**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. 3) Regulations 2024*

The *Financial Framework (Supplementary Powers) Act 1997* (the FFSP 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 FFSP 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 FFSP 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 FFSP Act confers powers of delegation on Ministers and the accountable authorities of non-corporate Commonwealth entities, including subsection 32B(1) of the FFSP Act. Schedule 1AA and Schedule 1AB to the Principal Regulations specify the arrangements, grants and programs.

Section 65 of the FFSP 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. 3) Regulations 2024* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for a grant to the GO Foundation to support a scholarship program (the program). The program is administered by the Department of Education (the department).

Since the 2014-15 Budget, funding for the GO Foundation, to run the program has been administered by the Department of the Prime Minister and Cabinet, via the National Indigenous Australians Agency (NIAA). The GO Foundation previously partnered with the Australian Indigenous Education Foundation (AIEF) to provide scholarships for First Nations students to support engagement with school. This partnership concluded in 2018 with the GO Foundation focusing its support on First Nations students in public schools with a small portion in independent schools.

NIAA approved a new grant agreement which commenced in June 2019. This grant agreement and funding runs to 31 December 2024 when the responsibility for the administration of the program will transfer to the department.

Funding of $4.0 million over four years from 2024-25 will support First Nations students achieve their full learning potential by providing access to quality education, mentorship, and pathways to employment through scholarships. The GO Foundation assists students across the full education life cycle (primary to post-tertiary) through cultural support, role modelling, career aspirations, and pathways support. The program supports the Australian Government’s broader Closing the Gap agenda.

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.

A regulatory impact analysis is not required as the Regulations only apply to non‑corporate Commonwealth entities and do not adversely affect the private sector.

**Attachment A**

**Details of the *Financial Framework (Supplementary Powers) Amendment***

***(Education Measures No. 3) Regulations 2024***

**Section 1 – Name**

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Education Measures No. 3) Regulations 2024.*

**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 – In the appropriate position in Part 3 of Schedule 1AB (table)**

This item adds one new table item to Part 3 of Schedule 1AB to establish legislative authority for government spending on an activity to be administered by the Department of Education (the department).

*Table item 82 – Grant to GO Foundation*

New **table item 82** establishes legislative authority for Government spending on the GO Foundation program (the program) to support First Nations students achieve their full learning potential by providing access to quality education, mentorship, and pathways to employment through scholarships.

Since the 2014-15 Budget, funding for the GO Foundation to run program has been administered by the Department of the Prime Minister and Cabinet, via the National Indigenous Australians Agency (NIAA). As of 2022, 94 per cent of GO Foundation scholarships are awarded to students in public schools.

When the 2014 grant agreement concluded, NIAA approved a new grant agreement commencing in June 2019. This grant agreement and funding runs to 31 December 2024, when the administration and financial responsibility of the program will transfer to the department.

The program itself will have no significant change in transferring to the department. The delivery of this program supports the Australian Government’s broader Closing the Gap agenda, by supporting Outcome 5, where First Nations students are supported to achieve their full learning potential by providing access to quality education, mentorship, and pathways to employment through scholarships. The GO Foundation assists students across the full education life cycle (primary to post-tertiary) through ‘wrap around’ cultural support, role modelling, career aspirations, and pathways support.

Wrap around support services enhance First Nations students’ educational experiences and outcomes, including through scholarships, mentoring, and tutoring. Specifically, cultural support is facilitated through cultural workshops, language preservation activities, and opportunities to engage with First Nations leaders and communities. Participants are provided with access to health and wellbeing services, including counselling and health services. Career pathways support for participants includes internships, work experience, and community engagement.

The GO Foundation has determined the eligibility criteria for scholarships. GO Foundation scholarships are only for First Nations people attending school or university. Other eligibility criteria include that the student must:

* be enrolled in a GO Foundation partner school;
* have a demonstrated commitment to education; and
* have an interest or history of participation in school or community activities.

GO scholarships assist with the costs of educational needs such as uniforms, excursions, tutoring and equipment for school, including laptops, iPads and school devices, stationery, backpacks, textbooks, home Wi-Fi for homework. School fees, sporting equipment or sportswear, driving lessons and/or entertainment are excluded.

*Funding amount and arrangements, merits review and consultation*

Funding of $4.0 million over four years from 2024-25 for the program comes under the administered funding of Outcome 1, Program 1.5: Early Learning and Schools Support, was announced by the Government on 11 July 2024, and will be included in the appropriate Budget Papers at the next appropriate update.

The program has been implemented by the GO Foundation and funding is administered and managed by the department. The Commonwealth will enter into a grant arrangement via a closed, non-competitive and one-off ad hoc grant. The department will administer the funding in accordance with obligations under the Public Governance, *Performance and Accountability Act 2013* and the grant guidelines developed pursuant to the *Commonwealth Grants Rules and Guidelines 2017*.

As there is no significant change to the program from its previous arrangement with the NIAA, a closed non-competitive grant round was agreed to be the best and most efficient mechanism for this grant. The GO Foundation has demonstrated success in delivering this program and has been in operation since 2009, receiving its first grant from the Government in 2014. Since its establishment, the organisation has supported 604 First Nations students and has awarded over 1200 scholarships. The GO Foundation is the only First Nations led scholarship provider at the national level.

The grant expenditure decision will be made by the First Assistant Secretary (Senior Executive Service (SES) Band 2) or Assistant Secretary (SES Band 1) of the Improving Student Outcomes Division (as delegate of the Secretary of the department in line with the appropriate financial delegations).

Details of the grant will be published on GrantConnect (www.grants.gov.au) in accordance with standard processes. The grant is exempt from using a Grants Hub.

Independent merits review of decisions made in connection with the grant would not be considered appropriate because the grant round is closed, non-competitive and for a specific purpose and entity. The grant decision will be final and involves an allocation of a finite resource to the GO Foundation. Review and potential change of decisions would impact allocations made to other parties and would impede timely and effective implementation of the program. The Administrative Review Council has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see items 4.11 to 4.16 of the document *What decisions should be subject to merit review?*).

The Department of Finance, the Treasury, the Department of the Prime Minister and Cabinet and the National Indigenous Australians Agency were all consulted in the development of this initiative. Agencies supported the transfer to the department and welcomed a four-year commitment, noting it would provide funding certainty to the provider and to the recipients of the program.

In addition, the GO Foundation and the Jumbunna Institute for Indigenous Education and Research (Jumbunna) have been partnering since 2021 to develop effective ways for identifying and sharing the impact of the GO Scholarship Program. Through their ongoing collaboration, in 2023, the GO Foundation engaged Jumbunna to undertake independent research into the Foundation’s Scholarship Program. The research focuses on the experiences of alumni and families as recipients of a GO Foundation Scholarship as well as the experiences of teachers at schools of GO Scholars. Testimonials from GO Scholarship recipients support the benefit of GO Scholarships and outlines their focus on culture and provide overall positive feedback on the program.

*Constitutional considerations*

Noting that it is not a comprehensive statement of relevant constitutional considerations, the purpose of the item references the race power (s 51(xxvi) of the Constitution).

*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 expenditure for the program is directed at supporting school attendance and engagement for First Nations students and employment prospects of First Nations people.

**Attachment B**

**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. 3) Regulations 2024***

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 FFSP Act) authorises the Commonwealth to make, vary and administer arrangements and grants specified in the *Financial Framework (Supplementary Powers) Regulations 1997* (the Principal 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 Principal Regulations specify the arrangements, grants and programs. The powers in the FFSP 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. 3) Regulations 2024* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for Government spending to continue support for young First Nations people by providing access to quality education, mentorship, and pathways to employment. As of 2024, the GO Foundation has awarded a total of approximately 1290 scholarships, with 54 per cent of the scholarships to girls. This funding will assist the GO Foundation to provide support to First Nations people, including the following:

* Scholarships – the GO Foundation provides scholarships to First Nations students to cover a range of educational expenses such as textbooks, electronic devices, home WiFi, uniforms, and extracurricular activities. The scholarships are aimed at alleviating financial barriers and enable First Nations students to access quality education.
* Mentoring – the GO Foundation offer mentoring programs that pair First Nations students with mentors who provide guidance, support, and encouragement through their educational journey. Mentors may be professionals, community leaders, and alumni.
* Support services – the GO Foundation offers various support services tailored to the needs of First Nations students such as tutoring, career counselling, and personal development workshops.
* Partnership – the GO Foundation collaborates with schools, universities, government agencies, corporate partners, and community organisations to expand its reach and impact on First Nations people. The partnerships may involve fundraising, advocacy campaigns, and sharing of resources and expertise. The GO Foundation relies primarily on these partnerships to fund their activities.

**Human rights implications**

This disallowable legislative instrument engages the right to education of children – Articles 28 and 29 of the *Convention on the Rights of the Child* (CRC), read with Article 4, and the right to education – 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. 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) 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.

This instrument supports the right to education by supporting the implementation of an initiative that aims to improve school education outcomes for First Nations students, including attendance, and educational engagement and achievement by fostering a stronger sense of identity, self-esteem and belonging through learning First Nations language and culture. This instrument is also directed at core educational activities that are central to the development of the talents and abilities of children.

**Conclusion**

This disallowable legislative instrument is compatible with human rights because it promotes the right to education under the ICESCR and the CRC.

**Senator the Hon Katy Gallagher**

**Minister for Finance**