**EXPLANATORY STATEMENT**

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

*Financial Framework (Supplementary Powers) Act 1997*

*Financial Framework (Supplementary Powers) Amendment*

*(Defence Measures No. 3) Regulations 2021*

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*.

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 (Defence Measures No. 3) Regulations 2021* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on the Schools Pathways Program (the program). The Department of Defence has responsibility for the program.

The program was established following the Government’s announcement of the *Industry Skilling Program Enhancement* package in November 2008. The program supports building early skills and awareness to help enhance future defence industry workforce. Currently, the program is a key initiative of the *2019 Defence Industry Skilling and STEM Strategy*.

The program’s primary goals are to:

* increase student awareness of the employment opportunities and pathways into defence industry;
* facilitate practical career experiences in defence industry for students;
* establish student mentoring and network opportunities with defence industry; and
* increase student opportunities and/or exposure to science, technology, engineering and mathematics (STEM) activities and subjects that lead to an improved awareness of defence industry careers and which increase the pool of skilled workers from which the Australian defence industry can recruit, giving consideration to traditionally underrepresented groups where appropriate.

Legislative authority for the program was initially established on 20 August 2015 under table item 107 of Schedule 1AB to the Principal Regulations, which was repealed on 1 January 2019. The purpose of the new table item 527 is to re-establish legislative authority, so that the program may continue to be administered with authority for the relevant expenditure.

The program is delivered through two complementary models: an intergovernmental agreement with the states of South Australia and Western Australia under the Federal Financial Relations framework, and a grants program, which provides funding to invited corporate entities that demonstrate an ability to meet the program objectives. Funding of $2.8 million over two years from 2020-21 is currently allocated for the grants program.

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 Defence.

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***

***(Defence Measures No. 3) Regulations 2021***

**Section 1 – Name**

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Defence Measures No. 3) Regulations 2021*.

**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 – 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 activity administered by the Department of Defence (the department).

New **table item 527** establishes legislative authority for government spending on the Schools Pathways Program (the program).

The program was established following the Government’s announcement of the *Industry Skilling Program Enhancement* package in November 2008. The program supports building early skills and awareness to help enhance future defence industry workforce.

The program’s primary goals are to:

* increase student awareness of the employment opportunities and pathways into defence industry;
* facilitate practical career experiences in defence industry for students;
* establish student mentoring and network opportunities with defence industry; and
* increase student opportunities and/or exposure to science, technology, engineering and mathematics (STEM) activities and subjects that lead to an improved awareness of defence industry careers and increase the pool of skilled workers from which the Australian defence industry can recruit, giving consideration to traditionally underrepresented groups where appropriate.

Legislative authority for the program was established on 20 August 2015 under table item 107 of Schedule 1AB, which was repealed on 1 January 2019. The purpose of the new table item 527 is to re-establish legislative authority, so that the program may continue to be administered with authority for the relevant expenditure.

The program is currently a key initiative of the *2019 Defence Industry Skilling and STEM Strategy* (the strategy). The strategy is part of the Government’s plan to grow a robust, resilient and internationally competitive Australian defence industrial base that is better able to help meet defence capability requirements.

The program is delivered through two complementary models: an intergovernmental agreement with the states of South Australia and Western Australia under the Federal Financial Relations framework, and a grants program which provides funding to invited corporate entities that demonstrate an ability to meet the program objectives.

Grants awarded under the program are subject to a grant agreement between the recipient organisation and the Commonwealth. Since 2015-16, there have been two regular grant recipients under the program:

* Regional Development Australia Hunter Inc. has been funded to deliver the program objectives in the Hunter region of New South Wales. Implemented under the branding of the ME Program, grant funding supports fostering the links between defence industries and schools through project based learning activities; and
* Re-Engineering Australia Foundation Limited has been funded to deliver the program objectives nationally through their STEM based technology competitions. Facilitating links between defence industries and schools, the current competitions implemented under the program include *F1 in Schools*, *Space in Schools*, *4x4 in Schools* and *SUBs in Schools*.

The department delivers the program using a closed, invitational, non-competitive grant process, in accordance with applicable legislative requirements under the *Public Governance, Performance and Accountability Act 2013* and the *Commonwealth Grants Rules and Guidelines 2017* (CGRGs).

Grant opportunities will be published utilising the whole-of-government grants system GrantConnect (www.grants.gov.au). Guidelines and information are now able to be made available to grant applicants through GrantConnect. The details of grant recipients will be published on GrantConnect, in accordance with the CGRGs. Grants may be administered by one of the Grants Hubs in the future if applicable.

Grants are awarded on the basis of the assessment of applications in relation to established eligibility criteria which relate to the legal and operational status of the applicant, the proposed projects and activities for which funding is sought, and the nature of the expenditure which the grant is intended to fund.

Applicants for the program must be incorporated Australia-based organisations with an Australian Business Number. To be eligible to apply for a grant, the organisation must also:

* be invited by the Commonwealth to submit a proposal; and
* hold the relevant working with vulnerable people registration in the states and territories in which it is proposing to administer the program.

Merit criteria are set out to guide the department’s selection of applicants that may be invited to submit a proposal. The department may approach entities that are believed to have the following capabilities and invite them to submit a proposal:

* have a thorough understanding of defence industry within the region proposed for the establishment of the program;
* knowledge and experience of both the public and private Australian secondary education systems which will assist in influencing student exposure and uptake of STEM studies and their understanding of defence industry career pathways;
* have demonstrated capacity and capability to run the program, providing outcomes against the primary goals and the performance indicators under the grant opportunity guidelines;
* are able to clearly describe the initiatives that they will put in place to ensure that the primary goals of the program and the performance indicators are met and are able to be demonstrated in each milestone report; and
* are able to demonstrate how they will measure the outcomes of each primary goal of the program and related performance indicators in each reporting period.

Applicants will have their proposal considered with regard to how strongly it meets merit criteria in the guidelines and demonstrates the ability to deliver program outcomes and value for money.

Senior officials within the department, the First Assistant Secretary, Defence Industry Policy and Assistant Secretary, Industry Policy, were the authorised delegates to administer grants made under the program following the establishment of table item 107 in Schedule 1AB. A new instrument of delegation would be provided to the Minister for Defence Industry for consideration allowing those same decision makers to continue to administer grants under new table item 527 in Schedule 1AB.

In the event of a complaint in relation to the outcome of an application under the program, requests for review may be sent in writing to the Director, National Defence Industry Skills Office (formerly known as the Industry Analysis and Skilling Strategy Directorate). An internal review will be conducted and a recommendation provided for decision by the First Assistant Secretary, Defence Industry Policy.

Funding decisions made under the program will not be subject to merits review because they meet the description of decisions which, in the opinion of the Administrative Review Council (ARC), are not suitable for merits review. These decisions relate to an allocation of finite resources whereby ‘only a proportion of applications [can] be met’ and ‘a decision made in relation to one grant [affects] the decision relating to all others’. In addition, merits reviews would likely result in delays to the allocation of funding to the program activities, which must occur in alignment with critical schooling points so that educational decisions can be informed by matters relevant to Defence capability. The ARC has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.11 to 4.15 of the guide, *What decisions should be subject to merit review?*).

That said, the ARC suggests that administrative accountability is still required, and that the process for allocating funds under a grant program must be fair, and the criteria for funding must be made clear. Further, decisions relating to grant funding must be made objectively. The department considers that these requirements will be met because of the detailed governance arrangements surrounding the administration and implementation of the program. Complainants who are unsatisfied with the outcome of an internal review of a grant decision will be encouraged to approach the Commonwealth Ombudsman.

The department have consulted with various stakeholders throughout the development of the program. In order to ensure a continuous cycle of evaluations, grantee performance is evaluated at certain points throughout the cycle and the grantee may be required to participate in an Annual Schools Pathways Program Forum to share successes and lessons learned with other program managers.

Funding for the grants program of $2.8 million over two years from 2020-21 will come from Program 2.1: Strategic, Policy and Industry, which is part of Outcome 2. Details are set out in the *Portfolio Budget Statements 2021-22, Budget Related Paper No. 1.3A, Defence Portfolio* at pages 44 to 45.

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 defence power (section 51(vi));
* the social welfare power (section 51(xxiiiA));
* the external affairs power (section 51(xxix));
* the power to grant financial assistance to the states (section 96); and
* the territories power (section 122).

*Defence power*

Section 51(vi) of the Constitution empowers the Parliament to make laws with respect to ‘the naval and military defence’ of the Commonwealth and States, and ‘the control of the forces to execute and maintain the laws of the Commonwealth’.

The program would contribute to Defence capability because it enhances work and career pathways for students into the Australian defence industry. This would expand the pool of skilled workers from which the Australian defence industry can recruit (including by supporting studies, experiences and educational endeavours in science, technology, engineering and mathematics for students).

*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 benefits to students.

The program assists in providing student benefits because it supports student involvement in studies, experiences and educational endeavours in science, technology, engineering and mathematics activities and subjects.

*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 *Convention on the Rights of the Child* (CRC) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). The program makes educational and vocational information and guidance available and accessible, consistent with specific articles of the CRC (in particular, Article 28(1)(b) and (d) and Article 29(1)(a)). In supporting studies, experiences and educational endeavours in science, technology, engineering and mathematics for students and by providing linkages to enhanced work and career pathways, and work experiences for students in the Australian defence industry sector, the program would enhance access to education in a manner consistent with the ICESCR (in particular, Article 13(2)(b)).

*Power to grant financial assistance to the states*

Section 96 of the Constitution empowers the Parliament to ‘grant financial assistance to any State on such terms and conditions as the Parliament thinks fit’.

Expenditure under the program would permit the Commonwealth to provide funding to a State.

*Territories power*

Section 122 of the Constitution empowers the Parliament to ‘make laws for the government of any territory’.

Expenditure under the program would permit the Commonwealth to provide funding to organisations within a Territory.

**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 (Defence Measures No. 3) Regulations 2021***

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 (Defence Measures No. 3) Regulations 2021* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on the Schools Pathways Program (the program). The program is administered by the Department of Defence.

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The program’s primary goals are to:

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Legislative authority for the program was established on 20 August 2015 under table item 107 of Schedule 1AB, which was repealed on 1 January 2019. The purpose of new table item 527 is to re-establish legislative authority, so that the program may continue to be administered with authority for the relevant expenditure.

The program is delivered through two complementary models: an intergovernmental agreement with the states of South Australia and Western Australia under the Federal Financial Relations framework, and a grants program, which provides funding to invited corporate entities that demonstrate an ability to meet the program objectives.

**Human rights implications**

This disallowable legislative instrument engages the following right:

* the right to education – Articles 28 and 29 of the *Convention on the Rights of the Child* (CRC), read with Article 4, and Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), read with Article 2.

*Right to education*

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.

Articles 28 and 29 of the CRC make educational and vocational information and guidance available and accessible to all children to prepare them for a responsible life in a free society in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin.

Article 2 of the ICESCR requires the States Parties to take steps to progressively achieve the full realisation of the rights recognised in the ICESCR by all appropriate means.

Article 13(2)(b) of the ICESCR states that:

* ‘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, and in particular by the progressive introduction of free education.’

By supporting studies, experiences and educational endeavours in science, technology, engineering and mathematics for students and by providing linkages to enhanced work and career pathways, and work experiences for students in the Australian defence industry sector, the program would enhance access to education.

**Conclusion**

This disallowable legislative instrument is compatible with human rights because it promotes the protection of human rights.

**Senator the Hon Simon Birmingham**

**Minister for Finance**