

## **EXPLANATORY STATEMENT**

### **Issued by the Authority of the Minister for Finance**

#### *Financial Framework (Supplementary Powers) Act 1997*

#### *Financial Framework (Supplementary Powers) Amendment (Employment and Workplace Relations 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 (Employment and Workplace Relations Measures No. 1) Regulations 2023* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on the Productivity, Education and Training (PET) Fund. The PET Fund is administered by the Department of Employment and Workplace Relations.

The PET Fund implements an outcome of the 2022 *Jobs and Skills Summit*, insofar as business, unions and government committed to work proactively together to strengthen tripartism and constructive social dialogue in Australian workplace relations.

Grant funding of approximately \$5.1 million over three years from 2023-24 will be provided to key selected representative employers' and workers' organisations to support improved engagement in Commonwealth workplace law reform processes. The organisations that are eligible to apply for a grant (collectively referred to as key peak agencies) are:

- Australian Council of Trade Unions;
- Australian Chamber of Commerce and Industry;
- Australian Industry Group;
- Business Council of Australia; and
- Council of Small Business Organisations Australia.

The PET Fund will ensure that the key peak agencies, as key intermediaries, can meaningfully engage with government on the reforms, and further support implementation, monitoring and review through their members. The funding will also support workplace productivity, education and training initiatives by the organisations to support their members to engage in Commonwealth law reform processes and encourage take up of new Commonwealth laws in their workplaces.

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 Employment and Workplace Relations.

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 (Employment and Workplace Relations Measures No. 1) Regulations 2023***

**Section 1 – Name**

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Employment and Workplace Relations 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 one new table item to Part 4 of Schedule 1AB to establish legislative authority for government spending on a certain activity to be administered by the Department of Employment and Workplace Relations (the department).

New **table item 597** establishes legislative authority for government spending on the Productivity, Education and Training (PET) Fund.

The PET Fund implements an outcome of the 2022 *Jobs and Skills Summit* (<https://treasury.gov.au/employment-whitepaper/jobs-summit>), insofar as business, unions and Government committed to work proactively together to strengthen tripartism and constructive social dialogue in Australian workplace relations. It also supports the Government's election commitment to secure Australian jobs, as this will require a sustained and enhanced tripartite effort to effectively develop and implement new workplace reforms.

Grant funding of approximately \$5.1 million over three years from 2023-24 will be provided to key selected representative employers' and workers' organisations, collectively referred to as key peak agencies, to support improved engagement in Commonwealth workplace law reform processes. The key peak agencies are:

- Australian Council of Trade Unions (ACTU): the peak body for Australian unions, made up of 38 affiliated unions, represents a broad coverage of the Australian

workforce, including in the health, construction, transport and manufacturing industries. The ACTU has a lengthy history of representing the interests of workers and would contribute a key voice to any tripartite structure;

- Australian Industry Group (Ai Group): a peak industry body representing more than 60,000 businesses employing more than 1 million staff. Members come from a range of industries, including engineering, labour hire, defence and airlines, representing both small and large businesses across these sectors. The Ai Group represents a valuable cross-section of Australian industry and a broad network of resources;
- Australian Chamber of Commerce and Industry (ACCI): the ACCI operates as a diverse platform with a network of 84 industry associations, 94 business leaders, state and territory chambers of commerce and the Australian division of the International Chamber of Commerce. The ACCI represents a significant business voice;
- Business Council of Australia (BCA): the BCA represents the interests of Australia's largest companies, with its 100+ strong membership comprising of chief executives from a range of industries including mining, information technology, banking and telecommunications. The BCA represents some of Australia's largest employers and offers an important perspective on workplace challenges; and
- Council of Small Business Organisations Australia (COSBOA): the COSBOA is Australia's peak small business representative, with 43 council members representing around 600,000 small businesses. COSBOA membership is diverse and represents a broad range of industries including beauty, retail and hospitality. As a dedicated small business representative, COSBOA has an important perspective that is a vital contribution to the social dialogue of workplace relations.

The key peak agencies give broad representation across the Australian workforce as well as key business representative organisations representing small, medium and large businesses in Australia. They have operated extensively in the workplace relations system and are uniquely positioned to engage directly with businesses and workers to drive change and ensure the needs of broad groups are considered during policy development and implementation of workplace reform.

The PET Fund will support the key peak agencies to deliver a variety of education and training activities to support their members to engage in law reform processes and to implement existing and amended laws in their workplaces.

The PET Fund may be used by the key peak agencies to support their engagement on workplace relations reforms and related activities, including:

- engaging in consultation meetings and forums, which requires building and developing expertise, analysing policy issues and engaging with other invested stakeholders to develop informed positions and build consensus;
- running events, workshops and summits to source feedback on national policy issues and to inform affiliated networks and members on outcomes;
- data collection and publication, including designing and implementing surveys, analysis of survey results and reporting;
- communication and other engagement activities such as social media work to publish information on workplace relations and work health and safety policy and educate their affiliated networks; and
- travel, administration and other project-related costs.

The department will deliver the PET Fund through a closed, non-competitive selection grant process and will ensure critical support is provided to organisations that have operated extensively in the workplace relations system and are uniquely positioned to engage directly with businesses and workers to engage in tripartite consultations and with their members on workplace reforms. The guidelines for the PET Fund, developed by the department for administering the fund will be informed by the *Commonwealth Grants Rules and Guidelines 2017*. The Community Grants Hub, which is part of the Department of Social Services will provide administration services to the department.

The eligibility and assessment criteria for the PET Fund will be contained within the grant opportunity guidelines, which will be developed and published on GrantConnect ([grants.gov.au](https://grants.gov.au)).

The Minister for Employment and Workplace Relations has the power to approve a commitment of relevant money for this grant activity under the *Financial Framework (Supplementary Powers) Act 1997*. A delegate of the department (at the SES level) with the relevant expertise in, and understanding of Safety and Industry Policy Division, Workplace Relations Group will be responsible for funding decisions relating to the grant.

Funding decisions made in connection with the grants will not be subject to independent merits review as the decisions relate to the allocation of a finite resource, and overturning a decision to allocate funding to one provider would affect an allocation that has already been made to another provider. The funding available under the PET Fund is strictly capped and all available amounts have been allocated. 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?*).

The department sought submissions from a number of stakeholders on immediate measures to strengthen social dialogue and tripartism in the lead up to the 2022 *Jobs and Skills Summit* (the Summit). The outcomes from the Summit are available at [Jobs and Skills Summit September 2022 – Outcomes \(treasury.gov.au\)](https://www.treasury.gov.au). As an outcome of the Summit, business, unions and government committed to work together to strengthen tripartism and constructive social dialogue in Australian workplace relations.

Total funding of \$8.9 million for the program was included in the 2022-23 October Budget under the measure ‘Outcomes of the Jobs and Skills Summit’ for a period of three years commencing in 2022-23. Details are set out in *Budget October 2022-23, Budget Measures, Budget Paper No. 2* at page 82. Funding for the PET Fund is part of this measure.

Funding for this item will come from Program 3.1: Workplace Support, which is part of Outcome 3. Details are set out in *Portfolio Budget Statements 2022-23, Budget Related Paper No. 1.6, Employment and Workplace Relations Portfolio* at page 48.

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 executive power and express incidental power (sections 61 and 51(xxxix)); and
- the external affairs power in section 51(xxix).

### Executive power and express incidental 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, and the execution and maintenance of the Constitution and the laws of the Commonwealth.

The program provides funding to support unions and employer representatives to engage with the Government to assist it in the development of policies, as well as to promote appropriate engagement by peak agencies with the government in relation to proposed workplace relations reforms. The objective of the funding is to help inform the development of Commonwealth policy regarding workplace relations.

### 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 relating to the International Labour Organization’s *Convention concerning Labour Administration: Role, Functions and Organisation* (ILO Convention 150), particularly:

- contemplates certain labour administration activities may be delegated or entrusted to non-governmental organisations, particularly employers’ and workers’ organisation, or – where appropriate – to employers’ and workers’ representatives (Art 2)
- requires ‘the organisation and effective operation...of a system of labour administration, the functions and responsibilities of which are properly co-ordinated’ (Art 4)
- requires ‘arrangements...to secure, within the system of labour administration, consultation, co-operation and negotiation between the public authorities and the most representative organisations of employers and workers, or...employers’ and workers’ representatives’ (Art 5(1))
- provides that ‘competent bodies...shall...be responsible for or contribute to the preparation, administration, co-ordination, checking and review of national labour policy’ and ‘be the instrument...for the preparation and implementation of law and regulations’ (Art 6(1)). Article 6(2)(c) provides that such bodies shall ‘make their services available to employers and workers, and their respective organisations...with a view to the promotion...of effective consultation and co-operation between public authorities and bodies and employers’ and workers’ organisations, as well as between such organisations.’

The PET Fund would contribute towards these obligations by supporting engagement by unions and employer representatives, and their members, through enhanced tripartite governance structures across the Commonwealth workplace relations portfolio. The PET Fund would offset costs associated with participation in consultation and engagement activities by unions and employer representatives with the Commonwealth regarding Commonwealth workplace relations reform and enable unions and employer representatives to educate, train and support their members and affiliates to implement existing and new

Commonwealth laws in their workplaces. These activities will further promote compliance with Commonwealth workplace relations laws and help inform the development of Commonwealth policy regarding workplace relations.

Australia also has obligations relating to the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), particularly:

- Articles 2 and 7 of the ICESCR recognise the right of everyone to the enjoyment of just and favourable conditions of work.

The PET Fund would contribute to meeting this obligation by promoting the informed development of Commonwealth policy regarding workplace relations, and promoting compliance with Commonwealth workplace laws.

## **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 (Employment and Workplace Relations 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 (Employment and Workplace Relations Measures No. 1) Regulations 2023* amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending for the Productivity, Education and Training (PET) Fund. The PET Fund is administered by the Department of Employment and Workplace Relations.

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- Council of Small Business Organisations Australia.

The key peak agencies give broad representation across the Australian workforce as well as key business representative organisations representing small, medium and large businesses in Australia. They have operated extensively in the workplace relations system and are uniquely positioned to engage directly with businesses and workers to drive change and ensure the needs of broad groups are considered during policy development and implementation of workplace reform.



The PET Fund will support the key peak agencies to deliver a variety of education and training activities to support their members to engage in law reform processes and to implement existing and amended laws in their workplaces.

### **Human rights implications**

This disallowable legislative instrument engages the following human right:

- the right to the enjoyment of just and favourable conditions of work – Article 7 of the *International Covenant on Economic Social and Cultural Rights* (ICESCR), read with Article 2.

#### *Right to the enjoyment of just and favourable conditions of work*

Article 2 of the ICESCR provides that each State Party will undertake to take steps to the maximum of its resources, without discrimination to any party, to realise the rights recognised in the ICESCR. Article 7 of the ICESCR recognises the right of everyone to the enjoyment of just and favourable conditions of work.

The PET Fund would contribute to meeting this obligation by strengthening tripartite governance structures across the Commonwealth workplace relations, thereby promoting the informed development of Commonwealth policy regarding workplace relations, as well as promoting compliance with Commonwealth workplace laws.

### **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**