**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's Portfolio Measures No. 2) 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*.

The Principal Regulations are exempt from sunsetting under section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (item 28A). If the Principal Regulations were subject to the sunsetting regime under the *Legislation Act 2003*, this would generate uncertainty about the continuing operation of existing contracts and funding agreements between the Commonwealth and third parties (particularly those extending beyond 10 years), as well as the Commonwealth’s legislative authority to continue making, varying or administering arrangements, grants and programs.

Additionally, the Principal Regulations authorise a number of activities that form part of intergovernmental schemes. It would not be appropriate for the Commonwealth to unilaterally sunset an instrument that provides authority for Commonwealth funding for activities that are underpinned by an intergovernmental arrangement. To ensure that the Principal Regulations continue to reflect government priorities and remain up to date, the Principal Regulations are subject to periodic review to identify and repeal items that are redundant or no longer required.

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. Section 32D of the FF(SP) Act confers powers of delegation on Ministers and the accountable authorities of non-corporate Commonwealth entities, including subsection 32B(1) of the Act. Schedule 1AA and Schedule 1AB to the Principal Regulations specify the arrangements, grants and programs.

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.

The *Financial Framework (Supplementary Powers) Amendment (Prime Minister and Cabinet's Portfolio Measures No 2) Regulations 2022* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for the Government to provide a grant to the Australian Future Leaders Foundation Limited (the Foundation) to deliver the Australia’s Future Leaders Program (the program). The program is an initiative of the Department of the Prime Minister and Cabinet in consultation with the Office of the Official Secretary of the Governor-General.

The program’s overall objective is to develop a group of nationally-minded multi-sector leaders who are better connected and impactful, and who jointly share a commitment to the future of Australia, its values and national interest.

The Foundation was selected to deliver the program based on a genuine unsolicited innovative proposal presented to the Government, supported by extensive consultation confirming interest and support for the program within the Government, corporate, academic and
not-for-profit sectors.

The program is a leadership development opportunity for emerging mid-career leaders from both government and non-government sectors including academia, not-for-profit and corporate. The Foundation intends to initially open the program to 120 participants offering a curriculum of online and face-to-face learning events, study tours, mentoring and coaching, and alumni networking opportunities, implemented over a period of two years for each cohort.

Funding of $14 million over four years from 2021-22 will be available for the 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 the Prime Minister and Cabinet and the Office of the Official Secretary of the Governor-General.

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's Portfolio Measures No. 2) Regulations 2022***

**Section 1 – Name**

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Prime Minister and Cabinet's Portfolio
Measures No. 2) 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 to be administered by the Department of the Prime Minister and Cabinet(the department).

New **table item 544** establishes legislative authority for the Government to provide a grant to the Australian Future Leaders Foundation Limited (the Foundation) to deliver the Australia’s Future Leaders Program (the program). The program is an initiative of the department in consultation with the Office of the Official Secretary of the Governor-General.

The program’s objective is to develop a group of multi-sector, nationally-minded leaders who are better connected and impactful, and who jointly share a commitment to the future of Australia, its values and national interest. The curriculum will be uniquely focused on topics of national significance in order to promote national bonds and cohesion among the program cohort.

Overall, the program is intended to generate accomplished alumni who will be uniquely placed to pursue Australia’s national interests through their roles as future leaders in governments, companies, educational institutions and non-profits across Australia. The program is based on highly successful proven international models. Canada has run similar and highly successful program for 300 participants to which thousands of people apply.

The Foundation was selected to deliver the program based on a genuine unsolicited innovative proposal presented to Government, supported by extensive consultation confirming interest and support for the program within the Government, corporate, academic and not-for-profit sectors.

The Foundation, established in April 2021 is a public company limited by guarantee. The Foundation is registered with the Australian Charities and Not-for-profits Commission noting its official charitable purpose is recorded as ‘advancing education’. The Foundation has received Deductible Gift Recipient endorsement, enabling it to receive donations that are tax deductible. The Foundation’s purpose is to advance education with a focus on building the skills, experience and capability of Australia’s future leaders.

With a focus on leadership development for emerging mid-career leaders (approximately ten years’ professional experience), the Foundation intends to initially open the program to 120 participants via a competitive, merit-based selection process. Participants will be drawn from both government and non-government sectors including academia, not-for-profit and corporate. Participants may also be considered from international organisations and governments where there is a clear link and benefit to Australia. The program will complement the Government’s Economic Recovery Plan and will catalyse societal cohesion, fairness and focus on the national interest, issues and opportunities.

Grant funding of $14 million over four years from 2021-22 will be provided to support the program to:

* address topics of national importance informed by contemporary policy matters and seek to facilitate fresh thinking on Australia’s critical issues from the next generation of digital native Australian leaders;
* offer a curriculum of online and face-to-face learning events, study tours, mentoring and coaching, and alumni networking opportunities, implemented over a period of two years for each cohort;
* comprise cohorts that are cross sector, cross geography and cross cultural in their composition;
* involve a mix of: State cohorts convening in their home States; all participants convening online; all participants convening in person; and small groups of participants convening in person and outside their home State; and
* have an alumni aspect aimed at growing networks that cross sectors, cultures and geographies and forging bonds across the nation, and a legacy aspect aimed at improved national cohesion.

The department will undertake a closed and non-competitive selection grant process to enter into a four-year grant agreement with the Foundation for the delivery of the program. Grant funding will be administered in accordance with the Commonwealth resource management framework, including the *Public Governance, Performance, Accountable Act 2013* and the *Commonwealth Grants Rules and Guidelines 2017*.

An exemption will be sought from using the GrantConnect website (www.grants.gov.au) to administer the selection process. The department will administer the selection process and establish the grant using a standard Commonwealth Grant Agreement.

Final funding decision will be made by the Accountable Authority’s delegate being the Assistant Secretary, Government Division. The delegate will be responsible for the final decision to enter into a grant agreement with the Foundation to deliver the program. The delegate is qualified to perform this function noting that they hold the appropriate internal delegated authority and has direct oversight of this project within the department. Once known, information on the final decision will be made publicly available through the GrantConnect website.

Merits review of decisions made in connection with the grant would not be considered appropriate because these decisions relate 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 Foundation was determined to be an appropriate organisation to pursue a one-off, ad hoc grant after a due diligence process. This process involved the verification of claims by the Foundation’s interim Executive Director that the Foundation is uniquely positioned in Australia to pursue a whole-of-nation, multi-sector leadership program at the scale required. As the Foundation has Deductible Gift Recipient status, it is also in the rare position to receive in-kind and philanthropic support for the program from interested non-government stakeholders.

The review and audit process undertaken by the Australian National Audit Office also provides a mechanism to review 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.

Further, the right to review under section 75(v) of the Constitution and review under section 39B of the *Judiciary Act 1903* may be available. Persons affected by spending decisions would also have recourse to the Commonwealth Ombudsman where appropriate.

The inception of the program is based on broad consultation undertaken by the Foundation. This has included Government representatives including the department’s senior officials, the Australian Public Service Commissioner and the Office of the Official Secretary to the Governor-General.

Feedback from both Government and non-government parties has been supportive of the program and its objectives in bringing a whole-of-nation focus to building future leaders for Australia. Having been awarded Deductible Gift Recipient status, the Foundation is in the process of securing philanthropic in-kind and financial donations to support the ongoing development and implementation of the program.

Funding of $14 million over four years from 2021-22 will be included in the 2022-23 Budget. Funding will come from Program 1.1: Prime Minister and Cabinet, which is part of Outcome 1. Details are included in the *Portfolio Additional Estimates Statements 2021-22, Prime Minister and Cabinet Portfolio* at page 23.

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, including the nationhood aspect (sections 51(xxxix) and 61); and
* the communications power (section51(v)).

*Express incidental power and executive power*

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 of 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 program has a national focus as it seeks to build a cohort of leaders from across Australia (including across different states and territories), who, in the course of the program and into the future, will address topics of national significance and promote national bonds and cohesion. The Commonwealth is uniquely placed to the determine the selection process for participants and the composition of any selection panel, in line with the Commonwealth’s perception of who is suited to be a future national leader, as well as to identify the topics of national importance to be addressed through the program.

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 will be delivered, in part, online via a ‘virtual learning’ component.

**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's Portfolio Measures No. 2) Regulations 2022***

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's Portfolio Measures No. 2) Regulations 2022* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for the Government to provide a grant to the Australian Future Leaders Foundation Limited (the Foundation) to deliver the Australia’s Future Leaders Program (the program). The program is an initiative of the department in consultation with the Office of the Official Secretary of the
Governor-General.

The program’s objective is to develop a group of multi-sector, nationally-minded leaders who are better connected and impactful, and who jointly share a commitment to the future of Australia, its values and national interest. The curriculum will be uniquely focused on topics of national significance in order to promote national bonds and cohesion among the program cohort.

Overall, the program is intended to generate accomplished alumni who will be uniquely placed to pursue Australia’s national interests through their roles as future leaders in governments, companies, educational institutions and non-profits across Australia. The program is based on highly successful proven international models. Canada has run similar and highly successful programmes for 300 participants to which thousands apply. The proposed Australian program is one or more steps more integrated and innovative.

The Foundation was selected to deliver the program based on a genuine unsolicited innovative proposal presented to Government, supported by extensive consultation confirming interest and support for the program within the Government, corporate, academic and not-for-profit sectors.

The Foundation intends to initially open the program to 120 participants via a competitive, merit-based selection process. Participants will be drawn from both government and non‑government sectors including academia, not-for-profit and corporate. Participants may also be considered from international organisations and governments where there is a clear link and benefit to Australia. The program will complement the Government’s Economic Recovery Plan and will catalyse societal cohesion, fairness and focus on the national interest, issues and opportunities.

Funding of $14 million over four years from 2021-22 will be available for the program.

**Human rights implications**

This disallowable legislative instrument engages the following rights:

* the right to Education– Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) read with Article 2.

*Right to Education*

Article 2(1) of the ICESCR requires that each State Party to the ICESCR undertakes to take steps to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in that Covenant by all appropriate means, including particularly the adoption of legislative measures.

Article 13(1) of the (ICESCR) which provides that States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

In particular, Article 13(4) affirms the liberty of individuals and bodies to establish and direct educational institutions', provided the institutions conform to the educational objectives set out in article 13(1) and to minimum educational standards*.*

While the program does not constitute formal primary, secondary, tertiary, technical or vocational education, it is compatible with the promotion of the right to education noting its primary focus leadership development skills for application across multiple-sectors. It also affirms the liberty of the Foundation as a non-government body to establish and run an educational program.

The disallowable legislative instrument may also support:

* articles 5(e)(v) and 7 of the *Convention on the Elimination of All Forms of Racial Discrimination* insofar as the selection process for the program prohibits discrimination and bias of candidates on the basis of race, colour national or ethnic origin, and promotes understanding, tolerance and friendship among nations and racial or ethnical groups by encouraging the participation of a diverse cohort of participants;
* articles 10 and 14(2)(d) of the *Convention on the Elimination of All Forms of Discrimination against Women* insofar as the selection process for the program prohibits discrimination and bias of candidates on the basis of gender, including rural women, and promotes the equality of men and women; and
* article 24 of the *Convention on the Rights of Persons with Disabilities* insofar as the selection process provides for inclusivity in supporting people with disabilities to participate in the program on an equal basis to other participants without disability.

**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**