance with usual practice, procurement decisions, once made, will be final and not subject to merits review. Re-making a procurement decision after entry into contractual arrangements with a successful tenderer would be legally complex, impractical and result in unacceptable delays to the implementation of the program. This is consistent with paragraphs 4.11 – 4.19 of the ARC guide.

The department will provide opportunity for tenderers to make inquiries and complaints, and provide feedback to unsuccessful tenders. These complaints and inquiries can be made at any time during the procurement process, and will be handled in accordance with the probity processes for the procurement which will be made available on AusTender.

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

Any person or organisation dissatisfied with one of the above decisions by the department could raise the matter with the Commonwealth Ombudsman. The Ombudsman has the power to ask the department to answer questions or to seek relevant documents.

The department gives weight to any recommendations by the Ombudsman and is required to respond to the Ombudsman regarding what it has done in response to any recommendations. Failure to adequately respond could lead to adverse public reporting by the Ombudsman.

The department may engage Workforce Specialists appointed to the panel on a project-by-project basis through a work order.

Decisions in relation to project approval and work order will be made by a delegate of the Secretary (e.g. Executive Level 2, SES Band 1, State Manager or above responsible for the management of the Workforce Specialist project) once they are satisfied the Core Project Criteria are met, including that the project will deliver value for money. If the project is approved, the Workforce Specialist will be engaged to deliver the project under a work order. The work order will include the Workforce Specialist project plan, and set out the relevant project details, deliverables and requirements, including payments, milestones and key performance indicators.

The work order, and attached Workforce Specialist project plan, will form the contract for the delivery of the Workforce Specialist project once executed by the department. Alternatively, the co-design process will end when one or more parties choose to no longer proceed with the development of the project concept, including where the project concept does not meet the core project criteria. This may occur at any step prior to the execution of the work order.

Each co-design process is non-binding and completion of the co-design process does not guarantee that the project will proceed to a work order for the delivery of the project. All procurement decisions will be made in accordance with the PGPA Act, the CPRs and the department's Accountable Authority Instructions.

The department will provide an opportunity for suppliers and respondents to make complaints if they wish, and to receive feedback. These complaints and inquiries can be made at any time during the procurement process, and will be handled in accordance with probity requirements. Information about the tender and the resultant contracts will be made available on AusTender ([www.tenders.gov.au](http://www.tenders.gov.au)) once the contracts are signed. Procurement decisions will be based on value for money, including capability and capacity to deliver, and price and risk considerations.

Decisions about which respondents to the Request for Proposal will be appointed to the panel will be made by a delegate of the Secretary of the department. Any decision of the Delegate in relation to the outcome of the RFP process is final and not subject to review or appeal. Organisations not appointed to the Workforce Specialists Panel following the Request for Proposal, may still be able to participate in the initiative.

First, the department reserves the right to make further approaches to the market during the term of the panel to appoint additional panel members, in order to meet the department's requirements, or to encourage competition or for any other reason. Any further approach to the market to refresh the panel will be conducted in accordance with the CPRs.

Second, the Panel established through the Request for Proposal will be a non-exclusive Panel. This means the department may also purchase services for Workforce Specialist projects through other procurement processes and other funding arrangements (where funding is available for that purpose). This will allow the department the flexibility to address needs and respond to government priorities as they arise if the panel does not meet the department's requirements.

Third, an unsuccessful respondent to the Request for Proposal may be able to participate in the initiative in collaboration with a panel member, through invitation to participate in the co-design process and/or potential to sub-contract service delivery where appropriate.

The decision to engage in co-design or to offer a work order will be made by a departmental official as a delegate of the Secretary based on analysis of the concept against program objectives and the core project criteria. The decision to offer a work order to a panel member will be made by the department based on the merit of the project concept, including the extent to which it provides value for money, supports job seekers connect with labour market opportunities to meet workforce needs and meets program objectives.

The department may decline to engage in co-design with a panel member or decline to offer a work order. However, this would not necessarily prevent the panel member from participating in the Workforce Specialist initiative as it would be open to the panel member to modify their project concept or develop a new project concept for consideration by the department.

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

Further, a decision to not fund a potential Workforce Specialist project, does not preclude the organisation (s) from seeking funding to deliver the proposed project through an alternative funding source or delivering the project through alternative means. Membership of the panel itself does not guarantee the Workforce Specialists panel member funding to deliver projects. That is, the department provides no guarantee of business under the panel, nor the volume or type of projects referred to Workforce Specialists. Not being on the panel will not necessarily prevent an organisation from participating in the initiative or from collaborating with the department through other processes. Decisions not to offer panel members co-design or a work order will also not preclude them from future collaboration with the department as outlined above.

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

In relation to decisions about whether to offer a work order to a panel member, a further reason supporting the absence of independent merits review is that the decisions will involve the allocation of finite resources from which all potential claims for a share of the resource cannot be met.

Overturning a decision not to offer a work order to one party would mean that less money is available for work orders for other parties. The Administrative Review Council's guide indicates that decisions involving the allocation of finite resources between competing parties are generally considered to be inappropriate for merits review (see paragraphs 4.11 to 4.14 of the guide). This reason also applies in relation to the \$3,000 co-design fee.

Where the department takes the decision that a project concept should not proceed, the department will provide high-level feedback regarding this decision when the Workforce Specialists is notified of the outcome. The option to request further information and a departmental review of this decision will be available to Workforce Specialists.

The department is committed to ensuring that competition for the purchase and supply of employment services is fair and transparent. Where requested by an organisation or individual, the department will review its decision to exclude them from participating as a panel member, or not to engage with them in co-design or offer a work order. In the event the



request is made to the department, the department will handle the matter by acknowledging receipt of the request and contact the individual with a view to resolving any issues as soon as practicable. The department will review the issue and work with the complainant to address it where needed. The department will respond to the complainant regarding the outcome of their request for review.

Any person or organisation dissatisfied with one of the above decisions by the department, or dissatisfied with their dealings with a panel member as part of the initiative, could also raise the matter with the Commonwealth Ombudsman.

In relation to decisions about whether a particular job seeker can participate in Workforce Specialists or a Workforce Specialists project, Workforce Specialists may make decisions about whether particular job seekers can participate in that program. In addition, Providers may also make decisions about whether particular job seekers can participate in Workforce Specialists.

In practice, Workforce Specialists and Providers are very likely to encourage job seekers to participate in Workforce Specialist projects as the projects will be generally relevant to supporting the job seeker to prepare for, find and/or keep paid work. However, where a job seeker is not selected to participate in a project or some of the activities within a project, or is not satisfied with the level of assistance they receive under the initiative, it will be open to them to access other projects in their area under the initiative, or assistance from the suite of other employment programs.

A decision to not provide a job seeker a placement to participate in a Workforce Specialist project would not substantially affect that job seeker's interests, whether or not the job seeker was subject to mutual obligation requirements at the time. This is because of the availability of other activities and programs that provide similar employment experience and training opportunities.

Depending on the particular employment services program that the job seeker is participating in, these could include activities such as Employability Skills Training, Career Transition Assistance, the Local Jobs Program, the National Work Experience Program, Youth Jobs PaTH and Work for the Dole. These may be used not only to help the job seeker prepare for, find and/or keep paid work, but also to assist the job seeker to meet any applicable mutual obligation requirements and therefore maintain their eligibility to receive their social security payment.

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

In practice, there is no prospect that not providing a job seeker access to the initiative would affect their eligibility to receive their social security payment, as they could meet their mutual obligation requirements in other ways, as noted above.

However, if a job seeker did consider that their ability to meet their mutual obligation requirements had been impacted by not accessing the initiative, for example because they were required to participate in an alternative activity which they considered was not suitable to their circumstances, and they were consequently subject to compliance action for failing to participate, they could seek merits review by Services Australia of any decision to reduce, cancel or suspend their payment. If dissatisfied by the Services Australia's decision, they could seek merits review of the decision by the AAT. If dissatisfied by the AAT's decision they could, on questions of law, appeal to the Federal Court of Australia.

A further reason supporting the absence of independent merits review in relation to participation in Workforce Specialists or a specific project is that the decisions will involve the allocation of finite resources from which all potential claims for a share of the resource cannot be met. Each Workforce Specialist project will have a finite budget, allocated from within the capped Workforce Specialists funding of \$12.5 million each financial year.

The majority of projects will only be able to support a finite number of participants. The Workforce Specialist will be responsible for considering job seeker suitability, capacity and eligibility to participate in a Workforce Specialist project. This will be done in accordance with relevant legislation, the Deed of Standing Offer, the relevant work order and project plan agreed with the department, and Workforce Specialist guidelines.

Overturning a decision not to provide access to the initiative or a specific project may adversely affect the support and assistance available to other job seekers participating in the initiative or specific project.

The ARC guide indicates that decisions involving the allocation of finite resources between competing applicants is generally considered to be inappropriate for merits review (see paragraphs 4.11 to 4.14 of the guide). As outlined above, the decision to not provide a job seeker access to the initiative or a specific project would not prevent the job seeker from obtaining similar assistance through the suite of other employment programs and activities or another Workforce Specialist project.

As for Workforce Specialists, and consistently with paragraphs 4.56 and 4.57 of the ARC guide, merits review of decisions about whether a job seeker could receive assistance or support from Workforce Australia, including whether they could receive Employment Fund support or participation in a Work for the Dole activity, is not needed. This is because, as noted above, a job seeker unable to receive one type of support on one occasion could receive different support under Workforce Australia, or support on a different occasion, or similar assistance through the suite of other employment programs and activities. A job seeker who is dissatisfied for any reason in connection with the amount or quality of the support or assistance they receive could raise the matter with the department or the Commonwealth Ombudsman as set out above.

In practice, there is no prospect that not providing a job seeker access to a particular Workforce Australia activity or type of support would affect their eligibility to receive their social security payment, as they could meet their mutual obligation requirements in other ways.

However, if a job seeker did consider that their ability to meet their mutual obligation requirements had been impacted by not accessing particular support or a particular activity, for example because they were required to participate in an alternative activity which they considered was not suitable to their circumstances, and they were consequently subject to compliance action for failing to participate, they could seek merits review by Services Australia of any decision to reduce, cancel or suspend their payment. If dissatisfied by the Services Australia's decision, they could seek merits review of the decision by the AAT. If dissatisfied by the AAT's decision they could, on questions of law, appeal to the Federal Court of Australia.

The department has a complaints handling process in place for all employment services programs should a job seeker wish to raise concerns or a complaint in relation to their request to participate or their participation in Workforce Australia or any other employment program, including Work for the Dole.

Job seekers should first raise any issues with the Provider to determine if they can be resolved. If the issue cannot be resolved, or the job seeker cannot raise the issue with the Provider, the job seeker may contact the department's National Customer Service Line. A customer service officer will treat the job seeker's complaint seriously and objectively. The department will follow the process outlined in the department's complaints handling fact sheet (<https://www.dese.gov.au/about-us/resources/complaints-factsheet>).

Workforce Australia was informed by extensive consultation with: over 1,400 stakeholders, national and international research, intensive user centred design with job seekers, employers and Providers, and consultation and user centred design during the development of the final model. This includes the independent Employment Services Expert Advisory Panel report, '*I Want to Work: Employment Services 2020*' which was provided to the Government on 15 October 2018.

Stakeholders have acknowledged and supported Workforce Australia due to its alignment with the advice of the Panel. Testing of the new model through the NEST and the Online Employment Services Trial also enabled a collaborative approach to testing, learning and refinement.

Several stakeholders were supportive of the Employment Fund including noting it is a critical tool for Providers, including specialist Providers. Some stakeholders raised concerns Providers are required to deliver Employability Skills Training (EST) without additional funding and suggested EST course fees are allocated quarantined funding, rather than not being reimbursed through the Employment Fund.

It was suggested that wage subsidies be funded through a separate funding source rather than through the Employment Fund. Several stakeholders sought more information about the Employment Fund including about the types of support and services available, and the level of flexibility in purchasing.

Since the announcement of the new model in the 2021-22 Budget, the department undertook stakeholder consultation in the second half of 2021 to inform the further development of the Workforce Specialists initiative, in particular the first iteration of the *Workforce Connections: Workforce Specialist Project Framework*. A range of stakeholders were consulted, including:

- industry associations, business councils and other representative bodies;

- Providers and their representatives;
- Commonwealth, state and territory government agencies, including the National Skills Commission; and
- the Employment Services Advisory Group (including employment services, employer and job seeker representatives).

Stakeholder consultation included stakeholder meetings, online webinars and a feedback survey. Recordings of the webinars, including the presentation and transcript, are available on the department's website.

Consultation was also undertaken with program areas within the department currently, or previously, delivering project-based solutions to connect job seekers with labour market opportunities. This includes program areas delivering the Local Jobs Program, Launch into Work and the PaTH Business Placement Partnerships Program, to ensure lessons learnt are embedded in design and implementation of the Workforce Specialists initiative.

Funding of \$12.5 million will be available each financial year to support the delivery of Workforce Specialist projects, with funding included in the Workforce Australia (New Employment Services Model) appropriation.

Funding of \$4.9 billion for Workforce Australia was included in the 2021-22 Budget under the measure 'New Employment Services Model' for a period of four years commencing in 2021-22. Details are set out in *Budget 2021-22, Budget Measures, Budget Paper No. 2 2021-22* at pages 92-93.

Funding for this item will come from Program 4.1: Employment Services, which is part of Outcome 4. Details are set out in the *Budget 2021-22, Portfolio Budget Statements 2021-22, Budget Related Paper No. 1.4, Education, Skills and Employment Portfolio* at page 77.

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

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

#### Communications power

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

Workforce Australia will assist job seekers who are digitally literate. These job seekers can access a variety of services online, such as employer matching, tailored learning modules, and career transition advice, while completing their participation requirements such as searching for employment.

#### Social Welfare power

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

Workforce Australia will provide support to job seekers who receive, or may require, unemployment benefits during their pursuit of an employment opportunity. Online Services will provide job seekers who are job-ready with greater choice and flexibility in how they meet their requirements.

Reduced Provider caseloads and new Provider payments to increase investment in job seekers will support more effective individual case management for the hardest to place job seekers. Providers will have demonstrated expertise in working with job seekers with complex needs.

Further support for both job-ready and harder to place job seekers will be available through the Employment Fund and Workforce Specialists.

### External affairs power

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

Australia has obligations relating to the following conventions:

- the ILO Convention 122, including Articles 1 and 2, which provide that Members shall pursue policies designed to promote full, productive and freely chosen employment, and determine measures for achieving those objectives;
- the ILO Convention 88, particularly Articles 1 and 2. ILO Convention 88 relates to the establishment and maintenance of a free public employment service, overseen by a national authority, that ensures the best possible organisation of the employment market for the achievement and maintenance of full employment and the development and use of productive resources;
- the ILO Convention 142, including Articles 1, 2, 3 and 4, which, among other things, relate to:
  - the adoption and development of comprehensive and coordinated policies and programs of vocational guidance and training, which are closely linked with employment;
  - the establishment and development of open, flexible and complementary systems of general, technical and vocational education, educational and vocational guidance and vocational training; and
  - gradually extending, adapting and harmonising vocational training systems to meet the needs for vocational training throughout the life of both young persons and adults in all sectors of the economy and branches of economic activity, and at all levels of skill and responsibility.

In addition to the considerable benefits that the digital platform will generate for users, moving functions into digital channels will allow resources to be redirected away from administration and into proactive support and tailored assistance for the most disadvantaged job seekers who will be serviced by Providers in face-to-face servicing.

## **Statement of Compatibility with Human Rights**

Prepared in accordance with Part 2 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

### ***Financial Framework (Supplementary Powers) Amendment (Education, Skills and Employment Measures No. 2) Regulations 2022***

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

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

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

The *Financial Framework (Supplementary Powers) Amendment (Education, Skills and Employment Measures No. 2) Regulations 2022* amend Schedule 1AB to the FF(SP) Regulations to establish legislative authority for government spending on certain activities administered by the Department of Education, Skills and Employment (the department).

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

- amends table item 34 ‘Work for the Dole’;
- adds table item 545 ‘Competitive fund for micro-credentials (pilot program)’;
- adds table item 546 ‘Scaling up Success in Remote Schools’; and
- adds table item 547 ‘Workforce Australia’.

#### **Amended table item 34 – Work for the Dole and new table item 547 – Workforce Australia**

The amended table item 34 establishes legislative authority for government spending on the Work for the Dole program, which reflected an update to the reference jobactive and the New Employment Services Trial, which are being replaced by Workforce Australia by 1 July 2022.

Work for the Dole is a long standing program, established in 1997 with the aim to bring young people out of isolation, to give them some opportunity to contribute to their communities, to lift their self-esteem, rebuild their motivation and establish contacts that may help them find work. The program’s objective remains similar since inception, with changes over time predominantly focused on expanding the target group from youth.

A strengthened Work for the Dole program under Workforce Australia will incorporate the formalised achievement of core competencies (such as team work or communication skills)

and other, lower complexity, qualifications (such as a forklift licence, or white card) for participants in provider-led services. Work for the Dole will be the default activity for eligible participants not engaged in work, training or work experience at the 6-month activation point or within 3 months for participants moving from Workforce Australia Online Services (Online Services) to Workforce Australia Services, which are provider-led services if they transferred after 12 months of digital servicing.

The amended Work for the Dole program will also include two sub-activities: ‘Placements’ – involving placing a single or multiple participants within an existing function of the Host Organisation, and ‘Projects’ – involving specific projects developed for the purpose of providing a work-like experience for groups of job seekers. Work for the Dole activities may involve attainment of a licence, qualification or other recognised skill or core competency.

New table item 547 establishes legislative authority for government spending on Workforce Australia (previously known as the New Employment Services Model) that would replace jobactive from 1 July 2022. Workforce Australia will consist of digital services and provider-led services.

Online Services will make better use of digital technology to support job seekers to find work. In addition to the full online service for fully eligible participants a new base online employment service will be made available to all Australians, including for volunteer job seekers.

Provider-led services will be available for job seekers assessed as being at greater risk of becoming long-term unemployed, including having Vocational or Non-vocational barriers to work. This is an intensive service incorporating in-person Provider support – job seekers will be able to choose their Provider, receive individually tailored case management, and undertake a range of activities to help them prepare for, and transition into work.

Under Workforce Australia, specialist Providers will be engaged for their expertise to tailor services to meet the needs of specific groups, such as Indigenous Australians, ex-offenders, Culturally and Linguistically Diverse and refugee job seekers. Specialist Providers will operate under the same program settings as generalist Providers, but will only work with job seekers from their target cohort.

An Employment Fund will be available under Workforce Australia, which is a pool of funds that is used by Providers and the department’s Digital Services Contact Centre to support participants to build experience, develop skills and prepare for work. The flexibility of the Employment Fund enables assistance to be targeted to individual circumstances, employer requirements and changing labour market conditions in local regions.

A panel of Workforce Specialists will be established from July 2022 to deliver a range of projects to connect job seekers, including those in Online Services and Workforce Australia Services and Workforce Australia – Transition to Work to identified industries and occupations with workforce needs.

## Human rights implications

The amended table item 34 and the new table item 547 engage the following rights:

- the right to social security – Article 9 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), read with Article 2;
- the right to an adequate standard of living – Article 11 of the ICESCR;
- the right to work – Article 6 of the ICESCR and Articles 1 and 2 of the International Labour Organization’s *Convention concerning Employment Policy* (ILO Convention 122); and
- the right to education – Articles 1, 2 and 4 of the International Labour Organization’s *Convention concerning Vocational Guidance and Vocational Training in the Development of Human Resources* (ILO Convention 142).

### Rights to social security and to an adequate standard of living

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

Article 9 of the ICESCR recognises the right of everyone to social security. The right to social security requires States to establish a social security system and, to the maximum of their available resources, ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.

Article 11 of the ICESCR recognises the right of everyone to an adequate standard of living including adequate food, water and housing, and to the continuous improvement of living conditions.

### Right to work

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

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

Article 2 of the ILO Convention 122 provides that each Member shall determine the measures for achieving the objectives specified in Article 1. This includes the establishment of programs for the application of these measures.



### Right to education

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

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

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

Workforce Australia promotes the right to social security and through that the right to an adequate standard of living, by providing the most job ready job seekers with access to a variety of services online, such as employer matching, tailored learning modules, and career transition advice, while completing their participation requirements such as searching for employment.

In addition to the considerable benefits that the digital platform will generate for users, moving functions into digital channels will allow resources to be redirected away from administration into proactive support and tailored assistance for the most disadvantaged job seekers, who will be serviced by Providers in face-to-face servicing. A key recommendation of the Employment Services Expert Advisory Panel was to leverage the benefits of digital servicing for the most job ready to increase investment in those job seekers who are long-term unemployed or at risk of becoming so. Retaining and improving face-to-face servicing, in provider-led services, will deliver the personalised support needed to decrease the proportion of the caseload that are long-term unemployed or at risk of becoming long-term unemployed.

Under the new model, reduced Provider caseloads and new Provider payments to increase investment in job seekers will support more effective individual case management for the hardest to place job seekers. Providers will have demonstrated expertise in working with job seekers with complex needs.

Safeguards built into the Digital Employment Services Platform (digital platform) will ensure people do not get left behind, including a Digital Services Contact Centre in the department to provide advice and extra support via phone or email. In addition, existing safeguards built into compliance arrangements will ensure that before anybody faces any financial penalty for not meeting their requirements, they will have the appropriateness of their requirements for their individual circumstances assessed twice by a delegate (Capability Interview and Capability Assessment).

Further, if job seekers enter an employment pathway plan online but later consider that their requirements are not appropriate for their circumstances, they will be able to receive assistance to alter their plan, for instance by contacting the Digital Services Contact Centre in the department. This will allow job seekers to adjust their requirements, if appropriate, or report a change in circumstance. This can occur at any time – there will be no rules or time limits on when a plan can be varied. Points Based Activation System will also allow job seekers to easily and quickly adjust the specific method through which they meet their requirements – for instance, in one period a job seeker may choose to meet their requirements solely through job search, in another period they may choose to meet requirements through a mixture of activity participation and job search.

Job seekers who do not meet their mutual obligation requirements may face pause, reduction or cancellation of their participation payment under the compliance frameworks (in Divisions 3A and 3AA of Part 3 of the Administration Act).

If a job seeker using online services is dissatisfied with their plan, they will be able to have it reviewed, initially by the Digital Services Contact Centre, then if necessary by an authorised review officer, the Administrative Appeals Tribunal or a court. Similarly, job seekers using provider-led services will be able to have their plan reviewed through those mechanisms.

Accordingly, these measures enhance job seekers' rights to social security and the right to an adequate standard of living them by providing job seekers greater choice and flexibility in how they meet their requirements and by providing more support for vulnerable job seekers. Promoting greater choice in how job seekers access employment services while improving delivery for vulnerable job seekers also enhances their ability to find and maintain meaningful employment, which promotes enjoyment of the right to work.

The Employment Fund is a flexible pool of funds that is used to pay for goods and services to support job seekers find and maintain employment, for example police checks or access to protective personal equipment. The Employment Fund will be divided into two separate funds associated with Online Services and provider-led services respectively – i.e. a 'Digital Employment Fund' and an 'Employment Fund'.

Job seekers in the full level of services in Online Services will have access to a Digital Employment Fund for some of the most commonly used Employment Fund items, such as police checks. Where possible, the system will enable the job seeker to access the item through the digital platform and automate the payment to suppliers. Where this is not possible, the Digital Services Contact Centre will liaise with suppliers and make the payment. Providers will administer a broader range of Employment Fund purchases to assist more disadvantaged job seekers.

The new Employment Fund arrangements promote human rights as they improve job seeker access to training, employment opportunities (through wage subsidies paid to employers, or employment prerequisites such as police checks) and through equipment which assists with job searching and job readiness (such as mobile phone credit and work uniforms). The flexible and beneficial nature of the Employment Fund measure enhances employment outcomes for job seekers, while improving job seeker well-being, promoting the right to work, the right to education, the right to social security and the right to an adequate standard of living.

The Provider licensing measure within provider-led services promotes human rights as it ensures that Providers demonstrate their ability to provide effective support to job seekers with more complex needs into employment through quality relationships with local employers and strong links with local community services.

This will improve a vulnerable job seeker's access to personalised support from their Provider, thereby enhancing the job seeker's ability to find and maintain meaningful employment, which promotes enjoyment of the right to work. Provision of such personalised support would also enhance a job seekers' rights to social security and the right to an adequate standard of living by giving them greater choice and flexibility in how they meet their mutual obligation requirements. For example, a more personalised and focussed service from a Provider will enable better tailoring of mutual obligation requirements to suit a job seeker's individual circumstances, meaning they are more likely to commit to these requirements and improve their prospects of employments and otherwise.

The Workforce Specialists measure will assist job seekers to gain employment through involvement in training and experience opportunities. Workforce Specialist Projects could potentially include increasing awareness of opportunities for job seekers within an industry, improving job seeker job readiness, creating industry specific pre-employment pathways for job seekers including targeted training, assessment centres and induction training to support job seekers to access large scale recruitment opportunities, opportunities for job seekers to gain work experience, and providing post-placement support to job seekers starting a new job to support sustainability of the placement.

In doing so, the measure advances the right to work and the right to education, through the provision of more guidance, work experience and training opportunities, which are tailored to support job seekers to enhance their ability and readiness to step into or return to the workforce.

The objective of Work for the Dole is to provide work-like experiences to participants which enhance their employability, networks and self-confidence amongst other attributes. A strengthened Work for the Dole program will incorporate the formalised achievement of core competencies and other, lower complexity, qualifications for job seekers in Enhanced Services not engaged in work, training or work experience at the 6-month activation point or within 3 months for job seekers moving from Online Services to provider-led services if they transferred after 12 months of digital servicing.

Consistent with current practices, Work for the Dole will only be available to job seekers in provider-led services who require greater support to improve their skills and to enter or to re-enter the workforce.

'Placements' will involve placing single or multiple job seekers within an existing function of the Host Organisation and will have a focus on the development of core competencies within these activities.

'Projects' will be specific projects developed for the purpose of providing a work-like experience for groups of job seekers, including the engagement of a supervisor/mentor for participants, and delivery of a benefit to the community.

Work for the Dole Placements or Projects may include the attainment of a licence, qualification or other recognised skill/core competency acquisition. The Work for the Dole measure generally promotes human rights because it creates opportunities for participants to upskill, and improve their employment prospects, while undertaking projects that are beneficial to the broader Australian community. In turn, participants are more likely to build their networks, to improve their skillsets, become job-ready, and to feel proud of their contribution to the community while the community supports them.

As participants may be required to undertake Work for the Dole activities, a failure to participate may result in compliance action, including the possible suspension, reduction and in some circumstances, the cancellation of a person's income support payment. Most commonly, where a person has had their payment suspended for non-compliance, they are typically back paid following re-engagement with their service provider. Other safeguards exist to protect people who had a reasonable excuse for non-compliance, meaning they can avoid a financial penalty.

The risk of compliance action has proved to be effective in ensuring individuals engage with Providers delivering Work for the Dole activities, and that they are able to benefit from the services on offer. International evidence confirms that activation (that is, placing conditions requiring active participation on income support payments) helps prevent welfare dependency, and increases the likelihood that recipients will be able to support themselves in the future.

## Conclusion

The amended table item 34 and new table item 547 are compatible with human rights because it promotes the protection of human rights.

### Table item 545 – Competitive fund for micro-credentials (pilot program)

Table item 545 establishes legislative authority for government spending on the Competitive fund for micro-credentials (pilot program).

The pilot program responds to Recommendation 4 of the *University-Industry Collaboration in Teaching and Learning Review* (the Review) for a development and delivery of industry-focused micro-credentials targeting global skills gaps and national priority areas.

The Review considered how universities, industry and government can increase industry engagement in teaching and learning through improved course curricula, more systemic engagement and expanded opportunities for learners to gain industry relevant skills. The Review also aligns with the Government's strategy to support skills development to meet domestic skills gaps.

In addition to addressing the Review's key findings and recommendations, industry-led micro-credentials delivered offshore will strategically align with key priorities detailed in the *Australian Strategy for International Education 2021-2030*. These include:

- assisting in diversifying education offerings and recover from a loss of revenue by tapping into the global online learning market,
- addressing critical skill shortages and gaps, and

- supporting international education’s growth offshore and increasing interest in Australian learning opportunities.

Funding of \$8.0 million under the pilot program will be used to develop up to 70 micro-credentials. They will be developed through partnerships and collaboration between Australian industry and tertiary education institutions. Funding allocation decisions will be handled through a competitive tender approach.

### **Human rights implications**

Table item 545 engages the following rights:

- the right to education – Article 13 of the ICESCR, read with Article 2;
- the right to recognition of benefits of scientific and cultural co-operation – Article 15 of the ICESCR; and
- the right to work – Article 6 of the ICESCR.

#### *Right to education*

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

Article 13(1) of the ICESCR states that the parties to the treaty “recognise the right of everyone to education” and “agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms...education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.” Article 13(2)(c) of the ICESCR is also engaged by this Legislative Instrument. This Article states that “higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means...”.

The Industry-led Micro-credentials Development will support the right of overseas students to access further education by enabling students who are interested in Australian industry learning opportunities, but are not interested in studying a conventional multi-year qualification, to undertake courses through Australian institutions. Micro-credentials can also be stacked towards domestic qualifications, which will provide an option for international students to go on to undertake a multi-year qualification after completion of a micro-credential.

Further, micro-credentials will enable many international students to undertake study at Australian institutions when borders reopen and will assist them to participate in society, an increasingly international labour market and promote understanding and friendship across nations.

*Right to recognition of benefits of scientific and cultural co-operation*

Article 15(4) of the ICESCR states that parties to the treaty “recognise the benefits to be derived from the encouragement and development on international contacts and co-operation in the scientific and cultural fields.”

By supporting education providers to offer micro-credentials to international students, either off-shore or on campus in Australia, the program will support the development of international contacts and co-operation in scientific and cultural fields.

*Right to work*

Article 6 of the ICESCR recognises the ‘the right of everyone to the opportunity to gain [their] living by work’ and that States Parties will ‘take appropriate steps to safeguard this right’. Article 6(2) cites ‘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’ as steps to be taken by a State Party to achieve the full realisation of the right contained in Article 6(1).

Industry-focused micro-credentials will target critical skill shortages and gaps, enabling providers to equip students with the knowledge and skills to enter the workforce upon completion of their study.

**Conclusion**

Table item 545 is compatible with human rights because it promotes the protection of human rights.

*Table item 546 – Scaling up Success in Remote Schools*

Table item 546 establishes legislative authority for government spending on the Scaling up Success in Remote Schools (the program).

The program is one of three existing programs under the Scaling Up Proven Primary Reading Programs measure which have demonstrated success in making progress against Target 5 (increasing the proportion of Aboriginal and Torres Strait Islander people (age 20-24) attaining year 12 or equivalent qualification to 96 percent) under the Australia Government’s National Agreement on Closing the Gap in remote and very remote locations.

Under the program, the Government will invest \$10.0 million over five years from 2021-22 to expand the models and learnings from the Kimberley Schools Project (KSP) into remote Western Australia (WA), with an option to expand into outer regional WA. The expansion of the KSP aims to support remote schools with a high proportion of Indigenous students to implement targeted teaching practices and to increase student attendance rates.

The KSP, proven to enable Indigenous students to reach their potential across remote WA, is a strong mechanism to lift outcomes in remote schools, achieved through:

- targeted teaching: evidence-based literacy teaching strategies and quality materials with frequent measurement of progress to inform planning and delivery;

- better early years learning and care: community co-design initiatives that build on and improve existing services, and engage families as first teachers;
- Regular attendance: community partnerships to deliver strategies that aim to resolve issues of student non-attendance in particular communities.
- Increased student and community engagement: co-designed community initiatives that build positive relationships between the school and the community.

The program will support an estimated 10 schools with a high proportion of Indigenous students to implement the models and learnings from the KSP, such as its targeted teaching practices (including explicit instruction) to increase student attendance and responsiveness to community needs and aspirations.

### **Human rights implications**

Table item 546 engages the following rights:

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

#### *Right to Education*

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

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

Article 28 of the CRC is in similar terms to Article 13 of the ICESCR.

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

Table item 546 would promote the right to education as the purpose of the program is to increase student attainment of a year 12 or equivalent qualification through implementing targeted teaching practices and improving student outcomes and attendance.

### **Conclusion**

Table item 546 is compatible with human rights because it promotes the protection of human rights.

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