

## **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 2024*

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 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 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 FFSP 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 FFSP 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 2024* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on the Youpla Support Program (the program). The program will be administered by the National Indigenous Australians Agency within the Prime Minister and Cabinet portfolio.

The program has been developed in response to the Government's commitment to help eligible Youpla Group policy holders recover from the financial loss of the Group's collapse so that they can conduct Sorry Business with dignity into the future. The Youpla Group of companies, including the four funeral funds of the Youpla Group (Aboriginal Community Benefit Fund Pty Ltd, Aboriginal Community Benefit Fund No 2 Pty Ltd, ACBF Funeral Plans Pty Ltd and Community Funeral Plans Pty Ltd), were placed into liquidation in March 2022, causing uncertainty and distress for its members.

The program aims to help meet the costs of conducting Sorry Business for ex-Youpla policy holders who held an eligible funeral insurance policy issued by the Youpla Group at any time on or after 1 August 2015 and help them recover financially from loss of money paid through premiums.

Funding of \$76.8 million over four years from 2023-24 is available for resolution payments and other assistance such as financial counselling to eligible persons in respect of rights and entitlements under eligible funeral insurance policies, including policies affected by the collapse and liquidation of those companies.

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 National Indigenous Australians Agency.

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 (Prime Minister and Cabinet's Portfolio Measures No. 1) Regulations 2024***

**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 2024*.

**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 to be administered by the National Indigenous Australians Agency (NIAA) within the Prime Minister and Cabinet portfolio.

New **table item 650** establishes legislative authority for government spending on the Youpla Support Program (the program).

The program has been developed in response to the Government's commitment to help Youpla Group policy holders recover from the financial loss of the Group's collapse so that they can conduct Sorry Business with dignity into the future. The Youpla Group of companies, including the four funeral funds of the Youpla Group (Aboriginal Community Benefit Fund Pty Ltd, Aboriginal Community Benefit Fund No 2 Pty Ltd, ACBF Funeral Plans Pty Ltd and Community Funeral Plans Pty Ltd), were placed into liquidation in March 2022, causing uncertainty and distress for members.

On 25 July 2022, the Assistant Treasurer and Minister for Financial Services, the Hon Stephen Jones MP and the Minister for Indigenous Australians, the Hon Linda Burney MP jointly announced (<https://ministers.treasury.gov.au/ministers/stephen-jones-2022/media-releases/help-youpla-group-collapse-families>) the Government's intention to support Youpla Group collapse families by establishing the Youpla Group Funeral Benefits Program (YGFBP). Funding of \$7.2 million was provided for the YGFBP to meet the immediate cost of funeral claims for deceased fund members in circumstances where the policy has been affected by the collapse and liquidation of those companies.

The YGFBP is delivered by the Department of the Treasury as an interim measure, while the Government investigated steps required for an enduring resolution. Legislative authority for the YGFBP was provided under table item 556 in Part 4 of Schedule 1AB.

On 8 February 2024, the Minister for Indigenous Australians announced the establishment of a new program (<https://ministers.pmc.gov.au/burney/2024/enduring-resolution-victims-youpla-group>) to help Youpla Group policy holders who held an eligible funeral insurance policy issued by the Youpla Group at any time on or after 1 August 2015 to recover from the financial loss of the Group's collapse so that they can conduct Sorry Business with dignity into the future.

The program will make resolution payments to eligible Youpla policy holders. Eligible recipients of a payment will be able to take up the payment in cash as a lump sum (through grant arrangements) or be assisted to reinvest it in a funeral bond delivered by a prudentially regulated funeral bond provider (through procurement arrangements).

The resolution payment will generally be paid to the person who paid for the policy. This will be assessed at 60 per cent of the premiums paid up to 100 per cent of the policy limit. Eligible amounts will be determined with reference to the Youpla company records currently held by the company's liquidator. Eligible people will also be able to access free and voluntary financial counselling to better understand their choices. The counselling will be provided by a specialist company procured by the NIAA.

It is estimated that 13,700 payers of policies will benefit from resolution payments. This will be confirmed after the Youpla customer data has been provided to the agency and assessed by the NIAA and Services Australia.

The program will run from 1 July 2024 to 1 December 2026. Applications will be accepted until 1 July 2026.

The NIAA will have policy responsibility and program overview, and the day-to-day program delivery, including payments, will be managed by Services Australia. The NIAA and Services Australia will enter into an arrangement to manage this shared delivery.

The NIAA will provide Services Australia with a database identifying eligible Youpla customers. Services Australia staff will both make contact and be contacted by applicants. Services Australia will confirm eligibility (by reference to the database provided by the NIAA) and establish people's identity on a case-by-case basis. Where a decision cannot be made from reference to the database, Services Australia will refer the claim to the NIAA for review.

Grant payments will be made 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).

Delegation for resolution payment decisions will reside with the NIAA and be made by the EL2 with program management responsibility for the program at the NIAA or at the SES Band 1 level. The EL2 with program management responsibility for the program at the NIAA will hold the necessary expertise to make frequent (approximately 13,700), low value (average of \$5,000) decisions on grants or procurements. Funding decisions will be procedural (i.e. not merit-based or subject to discretion) as eligibility will be confirmed by evidence that a person held an eligible policy (active anytime on or after 1 August 2015) and payment value predetermined by reference to the value of premiums paid on that policy. Information on grant decisions will be available in aggregate terms in GrantConnect, available at [help.grants.gov.au](http://help.grants.gov.au). The identity of successful individual applicants will not be publicly reported.

The NIAA will oversee the following procurements in accordance with the PGPA Act and the *Commonwealth Procurement Rules*:

- provision of Youpla company data with the Youpla Group liquidator (including details of the payer, whether the policy was active at given times, the value of premiums paid, and whether any amounts were paid out under claims against the policy) and technical support (verification of policies in the event a person claims that they had an eligible policy that was not previously captured);
- funeral bonds delivered by a prudentially regulated funeral bond provider;
- financial counselling services; and
- a privacy impact assessment to ensure NIAA complies with legislated privacy obligations when handling Youpla Group policy holder data. NIAA will also procure consultancy services to assist with probity (through the MAS Panel) and/or procurement (through the AFP panel).

An NIAA selection panel will make recommendations as to successful tenderers and the delegate will be an NIAA official at the SES band 1 level. Information on decisions will be made available on Austender ([tenders.gov.au](http://tenders.gov.au)).

The NIAA will manage the contracts for the above procurements. Services Australia will have numerous points of operational contact with the contracted entities for the funeral bond and financial counselling services. This will mainly relate to referring applicants to these services.

Independent merits review is not considered suitable for decisions made in connection with eligibility for resolution payments as such decisions are automatic or mandatory in nature. The decision to make a cash payment under the program or procure a funeral bond for an eligible individual will be procedural, limited to confirming the identity of the individual and the eligibility of the policy. The Administrative Review Council (ARC) has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 3.8 to 3.11 of the guide, *What decisions should be subject to merit review?* (ARC guide)).

Independent merits review is also not considered suitable for decisions made in connection with procurement of services as these decisions relate to the allocation of a finite resource, from which all potential claims for a share of the resource cannot be met. Any funding that has already been allocated would be affected if the original decision was overturned. The ARC 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 ARC guide).

In addition, the remaking of a funding decision after entry into a contractual arrangement with a successful provider is legally complex, impractical, and could result in delays to delivery of the program which involves a significant public interest element. The *Government Procurement (Judicial Review) Act 2018* enables suppliers to challenge some procurement processes for alleged breaches of certain procurement rules. This legislation might provide an additional avenue of redress (compensation or injunction) for dissatisfied providers or potential providers, depending on the circumstances.

Consultation for the implementation stage will begin as early as possible in 2024 with First Nations advocates, the Save Sorry Business Coalition (SSBC) and funeral bond providers. It is hoped that cooperation with the SSBC will mirror the close cooperation seen during the implementation of the YGFBP. This will help ensure that arrangements made are culturally competent. Discussion with bond providers will focus on firming the practical parameters of a reinvestment process leading up to the procuring of a provider. Providers have previously indicated that they will need about three months to prepare.

There has been extensive engagement with the SSBC at all levels, including at least 10 meetings with departmental officials designed to elicit and discuss their preferred approaches to a resolution. This engagement will continue into the implementation phase with a focus on ensuring that processes are culturally competent. Leading members of the SSBC include First Nations focused financial counselling services (such as the Indigenous Consumer Access Network, Mob Strong Debt Help and Bush Money Mob) and consumer advocates (such as CHOICE).

The Department of the Treasury and the NIAA have conducted two rounds of consultation with funeral bond, funeral insurance and pre-paid funeral providers. The Queensland and New South Wales governments, the Australian Securities and Investments Commission, the Australian Prudential Regulation Authority, and the Australian Competition and Consumer Commission have also been consulted. The Youpla liquidator has been consulted on data provision.

Funding of \$76.8 million over four years from 2023-24 will be included in the 2024-25 Budget and the 2023-24 Portfolio Additional Estimates Statements for the Prime Minister and Cabinet Portfolio – National Indigenous Australians Agency. Funding for the item will come from Program 1.3: Safety and Wellbeing and Program 1.7: Program Support, which are 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 insurance power (section 51(xiv));
- the bankruptcy and insolvency power (section 51(xvii)); and
- the race power (section 51(xxvi)).

### Insurance power

Section 51(xiv) of the Constitution empowers the Parliament to make laws with respect to ‘insurance, other than State insurance; also State insurance extending beyond the limits of the State concerned’.

The program will make payments to (and otherwise support) beneficiaries of insurance policies with respect to individuals who were insured by the Youpla Group’s funeral funds. These payments and support will be attributable to the conduct of insurance business by the Youpla Group and will also assist beneficiaries to acquire rights and entitlements equivalent to those they held under an insurance policy with Youpla Group.

### Bankruptcy and insolvency power

Section 51(xvii) of the Constitution empowers the Parliament to make laws with respect to ‘[b]ankruptcy and insolvency’.

The program will make payments to (and otherwise support) beneficiaries of policies who are unable to make a claim as a consequence of the insolvency of the Youpla Group.

### Race power

Section 51(xxvi) of the Constitution empowers the Parliament to make laws with respect to ‘[t]he people of any race for whom it is deemed necessary to make special laws’.

The majority of beneficiaries who will be receiving payments and support through this program are First Nations people.

## **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 2024***

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 (Prime Minister and Cabinet's Portfolio Measures No. 1) Regulations 2024* (the Regulations) amend Schedule 1AB to the FFSP Regulations to establish legislative authority for government spending on the Youpla Support Program (the program). The program will be administered by the National Indigenous Australians Agency within the Prime Minister and Cabinet portfolio.

The program has been developed in response to the Government commitment to help eligible people recover from the Youpla Group collapse. The Youpla Group of companies, including the four funeral funds of the Youpla Group (Aboriginal Community Benefit Fund Pty Ltd, Aboriginal Community Benefit Fund No 2 Pty Ltd, ACBF Funeral Plans Pty Ltd and Community Funeral Plans Pty Ltd), were placed into liquidation in March 2022, causing uncertainty and distress for its members.

The program aims to help meet the costs of preparing for Sorry Business for ex-Youpla policy holders who held an eligible funeral insurance policy issued by the Youpla Group at any time on or after 1 August 2015.

Funding of \$76.8 million over four years from 2023-24 is available for resolution payments and other assistance such as financial counselling to eligible persons in respect of rights and entitlements under eligible funeral insurance policies, including policies affected by the collapse and liquidation of those companies.



## **Human rights implications**

This disallowable legislative instrument engages the following right:

- the rights of Indigenous peoples – Article 12 of the *United Nations Declaration on the Rights of Indigenous Peoples*.

### *Rights of Indigenous peoples*

Article 12 of the United Nations Declaration on the Rights of Indigenous Peoples provides that indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

The program is intended to support an estimated 13,700 payers of policies under the Youpla Group who are almost all First Nations people. Sorry Business is of the deepest cultural importance to First Nations people. This disallowable legislative instrument ensures that indigenous people have the support required to allow the families of deceased Youpla Group fund members to mourn their loved ones and conduct Sorry Business with the dignity that had been intended.

## **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**