

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance

Financial Framework (Supplementary Powers) Act 1997

*Financial Framework (Supplementary Powers) Amendment
(Infrastructure, Transport, Regional Development and Communications Measures No. 1)
Regulations 2022*

The *Financial Framework (Supplementary Powers) Act 1997* (the FF(SP) Act) confers on the Commonwealth, in certain circumstances, powers to make arrangements under which money can be spent; or to make grants of financial assistance; and to form, or otherwise be involved in, companies. The arrangements, grants, programs and companies (or classes of arrangements or grants in relation to which the powers are conferred) are specified in the *Financial Framework (Supplementary Powers) Regulations 1997* (the Principal Regulations). The powers in the FF(SP) Act to make, vary or administer arrangements or grants may be exercised on behalf of the Commonwealth by Ministers and the accountable authorities of non-corporate Commonwealth entities, as defined under section 12 of the *Public Governance, Performance and Accountability Act 2013*.

Section 65 of the FF(SP) Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 32B of the FF(SP) Act authorises the Commonwealth to make, vary and administer arrangements and grants specified in the Principal Regulations. Section 32B also authorises the Commonwealth to make, vary and administer arrangements for the purposes of programs specified in the Principal Regulations. Schedule 1AA and Schedule 1AB to the Principal Regulations specify the arrangements, grants and programs.

The *Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development and Communications Measures No. 1) Regulations 2022* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on a certain activity that will be administered by the Office of Northern Australia, part of the Department of Infrastructure, Transport, Regional Development and Communications.

In the 2021-22 Budget, the Government announced a package of measures to support the next five year plan for progressing economic development in Northern Australia, *Our North, Our Future: 2021-2026*. One of the key measures under the package is the Northern Australia Development Program (NADP), which provides funding for enterprises in Northern Australia, including Indigenous businesses, to create jobs and strengthen business capability and resilience through diversifying or scaling up their business and increasing turnover and profitability. The NADP has two elements: grant opportunities and a business advisory service.

In order to unlock a broader level of demand for the program and support a greater number of Indigenous businesses, and regional and remote areas with higher social and economic infrastructure needs, the Government has agreed to expand eligibility for the NADP to community organisations and other entities (including sole traders and partnerships). The

expansion will be run as a separate program – the Northern Australia Business and Community Growth Program – in parallel with the NADP. Legislative authority for government spending on this new program will be established by the Regulations.

The Northern Australia Business and Community Growth Program will assist community organisations and other eligible entities by providing grant opportunities to support business growth, improve social and economic infrastructure, increase community amenity and liveability, and deliver employment outcomes. Funding of \$80 million over three years from 2021-22 will be available for grants under both the NADP and the Northern Australia Business and Community Growth Program.

Details of the Regulations are set out at [Attachment A](#). A Statement of Compatibility with Human Rights is at [Attachment B](#).

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*. The Regulations commence on the day after the instrument is registered on the Federal Register of Legislation.

Consultation

In accordance with section 17 of the *Legislation Act 2003*, consultation has taken place with the Department of Infrastructure, Transport, Regional Development and Communications.

A regulation impact statement is not required as the Regulations only apply to non-corporate Commonwealth entities and do not adversely affect the private sector.

Details of the *Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development and Communications Measures No. 1) Regulations 2022*

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development and Communications Measures No. 1) Regulations 2022*.

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 Office of Northern Australia, part of the Department of Infrastructure, Transport, Regional Development and Communications (the department).

New **table item 534** establishes legislative authority for government spending on the Northern Australia Business and Community Growth Program.

In the 2021-22 Budget, the Government announced a package of measures to support the next five year plan for progressing economic development in Northern Australia, *Our North, Our Future: 2021-2026*. The package provides funding for on-ground resources to focus investment, job creation and business growth in selected geographic regions of growth in Northern Australia, enables greater digital connectivity, and establishes the Northern Australia Development Program (NADP). This investment complements the delivery of the Australian Government initiatives, including the JobMaker Plan, the Digital Business Plan, Gas-Fired Recovery, Ag2030 and the Modern Manufacturing Strategy, in the north.

The NADP provides funding for enterprises in Northern Australia, including Indigenous businesses, to create jobs and strengthen business capability and resilience through

diversifying or scaling up their business and increasing turnover and profitability. The NADP has two elements: grant opportunities for business development and industry transformation, and a business advisory service which gives access to advice and services to build and strengthen businesses. Legislative authority for government spending on the NADP is provided by the *Industry Research and Development (Northern Australia Development Program) Instrument 2021*.

In order to unlock a broader level of demand for the program and support a greater number of Indigenous businesses, and regional and remote areas with high social and economic infrastructure needs, the Government has agreed to expand eligibility for the NADP to community organisations and other entities (including sole traders and partnerships). The expansion will be run as a separate program – the Northern Australia Business and Community Growth Program (the BCGP) – in parallel with the NADP. Legislative authority for government spending on the BCGP will be established by the Regulations.

The BCGP will assist community organisations and other eligible entities to support business growth, improve social and economic infrastructure, increase community amenity and liveability, and deliver employment outcomes. The program will run over five years from 2021-22.

The objectives of the BCGP are to:

- support eligible organisations to create jobs, grow or transform an industry, and improve social and economic infrastructure to increase community amenity and liveability in Northern Australia;
- de-risk the higher costs of doing business in Northern Australia by providing co-investment grant funding; and
- support a range of activities including capital investment in infrastructure, assets and feasibility studies.

The intended outcomes of the BCGP are:

- increased employment opportunities;
- increased business turnover and profitability;
- greater diversification of business in Northern Australia; and
- improved community amenity and liveability.

Grant amounts of \$50,000 to \$2 million will be available for projects that will be located in or will significantly benefit Northern Australia and meet other eligibility criteria as set out in the BCGP grant opportunity guidelines. The program opened for applications in December 2021, with the first assessment round closing on 13 January 2022. Funding of \$80 million will be available for the NADP and the BCGP over three years from 2021-22.

Examples of project activities that may be eligible for funding under the BCGP include:

- construction and/or fitout of new infrastructure;
- the upgrade, renovation or extension to existing infrastructure such as buildings and laboratories;
- relevant training and skills development directly related to the proposed project;
- feasibility studies/business case to bring the project to investment ready;
- process design and engineering; and

- costs associated with preparing of environmental approval applications and other statutory and required approvals.

The BCGP is an open, merit based grant opportunity, administered by the Business Grants Hub (part of the Department of Industry, Science, Energy and Resources) on behalf of the department, in accordance with the Commonwealth resource management framework, including the *Public Governance, Performance and Accountability Act 2013* and the *Commonwealth Grants Rules and Guidelines 2017*. The Business Grants Hub is a specialised design, management and delivery body with extensive expertise and capability in delivering similar programs.

The program eligibility and assessment criteria are set out in the BCGP grant opportunity guidelines available at www.business.gov.au and www.grants.gov.au. The Business Grants Hub will review grant applications against the eligibility criteria. An independent committee will then assess eligible applications and make recommendations to the Minister for Agriculture and Northern Australia (the Minister). The Minister will decide which grants to approve taking into account the application assessment, the recommendations of the committee and the availability of grant funds.

Independent merits review of grant funding decisions made in connection with the program is not considered appropriate 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. 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?*).

In addition, there is a robust and extensive assessment process, an enquiry and feedback process, and an existing complaints mechanism for affected applicants. Both successful and unsuccessful applicants will be informed in writing. Unsuccessful applicants will have an opportunity to discuss the outcomes with the Business Grants Hub, and can submit a new application for the same or similar project in future funding rounds. Where this occurs, applicants should include new or more information where needed.

Persons who are otherwise affected by decisions or who have complaints about the BCGP will also have recourse to the department. The department will investigate any complaints about the program in accordance with its complaints policy and procedures. If a person is not satisfied with the way the department handles the complaint, they may lodge a complaint with the Commonwealth Ombudsman.

The review and audit process undertaken by the Australian National Audit Office also provides a mechanism to review the Australian Government spending decisions and report any concerns to the Parliament. These requirements and mechanisms help to ensure the proper use of Commonwealth resources and appropriate transparency around decisions relating to making, varying or administering arrangements to spend relevant money.

Consultation was undertaken on the NADP, with Northern Australian state and territory representatives, the National Indigenous Australians Agency, the Northern Australia Infrastructure Facility, the Cooperative Research Centre for Developing Northern Australia,

Chambers of Commerce, Indigenous business network, Regional Development Australia committees, and other key industry stakeholders.

For the BCGP, limited consultation has been undertaken with external community organisations, sole traders and partnerships who are the recipients of this program, due to the short timeframe for establishing the BCGP. Consultations for the BCGP were generally positive and it was noted the broad eligibility base made the program accessible to a large number of northern entities. Internal consultation has been undertaken with the relevant areas within the department. The BCGP grant opportunity guidelines have been released publicly and promoted widely.

Funding of \$111.9 million for the NADP was included in the 2021-22 Budget under the measure ‘Our North, Our Future – Next Five Year Plan for Northern Australia’ for a period of five years commencing in 2021-22. Details are set out in *Budget 2021-22, Budget Measures, Budget Paper No. 2 2021-22* at page 142. A total of \$80 million will be available between the NADP and the BCGP during the first funding round over three years from 2021-22.

Funding for the NADP, which was initially allocated to the Department of Industry, Science, Energy and Resources, has now transferred to the department as a result of the amendments to the Administrative Arrangements Order made on 2 July 2021. Funding for the BCGP will come from Program 3.1: Regional Development, which is part of Outcome 3 of the department.

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 communications power (section 51(v));
- the race power (section 51(xxvi));
- the external affairs power (section 51(xxix));
- the power to grant financial assistance to states (section 96); 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 proposed spending may be used to foster interstate and/or international trade and commerce activities of funding recipients involved in the construction or development of local infrastructure or enterprises, and may foster interstate and/or international tourism.

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 spending may be used to enhance communications infrastructure or services in Northern Australia.

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 spending may be used to support or benefit Indigenous people or Indigenous organisations.

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, which 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, which provides that the States Parties recognise the right to work and will take appropriate steps to achieve the realisation of this right.

Australia also 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 declare and pursue, as a major goal, an active policy designed to promote full and freely chosen employment’. It further provides that the policy shall, amongst other objectives, aim at ensuring there is work for all who are available for and seeking work; 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 proposed spending may be used to support increased employment in Northern Australia.

Power to grant financial assistance to states

Section 96 of the Constitution empowers the Parliament to ‘grant financial assistance to any State’.

The proposed spending may be provided to state governments.

Territories power

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

The proposed spending may be used to support entities within a territory, or in relation to a territory (that is, the Northern 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 FF(SP) Regulations. Schedule 1AA and Schedule 1AB to the FF(SP) Regulations specify the arrangements, grants and programs. The powers in the FF(SP) Act to make, vary or administer arrangements or grants may be exercised on behalf of the Commonwealth by Ministers and the accountable authorities of non-corporate Commonwealth entities, as defined under section 12 of the *Public Governance, Performance and Accountability Act 2013*.

The *Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development and Communications Measures No. 1) Regulations 2022* (the Regulations) amend Schedule 1AB to the FF(SP) Regulations to establish legislative authority for government spending on the Northern Australia Business and Community Growth Program that will be administered by the Office of Northern Australia, part of the Department of Infrastructure, Transport, Regional Development and Communications.

In the 2021-22 Budget, the Government announced a package of measures to support the next five year plan for progressing economic development in Northern Australia, *Our North, Our Future 2021-2026*. One of the key measures under the package is the Northern Australia Development Program (NADP), which provides funding for enterprises in Northern Australia, including Indigenous businesses, to create jobs and strengthen business capability and resilience through diversifying or scaling up their business and increasing turnover and profitability. The NADP has two elements: grant opportunities and a business advisory service.

In order to unlock a broader level of demand for the program and support a greater number of Indigenous businesses, and regional and remote areas with higher social and economic infrastructure needs, the Government has agreed to expand eligibility for the NADP to community organisations and other entities (including sole traders and partnerships). The expansion will be run as a separate program – the Northern Australia Business and Community Growth Program – in parallel with the NADP. Legislative authority for government spending on this new program will be established by the Regulations.

The Northern Australia Business and Community Growth Program will assist community organisations and other eligible entities by providing grant opportunities to support business

growth, improve social and economic infrastructure, increase community amenity and liveability, and deliver employment outcomes. Funding of \$80 million over three years from 2021-22 will be available for grants under both the NADP and the Northern Australia Business and Community Growth Program.

Human rights implications

This disallowable legislative instrument engages the following right:

- the right to work – Article 6 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), read with Article 2.

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’.

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.

The Northern Australia Business and Community Growth Program seeks to encourage job creation and economic diversification in Northern Australia through support for scaling up and growing business in Northern Australia by providing co-investment grant funding to de-risk the higher risk business environment in Northern Australia. It will provide support for new activities undertaken by eligible entities to create jobs, grow or transform industry, improve social and economic infrastructure, and increase community amenity and liveability in Northern Australia.

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**