**EXPLANATORY STATEMENT**

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

*Financial Framework (Supplementary Powers) Act 1997*

*Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development, Communications and the Arts
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 sunsetting under section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (item 28A). If the Principal Regulations were subject to the sunsetting 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 (Infrastructure, Transport, Regional Development, Communications and the Arts Measures No. 1) Regulations 2024*(the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on certain activities to be administered by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts.

Funding is provided for:

* arrangements with the International Civil Aviation Organization (ICAO) towards the operations and projects of ICAO (current allocation of $4.9 million over four years from 2023-24);
* the Regional Roads Australia Mobile Program for investment in telecommunications infrastructure and services to support improvements in mobile coverage along roads in regional, rural, remote areas, including in communities adjacent to such roads (up to $400.0 million over five years from 2022-23); and
* the Supporting Media in Culturally and Linguistically Diverse Communities program to improve media literacy in culturally and linguistically diverse communities, with a view to combatting misinformation and disinformation and supporting economic and civic engagement ($2.5 million over two years from 2023-24).

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 Infrastructure, Transport, Regional Development, Communications and the Arts.

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.

**Attachment A**

**Details of the *Financial Framework (Supplementary Powers) Amendment
(Infrastructure, Transport, Regional Development, Communications and the Arts Measures No. 1) Regulations 2024***

**Section 1 – Name**

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development, Communications and the Arts 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 1 of Schedule 1AB (table)**

This item adds one new table item to Part 1 of Schedule 1AB to establish legislative authority for government spending on a financial arrangement to be administered by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the department).

New **table item 5** establishes legislative authority for the Government to make contributions, including additional or voluntary contributions, towards the operations and projects of the International Civil Aviation Organization (ICAO).

ICAO is a specialised agency of the United Nations, established under the *Chicago Convention on International Civil Aviation* (Chicago Convention) that sets international aviation safety, air navigation, security, facilitation and environmental protection standards under the Chicago Convention. Australia is a contracting State and has been paying assessed annual contributions to ICAO and its predecessor, the provisional ICAO, since 1945.

ICAO has requested additional, voluntary contributions from Member States to support its operation in delivering specific targeted initiatives. The Australian Government is committed to supporting ICAO’s efforts through initiatives that directly align with Australia’s strategic foreign affairs and international aviation aims, including:

* ICAO Pacific Liaison Office;
* ICAO Environmental Fund;
* ICAO Transformational Objective; and
* ICAO Safety Fund.

*ICAO Pacific Liaison Office*

ICAO has deployed a Liaison Officer to the Pacific to improve its engagement and support for Pacific Small Island Developing States (PSIDS). The new position responds to the aviation priorities of PSIDS as outlined in the *Pacific Regional Aviation Strategy 2022-2032*, the 2021 Port Moresby Declaration on Aviation Safety and Security, and the 2019 ICAO PSIDS Study, and recognises the unique aviation challenges in the Pacific.

The Pacific Liaison Officer serves as the key coordination and collaboration point on civil aviation development matters between the PSIDS with ICAO’s Asia Pacific Regional Office, ICAO’s Capacity Development and Implementation bureau in Montreal, and with applicable regional and international organisations, such as the Pacific Aviation Safety Office. The goal of the position is to directly assist Pacific island countries in discharging their obligations under the Chicago Convention.

ICAO has requested contributions to fund the work of the position. While Australia continues to assist PSIDS through programs funded or administered by the Department of Foreign Affairs and Trade, such as the Papua New Guinea Transport Sector Support Program and donor funding to the Pacific Safety Aviation Office for aviation capacity and capability building projects, funding this initiative contributes towards deepening our engagement with the Pacific through ICAO and is consistent with Australia’s desired outcome of achieving safe, effective and sustainable aviation systems in the Pacific.

*ICAO Environment Fund*

ICAO has sought contributions from Member States to the ICAO Environment Fund in support of activities under the ICAO Assistance, Capacity-building and Training for Sustainable Aviation Fuels (ACT-SAF) program.

The ICAO ACT-SAF program provides tailored support for States to develop their full potential in SAF development and deployment, in line with ICAO’s No Country Left Behind initiative, the 2050 ICAO Vision for SAF, and the United Nation’s three main pillars of sustainable development.

Activities and projects that ICAO delivers to support States under ACT-SAF includes the following:

* regional SAF training workshops;
* feasibility studies supporting States’ assessments into viable SAF feedstock and SAF production pathways;
* support for SAF deployment (e.g. certification), policy development, pilot projects;
* exchanges of best practices; and
* establishing partnerships among States and other stakeholders.

It is expected that ICAO will deploy this program to Asia and the Pacific. Contributing to this initiative would signal our commitment to ICAO’s strategic environmental aims in addressing aviation emissions, which Australia strongly supported at the 41st ICAO Assembly, and demonstrates our leadership by promoting good governance.

*ICAO Transformational Objective*

The ICAO Transformational Objective is aimed at improving the governance and transparency of ICAO. Key issues for Australia include the digital transformation of ICAO, improved accountability and financial management, and addressing cybersecurity concerns. To remain relevant and maintain the trust and confidence of Member States, ICAO must undertake an organisational reform program to ensure it can deliver on its strategic objectives on behalf of its Member States.

This ICAO initiative is consistent with our national interests and role on the ICAO Council to promote institutional reforms that strengthen its governance and performance.

*ICAO Safety Fund*

The ICAO Safety Fund serves as a mechanism for the collection and use of voluntary contributions from Member States and other donors to support the ICAO safety program in a responsible, consistent, transparent, efficient and timely manner.

The objective of the ICAO Safety Fund is to improve the safety of civil aviation by supporting aviation safety projects and providing contingency funding to allow ICAO to act immediately and effectively on urgent safety issues and in response to unforeseen events.

This ICAO initiative is consistent with Australia’s international aviation aims to ensure the safety of global and regional aviation and in reducing the risk of Australians or Australian aircraft operating overseas from being affected by an accident or other occurrence.

Australia contributing to these ICAO initiatives is consistent with our stated commitment to leading transport-sector assistance in the Pacific, particularly in relation to aviation and the environment. It is also consistent with Australia’s stated commitment to improving transparency and governance outcomes in multilateral institutions.

ICAO may establish other initiatives from time to time and request contributions from Member States, which would be considered on a case-by-case basis.

Various requirements will apply to the contributions, which will be negotiated through a memorandum of understanding, exchange of letters or similar instrument with ICAO, including:

* the specific projects for which contributions will be made;
* project documents that will detail the use of the contribution;
* that the contribution will be administered in accordance with the applicable ICAO rules, regulations and procedures;
* accounting records will be established by ICAO for the projects to reflect expenditures incurred with respect to the project(s);
* the contribution will be subject to the internal and external auditing procedures laid down in the financial rules, regulations and procedures of ICAO; and
* ICAO will provide the department with regular reports and progress may also be monitored by Australia’s representative on the ICAO Council.

Contributions will be provided to ICAO under an arrangement supported by a negotiated instrument (including project details) to outline how contributions will be used, the projects that will be delivered, progress reports, and the applicable rules, regulations and procedures that will be followed to ensure proper accountability and probity for the use of the funds.

The department is responsible for administering Australia’s arrangements under the Chicago Convention. This includes payment of the annual membership contribution, the legal matters involved with the Chicago Convention, administration of other treaties, management of international affairs arising from ICAO, and the coordination of issues related to the governance of ICAO.

The arrangement will be administered in accordance with the Commonwealth resource management framework, including the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and the department’s Accountable Authority Instructions.

A delegate of the Secretary of the department under the *Financial Framework (Supplementary Powers) Act 1997* (FFSP Act) will be responsible for approving Commonwealth payments provided to ICAO. The delegate will be the SES Band 2 in charge of the International Aviation, Technology and Services Division, which manages the administered expenditure of the ICAO contribution.

The department will only make payments in accordance with the negotiated memorandum of understanding or equivalent instrument e.g. exchange of letters for the projects specified. Information about the department’s voluntary contributions to ICAO will be published on the department’s website, which includes information about Australia’s existing work in ICAO.

Independent merits review of decisions made under the arrangement would not be considered appropriate because decisions by government to allocate funding to programs as a whole are not suitable for review, as they are budgetary decisions of a policy nature, rather than decisions immediately affecting any particular person’s interests. Those decisions are subject to parliamentary scrutiny, and the Minister who makes them will be held politically accountable for any consequences. Given Australia has been a contracting State to the Chicago Convention since 1947, with ratification of the Chicago Convention provided for in the *Air Navigation Act 1920*, legislation-like decisions that are not directed towards the circumstances of particular persons, but which apply generally to the community, are considered to be unsuitable for review. By their nature, it is unlikely that they affect the interests of any one person.

The Administrative Review Council (ARC) has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 3.3 to 3.4 and 4.18 to 4.19 of the guide, *What decisions should be subject to merit review?* (ARC guide)).

ICAO is a United Nations specialised agency and international standards-setting body which helps 193 countries to cooperate for the purposes of international civil aviation and is the only organisation that is appropriate to deliver the initiatives identified for the purposes of the Chicago Convention.

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

Further, the right to review under section 75(v) of the Constitution and review under section 39B of the *Judiciary Act 1903* may be available. Persons affected by spending decisions would also have recourse to the Commonwealth Ombudsman where appropriate.

The department will consult directly with ICAO regarding the proposed memorandum of understanding, exchange of letters or similar instrument including project plans. The Member States who will receive the ICAO initiatives will be consulted with by ICAO and, where appropriate, the department. Depending on the ICAO initiatives, Member States would include Pacific Small Island Developing States – including the Cook Islands, Kiribati, Nauru, Niue, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu, and may include other States in need of capacity and capability building assistance such as States in Asia, Africa, Latin America and the Caribbean.

Current funding allocated to ICAO of $13.6 million over four years from 2023-24 is included in the *Portfolio Budget Statements 2023-24, Budget Related Paper No. 1.12, Infrastructure, Transport, Regional Development, Communications and the Arts Portfolio* at page 46. Funding for this item comes from Program 2.3: Air Transport, which is part of Outcome 2. Funding of $4.9 million over the four years from 2023-24 may be available for voluntary contributions from the existing current funding allocated to ICAO.

Noting that it is not a comprehensive statement of relevant constitutional considerations, the purpose of the item references the external affairs power (section 51(xxix)) of the Constitution.

*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. Projects to be funded by these contributions, including the ICAO Pacific Liaison Office, the ICAO Environment Fund, the ICAO Transformational Objective and the ICAO Safety Fund will all be carried out overseas.

The external affairs power supports legislation with respect to matters concerning Australia’s relations with other nations. The payment of these contributions will enhance Australia’s relationship with ICAO, and other contracting States.

**Item 2 – In the appropriate position in Part 4 of Schedule 1AB (table)**

This item adds two new table items to Part 4 of Schedule 1AB to establish legislative authority for government spending on certain activities to be administered by the department.

New **table item 647** establishes legislative authority for government spending on the Regional Roads Australia Mobile Program (RRAMP) to provide funding for investment in telecommunications infrastructure and services to support improvements in mobile coverage along roads in regional, rural and remote areas, including in communities adjacent to such roads.

The RRAMP is part of the Australian Government’s $1.1 billion *Better Connectivity Plan for Regional and Rural Australia* (Better Connectivity Plan). The Better Connectivity Plan is a key part of the Government’s telecommunications agenda to improve mobile and broadband connectivity and resilience in rural and regional Australia (www.infrastructure.gov.au/bcp).

The Better Connectivity Plan includes $400.0 million to improve mobile coverage in underserved regional and remote communities and increase the resilience of communications services and public safety communications facilities. As part of these efforts, $50.0 million has been announced under the RRAMP for pilot programs to deliver improved multi-carrier mobile coverage that is focused on regional highways and major roads. The Mobile Black Spot Program will be used to deliver improved mobile coverage across Australia, with a focus on regional communities. Other programs, including the Mobile Network Hardening Program and the Telecommunications Disaster Resilience Innovation Program, will increase the resilience of communications services and public safety communications.

Communications markets in regional and remote Australia, and particularly on road networks, are typically thin to non-existent, and an expansion of coverage often results in small numbers of new customers.

The policy objective of the RRAMP is to improve mobile coverage on roads and adjacent communities in rural, regional and remote Australia to support economic growth, social activity and public safety. Multi-carrier coverage, that is mobile coverage delivered by at least two MNOs, will, at a minimum, be strongly encouraged to provide competition, choice to consumers and continuity in service provider for travellers. Communities, individuals and businesses will benefit from improved mobile coverage, including communities that may be adjacent to such roads.

Funding for the RRAMP will be delivered via two mechanisms: pilot programs and a national program.

The pilot programs will be delivered by state and territory governments. The pilot programs will test innovative, novel or complex approaches to improve mobile coverage on regional highways and major roads, with a focus on areas with little or no coverage. Each of these pilot programs is expected to utilise different or discrete arrangements which cannot be delivered in a single national program, for example a competitive grants program on a range of regional roads and highways or a targeted grant to facilitate active sharing on identified roads. State and territory governments can also target their pilot program to their own needs and priorities, for example the needs of the Northern Territory (given its geography and remoteness) are different to those of Victoria.

Each state and territory government will submit a proposal for a pilot program which delivers improved mobile coverage on regional highways and major roads, with a focus on areas with little or no coverage and a preference for multi-carrier coverage. Pilot programs are expected to be established in the short term and will inform the design of a scaled up national program.

Legislative authority for spending activities managed by state and territory governments is provided through the *Federal Financial Relations Act 2009* with arrangements to be included as a schedule to the Federation Funding Agreement.

A national program is expected to open in the second half of 2024. The design and delivery of the national program will be informed by the pilot programs and may be implemented over two or more rounds. Funding may be provided to Mobile Network Operators (MNOs), Mobile Network Infrastructure Providers (MNIPs), or Network Management Providers that are contracted by an MNO to assist with the management and maintenance of its network.

Legislative authority for spending activities managed by the department is provided through table item 647.

Funded pilot projects will be on a defined regional highway or major road located in Inner Regional Australia, Outer Regional Australia, Remote Australia or Very Remote Australia. The dataset being used for the National Audit of Mobile Coverage will be used to guide regional highways and major roads. Development of this dataset follows extensive research and discussion with stakeholders, and its use ensures consistency across initiatives. The Major Cities, Inner Regional, Outer Regional, Remote and Very Remote categories of the Australian Bureau of Statistics’ Australian Statistical Geography Standard Remoteness Structure will be used to define regional remote and very remote areas. This classification system is used nationally, well understood, and widely employed by the department and stakeholders.

Pilot projects should, at a minimum, strongly encourage multi-carrier outcomes and may fund active or passive infrastructure. Active infrastructure generally includes electrical components such as antennas, transceivers, base station controllers on the radio access network and can include backhaul transmission equipment and core network elements. Passive infrastructure is typically non-electronic infrastructure and can include towers, land, power and physical elements such as backhaul transport links.

MNOs can own the infrastructure or it could be owned by a third party. Sharing network infrastructure reduces the capital costs of building new network infrastructure, promotes efficient use of network assets by avoiding duplication and increases competition by allowing more than one telecommunications provider to reach more customers.

Funding contributions from third parties, such as local governments, local communities, the fuel or electric vehicle sectors and telecommunications companies, are encouraged. Strong partner contributions will maximise the benefit of the Government’s investment.

To be eligible for funding, pilot projects must:

* + not otherwise be funded by the telecommunications company, demonstrated by not being, in the forward work program of the MNO or a public commitment to provide the service in the location;
	+ contribute to public policy outcomes, such as improving road and traveler safety;
	+ deliver mobile coverage to adjacent local communities;
	+ enhance connectivity between regional population centres; and/or
	+ deliver benefits to local communities, such as supporting economic activity or regional development, and improving social connectivity.

The national program of the RRAMP is intended to be delivered as a competitive grants process targeted at nominated sectors of the telecommunications industry and will be administered in accordance with the Commonwealth resource management framework, including the PGPA Act and the *Commonwealth Grants Rules and Guidelines 2017* (CGRGs).

Information about the grant, including grant opportunity guidelines, will be made available on the GrantConnect website (help.grants.gov.au), and advice on the program and release of the guidelines on the department’s website (www.infrastructure.gov.au). The guidelines will include outcomes and objectives, eligibility and merit criteria, details of the assessment process, contracting arrangements and a timeline. Public consultation on the draft program guidelines will be undertaken.

Grants will be administered by the department directly as the design, competitive assessment process, contract negotiation and administration of the RRAMP requires specialist technical, commercial and legal skills. The department utilises these skills in the delivery of its regional communications grant programs, including the Mobile Black Spot Program and the Mobile Network Hardening Program.

Potential applicants will have the opportunity to ask questions on the RRAMP guidelines and assessment process through a dedicated email address. Responses which provide new information will be made available to all potential applicants through an addendum to the RRAMP guidelines and published on GrantConnect.

The department will assess applications for eligibility, merit, risk and value-for-money and provide advice to the Minister for Communications (the Minister). Independent technical advice will be requested, where needed. Advice on potential projects may also be requested from state and territory governments to inform the department’s analysis and the Minister’s decisions. An Assessment Committee comprising appropriately skilled officials from the department and other relevant Commonwealth agencies will be established to consider applications and the department’s analysis. Based on the recommendations of the Assessment Committee, the department will provide advice to the Minister on eligible projects and details of the assessment of each eligible application.

The Minister is the decision maker for grant expenditure under the RRAMP. The department will provide recommendations to the Minister and will negotiate arrangements with successful grant recipients.

Funding decisions made in connection with the RRAMP are not considered appropriate for independent merits review because decisions relate to the allocation of a finite resource and all potential applications for funding are unlikely to be met from this finite resource. The ARC has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.11 to 4.14 of the ARC guide). The RRAMP meets both criteria, given it has limited funds and any reversal of a decision would mean that another project could not be funded.

Applicants who are affected by decisions or who have complaints about the RRAMP have recourse to the department in accordance with its Client Service Charter, and such complaints will be investigated under the department’s complaints policy and procedures. Information on the Charter and handling of complaints is available on the department’s website (www.infrastructure.gov.au/about-us/corporate-reporting/client-service-charter). If the applicant is not satisfied with the outcome of the department’s assessment or investigation of their complaint, they may contact the Commonwealth Ombudsman as a final recourse.

Consultation on the RRAMP occurred with state and territory Ministers at a Regional Connectivity Minister’s Roundtable on 11 August 2023, including the idea of pilot programs to be conducted by state and territory governments. Ministers were supportive of the pilot programs, particularly the flexibility to trial new approaches and target the priorities and needs of their jurisdiction.

Consultation has also occurred at officials’ level with state and territory governments. The RRAMP was discussed at officials’ Regional Digital Connectivity Meetings on 8 July 2023 and 23 November 2023. Principles underpinning the pilot programs were discussed with relevant state and territory officials on 19 October 2023. Bilateral meetings with state and territory government officials have also taken place.

Officials have discussed barriers to and opportunities for multi-carrier coverage with the telecommunications sector. Bilateral discussions have, for example, been held with MNOs and MNIPs over a twelve-month period.

Broader consultation on the national program is expected, including through an Issues Paper and on the draft guidelines. While the department’s ‘Have your Say’ page will be utilised in these consultations, targeted roundtable discussions with different sectors of the industry may also be undertaken.

Funding of $400.0 million is available for the RRAMP, this was included in the 2022-23 October Budget under the measure ‘Better Connectivity Plan for Regional and Rural Australia’ for a period of five years commencing in 2022-23. Details are set out in the *Budget October 2022-23*, *Budget Measures, Budget Paper No. 2* at page 158.

Funding for this item comes from Program 5.1: Digital Technologies and Communications Services, which is part of Outcome 5. Details are set out in the *Portfolio Budget Statements 2022-23*, *Budget Related Paper No. 1.12, Department of Infrastructure, Transport, Regional Development, Communications and the Arts Portfolio* at pages 31 and 75.

Noting that it is not a comprehensive statement of relevant constitutional considerations, the objective of the item references the communications powers (section 51(v)) of the Constitution.

*Communications power*

Section 51(v) of the Constitution empowers the Parliament to make laws with respect to ‘postal, telegraphic, telephonic and other like services’.

The RRAMP will seek to improve mobile coverage and services on regional highways and roads, and underserved adjacent communities, to support economic growth, social activity and public safety. Communities, individuals and businesses will benefit from improved mobile coverage.

New **table item 648** establishes legislative authority for government spending on the Supporting Media Literacy in Culturally and Linguistically Diverse Communities program (the program). The program seeks to improve media literacy in culturally and linguistically diverse communities, with a view to combatting misinformation and disinformation and supporting economic and civic engagement.

Australia is a nation built on migration, and our population is becoming increasingly diverse. In 2021, the Australian Bureau of Statistics reported that 51 per cent of the Australian population was born overseas or speaks a language other than English at home. Improving media literacy in vulnerable segments of culturally and linguistically diverse (CALD) communities will help mitigate the harms associated with promulgation of deceptive information in those communities and support higher levels of economic and civic engagement.

The Government is undertaking a whole-of-government approach, mobilising multiple portfolios to combat misinformation and disinformation, scams, deceptive information, gambling reform and media and digital literacy.

The Government will provide funding of $2.5 million over two years from 2023-24 to support a partnership between the Federation of Ethnic Communities’ Councils of Australia (FECCA) and the department on improving community engagement on communications issues that affect multicultural communities.

The partnership with FECCA is intended to assist the Government to communicate with
hard-to-reach communities and deliver information in a trusted manner. Targeted community-led, strength-based, culturally informed approaches deliver the best results. During the COVID-19 pandemic, targeted communication strategies developed and delivered by grassroots community organisations were proven to be more effective in both reaching the intended audience and resulting in action in comparison to official national communication channels.

FECCA is the peak national body representing Australians from CALD communities and is ideally placed to implement an expert and tailored funding program on media literacy, vulnerability to online harms, and other communications matters affecting CALD communities. The FECCA network consists of over 1,500 community organisations. FECCA is uniquely positioned to operate as a sophisticated two-way conduit between community and government, based on enduring and trusted relationships. It has a long history of successfully engaging with multicultural communities on numerous issues includes COVID-19 information and vaccinations, racism, marriage equality, and Australia’s civic institutions and processes such as the recent Voice to Parliament referendum, elections, and the Census.

Departmental funding of $1.0 million is allocated to develop and implement improved community engagement strategies with FECCA to reach in CALD populations, including hard to reach populations. These strategies will have a focus on improving media literacy to combat misinformation and disinformation and scams, and support economic and civic engagement.

The ability of CALD communities to effectively counter misinformation and disinformation often comes down to the efforts of single individuals within communities who are able and willing to act as a conduit of high quality and trustworthy information to their communities. This approach to managing these issues is not robust and is prone to failure when key individuals step away from involvement.

Administered funding of $1.5 million is available for FECCA to administer a small funding program focused on the delivery of information and education resources to multicultural communities. Information and education resources will include how to engage critically with media messages, spot misinformation, and reduce vulnerability to deceptive information such as scams. Resources will be developed and provided in a tailored, culturally sensitive and targeted way to increase reach and awareness.

The department will work closely with the Australian Competition and Consumer Commission on key messages to inform FECCA’s approach in CALD communities on scams, and integrate relevant learnings from Scamwatch. For example, in 2021 Scamwatch reported that scams impacting CALD communities made up five per cent of all reports to Scamwatch, and almost 13 per cent of future losses. Members of CALD communities reported $42.0 million in losses that year, an increase of 88 per cent compared to 2020, with investment scams being the most harmful.

The department will deliver the program as a closed non-competitive grant program in accordance with applicable legislative requirements under the PGPA Act and the CGRGs. This grant opportunity and process will be administered by the Business Grants Hub within the Department of Industry, Science and Resources on behalf of the department. Grant opportunity guidelines will be published on GrantConnect (help.grants.gov.au). These will set out the eligible applicants for a grant. Eligible applicants will be invited to submit a proposal that addresses the assessment criteria set out in the guidelines.

A delegate of the Secretary of the department under the FFSP Act will be responsible for approving Commonwealth funding provided for the program. The delegate will be the First Assistant Secretary, Online Safety, Media and Platforms Division, which manages the administered expenditure of this program.

The grant guidelines will include outcomes and objectives, eligibility and merit criteria, details of the assessment process, contracting arrangements and a timeline. The delegate’s decision is final in all matters, including:

* the grant approval;
* the grant funding to be awarded; and
* any conditions attached to the offer of grant funding.

The decision maker must not approve funding if there are insufficient program funds available across financial years for the program.

Payments will be made according to an agreed schedule set out in the grant agreement. Payments are subject to satisfactory progress on the project. The successful grant applicant will be announced on the GrantConnect website within 21 calendar days after the date of effect.

Grant recipients must enter into a legally binding grant agreement, which will include terms and conditions of funding, reporting requirements, milestones and payment arrangements.

The successful applicant will be required to provide an independent audit report. An audit report will verify that they have spent the grant in accordance with the grant agreement. The audit report requires the applicant to prepare a statement of grant income and expenditure. The report template is available at business.gov.au and on GrantConnect.

Funding decisions made in connection with the program are not suitable for independent merits review because these decisions relate to the provision of a one-off grant to a certain service provider, over other service providers. The ARC has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.16 to 4.19 of the ARC guide).

FECCA has experience delivering small funding programs of this nature. For example, FECCA delivered a CALD COVID-19 Health Small Grants Fund in partnership with the Department of Health from 2021 to assist community groups lead grassroots communication activities around Covid-19 and the vaccine rollout.

The review and audit process undertaken by the ANAO also provides a mechanism to review Australian 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.

Further, the right to review under section 75(v) of the Constitution and review under section 39B of the *Judiciary Act 1903* may be available. Persons affected by spending decisions would also have recourse to the Commonwealth Ombudsman where appropriate.

Ongoing consultation with local community stakeholders will be undertaken by FECCA as part of delivering the project. The details of this consultation will form part of the contract negotiation process between the Business Grants Hub and FECCA.

Funding of $2.5 million for the program was included in the 2023-24 Budget under the measure ‘Supporting Sustainability and Building Media Literacy’ for a period of two years commencing in 2023-24. Details are set out in the *Budget 2023-24, Budget Measures, Budget Paper No. 2* at page 183.

Funding for this item will come from Program 5.1: Digital Technologies and Communications (administered) and Program 5.2: Program Support for Outcome 5 (departmental) which are part of Outcome 5. Details are set out in the *Portfolio Budget Statements 2023-24*, *Budget Related Paper No. 1.12, Department of Infrastructure, Transport, Regional Development, Communications and the Arts* at pages 75-77.

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 communications power (section 51(v)); and
* the executive power and express incidental power (sections 61 and 51(xxxix)).

*Communications power*

Section 51(v) of the Constitution empowers the Parliament to make laws with respect to ‘postal, telegraphic, telephonic and other like services’.

Funded initiatives will be produced or provided by means of electronic communications, with a view to improving media literacy in culturally and linguistically diverse communities and combatting misinformation and disinformation.

*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 extends to a range of matters, including:

* activities that form part of the ordinary and well-recognised functions of government; and
* activities that are peculiarly adapted to the government of the nation and cannot otherwise be carried out for the benefit of the nation.

Funded initiatives will contribute to policy development and enable the Federation of Ethnic Communities’ Councils of Australia, as the peak national body, to foster full economic and social participation among culturally and linguistically diverse communities.

**Attachment B**

**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 (Infrastructure, Transport, Regional Development, Communications and the Arts 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 (Infrastructure, Transport, Regional Development, Communications and the Arts Measures No. 1) Regulations 2024* amend Schedule 1AB to the FFSP Regulations to establish legislative authority for government spending on certain activities administered by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the department).

This disallowable legislative instrument makes the following amendments to Part 1 of Schedule 1AB:

* adds table item 5 ‘Arrangements with International Civil Aviation Organization (ICAO)’;

and the following amendments to Part 4 of Schedule 1AB:

* adds table item 647 ‘Regional Roads Australia Mobile Program’; and
* adds table item 648 ‘Supporting Media Literacy in Culturally and Linguistically Diverse Communities’.

*Table item 5 – Arrangements with International Civil Aviation Organization (ICAO);*

Table item 5 establishes legislative authority for the Government to make contributions, including additional or voluntary contributions, towards the operations and projects of the International Civil Aviation Organization (ICAO).

ICAO is a specialised agency of the United Nations, established under the *Chicago Convention on International Civil Aviation* (Chicago Convention) that sets international aviation safety, air navigation, security, facilitation and environmental protection standards under the Chicago Convention. Australia is a contracting State and has been paying assessed annual contributions to ICAO and its predecessor, the provisional ICAO, since 1945.

ICAO has requested additional, voluntary contributions from Member States to support its operation in delivering specific targeted initiatives. The Australian Government is committed to support ICAO four proposed initiatives, which directly align with Australia’s strategic foreign affairs and international aviation aims:

* ICAO Pacific Liaison Office, which assists Pacific Small Island Developing States (PSIDS) build capability and capacity in aviation safety and security and is improving ICAO’s engagement with the Pacific and the Pacific Aviation Safety Office.
* ICAO Environment Fund, which assists developing States, including PSIDS, build the capability and capacity needed to implement their international commitments to address aviation-related emissions through the use of sustainable aviation fuels.
* ICAO Transformational Objective to improve its transparency and governance.
* ICAO Safety Fund to assist ICAO in acting immediately to help remedy significant aviation safety deficiencies in a Member State.

The additional contribution will be reallocated from existing ICAO funding of $4.9 million over four years from 2023-24.

**Human rights implications**

Table item 5 does not engage any of the applicable human rights or freedoms.

**Conclusion**

Table item 5 is compatible with human rights as it does not raise any human rights issues.

*Table item 647 – Regional Roads Australia Mobile Program*

Table item 647establishes legislative authority for government spending on the Regional Roads Australia Mobile Program (RRAMP) to provide funding for investment in telecommunications infrastructure and services to support improvements in mobile coverage along roads in regional, rural and remote areas, including communities adjacent to such roads.

The Better Connectivity Plan includes $400.0 million to improve mobile coverage in underserved regional and remote communities, and increase the resilience of communications services and public safety communications facilities. As part of these efforts, $50.0 million has been announced under the RRAMP for pilot programs to deliver improved multi-carrier mobile coverage that is focused on regional highways and major roads. The Mobile Black Spot Program will be used to deliver improved mobile coverage across Australia, with a focus on regional communities. Other programs, including the Mobile Network Hardening Program and the Telecommunications Disaster Resilience Innovation Program, will increase the resilience of communications services and public safety communications.

The policy objective of the RRAMP is to improve mobile coverage on roads and adjacent communities in regional, rural and remote Australia to support economic growth, social activity and public safety. Multi-carrier coverage, that is mobile coverage delivered by at least two MNOs, will, at a minimum, be strongly encouraged to provide competition, choice to consumers and continuity in service provider for travellers. Communities, individuals and businesses will benefit from improved mobile coverage.

**Human rights implications**

Table item 647 engages the following right:

* the right to freedom of opinion and expression – Article 19 of the *International Covenant on Civil and Political Rights (ICCPR)*, read with Article 2.

*Right to freedom of opinion and expression*

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 19(2) states: ‘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 his choice.’

The right to freedom of expression includes the right to receive and impart information of all kinds through any medium, including media and broadcasting. Table item 647 promotes this right by supporting initiatives which aim to preserve access to internet and telephony-based communications.

**Conclusion**

Table item 647 is compatible with human rights because it promotes the protection of human rights.

*Table item 648 – Supporting Media Literacy in Culturally and Linguistically Diverse Communities*

Table item 648 establishes legislative authority for government spending on the Supporting Media Literacy in Culturally and Linguistically Diverse Communities program (the program).

Funding of $2.5 million over two years from 2023-24 will support a partnership between the Federation of Ethnic Communities’ Councils of Australia (FECCA) and the department on improving community engagement on communications issues that affect multicultural communities. This would include:

* $1.0 million in departmental funding to develop and implement improved community engagement strategies with FECCA to reach in Culturally and Linguistically Diverse (CALD) populations, including hard to reach populations. These strategies will have a focus on improving media literacy to combat misinformation and disinformation and scams, and support economic and civic engagement; and
* $1.5 million in administered funding for FECCA to administer a small funding program to recipient community organisations providing funding for these organisations to develop and/or deliver media literacy resources focused on combatting misinformation and disinformation to CALD communities.

The partnership with FECCA is intended to assist the government to communicate with hard-to-reach communities and deliver information in a trusted manner. Targeted community-led, strength-based, culturally informed approaches deliver the best results. For example, during the COVID-19 pandemic, targeted communication strategies developed and delivered by grassroots community organisations were proven to be more effective in both reaching the intended audience and resulting in action in comparison to official national communication channels.

**Human rights implications**

Table item 648 engages the following rights:

* the right to freedom of opinion and expression – Articles 19 and 20 of the ICCPR, read with Article 2;
* the right to enjoy and benefit from culture – Article 27 of the ICCPR and Article 15 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), read with Article 2; and
* the right to freedom of thought, conscience and religion or belief – Article 18 of the ICCPR.

*Right to freedom of opinion and expression*

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.

There is no Commonwealth legislation enshrining a general right to freedom of expression. Article 19 of the ICCPR states that:

1. Everyone shall have the right to hold opinions without interference.
2. 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 his choice.

The right in Article 19(1) to hold opinions without interference cannot be subject to any exception or restriction. The right in Article 19(2) protects freedom of expression in any medium, for example written and oral communications, the media, public protest, broadcasting, artistic works and commercial advertising. The right protects not only favourable information or ideas, but also unpopular ideas including those that may offend or shock (subject to limitations). Freedom of expression carries with it special responsibilities.

Article 20(1) states that any propaganda for war shall be prohibited by law. Article 20 (2) states that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

The *Racial Discrimination Act 1975* makes it unlawful to do an act reasonably likely to offend, insult, humiliate or intimidate another person or group if the act is done because of the race, colour or national or ethnic origin of the person or group.

The ability of CALD communities to effectively counter misinformation and disinformation and provide high value public interest journalism often comes down to the efforts of single individuals within communities who are able and willing to act as a conduit of high quality and trustworthy information to their communities. Improving media literacy in vulnerable segments of CALD communities will help mitigate the harms associated with promulgation of deceptive information in those communities and support higher levels of economic and civic engagement.

*Right to enjoy and benefit from culture*

The right to enjoy and benefit from culture is contained in Article 27 of the ICCPR and Article 15 of theICESCR.

Article 27 of the ICCPR states that in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language. These rights are particular to members of such minorities, who also enjoy the other rights guaranteed in the human rights treaties.

Article 15(1) of the ICESCR provides that States Parties recognise the right of everyone: (a) To take part in cultural life; (b) To enjoy the benefits of scientific progress and its applications; (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 15(2) provides that the steps to be taken by the States Parties to the ICESCR to achieve the full realisation of this right shall include those necessary for the conservation, the development and the diffusion of science and culture. Article 15(3) provides that the States Parties undertake to respect the freedom indispensable for scientific research and creative activity. Article 15(4) provides that the States Parties recognise the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

The *Special Broadcasting Service Act 1991*contains a Charter in section 6 that requires SBS to perform a number of functions, including the promotion of understanding and acceptance of the cultural, linguistic and ethnic diversity of the Australian people, and contributing to the retention and continuing development of language and other cultural skills.

The functions of the Australia Council, as set out in section 5 of the *Australia Council Act 1975* include to uphold and promote the right of persons to freedom in the practice of the arts, which includes creative and interpretative expression through theatre, literature, music, visual arts, film and crafts.

Combating the proliferation of deceptive and harmful information in Australian communities requires a coordinated approach, informed by direct engagement with vulnerable and hard to reach groups.

CALD communities are diverse and resources for consultation are finite. This measure will streamline consultation processes for the department on several policy matters. It will also reduce the cost and complexity faced by multicultural communities in engaging with public policy development.

The Government is undertaking a whole-of-government approach, mobilising multiple portfolios to combat misinformation and disinformation, scams, deceptive information, gambling reform and media and digital literacy. This program further supports that work, focusing on CALD communities to further improve community engagement on communications matters.

*Right to freedom of thought, conscience and religion or belief*

Section 116 of the Constitution provides that the Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.

Article 18 of the ICCPR states that:

* Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
* No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

Article 18 of the ICCPR protects the right to think freely and to entertain ideas and hold positions based on conscientious or religious or other beliefs. This entails protection against brainwashing or indoctrination. The right also protects the right to demonstrate or manifest religious or other beliefs, whether individually or collectively, and whether through worship, observance, practice or teaching.

The *Racial Discrimination Act 1975* makes it unlawful to do an act reasonably likely to offend, insult, humiliate or intimidate another person or group if the act is done because of the race, colour or national or ethnic origin of the person or group.

The program aims to improve media literacy and increase community engagement on communication issues that affect multicultural communities, including religiously diverse communities. Participants will broaden their abilities to recognise misinformation and disinformation in a broad range of media sources including in language news services on social media.

**Conclusion**

Table item 648 is compatible with human rights because it promotes the protection of human rights.

**Senator the Hon Katy Gallagher**

**Minister for Finance**