**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. 1) Regulations 2023*

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*.

The Principal Regulations are exempt from sunsetting under section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (item 28A). If the Principal Regulations were subject to the sunsetting regime under the *Legislation Act 2003*, this would generate uncertainty about the continuing operation of existing contracts and funding agreements between the Commonwealth and third parties (particularly those extending beyond 10 years), as well as the Commonwealth’s legislative authority to continue making, varying or administering arrangements, grants and programs.

Additionally, the Principal Regulations authorise a number of activities that form part of intergovernmental schemes. It would not be appropriate for the Commonwealth to unilaterally sunset an instrument that provides authority for Commonwealth funding for activities that are underpinned by an intergovernmental arrangement. To ensure that the Principal Regulations continue to reflect government priorities and remain up to date, the Principal Regulations are subject to periodic review to identify and repeal items that are redundant or no longer required.

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. Section 32D of the FF(SP) Act confers powers of delegation on Ministers and the accountable authorities of non-corporate Commonwealth entities, including subsection 32B(1) of the Act. Schedule 1AA and Schedule 1AB to the Principal Regulations specify the arrangements, grants and programs.

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.

The *Financial Framework (Supplementary Powers) Amendment (Education Measures No. 1) Regulations 2023* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on certain activities administered by the Department of Education.

Funding will be provided for the following programs:

* the City-Country Partnerships Program - aims to provide financial support to facilitate high-performing metropolitan schools engaging in partnerships with remote schools to improve educational outcomes of Aboriginal and Torres Strait Islander students in the remote schools (up to $25.9 million over two years from 2022-23, no new funding is provided);
* the Commonwealth Regional Scholarship Program - aims to fund a scholarship program to support students from regional and remote Australia to attend boarding school or live at a boarding facility while attending school ($10.9 million over seven years from 2023-24); and
* Consent and Respectful Relationships Education - initiative to fund the States, Territories and non-government representative bodies for the delivery of consent and respectful relationships education in schools ($83.5 million over six years from   
  2022–23).

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.

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. 1) Regulations 2023***

**Section 1 – Name**

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Education Measures No. 1) Regulations 2023*.

**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**

***Financial Framework (Supplementary Powers) Regulations 1997***

**Item 1 – Part 4 of Schedule 1AB (cell at table item 517, column headed “Program”)**

**Table item 517** in Part 4 of Schedule 1AB establishes legislative authority for government spending on the School Partnerships to Improve Educational Outcomes for Indigenous Students in Remote Schools program, which is administered by the Department of Education (the department).

Item 1 amends table item 517 by repealing the cell in the column headed “Program” and substituting with “City-Country Partnerships Program” (the program). The amendment aligns the program’s name with the innovative grant program announced as part of the Commonwealth’s first Implementation Plan under the *National Agreement on Closing the Gap*.

**Item 2 – Part 4 of Schedule 1AB (table item 517, column headed “Objective(s)”)**

Item 2 amends table item 517 by omitting “non-government” in the column headed “Objective(s)”. The original program parameters provide that only Independent city schools were eligible to be a partner school. An amendment to table item 517 removes this parameter, so that any high-performing metropolitan schools from any education sector (government or non-government) are eligible to apply to engage in new formal partnerships with remote schools with a high proportion of Aboriginal and Torres Strait Islander students.

The program was announced in August 2021 as part of the Commonwealth’s first Implementation Plan under the *National Agreement on Closing the Gap* (https://www.closingthegap.gov.au/national-agreement), which required the Australian Government to submit an implementation plan setting out the Commonwealth’s efforts in achieving the targets in the National Agreement (both existing actions as well as new investment and areas of future work). The program is part of a broader package of measures supporting the *Closing the Gap Implementation Plan* that will be monitored by the Joint Council on Closing the Gap.

Funding of up to $25.9 million over two years from 2022-23 was provided to incentivise and support new formal partnerships between high-performing, metropolitan independent schools and remote schools with a high proportion of Aboriginal and Torres Strait Islander students.

The program will be administered within the existing commitments with no new funding provided for the legislative amendments. The department will monitor program uptake, but initial analysis suggests this change will not significantly increase the number of interested potential partner schools. Rather, it will remove any perception of inequity and maximise the focus on metropolitan schools being high-performing, instead of being from a particular sector.

These formal partnerships aim to improve the quality of operational management and principal leadership and increase the reach of effective teacher practices, for example, instructional coaching to teachers to lift the quality of pedagogy in remote schools. These partnerships are expected to support two-way learning between partner schools, address key issues such as workforce shortages through enabling and encouraging teacher transfers and support improved education outcomes for remote Aboriginal and Torres Strait Islander students.

The program contributes toward achieving Target 5 of the *National Agreement on Closing the Gap* by 2031, increase the proportion of Aboriginal and Torres Strait Islander people (aged 20-24) attaining Year 12 or equivalent qualification to 96 per cent*.* According to the *Closing the Gap Report 2020* available at https://ctgreport.niaa.gov.au/ (the annual report to Parliament on progress in Closing the Gap), the proportion of Aboriginal and Torres Strait Islander people aged 20-24 years attaining Year 12 or equivalent level of education decreases with remoteness. The Year 12 attainment rate is 85 per cent in major cities compared with 38 per cent in very remote areas.

To be successful in improving student outcomes, attendance and engagement to accelerate progress toward Target 5, partnerships will need to be enduring. As such, to apply for funding, schools must:

* provide a business plan to underpin their proposed partnership, with a demonstrated need, a clear plan to lift school outcomes, and a pathway to sustainability to embed the success of partnerships over longer term;
* provide evidence of sustained consultation and involvement by local Aboriginal and Torres Strait Islander communities;
* demonstrate support of the appropriate state or territory government; and
* demonstrate the ability to capture and report on student outcomes, attendance, engagement and Year 12 attainment rates as part of annual reporting requirements.

Participating schools will be expected to report annually on Aboriginal and Torres Strait Islander student outcomes, attendance, engagement and Year 12 attainment rates to inform an evaluation of the program.

Under the program existing funding arrangements, $3.8 million has been awarded to the Yadha Muru Foundation (YMF) to deliver the program. YMF was formed in 2019 as an Indigenous led independent not-for-profit. YMF’s ambition is to facilitate the widespread replication of the school partnership model in Indigenous education. The partnership model allows students, families and communities to work closely with schools to find a ‘good path’ for their children resulting in educational success and positive future pathways.

Funding of $20.8 million will be expended on partnership activities, with partnerships to be recommended by YMF and approved by the Deputy Secretary of Schools Group, following a selection process run by YMF. $0.4 million will contribute to a consolidated evaluation of Closing the Gap Schools and Youth Measures and $0.9 million will be expended on departmental costs associated with administering the program grant.

The YMF was selected following an open, competitive grant opportunity in March-April 2022 in accordance with the relevant grant opportunity guidelines and the *Commonwealth Grants and Rules Guidelines 2017* (CGRGs). The outcome of the grant round was approved by the Minister for Education, the Hon Jason Clare MP, and a grant agreement was subsequently executed between the department and YMF on 26 August 2022.

The grant is being administered by the Community Grants Hub, part of the Department of Social Services. The internal delegates for matters relating to the grant agreement are the Deputy Secretary, Schools Group and the First Assistant Secretary of the Improving Student Outcomes Division (as the delegate of the Secretary of the department in accordance with the appropriate financial delegations). The delegates have a sound understanding of the policy and operational context for Commonwealth spending on the program.

YMF has been engaged to oversee implementation of the program. YMF is an Indigenous-led consortium with sound experience and understanding of the policy and operational context for partnership arrangements intended to be supported through the program. Specifically, YMF is required to:

* document a selection process for formal school partnerships, to be agreed by the department;
* identify, assess, and advise, through the department, on partnership proposals for consideration and decision by the Deputy Secretary of Schools Group, following a selection process run by YMF;
* consult sector stakeholders, including those identified by the department, such as Aboriginal and Torres Strait Islander education stakeholders, non-government and government school leaders, education authorities and state and territory education departments;
* administer the funding to selected schools, oversee partnerships implementation in line with these grant guidelines and source philanthropic support to match government funding;
* identify and source philanthropic or other financial support, including contributions from partnering schools to enhance the partnerships;
* support participating schools to develop and demonstrate financial sustainability arrangements before Australian Government funding ceases in 2023-24;
* consolidate reporting information from participating schools and provide to the department (annually or as agreed); and
* provide secretariat support where required to ensure appropriate oversight and Indigenous engagement in the delivery of the program.

Information on the program and partnerships will be made available on the department’s website at www.education.gov.au and on YMF’s website.

It is expected that a finite number of schools will benefit from the program, with the decision to provide grants to eligible schools not subject to independent merits review. In order for a remote school to be eligible for grant funding under the program, the level of need will need to be high. Overturning a decision to allocate funding to one school would affect an allocation already made to another school in need. Merits review would also cause delays in channelling funds to the program. The Administrative Review Council (ARC)has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.11 to 4.19 of the guide, *What decisions should be subject to merit review?* (ARC guide)).

The amendments to table item 517 respond to feedback that other sectors would have   
high-performing metropolitan schools, not just independent schools. This was received from a range of external stakeholders, including state and territory education departments and external stakeholders that are members of the Commonwealth department’s Indigenous Education Consultative Meeting (IECM). IECM is a key engagement mechanism for the department enabling it to work in partnership with Aboriginal and Torres Strait Islander people in line with the *National Agreement on Closing the Gap* and the group receives updates on the department’s Closing the Gap measures, of which the program is one.

The selected delivery organisation, YMF, were consulted and are supportive of the program parameter change and what that will mean for their grant agreement (largely the same activity delivery expectations apply, with an amendment to the scope of schools who can express interest in participating in the program). Consultation also took place with the National Indigenous Australians Agency to confirm their support for the parameter change.

Funding of up to $25.9 million over two years from 2022-23 for the program will come from Program 1.5: Early Learning and Schools Support, which is part of Outcome 1. Details are set out in *October Portfolio Budget Statements 2022-23, Budget Related Paper No. 1.5, Education Portfolio* at page 54.

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 race power (section 51(xxvi));
* the external affairs power (section 51(xxix)); and
* the Territories power (section 122).

*Race power*

Section 51(xxvi) of the Constitution empowers the Parliament to make laws with respect to ‘the people of any race for whom it is deemed necessary to make special laws’.

The program will fund high performing schools so they can engage in formal partnerships with remote majority Indigenous schools to improve the operations of and the education provided by the remote school, particularly in relation to teaching. This will benefit the Aboriginal and Torres Strait Islander students targeted by this program.

*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 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).

Article 4 of the CRC provides that States Parties to the Convention will undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the Convention.

Article 28(1) of the CRC provides that States Parties recognise the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity.

Article 29 of the CRC provides that States Parties agree that the education of the child shall be directed to the ‘development of the child’s personality, talents and mental and physical abilities to their fullest potential’.

Article 2(1) of the ICESCR provides that each State Party to the Covenant undertakes to take steps to achieve progressively the full realisation of the rights recognised in the Covenant.

Article 13(2)(a) of the ICESCR provides that the States Parties ‘recognize that, with a view to achieving the full realization of this right ... [p]rimary education shall be compulsory and available free to all’.

The above provisions of the CRC and ICESCR are engaged by the program as it is directed to improving the quality and consistency of education provided to students at the participating schools.

*Territories power*

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

The program’s focus on remote majority Indigenous schools will benefit participating schools in the Northern Territory.

**Item 3 – 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 to be administered by the department.

New **table item 586** establishes legislative authority for government spending on the Commonwealth Regional Scholarship Program (the program) to support students from regional and remote Australia to attend boarding school or live at a boarding facility while attending school.

The program aims to assist students from rural, regional and remote areas with boarding fees, in order to provide a quality education option where local alternatives may not exist or be suitable.

Boarding schools and facilities are an important option for many families, particularly in regional and remote communities, where local secondary school options may be limited. The scholarships will help to ensure that recipients can attend boarding school where it may otherwise have been unaffordable.

The program will deliver approximately 100 scholarships to students from regional and remote communities across Australia. Scholarships will be offered for up to six years (all of secondary school) to promote greater schooling continuity and increase the likelihood of student engagement and retention.

Scholarships will be offered for two tiers of student: Tier 1 funding will support low-income families (at $20,000 per annum) and Tier 2 will support low-to-middle income families experiencing financial hardship (at $10,000 per annum) to ensure the scholarship better supports target student cohorts, including low-income families with limited capacity to contribute to out-of-pocket boarding fees.

The target students for this scholarship:

* are from regional, rural, and remote communities;
* are from low-income families, or low-to-middle income families experiencing financial hardship;
* are commencing or undertaking secondary school in the 2024 school year; and
* have shown academic improvement or a commitment to improve their academic achievements over time. However, this scholarship is not intended to specifically target students with outstanding academic ability, noting that the intent of the program is to lift the educational attainment rates of regional, rural, and remote students, which fall below their metropolitan peers.

The program will be administered through third-party provider/s, who will provide support to scholarship recipients while they board at a school or boarding facility. This support includes managing relationships and helping to make necessary arrangements between schools, recipients, and families/communities, and connecting scholarship recipients to relevant support services.

Scholarship processes and guidelines will be designed in consultation with stakeholders including peak bodies and the National Indigenous Australians Agency (NIAA) which manages several boarding scholarships. This design process will consider factors such as efficient and proper distribution of funds, and ensuring funds are recoverable if needed. This design process will also have a view to ensuring the fair and equitable administration of the program. Once finalised, the selected provider/s will publish the selection criteria for scholarship recipients, including the definition/criteria of low-income families and low-to-middle income families experiencing financial hardship.

Providers will select scholarship recipients based on agreed selection criteria. The department will consult with key stakeholders such as state and territory government education departments and peak bodies to inform the development of scholarship selection criteria. This consultation and design process will help ensure that Commonwealth funds are administered fairly and equitably, in line with the policy intent of the scholarships.

The department will work with the Community Grants Hub to select these providers through a targeted competitive grants process. The grants process and grant opportunity guidelines will be designed to identify and select providers who have the expertise and community relationships required to administer the scholarships.

Information about the grant and grant opportunity guidelines will be made available on the GrantsConnect website and the grant will be administered by the Community Grants Hub.

The final decision in relation to the selection of the providers of the program and the terms of their arrangements will be made by the First Assistant Secretary responsible for administering the program. The person holding that position will be a senior executive officer who will have a sound understanding of the policy and operational context for Commonwealth spending on the program.

The relevant arrangements for the program will be administered in accordance with the Commonwealth resource management framework including the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and the CGRGs. It will also be administered in accordance with the department’s Accountable Authority Instructions and any other relevant financial delegations.

Information about the program will be made publicly available on the department’s website at https://www.education.gov.au.

Funding decisions taken in relation to the program will not be subject to independent merits review. The program involves an allocation of finite resources. Review (and potential change) of decisions would impact allocations made to other parties and would impede timely and effective implementation of the Initiative. The ARC has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.11 to 4.16 of the ARC guide*)*.

Furthermore, review of decisions once funding agreements have been entered into would be difficult and legally complex.

Several recent reviews have consulted widely with relevant stakeholders regarding the issues faced by students in regional and remote areas. These reviews include the *Independent Review into Regional Rural and Remote Education* (2018) (Halsey Review: https://www.education.gov.au/quality-schools-package/resources/independent-review-regional-rural-and-remote-education-final-report); the review *Boarding: investing in outcomes for Aboriginal and Torres Strait Islander students* (2019) (https://www.niaa.gov.au/sites/default/files/publications/investing-in-outcomes-analysis-2019.pdf), conducted by Grant Thornton Australia for the Department of the Prime Minister and Cabinet; and the House of Representatives *Standing Committee on Employment, Education and Training’s inquiry into education in remote and complex environments* (2020) (https://www.aph.gov.au/Parliamentary\_Business/Committees/House/Employment\_Education\_and\_Training/RemoteEducation/Report).

The reviews identified the need for some students to attend boarding school, and that some of these students require financial support to be able to afford boarding. They noted the existing government supports that are available, and that more support is needed.

The department consulted the NIAA regarding the initial design of the program. NIAA administers the funding for existing scholarships for Aboriginal and Torres Strait Islander school students and has considerable experience in this field. They provided information regarding administration costs and unmet demand for boarding school scholarships.

In light of the above reviews and consultation with the NIAA, it was considered unnecessary to conduct further consultations with stakeholders in relation to the need for the program.

In October 2022, the department consulted with the Regional Education Commissioner on potential adjustments to program settings, following a request from the Commonwealth Minister for Education to consider how the program could be adjusted to focus on equity objectives. The Regional Education Commissioner suggested several changes to program settings, including changing the per-student funding amount, scholarship length and number of scholarships.

The scholarships are a beneficial measure and to date have been welcomed by stakeholders. The department will consult with key stakeholders, such as state and territory government education departments and peak bodies, during the design of the program guidelines, including to inform scholarship selection processes.

Funding of $10.9 million over seven years from 2023-24 for the program will come from Program 1.5: Early Learning and Schools Support, which is part of Outcome 1. Details will be included in the 2023-24 Budget and Portfolio Budget Statements 2023-24, Education Portfolio.

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

*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 program will provide funding to enable students to attend boarding school, or to live at a boarding facility while attending school.

New **table item 587** establishes legislative authority for government spending on Consent and Respectful Relationships Education initiative (the initiative) to fund the States, Territories and non‑government representative bodies for the delivery of consent and respectful relationships education in schools.

The initiative responds to the Government’s election commitment on *Labor’s Plan to teach students respect* to support schools to provide evidence-based, age-appropriate consent and respectful relationships education to help prevent violence and keep young people safe.

The initiative provides an opportunity for a nationally coordinated and strategic approach with jurisdictions and non-government school systems that will demonstrate collective investment in prevention education in schools.

In recognition that delivery for respectful relationships education is the responsibility of state and territory governments and non-government school systems, the initiative aims to support work already underway in jurisdictions and to provide support and guidance to enable schools to offer high-quality and evidence-based programs for teaching respectful relationships education. The details of funding allocations will be informed by the advice of the expert working group and consultations with jurisdictions and the non-government schooling sectors. The Minister for Education will provide final approval for funding allocations.

Funding of $83.5 million over six years from 2022-23 could be allocated as follows:

* **establishing the national expert working group**. The Expert Working Group will include Australian government and state and territory representatives, representation from National Catholic Education Commission and Independent Schools Australia. Several subject matter experts will also be invited to be members of the Expert Working Group subject to Ministerial approval. Selection of experts will be based on their expertise in delivering respectful relationships education, women’s and children’s safety and violence prevention, with the possibility of including other experts that represent priority cohorts, research expertise or related subject experts. Membership to be finalised;
* **completing a rapid review of key areas of need**. The Review will focus on the ‘how’ of respectful relationships education (RRE), ie, the delivery of RRE in schools and the identification of gaps and opportunities for improvement. The Review builds on the national stocktake project undertaken by Monash University (report published on 16 September 2022), which focused on the ‘what’; ie, the identification of existing respectful relationships education programs and resources used by schools, the effectiveness of these programs and resources, and common practice and policy challenges faced by existing approaches to respectful relationships education. At the completion of the rapid review in 2023, the grant activities will be developed in consultation with the working group and be informed by the review findings. This will include robust and transparent grant opportunity guidelines for a closed   
  non-competitive process that will set out eligibility criteria, eligible grant activities and expenditure;
* **developing a national framework to guide schools** in investing in and supporting delivery of quality evidence-based, age-appropriate consent and RRE across Australian schools. This framework is to provide assurance to school communities that they are delivering and receiving high-quality and evidenced-based RRE programs. The Expert Working Group will support the development of the framework; and
* **grant opportunity process** for state and territory governments and   
  non-government school systems (to share funding of $77.6 million). Grant opportunity guidelines will be developed in consultation with the Expert Working Group and will be informed by the rapid review findings. A grants process is anticipated for mid-2023 (2023-24) to support the roll-out of programs and related services in the 2024 school year.

The intent of the initiative is to direct funding towards gaps and needs, and to facilitate the sharing of knowledge and approaches across jurisdictions and sectors – such as sharing of education resources.

The need for improved consent and RRE in schools gained prominence through the ‘[Teach Us Consent](https://www.teachusconsent.com/)’ campaign. In April 2022, the Education Ministers [endorsed](https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F8505409%22) version 9.0 of the [Australian Curriculum](https://v9.australiancurriculum.edu.au/). This [revised curriculum](https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F8618568%22) included ‘a strengthening of explicit teaching of consent and respectful relationships from F–10 [Foundation to Year 10] in   
age-appropriate ways’.

Beneficiaries of the initiative are schools and school students from foundation to Year 12 through investments as determined by the jurisdiction and non-government school sectors in line with the grant opportunity guidelines. These investments may include professional development for teachers, casual teacher relief time for schools, and/or delivery of   
evidence-based programs by external providers.

The initiative will be delivered in partnership with states, territories and non-government school systems and will support schools to invest in teacher professional training and release time and partner with quality external providers. Details regarding the allowable uses of funding will be developed during the grant opportunity guidelines approval process and at the discretion of the Minister for Education. The allowable uses of funding will be informed by the expert working group’s recommendations.

Grants funding will be provided in accordance with the Commonwealth resource management framework, including the PGPA Act and the CGRGs, to be administered by the Community Grants Hub. The grants round is expected to open mid-2023 according to selection criteria which will be outlined in the grant opportunity guidelines and published on GrantConnect (www.grants.gov.au).

Information about the program and the decisions made will be published on the department’s website (www.education.gov.au).

Funding decisions will be informed by consultation with the Respectful Relationships Education Expert Working Group and final decisions will be made by the Minister for Education.

Independent merits review will not be available for the grants provided. The grants decisions, once made, will be final and not subject to merits review. The grant involves an allocation of a finite resource. Review (and potential change) of decisions would impact allocations made to other parties and would impede timely and effective implementation of the program. The ARC has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.11 to 4.16 of the ARC guide).

Australian Education Senior Officials Committee (AESOC) members were briefed on the Government’s election commitments including the initiative at the 29 July 2022 AESOC meeting.

During September to November 2022, the department invited all jurisdictions and   
non-government school peak bodies to meet and discuss the concept and intent of the initiative. The department met with representatives from the Department of Education Tasmania, the ACT Education Directorate, the South Australian Department for Education, the NT Education Department, the Department of Education and Training Victoria, the Queensland Department of Education, the WA Department of Education, the NSW Department of Education, the National Catholic Education Commission and Independent Schools Australia.

These stakeholders were supportive of the initiative and expressed interest in being involved through membership of the working group. These stakeholders were selected to be part of the consultation process as the Government acknowledges and values the expertise and work of state and territory governments and non‑government school systems to implement the Australian Curriculum and develop policies and programs for teaching respectful relationships in their respective schools.

Funding of $83.5 million for the initiative is included in the 2022-23 October Budget under the measure ‘Consent and Respectful Relationships Education’ for a period of six years commencing in 2022-23. Details are set out in the *Budget October 2022-23, Budget Measures, Budget Paper No. 2* at page 91.

Funding for this item will come from Program 1.5: Early Learning and School Support, which is part of Outcome 1. Details are set out in the *October* *Portfolio Budget Statements 2022-23*, *Budget Related Paper No. 1.5, Education Portfolio* at pages 23, 30 and 54.

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 external affairs power (section 51(xxix));
* the power to grant financial assistance to States (section 96); and
* the Territories power (section 122).

*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 reduction of violence against women and girls under Articles 1, 2, 5 and 16 of the *Convention on the Elimination of all Forms of Discrimination against Women* [1983] ATS 9(CEDAW) and Article 19 of the *Convention on the Rights of the Child* [1991] ATS 4 (CRC).

Article 1 of the CEDAW states that ‘discrimination against women’ means any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2(f) of the CEDAW provides that ‘States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women’.

Article 5(a) of the CEDAW provides that ‘States Parties shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women’.

Article 16 of the CEDAW provides that ‘States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women.

The purpose of the initiative is to reduce violence against women and girls, which assists Australia to meet these obligations.

Article 9 of the CRC provides that ‘States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in particular case such as one involving abuse or neglect of the child by the parents’.

Article 19 of the CRC provides that ‘States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child’.

The purpose of the initiative is to educate children to help prevent violence and keep young people safe, which assists Australia to meet these obligations.

*Power to grant financial assistance to 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’.

Some of the projects will be carried out in states and funding will be provided to state governments.

*Territories power*

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

Some of the projects will be carried out in territories.

**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. 1) Regulations 2023***

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 (Education Measures No. 1) Regulations 2023* amend Schedule 1AB to the FF(SP) Regulations to establish legislative authority for government spending on certain activities administered by the Department of Education.

This disallowable legislative instrument makes amendments to the following table items in Part 4 of Schedule 1AB:

* amends table item 517 ‘City-Country Partnerships Program’;
* adds table item 586 ‘Commonwealth Regional Scholarships Program’; and
* adds table item 587 ‘Consent and Respectful Relationships Education’.

*Amended table item 517 - City-Country Partnerships Program*

The amended table item 517 provides legislative authority for government spending on the City-Country Partnerships program (the program) by expanding the parameters of the program to allow high-performing metropolitan schools from any education sector (government, non-government and independent) to be eligible to apply to engage in new formal partnerships with remote schools with a high proportion of Aboriginal and Torres Strait Islander students.

The formal partnerships aim to improve the quality of operational management and principal leadership, and increase the reach of effective teacher practices (for example, instructional coaching to teachers to lift the quality of pedagogy in remote schools). These partnerships will address key issues such as workforce shortages through enabling and encouraging teacher transfers.

Funding of up to $25.9 million over two years from 2022-23 will also support brokerage activity to promote partnerships in the school sector and may consider opportunities to partner with local further education and training providers and employers, to enhance further education and employment pathways for students.

**Human rights implications**

The amended table item 517 engages the following human right:

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

*Right to education*

Article 2 of the ICESCR requires 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)(a) of the ICESCR relates to the right of everyone to primary education that is compulsory and free.

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. These rights include ‘the right of the child to education’ (Article 28).

Article 29(1)(a) of the CRC provides that States Parties agree that the education of the child shall be directed to the ‘development of the child’s personality, talents and mental and physical abilities to their fullest potential’.

The amended table item 517 supports the right to education as it will enable funding to be provided to high performing metropolitan schools from any education sector (government, non-government and independent), so they can engage in formal partnerships with remote, majority Indigenous schools, to improve the operations of, and the education provided by, the remote school.

**Conclusion**

The amended table item 517 is compatible with human rights because it promotes the protection of human rights.

*Table item 586 – Commonwealth Regional Scholarship Program*

Table item 586 establishes legislative authority for government spending on the Commonwealth Regional Scholarship Program (the program) to support students from regional and remote Australia to attend boarding school or live at a boarding facility while attending school.

The program aims to assist students from rural, regional and remote areas with boarding fees, in order to provide a quality education option where local alternatives may not exist or be suitable. Boarding schools and facilities are an important option for many families, particularly in regional and remote communities, where local secondary school options may be limited. The scholarships will help to ensure that recipients can attend boarding school where it may otherwise have been unaffordable.

Funding of $10.9 million over seven years from 2023-24 will be provided to deliver approximately 100 scholarships to students from regional and remote communities across Australia. Scholarships will be offered for up to six years (all of secondary school) to promote greater schooling continuity and increase the likelihood of student engagement and retention.

**Human rights implications**

Table item 586 engages the following human right:

* the right to education – Articles 28 and 29 of the CRC, read with Article 4, and Article 13 of the 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 CROC. These rights include ‘the right of the child to education’ (Article 28).

Article 29(1)(a) of the CROC provides that ‘States Parties agree that the education of the child shall be directed to… the development of the child’s personality, talents and mental and physical abilities to their fullest potential’.

Article 2 of the ICESCR requires 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)(a)-(b) of ICESCR relates to the right of everyone to primary education that is compulsory and free and to secondary education that is generally available and accessible to all. Article 13(3) relates to the liberty of parents and guardians to choose schools for their children provided those schools confirm to minimum educational standards.

Table item 586 supports the right to education by supporting the implementation of a program that will improve access to education by providing scholarships for students in regional and remote Australia that are from low socioeconomic families and low to   
mid-socioeconomic families who are experiencing financial hardship. The scholarships will support such students to attend boarding school or live at a boarding facility while attending school. Provision of such scholarships will also support parental choice in school education by reducing the financial burden of boarding school and boarding facilities.

**Conclusion**

Table item 586 is compatible with human rights because it promotes the protection of human rights.

*Table item 587 - Consent and Respectful Relationships Education*

New table item 587 establishes legislative authority for government spending on the Consent and Respectful Relationships Education initiative (the initiative) to fund the States, Territories and non‑government representative bodies for the delivery of consent and respectful relationships education in schools.

The initiative responds to the Government’s election commitment on *Labor’s Plan to teach students respect* to support schools to provide evidence-based, age-appropriate consent and respectful relationships education to help prevent violence and keep young people safe.

The initiative provides an opportunity for a nationally coordinated and strategic approach with jurisdictions and non-government school systems that will demonstrate collective investment in prevention education in schools.

Funding of $83.5 million over six years from 2022-23 will be provided to support:

* the establishment of a national respectful relationship education working group to inform and guide the implementation of the initiative;
* completing a rapid review of key areas of need focusing on the ‘how’ of respectful relationships education;
* developing a national framework to guide schools in investing in and supporting delivery of quality evidence-based, age-appropriate consent and respectful relationships education across Australian schools; and
* grant opportunity process for state and territory governments and non-government school systems.

**Human rights implications**

Table item 587 engages the following human rights:

* the right to education – Articles 28 and 29 of the CRC, read with Article 4, and Article 13 of the ICESCR, read with Article 2; and
* the right to condemn discrimination and reduce violence against women and girls – Articles 1, 2, 5 and 16 of the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW).

*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 CROC. These rights include ‘the right of the child to education’ (Article 28).

Article 29(1)(a) of the CRC provides that ‘States Parties agree that the education of the child shall be directed to… the development of the child’s personality, talents and mental and physical abilities to their fullest potential’.

Article 2 of the ICESCR requires 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)(a)-(b) of ICESCR relates to the right of everyone to primary education that is compulsory and free and to secondary education that is generally available and accessible to all. Article 13(3) relates to the liberty of parents and guardians to choose schools for their children provided those schools confirm to minimum educational standards.

Table item 587 promotes the right to education by supporting the implementation of the program that will assist children’s education outcomes and development.

*Right to condemn discrimination of women*

Article 1 of the CEDAW states that ‘discrimination against women’ means any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2(f) of the CEDAW provides that ‘States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women’.

Article 5(a) of the CEDAW provides that ‘States Parties shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women’.

Article 16 of the CEDAW provides that ‘States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women.’

The purpose of this program is to reduce violence against women and girls, which supports the right to condemn discrimination of women.

**Conclusion**

Table item 587 is compatible with human rights because it promotes the protection of human rights.

**Senator the Hon Katy Gallagher**

**Minister for Finance**