

## **EXPLANATORY STATEMENT**

### **Issued by the Authority of the Minister for Finance**

*Financial Framework (Supplementary Powers) Act 1997*

*Financial Framework (Supplementary Powers) Amendment  
(Foreign Affairs and Trade Measures No. 2) 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 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 *Financial Framework (Supplementary Powers) Amendment (Foreign Affairs and Trade Measures No. 2) Regulations 2019* amends Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on the Pacific Secondary School Scholarships Program (the PSSS Program). The Department of Foreign Affairs and Trade will have policy responsibility for the PSSS Program.

The PSSS Program will use government funding to provide scholarships for education, accommodation and related welfare support to eligible Pacific island students to undertake study in Australian secondary schools.

The Prime Minister announced the PSSS Program on 18 November 2018, following the conclusion of the Asia-Pacific Economic Cooperation Summit in Port Moresby, as part of the Government's efforts to further deepen educational links with the region as part of the Government's Pacific 'Step-up'.

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 Foreign Affairs and Trade.

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 (Foreign Affairs and Trade Measures No. 2) Regulations 2019***

**Section 1 – Name**

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Foreign Affairs and Trade Measures No. 2) 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 4 of Schedule 1AB (table)**

This item adds a new table item to Part 4 of Schedule 1AB to establish legislative authority for government spending on an initiative. The Department of Foreign Affairs and Trade (the department) will have policy responsibility for the initiative.

New **table item 378** establishes legislative authority for government spending on the Pacific Secondary School Scholarships (PSSS) Program to provide scholarships for education, accommodation and related welfare support to eligible Pacific island students to undertake study in Australian secondary schools.

The Prime Minister announced the PSSS Program on 18 November 2018, following the conclusion of the Asia-Pacific Economic Cooperation Summit in Port Moresby as part of the Government’s Pacific ‘Step up’ policy.

The goal of the PSSS Program is to help prepare scholarship students from Pacific island countries for economic and social leadership in a changing world, through high-quality secondary education that deepens people-to-people links with Australia and will contribute to enhanced economic growth and stability of the region. This will enable students to build stronger connections between Australian and Pacific island nations and to build the scholarship recipients’ capacity to contribute to their country’s development as future economic and social leaders.

The scholarship will be structured initially as an immersive experience where scholarship recipients would live with an Australian family through accredited homestay and be encouraged to undertake extra-curricular activities such as part-time work, sport, church and other community engagement. Scholarship recipients would return home regularly for the purposes of maintaining a connection with families and home countries. The PSSS Program would assist students to prepare for transition to further education, training or work on return home following completion of year 12 in Australia.

As currently designed, government funding will be provided for a fully-funded scholarship for a two-and-a-half year course of study consisting of the second half of year 10, followed by Years 11 and 12 to complete a senior school certificate. Under current planning, the aim is to have the first cohort of 100 scholarship students commence in Year 10 in Australia in July 2020.

Funding consists of two main components: the schooling, accommodation and other support costs for the scholarship recipients; and the operational and program costs.

#### *Schooling, accommodation and other support costs*

These costs include but are not limited to all tuition and related non-tuition expenses for each student over the duration of the scholarship: school fees; homestay fees; overseas student health cover and travel insurance; public transport to/from school; uniforms; excursions and extra-curricular activities; flights home at regular intervals to maintain a connection with family; participation in school holiday programs; a small stipend to cover basic personal needs; telephone and IT device.

International student and homestay fees are set by the relevant education provider. Details of the 2020 expenses for NSW and Queensland state government international education programs, by way of example, are available at the following links:

- Queensland - <https://eqi.com.au/study-options/fees>; and
- NSW - <https://www.deinternational.nsw.edu.au/study-options/fees>.

#### *Operational and program support costs*

These costs relate to all management, operational and resourcing requirements to support the PSSS Program, and includes: advertising and promotion of the scholarships; selection process costs; monitoring and evaluation costs; alumni engagement; program management costs; and ancillary services to support students.

The PSSS Program will be delivered through a small number of established international education programs. This approach will achieve a simpler mode of delivery for a new program involving children. Over time, the program could be extended to other scholarship formats and a broader range of education providers on a demand-driven basis.

The PSSS Program will be led by the Office of the Pacific in the department. A department delegate will chair a program oversight committee, which will provide strategic direction and oversight over contracts and other arrangements for ongoing strategic management and implementation of the PSSS program.

The PSSS Program will be delivered as a collaborative effort across several program partners and service providers, where responsibility for tasks is assigned to the party with the best resources and capability to implement the task. Key partners in the PSSS Program are:

- international education providers that will provide the education, accommodation and welfare services from the time that they arrive in Australia, in alignment with normal industry practice for fee-paying students;
- a Managing Contractor that will provide offshore services and administrative arrangements over the program's lifecycle (eg promotion of the scholarships, administration of the selection process, mobilisation of the successful applicants) and monitoring and evaluation services;
- participating Pacific island governments; and
- students and their parents.

Subject to the completion of bilateral Memoranda of Understanding, the PSSS Program will initially be open to students from the following Pacific island countries: Fiji, Kiribati, Nauru, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu.

Students from these countries will apply through an open, merit-based and transparent process. They will be assessed in accordance with publicly-available selection and eligibility criteria. Selection of students will be on the basis of merit, and will take into account both academic performance and personal leadership qualities, which will be assessed by how well the applicant can demonstrate relevant skills, attributes and qualifications, such as community engagement, future career aspirations, and interest in contributing to the economic or social development of their country. Scholarship places will be allocated equally between boys and girls.

As currently designed, the Managing Contractor will be responsible for reviewing scholarship applications and preparing a shortlist of candidates for interview by the selection committees. The selection committees will be chaired by the Australian High Commission in each participating Pacific country with host government participation, if desired. Successful scholarship candidates will receive a preliminary scholarship offer, subject to the completion of mandatory school enrolment and Australian migration processes. The selection committee in each country will recommend the list of candidates to be offered scholarships to the department's delegate in Canberra for approval. As with the Australia Awards, the department's delegate's decision will be final. The Managing Contractor will be required to have a complaints handling process to respond to any concerns raised by its carrying out of functions.

Successful students will be placed with education providers that are on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS). All CRICOS registered education providers are required to meet legislative and regulatory requirements relating to child welfare and protection and they have tested systems in place to support international students.

The department will engage a Managing Contractor through an open tender process in accordance with the *Commonwealth Procurement Rules 2019*. The department has a complaints handling guideline for complaints, including the conduct of the process or the outcome, which is available on department's website.

The exclusion of independent merits review of the department's delegate's decision on the awarding of each scholarship is justified because the decision relates to the allocation of a finite resource, being the re-prioritisation of approximately AUD 66 million from within existing aid funding, over four years. If allocation of funding for the PSSS Program is altered by the department's delegate's scholarship decisions being subject to review and being overturned, allocations from the funding that have already been made to other scholarship applicants will be directly affected.

The funding to achieve the program's objectives is finite and only a defined number of scholarships can be awarded.

Even though the decision on the awarding of each scholarship is inappropriate for merits review, the department will emphasise administrative accountability in the decision making process by ensuring that selection process is fair, transparent and merit based, and that the decisions are well documented, defensible and made with reference to the selection criteria.

Funding of \$66 million over four years from 2019-20 will be from the department's Official Development Assistance Budget allocation under Program 1.2: Official Development Assistance – Administered, which is part of the department's Outcome 1. Details are set out in the *2019-20 Portfolio Budget Statements, Budget Related Paper No. 1.8, Foreign Affairs and Trade portfolio* (on page 25).

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 aliens power (section 51(xix));
- the social welfare power (section 51(xxiiiA));
- the external affairs power (section 51 (xxix));
- the Pacific islands power (section 51(xxx)); and
- the express incidental power and the executive power (sections 51(xxxix) and 61).

#### Aliens power

Section 51(xix) of the Constitution empowers the Parliament to make laws with respect to 'naturalization and aliens'.

The PSSS Program may provide funding to selected citizens of Pacific Island nations to cover tuition and non-tuition expenses associated with receiving secondary education. Australian nationals and permanent residents will not be eligible for PSSS Program funding.

#### 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 PSSS Program may provide funding to selected students from Pacific Island nations, in the form of scholarships, to assist them attend Australian secondary education institutions.

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 with respect to matters or things outside the geographical limits of Australia.

The PSSS Program will provide scholarships to selected Pacific island students to study at secondary school in Australia and obtain a recognised education qualification. It is anticipated that at the end of year 12, the students will return home with an Australian secondary education certificate, better prepared for economic and social leadership in a changing world. Once they return home, the scholarship students are expected to transition to further education, training or work.

The Pacific islands power

Section 51(xxx) of the Constitution empowers the Parliament to make laws with respect to the relations of the Commonwealth with the islands of the Pacific.

The PSSS Program is intended to deepen educational links with the Pacific region and is a collaborative effort with program partners including Pacific island governments. The PSSS Program will help prepare scholarship students from Pacific island countries for economic and social leadership in their home country.

Executive power and express incidental power

The express incidental power in section 51(xxxix) of the Constitution empowers the Parliament to make laws with respect to matters incidental to the execution of any power vested in the Parliament, the executive or the courts by the Constitution. The executive power in section 61 of the Constitution supports activities that form part of the ordinary and well-recognised functions of government

The PSSS Program may involve funding staffing and other costs associated with the implementation of the activities under the PSSS Program.

## **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 (Foreign Affairs and Trade Measures No. 2) Regulations 2019***

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 *Financial Framework (Supplementary Powers) Amendment (Foreign Affairs and Trade Measures No. 2) Regulations 2019* amends Schedule 1AB to the FF(SP) Regulations to establish legislative authority for government spending on the Pacific Secondary Schools Scholarships (PSSS) Program that will be administered by the Department of Foreign Affairs and Trade.

The PSSS Program will provide a fully-funded government scholarship for education, accommodation and related welfare support for a two-and-a-half year course of study at accredited international education programs in Australian secondary schools. Students would undertake the second half of year 10, followed by years 11 and 12 to obtain a senior school certificate.

The scholarship will be structured as an immersive experience to live with an Australian family, undertake extra-curricular activities such as part-time work, sport, possibly church and other community engagement, as well as opportunities to return home for the purposes of maintaining a connection with families and home countries. The PSSS Program will assist students to prepare for transition to further education, training or work on return home following completion of year 12 in Australia. The scholarship aims to help prepare students for economic and social leadership in their country.

At all stages, the PSSS Program prioritises the students' education and welfare. As part of the quality assurance, students will be placed with education providers that are on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS). All CRICOS registered education providers are required to meet legislative and regulatory requirements relating to child welfare and protection, and they have tested systems in place to support international students.



## **Human rights implications**

This instrument engages the following human rights:

- Right to education: Articles 28 and 29, Convention on the Rights of the Child (CRC); Article 13, International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Right to equality: Articles 3 and 10, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); Article 24, Convention on the Rights of Persons with Disabilities (CRPD).

### *Right to education and equality in respect of education*

Article 28 of the CRC recognises the right of the child to education and provides for States Parties to make available and accessible different forms of secondary education. States Parties are required to promote and encourage international cooperation in matters relating to education, to facilitate access to scientific and technical knowledge and modern teaching methods, with particular account taken of the needs of developing countries.

Article 29 of the CRC provides that education of the child is to be directed, inter alia, to the development of the child to their fullest potential; the preparation of the child for responsible life in a free society with an understanding of tolerance, equality and friendship.

Article 13 of the ICESCR recognises the right of everyone to education, enabling all persons to participate effectively in a free society, promote understanding, tolerance and friendship. In particular, States Parties shall make generally available and accessible secondary education in its different forms.

Article 3 of the CEDAW provides that State Parties shall pursue measures to ensure the economic development and enhancement of women.

Article 10 of the CEDAW provides that States Parties shall take all appropriate measures to eliminate discrimination against women to ensure to them equal rights with men in the field of education. This includes the same opportunities to access general education and to benefit from scholarships.

Article 24 of the CRPD requires States Parties to provide an inclusive education system, whereby persons with disabilities can access a quality education system.

The PSSS Program reflects a shared commitment to quality education by the Government of Australia and partner Pacific Governments, while recognising that ensuring access to education for nationals remains a sovereign responsibility. The PSSS Program reinforces Australia's long-standing priority on education in its aid programs in the Pacific, and commitment to work with partner countries to deliver comprehensive and high-quality education services. The PSSS Program is a complementary modality to Australia's in-country investments in the region, recognising that international education can transform individual recipients, as well as the communities they return home to, as it widens their intellectual horizons, builds their skill set, enhances career and economic prospects and extends their friendship network.

The PSSS Program will adopt an inclusive approach to the selection of scholarship students, ensuring gender equality, inclusion of people with disabilities and those disadvantaged through geographic location or socio-economic circumstances. Scholarship places will be allocated equally between girls and boys.

### **Conclusion**

This Instrument is compatible with human rights because it promotes the protection of human rights, in particular the right to education and the right to equality in respect of accessing education.

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