

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. 5) 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 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. 5) Regulations 2024* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for the National Collaborative Research Infrastructure Strategy (NCRIS) program to deliver facilities and projects of a national character. The program is administered by the Department of Education.

The NCRIS, established in 2004, is an existing highly collaborative and distinctively Australian program, which maximises Australia's national research infrastructure (NRI) investments. NCRIS does this by coordinating open access to NRI facilities, targeted NRI specialities at Australia's research institutions, and co-funding in NRI by state and Commonwealth governments, universities, publicly funded research agencies and industry across the research sector. This enables Australia to adapt to rapid technological shifts, engage in multidisciplinary and international research, and maintain world-leading status in complex and emerging fields that would otherwise be out of Australia's financial reach.

Periodically, an expert group develops an NRI Roadmap, which involves a review of the current state of Australia's NRI and the provision of advice on NRI priorities over the next 5-10 years. Roadmaps ensure Australia has an up-to-date strategic vision to inform NCRIS investments. The 2016 NRI Roadmap developed a prioritised plan for the coming decade for investment in national research infrastructure capability, which was built upon and expanded by the 2021 NRI Roadmap. NCRIS investment is guided by the priorities set out in these documents.

Legislative authority to amend table item 231 in Part 4 of Schedule 1AB is required to ensure the NCRIS program has the ability to deliver expenditure on facilities and project of a national character, with nationally significant purposes and outcomes as identified over time, without being tied to the formulation of a particular NRI Roadmap.

Existing funding of \$2,097.1 million over four years from 2023-24 is available for the NCRIS program.

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. 5) Regulations 2024*

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Education Measures No. 5) 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

The items in Schedule 1 amend Schedule 1AB to the Principal Regulations to provide legislative authority for government spending on an activity administered by the Department of Education (the department).

Amended table item 231 – National Collaborative Research Infrastructure Strategy

Item 1 – Part 4 of Schedule 1AB (table item 231, column headed “Objective(s)”)

Table item 231 in Part 4 of Schedule 1AB establishes legislative authority for government spending on the National Collaborative Research Infrastructure Strategy (NCRIS) program.

Item 1 amends table item 231 by inserting “do one or more of the following” after “in order to” in the column headed “Objective(s)”. The amendment reflects that a project or facility, under the NCRIS program, is eligible for funding when it meets one or more of the listed requirements.

Item 2 – Part 4 of Schedule 1AB (table item 231, column headed “Objective(s)”, paragraph (a) (first occurring))

Item 2 amends table item 231 by repealing and substituting paragraph “(a) deliver facilities and projects of a national character, with nationally significant purposes and outcomes, as identified over time” in the column headed “Objective(s)” at paragraph (a) (first occurring).

The amendment reflects that the intention of the NCRIS program is to support facilities and project of a national character, with nationally significant purposes and outcomes as identified over time, and not just as identified in a particular national research infrastructure (NRI) Roadmap.

Item 3 – Part 4 of Schedule 1AB (table item 231, column headed “Objective(s)”, paragraphs (b), (c), (d), (e) and (f) (first occurring))

Item 3 amends table item 231 by omitting “; and” and substituting “;” in the column headed “Objective(s)” at paragraphs (b), (c), (d), (e) and (f) (first occurring). The amendment reflects that a project or facility, under the NCRIS program, is eligible for funding when it meets one or more of the listed requirements.

Item 4 – Part 4 of Schedule 1AB (table item 231, column headed “Objective(s)”)

Item 4 amends table item 231 by omitting the words “This objective also” and substituting the words “This objective” in the column headed “Objective(s)”. The effect of this technical amendment to the operational provision is to align table item 231 with the current approach to referring to constitutional heads of power in table items in Schedule 1AB.

The NCRIS, established in 2004, is an existing highly collaborative and distinctively Australian program, which maximises Australia’s NRI investments. Australia is an established global leader in world-class research that is underpinned by access to excellent NRI. Australian Government investments in NRI are guided by Roadmaps, funded through investment plans, and enacted through the NCRIS program.

Providing infrastructure of the quality and scale required for cutting-edge research requires nationwide, long-term planning. The department’s investments in NRI provide specific funding for projects that will meet Australia’s research infrastructure needs. To date, \$3,148.9 million has been awarded with 26 current projects.

The NCRIS program:

- maximises Australia’s investments by coordinating open access, targeted specialities in research infrastructure providers across the country; and
- helps coordinate co-funding by state and Commonwealth government, universities, publicly funded research agencies and industry across the research sector.

Investment is focussed on infrastructure needs identified in Roadmaps, though sometimes new needs arise in between Roadmaps, and these can also receive funding. All investments made through the NCRIS program are nationally significant and support national priorities.

The coordinated investment and co-investment through the NCRIS program enable Australia to adapt to rapid technological shifts, engage in multidisciplinary and international research, and maintain world-leading status in complex and emerging fields that would otherwise be out of Australia's financial reach.

The Government develops Roadmaps to identify Australia's research infrastructure needs, set priorities, and guide investment. Roadmaps are prepared by an expert working group in consultation with the research community, and a new Roadmap is created every five years. The first NRI Roadmap was developed in 2006, and since then, successive Roadmaps in 2008, 2011, 2016 and 2021 have built on each other to give a long-term view of NRI which has allowed Australia to keep abreast of technological shifts. The 2016 NRI Roadmap provided advice to the Australian Government on future priorities for the coming decade's investment in key NRI capabilities.

The 2021 NRI Roadmap followed on the 2016 NRI Roadmap, with a key recommendation (recommendation 2) to continue funding the current network of NCRIS facilities that were supported under the 2016 NRI Roadmap. The 2021 NRI Roadmap identified similar priority areas to the 2016 NRI Roadmap.

The 2021 NRI Roadmap described the current context (both in Australia and internationally) of these identified priorities, and in the context of Australia's broader NRI needs, introduced four new priorities. These were critical minerals processing, recycling, a national approach to research collections, and considering social licence issues when seeking to translate research. It also elevated the importance of appropriate Indigenous data governance by establishing it as a new NRI Principle, whereas in the 2016 Roadmap it had been mentioned in the context of humanities, social science and digital platforms.

Aside from these new and elevated priorities, the priorities identified by the 2021 NRI Roadmap strongly echoed those in the 2016 NRI Roadmap. More information can be found at <https://www.education.gov.au/national-research-infrastructure>.

Funding amount and arrangements, merits review and consultation

Existing funding of \$2,097.1 million over four years from 2023-24 for the NCRIS program comes from Program 2.6: Research Capacity, which is part of Outcome 2. Details are set out in the *Portfolio Budget Statement 2024–25, Budget Related Paper No. 1.5, Education Portfolio* at page 61.

NCRIS grant opportunities are a closed, non-competitive selection process. Eligible organisations for future opportunities are those that have previously received funding through either the NCRIS 2018 Guidelines, the NCRIS 2021 Guidelines, the NCRIS 2022 Guidelines and/or the NCRIS 2023 Guidelines to implement NRI facilities, or organisations identified through the investment plan processes who are positioned to meet needs not currently covered by existing projects.

The grants 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* and the *Commonwealth Grants Rules and Principles 2024* (CGRPs).

Grant opportunity guidelines (NCRIS Guidelines) for current projects are developed and will continue to have regard to the nine key principles in administering the grant. These Guidelines address recommendations and findings in Roadmaps.

New NCRIS Guidelines for 2024 have been drafted and will be published on GrantConnect (www.grants.gov.au) once approved. These will be the first Guidelines that have objectives from the 2021 NRI Roadmap which were not noted in the 2016 NRI Roadmap.

The funds will be administered by the department. Final decisions are made by the Minister for Education based on NRI Roadmaps and targeted expert consultation, including the National Research Infrastructure Advisory Group, Commonwealth Government stakeholders on policy priority of potential investments, state governments, and specialist external experts. Funded NCRIS Projects are published on the department's website (<https://www.education.gov.au/national-research-infrastructure/funded-research-infrastructure-projects>).

Funding decisions relating to grants for the NCRIS program will not be suitable for independent merits review as the decisions are based on a finite resource and allocations to other parties would be affected by overturning the original decision. 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 4.19 of the guide, *What decisions should be subject to merit review?*).

Investment decisions are informed, including review of draft decisions, by NRI Roadmaps, the National Research Infrastructure Advisory Group (independent experts), expert sub-committees, and consideration across a range of Commonwealth entities including the Department of Industry, Science and Resources and the Department of Climate Change, Energy, the Environment and Water.

Reviews of decisions take place at multiple points in the investment cycle, starting with the Investment Plan process, where draft decisions are reviewed by a Commonwealth Inter-Departmental Committee. NRI Roadmaps also review the preceding five years of NCRIS investments and decisions, providing input from each Roadmap's independent expert working group. A previous review of NCRIS, the Lateral Economics Review of June 2021, titled "National Collaborative Research Infrastructure (NCRIS) spending and economic growth", determined that a Return on Investment for NCRIS spending is in the order of 7.5:1. The NCRIS facilities have six-monthly reporting requirements to the department that provide detailed progress and updates on the research infrastructure and its usage by the Australian researchers.

The review and audit process undertaken by the Australian National Audit Office also provides a mechanism to review Australian Government spending decisions and report any concerns to the Parliament. These requirements and mechanisms help to ensure the proper use of Commonwealth resources and appropriate transparency around decisions relating to making, varying or administering arrangements to spend relevant money.

Further, the right to review under section 75(v) of the Constitution and review under section 39B of the *Judiciary Act 1903* may be available. Persons affected by spending decisions would also have recourse to the Commonwealth Ombudsman where appropriate.

The NRI Roadmap development process includes extensive, open consultation with the research sector through surveys, targeted discussion sessions, discussion papers and meetings and workshops with the community and its stakeholders (held virtually during the most recent Roadmap consultation period due to COVID-19 restrictions) and publication of an exposure draft for feedback.

The 2021 NRI Roadmap was informed by another Roadmap Expert Working Group, led by Dr Ziggy Switkowski AO. Membership was agreed to by the then Minister for Education and Youth and the then Minister for Industry, Science and Technology, and included Dr Finkel's successor as Australia's Chief Scientist, Dr Cathy Foley. The expert working group led the development of the 2021 Roadmap, supported by a taskforce within the then Department of Education, Skills and Employment with secondees from across Government agencies. Due to travel restrictions during the pandemic, consultations for the 2021 NRI Roadmap were mostly conducted online with an extensive consultation using a variety of virtual platforms, including an online survey with nearly 3,000 respondents, a series of workshops, and two 'Ideas Jam' time-limited forums designed to promote the sharing of ideas.

An NRI Roadmap Exposure Draft was released on 29 November 2021 for three and half week's consultation. Submissions closed on 22 December 2021. Of the 250 public responses received the responses was overwhelmingly positive and highlighted where further attention was required.

Following these positive responses to the Exposure Draft, the Final 2021 NRI Roadmap was released on 7 April 2022. The changes between the Exposure Draft and Final were minimal based on the largely positive feedback, but two areas highlighted for further attention were incorporated. Particularly, 'Humanities and Social Sciences and NRI' was added as a priority area, and the 'National Approach to Collections' was incorporated into the Roadmap as a Step Change area.

The process for determining which projects should receive NCRIS funding also involves considerable consultation. The 2023 investment round included consultation with a Commonwealth interdepartmental committee on the policy priority of the proposals in the round, a similar roundtable of state government stakeholders, and independent experts brought in to advise on Synthetic Biology investments. The stakeholders consulted were generally very positive toward the proposed investments, and their feedback was incorporated into the final decisions – examples include where one part of a proposed investment was considered too nascent for full funding at that point in time, and Commonwealth stakeholder feedback on proposals that sought to meet policy objectives relevant to them. The NRI Advisory Group also reviewed and endorsed the planned investments before they went to the Minister for Education for approval, and that approval was made in consultation with the Minister for Industry and Science.

Constitutional considerations

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 trade and commerce power (section 51(i));
- the communications power (section 51(v));
- the defence power (section 51(vi));
- the astronomical and meteorological observations power (section 51(viii));

- the quarantine power (section 51(ix));
- the fisheries power (section 51(x));
- the census and statistics power (section 51(xi));
- the social welfare power (section 51(xxiiiA));
- the external affairs power (section 51(xxix));
- the territories power (section 122);
- the executive power and the express incidental power (sections 51(xxxix) and 61), including the nationhood aspect; and
- the power to grant financial assistance to States (section 96).

Trade and commerce power

Section 51(i) of the Constitution empowers the Parliament to make laws with respect to ‘trade and commerce with other countries, and among the states’.

The NCRIS program provides funding to grow and develop Australia’s research sector. The funding will ensure that Australia can adapt to rapid technological shifts, engage in multidisciplinary and international research, and maintain world-leading status in complex and emerging fields that would otherwise be out of Australia’s financial reach.

Communications power

Section 51(v) of the Constitution empowers the Parliament to make laws with respect to ‘postal, telegraphic, telephonic and other like services’.

The NCRIS program may fund telecommunications infrastructure or projects, such as infrastructure facilitating online access to data storage facilities that may be accessed by researchers.

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’.

The NCRIS program may fund infrastructure or projects that enables research in relation to the naval and military defence of Australia.

Astronomical and meteorological observations power

Section 51(viii) of the Constitution empowers the Parliament to make laws with respect to ‘astronomical and meteorological observations’.

The NCRIS program may fund infrastructure or projects that enables astronomical and meteorological research.

Quarantine power

Section 51(ix) of the Constitution empowers the Parliament to make laws with respect to quarantine.

The NCRIS program may fund biosecurity research that supports Australia's quarantine efforts.

Fisheries power

Section 51(x) of the Constitution empowers the Parliament to make laws with respect to 'fisheries in Australian waters beyond territorial limits'. The power under section 51(x) extends to laws directed at the conservation of fisheries, regulating pollution for the purpose of protecting or improving fisheries, exploitation of fisheries, management of fisheries, marketing of fisheries or other subjects related to fisheries.

The NCRIS program may fund infrastructure or projects that enables research on these issues in relation to fisheries.

Census and statistics power

Section 51(xi) of the Constitution empowers the Parliament to make laws with respect to 'census and statistics'.

The NCRIS program may fund infrastructure that enables the computation of statistical data or data-related research.

Social welfare power

The social welfare power in section 51(xxiiiA) of the Constitution empowers the Parliament to make laws with respect to the provision of certain social welfare benefits, such as sickness and hospital benefits, and benefits to students.

The NCRIS program may fund infrastructure and projects that enable research in relation to healthcare. Additionally, the NCRIS program provides funding that may support students in conducting research.

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. The NCRIS program may fund research for the purposes of meeting international treaty obligations.

The external affairs power supports legislation with respect to matters or things outside the geographical limits of Australia. The NCRIS program may support research that is conducted outside of Australia.

The external affairs power supports legislation with respect to matters concerning Australia's relations with other nations. The NCRIS program may fund projects that are conducted in partnership with another nation.

Territories power

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

The NCRIS program may provide funding to entities operating in a territory.

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.

The NCRIS program funds projects that are nationally significant. Projects funded by the program may allow the Commonwealth to inform itself about national research and research infrastructure priorities, further national wellbeing, environment sustainability outcomes, economic prosperity and national and international collaboration. These projects may cross institutional and state boundaries.

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'.

The NCRIS program may provide funding to State governments.

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. 5) 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*.

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Periodically, an expert group develops an NRI Roadmap, which involves a review of the current state of Australia's NRI and the provision of advice on NRI priorities over the next 5-10 years. Roadmaps ensure Australia has an up-to-date strategic vision to inform NCRIS investments. The 2016 NRI Roadmap developed a prioritised plan for the coming decade for investment in national research infrastructure capability, which was built upon and expanded by the 2021 NRI Roadmap. NCRIS investment is guided by the priorities set out in these documents.

Legislative authority to amend table item 231 in Part 4 of Schedule 1AB is required to ensure the NCRIS program has the ability to deliver expenditure on facilities and project of a national character, with nationally significant purposes and outcomes as identified over time, without being tied to the formulation of a particular NRI Roadmap.

Existing funding of \$2,097.1 million over four years from 2023-24 is available for the NCRIS program.

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