

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance

Financial Framework (Supplementary Powers) Act 1997

*Financial Framework (Supplementary Powers) Amendment
(Education and Training Measures No. 3) Regulations 2017*

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

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

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

The Regulations amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on a number of initiatives administered by the Department of Education and Training.

Funding will be provided for:

- the National Collaborative Research Infrastructure Strategy program to fund the operation of national collaborative research infrastructure facilities and projects; and
- the Industry Specialist Mentoring for Australian Apprentices program to provide an industry specialist mentoring service to apprentices and trainees in industries that are undergoing structural change.

Details of the Regulations are set out at [Attachment A](#). A Statement of Compatibility with Human Rights is at [Attachment B](#).

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

Consultation

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

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

Details of the *Financial Framework (Supplementary Powers) Amendment (Education and Training Measures No. 3) Regulations 2017*

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Education and Training Measures No. 3) Regulations 2017*.

Section 2 – Commencement

This section provides that the Regulations commence on the day after registration on the Federal Register of Legislation.

Section 3 – Authority

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

Section 4 – Schedules

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

Schedule 1 – Amendments

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

This item adds two new table items to Part 4 of Schedule 1AB to establish legislative authority for government spending on certain activities administered by the Department of Education and Training.

New **table item 231** establishes legislative authority for government spending on the National Collaborative Research Infrastructure Strategy (NCRIS) program.

The program funds the operation of national collaborative research infrastructure facilities and projects to underpin Australia's national and international research endeavour that delivers economic, social and environmental benefits to the Australian community.

The program provides grant funding to a range of national cutting-edge research infrastructure facilities located in:

- universities;
- research organisations (public and private); and
- publicly funded research agencies such as the Commonwealth Scientific and Industrial Research Organisation.

The national research infrastructure comprises nationally significant assets, facilities and services which support leading-edge research and innovation. It is accessible to publicly and privately funded users across Australia and internationally. A national research infrastructure

facility or project is made up of a number of operational units offering a distinct set of research infrastructure assets or services.

The NCRIS facilities and projects are managed through funding agreements with lead agents. Lead agents receive grant funding to support a set of agreed activities, usually through a network of nodes located in a number of institutions across Australia. For example, the lead agent for the NCRIS National Imaging Facility project is the University of Queensland. Other project participants are the University of Sydney; the University of New South Wales; the Western Sydney University; the Florey Institute; the University of Melbourne; the Swinburne University; the University of Western Australia; and the South Australian Health and Medical Research Institute. Together the project participants offer a coordinated network that efficiently delivers a range of research infrastructure to meet the imaging needs of the research sector.

Project participants have contracts with the lead agent to deliver their components of the NCRIS facility or project. Each lead agent reports to, and is held accountable by, the Department of Education and Training for all project activities. Project reporting, information management and financial management systems are in place in accordance with and subject to the requirements outlined in the *Public Governance, Performance and Accountability Act 2013* and the *Commonwealth Grants Rules and Guidelines*.

The NCRIS program was established in 2006 as a standalone, highly specialised national funding program. Following the implementation of research infrastructure roadmaps developed in 2006 and 2008 and associated consultation processes and investments, the program currently supports national research infrastructure facilities and projects that employ more than 1,700 technical experts, researchers and facility managers. It provides access to facilities and services to over 35,000 researchers, both domestically and internationally, in a broad range of fields as varied as medical research, advanced nano-fabrication, high performance computing, agriculture and marine science. The program has attracted high levels of co-investment from universities, state and territory governments, and industry.

In December 2015, the NCRIS program became part of the National Innovation and Science Agenda, which was announced by the Prime Minister, the Hon Malcolm Turnbull MP, and the then Minister for Industry, Innovation and Science, the Hon Christopher Pyne MP. The next funding round under the program will cover the period from 1 July 2017 to 30 June 2019, which will be outlined in the NCRIS 2017-19 Guidelines, while the Government considers its response to the 2016 National Research Infrastructure Roadmap. Funding from 1 July 2019 will be subject to the new program guidelines.

Funding of \$2.3 billion to establish an ongoing research infrastructure funding program was included in the 2015-16 Mid-Year Economic and Fiscal Outlook under the measure 'National Innovation and Science Agenda – supporting critical research infrastructure' for a period of ten years commencing in 2016-17. Details are set out in the *Mid-Year Economic and Fiscal Outlook 2015-16*, Appendix A: Policy decisions taken since the 2015-16 Budget at page 163.

As part of the 2017-18 Budget, the Government announced the development of the Research Infrastructure Investment Plan, which will be informed by the 2016 National Research Infrastructure Roadmap and an inventory of existing national research

infrastructure. The Investment Plan will be developed by the Department of Education and Training and the Department of Industry, Innovation and Science, in consultation with the Commonwealth Science Council, Innovation and Science Australia and key stakeholders. Details are set out in *Budget 2017-18, Budget Measures, Budget Paper No. 2 2017-18* at page 86.

Due to the nature of the NCRIS program and its national focus, funding is allocated using a non-competitive process based on the national research infrastructure requirements identified through a roadmap process. Grants are approved by the Minister for Education and Training following a facilitated negotiation process and consultation with the research community. Funding under the NCRIS 2017-19 Guidelines will support the operation of priority facilities and projects identified by the 2016 Roadmap Expert Working Group. The Guidelines, which were released on 25 May 2017, are published on the NCRIS website at www.education.gov.au/national-collaborative-research-infrastructure-strategy-ncris.

Funding to establish existing NCRIS facilities and projects was awarded based on the national research infrastructure requirements and priority areas identified in the 2006 and 2008 roadmaps. The 2011 roadmap did not lead to a change in investments. Previous roadmaps are available at www.education.gov.au/previous-roadmaps.

In line with the *Commonwealth Grants Rules and Guidelines*, the complete list of final grant decisions is published at www.education.gov.au.

Funding decisions are subject to merits review. If an applicant is dissatisfied with the way their grant allocation was dealt with, they can set out their concerns in writing to the nominated program delegate as outlined in the relevant program guidelines. If an applicant is dissatisfied with the way their application was dealt with by the department, they can approach the Commonwealth Ombudsman for external review of the administrative actions of the department.

Funding for the NCRIS program of \$632.4 million over four years from 2017-18 will come from Program 2.6: Research Capacity, which is part of Outcome 2. Details are set out in the *Portfolio Budget Statements 2017-18, Budget Related Paper No. 1.5, Education and Training Portfolio* at page 59.

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));
- the communications power (section 51(v));
- the defence power (section 51(vi));
- the astronomical and meteorological observations power (section 51(viii));
- the quarantine power (section 51(ix));
- the fisheries power (section 51(x));
- the census and statistics power (section 51(xi));
- the sickness and student benefits aspects of the social welfare power (section 51(xxiiiA));
- the external affairs power (section 51(xxix));
- the territories power (section 122);

- the Commonwealth executive power and the express incidental power (sections 61 and 51(xxxix)); and
- the grants to states power (section 96).

Trade and commerce power

Funding may be provided to cross-boundary national networks for activities such as those to meet specialised advanced materials nano-fabrication needs provided by the Australian National Fabrication Facility.

Communications power

Funding may be provided, for example, to eResearch infrastructure and high performance computing projects. Such projects may utilise online (cloud-based) data storage and analysis.

Defence power

Funding may be provided to research infrastructure which has application to defence industries, for example, advanced materials nano-fabrication equipment and techniques provided by the Australian National Fabrication Facility and the Australian Microscopy and Microanalysis Research Facility.

Astronomical and meteorological observations power

Funding may be provided for optical and radio astronomy, climate and weather prediction, and associated environmental and earth monitoring.

Quarantine power

Funding may be provided for biosecurity research that supports Australia's quarantine efforts, for example, through the Collaborative Bioresearch Facility of the Australian Animal Health Laboratory.

Fisheries power

Funding may be provided, for example, for investment in remote sensing for environmental and oceanic monitoring in facilities such as the Integrated Marine Observing System.

Census and statistics power

Funding may be provided for data related research, for example, population health research through the Population Health Research Network.

Sickness and student benefits aspects of the social welfare power

Funding will be provided for research areas that support medical research to enable better policy development, implementation and delivery of health benefits and services, for example, through Bioplatforms Australia and the Australian Phenomics Network. Funding may also be provided for infrastructure utilised by students.

External affairs power

Funding will be provided for research infrastructure that promotes Australia's international collaboration in scientific research. For example, funding may be provided for infrastructure that forms a key part of the Australian – New Zealand Science, Research and Innovation Cooperation Agreement, and infrastructure supporting Australia's participation in the European Molecular Biology Laboratory.

Territories power

Funding may be provided for investing in research infrastructure in Territories, for example, research infrastructure for high performance computing to support climate modelling such as the National Computational Infrastructure located at the Australian National University and marine monitoring in the Northern Territory as part of the National Mooring Network coordinated by the Integrated Marine Observing System.

Commonwealth executive power and express incidental power

The NCRIS program as a whole supports national scientific endeavour. In particular, the NCRIS funding supports national research infrastructure by implementing national research infrastructure roadmaps to maintain its position as an emerging or established global leader in scientific research. Funded facilities and projects commonly involve national networks which cross institutional and state boundaries, for example, the Population Health Research Network. Funding may also be provided, for example, for research infrastructure to enable the Commonwealth to inform itself such as the environmental monitoring and analysis infrastructure of the Terrestrial Ecosystem Research Network.

Grants to states power

Funding may be provided to a State for particular research purposes.

New **table item 232** establishes legislative authority for government spending on the Industry Specialist Mentoring for Australian Apprentices program.

The program will provide intensive industry specialist mentoring support to apprentices and trainees (Australian Apprentices) in industries that are undergoing structural change such as manufacturing or automotive industries. The support will be available for, but not limited to, Australian Apprentices from these industries who are likely to:

- have been previously retrenched workers;
- have experienced long-term unemployment;
- have not had prior employment, or education and training opportunities;
- be mature aged; and
- be from regional areas.

The program aims to increase the retention rates of Australian Apprentices, particularly in the first two years of training, in order to improve completion rates and support the supply of skilled workers in restructuring or transitioning industries. The program will support around 45,000 Australian Apprentices.

The mentoring services, involving regular one-to-one contact with Australian Apprentices, will be provided by highly skilled mentors with appropriate skill sets and detailed knowledge of the relevant industry. There will not be an application process for Australian Apprentices and their participation is voluntary. The program will operate for two years from 2017-18.

Funding of \$60 million was included in the 2017-18 Budget under the measure ‘Industry Specialist Mentoring for Australian Apprentices – establishment’ for a period of two years commencing in 2017-18. Details are set out in *Budget 2017-18, Budget Measures, Budget Paper No. 2 2017-18* at page 84.

The Department of Education and Training will run an open procurement process to engage suitably qualified service providers to deliver industry specialist mentoring services to Australian Apprentices. The procurement process will take into consideration the prospective service providers’ understanding of the industry sector in which they propose to provide mentoring services to support Australian Apprentices and their employers.

The program will complement existing support services including those provided under the Australian Apprenticeships Incentives Program, the Australian Apprenticeships Support Network Program, and the Trade Support Loans. Given the industry emphasis of the program, the department will consult with the Department of Employment and the Department of Industry, Innovation and Science in the development of the program guidelines.

The selection criteria, against which applications from prospective service providers will be assessed, will be published in the program guidelines and procurement documentation. This documentation will include a procurement plan, a probity plan, a risk assessment, and a program compliance plan. Applications from prospective service providers will be assessed by experienced departmental officials.

In accordance with the *Commonwealth Procurement Rules*, details of the procurement opportunity will be available on the AusTender website at www.tenders.gov.au. Decisions in connection with the procurement process will be made by a delegate of the Secretary of the Department of Education and Training. Information about successful tenderers will be published on AusTender and the Australian Apprenticeships website at www.australianapprenticeships.gov.au.

Funding will be spent in accordance with the *Public Governance, Performance and Accountability Act 2013*, the *Commonwealth Procurement Rules*, the Secretary Instructions and relevant financial delegations.

Decisions made in connection with the program will not be subject to merits review. Funding will be provided to contracted service providers selected through a procurement process. Information about where to direct complaints will be included in the procurement documentation. In accordance with the department’s procurement complaints process, any complaints will be directed, in the first instance, to the contact officer for the procurement, and if the complaint is unresolved to the probity officer overseeing the procurement. All applicants will be provided feedback on their application on request.

Funding for this item will come from Sub-program 2.8.2: Skills Development under Program 2.8: Building Skills and Capability, which is part of Outcome 2. Details are set out

in the *Portfolio Budget Statements 2017-18, Budget Related Paper No. 1.5, Education and Training Portfolio* at page 20.

Noting that it is not a comprehensive statement of relevant constitutional considerations, the objective of the item references the student benefits aspect of the social welfare power (section 51(xxiiiA)) of the Constitution.

The program will provide targeted mentoring services to apprentices and trainees in industries undergoing structural change to assist them to successfully progress through their apprenticeships and traineeships.

Statement of Compatibility with Human Rights

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

Financial Framework (Supplementary Powers) Amendment (Education and Training Measures No. 3) Regulations 2017

These Regulations are 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 FF(SP) Act applies to Ministers and the accountable authorities of non-corporate Commonwealth entities, as defined under section 12 of the *Public Governance, Performance and Accountability Act 2013*.

The Regulations amend Schedule 1AB to the FF(SP) Regulations to establish legislative authority for government spending on a number of initiatives administered by the Department of Education and Training.

Funding will be provided for:

- the National Collaborative Research Infrastructure Strategy program to fund the operation of national collaborative research infrastructure facilities and projects; and
- the Industry Specialist Mentoring for Australian Apprentices program to provide an industry specialist mentoring service to apprentices and trainees in industries that are undergoing structural change.

The Minister for Education and Training has responsibility for the National Collaborative Research Infrastructure Strategy program. The Assistant Minister for Vocational Education and Skills has responsibility for the Industry Specialist Mentoring for Australian Apprentices program.

Human rights implications

The Regulations do not engage any of the applicable rights or freedoms.

Conclusion

These Regulations are compatible with human rights as they do not raise any human rights issues.

**Senator the Hon Mathias Cormann
Minister for Finance**