

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 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 sunseting under section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (item 28A). If the Principal Regulations were subject to the sunseting 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 (Defence Measures No. 3) Regulations 2023* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for the Government to provide a grant to NQ Spark Pty Ltd to contribute towards meeting the costs of the construction of the North Queensland Simulation Park (NQ Spark). The grant program will be administered by the Department of Defence.

The grant will deliver on the Government's election commitment, published in the *Plan for a Better Future* for funding of \$32.2 million over three years from 2022-23 to support the construction of the Advanced Environmental Simulation Facility known as the NQ Spark in Townsville, Queensland.

NQ Spark Pty Ltd is a proprietary company solely owned by Townsville City Council. The grant aims to assist the Townsville City Council to develop a technology-oriented collaborative precinct, which will provide an innovative simulation facility and industry precinct, to support regional, science, health, knowledge and defence expertise.

Some of the activities to be conducted at NQ Spark will directly support the capability of the Australian Defence Force, including through simulation training, while others will support research of national significance, including a clinical simulation centre for medical training, research and simulation-enabled incident training.

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 been undertaken 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 2023*

Section 1 – Name

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

New **table item 70** establishes legislative authority for the Government to provide a grant to NQ Spark Pty Ltd to contribute towards meeting the costs of the construction of the Advanced Environmental Simulation Facility (AESF) known as the North Queensland Simulation Park (NQ Spark) in Townsville, Queensland.

The grant delivers on the Government's election commitment, published in the *Plan for a Better Future* and aligns with the Defence Ministers' joint statement on the 'Investing in Australia's national defence' of 9 May 2023 that NQ Spark will provide a leading example of how Defence can work in partnership with states and territories, communities and industry, to skill and train the workforce for the Australian Defence Force (ADF). The joint media release is available at <https://www.minister.defence.gov.au/media-releases/2023-05-09/investing-australias-national-defence>.

The grant program is developed to enhance Australia's defence sovereign industrial capability, enabling more effective support and response to broader government requirements. It was developed in line with needs identified by the *2020 Defence Strategic Update* and accompanying the *2020 Force Structure Plan*, which highlight the need to enhance support to civil authorities in response to national and regional crises and natural disasters. The planned facility at NQ Spark will support detailed planning and training for the provision of logistic and other support for civil authorities during and after a disaster.

NQ Spark Pty Ltd is a proprietary company solely owned by Townsville City Council (the Council). NQ Spark Pty Ltd was established and registered in May 2022 to enable dedicated administration of the NQ Spark program of construction, keeping the grant program separate from the other business activities of the Council, supporting probity and transparency.

Details of the plans for the NQ Spark facility have been published by the Council on its website, which provides that the location in Douglas between James Cook University, Townsville University Hospital and Lavarack Barracks includes around 13,400 square metres of commercial industry space. NQ Spark will play an important role as northern Australia's first collaborative industry hub, focused on developing defence and research capability. The project will bring together the regional science, defence, health and knowledge expertise in Townsville to create an advanced environmental simulation facility and technology-orientated collaborative precinct.

Some of the activities to be conducted at NQ Spark will directly support the capability of the ADF, including through simulation training. Other activities will support research of national significance, including a clinical simulation centre for medical training, research and simulation-enabled incident training.

The plan for Defence industry located at NQ Spark is to enhance Defence capability with development of sovereign test, evaluation, certification and assurance systems needed to provide the ADF with safe, effective and fit-for-purpose products and systems. A command and control team performance research laboratory is planned, to perform research with Defence Science and Technology STaRShot programs (challenging, inspirational and aspirational science and technology missions that will align strategic research to force structure priorities) and support training for emergency services, industry and Pacific engagements. A high performance computing capability will assist in modelling and simulation activities.

The intended outcomes of the grant program are to:

- exploit the unique confluence of defence, health and knowledge and simulation expertise to construct a multi-user AESF as the foundation infrastructure for an advanced training and experiential centre of excellence in soldier systems and human performance studies. The facility will have flexible, multipurpose applications not only as an advanced training facility, but also an experimentation centre for research, development, and human performance studies; and
- provide regional employment opportunities by creating new full-time jobs in Townsville.

Eligible activities may include but are not limited to:

- constructing new infrastructure;
- design, engineering and commissioning activities;
- certificate of compliance;
- legal fees;
- back to base security;
- land clearing, grading, excavating and filling;
- foundation work (compacting the ground, footing reinforcement, shuddering and footing concrete);
- office furniture;
- installation of security systems (CCTV, security entry pads/screens, ICT equipment); and
- staffing to manage the delivery of the project.

NQ Spark is to be developed in two stages. Stage 1 will focus on development to completion of the plan for NQ Spark, which involves the construction of the AESF as the foundation infrastructure for the technology-oriented collaborative precinct.

When developed, the AESF will be staffed by two full time technicians with responsibility for configuration, technical operation, and maintenance oversight. Organisations using the simulation facility will provide instructors and operators or negotiate a support contract for training or research as required. Initial utilisation is assumed to be 200 days per annum, or approximately 40 weeks per year, based on the following utilisation assumptions:

- Defence and defence agencies, 30 per cent;
- general research and academia, 25 per cent;
- clinical medicine, 25 per cent; and
- other industry training, 20 per cent.

Stage 2 will incorporate an estimated 7,000 square metres of commercial and shared facilities developed through to 2046 for commercial tenancy. Legislative authority under table item 70 will only support Stage 1 spending.

Funding is only authorised for the purposes of construction of the park and is a one-off grant, limited to the three year period ending on 30 June 2025. It does not provide any amount for its ongoing operation or maintenance following completion of NQ Spark.

The grant to build the NQ Spark will be administered in accordance with the Commonwealth resource management framework, including the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and the *Commonwealth Grants Rules and Guidelines 2017* (CGRGs).

Grant opportunity guidelines will be developed and published no later than 14 working days after the funding agreement for the grant to take effect, in accordance with the CGRGs. This information will be retained on the department's website for at least two financial years and published on the GrantConnect's website (www.grants.gov.au).

Grant funding will be administered by the Business Grants Hub (the hub), within the Department of Industry, Science and Resources (DISR). It is intended that senior officials within the hub would hold delegated authority to administer the grant for the department,

under section 32D of the *Financial Framework (Supplementary Powers) Act 1997* (FF(SP) Act). In accordance with the FF(SP) Act, the Secretary of the department will delegate relevant powers to an official in any non-Commonwealth entity, and this would include officials (within the meaning given by the PGPA Act) in DISR.

Independent merits review of funding decisions made in connection with the grant would not be considered appropriate as these decisions relate to one-off payments to a specific service provider, over other service providers. The Administrative Review Council (ARC) has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.16 to 4.19 of the guide, *What decisions should be subject to merit review?*).

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 and robust governance arrangements surrounding the administration of the program. Complainants who are dissatisfied with a decision relating to a grant under this program will be encouraged to approach the Commonwealth Ombudsman.

The department has consulted stakeholder entities in the development of the NQ Spark. The NQ Spark proposal was originally developed under the Tropical Intelligence and Health Precinct (TropiQ) partnership, with consultation between James Cook University, Townsville Hospital and Health Service and the Council, resulting in the proposal to focus on defence, emergency services, health and disaster management capability, as well as providing an experimentation centre for research, development and human performance studies.

The grant program complements but does not duplicate, the department industry hub that is part of the Townsville City Deal collaboration between the Department of Infrastructure, Transport, Regional Development, Communications and the Arts, Queensland Government and the related Townsville North Queensland Defence Strategy.

The department has relied on expert advice of the hub within DISR, the Security and Estate Group and the Defence Science and Technology Group in designing the guidelines for the grant program.

Funding of \$32.2 million for the grant program is included in the 2022-23 October Budget under the measure ‘Support for Defence and Manufacturing Industries’ for a period of three years commencing in 2022-23. Details are set out in *Budget October 2022-23, Budget Measures, Budget Paper No. 2* at page 88.

Funding for this item comes from Program 2.13: Defence Science and Technology, which is part of Outcome 2. Details are set out in the *Portfolio Budget Statements 2022-23, Budget Related Paper No. 1.4A, Defence Portfolio* at page 75.

Noting that it is not a comprehensive statement of relevant constitutional considerations, the purpose of the item references the following powers of the Constitution:

- the defence power (section 51(vi));
- the executive power (section 61); and
- the express incidental power and the executive power (sections 51(xxxix) and 61), including the nationhood aspect.

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’.

NQ Spark will increase the capability of ADF personnel by providing advanced facilities for simulation training and conducting defence-related research.

Executive power

The executive power of the Commonwealth in section 61 of the Constitution supports activities that form part of the ordinary and well-recognised functions of the government as well as the execution and maintenance of the Constitution, and the laws of the Commonwealth.

NQ Spark will enhance the ability of ADF personnel to respond to natural disasters and similar emergencies by providing facilities that support training for these scenarios.

Executive power and express incidental power, including the nationhood aspect

The express incidental power in section 51(xxxix) of the Constitution empowers the Parliament to make laws with respect to matters incidental to the execution of any power vested in the Parliament, the executive or the courts by the Constitution. Section 61 of the Constitution supports activities that are peculiarly adapted to the government of a nation and cannot be carried out for the benefit of the nation otherwise than by the Commonwealth.

NQ Spark will support research of national significance in defence and other areas through its advanced facilities.

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 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 (Defence Measures No. 3) Regulations 2023* amend Schedule 1AB to the FF(SP) Regulations to establish legislative authority for the Government to provide a grant to NQ Spark Pty Ltd to contribute towards meeting the costs of the construction of the North Queensland Simulation Park (NQ Spark). The grant will be administered by the Department of Defence.

The grant will deliver on the Government's election commitment, published in the *Plan for a Better Future* for funding of \$32.2 million over three years from 2022-23 to support the construction of the Advanced Environmental Simulation Facility (AESF) known as the NQ Spark in Townsville, Queensland.

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The grant program intended outcomes are to:

- exploit the unique confluence of defence, health and knowledge and simulation expertise to construct a multi-user AESF as the foundation infrastructure for an advanced training and experiential centre of excellence in soldier systems and human performance studies. The facility will have flexible, multipurpose applications not only as an advanced training facility, but also an experimentation centre for research, development, and human performance studies; and
- to provide regional employment opportunities by creating new full time jobs in Townsville.

Human rights implications

This disallowable legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

This disallowable legislative instrument is compatible with human rights as it does not raise any human rights issues.

**Senator the Hon Katy Gallagher
Minister for Finance**