

## **REPLACEMENT EXPLANATORY STATEMENT**

**This Explanatory Statement replaces the Explanatory Statement registered on 20 August 2021 for the *Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development and Communications Measures No. 4) Regulations 2021* [F2021L01141] to provide further information about delegation of decision making in relation to the Viewer Access Satellite Television service and the Culture, Heritage and Arts Regional Tourism program.**

**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. 4)  
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. 4) Regulations 2021* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on certain activities administered by the Department of Infrastructure, Transport, Regional Development and Communications.

Funding is provided for:

- the provision of safety net television services to viewers who are unable to access or receive terrestrial television services (\$42.4 million over three years from 2021-22);
- the Peri-Urban Mobile Program to support the provision of improved telecommunications connectivity in urban or peri-urban areas of Australia (\$16.4 million over three years from 2021-22); and

- the Culture, Heritage and Arts Regional Tourism Program to assist community cultural, heritage and arts organisations in regional Australia, including museums, galleries and historical societies, to recover from the adverse effects of COVID-19 and foster tourism and cultural participation (\$3.3 million in 2021-22).

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. 4) 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. 4) 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 three new table items to Part 4 of Schedule 1AB to establish legislative authority for government spending on certain activities that will be administered by the Department of Infrastructure, Transport, Regional Development and Communications (the department).

New **table item 495** establishes legislative authority for government spending on the provision of safety net television services to viewers who are unable to access or receive terrestrial television services.

Commonwealth funding will support the provision of safety net television services, which enable all areas of Australia to access free-to-air entertainment and news programs. A safety net television service is a platform/service that provides commercial and national free-to-air television to viewers unable to access terrestrial television transmission. Since the switchover to digital television, the Viewer Access Satellite Television (VAST) service has provided a safety net service via direct to home satellite transmission.

Having access to free-to-air television content is important for the social inclusion of regional and remote Australians. Sharing entertainment, education and social experiences through television serves to bring Australians together. However, the provision of free-to-air

television services using terrestrial transmission (broadcasting towers) is a commercial decision for the broadcasters. Due to Australia's large landmass and sparse population density, it is not economically viable to provide households in many areas of Australia with access to free-to-air television services through terrestrial transmission sites.

Government funding supports the provision of a safety net television service for areas where terrestrial television transmission is not available. More than 250,000 premises, primarily in regional and remote Australia, rely on a VAST direct to home service for access to news and entertainment broadcasts.

The VAST service commenced in 2010 and succeeds earlier satellite television programs such as the Remote Australia Broadcast Service. Viewers require satellite reception equipment (a rooftop dish) and a certified VAST set top box.

VAST is available nationally with three satellite broadcast licence areas specified in section 38C of the *Broadcasting Services Act 1992*. EASB holds the licence for the Northern Australia TV3 and South Eastern Australia TV3 licence areas, and WA Satco holds the licence for the Western Australia TV3 licence area. Funding agreements have been in place with EASB and WA Satco since VAST commenced. EASB and WA Satco receive funding in arrears for eligible expenses incurred in providing commercial free-to-air services on VAST. Eligible expenses include costs such as satellite transmission, distribution and contribution networks and playout. Funding will be provided to extend the VAST service for an additional three years to 30 June 2024 for eligible expenses incurred.

EASB and WA Satco are joint venture companies that were established for the purpose of providing commercial free-to-air television services over satellite in accordance with section 38C of the *Broadcasting Services Act 1992*.

Securing the current VAST service to 30 June 2024 enables Australians without terrestrial television reception to continue to access free-to-air television services. The Government will work with industry to determine the most efficient and sustainable delivery model for a safety net television service beyond 30 June 2024.

VAST funding will be provided through a closed non-competitive grant process, based on proposals submitted by the regional commercial television broadcasters and assessed against eligibility and assessment criteria set out in the grant opportunity guidelines. The guidelines have been developed in accordance with the *Commonwealth Grants Rules and Guidelines 2017* (CGRGs) and are available on GrantConnect at [www.grants.gov.au](http://www.grants.gov.au). Funding is allocated for the continuation of commercial free-to-air services on the VAST safety net service from 1 July 2021 to 30 June 2024.

Under his portfolio responsibilities, the Minister for Communications, Urban Infrastructure, Cities and the Arts is the final decision maker for grant expenditure under the program. The Minister has the appropriate skills, qualifications and experience to exercise these decision making powers. The department will provide funding recommendations to the decision maker and negotiate arrangements with successful grant recipients. 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 *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and the CGRGs. Grant outcomes will be made publicly available on GrantConnect at [www.grants.gov.au](http://www.grants.gov.au).

Funding decisions made in connection with the program are not considered appropriate for independent merits review as they involve 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?*).

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

- the criteria for funding are made clear; 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 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 its 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/departments/about/charter](http://www.infrastructure.gov.au/departments/about/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 department has consulted regional commercial television broadcasters on the extension of the VAST safety net service to 30 June 2024. The department has also consulted with industry stakeholders, including regional commercial television broadcasters, national broadcasters, metropolitan commercial television broadcasters, infrastructure providers and peak bodies, in the course of a recent consultancy that provided an economic analysis of current regional television services (including VAST) and options for future sustainable safety net service delivery models, including alternative technologies, beyond June 2024. The regional commercial television broadcasters were broadly supportive of the extension and have signed funding agreements.

Funding for the program was included in the 2020-21 Budget under the measure 'Viewer Access Satellite Television – extension'. Details are set out in *Budget 2020-21, Budget Measures, Budget Paper No. 2 2020-21* at page 144.

The program provides for an Australian Government financial commitment of \$42.4 million for a period of three years from 2021-22. Funding will come from the Regional Broadcasting component for Program 5.1: Digital Technologies and Communications Services, which is part of Outcome 5. Details are set out in the *Portfolio Budget Statements 2021-22, Budget Related Paper No. 1.10, Infrastructure, Transport, Regional Development and Communications Portfolio* at page 73.

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 VAST service involves the delivery of a satellite transmission service providing television and radio broadcasts.

New **table item 496** establishes legislative authority for government spending on the Peri-Urban Mobile Program (the program).

Under the program, grant funding will be provided to mobile network operators (MNOs) and infrastructure providers to deploy new mobile phone infrastructure to improve mobile connectivity in bushfire prone areas along the fringe of Australia’s major cities. The peri-urban fringe is where the bush meets the edges of the suburbs, creating bushfire risks for those living and working in those areas.

On 5 May 2021, the Minister for Communications, Urban Infrastructure, Cities and the Arts, the Hon Paul Fletcher MP, announced the program. Media release is available at <https://minister.infrastructure.gov.au/fletcher/media-release/164-million-improve-mobile-connectivity-urban-fringe>.

The 2019-20 bushfires demonstrated that Australian communities are increasingly reliant on mobile phones during extreme events, such as bushfires. However, there are longstanding mobile quality of service and reception issues in many bushfire prone areas on the peri-urban fringe of Australia’s major cities. Peri-urban areas have particular bushfire risk because they are on the interface of the built-up and bush areas. Areas of concern include the Blue Mountains, northern parts of Sydney, the Perth Hills, and north of Melbourne.

Poor mobile reception and coverage issues in these areas are often not commercially viable for MNOs (for example, Optus, Telstra and TPG Telecom) to address, leaving many communities with poor to no mobile service, reducing their productivity and exposing them to risks during bushfires.

The existing \$380 million Mobile Black Spot Program, a regional and remote mobile coverage program, does not target the peri-urban areas of major metropolitan cities, as it is designed to expand mobile coverage into new regional and remote areas rather than addressing quality of reception and localised coverage issues on the peri-urban fringe.

The program will be delivered through a targeted, competitive, merit-based grant process open to MNOs and mobile network infrastructure providers, commencing in the second half of 2021, with funding outcomes expected to be announced in early 2022.

Applications submitted by eligible applicants will be assessed against eligibility and assessment criteria outlined in the grant opportunity guidelines. The guidelines will be developed in accordance with the CGRGs and will be published on GrantConnect at [www.grants.gov.au](http://www.grants.gov.au) and the departmental website at [www.communications.gov.au](http://www.communications.gov.au). Grant opportunity guidelines are currently being developed in consultation with expert organisations, such as the Commonwealth Scientific and Industrial Research Organisation (CSIRO), using authoritative data from sources such as the Australian Bureau of Statistics.

The department will enter into funding agreements with successful grant recipients, who will be responsible for the administration of the funded proposal and the acquittal of Commonwealth funding. Applicants will be solely responsible for forming relationships and negotiating contributions with any relevant parties, including state and territory governments and local councils.

The Minister for Communications, Urban Infrastructure, Cities and the Arts will be the final decision maker for grant expenditure under the program. The department will assess each application received on its merits against the assessment criteria and process set out in the grant opportunity guidelines, and provide funding recommendations to the decision maker and negotiate funding agreements with the successful grant recipients.

Funding decisions will be made objectively, and in accordance with the assessment process set out in the guidelines and applicable legislative requirements under the PGPA Act. Grant outcomes will be published on GrantConnect, in accordance with the CGRGs.

Funding decisions made in connection with the program are not considered appropriate for independent merits review, as they involve 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?*).

An applicant that is dissatisfied with the handling of their funding application by the department will be able to lodge a complaint to the program manager for consideration. The program manager will be a departmental official with experience in regional telecommunications infrastructure programs.

Applicants who are otherwise affected by decisions or who have complaints about the program also have recourse to the department, in accordance with its 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/departments/about/charter](http://www.infrastructure.gov.au/departments/about/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 Commonwealth Ombudsman can only review the program assessment process, not a specific funding decision under the program.

The department is consulting with subject matter experts to develop grant opportunity guidelines, including CSIRO and external technical advisers. Consistent with the CGRGs, the department will consult publicly on the draft grant opportunity guidelines once finalised.

Funding of \$16.4 million was included in the 2021-22 Budget under the measure 'Digital Economy Strategy' for a period of three years commencing in 2021-22. Details are set out in *Budget 2021-22, Budget Measures, Budget Paper No. 2 2021-22* at page 74.

Funding for this item will come from Program 5.1: Digital Technologies and Communications Services, which is part of Outcome 5. Details are set out in the *Portfolio*

*Budget Statements 2021-22, Budget Related Paper No. 1.10, Infrastructure, Transport, Regional Development and Communications Portfolio at page 73.*

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 program involves the provision of funding to support the provision of improved telecommunications connectivity in urban/peri-urban areas of Australia.

New **table item 497** establishes legislative authority for government spending on the Culture, Heritage and Arts Regional Tourism Program (CHART program).

On 29 April 2021, the Minister for Communications, Urban Infrastructure, Cities and the Arts, the Hon Paul Fletcher MP, and the Federal Member for Robertson, Ms Lucy Wicks MP, jointly announced \$3 million funding for a grant program to assist community arts and cultural organisations in regional areas to recover from the impacts of COVID-19. Media release is available at <https://minister.infrastructure.gov.au/fletcher/media-release/culture-and-live-music-be-reignited-regional-australia>.

The CHART program is part of the \$11.4 million measure in the 2021-22 Budget to support tourism in regional areas, which seeks to capitalise on Australia's closed international borders and promote regional arts tourism by attracting new audiences to regional institutions, performances, art fairs, festivals and events.

The objective of the CHART program is to assist community cultural, heritage and arts organisations in regional Australia, including museums, galleries and historical societies, to recover from the adverse effects of the COVID-19 pandemic and promote domestic tourism into regional and remote parts of Australia. The CHART program will make \$3 million available in 2021-22 for grants of up to \$3,000 to support these organisations to continue to offer appealing cultural tourism experiences to visitors, which in turn will promote visitation and local expenditure.

Grant funding will assist eligible community organisations with activities including:

- the cost of additional COVID-19 cleaning and hygiene measures;
- purchasing computer hardware and/or software to facilitate the digitisation of the collection;
- the display and preservation of collection items;
- improving conditions for volunteers and collections through the purchase of furniture, display cabinets and improving kitchen facilities; and
- assisting with the costs of reopening or holding a community event that promotes the collection.



The intended outcomes of the CHART program include:

- promotion of regional arts tourism by supporting the development of appealing cultural tourism experiences, including through the preservation of Australia's cultural heritage and the telling of the stories of local communities;
- support of domestic intra-state and inter-state tourism and local economies more broadly; and
- contribution to the reactivation and recovery of organisations from the COVID-19 pandemic, and/or their ongoing sustainability.

Grant funding will be administered by the Australian Museums and Galleries Association Incorporated (AMaGA), which is the national association and peak advocacy body representing museums and galleries across all states and territories in Australia. The department will establish a funding agreement with AMaGA for it to provide grants of up to \$3,000 (plus GST where applicable) to eligible community organisations during 2021-22. AMaGA will also receive \$260,000 (plus GST) for costs associated with the administration of the CHART program.

Grant opportunity guidelines will be prepared for the provision of funding to AMaGA, which will in turn develop its own grant guidelines for the administration of grants to eligible community organisations. AMaGA will open the CHART program as soon as possible after legislative authority is provided through table item 497 and will close on 30 June 2022.

Funding will be provided to AMaGA through a one-off, ad hoc grant process. The grant will be administered in accordance with the Commonwealth resource management framework, including the PGPA Act and the CGRGs. The department is working with other departments to manage transition to the whole-of-government grant administration arrangements. Information about the grant will be made publicly available on the GrantConnect website ([www.grants.gov.au](http://www.grants.gov.au)).

The Minister for Communications, Urban Infrastructure, Cities and the Arts has approved the commitment for a grant to AMaGA to deliver the CHART program in 2021-22.

The First Assistant Secretary, Office for the Arts in the department (the delegate of the Secretary of the department) has executed a funding agreement with AMaGA. As the decision to provide funding to AMaGA had already been made by the Minister, the entering into that agreement to formalise the arrangement was more of a routine matter and suitable to be completed by departmental officials with appropriate powers of delegation.

Neither the Minister nor the department has a role in the assessment of applications or the allocation of the grants under the CHART program.

AMaGA, in delivering the CHART program, will operate an open, competitive grant funding round (or rounds) in accordance with grant opportunity guidelines which will be publicly available on its website. Funding will be allocated through a competitive, merit-based selection process based on applications submitted by eligible applicants and assessed by AMaGA against the assessment criteria set out in the grant opportunity guidelines. AMaGA will be responsible for decisions regarding grants made under the CHART program.

Funding decision made in connection with the grant to AMaGA is not considered appropriate for independent merits review, as it involves the provision of a one-off grant to a certain

service provider, over other service providers. The Administrative Review Council has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.16 to 4.19 of the guide, *What decisions should be subject to merit review?*).

Funding decisions made in connection with grants to successful applicants by AMaGA are not considered appropriate for independent merits review as they involve 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?*).

AMaGA was determined to be an appropriate organisation to pursue a one-off, ad hoc grant on the basis that it is the national association and peak advocacy body representing museums and galleries in Australia. In addition, the organisation has been assessed as having the necessary capacity, expertise and knowledge of the sector to deliver the CHART program in a manner that represents a value for money approach for the Commonwealth.

Complaints regarding the grant process will be made in writing to AMaGA in the first instance. Applicants who are otherwise affected by decisions or who have complaints about the program also have recourse to the department, in accordance with its 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/departments/about/charter](http://www.infrastructure.gov.au/departments/about/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.

Parties consulted in the development of the CHART program include AMaGA, the Federation of Australian Historical Societies, the Department of the Prime Minister and Cabinet and the Department of Finance. Since the announcement of the CHART program by the Government, AMaGA has provided information to its members (via its annual national conference) and sought input from its members on the program.

Funding of \$11.4 million to support tourism in regional areas, including \$3.3 million for the CHART program in 2021-22, was included in the 2021-22 Budget under the measure 'COVID-19 Response Package – additional arts sector support'. Details are set out in *Budget 2021-22, Budget Measures, Budget Paper No. 2 2021-22* at pages 148 to 149.

Funding for this item will come from Program 6.1: Arts and Cultural Development, which is part of Outcome 6. Details are set out in the *Portfolio Budget Statements 2021-22, Budget Related Paper No. 1.10, Infrastructure, Transport, Regional Development and Communications Portfolio* at page 81 (under the Arts and Cultural Development Special Appropriation).

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 race power (section 51(xxvi));
- the external affairs power (section 51(xxix));
- the express incidental power and the executive power (sections 51(xxxix) and 61), including the nationhood aspect; and

- the territories power (section 122).

### Trade and commerce power

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

The funding under the CHART program may be used to foster intrastate and interstate tourism.

### 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 funding under the CHART program may be used to support the protection and exhibiting of Indigenous art and culture/artefacts.

### External affairs power

Section 51(xxix) of the Constitution empowers the Parliament to make laws with respect to ‘external affairs’. The external affairs power supports legislation implementing Australia’s international obligations under treaties to which it is a party.

Australia has obligations under the *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*. In particular:

- Article 7 requires Parties to endeavour to create an environment which encourages individuals and social groups to:
  - ‘create, produce, disseminate, distribute and access their own cultural expressions, paying due attention to the special circumstances and needs of women as well as various social groups, including persons belonging to minorities and indigenous peoples’; and
  - ‘have access to diverse cultural expressions from within their territory, as well as from other countries of the world.’
- Article 10 requires Parties to:
  - ‘encourage and promote understanding of the importance of the protection and promotion of the diversity of cultural expressions, inter alia, through educational and greater public awareness programmes’; and
  - ‘endeavour to encourage creativity and strengthen production capacities by setting up educational, training and exchange programmes in the field of cultural industries.’

Australia also has obligations under the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), including:

- Article 2(1) of the ICESCR provides that each State Party undertakes to take steps to progressively realise the rights recognised in the ICESCR ‘by all appropriate means, including particularly the adoption of legislative measures’; and
- Article 15 of the ICESCR recognises the right to take part in cultural life, and provides that the steps taken by the States Parties to achieve this right include those necessary for the conservation, development and diffusion of culture.

The funding under the CHART program may support Australia's implementation of these obligations. It will support and promote the development and diffusion of cultural expression and the arts by supporting the digitisation of collections, the display and preservation of collections, and the delivery of community arts events that promote collections. It will also encourage and promote understanding of the importance of the protection and promotion of the diversity of cultural expressions by protecting and exhibiting Indigenous art, culture, and artefacts. Additionally, it will encourage creativity and strengthen production capacities by supporting educational and training programs in the field of cultural industries.

*Executive power and express incidental power, including the nationhood aspect*

The express incidental power in section 51(xxxix) of the Constitution empowers the Parliament to make laws with respect to matters incidental to the execution of any power vested in the Parliament, the executive or the courts by the Constitution. Section 61 of the Constitution supports activities that are peculiarly adapted to the government of a nation and cannot be carried out for the benefit of the nation otherwise than by the Commonwealth.

The funding under the CHART program supports national initiatives in the arts that advance the national interest, in addition to supporting the recovery of community cultural, heritage, and arts organisations from the adverse consequences of the national crisis resulting from the COVID-19 pandemic.

*Territories power*

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

The funding under the CHART program may be used to support eligible organisations like galleries and museums in a territory.

## **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. 4) 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. 4) Regulations 2021* amend Schedule 1AB to the FF(SP) Regulations to establish legislative authority for government spending on certain activities administered by the Department of Infrastructure, Transport, Regional Development and Communications.

This disallowable legislative instrument adds three table items to Part 4 of Schedule 1AB:

- table item 495 for the provision of safety net television services;
- table item 496 for the Peri-Urban Mobile Program; and
- table item 497 for the Culture, Heritage and Arts Regional Tourism Program.

#### **Table item 495 – Provision of safety net television services**

Table item 495 establishes legislative authority for government spending on the provision of safety net television services to viewers who are unable to access or receive terrestrial television services.

Commonwealth funding will support the provision of safety net television services, which enable all areas of Australia to access free-to-air entertainment and news programs. A safety net television service is a platform/service that provides commercial and national free-to-air television to viewers unable to access terrestrial television transmission. Since the switchover to digital television, the Viewer Access Satellite Television (VAST) has provided a safety net service via direct to home satellite transmission.

Having access to free-to-air television content is important for the social inclusion of regional and remote Australians. Sharing entertainment, education and social experiences through

television serves to bring Australians together. However, the provision of free-to-air television services using terrestrial transmission (broadcasting towers) is a commercial decision for the broadcasters. Due to Australia's large landmass and sparse population density, it is not economically viable to provide households in many areas of Australia with access to free-to-air television services through terrestrial transmission sites.

Government funding supports the provision of a safety net television service for areas where terrestrial television transmission is not available. More than 250,000 premises, primarily in regional and remote Australia, rely on a VAST direct to home service for access to news and entertainment broadcasts.

The VAST service commenced in 2010 following the switchover from analogue to digital television, and succeeds earlier satellite television programs such as the Remote Australia Broadcast Service. Viewers require satellite reception equipment (a rooftop dish) and a certified VAST set top box.

### **Human rights implications**

Table item 495 engages the following right:

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

Article 2 of the ICESCR requires the States Parties to take steps to progressively achieve the full realisation of the rights recognised in the ICESCR by all appropriate means. Article 15(a) of the ICESCR recognises the right to take part in cultural life.

Table item 495 promotes the realisation of this right by providing all areas of Australia, regardless of location, with access to free-to-air news and entertainment services through alternative technology delivery.

### **Conclusion**

Table item 495 is compatible with human rights because it promotes the protection of human rights.

### **Table item 496 – Peri-Urban Mobile Program**

Table item 496 establishes legislative authority for government spending on the Peri-Urban Mobile Program (the program).

Under the program, grant funding will be provided to mobile network operators and infrastructure providers to deploy new mobile phone infrastructure to improve mobile connectivity in bushfire prone areas along the fringe of Australia's major cities. The peri-urban fringe is where the bush meets the edges of the suburbs, creating bushfire risks for those living and working in those areas.

The 2019-20 bushfires demonstrated that Australian communities are increasingly reliant on mobile phones during extreme events, such as bushfires. However, there are longstanding mobile quality of service and reception issues in many bushfire prone areas on the peri-urban fringe of Australia's major cities. Peri-urban areas have particular bushfire risk because they

are on the interface of the built-up and bush areas. Areas of concern include the Blue Mountains, northern parts of Sydney, the Perth Hills, and north of Melbourne.

Poor mobile reception and coverage issues in these areas are often not commercially viable for mobile network operators (for example, Optus, Telstra and TPG Telecom) to address, leaving many communities with poor to no mobile service, reducing their productivity and exposing them to risks during bushfires.

### **Human rights implications**

Table item 496 engages the following rights:

- the right to work – Article 6 of the ICESCR, read with Article 2;
- the right of everyone to the enjoyment of the highest attainable standard of physical and mental health – Article 12 of the ICESCR;
- the right of everyone to education – Article 13 of the ICESCR; and
- the right to enjoy the benefits of scientific progress and its applications – Article 15 of the ICESCR.

Article 2 of the ICESCR requires the 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 and provides that the States Parties will take appropriate steps to achieve the realisation of the right to work, including through technical and vocational training.

Article 12 of the ICESCR recognises the right to the enjoyment of the highest attainable standard of physical and mental health and provides that the States Parties will take appropriate steps to achieve the realisation of this right, including the creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Article 13 of the ICESCR recognises the right of everyone to education.

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

Table item 496 promotes the realisation of these rights by ensuring Australians in peri-urban areas have access to reliable mobile telecommunications services. These services can promote economic inclusion and jobs, and support access to health care, government services and education.

### **Conclusion**

Table item 496 is compatible with human rights because it promotes the protection of human rights.

### **Table item 497 – Culture, Heritage and Arts Regional Tourism Program**

Table item 497 establishes legislative authority for government spending on the Culture, Heritage and Arts Regional Tourism Program (CHART program).

The CHART program is part of the \$11.4 million measure in the 2021-22 Budget to support tourism in regional areas, which seeks to capitalise on Australia's closed international borders and promote regional arts tourism by attracting new audiences to regional institutions, performances, art fairs, festivals and events.

The objective of the CHART program is to assist community cultural, heritage, and arts organisations, including museums, galleries and historical societies, to recover from the adverse effects of the COVID-19 pandemic and promote domestic tourism into regional and remote parts of Australia. The CHART program will make \$3 million available in 2021-22 for grants of up to \$3,000 to support these organisations to continue to offer appealing cultural tourism experiences to visitors, which in turn will promote visitation and local expenditure.

### **Human rights implications**

Table item 497 engages the following right:

- the right to take part in cultural life – Article 15 of the ICESCR, read with Article 2.

Article 2 of the ICESCR requires the States Parties to take steps to progressively achieve the full realisation of the rights recognised in the ICESCR by all appropriate means.

Article 15(a) of the ICESCR recognises the right to take part in cultural life.

Table item 497 promotes the realisation of this right by providing Australians with better access to (or greater opportunities to participate in) arts and cultural activities, including those relating to local cultural heritage and identity in regional areas. Direct benefit will be provided to community arts organisations, their workers and volunteers by supporting their engagement in and delivery of activities relating to cultural heritage. This right will also be promoted more broadly, as recipients are required to demonstrate the public benefit and public access associated with their activity. Additionally, this right will also be promoted in the context of Aboriginal and Torres Strait Islander arts and culture (including cultural heritage).

### **Conclusion**

Table item 497 is compatible with human rights because it promotes the protection of human rights.

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