

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. 4) 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 two initiatives in the Education and Training portfolio that arise from decisions in the 2017-18 Budget which was released on 9 May 2017. The initiatives will be administered by the Department of Education and Training.

Funding will be provided for:

- the trial of the English Language Learning for Indigenous Children initiative which aims to improve English literacy outcomes for Aboriginal and Torres Strait Islander preschool children between four and five years of age for whom English is a second or subsequent language; and
- the establishment of the Rural and Regional Enterprise Scholarships program to improve access to and completion of science, technology, engineering and mathematics tertiary education courses for students from regional and remote Australia.

The Rural and Regional Enterprise Scholarships program is a 2016 election commitment.

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

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

Consultation

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

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

Details of the *Financial Framework (Supplementary Powers) Amendment (Education and Training Measures No. 4) 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. 4) Regulations 2017*.

Section 2 – Commencement

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

Section 3 – Authority

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

Section 4 – Schedules

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

Schedule 1 – Amendments

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

This item adds 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 251** establishes legislative authority for government spending on the English Language Learning for Indigenous Children (ELLIC) initiative.

The trial of the ELLIC initiative aims to improve English literacy outcomes for Aboriginal and Torres Strait Islander preschool children between four and five years of age for whom English is a second or subsequent language. It intends to assist children to develop age appropriate literacy skills required for a successful transition into primary school.

The ELLIC initiative will support the Government's Closing the Gap target to halve the gap for Indigenous children in reading, writing and numeracy within a decade (by 2018).

The ELLIC trial will build on the successful Early Learning Languages Australia (ELLA) initiative, which is a series of digital learning, play-based applications for use on tablet devices that introduce the learning of languages other than English to preschool children. These children can be supported by a preschool educator who is not required to be proficient in the target language.

Similar to the ELLA initiative, the ELLIC trial will be underpinned by a series of applications for preschool children to use in the year before full-time school. The ten ELLIC applications will be aligned to the Early Years Learning Framework, which describes the principles, practices and outcomes that support and enhance young children's learning from birth to five years of age, as well as their transition to school.

The ELLIC applications will be designed to improve children's English literacy capability. The application design, which will take place during 2018, will be informed by extensive consultation with subject matter experts in Indigenous, rural and remote, digital, literacy, and early childhood education, as well as feedback from Aboriginal and Torres Strait Islander communities. The applications will be designed for use in a range of preschool settings, including standalone preschools, preschools attached to schools, and preschool programs delivered by long day care services.

Preschool educators will facilitate children's learning of English through the ten ELLIC applications. To support educators, a range of resources, including an educator application and the ELLIC website, will be developed. A families application will also be developed for parents and other community members to support the implementation of the initiative outside of the preschool setting.

The trial will take place in the 2019 and 2020 calendar years in at least 20 preschools with high proportions of Indigenous children for whom English is a second or subsequent language. The selection of participating preschool communities, which will take place in early 2018, will be informed by extensive consultation with Indigenous communities and stakeholder groups.

Funding of \$5.9 million was included in the 2017-18 Budget under the measure 'Closing the Gap – English language learning for Indigenous children trial' for a period of four years commencing in 2017-18. Details are set out in *Budget 2017-18, Budget Measures, Budget Paper No. 2 2017-18* at page 80.

The Department of Education and Training will engage an external consulting firm to manage the design, development and implementation of the ELLIC trial. This consulting firm will be tasked with:

- project management of the design, development and implementation of the trial;
- planning and undertaking consultation with Indigenous communities and relevant subject matter experts;
- the design, development and maintenance of the ELLIC digital resources (applications and website);
- the supply of necessary hardware capability for preschools to take part in the ELLIC trial (such as tablet devices, wi-fi routers and internet connection);
- educator training and liaison;
- public communications to inform stakeholders about the ELLIC trial; and
- overseeing implementation of the trial in at least 20 preschools during 2019 and 2020.

The department will also engage another consultancy firm to undertake an external evaluation of the ELLIC trial.

Procurement processes and spending decisions will follow the *Commonwealth Procurement Rules*, the department's Secretary Instructions and delegations on the expenditure of relevant monies, and the *Public Governance, Performance and Accountability Act 2013*.

As the ELLIC initiative is directed to Aboriginal and Torres Strait Islander people (children) and consistent with the Indigenous Procurement Policy, the department will seek to engage Indigenous small or medium enterprises through limited tender processes to deliver consultancy services. Under the *Commonwealth Procurement Rules* (Appendix A), a small or medium enterprise with at least 50 per cent Indigenous ownership may be engaged directly (via a limited tender) for the provision of goods or services.

If the limited tender processes are not successful, the department will run an open tender for the relevant service or services. Where required, information about procurement opportunities will be published on the AusTender website at www.tenders.gov.au.

The relevant delegate of the Secretary of the department will be responsible for making spending decisions, including the selection of preferred suppliers. After entering into a contract with the preferred suppliers, contract notices will be published on AusTender.

External merits review will not be available for procurement decisions made in relation to the ELLIC trial. All procurement processes will be conducted in accordance with the *Commonwealth Procurement Rules* and adhere to standard approach to market and procurement requirements. Information about where to direct queries or complaints about the conduct of the tender will be included in the procurement documentation.

In accordance with the department's procurement complaints process, contact details of where complaints should be directed would be made available as part of the procurement documentation. Any complaints arising from the procurement process will be directed to the probity officer overseeing the procurement. All tenderers will receive a debriefing on the outcome of their application on request.

Funding for this item will come from Program 1.7: Early Learning and Schools Support, which is part of Outcome 1. Details are set out in the *Portfolio Budget Statements 2017-18, Budget Related Paper No. 1.5, Education and Training Portfolio* at pages 14 and 19.

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

Communications power

With respect to the communications power, the ELLIC initiative is delivered through online communication services and involves language learning applications that are downloaded onto tablets for use by young children.

Races power

With respect to the races power, the ELLIC initiative is specifically directed to Aboriginal and Torres Strait Islander people (children).

New **table item 252** establishes legislative authority for government spending on the Rural and Regional Enterprise Scholarships program.

The program will improve access to and completion of science, technology, engineering and mathematics (STEM) tertiary education courses for students from regional and remote Australia. It will support at least 1,200 undergraduate, postgraduate, and vocational education and training students to undertake a STEM qualification.

The program will improve educational attainment and skills development opportunities for regional and remote students. Through studying STEM, scholarship recipients will gain important occupational skills, as well as strengthen their foundational literacies, socio-emotional skills and cognitive skills. They will be better equipped to adapt to the changing nature of work in a technologically advanced economy.

Scholarships will be administered through two rounds of applications for the 2018 and 2019 academic years, each for at least 600 scholarships. If not all funds are disbursed in the first two rounds, a third round of scholarships may be conducted.

Each scholarship recipient may receive up to \$18,000, depending on the course length and type of study or training. The funds remaining from scholarships of three years or less in duration would be available to support internships (\$500 for the host organisation and \$500 for out-of-pocket expenses for the student).

Funding of \$24 million was included in the 2017-18 Budget under the measure 'Rural and Regional Enterprise Scholarships – establishment' for a period of four years commencing in 2017-18. Details are set out in *Budget 2017-18, Budget Measures, Budget Paper No. 2 2017-18* at page 89.

The scholarships were announced as part of the election commitment to improve access to educational opportunities for regional students by the Deputy Prime Minister and Minister for Agriculture and Water Resources, the Hon Barnaby Joyce MP; the Minister for Education and Training, Senator the Hon Simon Birmingham; and Senator for Victoria, Ms Bridget McKenzie, on 23 June 2016 (<http://nationals.org.au/coalition-to-improve-access-to-education-for-regional-students/>).

The Department of Education and Training will run an open procurement process to engage a suitably qualified service provider to deliver the program. The service provider will conduct the scholarship application and selection processes, distribute scholarship funding to scholarship recipients, monitor continued eligibility and compliance with scholarship conditions, and report to the department at specified intervals.

The selection criteria against which applications from prospective service providers will be assessed will be published in the program guidelines and the procurement documentation. The department will develop a procurement plan, a probity plan and risk assessment procedures to underpin the establishment of the program. The program guidelines will be developed in consultation with the Department of Social Services and higher education stakeholders. Applications from prospective service providers will be assessed by experienced staff in the department.

Information about this procurement opportunity is available on AusTender at www.tenders.gov.au. Spending decisions in relation to the procurement will be made by a delegate of the Secretary of the department, in accordance with the *Commonwealth Procurement Rules*, the department's Secretary Instructions and delegations on the expenditure of relevant monies, and the *Public Governance, Performance and Accountability Act 2013*. The contract notice will be published on AusTender and the department's website at www.education.gov.au.

Decisions made in connection with the program will not be subject to merits review as funding will be provided to a contracted service provider selected through a procurement process. In conducting this process, the department will comply with the *Commonwealth Procurement Rules* and the *Public Governance, Performance and Accountability Act 2013*, including principles relating to probity. In accordance with the department's procurement complaints process, contact details of where complaints should be directed would be made available as part of the procurement documentation. Any complaints arising from the procurement process will be directed to the probity officer overseeing the procurement. All tenderers will receive a debriefing on the outcome of their application on request.

The service provider will run competitive rounds to identify scholarship recipients. The promotion and marketing of each scholarship round will be conducted by the service provider in accordance with the guidance provided by the department. Applications for scholarships will be assessed by the service provider against the selection and eligibility criteria in the program guidelines in accordance with the procedures agreed with the department. The service provider will determine which applicants will be offered scholarships.

The service provider will notify the successful and unsuccessful applicants of the outcome of their application in writing. Unsuccessful applicants will be provided with feedback on why they were unsuccessful and may contact the service provider to make inquiries, seek feedback and make complaints in relation to their application for funding. Complaints can be referred to the department if they cannot be satisfactorily resolved by the service provider. Unsuccessful applicants from a competitive funding round may apply in subsequent funding rounds for a scholarship.

Scholarship decisions will not be subject to external merits review. The scholarships will not be legal entitlements, and scholarship decisions will not be decisions under an enactment that affects any person's legal rights or liabilities. Decisions for each round of scholarships will be final, although unsuccessful applicants will be able to apply for future rounds should they still be eligible. The amount of scholarship funding will be limited in each round, and it will not be practicable to review decisions once they have been made. The remaking of a decision would affect allocation of scholarships to other parties. An application for merits review may also result in delays in finalising the entire scholarship round which would affect the timely provision of scholarship support to recipients by way of financial assistance.

Further information on the program, including the eligibility criteria and timing of each application round, will be available at www.education.gov.au/rural-and-regional-enterprise-scholarships.

Funding for this item will come from Program 2.3: Higher Education Support, which is part of Outcome 2. Details are set out in the *Portfolio Budget Statements 2017-18, Budget Related Paper 1.5, Education and Training Portfolio* at page 53.

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 benefits to students aspect of the social welfare power (section 51(xxiiiA)); and
- the external affairs power (section 51(xxix)).

Social welfare power

Section 51(xxiiiA) of the Constitution empowers the Parliament to make laws with respect to the provision of various social welfare benefits and services, including benefits to students.

The program will provide funding for scholarships and internships to selected students from regional and remote areas who are undertaking an eligible course of study to improve educational attainment and skills development opportunities.

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 treaties to which Australia is a party.

Australia has obligations in relation to the right to work and the right to education under the International Covenant on Economic, Social and Cultural Rights. In particular:

- Article 6 provides that States Parties shall take steps to realise the right to work, including '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'; and
- Article 13(2) provides that States Parties recognise that, with a view to achieving the full realisation of the right of everyone to education:

‘(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means...

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means ...’

Australia also has obligations under International Labour Organization's Conventions on Employment Policy (ILO Convention 122) and Vocational Guidance and Vocational Training in the Development of Human Resources (ILO Convention 142). In particular:

- Articles 1 and 2 of ILO Convention 122 require States Parties to pursue 'an active policy designed to promote full, productive and freely chosen employment'; and

- Articles 1 to 4 of ILO Convention 142 oblige States Parties to adopt policies and programs of vocational guidance and training, linked with employment.

The program will also provide funding for selected scholarship recipients to undertake voluntary internships relevant to their field of study, and funding to employers who provide the internships.

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. 4) 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 two initiatives in the Education and Training portfolio that arise from decisions in the 2017-18 Budget which was released on 9 May 2017. The initiatives will be administered by the Department of Education and Training.

Funding will be provided for:

- the trial of the English Language Learning for Indigenous Children initiative which aims to improve English literacy outcomes for Aboriginal and Torres Strait Islander preschool children between four and five years of age for whom English is a second or subsequent language; and
- the establishment of the Rural and Regional Enterprise Scholarships program to improve access to and completion of science, technology, engineering and mathematics tertiary education courses for students from regional and remote Australia.

The Rural and Regional Enterprise Scholarships program is a 2016 election commitment.

The Minister for Education and Training has portfolio responsibility for these matters.

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**