

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 2023*

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 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 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 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 2023* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for the Government to provide a grant to The Seed Library Incorporated (Seed Library) to deliver the Seeds in Schools program (the program). The program will be administered by the Department of Education.

The Seed Library is an incorporated association in Western Australia that was established in 2021 to encourage and engage children to grow and eat more vegetables by introducing seed libraries into schools, libraries and communities.

Grant funding of \$35,000 in 2023-24 to the Seed Library will provide seed packs (collections of vegetable and flower seeds) and education materials to 35 government schools in the electorate of Pearce in Western Australia.

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 regulatory impact analysis 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. 3) Regulations 2023*

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Education 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 a certain activity to be administered by the Department of Education (the department).

New **table item 76** establishes legislative authority for the Government to provide a grant to The Seed Library Incorporated (Seed Library) to support the expansion of the Seeds in Schools program (the program).

The Seed Library is an incorporated association in Western Australia (WA) that was established in 2021 to encourage and engage children to grow and eat more vegetables. Their aim is to introduce seed libraries into schools, libraries and communities. Thirty-two schools in WA currently participate in the program.

In the lead up to the 2022 federal election, the Government committed to provide funding to the Seed Library to support the expansion of the program to an additional 35 public schools in the electorate of Pearce. The Seed Library will provide these schools, which include primary, secondary and combined kindergarten to year 12 schools with seed packs to establish sustainable seed library collections within their school.

The program is focused on engaging WA students to learn more about vegetables, nutrition, sustainability and natural science, to experience growing vegetables from seed, and to participate in a seed saving and community sharing program. A school seed collection has been designed specifically to enable schools to grow and share vegetable seeds with their students and the wider school community.

The Seed Library will also provide teaching resources, activities for school children, other on-line resources and support from the coordinator for the Seed Library through school visits. The cost of each seed collection and corresponding resources is \$1,000 per school. Once the seed collections have been received by the schools it will then be up to the schools to use their collection as part of school lesson planning and student learning experiences.

Seeds can be utilised within class activities to support the curriculum and Science, Technology, Engineering and Mathematics (STEM) subjects. Students can monitor the growth of their vegetables whilst learning the techniques of growing, harvesting and seed saving. Additional teaching areas can include sustainability, permaculture, composting, recycling, companion planting, worm farming and water saving techniques.

The Commonwealth will enter into a grant arrangement via a closed, non-competitive, one-off, ad hoc grant for a specified period. This grant is subject to the *Public Governance, Performance and Accountability Act 2013* and the *Commonwealth Grants Rules and Guidelines 2017* (CGRGs). The department will be responsible for administering this grant and will develop relevant grant opportunity guidelines prior to issuing the grant to the Seed Library. The grant will be subject to approval of the Minister for Education.

The Seed Library will deliver the program in accordance with a Standard Commonwealth Funding Agreement. Notification of the grant will be published on the GrantsConnect website in accordance with the CGRGs.

Independent merits review will not be available for the grant as the grant involves an allocation of a finite resource to the Seed Library for a specific purpose. Review (and potential change) of decisions would impact allocations made and would impede timely and effective implementation of the program. The grant decision, once made, will be final and not subject to merits review. 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 guide, *What decisions should be subject to merit review?*).

The department has consulted with the organisation, the Seed Library to ensure effective delivery of the program.

Funding of \$35,000 in 2023-24 for this item will come from Program 1.5: Early Learning and Schools Support, Quality Outcomes, which is part of Outcome 1. Details are set out in the *Portfolio Budget Statements 2023-24, Budget Related Paper No. 1.5, Education Portfolio* at page 45.

Quality Outcomes is a discretionary funding program for initiatives of importance to the Australian Government. It is an ongoing measure, established in 2005 to provide funding for strategic projects that support improved student learning outcomes in schools. The Minister for Education approves funding allocations under the discretionary funding program.

Noting that this is not a comprehensive statement of relevant constitutional considerations, the purpose of the item references the external affairs power (section 51(xxix)) of the Constitution.

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 access to education, quality of education and health and nutrition under Articles 28(1)(d), 29(1)(a) and 24(2) (read with Article 4) of the *Convention on the Rights of the Child* [2001] ATS 4 (CRC).

Article 4 of the CRC obliges Australia to take appropriate measures to implement the rights recognised by the CRC. This includes rights recognised in Articles 28 and 29 of the CRC.

Article 28(1)(d) of the CRC, States Parties recognise the right of the child to education and are required to 'make education and vocational information and guidance available and accessible to all children'.

Article 29(1)(a) of the CRC, 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 ability to their fullest potential'.

Article 24 of the CRC outlines the right of the child 'to the enjoyment of the highest attainable standard of health. Article 24(2) lists measures that States Parties to the CRC must take to achieve the full realisation of that right, relevantly including to:

- 'combat disease and malnutrition, including ... through the provision of adequate nutritious foods' (Article 24(2)(c))
- 'ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition ...' (Article 24(2)(e)).

The purpose of this program is to educate children and encourage them to grow and eat more vegetables, which assists Australia to meet the above obligations.

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 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 FFSP Act) authorises the Commonwealth to make, vary and administer arrangements and grants specified in the *Financial Framework (Supplementary Powers) Regulations 1997* (the FFSP 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 FFSP 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 2023* amend Schedule 1AB to the FFSP Regulations to establish legislative authority for the Government to provide a grant to The Seed Library Incorporated (Seed Library) to support the expansion of the Seeds in Schools program (the program). The grant will be administered by the Department of Education.

Funding of \$35,000 in 2023-24 is provided to support an additional 35 government schools in the electorate of Pearce, Western Australia (WA) with:

- a collection of seeds, to assist those schools to establish sustainable ‘seed library’ collections; and
- associated teaching and learning materials, including lesson-planning information.

The program is focused on engaging WA students to learn more about vegetables, nutrition and sustainability, to experience the growing of vegetables from seed, and to participate in a seed saving and community sharing program. Its goal is to establish sustainable seed library collections within WA schools. A school collection has been designed specifically to enable schools to share and grow vegetable seeds with their students and the wider school community.

Seeds could be utilised within class activities to support the curriculum and Science, Technology, Engineering and Mathematics (STEM) subjects. Students can monitor the growth of their vegetables whilst learning the techniques of growing, harvesting and seed saving. Additional teaching areas could include sustainability, permaculture, composting, recycling, companion planting, worm farming and water saving techniques.

Human rights implications

This disallowable legislative instrument engages the following right:

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

Right to education

Article 4 of the CRC requires States Parties to undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the CRC. 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 ‘...[t]he 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) of the ICESCR relates to the right of everyone to primary education that is compulsory and free to all.

This disallowable legislative instrument promotes the right to education as the amendment will enable funding to be provided to the Seed Library to distribute seeds to schools, which will engage children’s holistic education including learning about food, sustainability, permaculture, composting and recycling. The objective of the program is to support the curriculum and in particular STEM subjects. Students can monitor the growth of their vegetables whilst learning the techniques of growing, harvesting and seed saving. Additional teaching areas can include learning about companion planting, worm farming and water saving techniques.

Conclusion

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

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