

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. 5)
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. 5) Regulations 2021* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on the Emerging Aviation Technologies Partnerships (EATP) Program. The EATP Program will be administered by the Department of Infrastructure, Transport, Regional Development and Communications.

The objective of the EATP Program is to provide financial assistance and deliver measures to encourage and enable the development and deployment of emerging aviation technologies to enhance the competitiveness, efficiency and reliability of Australian aviation, including by expanding employment in the aviation sector; improving supply chain and market efficiency; and improving connections with regional and remote, including Indigenous, communities.

Under the EATP Program, the Government will invest \$32.6 million over two years from 2021-22 to partner with industry to test emerging aviation technology platforms (such as electric engines, drones, and electric vertical take-off and landing vehicles) and to address priority community, mobility and cargo needs in regional Australia. In addition, the EATP Program will contribute to the digital transformation of Australian businesses, increased business efficiency, and reduced carbon emissions.

The EATP Program will provide opportunities for a number of industry partners to demonstrate their capability with emerging aviation technology platforms in five key areas:

- manufacturing in emerging aviation technology;
- improving health outcomes for remote Indigenous communities;
- connecting regional communities;
- digital farming; and
- boosting regional supply chains.

The EATP Program is scheduled to commence in late 2021 and will include two funding rounds. Funding will be used flexibly and will include grant payments to industry partners and a range of other funding support, including (where a need has been agreed with proponents), procurement activities to support the delivery of projects, such as the development of regulations to support the adoption of emerging aviation technologies.

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. 5) 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. 5) 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 a new table item to Part 4 of Schedule 1AB to establish legislative authority for government spending on an activity that will be administered by the Department of Infrastructure, Transport, Regional Development and Communications (the department).

New **table item 515** establishes legislative authority for government spending on the Emerging Aviation Technologies Partnerships (EATP) Program.

On 6 May 2021, the then Deputy Prime Minister and Minister for Infrastructure, Transport and Regional Development, the Hon Michael McCormack MP, announced the Government's commitment to establish the EATP Program, including a Drone Rule Management System and Drone Detection Network, as part of the new Digital Economy Strategy. Media release is available at <https://www.michaelmccormack.com.au/media-releases/2021/5/6/australia-leading-the-digital-revolution-in-aviation>.

The objective of the EATP Program is to provide financial assistance and deliver measures to encourage and enable the development and deployment of emerging aviation technologies to enhance the competitiveness, efficiency and reliability of Australian aviation, including by expanding employment in the aviation sector; improving supply chain and market efficiency; and improving connections with regional and remote, including Indigenous, communities.

Under the EATP Program, the Government will partner with industry to test emerging aviation technology platforms (such as electric engines, drones, and electric vertical take-off and landing vehicles (VTOL)) and to address priority community, mobility and cargo needs in regional Australia. In addition, the EATP Program will contribute to the digital transformation of Australian businesses, increased business efficiency, and reduced carbon emissions.

The EATP Program will provide opportunities for a number of industry partners to demonstrate their capability with emerging aviation technology platforms in five key areas:

- manufacturing in emerging aviation technology – to develop a prototype for a propulsion system using an alternative fuel source (for example, electric or hydrogen) to enable long-distance flights by drones and VTOL aircraft;
- improving health outcomes for remote Indigenous communities – to establish a trial from and/or between regional hubs that services a remote Indigenous community using drones or other emerging aviation technology to travel medium to long distance to deliver medical and other essential supplies or conduct research to support a future trial;
- connecting regional communities – to conduct research to identify what is required from a regulatory perspective to enable a future operational test flight using multi passenger eVTOL aircraft or other emerging aviation technology with the capacity to connect a network of regional towns;
- digital farming – to establish a trial using innovative digital aviation farming technology that is not already in use in the market, to demonstrate economic, productivity, environmental or other benefits for agricultural businesses in Australia; and
- boosting regional supply chains – to establish a trial with a regular supply chain link using drones or other emerging aviation technology with capability to travel medium to long distances to deliver critical and/or high turnover supplies from and between regional hubs.

The EATP Program will provide government with a valuable opportunity to refine approaches to regulation and digital service delivery models through real-world operational scenarios. This will enable development of a fit-for-purpose regulatory framework that accommodates operations with increased technical complexity and at a greater scale.

The EATP Program will commence in late 2021 for a duration of two years. It will be administered in accordance with the Commonwealth resource management framework, including the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), the *Commonwealth Grants Rules and Guidelines 2017* (CGRGs), the *Commonwealth Procurement Rules* (CPRs), and the department's Accountable Authority Instructions.

The department will deliver the EATP Program through a suite of grant and procurement processes. A range of grant and procurement methods may be used. This will ensure program funding will be used flexibly for a range of purposes that support the delivery of projects. This will include direct grant payments to industry partners and, where a need has been agreed with proponents, may include procurement of a range of services to support project delivery. Funding will be rolled out across two rounds.

Grant funding may be provided under the EATP Program to support the following activities:

- direct support to industry partners; and
- re-imbusement of regulatory fees and charges.

Grant applications for partners will be sought from local and international industry and assessed on a competitive basis, with an emphasis on Australian operators and international operators planning local investments.

Grant funding will be awarded following a competitive, open process under which applications may be submitted at any time over the life of the grant opportunity and assessed against selection criteria specific to each stream (which will be outlined in the grant opportunity guidelines made available on GrantConnect at www.grants.gov.au). Broad principles will include:

- viability of the proposed project;
- how innovative the project is;
- levels of co-investment in the project;
- benefits to the regional economy and community;
- value for money; and
- the potential for scalability of the trial service across Australia and/or the extent to which the project will support the growth of the broader industry.

The following services may be procured under the EATP Program:

- technical advice to the project to overcome regulatory and other barriers;
- services related to local community outreach and consultation;
- advice on regulatory development or policy development where required; and
- development of supporting infrastructure.

Tender documentation will be made available on AusTender at www.tenders.gov.au. Procurement decisions will be based on value for money, including capability and capacity to deliver, and price and risk considerations.

The department will manage all contracts for the above services, including the selection of grantees and awarding of procurement contracts. Information about the EATP Program will be available on the departmental website at www.infrastructure.gov.au.

Final expenditure decisions will be made by the Minister for Infrastructure, Transport and Regional Development, or their delegate. The department will provide recommendations to the decision maker and negotiate arrangements with successful grant recipients and/or suppliers. All funding decisions will be made objectively, and in accordance with applicable legislative requirements under the PGPA Act and assessment processes set out in relevant grant opportunity guidelines or tender documentation. In accordance with the CGRGs and CPRs, funding decisions will be made publicly available on GrantConnect (www.grants.gov.au) or AusTender (www.tenders.gov.au), as appropriate.

Funding decisions made in connection with the EATP Program are not considered suitable for merits review as these decisions relate to the allocation of a finite resource, from which all potential claims for a share of the resource cannot be met. Any funding that has already been allocated would be affected if the original decision was overturned. The Administrative

Review Council has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.11 to 4.19 of the guide, *What decisions should be subject to merit review?*).

The re-making of a procurement decision after entry into a contractual arrangement with a successful provider is legally complex, impractical, and could result in delays to program delivery. The *Government Procurement (Judicial Review) Act 2018* enables suppliers to challenge some procurement processes for alleged breaches of certain procurement rules. This legislation might provide an additional avenue of redress (compensation or injunction) for dissatisfied providers or potential providers, depending on the circumstances.

The department has been consulting with states, territories, and industry on the policy underpinning the EATP Program since 2020. Consultation on the program framework and design commenced in June 2021. There is a general level of support and interest both within industry and with state and territory governments.

Throughout the consultation process, the department engaged with Commonwealth agencies, state and territory governments, industry, and the community including via existing consultative bodies such as the National Emerging Aviation Technology Consultative Committee and the Drones state and territory working group.

Further consultation with local community stakeholders will be undertaken by the department as part of program delivery and throughout the life of the program.

Funding of \$32.6 million was included in the 2021-22 Budget under the measure ‘Digital Economy Strategy’ for a period of two years commencing in 2021-22. Details are set out in *Budget 2021-22, Budget Measures, Budget Paper No. 2 2021-22* at pages 72 to 76.

Funding for this item will come from Drone Management Programs, a component under Program 2.3: Air Transport, which is part of Outcome 2. 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 45.

Noting 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)); 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 EATP Program may be used to support interstate trade and commerce activities, including by supporting and enhancing interstate supply chains and connections between regional communities, and improving the efficiency of the agricultural sector’s engagement in international or interstate trade and commerce.

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 EATP Program may be used to improve services and health outcomes for remote Indigenous communities, including by enabling more frequent visits by medical professionals and better supply of medical supplies and fresh food.

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 *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 Covenant ‘by all appropriate means, including particularly the adoption of legislative measures’; and
- Article 6 of the ICESCR provides that the States Parties recognise the right to work and will take appropriate steps to achieve the realisation of this right including through ‘technical and vocational guidance and training programmes, policies and techniques’.

In addition, Australia has obligations under the International Labour Organization’s *Convention concerning Employment Policy* (ILO Convention 122). In particular:

- Article 1 of the ILO Convention 122 requires Members to pursue ‘an active policy designed to promote full, productive and freely chosen employment’; and
- Article 2 of the ILO Convention 122 requires Members to ‘decide on and keep under review... measures to be adopted for attaining the objectives specified in Article 1’.

The EATP Program will support Australia’s implementation of these obligations. It will support and promote employment in the electric aviation sector by establishing strategic partnerships with industry to support manufacturing and demonstration of emerging aviation technology platforms.

Territories power

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

The EATP Program may be used to support grant recipients in a territory, or in relation to a territory.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

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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*.

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- connecting regional communities;
- digital farming; and

- boosting regional supply chains.

The EATP Program is scheduled to commence in late 2021.

Human rights implications

This disallowable legislative instrument 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 health – Article 12 of the ICESCR.

Article 2 of the ICESCR requires that each State Party to the Covenant undertakes to take steps to the maximum of its available resources, especially economic and technical, to realise the rights recognised in the Covenant, particularly through legislative measures.

Right to work

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.

This disallowable legislative instrument promotes the right to work by promoting and supporting the creation of employment in the electric aviation sector.

Right to health

Article 12 of the ICESCR recognises the right to enjoy the highest attainable standard of physical and mental health, to have adequate access to health care, and to live in conditions that promote a healthy life.

This disallowable legislative instrument promotes the right to health by improving links with regional and remote communities, and improving health outcomes for remote Indigenous communities through the integration of emerging aviation technology into existing health care services to enable better management of remote health care needs.

Conclusion

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

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