

## **EXPLANATORY STATEMENT**

### **Issued by the Authority of the Minister for Finance**

#### *Financial Framework (Supplementary Powers) Act 1997*

#### *Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development and Communications Measures No. 1) Regulations 2021*

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 powers in the FF(SP) 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*.

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 (Infrastructure, Transport, Regional Development and Communications Measures No. 1) Regulations 2021* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on certain initiatives administered by the Department of Infrastructure, Transport, Regional Development and Communications (the department).

Funding is provided for:

- the National Collecting Institutions Touring and Outreach Program, which provides financial assistance to national collecting institutions and organisations to develop and tour exhibitions within Australia and overseas, and to bring cultural material and works from international collections to Australia for exhibition (\$4.0 million over four years from 2020-21);
- the Australian Government International Exhibitions Insurance Program, which provides financial assistance to cultural institutions and organisations to obtain insurance in relation to exhibitions in Australia of cultural material and works from international collections (\$9.7 million over four years from 2020-21);
- the Indigenous Repatriation Program, which provides financial assistance to museums and cultural institutions in Australia to facilitate the return of Indigenous Australian ancestral remains and secret sacred objects to their community of origin, and provide

culturally appropriate care of, and access to, Indigenous Australian ancestral remains and secret sacred objects (\$3.2 million over four years from 2020-21);

- the Arts and Cultural Development Program – Arts Training Organisations, which provides financial assistance to national performing arts organisations for the training of young Australian performing artists (\$91.8 million over four years from 2020-21); and
- the Australian 5G Innovation Initiative, which provides financial support to facilitate and encourage the deployment and use of the fifth generation of mobile telecommunications technology used for wireless communication (\$22.1 million over three years from 2020-21).

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, Regional Development and Communications.

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, Regional Development and Communications Measures No. 1) Regulations 2021***

**Section 1 – Name**

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development and Communications Measures No. 1) Regulations 2021*.

**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**

***Financial Framework (Supplementary Powers) Regulations 1997***

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

This item adds five new table items to Part 4 of Schedule 1AB to establish legislative authority for government spending on certain initiatives administered by the Department of Infrastructure, Transport, Regional Development and Communications (the department).

New **table item 465** establishes (and renews) legislative authority for government spending on the National Collecting Institutions Touring and Outreach Program (the NCITO program), which aims to increase the touring of cultural collections by Australian national collecting institutions so that Australian and overseas cultural material is accessible to all Australians, especially those in regional and remote communities. The NCITO program also aims to promote international awareness of Australia's cultural heritage by supporting tours of Australian collections items internationally, and encourage partnerships and collaboration.

The NCITO program was established in 2009-10 and was previously administered by the then Department of the Environment, Water, Heritage and the Arts. The NCITO program is now managed by the Office for the Arts, part of the department. Information on the program is available on the departmental website at <https://www.arts.gov.au/funding-and-support/national-collecting-institutions-touring-and-outreach-program>.

Grant funding is provided to eligible National Collecting Institutions (NCIs) that submit proposals to tour or develop exhibitions, which align with the following objectives:

- increase overall levels of touring by NCIs with particular emphasis on multiple venue tours;
- promote broad access to Australian cultural material, particularly for audiences in regional areas;
- encourage partnerships and collaboration between NCIs and also with other institutions across the collections sector (such as archives, galleries, libraries and museums), particularly in regional areas;
- promote international awareness of Australia's cultural heritage through touring Australian cultural material from NCIs overseas; and
- expand Australians' appreciation of international cultural material through enabling NCIs to bring works from international collections for exhibition or touring within Australia.

Funding is available for the development and touring of exhibitions by eligible NCIs. Development supports the costs of planning and producing an exhibition to tour different venues, including research and design. Touring supports the costs to transport, install and dismantle the exhibition, and deliver public programs.

Without this funding, many NCIs would be unable to tour their collections, particularly to regional and remote venues. Increasing participation by Australians in diverse creative and cultural experiences is a government priority and the NCITO program supports this by promoting engagement with the collections of NCIs through touring exhibitions. For example, in previous years, the NCITO program has supported around 15 to 18 exhibitions travelling to approximately 60 to 80 venues across Australia. In 2018-19, exhibitions that received NCITO funding were shown in all states and territories to a combined audience of 611,784 visitors.

Funding for eligible activities will cover:

- costs associated with development and touring of exhibitions, including but not limited to non-ongoing staff costs, freight costs, and costs associated with support material such as catalogues, education kits and promotional material;
- costs associated with bringing works from international collections for an exhibition or tour within Australia; and
- costs associated with touring or exhibition of Australian cultural material overseas.

While the primary outcome of the NCITO program is to support the touring of cultural collections, the development and touring of exhibitions also offer opportunities for professional and financial benefits to participating partners. The NCITO program encourages partnerships by NCIs with other organisations within the collections sector at a number of levels, including curatorial exchanges and collaborations, professional development (particularly for staff in recipient venues), and financial partnerships. Financial partnerships may include partnerships between NCIs and other organisations or with state and territory funding programs, where appropriate.

The funding complements other Australian Government funding programs for the arts, including the Visions of Australia program, which supports touring exhibitions of material from Australian incorporated arts and cultural heritage organisations.

The NCITO program is open to NCIs that are identified as eligible for funding in the NCITO program guidelines, and currently include the following:

- Australian National Maritime Museum;
- Bundanon Trust;
- Museum of Australian Democracy at Old Parliament House;
- National Archives of Australia;
- National Film and Sound Archive of Australia;
- National Gallery of Australia;
- National Library of Australia;
- National Museum of Australia; and
- National Portrait Gallery of Australia.

The department delivers the NCITO program through a restricted competitive grant process, based on applications submitted by eligible NCIs, which are assessed against eligibility and assessment criteria outlined in the NCITO program guidelines. The NCITO program guidelines have been developed in accordance with the *Commonwealth Grants Rules and Guidelines 2017* (CGRGs) and are publicly available on GrantConnect at [www.grants.gov.au](http://www.grants.gov.au).

The Office for the Arts within the department assesses NCITO applications to ensure that program objectives are met, and funding is shared reasonably across the bidding institutions. All funding decisions are considered within the limits of available program funding, and in the context of other funding support available to individual proposals. If the total of the bids from the applicants exceeds the funding available, the Office for the Arts will negotiate to reach a final allocation that is within the available budget. No funding cap is applied to individual applications.

Funding is administered through an annual funding round that opens around March/April each year, for activities to be delivered by eligible NCIs in the following financial year.

The Office for the Arts currently administers grant funding using SmartyGrants, a grants administration platform that is widely used by the arts sector nationally. The department is working with other departments to manage transition to the whole-of-government grant administration arrangements.

The Minister for Communications, Urban Infrastructure, Cities and the Arts (the responsible Minister), or the responsible Minister's delegate, is the final decision maker for grant expenditure under the NCITO program. The department provides funding recommendations to the decision maker. Funding decisions are made objectively, in accordance with the assessment process set out in the NCITO program guidelines and applicable legislative requirements under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), including the CGRGs.

Successful grant recipients are required to enter into a legally binding grant agreement to directly deliver the agreed activity within defined terms and conditions. Payments are made after funding agreements are signed by the recipient and the Commonwealth, and on receipt of a correct and complete invoice.

Information on the NCITO program funding decisions is made publicly available ([www.arts.gov.au/funding-and-support/national-collecting-institutions-touring-and-outreach-program](http://www.arts.gov.au/funding-and-support/national-collecting-institutions-touring-and-outreach-program)) and reported via GrantConnect ([www.grants.gov.au](http://www.grants.gov.au)).

Funding decisions made in connection with the NCITO program are not considered appropriate for independent merits review as the program involves the allocation of a finite resource, and an allocation that has already been made to another party would be affected by overturning the original allocation. 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 4.14 of the guide, *What decisions should be subject to merit review?*).

Since its inception, the NCITO program has been oversubscribed. With funding requests exceeding the limit of the available funding, only a proportion of suitable applications can be funded. A reviewed decision made in relation to one grant would also affect decisions in relation to all others, particularly around timing and funding amounts, which could jeopardise achievement of the program objectives.

In order to address accountability issues related to the exclusion of a merits review, the program design and assessment process place great emphasis on the administrative accountability for decisions to allocate funding. This includes ensuring that:

- the criteria for funding are made clear;
- the process seeks to share available funding reasonably across the bidding institutions that submit eligible proposals; and
- decisions are made objectively and in accordance with applicable legislative requirements under the PGPA Act.

An applicant who is dissatisfied about the handling of their grant application under the NCITO program will be able to lodge a complaint to the program manager for consideration. Applicants 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. Information on the Charter and the handling of complaints is available at <https://www.infrastructure.gov.au/department/about/charter.aspx>. If the applicant is not satisfied with the outcome of the assessment or investigation of their complaint, they will be able to contact the Commonwealth Ombudsman as a final recourse.

Ongoing consultation has occurred with NCIs since the NCITO program was established. The Office for the Arts has sought and received ongoing feedback on the effectiveness of the program through annual acquittal reports submitted by NCIs. These reports demonstrate that the NCITO funding enables NCIs to successfully provide access to their collections and deliver significant economic, educational and social benefits to local communities that they would otherwise be unable to achieve.

While the NCITO program is meeting its objectives, it is anticipated that a more comprehensive review of the program will occur in the next twelve months as a matter of good administrative practice. The Office for the Arts will continue to engage and consult with NCIs to inform the review process.

Funding for the NCITO program of \$4.0 million over four years from 2020-21 comes from Program 6.1: Arts and Cultural Development, which is part of Outcome 6. Details are set out in the *Portfolio Budget Statements 2020-21, Budget Related Paper No. 1.10, Infrastructure, Transport, Regional Development and Communications Portfolio* at page 77. NCITO is an ongoing program.

Noting that it is not a comprehensive statement of relevant constitutional considerations, the objective of the item references the executive power and express incidental power, including the nationhood aspect (sections 61 and 51(xxxix)) of the Constitution.

*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. The executive power in 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 NCITO program is concerned with providing access to international art works for all Australians as a national initiative in the arts.

New **table item 466** establishes (and renews) legislative authority for government spending on the Australian Government International Exhibitions Insurance Program (the AGIEI program), which supports cultural institutions and organisations by providing funding to offset insurance costs for eligible touring exhibitions from overseas so that Australian audiences have access to significant international cultural material that they would not otherwise have an opportunity to experience.

The AGIEI program was established in 2009 and was designed to replace the Art Indemnity Australia scheme that had been in operation since 1979. The AGIEI program is managed by the Office for the Arts, part of the department. Information on the program is available on the departmental website at <https://www.arts.gov.au/funding-and-support/australian-government-international-exhibitions-insurance-program>.

The AGIEI program recognises that insurance represents a large proportion of the costs associated with major international exhibitions. By providing assistance with insurance costs, the Australian Government is able to encourage and support the staging of major exhibitions drawn from some of the world's most historically significant and culturally rich collections. For example, in 2018-19 nine exhibitions received AGIEI funding. These exhibitions were shown at venues in Canberra, Sydney, Melbourne, Fremantle and Bendigo, to a combined audience of 718,112 visitors.

In addition to financially assisting cultural institutions with insurance costs, the Australian Government's involvement in an exhibition has been reported to positively influence institutions' negotiations with overseas lenders of cultural materials by:

- meeting expectations from many foreign countries for government-to-government level diplomacy;
- promoting that the Australian Government understands the need for appropriate protections and risk management;
- enabling international protocols to be observed; and
- attracting corporate support for major exhibitions.

The AGIEI program is open to the Commonwealth, state and territory government collecting institutions, incorporated not-for-profit public collecting institutions, and incorporated

not-for-profit bodies specialising in touring significant art and cultural collections, for high value exhibitions.

Eligibility criteria for the AGIEI program funding may include either multiple or single venue exhibitions; the cultural material in exhibitions must have a minimum value of AUD \$50 million for fine art exhibitions or AUD \$20 million for museological exhibitions; and insurance cover may apply to multiple or single items within an exhibition that meet the minimum value threshold.

By accepting applications for funding from partnership consortia for multiple venue exhibitions, the AGIEI program intends to support and encourage partnerships between collecting institutions. This can assist cultural institutions to manage the high cost of cultural material touring.

While the primary purpose of the AGIEI program is to support audience access to significant cultural material, where a recipient is a partnership consortia, the exhibition will frequently tour multiple venues within Australia, which also results in the program offering opportunities for professional and financial benefits to the participating partners. This encourages partnerships within the international collections sector at a number of levels, including curatorial exchange and collaboration, professional development, and financial partnerships. Financial partnerships may include partnerships with other organisations, and state and territory funding programs where appropriate.

The AGIEI program complements other Australian Government programs for the arts, particularly the Protection of Cultural Objects on Loan Scheme that encourages the loans of cultural material from overseas lenders.

Funding will be allocated by the Commonwealth through a restricted competitive grant process. Applications are received through an annual funding round, with flexibility to consider additional out-of-round applications. The application process has two stages to allow for in-principle support in the planning stages, followed by a final application closer to the exhibition opening. This model provides a mix of certainty and flexibility to meet the needs of negotiating international loans, and allows for variation between the initial stage and final confirmed amounts.

Applicants apply against eligibility and assessment criteria as outlined in the AGIEI program guidelines, which have been developed in accordance with the CGRGs and are publicly available on GrantConnect at [www.grants.gov.au](http://www.grants.gov.au).

The Office for the Arts within the department assesses AGIEI funding applications against the selection criteria set out in the AGIEI program guidelines in a competitive selection process. The AGIEI program assumes the likely benefits to audiences delivered by major international exhibitions and does not seek to make a comparative assessment of the cultural significance of individual exhibitions.

The Office for the Arts currently administers grants funding using SmartyGrants, a grants administration platform that is widely used by the arts sector nationally. The department is working with other departments to manage transition to the whole-of-government grant administration arrangements.



All funding decisions are considered within the limits of available program funding, and in the context of funding contributions available from other sources to support proposals. No funding cap is applied to individual applications.

The responsible Minister, or the responsible Minister's delegate, is the decision maker for grant expenditure under the AGIEI program. The department provides funding recommendations to the decision maker. Funding decisions are made objectively, and in accordance with the assessment process set out in the AGIEI program guidelines and applicable legislative requirements under the PGPA Act, including the CGRGs.

Successful grant recipients are required to enter into a legally binding grant agreement that sets out the actual costs of the insurance cover and includes a final quote or other evidence from the relevant insurer. Payments are made after funding agreements are signed by the recipient and the Commonwealth, and on receipt of a correct and complete invoice. Information on AGIEI funding decisions is reported via GrantConnect at [www.grants.gov.au](http://www.grants.gov.au).

Funding decisions made in connection with the AGIEI program are not considered appropriate for independent merits review as the program involves the allocation of a finite resource, and an allocation that has already been made to another party would be affected by overturning the original allocation. 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 4.14 of the guide, *What decisions should be subject to merit review?*).

Forecast demand for the AGIEI program for the 2020-21 financial year exceeds available funding. Information provided by regular applicants to the AGIEI program indicates that this trend will continue, with demand likely to exceed available funds by a significant margin in future years.

When funding requests exceed the limit of the available funding, only a proportion of suitable applications can be funded. A reviewed decision made in relation to one grant would also affect decisions in relation to all others, particularly around timing and funding amounts, which could jeopardise achievement of the program objectives.

In order to address accountability issues related to the exclusion of a merits review, the program design and assessment process place great emphasis on the administrative accountability for decisions to allocate funding. This includes ensuring that:

- the criteria for funding are made clear;
- the processes of allocating funds are fair; and
- decisions are made objectively and in accordance with applicable legislative requirements under the PGPA Act.

An applicant who is dissatisfied about the handling of their grant application under the AGIEI program will be able to lodge a complaint to the program manager for consideration. Applicants 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. Information on the Charter and the handling of complaints is available at <https://www.infrastructure.gov.au/department/about/charter.aspx>. If the applicant is not satisfied with the outcome of the assessment or investigation of their complaint, they will be able to contact the Commonwealth Ombudsman as a final recourse.

The department consulted with National Collecting Institutions and the Art Exhibitions Australia as part of the process of drafting the guidelines for the first iteration of the AGIEI program.

The AGIEI program was reviewed in 2013-14. This review received 12 written submissions and included 27 meetings with public art galleries/museums and arts officials in all states and territories. The majority of stakeholders were highly supportive of the AGIEI program. Following the review, a number of recommendations were made, all of which are now reflected in the current program design.

Further consultation is undertaken and feedback received through the acquittal of funding agreements each year and ongoing consultation with successful applicants. To date, these consultations have raised no areas of concern, with feedback generally being that the support provided by the program is the difference between an international exhibition proceeding or not proceeding.

Funding for the AGIEI program of \$9.7 million over four years from 2020-21 comes from Program 6.1: Arts and Cultural Development, which is part of Outcome 6. Details are set out in the *Portfolio Budget Statements 2020-21, Budget Related Paper No. 1.10, Infrastructure, Transport, Regional Development and Communications Portfolio* at page 77. AGIEI is an ongoing program.

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

#### Insurance power

Section 51(xiv) of the Constitution empowers the Parliament to make laws with respect to insurance.

The AGIEI program supports the Commonwealth providing or acquiring insurance and the Commonwealth funding the provision or acquisition of insurance by cultural institutions and organisations.

New **table item 467** establishes (and renews) legislative authority for government spending on the Indigenous Repatriation Program (IRP) Museum Grants, which support museums and cultural institutions to facilitate the return of Aboriginal and Torres Strait Islander (Indigenous Australian) ancestral remains and secret sacred objects from their collections to communities of origin. The IRP Museum Grants also support culturally appropriate care of, and access to, Indigenous Australian ancestral remains and secret sacred objects.

The IRP Museum Grants were established in 1998, and were formerly known as the Return of Indigenous Cultural Property (RICP) Program. Historically, the RICP Program was an initiative of the Cultural Ministers Council (CMC), endorsed in February 1998. The Australian Government contributed funds to the RICP Program, which were matched by state and territory contributions. As the CMC did not have the power to direct private or university collections to return cultural property, funds were distributed to the seven major state and territory museums and the National Museum of Australia. This enabled the RICP Program to

use a collaborative effort between the federal, state and territory governments to deliver its objectives.

The IRP Museum Grants continue the intergovernmental approach of the former RICP Program. As such, the current grant recipients identified in the IRP Museum Grants guidelines are the National Museum of Australia and the seven major state and territory museums: the Australian Museum, Museum and Art Gallery of the Northern Territory, Museums Victoria, Queensland Museum, South Australian Museum, Tasmanian Museum and Art Gallery, and the Western Australian Museum. More information about the IRP Museum Grants and highlights of the museums is published each year at <https://www.arts.gov.au/what-we-do/cultural-heritage/indigenous-repatriation/domestic-repatriation>.

The IRP Museum Grants are underpinned by Australia's accession to international agreements such as the United Nations Educational, Scientific and Cultural Organization (UNESCO) *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* and the United Nations *Declaration on the Rights of Indigenous Peoples*.

Funding under the IRP Museum Grants supports the museums to work collaboratively with Indigenous communities, other Australian Government agencies, and state, territory and local governments to meet the following objectives:

- identify the origin of ancestral remains and secret sacred objects held in the funded museums' and cultural institutions' collections;
- empower Indigenous Australian communities to be involved in the repatriation of their ancestral remains and secret sacred objects;
- repatriate ancestral remains and secret sacred objects to their community of origin;
- facilitate discussions with custodians for culturally appropriate storage and access to ancestral remains and secret sacred objects; and
- support the engagement and/or employment of Indigenous Australians to provide assistance, support and cultural advice to progress the repatriation of ancestral remains and secret sacred objects to communities of origin.

### *Repatriation process*

Identifying the community of origin for ancestral remains and secret sacred objects is very complex as museum records which help determine the origin vary. In order to determine the community of origin, museum repatriation officers undertake research, including but not limited to:

- physical examination to confirm that the ancestral remains or secret sacred objects are consistent with museum acquisition records;
- review museum archive records to find what information was recorded when the ancestral remains or secret sacred objects were accessioned into the museum collection, either by donation or purchase;
- review state, territory or Commonwealth archive records to seek relevant information on how the museum acquired the ancestral remains or secret sacred objects;
- consult communities, peak bodies, local, state and territory government agencies for additional information where ancestral remains or secret sacred objects have been identified to a community, area, region or state; and

- bring community representatives to the museum to identify the secret sacred objects, confirm that they are the appropriate community and classify the secret sacred objects.

Once the research has been completed and the community identified, the museum commences consultations with representatives from the community, or their nominated representative, to work out how and when the repatriation will occur. This process is very complex and the time this process takes varies from community to community.

#### *Culturally appropriate care*

Once a community is notified, the ongoing provision of culturally appropriate care and access is determined by the relevant community. Community also determines the cultural classification given to the secret sacred objects, which informs access and storage requirements. Ancestral remains and secret sacred objects are kept in separate secure locations with culturally appropriate access.

Some communities prefer museums to provide ongoing care of their ancestral remains or secret sacred objects, with ownership transferred to the community.

Museums hold ancestral remains and secret sacred objects with varying levels of provenance and the period of care provided can be unknown. For ancestral remains and secret sacred objects of poor or limited provenance, the period of care is determined by a museum's ability to establish provenance, undertake community consultations and repatriate the ancestral remains or secret sacred objects to the community. Where it is not possible to determine the provenance, ongoing care is for an indeterminate period.

Where provenance is determined, the museum consults with the community. The ancestral remains or secret sacred objects are repatriated to the community stewardship and the community determines when the return to Country occurs. In some cases, the community may request that the museum provide temporary care until the community is able to return them to Country.

Once the ancestral remains or secret sacred objects are returned to the community, the museum will work with the community to facilitate transfer to Country, reburial and ceremony associated with reburial. For many communities, this requires that the community works through a culturally appropriate process as there is no existing process to 'rebury' an ancestral remain that was removed from his/her original burial site.

#### *Classifying secret sacred objects*

A secret sacred object is one that is of a special cultural heritage significance to Aboriginal or Torres Strait Islander peoples generally or to a particular group or community. When a location has been determined where secret sacred objects may have been taken from, museums will identify community representatives and bring them to the museum to confirm that the secret sacred objects are from that community and to classify (or confirm classification of) the secret sacred objects. Community members will also determine what restrictions apply (for example, if secret sacred objects can only be seen by men, or by women).

Secret sacred objects may include items that are:

- associated with a traditional burial (grave goods, burial objects, mourning objects);
- created for ceremonial, religious or burial purposes (depending on ceremony type, this could include shields, ceremonial dress, music sticks, and objects used for initiation ceremonies);
- used or seen only by certain people (for example, men's business or women's business);
- sourced from or containing materials that only certain members of the community can use or see; or
- objects used as markers (known as cyclons) which are rocks or clay objects that mark routes and are known as 'way finding' devices. These are often associated with songlines.

Since the program was established, the IRP Museum Grants have facilitated the repatriation of more than 2,700 ancestral remains and more than 2,240 secret sacred objects to the custodianship of their communities of origin.

Available data indicates that seven of the museums identified in the IRP Museum Grants guidelines collectively hold the remains of over 10,400 ancestors. Six of the museums identified in the IRP Museum Grants guidelines have provided data on secret sacred objects and collectively they hold over 13,500 secret sacred objects. Even without data from the National Museum of Australia and the seven major state and territory museums, this demonstrates that to fulfil its objectives the IRP Museum Grants must remain ongoing.

The department deliver the IRP Museum Grants through a targeted grant process. The department invites the National Museum of Australia and the seven major state and territory museums to apply for annual funding through the nominated grants administration system.

The Office for the Arts currently administers grant funding using SmartyGrants, a grants administration platform that is widely used by the arts sector nationally. The department is working with other departments to manage transition to the whole-of-government grant administration arrangements.

Applicants apply against eligibility and assessment criteria as outlined in the IRP Museum Grants guidelines, which have been developed in accordance with the CGRGs and are made available on GrantConnect at [www.grants.gov.au](http://www.grants.gov.au).

The IRP Museum Grants guidelines are reviewed annually and made available to museums and cultural institutions through the nominated grants administration system when the funding round opens each year. The IRP Museum Grants guidelines are approved for use by a departmental delegate at the time in-principle funding approval is given to enable the funding round to open.

Applications for grant funding are assessed against the IRP Museum Grants guidelines by program officers in the Office for the Arts, who provide recommendations to the decision maker – the responsible Minister, or the responsible Minister's delegate. The decision maker considers the recommendations and declines or approves funding within the limits of available program funding. Funding decisions are made objectively, and in accordance with the assessment process set out in the IRP Museum Grants guidelines and applicable legislative requirements under the PGPA Act, including the CGRGs.

Grant recipients are required to enter into a legally binding grant agreement to directly deliver the agreed activity within defined terms and conditions. This includes a requirement to submit a mid-year Progress Report and a Final Report (acquittal), with 75 per cent of funds released on execution of the funding agreement and the final 25 per cent of funds released on the acceptance of the Progress Report. Unexpended funds are repaid to the department following submission and acceptance of the Final Report.

Information on funding decisions is publicly reported via GrantConnect at [www.grants.gov.au](http://www.grants.gov.au).

Funding decisions made in connection with the IRP Museum Grants are not considered appropriate for independent merits review as the program involves the allocation of a finite resource, and an allocation that has already been made to another party would be affected by overturning the original allocation. 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 4.14 of the guide, *What decisions should be subject to merit review?*).

When funding requests exceed the limit of the available funding, only a proportion of suitable applications can be funded. A reviewed decision made in relation to one grant would also affect decisions in relation to all others, particularly around timing and funding amounts, which could jeopardise achievement of the program objectives.

In order to address accountability issues related to the exclusion of a merits review, the IRP Museum Grants design and assessment process place great emphasis on the administrative accountability for decisions to allocate funding. This includes ensuring that:

- the criteria for funding are made clear;
- the processes of allocating funds are fair; and
- decisions are made objectively and in accordance with applicable legislative requirements under the PGPA Act.

An applicant who is dissatisfied with the handling of their grant application will be able to lodge a complaint to the program officer for consideration. Applicants who are otherwise affected by decisions or who have complaints about the grant 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. Information on the Charter and the handling of complaints is available at <https://www.infrastructure.gov.au/department/about/charter.aspx>. If the applicant is not satisfied with the outcome of the assessment or investigation of their complaint, they will be able to contact the Commonwealth Ombudsman as a final recourse.

The Australian Government Advisory Committee for Indigenous Repatriation (the Committee) was consulted on the Indigenous Repatriation Policy and on the creation of the IRP Museum Grants guidelines. The Committee is an all-Indigenous committee appointed by the responsible Minister to advise on policy and program issues related to the repatriation of Indigenous Australian ancestral remains and secret sacred objects from Australian collection institutions and Indigenous Australian ancestral remains from overseas. The Office for the Arts continues to consult with the Committee as needed.

Funding for the IRP Museum Grants of \$3.2 million over four years from 2020-21 comes from Program 6.1: Arts and Cultural Development, which is part of Outcome 6. Details are

set out in the *Portfolio Budget Statements 2020-21, Budget Related Paper No. 1.10, Infrastructure, Transport, Regional Development and Communications Portfolio* at page 77. The IRP Museum Grants are an ongoing program.

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

Races 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 IRP Museum Grants are concerned with the return and care of the ancestral remains of Indigenous Australians and secret sacred objects of Indigenous Australians to those communities.

New **table item 468** establishes (and renews) legislative authority for government spending on the Arts and Cultural Development Program (the ACD program), which provides financial assistance to arts training organisations for the training of young Australian performing artists.

The ACD program was established in 2001 and continued the Australian Government’s 40 years of commitment to support seven arts training organisations (ATOs) to operate as national centres of excellence for elite training in the performing arts.

The objective of the ACD program is to ensure all Australians have the opportunity to participate fully in the arts and that the most talented young Australians can excel in their chosen field. It provides surety to students and staff of recipient ATOs, and supports the operation and maintenance of specialised training facilities. Ongoing support also allows organisations to leverage funding from the ACD program to attract and grow long-term philanthropic commitments.

Funding is provided to ATOs to support operational costs, including the cost of performances and touring for the purposes of delivering high quality training. Funding is administered through six-year funding agreements by the Office for the Arts within the department.

Under these agreements, ATOs are required to achieve outcomes in line with specified goals, which are currently set out in the National Elite Performing Arts Training Activity Framework. These goals are to: deliver elite education and training; create and maintain the best possible environment for learning and training; engage and retain highly qualified staff; attract and retain the best students; govern and manage effectively; grow their resources; establish productive partnerships; promote their work; engage the community; and share ideas, resources and create opportunities for cooperative activities.

The outcomes of the ACD program include:

- provision of access and opportunities for talented young Australians to excel in a range of performing arts;
- nurturing of leadership and the pursuit of excellence in the performing arts sector;
- enhancement of the range of quality arts and cultural experiences that grow arts audiences throughout Australia;

- strengthening of Australia's reputation as a sophisticated and artistic nation with a confident, outward-focused arts sector;
- encouragement of greater private sector support and partnership funding for arts training and education; and
- new artistic and cultural collaborations within Australia and internationally.

Eligible ATOs must meet the Australian Government's policy objective to provide a quality school-based education on a merit basis for Australia's most talented students, irrespective of social and economic background or geographic location. Each year, these organisations offer a limited number of positions through a competitive, nationwide, merit based audition process.

Payments are currently made three times per year, based on ongoing satisfactory performance against the National Elite Performing Arts Training Activity Framework. The amount of funding to each organisation is negotiated based on its scale and operational requirements. Funding recipients are required to develop realistic, effective and efficient budgets that represent value for money.

The ACD program is open to ATOs that are identified as eligible for funding in the ACD program guidelines, and currently include the following:

- the National Institute of Dramatic Art;
- the Australian Ballet School;
- the Australian Youth Orchestra;
- the Flying Fruit Fly Circus;
- the National Aboriginal and Islander Skills Development Association Dance College;
- the National Institute of Circus Arts; and
- the Australian National Academy of Music.

The department delivers the ACD program through a closed non-competitive grant process. Organisations may be invited by the Government to be considered as an elite performing arts training organisation should funding become available. To be eligible for funding, applicants must be identified by the Government as a leading national elite performing arts training organisation; be an Australian incorporated not-for-profit organisation; have an active Australian Business Number; be registered for the Goods and Services Tax, if required by the Australian Taxation Office; and not have any outstanding reports, acquittals or serious breaches relating to any Commonwealth funding.

Applicants apply against eligibility and assessment criteria as outlined in the ACD program guidelines, which have been developed in accordance with the CGRGs and are made available on GrantConnect at [www.grants.gov.au](http://www.grants.gov.au).

If an organisation is considered an elite performing arts training organisation on this basis, the organisation will be required to provide a submission, including a six-year strategic plan for the organisation, a six-year business plan outlining the operations of the organisation, a six-year budget forecast, and a detailed budget for the first year. These documents will need to demonstrate the organisation's capacity to meet the requirements of the key goals for arts training organisations as outlined in the ACD program guidelines. If successful, the organisation will need to enter into a legally binding grant agreement to directly deliver the



agreed activity within defined terms and conditions, including that it continue to provide these documents on an annual basis.

Submissions will be considered in the context of the objectives of the ACD program and against the four equally weighted assessment criteria: quality, access, support and partnerships, and value for money. Assessors will determine whether an application meets the criteria to a high, medium or low degree. The Office for the Arts within the department will make a recommendation to the responsible Minister, the decision maker for grant expenditure under the program. Funding decisions are made objectively, and in accordance with the assessment process set out in the ACD program guidelines and applicable legislative requirements under the PGPA Act, including the CGRGs.

Successful applicants will be listed in the department's grants register in accordance with the CGRGs and reported via GrantConnect at [www.grants.gov.au](http://www.grants.gov.au). Unsuccessful applicants will be provided with feedback in writing.

The Office for the Arts currently administers grants funding using SmartyGrants, a grants administration platform that is widely used by the arts sector nationally. The department is working with other departments to manage transition to the whole-of-government grant administration arrangements.

Funding decisions made in connection with the ACD program are not considered appropriate for independent merits review as the program involves the allocation of a finite resource, and an allocation that has already been made to another party would be affected by overturning the original allocation. 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 4.14 of the guide, *What decisions should be subject to merit review?*).

With funding requests that are expected to exceed the limit of the available funding, only a proportion of suitable applications can be funded. A reviewed decision made in relation to one grant would also affect decisions in relation to all others, particularly around timing and funding amounts, which could jeopardise achievement of the program objectives.

In order to address accountability issues related to the exclusion of a merits review, the program design and assessment process place great emphasis on the administrative accountability for decisions to allocate funding. This includes ensuring that:

- the criteria for funding are made clear;
- the process includes input and advice from external experts and the department; and
- decisions are made objectively and in accordance with applicable legislative requirements under the PGPA Act.

An applicant who is dissatisfied about the handling of their grant application under the ACD program by the department will be able to lodge a complaint to the program manager for consideration. Applicants who are otherwise affected by decisions or who have complaints about the ACD 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. Information on the Charter and the handling of complaints is available at [www.communications.gov.au/who-we-are/department/client-service-charter](http://www.communications.gov.au/who-we-are/department/client-service-charter). If the applicant is not satisfied with the outcome of the department's

assessment or investigation of their complaint, they will be able to contact the Commonwealth Ombudsman as a final recourse.

The Australian Government has responded to the arts and cultural sector's need for very highly trained artists and practitioners, particularly in sectors where there was an unmet employment demand. The ATOs provide targeted elite level training and a pathway to excellence in their fields.

Ongoing consultation has occurred with ATOs since the ACD program was established. The Office for the Arts has sought and received ongoing feedback on the effectiveness of the program through regular milestone reporting by ATOs. Milestone payments are contingent on ATOs meeting satisfactory performance standards. These reports demonstrate that program funding enables ATOs to successfully operate as national centres of excellence for elite training in the performing arts.

The most recent review of the ACD program was conducted in August 2019. The review found that the seven ATOs delivered the expected policy outcomes and enabled the continuing growth of a vibrant arts and culture sector in Australia.

Funding for the ACD program of \$91.8 million over four years from 2020-21 comes from Program 6.1: Arts and Cultural Development, which is part of Outcome 6. Details are set out in the *Portfolio Budget Statements 2020-21, Budget Related Paper No. 1.10, Infrastructure, Transport, Regional Development and Communications Portfolio* at page 77. The ADC is an ongoing program.

Noting that it is not a comprehensive statement of relevant constitutional considerations, the objective of the item references the executive power and express incidental power, including the nationhood aspect (sections 61 and 51(xxxix)) of the Constitution.

*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. The executive power in 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 ACD program is concerned with developing and fostering, as a national initiative in the arts, national excellence in the performing arts.

New **table item 469** establishes legislative authority for government spending on the Australian 5G Innovation Initiative (the initiative), which provides financial support to facilitate and encourage the use of the 5th generation of mobile telecommunications technology used for wireless communication (5G).

The Government recognised the potential of 5G and implemented Australia's first 5G Strategy on 12 October 2017. The 5G Strategy (available at [www.communications.gov.au/documents/5g-enabling-future-economy](http://www.communications.gov.au/documents/5g-enabling-future-economy)) is set within the context of Australia's competitive mobile communications market to support the timely rollout of 5G in Australia. The Strategy

seeks to enable the next wave of broad-based industry productivity, supporting the growth of Australia's digital economy. The initiative builds on the 5G Strategy, and provides financial support to facilitate and encourage the use of 5G, including by funding demonstrations of the productivity enhancing benefits of 5G use cases while maintaining a competitive mobile market.

On 29 September 2020, the Prime Minister, the Hon Scott Morrison MP, announced the JobMaker Digital Business Plan, which included \$29.2 million to accelerate the rollout of 5G, including an initiative to invest in 5G commercial trials and testbeds in key industry sectors such as agriculture, mining, logistics and manufacturing (available at [www.pm.gov.au/media/digital-business-plan-drive-australias-economic-recovery](http://www.pm.gov.au/media/digital-business-plan-drive-australias-economic-recovery)).

Also on 29 September 2020, the Minister for Communications, Urban Infrastructure, Cities and the Arts, the Hon Paul Fletcher MP, announced funding of \$22.1 million (forming part of the \$29.2 million announced by the Prime Minister) to establish the initiative (available at [minister.infrastructure.gov.au/fletcher/media-release/supporting-australias-5g-future](http://minister.infrastructure.gov.au/fletcher/media-release/supporting-australias-5g-future)).

Funding to support 5G trials and testbeds (which are platforms for conducting rigorous, transparent, and replicable testing of scientific theories, computational tools, and new technologies; 5G testbeds help industry understand the challenges involved in deploying new 5G technologies and test 5G applications) will focus on areas where 5G has potential to bring productivity benefits, including agriculture, mining, logistics, medical technology, and manufacturing sectors. This funding is intended to support a variety of industry sectors to demonstrate the emerging commercial benefits of 5G technology and assist to grow local expertise in the overall deployment and application of 5G.

Funding will be provided to support 5G trials and testbeds that undertake rigorous, commercial, and replicable testing of 5G-enabled technology. Additionally, the funding will help to create a pipeline of trials and testbeds demonstrating different future 5G uses (including Internet of Things applications), which will assist in building Australia's 5G ecosystem. These trials and testbeds will assist businesses in Australia, including small to medium enterprises, to test and develop 5G applications, services and products. This expenditure creates a commercial incentive for a greater number of businesses to adopt 5G solutions, and for telecommunication carriers to accelerate 5G rollout.

Examples of 5G applications include, but are not limited to, smart manufacturing solutions, smart farming (including on farm machinery, sensors and drones), telemedicine, robotics, augmented reality, and freight and logistics management solutions. The International Mobile Telecommunications-2020 (IMT-2020 Standard), issued by the International Telecommunication Union, sets out the definitions and technical requirements for 5G networks, devices and services.

Funding will be provided in two rounds. The first round of funding is anticipated to be offered in the second quarter of 2021, with the second round of funding to be allocated in the second quarter of 2022. It is expected that each round of funding will support between 10 and 20 projects, subject to applications received and the relative merits of the applications. For the first round of funding, the grant amount will be up to 100 per cent of eligible project expenditure (grant percentage), and grant amounts will range from \$100,000 to \$2.0 million. Projects that receive grants closer to the maximum value are expected to demonstrate either multiple 5G applications, or 5G applications that are more complex.

Funding under the initiative will be allocated by the Commonwealth through open competitive grant processes, against eligibility and assessment criteria set out in the grant opportunity guidelines published on GrantConnect (at [www.grants.gov.au](http://www.grants.gov.au)), in accordance with the CGRGs and the PGPA Act.

The grant eligibility criteria and guidelines for the first round of funding encourage participation from a wide range of businesses, from different industry sectors, including small and medium sized businesses. Eligible activities include conducting trials that undertake rigorous, commercial, and replicable testing of technologies that make use of 5G and identifying solutions that demonstrate 5G capabilities.

Applications for the first round of funding will be assessed against assessment criteria where applicants demonstrate alignment with the initiative objectives, ability to access technology and spectrum, capacity and capability to deliver, and value for money. Information in relation to the awarding of grants will also be published on GrantConnect.

The Department of Industry, Science, Energy and Resources' Business Grants Hub will administer grant funding, with policy and technical support from the department. Grant recipients must enter into a legally binding grant agreement for delivery of the agreed activity within defined terms and conditions, and it is expected that payments will be staged at particular project milestones. This will encourage recipients to demonstrate the benefits of projects.

The responsible Minister will be the decision maker for grant expenditure under the initiative, and all relevant approvals are subject to the PGPA Act. The responsible Minister will be supported by experienced assessors from the department and the Business Grants Hub. External technical experts may also be consulted to inform assessments. Assessors may seek additional information about the applicant or application, will assess applications on their merits against the assessment criteria, and make recommendations to the responsible Minister on applications to be approved.

Funding decisions will be made objectively, and in accordance with the assessment process set out in the grant opportunity guidelines and applicable legislative requirements under the PGPA Act. Applications fulfilling all eligibility criteria are ranked against the assessment criteria. Only applications that perform strongly against the assessment criteria will be awarded funding.

The responsible Minister's decision is final in all matters, including the approval of grants, the grant funding amounts to be awarded, and the terms and conditions of grants. Funding will not be approved if the program funding available will not accommodate the funding offer, and/or the application does not represent value for money.

Funding decisions made in connection with the initiative are not considered suitable for independent review, as they involve the allocation of a finite resource between competing applicants. A reviewed decision made in relation to one grant would also affect decisions in relation to all others, particularly around timing and funding amounts, which could jeopardise achievement of the initiative objectives. The Administrative Review Council has recognised it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.11 to 4.14 of the guide, *What decisions should be subject to merit review?*).

In order to address accountability issues related to the exclusion of a merits review, the initiative design and assessment process place great emphasis on the administrative accountability for decisions to allocate funding. This includes ensuring that there is clear criteria for funding and that decisions are made objectively and in accordance with applicable legislative requirements under the PGPA Act.

An applicant who is dissatisfied about the handling of their grant application under the initiative by the department will be able to lodge a complaint to the program manager, who is an official of the department. Applicants who are otherwise affected by decisions or who have complaints about the initiative may 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. Information on the Charter and the handling of complaints is available at [www.infrastructure.gov.au/department/about/charter.aspx](http://www.infrastructure.gov.au/department/about/charter.aspx). If the applicant is not satisfied with the outcome of the department's assessment or investigation of their complaint, they will be able to contact the Commonwealth Ombudsman as a final recourse.

The initiative responds to consultation across the telecommunications sector and government that identified the need to demonstrate the benefits of 5G technology to businesses in Australia. In 2019 and 2020, the House of Representatives Standing Committee on Communications and the Arts undertook an inquiry into the deployment, adoption and application of 5G in Australia. The Committee received 537 submissions from a wide range of stakeholders. In addition to receiving submissions, the Committee held six days of public hearings in different Australian states. In its final report (available at [https://www.aph.gov.au/Parliamentary\\_Business/Committees/House/Communications/5G/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/House/Communications/5G/Report)), which was tabled on 12 May 2020, the Committee recommended that the Australian Government work with carriers to develop campaigns to boost industry awareness about the advantages of 5G to business to help realise the benefits of this new network quickly. A key aim of the initiative is to boost business awareness of the benefits of 5G.

Additionally, the department prepared a discussion paper (available at <https://www.communications.gov.au/have-your-say/consultation-australian-5G-innovation-initiative>) about the initiative and undertook consultation with key industry groups, including the telecommunications industry, bodies representing end-user sectors, relevant government departments, and other stakeholders. The paper outlined the key elements for the initiative, including proposed initiative principles and assessment criteria, and sought input from stakeholders on the scope and the design of the initiative. The consultation period was from 13 November to 11 December 2020. Outcomes from the consultation have informed the development of the grant opportunity guidelines for the first round of funding under the initiative.

Funding of \$22.1 million was included in the 2020-21 Budget under the measure 'Jobmaker Plan – Digital Business Plan' for a period of three years commencing in 2020-21. Details are set out in *Budget 2020-21, Budget Measures, Budget Paper No. 2 2020-21* at pages 64 to 66.

Funding for this item will come from Program 5.1: Digital Technologies and Communications Services, which is part of Outcome 5: 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 *Portfolio Budget Statements 2020-21, Budget Related Paper No. 1.10, Infrastructure, Transport, Regional Development and Communications Portfolio* at pages 69 and 70.

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

*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 initiative will be used to facilitate and encourage the deployment and use of 5G, which is a communications service.

## **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, Regional Development and Communications Measures No. 1) Regulations 2021***

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 powers in the FF(SP) 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 (Infrastructure, Transport, Regional Development and Communications Measures No. 1) Regulations 2021* amend Schedule 1AB to the FF(SP) Regulations to add five new table items to establish legislative authority for government spending on certain activities administered by the Department of Infrastructure, Transport, Regional Development and Communications.

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

- table item 465 for the National Collecting Institutions Touring and Outreach Program;
- table item 466 for the Australian Government International Exhibitions Insurance Program;
- table item 467 for the Indigenous Repatriation Program;
- table item 468 for the Arts and Cultural Development Program – Arts Training Organisations; and
- table item 469 for the Australian 5G Innovation Initiative.

#### **Table item 465 – National Collecting Institutions Touring and Outreach Program**

Table item 465 establishes (and renews) legislative authority for government spending on the National Collecting Institutions Touring and Outreach Program (the NCITO program), which aims to increase the touring of cultural collections by Australian national collecting institutions so that Australian and overseas cultural material is accessible to all Australians, especially those in regional and remote communities. The NCITO program also aims to promote international awareness of Australia's cultural heritage by supporting tours of Australian collections items internationally, and encourage partnerships and collaboration.

Grant funding is provided to eligible National Collecting Institutions (NCIs) that submit proposals to tour or develop exhibitions, which align with the following objectives:

- increase overall levels of touring by NCIs with particular emphasis on multiple venue tours;
- promote broad access to Australian cultural material, particularly for audiences in regional areas;
- encourage partnerships and collaboration between NCIs and also with other institutions across the collections sector (such as archives, galleries, libraries and museums), particularly in regional areas;
- promote international awareness of Australia's cultural heritage through touring Australian cultural material from NCIs overseas; and
- expand Australians' appreciation of international cultural material through enabling NCIs to bring works from international collections for exhibition or touring within Australia.

The funding complements other Australian Government funding programs for the arts, including the Visions of Australia program, which supports touring exhibitions of material from Australian incorporated arts and cultural heritage organisations.

### **Human rights implications**

Table item 465 engages the following rights:

- the right to work – Article 6 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), read with Article 2; and
- the right to take part in cultural life – Article 15 of the ICESCR, read with Article 2.

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 6 of the ICESCR recognises the right to work. Table item 465 promotes the realisation of the right to work by supporting employment in the arts sector, and by supporting the continuing viability of arts organisations.

Article 15 of the ICESCR recognises the right to take part in cultural life. Table item 465 promotes the realisation of this right by supporting the exhibition of cultural material for the enjoyment and benefit of members of the Australian community, including underserved audiences in outer metropolitan, regional and remote areas.

### **Conclusion**

Table item 465 is compatible with human rights as it promotes the realisation of human rights.

#### *Table item 466 – Australian Government International Exhibitions Insurance Program*

Table item 466 establishes (and renews) legislative authority for government spending on the Australian Government International Exhibitions Insurance Program (the AGIEI program), which supports cultural institutions and organisations by providing funding to offset insurance costs for eligible touring exhibitions from overseas so that Australian audiences



have access to significant international cultural material that they would not otherwise have an opportunity to experience.

In addition to financially assisting cultural institutions with insurance costs, the Australian Government's involvement in an exhibition has been reported to positively influence institutions' negotiations with overseas lenders of cultural materials by:

- meeting expectations from many foreign countries for government-to-government level diplomacy;
- promoting that the Australian Government understands the need for appropriate protections and risk management;
- enabling international protocols to be observed; and
- attracting corporate support for major exhibitions.

The AGIEI program complements other Australian Government programs for the arts, particularly the Protection of Cultural Objects on Loan Scheme that encourages the loans of cultural material from overseas lenders.

### **Human rights implications**

Table item 466 engages the following human rights:

- the right to work – Article 6 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), read with Article 2; and
- the right to take part in cultural life – Article 15 of the (ICESCR), read with Article 2.

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 6 of the ICESCR recognises the right to work. Table item 466 promotes the realisation of the right to work by supporting the continuing viability of arts organisations.

Article 15 of the ICESCR recognises the right to take part in cultural life. Table item 466 promotes the realisation of this right by supporting the exhibition of significant cultural material for the enjoyment and benefit of members of the Australian community.

### **Conclusion**

Table item 466 is compatible with human rights because it promotes the protection of human rights.

#### *Table item 467 - Indigenous Repatriation Program*

Table item 467 establishes (and renews) legislative authority for government spending on the Indigenous Repatriation Program (IRP) Museum Grants, which supports museums and cultural institutions to facilitate the return of Aboriginal and Torres Strait Islander (Indigenous Australian) ancestral remains and secret sacred objects from their collections to communities of origin. The IRP Museum Grants also support culturally appropriate care of, and access to, Indigenous Australian ancestral remains and secret sacred objects.

Funding under the IRP Museum Grants supports the museums to work collaboratively with Indigenous communities, other Australian Government agencies, and state, territory and local governments to meet the following objectives:

- identify the origin of ancestral remains and secret sacred objects held in the funded museums' and cultural institutions' collections;
- empower Indigenous Australian communities to be involved in the repatriation of their ancestral remains and secret sacred objects;
- repatriate ancestral remains and secret sacred objects to their community of origin;
- facilitate discussions with custodians for culturally appropriate storage and access to ancestral remains and secret sacred objects; and
- support the engagement and/or employment of Indigenous Australians to provide assistance, support and cultural advice to progress the repatriation of ancestral remains and secret sacred objects to communities of origin.

The IRP Museum Grants are underpinned by Australia's accession to international agreements such as the United Nations Educational, Scientific and Cultural Organization (UNESCO) *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* and the United Nations *Declaration on the Rights of Indigenous Peoples*.

### **Human rights implications**

Table item 467 engages the following human rights:

- the right to work – Article 6 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), read with Article 2;
- the right to take part in cultural life – Article 15 of the ICESCR, read with Article 2;
- the right for minority groups to enjoy their own culture and to profess and practise their own religion – Article 27 of the *International Covenant on Civil and Political Rights* (ICCPR), read with Article 2; and
- the right to self-determination – Article 1 of the ICESCR and Article 1 of the ICCPR.

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 2 of the ICCPR requires States Parties to take the necessary steps to give effect to the rights recognised in the ICCPR.

Article 6 of the ICESCR recognises the right to work. Table item 467 promotes the realisation of the right to work by supporting employment in the museum sector, and by supporting the continuing viability of cultural organisations.

Article 15 of the ICESCR recognises the right to take part in cultural life, and Article 27 of the ICCPR recognises the right for minority groups to enjoy their own culture and to profess and practise their own religion. Table item 467 promotes the realisation of these rights by supporting Aboriginal and Torres Strait Islander communities to observe and participate in cultural practices.

Article 1 of the ICESCR and Article 1 of the ICCPR recognise the right to self-determination, including that groups within a country, such as those with a common racial or cultural identity, particularly Indigenous people, have the right to a level of internal self-determination. Accordingly, it is important individuals and groups, particularly

Aboriginal and Torres Strait Islander peoples, should be consulted about decisions likely to affect them.

This includes ensuring that they have the opportunity to participate in the making of such decisions and are able to exercise meaningful control over their affairs. Table item 467 promotes the realisation of this right by:

- empowering Aboriginal and Torres Strait Islander communities to be involved in the repatriation of their ancestors and secret sacred objects;
- facilitating discussions with custodians for culturally appropriate storage and access to Aboriginal and Torres Strait Islander ancestors and secret sacred objects; and
- supporting the engagement and/or employment of Aboriginal and Torres Strait Islander peoples to provide assistance, support and cultural advice to progress the repatriation of ancestors and secret sacred objects to communities of origin.

## **Conclusion**

Table item 467 is compatible with human rights because it promotes the protection of human rights.

### *Table item 468 - Arts and Cultural Development Program – Arts Training Organisations*

Table item 468 establishes (and renews) legislative authority for government spending on the Arts and Cultural Development Program (the ACD program), which provides financial assistance to arts training organisations for the training of young Australian performing artists.

The objective of the ACD program is to ensure all Australians have the opportunity to participate fully in the arts and that the most talented young Australians can excel in their chosen field. It provides surety to students and staff of recipient arts training organisations, and supports the operation and maintenance of specialised training facilities. Ongoing support also allows organisations to leverage funding from the ACD program to attract and grow long-term philanthropic commitments.

The outcomes of the ACD program include:

- provision of access and opportunities for talented young Australians to excel in a range of performing arts;
- nurturing of leadership and the pursuit of excellence in the performing arts sector;
- enhancement of the range of quality arts and cultural experiences that grow arts audiences throughout Australia;
- strengthening of Australia’s reputation as a sophisticated and artistic nation with a confident, outward-focused arts sector;
- encouragement of greater private sector support and partnership funding for arts training and education; and
- new artistic and cultural collaborations within Australia and internationally.

The ACD program was established in 2001 and continued the Australian Government’s 40 years of commitment to support arts training organisations to operate as national centres of excellence for elite training in the performing arts.

## Human rights implications

Table item 468 engages the following human rights:

- the right to work – Article 6 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), read with Article 2; and
- the right to take part in cultural life – Article 15 of the ICESCR, read with Article 2.

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 6 of the ICESCR recognises the right to work. Table item 468 promotes the realisation of the right to work by supporting employment in the arts sector, and by supporting the continuing viability of arts organisations.

Article 15 of the ICESCR recognises the right to take part in cultural life. Table item 468 promotes the realisation of this right by supporting the continued creation and delivery of creative works and the arts to members of the Australian community, including underserved audiences in outer metropolitan, regional and remote areas.

## Conclusion

Table item 468 is compatible with human rights because it promotes the protection of human rights.

### Table item 469 – Australian 5G Innovation Initiative

Table item 469 establishes legislative authority for government spending on the Australian 5G Innovation Initiative (the initiative), which provides financial support to facilitate and encourage the use of the 5th generation of mobile telecommunications technology used for wireless communication (5G).

Funding to support 5G trials and testbeds (which are platforms for conducting rigorous, transparent, and replicable testing of scientific theories, computational tools, and new technologies; 5G testbeds help industry understand the challenges involved in deploying new 5G technologies and test 5G applications) will focus on areas where 5G has potential to bring productivity benefits, including agriculture, mining, logistics, medical technology, and manufacturing sectors.

This funding is intended to support a variety of industry sectors to demonstrate the emerging commercial benefits of 5G technology and assist to grow local expertise in the overall deployment and application of 5G. Funding will be provided to support 5G trials and testbeds that undertake rigorous, commercial, and replicable testing of 5G-enabled technology.

Additionally, the funding will help to create a pipeline of trials and testbeds demonstrating different future 5G uses (including Internet of Things applications), which will assist in building Australia's 5G ecosystem. These trials and testbeds will assist businesses in Australia, including small to medium enterprises, to test and develop 5G applications, services and products. This expenditure creates a commercial incentive for a greater number of businesses to adopt 5G solutions, and for telecommunication carriers to accelerate 5G rollout.

## **Human rights implications**

Table item 469 engages:

- the right to enjoy the benefits of scientific progress and its applications – Article 15 of the *International Covenant of Economic, Social and Cultural Rights* (ICESCR), read with Article 2.

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 15(b) of the ICESCR recognises the right to enjoy the benefits of scientific progress and its applications.

Table item 469 promotes the realisation of this right by supporting the application of new technology for the benefit of the Australian community, including outer metropolitan, regional and remote areas.

## **Conclusion**

Table item 469 is compatible with human rights because it promotes the protection of human rights.

**Senator the Hon Simon Birmingham  
Minister for Finance**