

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance

Financial Framework (Supplementary Powers) Act 1997

*Financial Framework (Supplementary Powers) Amendment
(Education Measures No. 4) Regulations 2019*

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 the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

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

The *Financial Framework (Supplementary Powers) Amendment (Education Measures No. 4) Regulations 2019* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending for Grants to General Sir John Monash Foundation to establish and administer the Bob Hawke John Monash Scholarships and the Tim Fischer John Monash Scholarships (the Scholarships).

The Scholarships will support Australia's brightest young academic minds to study at leading overseas universities.

Funding of \$10 million will be provided through two one-off grants of \$5 million each to the General Sir John Monash Foundation for the Scholarships. Details will be included in the 2019-20 Mid-Year Economic and Fiscal Outlook.

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.

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 Measures No.4) Regulations 2019*

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Education Measures No. 4) Regulations 2019*.

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 3 of Schedule 1AB (table)

Item 1 inserts new **table item 36** in Part 3 of Schedule 1AB to the *Financial Framework (Supplementary Powers) Regulations 1997*.

New table item 36 establishes legislative authority for Grants to General Sir John Monash Foundation to establish the Bob Hawke John Monash Scholarships and the Tim Fischer John Monash Scholarships (the Scholarships).

The Scholarships will support high-achieving Australian postgraduate students to study at leading overseas universities. The Scholarships will be administered by the General Sir John Monash Foundation (the Foundation) alongside other Foundation scholarships.

The government will provide two one-off payments of \$5 million each to the Foundation to establish the Scholarships. For each scholarship, a minimum of one scholarship is expected to commence each calendar year, with scholars to be supported for up to three years, at the discretion of the Foundation.

In selecting scholarship recipients, the Foundation will apply the same criteria as other Foundation scholarships and a number of additional selection criteria to reflect the particular areas of interest of their namesakes.

To be eligible to apply for a scholarship, applicants must:

- be Australian citizens;
- have completed or be about to complete a full degree from an Australian university; and
- be planning to undertake postgraduate study at an overseas university commencing in the calendar year following the year of application and selection.

In awarding Foundation scholarships, factors considered by the Foundation include:

- Excellence in the candidate's field of expertise – usually a university degree obtained with outstanding results, but can also be demonstrated through prizes, awards, publications, performance, exhibitions and professional endeavours.
- Leadership – candidates should demonstrate leadership experience or potential in the field of study, professional environment and/or the community.
- Research project or study program – specific, well-developed case for support for the candidate's study at the best overseas university in their field. It is not necessary to have been accepted at the institution at the time of applying for the scholarship.
- Proposed career pathway – candidates must present a credible pathway, addressing an issue the applicant is passionate about, and which will be of benefit to Australia.
- Three references – outlining the candidate's abilities and endorsing the proposed course of study, these may be any combination of academic, personal and professional.

The Bob Hawke John Monash Scholarships will allow scholars to gather knowledge and build academic skills and bring these back into the Australian research system.

The Bob Hawke John Monash Scholarships will:

- be open to talented young Australian scholars with academic ability and leadership potential to develop their skills at leading overseas institutions;
- be for study in any field deemed by the Foundation to be in the interest of the nation; and
- address the greatest challenges across all areas of academic and artistic endeavour.

The Tim Fischer John Monash Scholarships will be awarded each year to scholars from a regional or rural background.

The Tim Fischer John Monash Scholarships will be:

- open to scholars from a regional or rural background; and
- be selected on the basis of their academic achievement, demonstrated leadership and capacity to contribute to the future for regional and remote Australia.

The Government has made the decision to award the grants to the Foundation. As such, it is not appropriate for this decision of government to be subject to independent review. The grants to the Foundation will be administered in accordance with the *Commonwealth Grant Guidelines and Rules 2017* and the Conditions of the Grant that will be agreed with the Foundation prior to commencement of the Scholarships.

The Foundation will be responsible for awarding the Scholarships under criteria agreed with the Department of Education and will report all decisions regarding award of the Scholarships to the Department of Education. As the Foundation already has a

well-established scholarship award process in place, decisions regarding the award for the scholarships will not be subject to independent review.

The Bob Hawke John Monash Scholarships was announced by the Prime Minister on 3 July 2019, and the Tim Fischer John Monash Scholarships was announced by the Prime Minister on 9 September 2019.

Funding of \$10 million will be provided as a one-off grant for the Scholarships. Details will be included in the 2019-20 Mid-Year Economic and Fiscal Outlook.

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

Statement of relevant and operation of constitutional heads of power

Social welfare power

Section 51(xxiiiA) of the Constitution empowers the Parliament to make laws with respect to the provision of certain social welfare benefits, including ‘benefits to students’. The grant to the Foundation will provide funding for scholarships to be paid to identified students to meet the educational needs of those students.

External affairs power

Sections 51(xxix) of the Constitution empowers the Parliament to make laws with respect to external affairs. The external affairs power supports legislation with respect to matters or things outside the geographical limits of Australia. The grant to the Foundation will provide funding of scholarships to support activities geographically external to Australia (i.e overseas study).

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 Measures No. 4) Regulations 2019

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

Overview of the Legislative Instrument

Section 32B of the *Financial Framework (Supplementary Powers) Act 1997* (the FF(SP) Act) authorises the Commonwealth to make, vary and administer arrangements and grants specified in the *Financial Framework (Supplementary Powers) Regulations 1997* (the FF(SP) Regulations) and to make, vary and administer arrangements and grants for the purposes of programs specified in the FF(SP) Regulations. Schedule 1AA and Schedule 1AB to the FF(SP) Regulations specify the arrangements, grants and programs. The 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 *Financial Framework (Supplementary Powers) Regulations 1997* (FF(SP) Regulations) provides legislative authority for Commonwealth expenditure. The Government announced that it would provide two one-off grants to the General Sir John Monash Foundation (the Foundation) for delivery of the Bob Hawke John Monash Scholarships and Tim Fischer John Monash Scholarships (the Scholarships) on 3 July 2019 and 9 September 2019, respectively. To enable provision of these grants to the Foundation, and commencement of the Scholarships, authority to spend must be granted through an addition to Schedule 1AB of the FF(SP) Regulations.

The Government recognises the increasing need for individuals to access tertiary education to upskill and reskill throughout their life, in order to meet the evolving demands of the labour market. The grants to the Foundation will enable scholarships to be awarded to outstanding Australians with leadership potential who wish to undertake postgraduate study overseas. By supporting Australia's brightest young academic minds to study at leading overseas universities, the Scholarships will allow scholars to gather knowledge and build academic skills which they will bring back into the Australian research system.

Human rights implications

This Legislative Instrument engages the right to education in Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), and supports Article 15(4) of the ICESCR.

Analysis of human rights implications

Article 13: Right to education

This Legislative Instrument engages with Article 13(1) of the ICESCR, which 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 Scholarships will support the right of Australian scholars to access higher education and enable them to undertake postgraduate study that will assist them to participate in society, an increasingly international labour market and promote understanding and friendship across nations.

The Scholarships will also support open access to higher education for students who otherwise may not be able to afford to undertake overseas postgraduate study. In particular, the Tim Fischer John Monash Scholarships will provide access to higher education to students from a rural or regional background.

Article 15: Recognition of benefits of scientific and cultural co-operation

This Legislative Instrument engages with Article 15(4) of the ICESCR which 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 Australian scholars to undertake postgraduate study at leading overseas universities, the Scholarships will support the development of international contacts and co-operation in scientific and cultural fields.

Conclusion

The Legislative Instrument is compatible with human rights as it promotes the protection of human rights. To the extent, if any, that it may limit human rights, those limitations are reasonable, necessary and proportionate.

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