

## **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. 2) 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. 2) Regulations 2024* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on the New Jobs Program Trial (NJPT). The NJPT is administered by the National Indigenous Australians Agency within the Prime Minister and Cabinet portfolio.

The NJPT is part of the Government's election commitment to replace the Community Development Program (CDP) with a new program with real jobs, proper wages and decent conditions. The NJPT aims to assist CDP participants of working age to move into paid employment.

The NJPT was initially rolled out in September 2023 and will be available to October 2024. The NJPT will provide for up to 200 new jobs with real wages, including leave and superannuation in targeted CDP regions.

Funding of \$15.8 million to October 2024 is available to cover the hire of plant and equipment, including motor vehicles, to be used by CDP participants in their employment, office equipment and supplies, and consumable building materials for minor upgrades to community facilities where there is an immediate local need and community support.

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. 2) 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. 2) 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 655** establishes legislative authority for government spending on the New Jobs Program Trial (NJPT).

The NJPT responds to the Government's 2022 election commitment published in the *Labor's Commitment to First Nations Peoples* policy (<https://parlinfo.aph.gov.au/parlInfo/download/library/partypol/>) for a new program to replace the Community Development Program (CDP). The NJPT will be developed in partnership with First Nations people to inform the design of a new Remote Jobs and Economic Development program for real jobs, proper wages and decent conditions.

Grant opportunity guidelines for the NJPT were published in September 2023, providing up to \$15.8 million in funding to support 200 jobs in 17 of the 60 current CDP regions until 31 October 2024. The NJPT aims to provide pathways for CDP participants to move into genuine employment, as well as provide increased economic opportunities in remote areas.

Community organisations and local governments in targeted CDP regions, are being funded to cover wages at the minimum wage rate, including leave and superannuation entitlements, for jobs that support community priorities.

Funding can also cover the hire of plant and equipment, including motor vehicles if needed, to be used by CDP participants in their employment, office equipment and supplies, and consumable building materials for minor upgrades to community facilities where there is an immediate local need and community support. Spending under the NJPT must be discussed with the National Indigenous Australians Agency Regional Office.

Community organisations or local government can apply for one-off grant funding for jobs that are identified in community and may:

- provide better pathways to jobs in remote communities;
- support community priorities and economic development; and
- recognise and engage youth, women and other vulnerable groups.

The NJPT may also support the development of new approaches to leadership and jobs which complement caring and cultural responsibilities.

The NJPT provides the opportunity for community organisations and local government to develop and test local approaches to jobs, including what support, programs, and innovations will be needed to enable CDP participants to move off income support, while providing a direct investment in organisations and job creation in remote Australia. Learnings, experiences, insights and feedback from the NJPT will continue to feed into the design of the new Remote Jobs and Economic Development program to replace the CDP.

The NJPT will target the following CDP regions:

- Goldfields/Kambalda/Norseman Region, WA (CDP region 2);
- Goldfields/Ngaanyatjarra Lands, WA (CDP region 3);
- Goldfields/Yaaliku Region, WA (CDP region 4);
- Mid-West - West Region, WA (CDP region 5);
- East Kimberley/East Kimberley Region, WA (CDP region 15);
- Eyre Region/Eyre Region, SA (CDP region 16);
- Ceduna and surrounds/Far West Region, SA (CDP region 17);
- Northern Territory/Town Camps and surrounds of Alice Springs, NT (CDP regions 20, 21, 22, 23, 24, 25 and 27);
- Northern Territory/South East Barkly Region and North Barkly Region, NT (CDP regions 26 and 28); and
- Palm Island/Palm Island Region, QLD (CDP region 50).

The NJPT supports the National Agreement on Closing the Gap's Target 7: increasing the portion of Aboriginal and Torres Strait Islander youth (15 to 24 years) who are in employment, education or training to 67 per cent; Target 8: increasing the portion of Aboriginal and Torres Strait Islander people aged 25 to 64 who are employed to 62 per cent; and Priority Reform 2: Building the community-controlled sector.

The NJPT was announced by the Minister for Indigenous Australians on 25 October 2022 with a subsequent announcement on 9 May 2023 as part of the 2023-24 Budget. The grant opportunity associated with the NJPT was announced on 20 October 2023. Details of these

announcements are available at: <https://ministers.pmc.gov.au/burney/2022/delivering-better-future-aboriginal-and-torres-strait-islander-australians>, <https://www.indigenous.gov.au/news-and-media/announcements/investing-better-future-aboriginal-and-torres-strait-islander-people>, and <https://www.indigenous.gov.au/news-and-media/announcements/new-job-opportunities-remote-australia>.

Funding will be provided to community organisations and local government through an open, non-competitive grant. The grants are administered in accordance with the Commonwealth resource management framework, including the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and the *Commonwealth Grant Rules and Guidelines 2017* (CGRGs). Information about the grant opportunity including final decisions is available on the GrantConnect website ([help.grants.gov.au](http://help.grants.gov.au)).

The grants will be administered by NIAA. A delegate within NIAA at the Senior Executive Service (Band 1) officer or above will be responsible for approving Commonwealth funding provided to grant recipients under the *Financial Framework (Supplementary Powers) Act 1997*. The relevant delegate will have experience in program management responsibility to ensure the proper administration of the NJPT.

The NIAA is responsible for administering the assessment and selection process. A panel of NIAA staff will assess each application before recommending them to the delegate, to determine which grant applications should be awarded a grant. The recommendation will be based on the merits of the application including consideration of the assessment, risk and value with relevant money, priority areas of need, and availability of funding. The assessment staff will be made up of NIAA staff from the Economic Empowerment Group, a Regional Office assessor, and the applicable Regional Manager.

Funding decisions made in connection with the grant opportunity for the NJPT are not considered appropriate for independent merits review because these decisions relate to the provision of a one-off grant to certain service providers, over other service providers. The Administrative Review Council has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.16 to 4.17 of the guide, *What decisions should be subject to merit review?*).

The review and audit process undertaken by the Australian National Audit Office 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. Individual persons affected by grant decisions also have recourse to the Commonwealth Ombudsman where appropriate.

The NIAA has engaged with local communities about the NJPT since 2022. Initially, local co-design groups were part of the previous government's approach to replacing CDP. Each local co-design group included representatives from First Nations community-controlled organisations, Traditional Owners, other First Nations leadership or cultural authority groups, the relevant CDP provider, significant local employers and state and local government representatives.

In November 2022, co-design workshops for the NJPT were held in the Mid-West/West, WA, and Barkly, NT, followed by a co-design workshop for Eyre Region, SA in December 2022. The co-design groups had already started discussing local labour market conditions and possible job opportunities, and held discussions focussed on a new remote jobs program and what this might look like in their region.

The NIAA will monitor and collect evidence and learnings from the grant activity. The NIAA has engaged an independent consultant to work with selected trial funding recipients and the community to understand successes, learnings and individual and community views of the NJPT. NIAA Regional Office staff will regularly update communities on progress and seek views on what works.

Total funding of \$15.8 million over three years from 2022-23 for the NJPT was included in the 2022-23 Budget under the measure ‘Replacing the Community Development Program with a New Jobs Program – trial’ and the 2023-24 Budget under the measure ‘Closing the Gap – further investment’. Details are set out in *Budget October 2022-23, Budget Measures, Budget Paper No. 2* at page 173 and in *Budget 2023-24, Budget Measures, Budget Paper No. 2* at page 190 respectively.

Funding for this item will come from Program 1.1: Jobs, Land and the Economy, which is part of Outcome 1. Details are set out in the *Portfolio Budget Statements 2022-23, Budget Related Paper No. 1.13, Prime Minister and Cabinet Portfolio* at page 200, and *Portfolio Budget Statements 2023-24, Budget Related Paper No 1.13, Prime Minister and Cabinet Portfolio* at page 195.

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 social welfare power (section 51(xxiiiA)); and
- the external affairs power (section 51(xxix)).

#### *Social welfare power*

Section 51(xxiiiA) of the Constitution empowers the Parliament to make laws with respect to the provision of certain social welfare benefits, such as unemployment benefits.

Funding under the NJPT will facilitate the provision of material aid to identified or identifiable persons who are unemployed.

#### *External affairs power*

Section 51(xxix) of the Constitution empowers the Parliament to make laws with respect to ‘external affairs’. The external affairs power supports legislation implementing Australia’s international obligations under treaties to which it is a party.

Australia has obligations relating to the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and the International Labour Organization's *Convention concerning Employment Policy* (ILO Convention 122).

Article 2(1) of the ICESCR provides that States Parties shall take steps to realise the rights recognised in the ICESCR. Article 6 of the ICESCR obliges States Parties to take steps to achieve the full realisation of the right to work that include ‘technical and vocational guidance and training programmes, policies and techniques to achieve ... full and productive employment.’

Article 1 of ILO Convention 122 requires each Member to ‘declare and pursue, as a major goal, an active policy designed to promote full and freely chosen employment’ and further provides that the policy shall, among other objectives, ‘aim at ensuring there is work for all who are available for and seeking work.’ Article 2 requires each Member to ‘take such steps as may be needed, including where appropriate the establishment of programmes’ to achieve the objectives specified in Article 1.

In creating and sustaining jobs and employment in eligible regions, the NJPT aims to promote full and productive employment in regions where unemployment is high, and full and freely chosen employment in those regions.

## **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. 2) 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. 2) Regulations 2024* (the Regulations) amend Schedule 1AB to the FFSP Regulations to establish legislative authority for government spending on the New Jobs Program Trial (NJPT). The NJPT is administered by the National Indigenous Australians Agency within the Prime Minister and Cabinet portfolio.

The NJPT responds to the Government's 2022 election commitment for a new program to replace the Community Development Program (CDP). The NJPT will be developed in partnership with First Nations people to inform the design of a new Remote Jobs and Economic Development program for real jobs, proper wages and decent conditions.

The NJPT was initially rolled out in September 2023, providing up to \$15.8 million in funding to support 200 jobs in 17 of the 60 current CDP regions until 31 October 2024. The NJPT aims to provide pathways for CDP participants to move off income support and into genuine employment, as well as to provide increased economic opportunities in remote areas.

Community organisations and local governments in targeted CDP regions, are being funded to cover wages at the minimum wage rate, including leave and superannuation entitlements, for jobs that support community priorities.



## Human rights implications

This disallowable legislative instrument engages the following rights:

- the right to work and rights in work – Articles 6 and 7 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), read with Article 2 and Article 1 of the International Labour Organization’s *Convention concerning Employment Policy* (ILO Convention 122);
- the rights of equality and non-discrimination – Articles 3, 16 and 26 of the *International Covenant on Civil and Political Rights* (ICCPR), read with Article 2, Article 5 of the *International Convention on the Elimination of All Forms of Racial Discrimination* (CERD), read with Article 2 and Article 5 of the *Convention on the Rights of Persons with Disabilities* (CRPD), read with Article 4; and
- the rights of Indigenous Peoples – Article 17 of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP).

### Right to work and rights in work

Article 2(1) of the ICESCR requires that each State Party 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 realisation of the rights recognised, by all appropriate means, including particularly the adoption of legislative measures.

Article 6(1) of the ICESCR recognises the right of everyone to work, including the opportunity to gain their living by work which they freely choose or accept. Article 6(2) of the ICESCR further provides that the progressive realisation of this right by States includes implementing policies which facilitate full and productive employment.

Article 7 of the ICESCR recognises the right of everyone to just, favourable and safe conditions of work, including fair wages, equal pay and conditions for women and men and periodic paid holidays.

Article 1 of the ILO Convention 122 provides that ‘each Member shall declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment’.

The NJPT positively engages with the right to work by incentivising the provision of jobs for job seekers in remote Australia, with a view to their future engagement in paid work in the open labour market.

The NJPT positively engages with the rights in work by creating opportunities for remote job seekers to enjoy employment in jobs paid at the minimum wage with conditions including paid leave, superannuation entitlements and other conditions of work under Australian employment law.

### Rights of equality and non-discrimination

Article 2(1) of the ICCPR requires that each State Party undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion,

national or social origin, property, birth or other status. Article 2(2) of the ICCPR requires, where not already provided for by existing legislative or other measures, each State Party to undertake to take the necessary steps to adopt such laws or other measures as may be necessary to give effect to the rights recognised.

Article 2(1)(c) of the CERD requires each State Party to take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists.

Article 4(1)(a) of the CRPD requires each State Party to adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognised.

The rights of equality and non-discrimination are contained in Articles 3, 16 and 26 of the ICCPR, Article 5 of the CERD and Article 5 of the CRPD. These rights recognise that all human beings have the right to be treated equally and not to be discriminated against.

The NJPT positively engages with the rights of equality and non-discrimination by providing opportunities for remote job seekers to enjoy employment. The application of the NJPT in remote Australia is intended to address the inherent lack of employment opportunities and consequential disadvantage experienced in parts of remote Australia and elevate the situation of remote job seekers to a standard comparable to those living in non-remote regions.

#### *Rights of Indigenous Peoples*

The UNDRIP contains provisions relevant to the right of Indigenous peoples to work and rights in work and informs the way governments engage with and protect the rights of Indigenous peoples.

Article 17 of the UNDRIP recognises Indigenous peoples right to enjoy fully all rights established under applicable international and domestic labour law and to not be subject to any discriminatory conditions of labour, employment or salary.

The NJPT positively engages with the UNDRIP by providing opportunities for Indigenous people to enjoy employment in jobs paid at the minimum wage with conditions including paid leave, superannuation entitlements and other conditions of work under Australian employment law.

#### **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**