

## **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. 1) Regulations 2023*

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 (Prime Minister and Cabinet's Portfolio Measures No. 1) Regulations 2023* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on the referendum civics education and awareness program (the program). The program is administered by the National Indigenous Australians Agency, part of the Prime Minister and Cabinet portfolio.

Funding for the program would be provided for public education programs and other activities to raise public understanding and awareness of, and promote community engagement with, a referendum to recognise Aboriginal and Torres Strait Islander peoples in the Constitution through an Aboriginal and Torres Strait Islander Voice (the Voice).

The program forms part of the Government's strategy to deliver its election commitment for a referendum to enshrine the Voice. A comprehensive civics education and awareness program is needed to ensure Australians understand the facts about the Voice proposal and the referendum to make an informed choice.

While the program will target all Australians, specific content would be developed for Aboriginal and Torres Strait Islander people, as well as for culturally and linguistically diverse audiences. The program would be separate from but complementary to a mechanics of voting campaign run by the Australian Electoral Commission, and delivery of the program could begin as early as March 2023.

Funding of \$9.5 million over two years from 2022-23 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 registration on the Federal Register of Legislation.

### **Consultation**

In accordance with section 17 of the *Legislation Act 2003*, consultation has taken place with the National Indigenous Australians Agency and 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's Portfolio Measures No. 1) Regulations 2023***

**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. 1) Regulations 2023*.

**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 National Indigenous Australians Agency (the Agency), part of the Prime Minister and Cabinet portfolio.

New **table item 599** establishes legislative authority for government spending on the referendum civics education and awareness program (the program) to fund public civics education and awareness programs, community initiatives and other activities to raise public understanding and awareness of, and community engagement with, a referendum to recognise Aboriginal and Torres Strait Islander peoples in the Constitution through an Aboriginal and Torres Strait Islander Voice (the Voice).

The program forms part of the Government's strategy to deliver its election commitment for a referendum to enshrine the Voice in the Constitution (<https://www.alp.org.au/policies/first-nations>). The program aims to support understanding of the referendum process and the facts about the Voice proposal across the community so that voters can be informed participants in the referendum process.

The program is needed because all Australians over the age of 18 who are qualified to vote are required to vote in a referendum. Voters should understand the referendum process and what is proposed. The program would focus on delivering facts about the Constitution, referendums as the mechanism to change the Constitution, and information about the Voice proposal. The program would be separate to a campaign run by the Australian Electoral Commission on the mechanics of voting in a referendum. The program could start delivery as early as March 2023.

Funding of \$9.5 million over two years from 2022-23 would be provided to:

- bolstering civics education on the Constitution and referendum process;
- improving the impact and reach of the Agency Voice website;
- developing a more comprehensive information program on the facts of the Voice proposal and relevant civics information;
- paid media placements for the Voice information program to significantly expand reach across the broader community; and
- activating the First Nations media sector to boost the delivery of civics education and information on the referendum and Voice proposal in First Nations communities across Australia.

To improve public understanding of the Constitution and referendum process, the program would provide funding for civics education for a non-government organisation with relevant expertise to enhance and increase the reach and visibility of their existing education products through digital channels and dissemination to public institutions around Australia.

To provide a suitable and trusted platform for information on the Voice with accessible content for the broader Australian community, funding would be provided to improve the impact of the existing Voice website (managed by the Agency), including increasing online visibility and reach, and translating existing content into around 30 culturally and linguistically diverse and First Nations languages.

Separate to the upgrades to the Agency website, funding would be provided to support the development of a more comprehensive information program on the Voice and relevant civics information. This program would focus on the available facts on the Voice. It would not be a 'yes' campaign – but would increase understanding of the issues relating to the referendum question.

In addition to a broader community wide civics education program, more needs to be done to increase understanding of the Constitution, referendum process and the Voice proposal in First Nations communities. The First Nations media sector plays a pivotal role in informing First Nations people, particularly in regional and remote Australia where traditional media do not have the same reach, and First Nations languages are the primary languages in use. The program would enable the rapid dissemination of government messaging in accessible and culturally appropriate ways.

The Agency will engage, through procurements and grants, a number of services to deliver the program in accordance with applicable legislative requirements under 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 Agency's Accountable Authority Instructions.

A range of procurement methods may be used depending on the activity, including open tender, limited tender and procurements from standing offers. The selection of which procurement method to use will depend on the activity. Final spending decisions will be made by the Chief Executive Officer of the Agency or an appropriate SES Band 1 or EL 2 delegate with relevant subject-matter expertise as specified in the Agency's Instrument of Delegation, Financial Management No. 3 of 2022.

The Agency may procure some or all of the following services:

- communications, stakeholder and digital strategies;
- digital development;
- public relations;
- stakeholder engagement activity support;
- content development and refinement;
- First Nations strategy and content development;
- culturally and linguistically diverse strategy and content development;
- advertising placements; and
- post-program evaluation.

The Agency will provide an opportunity for suppliers and tenderers to make complaints if they wish, and to receive feedback. These complaints and inquiries can be made at any time during the procurement process and will be handled in accordance with probity requirements. Information about the tender and the resultant contracts will be made available on AusTender ([www.tenders.gov.au](http://www.tenders.gov.au)) once the contracts are signed. Procurement decisions will be based on value for money, including capability and capacity to deliver, and price and risk considerations.

The Agency may also administer grants to organisations with work aligned with the intent of the program. The grant program design will be guided by the overarching program strategy. The Agency will determine the appropriate approach, whether it be extending an existing arrangement, targeted or direct, once the program is developed, with authority to proceed to be sought through the Minister for Indigenous Australians. Spending activities deliver under the grant process will be done in accordance with the CGRGs with grant details, including any grant opportunity guidelines will be made available on GrantConnect ([www.grants.gov.au](http://www.grants.gov.au)).

Independent merits review would not be suitable for decisions made in connection with the grants and procurements. The program will include the allocation of finite resources and the decisions to provide payments to certain service providers. The Administrative Review Council has recognised that it is justifiable to exclude merits review in relation to decisions of the above nature (see paragraphs 4.11 to 4.19 of the guide, *What decisions should be subject to merit review?*).

The applicable expenditure frameworks including the PGPA Act, CGRGs, CPRs and the Agency's Accountable Authority Instructions provide assurances that expenditures under the program, which are inappropriate for independent merits review, will be sufficiently covered by accountability and transparency mechanisms.

The Agency consulted with key stakeholders within the Government entities, including:

- the Department of Finance's Communications Advice Branch on the design of the program to ensure alignment with the Australian Government's policies on campaign advertising;
- the Department of the Prime Minister and Cabinet's Digital Team and the Digital Transformation Agency in relation to the digital development component to ensure alignment with the Australian Government's policies on ICT; and
- the Australian Electoral Commission's Communications Branch on the intent and timing of the program to ensure alignment with their proposed program of work related to a referendum.

The Agency continues to engage with Aboriginal and Torres Strait Islander people through the Referendum Working Group, the Referendum Engagement Group and other key stakeholders on the delivery of the program to further inform its approach.

Funding for this program of \$9.5 million over two years from 2022-23 will come from Program 1.7: Program Support, which is part of Outcome 1. Details will be included in the 2023-24 Budget and Portfolio Budget Statements of the Prime Minister and Cabinet Portfolio (National Indigenous Australians Agency).

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 power to legislate for the manner of conducting referendums (section 128) and the express incidental power (section 51(xxxix)); and
- the executive power (section 61).

*Power to legislate for the manner of conducting referendums and the express incidental power*

Section 128 of the Constitution empowers the Parliament to make laws with respect to the manner of conducting referendums.

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.

The program will fund a range of activities to raise public awareness of, and community engagement with, a referendum to recognise Aboriginal and Torres Strait Islander peoples in the Constitution through an Aboriginal and Torres Strait Islander Voice.

*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 or the courts by the Constitution. The executive power in section 61 of the Constitution supports activities that form part of the ordinary and well-recognised functions of government.

The program will fund activities which enable the Commonwealth to engage with stakeholders, update information available to the public and research community sentiment in relation to a referendum to recognise Aboriginal and Torres Strait Islander peoples in the Constitution through an Aboriginal and Torres Strait Islander Voice.

## **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. 1) Regulations 2023***

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. 1) Regulations 2023* amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on the referendum civics education and awareness program (the program). The program is administered by the National Indigenous Australians Agency (the Agency), part of the Prime Minister and Cabinet portfolio.

The program forms part of the Government's strategy to deliver its election commitment for a referendum to enshrine an Aboriginal and Torres Strait Islander Voice (the Voice) in the Constitution. The program aims to support understanding of the Voice proposition across the community so that voters can be informed participants in the referendum process.

Funding of \$9.5 million over two years from 2022-23 would be provided to fund public education programs and other activities to raise understanding and awareness of, and promote community engagement with, the referendum.

The program would comprise funding for some or all of the following activities:

- bolstering civics education on the Constitution and referendum process;
- improving the impact and reach of the Agency's Voice website;
- developing a more comprehensive information program on the facts of the Voice proposal and relevant civics information;



- paid media placements for the Voice information program to significantly expand reach across the broader community; and
- activating the First Nations media sector to boost the delivery of civics education and information on the referendum and Voice proposal in First Nations communities across Australia.

### **Human rights implications**

This disallowable legislative instrument engages the following human rights:

- the right to take part in public affairs and elections – Article 25 of the *International Covenant on Civil and Political Rights* (ICCPR), read with Article 2;
- the right to self-determination – Articles 1 of the ICCPR and the *International Covenant on Economic Social and Cultural Rights* (ICESCR), read with Article 2; and
- the right to enjoy and benefit from culture – Article 27 of the ICCPR.

#### *Right to take part in public affairs and elections*

Article 2(1) of the ICCPR states that each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 25 of the ICCPR relevantly provides that every citizen shall have the right and the opportunity, without any distinction including race, to take part in the conduct of public affairs. This disallowable legislative instrument engages the right to take part in public affairs and elections in article 25 of the ICCPR as it will enable the funding of the program. The right is positively engaged as the program encourages broad understanding and informed deliberation, allowing informed participation in the referendum and related public debate on amendments to the Australian Constitution.

#### *Right to self-determination*

Article 2 of the ICESCR requires States Parties to take steps to progressively achieve the full realisation of the rights recognised in the Covenant by all appropriate means.

Articles 1 of the ICCPR and ICESCR provide that all people have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

This disallowable legislative instrument engages the right to self-determination through enabling informed participation in the referendum and related public debate on amendments to the Constitution for an Aboriginal and Torres Strait Islander Voice to Parliament. The right is positively engaged as it will encourage broad understanding and informed deliberation, allowing informed participation in the referendum and related public debate on amendments to the Constitution.

*Right to enjoy and benefit from culture*

Article 27 of the ICCPR provides that in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

This disallowable legislative instrument engages the right to enjoy and benefit from culture as it will enable informed participation in the referendum and related public debate on amendments to the Constitution for an Aboriginal and Torres Strait Islander Voice to Parliament. Culturally appropriate and linguistically diverse material will be included in the program aimed at increasing understanding and awareness of the referendum process, its genesis and, when finalised, specifics of the referendum proposal.

This disallowable legislative instrument is compatible with human rights because it promotes the right to take part in public affairs and elections, the right to self-determination and the right to enjoy and benefit from culture. This disallowable legislative instrument does not engage with other human rights.

**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**