

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance

Financial Framework (Supplementary Powers) Act 1997

*Financial Framework (Supplementary Powers) Amendment
(Prime Minister and Cabinet Measures No. 10) 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 (Prime Minister and Cabinet Measures No. 10) Regulations 2021* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for the Government to provide grant funding to the National Australia Day Council (NADC) Limited to deliver a grants program that supports Australia Day events and a communications campaign to promote Australia Day. The NADC is a Commonwealth company within the Prime Minister and Cabinet portfolio. Grant funding to the NADC will be provided by the Department of the Prime Minister and Cabinet.

The Australia Day grants program will support the promotion of and participation in a day of national significance. It is also a means of distributing funding and generating local economic activity across communities that have been adversely affected by reduced business activity as a result of the COVID-19 pandemic. The program will provide grant funding for community events and major events across Australia. Total funding of up to \$16.9 million in 2021-22 will be available for the program.

Government funding will also be provided for the NADC to build on the extended reach of its Australia Day communications through a national advertising campaign promoting the celebration of Australia Day 2022 in the lead-up to the event. Funding of \$9.8 million in 2021-22 will be available for the 2022 Australia Day campaign.

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 the Prime Minister and Cabinet.

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 (Prime Minister and Cabinet Measures No. 10) Regulations 2021*

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Prime Minister and Cabinet Measures No. 10) 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 administered by the Department of the Prime Minister and Cabinet (the department).

New **table item 521** establishes legislative authority for the Government to provide grant funding to the National Australia Day Council (NADC) Limited to deliver a grants program that supports Australia Day events and a communications campaign to promote Australia Day. The NADC is a Commonwealth company within the Prime Minister and Cabinet portfolio. Grant funding to the NADC will be provided by the department.

Australia Day grants program

The Australia Day grants program will support the promotion of and participation in a day of national significance. It is also a means of distributing funding and generating local economic activity across communities that have been adversely affected by reduced business activity as a result of the COVID-19 pandemic.

The delivery of Australia Day 2022 events is consistent with the Government's commitment to:

- ensuring delivery of longstanding community events across Australia in a COVID-19 responsible environment to celebrate Australia Day with as many Australians participating as possible;
- supporting events that allow communities to honour and thank the everyday Australian heroes who helped pull Australia through challenges of 2021;
- communicating that Australia Day is a day to *Reflect. Respect. Celebrate. We're all part of the story*;
- promoting Australia Day as an opportunity to bind as a nation, where Australians can reflect on their past, respect the contribution of many and celebrate their future with optimism; and
- supporting economic recovery in capital cities and in regional and remote communities.

The department will provide a one-off grant of \$16.9 million in 2021-22 to the NADC to select Australia Day 2022 grant recipients, and administer and report on individual grants provided. The grants program will comprise community events and major events. Eligible activities will include any public event that will take place on Australia Day 2022. The event can be an existing or new event. Examples of event categories include, but are not limited to, fireworks, live entertainment and citizenship.

The decision maker for the award of the grant to the NADC will be the Assistant Secretary, Parliamentary and Government Branch acting as a delegate of the Secretary of the department. The Parliamentary and Government Branch of the department has responsibility for administering the funding agreement with the NADC.

The grant to the NADC will be administered by the department in accordance with the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and the *Commonwealth Grants Rules and Guidelines 2017* (CGRGs), including reporting the grant on GrantConnect within 21 days of signing the funding agreement with the NADC.

The NADC will design, implement and administer the Australia Day 2022 grants program in accordance with the principles and requirements of the CGRGs, including the requirement to achieve value with relevant money, to the extent that these principles and requirements are reasonably able to apply to granting activities of a Commonwealth company such as the NADC.

Community events (\$7.5 million)

State and territory Australia Day bodies (entities that are part of the Australia Day National Network), local councils and community organisations will be able to apply for grants of up to \$20,000 to deliver Australia Day events. Eligible event organisers will also have the opportunity to apply for additional grant funding of up to \$10,000 for costs associated with including Aboriginal and Torres Strait Islander engagement activities, such as participation, performance or welcome to country by local Indigenous people, in their Australia Day event.

The NADC has engaged Our Community Pty Ltd (Our Community), the developer of the SmartyGrants grants management application, to develop the program guidelines for community events grants, assess grant applications, and administer grant agreements and

payments on its behalf. The NADC will be responsible for independent oversight of the grant selection process for community events. The NADC will provide draft program guidelines to the department for agreement and to the Minister Assisting the Prime Minister and Cabinet for noting, before the NADC Board formally approves them.

The NADC intends to distribute community events grants across the nation, including metropolitan, regional, rural and remote locations, in proportions as determined by the NADC. Our Community will assess the applications to determine whether the applicant and the intended event or activity are eligible. If the application passes the initial screening against the eligibility criteria, the application will proceed to a full assessment. The assessors will consider an application on its merits based on the criteria set out in the program guidelines, which will be published on the SmartyGrants website.

The NADC Board will decide which applications to approve taking into account recommendations from the assessors, the NADC's Chief Executive Officer and Chief Operating Officer, and the availability of grant funds. The NADC Board's decisions will be final in all matters. The NADC will advise applicants of the outcome of their applications in writing. Successful applicants for community event grants will be required to list their event/s on the NADC's Australia Day Event Register website.

Major events (\$7.5 million)

The NADC intends to distribute grant funding to eligible event organisers in order to enable large-scale Australia Day 2022 events to proceed after a protracted period of social and economic hardship as a result of COVID-19. Organisers of major Australia Day celebrations that were run in 2021 will be able to apply for grant funding; major events in capital cities will be the priority, with major events in regional centres able to be considered by exception.

The NADC will develop a framework to guide negotiations for, and administration of, funding in support of major events for Australia Day 2022. Individual funding agreements to support major event organisers will be administered by the NADC, consistently with the framework. The NADC will provide draft framework to the department for agreement and to the Minister Assisting the Prime Minister and Cabinet for noting, before the NADC Board formally approves it. The remaining government grant funds will be used to support the NADC's administration and promotion of the program.

The NADC will review applications to determine whether the applicant and the intended event or activity are eligible. Applications will be assessed on how well they meet the intended outcomes of the program, and whether they meet the assessment criteria set out in the program guidelines and provide value for money. The NADC Board will approve successful events taking into account recommendations from the NADC assessors and the availability of grant funds. The NADC Board's decisions will be final in all matters. Successful applicants for major event grants will be required to register their event on the NADC website.

Independent merits review is not available in respect of decisions made by the NADC Board. Decisions of this kind are not considered suitable for independent merits review, as they are decisions relating to the allocation of a finite resource, from which all potential claims for a share of the resource cannot be met. In addition, 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?*, which is available at <https://www.ag.gov.au/legal-system/administrative-law/administrative-review-council-publications/what-decisions-should-be-subject-merit-review-1999>).

The re-making of a decision to provide funding for a major event, or grants for community events, after entering into grant agreements with successful applicants is legally complex, impractical and could significantly prejudice the successful delivery of events and activities for Australia Day 2022.

The grants program design is based on consultation with the Australia Day National Network (the Network), comprised of hundreds of local councils and committees, and eight state and territory Australia Day organisations. Following the huge success of the Australia Day 2021 grants program that originated as a COVID-19 relief and recovery initiative, the NADC engaged with the Network to build on the success of this program and understand requirements for future years.

Feedback from the Network even prior to Australia Day in 2021 indicated that Australia Day events were often poorly funded, which had a significant effect on participation rates by the general public in Australia Day activities. By enabling organisers to deliver events that may not be able to proceed without the assistance this program seeks to provide, participation in Australia Day activities is far increased. As such, the 2022 program seeks to replicate and build on the 2021 program, given its reach and overwhelming success.

Communications campaign

Government funding will also be provided for the NADC to build on the extended reach of its Australia Day communications through a national advertising campaign promoting the celebration of Australia Day 2022. The Government has already invested significant resources to refresh and renew Australia Day communications, with the central theme of *Reflect. Respect. Celebrate. We're all part of the story*. This was supported by a new advertising campaign *The Story of Us* aiming to increase participation in Australia Day activities, build social cohesion and foster national pride. The campaign aligns with the Government's strategic priorities, and complements and supports the successful delivery of local and iconic major Australia Day 2022 events.

The department will provide a one-off grant of \$9.8 million in 2021-22 to the NADC for the Australia Day 2022 communications campaign. The decision maker for the award of the grant to the NADC will be the Assistant Secretary, Parliamentary and Government Branch acting as a delegate of the Secretary of the department. The Parliamentary and Government Branch of the department has responsibility for administering the funding agreement with the NADC. The grant to the NADC will be administered by the department in accordance with the PGPA Act and the CGRGs, including reporting the grant on GrantConnect within 21 days of signing the funding agreement with the NADC.

Independent merits review is not available in respect of the decision to provide grant funding to the NADC for the Australia Day 2022 grants program and communications campaign as the decision relates to 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?*).

The communications campaign responds to feedback provided by a survey undertaken by the NADC following Australia Day 2021, which identified increased participation in Australia Day activities, greater social cohesion and the fostering of national pride as benefits of the campaign. The survey, that was completed by a representative sample of the Australian population found that:

- 75 per cent of respondents recalled seeing the campaign, either on TV, or via outdoor advertising, social media or on radio; and
- 90 per cent of respondents supported the Australian Government conducting the campaign, including 89 per cent of Aboriginal and Torres Strait Islanders.

Total funding of \$26.7 million in 2021-22 for the Australia Day grants program and communications campaign is expected to be included in the 2021-22 Mid-Year Economic and Fiscal Outlook and 2021-22 Portfolio Additional Estimates Statements for the Prime Minister and Cabinet Portfolio. Funding for the item will come from Program 1.1: Prime Minister and Cabinet, which is part of Outcome 1.

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 express incidental power and the executive power (sections 51(xxxix) and 61), including the nationhood aspect;
- the communications power (section 51(v));
- the aliens power (section 51(xix));
- the race power (section 51(xxvi));
- the immigration and emigration power (section 51(xxvii));
- the power to grant financial assistance to states (section 96); and
- the territories power (section 122).

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 proposed expenditure will allow the NADC to administer funding in support of community events marking Australia Day, as the official day nominated by the Australian Government to celebrate Australia's origins and history. By facilitating the hosting of Australia Day events throughout the nation, the funding will support the promotion of and participation in a day of national significance.

The proposed expenditure will allow for a communications campaign to promote and encourage participation in Australia Day. Such a campaign will support the hosting of, and participation in, events and activities directed towards the observance of a day of national significance.

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 proposed expenditure will allow for an online communications campaign to promote and encourage participation in Australia Day. Such a campaign will support the hosting of, and participation in, events and activities directed towards the observance of a day of national significance.

Aliens power

Section 51(xix) of the Constitution empowers the Parliament to make laws with respect to ‘naturalization and aliens’.

The proposed expenditure will allow the NADC to administer funding to event organisers who wish to host activities or initiatives in observance of Australia Day for particular groups within the Australian community, including non-citizens.

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 proposed expenditure will allow the NADC to administer funding to event organisers who wish to host activities or initiatives in observance of Australia Day for particular groups within the Australian community, including Aboriginal and Torres Strait Islander Australians.

Immigration and emigration power

Section 51(xxvii) empowers the Parliament to make laws with respect to ‘immigration and emigration’.

The proposed expenditure will allow the NADC to administer funding to event organisers who wish to host activities or initiatives in observance of Australia Day for particular groups within the Australian community, including recent immigrants.

Power to grant financial assistance to states

Section 96 of the Constitution empowers the Parliament to ‘grant financial assistance to any State on such terms and conditions as the Parliament thinks fit’.

The proposed expenditure will allow the NADC to administer funding to states in support of Australia Day events and activities.

Territories power

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

The proposed expenditure will allow the NADC to administer funding to, and enter into grant agreements with, territory entities in support of Australia Day events and activities.

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 (Prime Minister and Cabinet Measures No. 10) 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 (Prime Minister and Cabinet Measures No. 10) Regulations 2021* (the Regulations) amend Schedule 1AB to the FF(SP) Regulations to establish legislative authority for the Government to provide grant funding to the National Australia Day Council (NADC) Limited to deliver a grants program that supports Australia Day events and a communications campaign to promote Australia Day. The NADC is a Commonwealth company within the Prime Minister and Cabinet portfolio. Grant funding to the NADC will be provided by the Department of the Prime Minister and Cabinet.

The Australia Day grants program will support the promotion of and participation in a day of national significance. It is also a means of distributing funding and generating local economic activity across communities that have been adversely affected by reduced business activity as a result of the COVID-19 pandemic. The program will provide grant funding for community events and major events across Australia.

Government funding will also be provided for the NADC to build on the extended reach of its Australia Day communications through a national advertising campaign promoting the celebration of Australia Day 2022 in the lead-up to the event.

Human rights implications

This disallowable legislative instrument engages the following rights:

- the right of self-determination – Article 1 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), read with Article 2; and
- the right of all people to take part in cultural life – Article 15 of the ICESCR.

Article 1 of the ICESCR relates to the right of all people to self-determination and, by virtue of that right, they freely determine their political status and pursue economic, social and cultural development.

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 of the ICESCR relates to the right of everyone to take part in cultural right, and requires the steps to be taken by the States Parties to achieve the full realisation of this right to include those necessary for the conservation, development and diffusion of science and culture.

By providing opportunities for all Australians to take part in Australia Day 2022 events, regardless of geographic location or any COVID-19 related restrictions that may be in place, including through the virtual alternative, and by promoting the central message of *Reflect. Respect. Celebrate. We're all part of the story*, the proposed measures positively support the participation of all Australians in the cultural life of the nation.

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**