

## **EXPLANATORY STATEMENT**

### **Issued by the Authority of the Minister for Finance and the Public Service**

*Financial Framework (Supplementary Powers) Act 1997*

*Financial Framework (Supplementary Powers) Amendment  
(Communications and the Arts Measures No. 2) Regulations 2019*

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 FF(SP) Act applies to Ministers and the accountable authorities of non-corporate Commonwealth entities, as defined under section 12 of the *Public Governance, Performance and Accountability Act 2013*.

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.

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. Schedule 1AA and Schedule 1AB to the Principal Regulations specify the arrangements, grants and programs.

The *Financial Framework (Supplementary Powers) Amendment (Communications and the Arts Measures No. 2) Regulations 2019* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on two initiatives that will be administered by the Department of Communications and the Arts.

Funding will be provided for:

- a grant to Free TV Australia Ltd to distribute Australian television content in the South Pacific region for transmission by South Pacific broadcasters (with funding of \$17.1 million over three years from 2019-20)
- the Regional Connectivity Program, part of the Stronger Regional Digital Connectivity Package, to improve access to telecommunications infrastructure in regional Australia (with funding \$57.6 million over two years from 2019-20).

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 it is registered 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 Communications and the Arts.

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 (Communications and the Arts Measures No. 2) Regulations 2019***

**Section 1 – Name**

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Communications and the Arts Measures No. 2) Regulations 2019*.

**Section 2 – Commencement**

This section provides that the Regulations commence on the day after they are registered 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**

The items in Schedule 1 amend Schedule 1AB to the *Financial Framework (Supplementary Powers) Regulations 1997* to provide legislative authority for government spending on activities that will be administered by the Department of Communications and the Arts (the department).

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

This item adds a new table item to Part 3 of Schedule 1AB.

New **table item 33** establishes legislative authority for the Government to provide a grant to Free TV Australia Ltd (Free TV) to distribute Australian television content to South Pacific broadcasters for transmission by South Pacific broadcasters. Free TV is the industry body which represents all of Australia's commercial free-to-air television broadcasters.

Under the initiative, Free TV would make programming rights to 1,000 hours of Australian content per year available to South Pacific broadcasters for the next three years from 2019-20. Key countries of focus include Papua New Guinea, Fiji, Vanuatu, Solomon Islands, Kiribati, Tuvalu and Nauru.

Providing news and information content will strengthen Australia's contribution to discussion on issues of regional importance, whilst entertainment content will showcase Australia's lifestyle and culture. Pacific communities have a strong interest in Australian content, but are not resourced to acquire it independently.

South Pacific broadcasters will be able to make independent decisions on the programming of the Australian content. Free TV, in collaboration with the department and the Department of Foreign Affairs and Trade, will work with the local broadcasters of each participating South Pacific country to identify content that meets local audience needs and interests.

The funding initiative is part of a range of programs announced by the Prime Minister on 8 November 2018 to enhance Australia's engagement with the Pacific (the 'Pacific Step-up'). Funding of \$17.1 million over three years from 2019-20 for the initiative was announced by the Prime Minister on 18 January 2019 in a joint statement with the Prime Minister of Fiji (<https://www.pm.gov.au/media/joint-statement-prime-minister-fiji>).

The funding will come from Program 1.1: Digital Technologies and Communications Services, which is part of Outcome 1. Details are set out in the 2019-20 Portfolio Budget Statements for the Communications and the Arts Portfolio.

The funding will be provided to Free TV through a non-competitive, multi-year grant in accordance with the *Commonwealth Grants Rules and Guidelines 2017* (CGRGs).

Information about the grant and the grant guidelines will be published on the GrantConnect website at [www.grants.gov.au](http://www.grants.gov.au). The Minister for Communications and the Arts (the Minister) will be the decision-maker for the grant expenditure, and all relevant approvals will be subject to the *Public Governance, Performance and Accountability Act 2013* (the PGPA Act). The Minister will be supported by departmental officers who will negotiate the arrangements of the grant with Free TV under the PGPA Act. The grant will be administered by the Community Grants Hub.

The decision to provide funding to Free TV is not directed towards the circumstances of particular persons, but rather to the broader benefit to Australia's relations with foreign countries in the South Pacific. The decision involves the consideration of issues of significant consequence to the Government concerning Australia's relations with other countries. Therefore, the funding decision is considered to be unsuitable for merits review.

Funding is targeted, non-competitive and for the specific purpose of supporting Australia's relations with countries in the South Pacific. Providing the funding to Free TV is appropriate due to the leverage it has through broad industry representation held by its members and their unique role in the industry. The decision is unlikely to affect the interests of any one person and remaking of a decision under merits review would necessarily impact the objectives of the funding to strengthen Australia's contribution to discussion on issues of regional importance, and the timely achievement of this goal.

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 communications power (section 51(v))
- the external affairs power (section 51(xxix)).

### Communications power

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

Funding provided to Free TV will support existing television stations in the South Pacific region to re-transmit Australian programming within their schedules.

*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 with respect to matters or things outside the geographical limits of Australia. The external affairs power also supports legislation with respect to matters concerning Australia’s relations with other nations and international persons.

Funding provided to Free TV will involve the distribution of Australian programming rights to broadcasters external to Australia. The funding will also promote Australian values in the South Pacific region and the presence of Australian media with South Pacific nations.

**Item 2 – In the appropriate position in Part 4 of Schedule 1AB (table)**

This item adds a new table item to Part 4 of Schedule 1AB.

New **table item 348** establishes legislative authority for government spending on the Regional Connectivity Program (the Program) to improve access to telecommunications infrastructure in regional Australia. The Program will address issues raised in the 2018 Regional Telecommunications Review by improving access to telecommunications infrastructure and digital literacy.

The Program is one of the elements of the Stronger Regional Digital Connectivity Package that was announced on 20 March 2019 as part of the Government’s response to the 2018 Regional Telecommunications Review. The Stronger Regional Digital Connectivity Package directly addresses four of the recommendations of the 2018 Regional Telecommunications Independent Review Committee. It includes the Regional Connectivity Program and \$160 million for additional rounds of the Mobile Black Spot Program.

Under the Program, funding will be provided for:

- grants to selected telecommunications companies to undertake place-based telecommunications infrastructure projects
- a Digital Technology Hub
- trials of new or innovative technologies for providing voice services in remote areas of Australia.

The objective of the grants component is to target telecommunications infrastructure investment to provide economic opportunities for regional communities and businesses and enable their participation in the digital economy. A ‘place-based’ approach will be used to give effect to local and national goals through targeted investment in telecommunications infrastructure. This approach will involve giving consideration to issues experienced by particular areas, such as limited access to broadband data, and the benefits to the local area of the proposed solution put forward by the applicant.

The grants component will focus on areas:

- of high economic, public safety or social value
- predominantly serviced by the Sky Muster satellite service outside the National Broadband Network fixed-line footprint
- where better connectivity and increased data have a clear benefit to a local region.

The type of projects that could be supported include projects that would:

- provide additional data and coverage in agricultural production and tourism areas
- improve broadband access in remote Indigenous communities
- improve broadband services for public interest premises such as remote health and education facilities.

There will be a tiered approach to grants with small and medium scale categories to enable projects of similar sizes to compete against each other:

- Small scale projects would have an average grant amount of approximately \$1.5 million. These will predominantly focus on high-value agricultural and tourism areas; remote Indigenous communities; and public interest premises, such as rural schools and health facilities.
- Medium scale projects would have an average grant amount of approximately \$3.0 million. These projects would include new mobile coverage at multiple sites within a region, as well as upgraded fixed-line broadband services in smaller regional centres and the surrounding area.

The grants program would be available to telecommunications infrastructure providers. In applying for grants, telecommunications companies would be required to outline their specific proposal and demonstrate support from the local community.

The Digital Technology Hub will provide independent advice about digital technologies and applications. In addition to a website, the Digital Technology Hub could include interactive assistance measures such as online forums and chat or online support. The Digital Technology Hub will focus on matters relevant to regional Australians.

The High Capacity Radio Concentrator network is a radio transmission service that is used to provide voice services in more remote parts of Australia. This network is ageing and there is little information available about what alternative services have been planned to ensure landline services continue to be available in the event that this network fails.

The Program will include trials of several alternate voice technologies over a two-year period and in differing seasonal conditions. The trials will be in geographically disparate areas, including tropical areas and drier parts of Australia. The purpose of the trials is to test the availability, quality, reliability and cost-effectiveness of alternate voice services and provide evidence of the costs of offering and maintaining alternate technologies and the quality of service.

The Digital Technology Hub and the trials of alternate voice services will be procured concurrently but separately to the grants element of the Program, with the funding drawn from the total funding available for the Program. Both the Digital Technology Hub and the trials will be implemented through competitive procurement processes.

The trials will be open to telecommunications infrastructure providers. Applicants for the Digital Technology Hub will not be required to be telecommunications infrastructure providers but will be required to have a demonstrated capacity to deliver the services.

Grant recipients will be selected through a competitive, merit-based selection process against eligibility and merit criteria as set out in the program guidelines, which will be published on GrantConnect ([www.grants.gov.au](http://www.grants.gov.au)) and the department's website ([www.communications.gov.au](http://www.communications.gov.au)). Once grants are awarded, they will be published on GrantConnect, in accordance with the *Commonwealth Grants Rules and Guidelines 2017* (CGRGs).

The assessment criteria will be oriented to eligible applicants who have the capacity to provide place-based solutions to regional digital connectivity issues through a range of mobile and/or broadband services.

The Commonwealth will enter into grant agreements with telecommunications companies, which, in turn, will be responsible for the administration of the projects and the acquittal of Commonwealth funding.

The Minister for Regional Services, Sport, Local Government and Decentralisation (the Minister) will be the decision-maker for grant expenditure. All relevant approvals will be subject to the *Public Governance, Performance and Accountability Act 2013* (the PGPA Act) and the CGRGs. The Minister will be supported by departmental officers who will assess the applications on their own merits against the assessment criteria and in accordance with the program guidelines, and make recommendations to the Minister on whether to approve a grant application. Moreover, funding decisions will be made objectively and in accordance with the assessment process set out in the program guidelines and applicable legislative requirements of the PGPA Act.

The Digital Technology Hub and trials of alternative voice technologies will be procured through a competitive approach to market, in accordance with the Commonwealth Procurement Rules and the PGPA Act. Information about the approach to market and results will be published on AusTender ([www.tenders.gov.au](http://www.tenders.gov.au)).

The Minister will be the decision-maker for procurements. All relevant approvals will be subject to the PGPA Act. The Minister will be supported by officers in the department who will assess the applications on their own merits against the assessment criteria. Procurement decisions will be made objectively and in accordance with the assessment process and applicable legislative requirements of the PGPA Act.

The grants element of the program is not considered suitable for independent merits review as it involves the allocation of finite resources. As the program has a capped amount, only a proportion of proposed projects may receive funding. The remaking of a decision under merits review would necessarily affect funding made available to other parties. An application for merits review would delay the deployment of projects which would affect the timely provision of improved digital connectivity for locations in need.

Procurements under the Program will be conducted in accordance with the Commonwealth's resource management framework, including the Commonwealth Procurement Rules and the PGPA Act. Procurements would be subject to the *Government Procurement (Judicial Review) Act 2018*, once enacted, and any independent review arrangements under that Act.

An applicant who is dissatisfied about the handling of their funding application by the department will be able to lodge a complaint with the department's program manager for consideration.

People who are otherwise affected by decisions or who have complaints about the Program also have recourse to the department, in accordance with the department's Client Service Charter, and such complaints would be investigated under the department's complaints policy and procedures. A person who is not satisfied with the outcome of the department's assessment or investigation of their complaint is able to contact the Commonwealth Ombudsman as a final recourse. The Commonwealth Ombudsman can only review the Program's assessment processes, not any specific funding decision, under the Program.

Funding of \$57.6 million over two years from 2019-20 for the Program will come from Program 1.1, which is part of the Department of Communications and the Arts' Outcome 1: *Promote an innovative and competitive communications sector, through policy development, advice and program delivery, so all Australians can realise the full potential of digital technologies and communications services*. Details are set out in the 2019-20 Portfolio Budget Statements for the Communications and the Arts portfolio.

Noting that it is not a comprehensive statement of relevant constitutional considerations, the objective of the item references the communications power in section 51(v) of the Constitution.

Section 51(v) of the Constitution empowers the Parliament to make laws with respect to 'postal, telegraphic, telephonic and other like services'. The item relates to funding of telecommunications infrastructure, trials for providing voice services in remote Australia, and a technology hub delivered online and by telephone.

## 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 (Communications and the Arts Measures No. 2) Regulations 2019***

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 FF(SP) Regulations. Schedule 1AA and Schedule 1AB to the FF(SP) Regulations specify the arrangements, grants and programs. The FF(SP) Act applies to 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 (Communications and the Arts Measures No. 2) Regulations 2019* amend Schedule 1AB to the FF(SP) Regulations to add two new table items to establish legislative authority for government spending on activities that will be administered by the Department of Communications and the Arts (the department).

This instrument adds the following table item to Part 3 of Schedule 1AB:

- Table item 33 provides legislative authority for the Government to provide a grant to Free TV Australia Ltd (Free TV) to distribute Australian television content in the South Pacific region for transmission by South Pacific broadcasters.

This instrument adds the following table item to Part 4 of Schedule 1AB:

- Table item 348 provides legislative authority for government spending on the Regional Connectivity Program (the Program) which will use a place-based approach to target telecommunications infrastructure investment to provide economic opportunities and enable participation in the digital economy for regional communities and businesses.

### **Table item 33 - Grant to Free TV Australia Ltd**

The funding measure described in the item is part of the ‘Pacific Step-up’ announced by the Prime Minister on 8 November 2018. The funding was announced by the Prime Minister in a joint statement with the Prime Minister of Fiji. The joint statement is available at: <https://www.pm.gov.au/media/joint-statement-prime-minister-fiji>

Under table item 33, the Government will provide \$17 million over three years from 2019-20 to Free TV to make programming rights to Australian content available to broadcasters within those South Pacific Island countries participating in the ‘Pacific Step-up’, and allow for re-transmission by those South Pacific Island broadcasters within their schedules. The initial participating countries include Papua New Guinea, Fiji, Vanuatu, Solomon Islands, Kiribati, Tuvalu and Nauru.

Free TV is the industry body representing all of Australia’s commercial free-to-air television broadcasters.

Providing Australian content, through the granting arrangement with Free TV, will allow audiences in the participating South Pacific Island countries, to have access to a greater diversity of Australian media to showcase Australia’s lifestyle, culture and values. Pacific communities have a strong interest in Australian content, but are not resourced to acquire it independently.

The Minister for Communications and the Arts has portfolio responsibility for this matter.

### **Human rights implications**

Australia is a signatory to seven core United Nations (UN) human rights treaties. The measure at table item 33 engages rights outlined in two of the seven treaties namely, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Article 15 of the ICESCR recognises the rights of all people to take part in cultural life.

Articles 19(2) of the ICCPR recognises the right to freedom of expression, including the right to receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of a person’s choice.

The UN Committee on Economic, Social and Cultural Rights has given a very broad interpretation to the term ‘culture’. This could potentially include the ability to access cultural events through viewing these events on television. The measure is expected to include programming rights relating to Australian content about sporting-related events, drama, comedy, children’s content, lifestyle and art among others. Arguably, the measure promotes both the right to receive information and to take part in cultural life or enjoy culture in the form of the broadcast television content.

The measure upholds the rights outlined in Article 15 by promoting the ability of Pacific audiences to participate in cultural life by accessing Australian television content via local free-to-air broadcasters.

Additionally, as outlined in the Parliamentary Joint Committee on Human Rights *Guide to Human Rights*, the right to culture is a key human right that Australia has commitments to uphold. The measure upholds the right to culture by making cultural goods and services (in this context, broadcast television content) available for everyone to enjoy.

Table item 33 impacts on cultural life and consequently must be culturally appropriate.

The department, in collaboration with Free TV and the Department of Foreign Affairs and Trade, will consult with South Pacific Island country broadcasters and overseas Australian Posts to determine what content is in demand by Pacific audiences to ensure that the most relevant and appropriate content is delivered. Ultimately, local broadcasters in the participating South Pacific Island countries will have full determination over their programming rights.

### **Conclusion**

Table item 33 is compatible with human rights because it promotes the rights of all people to take part in cultural life and the right to freedom of expression.

### **Table item 348 – Regional Connectivity Program**

The Program will fund:

- grants to selected telecommunications companies, which may partner with any co-contributors (such as local and state governments) to undertake place-based telecommunications infrastructure projects
- a digital technology hub to provide independent advice about digital technologies and applications
- trials of new or innovative technologies for providing voice services in remote areas of Australia.

The Program is part of the Government's response to the 2018 Regional Telecommunications Review.

The Minister for Regional Services, Sport, Local Government and Decentralisation has portfolio responsibility for this matter.

### **Human rights implications**

Australia is a signatory to the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Article 12 of the ICESCR recognises the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and Article 13 recognises the right of everyone to education. Access to telecommunications services can promote: economic inclusion and jobs; access to healthcare; and access to education.

Article 2(1) of the ICESCR states that each State Party undertakes steps to realise the rights recognised in the Covenant by all appropriate means, including particularly the adoption of legislative measures.

This instrument promotes access to telecommunications services, which are valuable tools in enabling economic, social and cultural development. This is acknowledged in reports by the International Telecommunications Union and UNESCO which highlight the importance of broadband in realising the United Nations Sustainable Development Goals adopted in 2015.

### **Conclusion**

This instrument is compatible with human rights as it engages with and promotes human rights.

**Senator the Hon Mathias Cormann  
Minister for Finance and the Public Service**