

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance

Financial Framework (Supplementary Powers) Act 1997

*Financial Framework (Supplementary Powers) Amendment
(Foreign Affairs and Trade Measures No. 4) Regulations 2023*

The *Financial Framework (Supplementary Powers) Act 1997* (the FFSP 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 FFSP 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 (Foreign Affairs and Trade Measures No. 4) Regulations 2023* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on the Southeast Asia placements and internships pilot program (the program), which will be administered by the Department of Foreign Affairs and Trade.

The program will implement recommendation 18: *Establish a new public and private sector multi-country program to arrange professional exchanges and internships in select industries at the company or organisation level*, from Australia's Special Envoy for Southeast Asia Nicholas Moore AO's report to the Government: *Invested: Australia's Southeast Asia Economic Strategy to 2040*.

The program aims to deepen Australia's economic engagement with Southeast Asia by providing placements and internships for young professionals from Southeast Asia and Australia to gain experience working in Australian and Southeast Asian companies. The program will provide up to 100 placements each year (inbound and outbound) for a maximum of 12 months per placement. The program will help build enduring business links and cultural understanding between Australia and the region and strengthen Australian business' Southeast Asia literacy.

Funding of \$6.0 million over four years from 2023-24 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 been undertaken with the Department of Foreign Affairs and Trade.

A regulatory impact analysis 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 (Foreign Affairs and Trade Measures No. 4) Regulations 2023*

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Foreign Affairs and Trade Measures No. 4) 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 an activity to be administered by the Department of Foreign Affairs and Trade (the department).

New **table item 643** establishes legislative authority for government spending on the Southeast Asia placements and internships pilot program (the program).

The program will implement one of the recommendations made by Australia's Special Envoy for Southeast Asia, Nicholas Moore AO, in his report to the Government: *Invested: Australia's Southeast Asia Economic Strategy to 2040* (the Strategy) (<https://www.dfat.gov.au/southeastasiaeconomicstrategy>). The Strategy sets out a practical pathway to increase Australia's two-way trade and investment with the region.

The appointment of a Special Envoy for Southeast Asia and the commissioning of the Strategy were both election commitments of the Government. The Strategy was launched by the Prime Minister on 6 September 2023 at the Association of Southeast Asian Nations (ASEAN) Indo-Pacific Forum in Jakarta, Indonesia. The media release is available at <https://www.pm.gov.au/media/invested-southeast-asia>.

The Special Envoy identified 10 priority sectors offering the most potential for growth: agriculture and food; resources; green energy transition; infrastructure; education and skills; visitor economy; healthcare; digital economy, professional and financial services; and creative industries. The program will implement recommendation 18 of the Strategy: *Establish a new public and private sector multi-country program to arrange professional exchanges and internships in select industries at the company or organisation level.*

The program's objective is to deepen Australia's economic engagement with Southeast Asia by providing placements and internships for young professionals from Southeast Asia and Australia to gain experience working in Australian and Southeast Asian companies. From a policy perspective, it will enhance opportunities for Australian businesses to strengthen their connections with Southeast Asia, contributing to cultural literacy of both Australian and Southeast Asian young professionals, help build enduring business links and cultural understanding between Australia and the region, and strengthen Australian business' Southeast Asia literacy.

The program will primarily be funded by the private sector, in partnership with the department which will coordinate engagement between business and participants. The Government will provide funding of \$6.0 million over four years from 2023-24 to support inbound and outbound placements for a maximum of 12 months per placement. A design process for the program will inform how candidates will be selected and grants administered. Subject to the outcome of the design process, it is expected that the program will be targeted at graduates with a minimum of five years' professional work experience. English-language requirements would also need to be met for applicants from Southeast Asia.

Exchanges will initially focus on sectors in support of Australia's economic and strategic objectives, including investment (financial and insurance services), energy transition (clean energy, mining, engineering and green technology services) with a focus on increasing engagement of women in the sector, and the digital economy (digital technology, digital infrastructure, and digital services). The program will complement the long-running New Colombo Plan (NCP), which provides opportunities for undergraduates to undertake study and internships in countries across the Indo-Pacific, including by offering opportunities to NCP alumni for longer term placements.

Funding from the Government includes \$50,000 per year to engage a managing contractor to design and manage the program and conduct monitoring and evaluation, and for operational costs and targeted promotional campaigns to encourage participation in the program.

The department will deliver the program through a range of grants and procurements. Selection of the funding method, such as targeted competitive grant funding rounds or one-off grants, will depend on the activity. Funding may also be allocated through an open or limited procurement process to deliver selected activities. The spending activities will include:

- pilot design and monitoring and evaluation, with a focus on encouraging participation by women and collection of data disaggregated by gender;
- providing secretariat support for the running of the program;
- providing small grants to cover flights and visa costs for participants;
- reimbursing participating businesses' administration costs; and
- running annual targeted promotion campaigns to encourage participation in the initiative.

All grants will be administered 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).

Where a grant process is utilised, grant opportunity guidelines and information about grants awarded will be published on GrantConnect (grants.gov.au) as relevant. Grant payments will be administered by a managing contractor engaged to deliver the program.

Procurement decisions will also be made in accordance with the Commonwealth resource management framework, including the PGPA Act and *Commonwealth Procurement Rules* (CPRs). Information about the tenders and resulting contracts will be made available on AusTender (www.tenders.gov.au) once the contracts are signed.

The department 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. Responsibility for decision making will be resolved in the design process and will likely be the delegate of the Secretary of the department, a Senior Executive Service officer (at Band 2 level) with overarching responsibility for delivery of the program.

Independent merits review of decisions made in connection with the program would not be considered appropriate because they are decisions relating to the allocation of a finite resource, from which all potential claims for a share of the resource cannot be met. Prospective grantees or tenderers applying or tendering for a portion of these resources will have to do so in accordance with prescribed eligibility criteria, advertised as part of the grant or procurement process, in accordance with the CGRGs or CPRs, as applicable.

Once a successful grantee or tenderer is in place, any subsequent decision to overturn the original decision and nominate an alternative grantee or tenderer, may result in a smaller pool of resources being available for subsequent grantees or tenderers. This may unduly impact on the ability of those grantees or tenderers to satisfy the original requirements, and their ability to deliver the expected outcomes of the funding.

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?*).

While judicial review is not ordinarily available to grant applicants, tenderers in a procurement process may challenge the department's decisions in accordance with the *Government Procurement (Judicial Review) Act 2018* (GPJR).

Where the parties are unable to resolve the tenderer's concerns through the complaints handling process, the GPJR enables suppliers to challenge some procurement processes for alleged breaches of certain procurement rules. The GPJR applies to any procurement decisions made under the instrument, where such decisions are 'covered procurements' within the meaning of section 5 of the Act.

The department has a Complaints Handling Policy (available at <https://www.dfat.gov.au/about-us/publications/complaint-handling-procedures-procurement>) that sets out the process for responding to any procurement complaints received. This includes investigations to resolve the complaint by reaching a fair and independent view on the issues raised by the complainant. If the department finds a complaint has merit and the complainant has been inconvenienced or disadvantaged through their interactions with the department, an apology or other form of suitable remedy such as providing additional information, changing or reconsidering a decision or expediting action may be appropriate. If the complainant is still not satisfied with the response, they may seek an internal review of how the complaint was managed. If the complainant is still dissatisfied, the option to seek independent review is available from the Commonwealth Ombudsman. The complainant may also be able to pursue judicial review from the Federal Court. In this case, all information about the complaint and proposed resolution must be provided by the department, when requested.

Where a grant process is utilised, the department will develop appropriate grant guidelines in accordance with the CGRGs, including appropriate complaints handling procedures.

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

In developing the Strategy, the Government and Special Envoy consulted widely across the federal government and with state and territory governments, Southeast Asian governments, thinktanks, Australian and Southeast Asian businesses and investors from December 2022 onwards. The Special Envoy met with more than 750 individuals, received over 200 written submissions and travelled to all ASEAN countries, except Myanmar. The list of consultations and submissions is published in the Strategy, which can be found at <https://www.dfat.gov.au/countries-economies-and-regions/southeast-asia/invested-australias-southeast-asia-economic-strategy-2040/appendixes/appendix-d-method-and-acknowledgements>.

The program was raised by the Special Envoy and positively received by a range of interlocutors from business, thinktanks and governments. Immediately prior to the launch of the Strategy and the announcement of the program, the Special Envoy and senior departmental staff briefed Southeast Asian (except Myanmar) Heads of Mission/representatives.

Funding of \$6.0 million for the program is included in the 2023-24 Mid-Year Economic and Fiscal Outlook and the Portfolio Additional Estimates Statements for the Foreign Affairs and Trade portfolio. Funding will come from Program 1.1: Foreign Affairs and Trade Operations, which is part of Outcome 1.

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 aliens power (section 51(xix); and
- the external affairs power (section 51(xxix)).

Aliens power

Section 51(xix) of the Constitution empowers the Parliament to make laws with respect to ‘naturalization and aliens’.

The program supports expenditure on placements and internships in Australia for young professionals from Southeast Asia.

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 with respect to matters or things outside the geographical limits of Australia.

The program involves Australian persons undertaking placements and internships in Southeast Asia.

The external affairs power also supports legislation with respect to matters concerning Australia’s relations with other nations. The program is intended to further Australia’s ties with the Southeast Asian region through the deepening of people-to-people and business links between young professionals in Australia and Southeast Asia. In providing such opportunities at an early stage of their careers, this program can boost Australia’s Southeast Asia literacy and vice versa.

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 (Foreign Affairs and Trade Measures No. 4) 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 FFSP Act) authorises the Commonwealth to make, vary and administer arrangements and grants specified in the *Financial Framework (Supplementary Powers) Regulations 1997* (the FFSP 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 FFSP Regulations specify the arrangements, grants and programs. The powers in the FFSP 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 (Foreign Affairs and Trade Measures No. 4) Regulations 2023* (the Regulations) amends Schedule 1AB to the FFSP Regulations to establish legislative authority for government spending on the Southeast Asia placements and internships pilot program (the program), which will be administered by the Department of Foreign Affairs and Trade.

The program will implement a recommendation made by Australia's Special Envoy for Southeast Asia, Nicholas Moore AO, in his report to the Government: *Invested: Australia's Southeast Asia Economic Strategy to 2040* (the Strategy). The Strategy sets out a practical pathway to increase Australia's two-way trade and investment with the region.

The program aims to deepen Australia's economic engagement with Southeast Asia by providing placements and internships for young professionals from Southeast Asia and Australia to gain experience working in Australian and Southeast Asian companies.

The program will provide \$6.0 million over four years from 2023-24 to support up to 100 placements each year (inbound and outbound) for a maximum of 12 months per placement. The program will help build enduring business links and cultural understanding between Australia and the region and strengthen Australian business' Southeast Asia literacy.

Human rights implications

This disallowable legislative instrument engages the following rights:

- the right to work and rights at work – Article 6 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), read with Article 2, Articles 1 and 2 of the International Labour Organization’s *Convention concerning Employment Policy* (ILO Convention 122), Article 1 of the International Labour Organization’s *Convention concerning the Organisation of the Employment Service* (ILO Convention 88), Articles 1 to 4 of the International Labour Organization’s *Convention concerning Vocational Guidance and Vocational Training in the Development of Human Resources* (ILO Convention 142);
- the right to equality and non-discrimination – Article 26 of the *International Covenant on Civil and Political Rights* (ICCPR), read with Article 2, Article 10 of the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), read with Article 3, and Articles 1 and 5 of the *International Convention on the Elimination of all Forms of Racial Discrimination* (CERD), read with Article 2; and
- the right to freedom of expression – Article 19 of the ICCPR.

Right to work and rights at work

Article 2 of the ICESCR requires that each State Party to the Covenant undertakes to take steps to the maximum of its available resources, especially economic and technical, to realise the rights recognised in the Covenant, particularly through legislative measures.

Article 6 of ICESCR conveys that States Parties will recognise the right to work, which includes the right of everyone to the opportunity to gain their living by work which is freely chosen or accepted and will take appropriate steps to safeguard this right. The right to work also provides that the labour market is open to everyone without discrimination (including that work be physically accessible for people with disability).

Article 1 of the ILO Convention 122 provides that ‘each Member shall declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment’. Article 2 requires Members to maintain measures to attain the objectives of the Convention and take necessary steps for the application of the measures, including the establishment of programs.

Article 1 of the ILO Convention 88 provides that Members shall maintain a free public employment service, which in co-operation with other public and private bodies concerned, ensures the best possible organisation of the employment market to achieve and maintain full employment and the productive use of resources.

Articles 1 to 4 of the ILO Convention 142 relate to the adoption and development of comprehensive and coordinated policies and programs of vocational guidance and training, including providing broadest possible information and guidance, which are closely linked with employment for all people.

This disallowable legislative instrument engages and promotes the right to work and rights at work by providing professionals from Southeast Asia and Australia opportunities to work in Australian and Southeast Asian companies. This enhances employment opportunities which

may otherwise have been perceived as inaccessible. The program will further Australia's commitment to upholding the right to work and the rights at work by providing training and contributing to cultural literacy of both Australian and Southeast Asian young professionals. The program is accessible to people with disability and promotes participants' access to full, productive and freely chosen employment.

Right to equality and non-discrimination

Article 2 of the ICCPR requires that each State Party to the Covenant undertakes to respect and ensure the rights recognised in the Covenant, adopt laws or other measures to give effect to these rights, and ensure an effective remedy to any person whose rights recognised in the Covenant are violated.

Article 26 of the ICCPR recognises rights to equality and protection against discrimination on any ground. Equality affirms that all human beings are born free and equal. Equality presupposes that all individuals have the same rights and deserve the same level of respect. All people have the right to be treated equally.

Non-discrimination is an integral part of the principle of equality. It ensures that no one is denied their rights because of factors such as race, colour, sex, language, religion, political or other opinion, national or social origin, property or birth. In addition to those grounds, discrimination on certain other grounds may also be prohibited. These grounds include age, nationality, marital status, disability, place of residence within a country and sexual orientation.

To end discrimination, Article 3 of the CEDAW requires States Parties to take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men. Article 10 of the CEDAW requires States Parties to take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women.

Article 1(4) of the CERD allows each State Party to adopt special measures for the sole purpose of securing adequate advancement of certain racial or ethnic groups as long as this does not lead to the maintenance of separate rights after these objectives have been achieved. Such measures are not deemed to be racial discrimination. Pursuant to Article 2, States Parties to the CERD expressly condemn racial discrimination and undertake to pursue policies to eliminate racial discrimination, Article 5 of the CERD clarifies that the general obligation to end racial discrimination extends to all human rights, including political and civil rights, economic and cultural rights.

This disallowable Instrument engages the right to equality and non-discrimination as it facilitates access to young professionals to equally participate in the program. The program takes into account and addresses the diverse barriers that women and First Nations people face in accessing trade, markets, employment, information and upskilling in Australia and Southeast Asia. The program will feature gender targets and will encourage participation of Aboriginal and Torres Strait Islander people and communities.

To the extent that the program limits the right to equality and non-discrimination in that it is only available to young professionals from Australia and Southeast Asia and not open to older professionals or those from other countries, this is reasonable and proportionate to achieving the legitimate purposes of providing temporary employment opportunities which may otherwise have been perceived as inaccessible to young professionals. Young professionals, for instance, may be less likely to have access to international placements than more senior counterparts who are more experienced. This measure is consistent with the principle of substantive equality as it will provide a temporary benefit to members of a disadvantaged group for the sole purpose of advancing the rights of that group.

The objective of the program is to contribute to cultural literacy of both Australian and Southeast Asian young professionals and enhance and encourage greater connections with Southeast Asia. The program would implement recommendation 18 from the Strategy.

Right to freedom of expression

Article 19 of the ICCPR requires that everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of their choice.

The disallowable Instrument engages and protects the right to freedom of expression by providing professionals from Southeast Asia and Australia opportunities to seek, receive and impart information and ideas while working in Australian and Southeast Asian companies.

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**