

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance

Financial Framework (Supplementary Powers) Act 1997

*Financial Framework (Supplementary Powers) Amendment
(Infrastructure, Transport, Cities and Regional Development 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 that Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to that 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 (Infrastructure, Transport, Cities and Regional Development Measures No. 2) Regulations 2019* (the Regulations) amends Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on the Regional Airports Program (the Program). The Department of Infrastructure, Transport, Cities and Regional Development (the department) will have policy responsibility for this item.

The program will provide financial assistance to the owners and operators of regional airports and aerodromes to undertake aviation safety and access work to ensure continuity of essential air services.

The program was announced on 30 March 2019, by the Deputy Prime Minister and Minister for Infrastructure, Transport and Regional Development, the Hon Michael McCormack MP.

Funding of \$100 million over four years from 2019-20 was included in the 2019-20 Budget.

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 the instrument 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 Infrastructure, Transport, Cities and Regional Development.

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 (Infrastructure, Transport, Cities and Regional Development Measures No. 2) Regulations 2019*

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Cities and Regional Development Measures No. 2) Regulations 2019*.

Section 2 – Commencement

This section provides that the Regulations commence on the day after the instrument is 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

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

This item adds a new table item to Part 4 of Schedule 1AB to establish legislative authority for government spending on an initiative. The Department of Infrastructure, Transport, Cities and Regional Development (the department) will have policy responsibility for the initiative.

New **table item 379** establishes legislative authority for government spending for the Regional Airports Program (the Program) to provide financial assistance to the owners and operators of regional airports and aerodromes to undertake aviation safety and access work to ensure continuity of essential air services.

Regional communities rely on aerodromes for emergency and other essential service flights. Air services are critical for regional communities due to distances to access markets and larger service centres, as well as the impacts of the wet season. Residents rely on flights to access services in larger centres such as health appointments, professional services and attending school. Emergency services such as fire response also rely extensively on this infrastructure across regional areas. The Program will ensure regional airport facilities meet the needs of communities and local industry now and into the future.

Currently, there is no specific Australian Government funding for regional aerodromes. The Australian Airports Association (the AAA) has identified a significant operational funding gap at many regional airports, excluding the cost of necessary capital works for safety compliance. The Program will provide one-off financial assistance to ensure aerodromes

continue to comply with aviation safety regulations. Funding will also leverage other investment in projects to support tourism, freight and other local industries.

Funding under the Program will be allocated through competitive open grant funding rounds. It is anticipated there will be two rounds and for each grant funding round process, grant opportunity guidelines will be developed. While the exact number of projects funded per round will depend on the applications received, it is estimated that approximately 13 to 15 projects will be contracted in each round. Funding under the first two funding rounds will be available over four years from 2019-20, and funding agreements will typically be negotiated for a two-year period to allow for the implementation of complex works.

The works that are proposed to be funded under the Program include runway and taxiway works, drainage and other earthworks, runway line marking, animal perimeter fencing, airside safety equipment and related works. These works will promote aviation safety and provide for more reliable air access for residents of remote communities, improving access to health care and other essential services. Landside works, such as airport terminals, carparks and industrial estates will not be eligible for funding under the Program.

Recipients are anticipated to mostly be local councils. Some Indigenous community organisations may seek funding, typically those with responsibility for providing municipal services. Eligible grant recipients will be owners and/or operators of existing aerodromes or airports in regional areas in Australia that are:

- entities incorporated in Australia (including incorporated trustees on behalf of a trust)
- Australian local government agencies or bodies
- Australian State or Territory Government agencies or bodies
- corporate Commonwealth entities
- Aboriginal and Torres Strait Islander Corporations registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

State agencies or other eligible entities may apply on behalf of aerodrome owners/operators. In such cases, the state agency or other eligible entity will be the lead applicant in a joint application and will be wholly responsible for administering the grant project(s).

The beneficiaries of this Program will be the residents of regional communities who will have improved air access as a result of projects funded under the Program.

The Program guidelines for each funding round will be developed by the Grants Hub within the Department of Industry, Innovation and Science and in accordance with the *Commonwealth Grants Rules and Guidelines 2017*. The applications received through each open, competitive grant funding round will initially be assessed by the Grants Hub for eligibility, then against the criteria set out in the Program guidelines. The criteria may include matters such as the demonstrated need for the project(s) proposed by the applicant, the capacity, capability and resources of the applicant to deliver the project(s), and the anticipated benefits.

Following consideration by the Grants Hub, applications will also be considered by an Assessment Panel against the criteria and compared to other eligible applications. The Assessment Panel will be made up of representatives from the department, the Royal Flying Doctor Service, and the Australian Airports Association. The Assessment Panel will make

recommendations to the Deputy Prime Minister for their decision about which projects should be funded.

Program documentation and grant outcomes will be published on GrantConnect (grants.gov.au). Grant funding agreements will then be negotiated with successful grant recipients in relation to approved projects by the Grants Hub. Grant funding agreements will be administered in accordance with the *Public Governance, Performance and Accountability Act 2013* and its associated rules. Payments will be made against the achievement of agreed milestones in each funding agreement. Delivery of works under the funding agreements will be the responsibility of grant recipients and will be undertaken either by the recipients themselves or will be sub-contracted/tendered.

Funding decisions made in connection with the Program are not suitable for independent review, as they will be made in accordance with the Program guidelines and are not for the purpose of conferring benefits (financial or otherwise) on individual persons or companies, but apply broadly for the benefit of the broader Australian community. In other words, the Program will seek to provide economic and social benefits for the community more generally, as a result of the improved access to air services and the essential services they provide to regional communities.

The Program guidelines will provide that the responsible Minister's decision in relation to the funding will be final in all matters. No merits review will be provided for grant funding decisions. In the context of the Administrative Review Council's document '*What decisions should be subject to merit review?*', a decision to provide a grant to one applicant over another involves the allocation of finite resources between competing applicants, and an allocation that has already been made to another party would be affected by overturning the original decision. As the funding is limited, any reversal of a decision on whether a party is successful or not will then cause the displacement of, and disadvantage to, another successful party. It would not be feasible for such decisions to be subject to independent merit review.

Funding of \$100 million over four years from 2019-20 was agreed to in the 2019-20 Budget. Funding for this initiative will come from Program 2.3: Air Transport, which is part of Outcome 2. Details are set out in the *Portfolio Budget Statements 2019-20, Budget Related Paper No. 1.12, Infrastructure, Regional Development and Cities Portfolio* at page 37.

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 Territories power (section 122)
- the power to grant financial assistance to the States (section 96)
- the race power (section 51(xxvi))
- the social welfare power (section 51(xxiiiA))
- the referred powers (section 51(xxxvii))
- the communications power (section 51(v)).

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'.

By supporting aviation safety and accessibility works at regional airports, the Program will foster, enhance and maintain air navigation between Australia and other countries and among the States.

Territories power

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

The Program may include expenditure in relation to Territories, such as to grant proponents within Territories.

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 Program may include expenditure in relation to aerodromes made by way of grants to States.

Race power

Section 51(xxvi) of the Constitution empowers the Parliament to make laws with respect to ‘the people of any race for whom it is deemed necessary to make special laws’.

The Program may involve expenditure directed at improving air transport access for Indigenous Australians.

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, including the provision of ‘medical and dental services (but not as to authorise any form of civil conscription)’ and ‘benefits to students’.

The Program will promote aviation safety and access for regional communities, which may provide residents of those communities with better access to health and other essential services, including education services (for example, enabling students to travel to attend school).

Referred powers

Section 51(xxxvii) relates to ‘matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States’.

The Queensland and Tasmanian Parliaments referred the matter of ‘air transport’ to the Commonwealth Parliament through the enactment of the Commonwealth Powers (Air Transport) Act 1950 (Qld) and the Commonwealth Powers (Air Transport) Act 1952 (Tas)

respectively. The Program will likely include expenditure in relation to airports in Queensland and Tasmania.

Communications power

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

By promoting aviation access for regional communities, the Program may provide residents with more reliable access to postal services.

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 (Infrastructure, Transport, Cities and Regional Development 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 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 (Infrastructure, Transport, Cities and Regional Development Measures No. 2) Regulations 2019* amend Schedule 1AB to the FF(SP) Regulations to add a new table item 379 to Part 4 of that schedule. The new table item establishes legislative authority for Government spending on the Regional Airports Program (the Program).

On 30 March 2019, the Deputy Prime Minister and Minister for Infrastructure, Transport and Regional Development, the Hon Michael McCormack MP, announced the Program, with \$100 million provided to upgrade regional airports across Australia. Funding will be provided over four years from 2019-20 and was included in the 2019-20 Budget.

The Program will provide financial assistance to the owners/operators of regional airports and aerodromes to enable them to undertake essential works, promoting aviation safety and access for communities. The works will range from runway and taxiway works to animal fencing and safety equipment. These works will promote aviation safety and provide for more reliable air access for residents of remote communities, improving access to health care and other essential services.

The Program will be managed through the Aviation and Airports Division within the Department of Infrastructure, Transport, Cities and Regional Development and will be administered by the Grants Hub at the Department of Industry, Innovation and Science.

The Minister for Infrastructure, Transport and Regional Development has portfolio responsibility for this matter.

Human rights implications

This instrument engages the following rights:

- Right to health in Article 12 of 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.”

The Regional Airports Program will improve airport infrastructure enabling residents of regional areas to have more reliable access to health services.

Conclusion

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

**Senator the Hon Mathias Cormann
Minister for Finance**