

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance

Financial Framework (Supplementary Powers) Act 1997

*Financial Framework (Supplementary Powers) Amendment
(Defence 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 FFSP 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 (Defence Measures No. 1) Regulations 2024* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for the Government to provide grants to the United Kingdom of Great Britain and Northern Ireland as a financial contribution to the International Fund for Ukraine (IFU). The payment is administered by the Department of Defence.

The IFU is administered by the United Kingdom's Ministry of Defence and uses international partners' contributions to procure priority military equipment for Ukraine and ensure the continued supply of military support, both lethal and non-lethal.

Funding of \$50.0 million in 2023-24 will be available for the IFU.

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 Defence.

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 (Defence Measures No. 1) Regulations 2024*

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Defence 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 3 of Schedule 1AB (table)

This item inserts one new table item to Part 3 of Schedule 1AB to establish legislative authority for government spending on an activity to be administered by the Department of Defence (the department).

New **table item 81** establishes legislative authority for the Government to provide grants to the United Kingdom (UK) of Great Britain and Northern Ireland as a financial contribution to the International Fund for Ukraine (IFU).

On 15 February 2024, the Australian Government announced it would provide a \$50.0 million grant funding to the IFU ahead of the second anniversary of Russia's brutal full-scale invasion. The Australian Government remains steadfast in its commitment to support Ukraine and the Ukrainians who are defending their people, their territory, and their sovereignty. The media release is available at <https://www.pm.gov.au/media/50-million-australian-support-international-fund-ukraine>.

The IFU is administered by the UK Ministry of Defence on behalf of an executive panel comprising the UK, Norway, the Netherlands, Denmark, Sweden and Lithuania. These partners, along with Iceland, provide funds that are then used to procure priority military equipment for Ukraine under a fast-tracked process.

The purpose of the IFU is to ensure the continued supply of military support, both lethal and non-lethal to Ukraine through 2024 and beyond. Funding to the IFU will further the Government's policy of supporting Ukraine as it defends itself against Russia's illegal and immoral invasion.

The department will deliver the payments through a closed non-competitive grant process 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).

The First Assistant Secretary, International Policy Division within the department will hold delegated authority to directly administer the payments under the *Financial Framework (Supplementary Powers) Act 1997*.

Details of the grant recipient will be published no later than 14 working days after the funding agreement for the grant takes effect, in accordance with the CGRGs. This information will be retained on the department website for at least two financial years and published on the GrantConnect website (help.grants.gov.au).

Merits review of decisions made in connection with the grant would not be considered appropriate because these decisions relate to the provision of a one-off grant to a certain service provider, over other service providers. The Administrative Review Council (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 guide, *What decisions should be subject to merit review?*).

The ARC suggests that administrative accountability is still required, and that the process for allocating funds under a grant program must be fair and the criteria for funding must be made clear. Further, decisions relating to grant funding must be made objectively. The department considers that these requirements will be met because of the detailed and robust governance arrangements surrounding the administration of the program.

Complainants who are dissatisfied with a decision relating to a grant under this program may approach the Commonwealth Ombudsman.

The department has consulted stakeholder entities in the development of the program including the Department of Foreign Affairs and Trade and the Department of the Prime Minister and Cabinet. The proposed approach was also discussed during an interdepartmental committee on Ukraine with agencies acknowledging the department's proposed approach. Public consultation was not considered appropriate for this program.

Funding of \$50.0 million in 2023-24 for the program will be included in the 2024-25 Budget and the Portfolio Budget Statements, Defence Portfolio. Funding will come from Program 2.1: Strategy, Policy and Industry, which is part of Outcome 2.

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 confers power on the Commonwealth Parliament to make laws with respect to ‘external affairs’. The external affairs power supports legislation with respect to matters or things outside the geographical limits of Australia.

The activities that are supported by this grant will take place outside the geographical border of Australia. The funds would support procurement activities in the UK and the equipment purchased would be sent to Ukraine.

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 (Defence 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 (Defence Measures No. 1) Regulations 2024* amend Schedule 1AB to the FFSP Regulations to establish legislative authority for the Government to provide grants to the United Kingdom (UK) of Great Britain and Northern Ireland as a financial contribution to the International Fund for Ukraine (IFU). Grant payments will be administered by the Department of Defence.

The IFU is administered by the UK Ministry of Defence on behalf of an executive panel comprising the UK, Norway, the Netherlands, Denmark, Sweden and Lithuania. These partners, along with Iceland, provide funds that are used to procure priority military equipment for Ukraine under a fast-tracked process. The purpose of the IFU is to ensure the continued supply of military support, both lethal and non-lethal, to Ukraine through 2024 and beyond.

Funding of \$50.0 million in 2023-24 will be available for the IFU.

Human rights implications

This disallowable legislative instrument does not engage any of the applicable human rights or freedoms.

Conclusion

This disallowable legislative instrument is compatible with human rights as it does not raise any human rights issues.

**Senator the Hon Katy Gallagher
Minister for Finance**