

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 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 sunset under section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (item 28A). If the Principal Regulations were subject to the sunset 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. 1) Regulations 2024* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for the Government to provide a grant to the Trustees of the Roman Catholic Church for the Diocese of Broken Bay for the construction of a new community preschool. The grant will be administered by the Department of Education.

The community preschool will be constructed at St Mary's Catholic Primary School in Toukley, New South Wales. The preschool will include a modern, purpose-built three room facility catering for 20 children in each room, with adequate indoor and outdoor education spaces. It will be available for 3 to 5-year-olds children offering a preschool program under the National Quality Standards and Early Childhood Framework and regulated under the Education and Care Services National Law and Regulations.

Grant funding of \$0.6 million over two years from 2023-24 will be available for capital works for the preschool.

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. 1) Regulations 2024*

Section 1 – Name

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

New **table item 79** establishes legislative authority for the Government to provide a grant to the Trustees of the Roman Catholic Church for the Diocese of Broken Bay (the Trustees) for the construction of a new community preschool at St Mary's Catholic Primary School in Toukley, New South Wales (NSW).

The grant program will deliver on the Government's election commitments and forms part of a broader Investing in Our Communities package totalling \$349.9 million to deliver small scale community, sport and infrastructure projects across Australia.

The Trustees are a body corporate created under the *Roman Catholic Church Trust Property Act 1936* (NSW). The Catholic Diocese of Broken Bay was created in 1986 and covers 2,763 square kilometres and 26 parishes in the Northern Beaches, the North Shore, and the Central Coast, including Toukley parish.

The new early learning centre will operate as a preschool for 3 to 5-year-olds children and includes a modern, purpose-built three-room facility catering for 20 children in each room, with adequate indoor and outdoor education spaces.

The new centre will operate in alignment with the National Quality Standards and Early Childhood Framework and regulated under the Education and Care Services National Law and Regulations. The service provides additional preschool spaces in a fast-growing, low socio-economic area, providing additional support to many disadvantaged families. It provides priority access to children of Aboriginal and Torres Strait Islander background and children with a disability. Children from disadvantaged families will have priority access to additional days (third, fourth, and fifth day) with subsidised fees.

Additionally, the new centre serves as a soft-entry point for children and families to access health screening, developmental checks, parental support and referrals to additional health and social support services.

The construction of the centre will be managed by the Trustees, who are an approved provider under the Family Assistance Law operating several other early childhood education and care services. A tender process was completed for key project services, including planning, engineering, and architectural design of the new early learning service, with construction to be completed by July 2025. The Trustees were responsible for the tender process, which formed part of the Commonwealth funding.

The construction of the new community preschool is expected to cost around \$3.3 million. The Commonwealth Government will contribute a grant of \$0.6 million to the Trustees, which will comprise of two payments of \$0.3 million to be paid in 2023-24 and 2024-25. The remaining funding requirements will come from the NSW Government's Start Strong Capital Works fund as well as from the CatholicCare Diocese of Broken Bay's (CatholicCare) existing funds and other sources. CatholicCare is the social care and support agency of the Catholic Church in the Diocese.

Funding will be provided to the Trustees as a one-off, ad-hoc grant. The grant will be administered in accordance with the Commonwealth resource management framework, including the *Public Governance, Performance and Accountability Act 2013*, the *Public Governance, Performance and Accountability Rule 2014*, the *Commonwealth Grants Rules and Guidelines 2017* and departmental grant requirements and processes.

The Community Grants Hub within the Department of Social Services will be responsible for administering the grant payment. The department has developed relevant grant opportunity guidelines prior to issuing the grant to the Trustees. The grant applicant must supply details about who will benefit from the funding, their client base, and the community in accordance with the draft grant opportunity guidelines selection criteria. The grant will be subject to the approval of the departmental delegate, the First Assistant Secretary, Early Childhood and Youth Programs Division.

The Trustees will deliver the program in accordance with a Standard Commonwealth Funding Agreement. Notification of the grant will be published on the GrantsConnect website (www.grants.gov.au).

Independent merits review of decisions made in connection with the grant would not be considered appropriate because the decisions relate to the provision of a one-off grant to a specific service provider for a specific purpose, over other service providers. 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 paragraphs 4.11 to 4.16 of the guide, *What decisions should be subject to merit review?*).

The department has consulted with the Chief Financial Officer and General Manager of CatholicCare. The consultation was about the scope of the project, in-principle government agreements, plans, grant opportunity timeframes and updates on the process and overall progress. CatholicCare advised that they aim to construct and subsequently operate a new 60 place community preschool, on the site of the St Mary's Toukley Catholic Parish and Primary School. A professional project management firm, Carmichael Tompkins Property Group, has been engaged to assist with all stages of project management and delivery of the final project. A quantity surveyor has been engaged to provide detailed cost estimations for the project. Tenders have been completed for key project services including: planning, engineering, architectural design etc with successful tenderers ready to be appointed.

Funding of \$0.6 million for the grant program was included in the October 2022-23 Budget under the measure 'Responsible Investment to Grow Our Regions' for a period of two years commencing in 2023-24. Details are set out in the *Budget October 2022-23, Budget Measures, Budget Paper No. 2* at page 163.

Funding for this item will come from Program 1.1: Support for the Child Care System, 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 pages 30-31.

Noting that it 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 the following international obligations under the *Convention on the Rights of the Child* (CRC).

Article 4 of the CRC relevantly obliges States Parties to undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the CRC. With regard to economic, social and cultural rights, States Parties are obliged to "undertake such measures to the maximum extent of their available resources, and where needed, within the framework of international cooperation".

Article 28 of the CRC obliges States Parties to recognise the right of the child to education by making primary education compulsory and available free to all and take measures to encourage regular attendance at schools and the reduction of drop-out rates.

Article 29 of the CRC provides that States Parties agree 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.

Expenditure on this item will enhance access to early childhood education by increasing preschool attendance and will therefore promote the development of the child and help them reach their full potential.

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 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 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. 1) Regulations 2024* amend Schedule 1AB to the FFSP Regulations to establish legislative authority for the Government to provide a grant to the Trustees of the Roman Catholic Church for the Diocese of Broken Bay for the construction of a new community preschool. The grant will be administered by the Department of Education.

Grant funding of \$0.6 million over two years from 2023-24 will be provided to build the preschool at St Mary's Catholic Primary School in Toukley, New South Wales. The new early learning centre will operate as a preschool for 3 to 5-year-olds children and includes a modern, purpose-built three-room facility catering for 20 children in each room, with adequate indoor and outdoor education spaces.

The service provides additional preschool spaces in a fast-growing, low socio-economic area, providing additional support to many disadvantaged families. It provides priority access to children of Aboriginal and Torres Strait Islander background and children with disability. Children from disadvantaged families will have priority access to additional days (third, fourth, and fifth day) with subsidised fees.

Human rights implications

This disallowable legislative instrument engages the following human right:

- the right to education – Articles 18, 23, 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 18(2) of the CRC requires States Parties to render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and to ensure the development of institutions, facilities and services for the care of children.

Article 23 of the CRC provides that States Parties encourage and ensure that appropriate assistance is provided for eligible disabled children, and those responsible for their care.

Article 29(1)(a) of the CRC is an agreement by States Parties 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(1) of the ICESCR relates to the right of everyone to education ‘directed to the full development of the human personality and the sense of its dignity’, including that ‘[t]he development of a system of schools at all levels shall be actively pursued’.

This disallowable legislative instrument promotes the right to education as the amendment provides funding for the construction of a new community preschool that enhances early childhood education and care services in Toukley – a fast growing, low socio-economic area, providing additional support to many disadvantaged families.

The preschool will provide priority access to children of Aboriginal and Torres Strait Islander background and children living with a disability, giving such children priority access to additional days (third, fourth, and fifth day) with subsidised fees. The new centre will also serve as a soft-entry point for children and families to access health screening, developmental checks, parental support and referrals to other health and social support services. In doing so, the preschool promotes the children’s development and helps them reach their full potential, while assisting parents and carers of such children with their care.

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**