

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance

Financial Framework (Supplementary Powers) Act 1997

*Financial Framework (Supplementary Powers) Amendment
(Social Services 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 (Social Services Measures No. 1) Regulations 2024* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on the Strengthening Families and Communities Partnership (the Partnership). The Partnership will be administered by the Department of Social Services.

The Partnership delivers on one of six core actions of the Australian Government's *Better, Safer Future for Central Australia*, specifically the *Investing in Families* action. The Partnership will provide \$30.0 million over four years from 2023-24 to support initiatives in the Central Australia region of the Northern Territory.

Funding will be allocated to initiatives through place-based partnerships to improve family and community safety. Initiatives to be funded may include:

- support for those impacted by family and domestic violence;
- prevention of family and domestic violence and other issues that go to supporting healthy relationships, self-esteem and self; and
- strengthening parents and families, including in the early years.

Funding will also be allocated to facilitate regional planning and community engagement. This may include capability and capacity building for communities to engage with regional planning and services and will support mechanisms to facilitate this noting some communities will require more support than others.

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 Social Services.

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 (Social Services Measures No. 1) Regulations 2024*

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Social Services 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 Department of Social Services (the department).

New **table item 646** establishes legislative authority for government spending on the Strengthening Families and Communities Partnership (the Partnership).

The Partnership delivers on one of six core actions of the Australian Government's *Better, Safer Future for Central Australia* (the Central Australia Plan), specifically the *Investing in Families* action. The Government is working with the local community, organisations, the Central Australian Regional Controller, the Northern Territory Government, businesses, and local government to deliver the \$250 million package. The Plan focuses on:

- Improved community safety and cohesion – through more youth engagement and diversion programs.
- Job creation – particularly in the communities that surround Alice Springs – including urgent changes as part of replacing the failed Community Development Program.
- Better services – by improving health services in surrounding communities, there will be less pressure on Alice Springs.

- Preventing and addressing the issues caused by Foetal Alcohol Spectrum Disorders – including better responding through the health and justice systems.
- Investing in families – including by better supporting elders and parents, boosting domestic violence services.
- On country learning – improving school attendance and completion through caring for culture and country.

The Partnership was outlined by the joint media release on 5 December 2023 by the Minister for Social Services, Acting Minister for Indigenous Australians and Assistant Minister for Social Services and the Member for Lingiari (<https://ministers.dss.gov.au/media-releases/11156/Increased-support-to-end-violence-against-women-and-children>).

The Partnership will provide \$30.0 million over four years from 2023-24 to support initiatives in the Central Australia region of the Northern Territory. The Partnership will invest funding into this region with a specific focus on supporting initiatives through place-based partnerships, to improve family and community safety.

A place-based approach is an evidence-based approach to delivering initiatives for Indigenous communities. It involves the Australian Government listening to communities in the development of solutions that impact them. The design of the specific initiatives that will fall under the Partnership is yet to be developed. It will be informed through consultation with the Central Australia Plan Aboriginal Leadership Group (ALG) and the Office of the Central Australian Regional Controller (OCARC) in 2024. The specific timing for implementation of initiatives will be agreed in partnership with local Indigenous leadership structures across relevant parts of Central Australia who may be represented within the ALG.

The ALG was established in 2023 under the Central Australia Plan to provide independent advice to the Minister for Indigenous Australians, the Northern Territory Chief Minister, and the Central Australian Regional Controller. Membership of the ALG is made up of Aboriginal leaders who represent their communities on regional councils, young people, and grandmothers groups who are key to connecting vulnerable community members to services and the broader community. In accordance with the Terms of Reference agreed to by the Minister for Indigenous Australians, the ALG complements existing structures through which diverse community voices actively contribute to identifying community priorities, needs and solutions.

The implementation approach of the Partnership reflects the Government's agreement for a place-based approach, consistent with its commitment to amplifying voices of local communities in Government decision making. The key message arising from community consultations and with the OCARC have urged the Australian Government to develop initiatives tailored to the needs of the local community as initiatives developed through a one-size fits all approach have not been effective in directly addressing family and community safety.

The Partnership is expected to positively impact families and communities in Central Australia, including in Alice Springs, with a focus on remote communities. It will allocate funding to focus on the provision of support for children and families, using primary prevention and early intervention programs to address family and community safety. Communities in Central Australia will benefit from the Partnership through increased support for existing, upcoming or new programs and activities that align with their regional priorities,

building on existing strengths. It will provide opportunities to leverage off the strengths and aspirations of communities to support longer-term community-led change.

While the place-based approach will build on learnings and evidence from place-based initiatives such as the Stronger Places, Stronger People (SPSP) program, the Partnership will not impose the SPSP program (or other existing Commonwealth place-based programs) in Central Australia. Instead, the Partnership will work with local leadership groups already operational across Central Australia and support these groups to participate in the design process and listen to their needs for their individual community to support safe families and children.

This approach builds on the unique strengths of the communities in Central Australia. It will be responsive to communities, and recognise their diversity and different stages of readiness, starting conditions and challenges. The Partnership will be evidence based, but adapted to the collective impact approach under the Central Australia Plan. This is an already established regional approach in operation addressed through the ALG. ALG has been working with the OCARC, the Northern Territory Government and Commonwealth throughout 2023 on this regional approach.

The Partnership will fund local activities that deliver on a number of linked national strategies. This includes the *Aboriginal and Torres Strait Islander Action Plan 2023-2025*, the *National Plan to End Violence against Women and Children 2022-2032*, *Safe and Supported: the National Framework for Protecting Australia's Children 2021-2031*, *Australia's Disability Strategy 2021-2031*, and the developing *Early Years Strategy* and targeted *Entrenched Disadvantage Package*.

Funding will be allocated to initiatives, through place-based partnerships to improve family and community safety. Initiatives to be funded may include:

- Support for those impacted by family and domestic violence – Women's safety support services and programs, which may include relocation support and men's healing support services.
- Prevention of family and domestic violence and other issues that go to supporting healthy relationships, self-esteem and self-respect – Respectful relationships education for children and youth, youth leadership strengthening programs including youth recreation and prevention programs, strength-based preventative interventions such as physical or speech therapy for children with disability, Men as Role Model programs and connection to culture.
- Strengthening parents and families, including in the early years – Parenting and other related social supports including coordination of holistic supports for families with complex and multiple needs such as the approach being taken in the Improving Multidisciplinary Responses program, development of cooking and household management skills, grandmothers groups, mentoring pathways to young people and families and access to food security.

Funding will also be allocated to facilitate regional planning and community engagement. This may include capability and capacity building for communities to engage with regional planning and services and will support mechanisms to facilitate this noting some communities will require more support than others.

Funding has been committed to support the ability of community to make informed decisions by building community data capacity to develop mature, data-informed analysis of local needs. This will allow the ALG and communities to monitor implementation and evolving need, informing future decision making under the Partnership and future Community governance processes. An appointed evaluation provider will work with the department, the National Indigenous Australians Agency (NIAA) and the ALG to support development of the agreed outcomes for the projects and analyse success in delivering on these outcomes through implementation of the funding.

The department will provide funding for the partnership through a range of grants and procurements.

Where funding is delivered through a grants arrangement, funds may be allocated either through a competitive selection process, or through a closed non-competitive process based on an organisation's specialised experience, record of high-performance, and expertise in addressing family and community safety and associated protective factors. Closed non-competitive processes would only be considered where it would be impractical and inefficient to select new organisations to deliver the activity.

Activities may also be funded through a third-party funding arrangement with a community organisation. This is where funding is provided to a service provider who develops a plan and administers discretionary funding to fill service and program gaps with activities. While the decision to allocate funding to the community organisation will be made by the Minister for Social Services or an appropriate delegate, subsequent decisions on how to allocate the discretionary spending will be made by a local leadership group with reference to a local plan developed with communities. Local leadership groups will build on existing models already in place at a community level. All grants will be administered in accordance with the Commonwealth resource management framework, including the *Public Governance, Performance and Accountability Act 2013* and the *Commonwealth Grants Rules and Guidelines 2017* (CGRGs).

Grant opportunity guidelines and information about grants awarded will be published on GrantConnect (help.grants.gov.au). The department and the Community Grants Hub will administer the programs.

Funding may also be delivered through a procurement arrangement, although the appropriateness of such arrangements will be determined through further and ongoing engagement with the ALG and communities in Central Australia.

Procurement decisions will also be made in accordance with the Commonwealth resource management framework, including the PGPA Act, the *Commonwealth Procurement Rules* (CPRs) and the department's Accountable Authority Instructions. 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. Information about the tender and the resultant contracts will be made available on AusTender (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.

Final funding decisions for both procurements and grants will be made by the Minister for Social Services or a delegate who will be an SES officer with appropriate and relevant knowledge and expertise. These decisions will be informed by community consultations through the ALG and be adaptive to community needs and priorities.

Independent merits review would not be appropriate for the Partnership because decisions made with respect to the procurement and grant relate to the allocation of a finite resource from which all potential claims for a share of the resource cannot be met. A reallocation of funding that has already been made to another party would be affected by overturning the original decision. 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?*).

In addition, the remaking of a procurement decision after entry into a contractual arrangement with a successful provider is legally complex, impractical, and could result in delays to delivery of the campaign 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.

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

The department is collaborating with the NIAA on the Partnership, which is leading the work in Central Australia. The Partnership, particularly the need for a place-based and community-led approach, was developed in response to insights gained through consultation with key Central Australian stakeholders including the ALG, OCARC, Aboriginal communities and organisations in Alice Springs and remote communities and service providers.

Future consultations with community stakeholders will be undertaken to provide advice on the design of initiatives. In addition, the engagement on the Partnership with communities will connect with NIAA's work on leading the Central Australian engagement strategy for communities.

Previous community consultations, which have informed the development of the Partnership, include:

- NIAA-led community consultations undertaken between February and June 2023 on child safety and family and domestic violence;
- the Northern Territory Tripartite Forum on child safety;
- consultation on the dedicated *Aboriginal and Torres Strait Islander Action Plan 2023-2025*;
- NIAA-led service provider roundtables held three times in 2023, which identified gaps, priorities, challenges and needs of regional communities; and
- meetings with community members in Alice Springs where Department of Social Security SES officers met with local community members.

Funding of \$30.0 million was included in the 2023-24 Budget under the measures ‘Better, Safer Future for Central Australia Plan’ for a period of four years commencing in 2023-24. Details are set out in the *Budget 2023-24, Budget Measures, Budget Paper No. 2* at pages 83-84.

Funding for this item comes from Program 2.1: Families and Communities, which is part of Outcome 2. Details are set out in the *Portfolio Budget Statements 2023-24, Budget Related Paper No. 1.14, Social Services Portfolio* at pages 50-51.

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 race power (section 51(xxvi)); and
- the territories power (section 122).

Race power

Section 51(xxvi) of the Constitution empowers Parliament to make laws with respect to ‘the people of any race for whom it is deemed necessary to make special laws’.

Funding for a range of initiatives under the Partnership will be used to strengthen Indigenous families and communities and address family and community needs in Central Australia.

Territories power

Section 122 of the Constitution empowers the Parliament to ‘make laws for the government of any territory’.

Funding under the Partnership will be directed to the Central Australia region of the Northern Territory focusing specifically on the provision of support for children and families, using primary prevention and early intervention programs to address family and community needs.

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 (Social Services 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*.

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- Strengthening parents and families, including in the early years – Parenting and other related social supports including coordination of holistic supports for families with complex and multiple needs such as the approach being taken in the Improving Multidisciplinary Responses program, development of cooking and household management skills, grandmothers groups, mentoring pathways to young people and families and access to food security.

Funding will also be allocated to facilitate regional planning and community engagement. This may include capability and capacity building for communities to engage with regional planning and services and will support mechanisms to facilitate this noting some communities will require more support than others.

Human rights implications

This disallowable legislative instrument engages the following rights:

- the rights of the family to adequate standard of living – Article 11 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), read with Article 2;
- the rights of women not to be discriminated against based on gender – Articles 5 and 16 of the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), read with Article 3;
- the rights of the child – Articles 3, 19 and 36 of the *Convention on the Rights of the Child* (CRC), read with Article 4; and
- the rights of people with disability – Articles 5 and 16 of the *Convention on the Rights of Persons with Disabilities* (CRPD), read with Article 4.

Right of the family to adequate standard of living.

Article 2 of the ICESCR requires States Parties to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognised in the Covenant by all appropriate means, including particularly the adoption of legislative measures.

Article 11 of the ICESCR provides that States Parties ‘recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.’

The Partnership promotes the rights of families through initiatives such as:

- parenting and other related social supports including coordination of holistic supports for families with complex and multiple needs such as the approach being taken in improving multidisciplinary responses program; and
- development of cooking and household management skills.

Rights of women not to be discriminated against based on gender

Article 3 of the CEDAW provides that States Parties shall 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 5 of the CEDAW provides that States Parties shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

Article 16 requires States Parties to ‘take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations’.

While the Partnership is inclusive of all genders, initiatives funded under the Partnership will support the rights of women not to be discriminated against based on gender. For example, the Partnership will fund programs that support women’s safety support services, which may include relocation support for women who may be experiencing family, domestic and sexual violence.

Rights of the child

Article 4 of the CRC requires States Parties to undertake all appropriate legislative, administrative, and other measures for the implementation of the rights in the CRC.

Article 3 of the CRC requires States Parties to undertake to ensure the child such protection and care as is necessary for his or her wellbeing and, to this end, take all appropriate legislative and administrative measures.

Article 19 of the CRC imposes an obligation on State Parties to take measures to protect children from all forms of physical or mental violence, injury or abuse, and to prevent such violence occurring, including through activities for their carers.

Article 36 of the CRC requires States Parties to protect the child against all other forms of exploitation prejudicial to any aspects of the child’s welfare.

The Partnership promotes the rights of children through recognising the need to break the cycle of violence by driving positive change in behaviours and attitudes around family violence. This includes initiatives aimed at strengthening parents and families through the provision of holistic supports for families aimed at ensuring children’s wellbeing. Initiatives will also include those aimed and children and young people, including informing young people about respectful relationships, youth leadership strengthening programs through youth recreation and prevention programs.

Rights of people with disability

Article 4 of the CRPD requires States Parties to ensure and promote the full realisation of all human rights and fundamental freedoms for all persons with disability without discrimination of any kind on the basis of disability. Article 4(a) provides that States Parties undertake to adopt appropriate legislative, administrative and other measures to this end.

Article 5(2) of the CRPD requires States Parties to prohibit all discrimination on the basis of disability and guarantee persons with disabilities equal and effective legal protection against discrimination on all grounds.

Article 16 of the CRPD requires States Parties to take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.

The Partnership promotes the rights of people with disability by recognising the importance of strength-based preventative interventions such as physical or speech therapy for children with disability.

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**