

## **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, Communications and the Arts 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*.

The Principal Regulations are exempt from sunseting under section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (item 28A). If the Principal Regulations were subject to the sunseting 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 (Infrastructure, Transport, Regional Development, Communications and the Arts Measures No. 1) Regulations 2022* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on the Automatic Dependent Surveillance Broadcast (ADS-B) Rebate Program (the program), which aims to enhance the safety, regularity and efficiency of air navigation in Australia by providing financial assistance to enable participants to install or carry equipment enabling ADS-B capability in aircraft that operate under Visual Flight Rules. The program is administered by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts.

Grant funding of \$30 million over two years from 2021-22 (or until funds are fully exhausted) will be available for the program to encourage uptake of the ADS-B technology. The program funding will provide a rebate of 50 per cent of eligible project expenditure. The maximum grant amount is \$5,000 per eligible aircraft towards purchase and installation costs for Australian aircraft owners to install fixed ADS-B devices, or to purchase an eligible electronic conspicuity device which provides ADS-B capability for carriage and use aboard their aircraft.

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 registration 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, Communications and the Arts.

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, Communications and the Arts 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, Communications and the Arts Measures No.1) Regulations 2022.*

**Section 2 – Commencement**

This section provides that the Regulations commence on the day after registration 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 Infrastructure, Transport, Regional Development, Communications and the Arts (the department).

New **table item 553** establishes legislative authority for government spending on the Automatic Dependent Surveillance Broadcast (ADS-B) Rebate Program (the program). The program aims to enhance the safety, regularity and efficiency of air navigation in Australia by providing financial assistance to enable participants to install or carry equipment enabling ADS-B capability in aircraft that operate under Visual Flight Rules (VFR).

ADS-B technology enables aircraft to detect each other and be visible on Air Traffic Control (ATC) surveillance systems. This detection capability can enhance pilots' situational awareness and supplements voice-alerted see and avoid techniques, which Australian pilots flying under VFR operate under.

Since 2017, particular ADS-B equipment has been mandated for all aircraft operating under Instrument Flight Rules, which includes most commercial flights in Australia. Aircraft operating under VFR, mostly general aviation flights, may voluntarily fit ADS-B equipment,

but are not mandated to do so. Among VFR aircraft, the uptake of ADS-B has been low due to the high cost of equipment and installation.

The objective of this program is to incentivise voluntary uptake of ADS-B equipment in Australian-registered aircraft operating under VFR to improve safety and efficiency for Australian airspace users, consistent with the objectives contained in section 3 of the *Airspace Act 2007*.

Grant funding of \$30 million over two years from 2021-22 (or until funds are fully exhausted) will provide a rebate of 50 per cent of expenditure on two classes of eligible ADS-B equipment: installed ADS-B equipment that air traffic controllers can use for aircraft separation purposes (referred to as ADS-B), or portable ADS-B equipment for local electronic traffic information purposes (referred to as ADS-B Electronic Conspicuity (ADS-B EC)). The maximum grant amount is \$5,000 per eligible aircraft towards purchase and installation costs for Australian aircraft owners to install fixed ADS-B devices, or to purchase ADS-B EC equipment for carriage and use aboard their aircraft. The grant may be made for each eligible aircraft for an ADS-B or an ADS-B EC, but not both.

The intended outcome of the program is improved safety and efficiency of Australian airspace, through extension of ADS-B technology to the Australian VFR aircraft fleet. There are considerable benefits from more VFR aircraft being equipped with ADS-B, including:

- enhanced situational awareness for pilots and air traffic control;
- position reports transmitted manually by voice will no longer be required for identified ADS-B aircraft in most circumstances; and
- enhanced traffic situational awareness for other types of aircraft fitted with equivalent technology.

The department will administer the program through a non-competitive grants process in accordance with the Commonwealth resource management framework, including the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and the *Commonwealth Grants Rules and Guidelines 2017* (CGRGs).

The Business Grants Hub within the Department of Industry, Science and Resources (DISR) will administer the program, including administering grants payments on behalf of the department. Information about the program, including the program guidelines specifying eligibility criteria, is available on the DISR's website at [www.industry.gov.au](http://www.industry.gov.au) and will also be published on GrantsConnect.

Policy decision for the program, including final funding decisions will be made by an appropriate delegate of the Secretary of the department. The delegate, at the Senior Executive Service (SES) level will have appropriate skills, qualification and experience with a strong understanding of the objectives of the program and the relevant legislation.

The delegate will be supported by the program delegate, a Senior Officer at the Executive Level 2 (EL2) within DISR to assess applications based on eligibility criteria under the Ministerially-approved program guidelines. The EL2 officer will have the skills and knowledge needed to provide effective advice to the SES officer about funding decisions. This is consistent with other programs given the high volume, low complexity of the decision making required for the rebate program.

All funding decisions will be made objectively, and in accordance with applicable legislative requirements under the department's financial frameworks, made pursuant to the PGPA Act and the *Financial Framework (Supplementary Powers) Act 1997*. In accordance with the CGRGs, funding decisions will be made publicly available on GrantConnect ([www.grants.gov.au](http://www.grants.gov.au)).

Funding decisions made in connection with the program are not considered suitable for independent merits review on the basis that the program involves the allocation of a finite resource, from which all potential claims for a share of the resource cannot be met, and an allocation that has already been made to another party would be affected by overturning the original allocation. The rebate provision is provided on a first-come, first-served basis and the program will run until the funding is exhausted or until 30 June 2023, whichever comes first. 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?*).

Applicants who are otherwise affected by decisions or who have complaints about the program also have recourse to the department, in accordance with the department's Client Service Charter, and such complaints would be investigated under the department's complaints policy and procedures. Information on the Charter and the handling of complaints is available at [www.infrastructure.gov.au/department/about/charter](http://www.infrastructure.gov.au/department/about/charter).

If the applicant is not satisfied with the outcome of the department's assessment or investigation of their complaint, they will be able to contact the Commonwealth Ombudsman as a final recourse. The Commonwealth Ombudsman can only review the program assessment processes, not a specific funding decision under the program.

The department has consulted with the Civil Aviation Safety Authority, Airservices Australia, the Australian Transport Safety Bureau and key industry stakeholders, including the General Aviation Advisory Network in the development of the program. All stakeholders were supportive of the program. The program has been positively received by the aviation industry, and particularly the general aviation sector, as it encourages the voluntary uptake of equipment and enables claims for eligible devices, the lower cost of which is likely to prove attractive to general aviation owners.

Total funding of \$33.5 million for the program was included in the 2021-22 Mid-Year Economic and Fiscal Outlook under the measure 'Aviation Recovery Framework' for a period of two years commencing in 2021-22. Details are set out in the *Mid-Year Economic Outlook for the 2021-22 Appendix A: Policy decision taken since the 2021-22 Budget* at page 271.

Funding for this item will come from Program 2.3: Air Transport, which is part of Outcome 2. Details are included in the *Portfolio Additional Estimates Statements 2021-22 Infrastructure, Transport, Regional Development and Communications Portfolio* at page 41.

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 interstate and overseas trade and commerce power (section 51(i));
- the communications power (section 51(v)); and
- the territories power (section 122).

Interstate trade and overseas and commerce power

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

The program involves providing funding to support the improvement of interstate or international air navigation from the aspects of safety, accuracy and efficiency by allowing more precise tracking of aircrafts as compared to radar technology.

Communications power

Section 51(v) of the Constitution empowers the Commonwealth Parliament to make laws with respect to ‘postal, telegraphic, telephonic, and other like services’.

The program involves providing funding to support the improvement of the way by which data is communicated in air navigation by allowing radio signals and antennas be replaced with satellites to track aircraft movements.

Territories power

Section 122 of the Constitution empowers the Commonwealth Parliament to make laws for the government of ‘any territory surrendered by any State to and accepted by the Commonwealth’.

The program involves providing funding to support the improvement of aircraft that may undertake air navigation in or over a territory.

## **Statement of Compatibility with Human Rights**

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

### ***Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development, Communications and the Arts Measures No. 1) 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*.

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and installation costs for Australian aircraft owners to install fixed ADS-B devices, or to purchase ADS-B EC equipment for carriage and use aboard their aircraft. The grant may be made for each eligible aircraft for an ADS-B or an ADS-B EC, but not both.

### **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.

#### Right to work

This disallowable legislative instrument engages Articles 2 and 6 of the ICESCR.

Article 2(1) of the ICESCR provides 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 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

This disallowable legislative instrument engages Article 12 of the ICESCR. Article 12 of the ICESCR recognises the right to enjoy the highest attainable standard of physical and mental health, to have adequate access to healthcare, 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 healthcare 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 Katy Gallagher  
Minister for Finance**