

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance

Financial Framework (Supplementary Powers) Act 1997

*Financial Framework (Supplementary Powers) Amendment
(Finance Measures No. 1) Regulations 2024*

The *Financial Framework (Supplementary Powers) Act 1997* (the FFSP Act) confers on the Commonwealth, in certain circumstances, powers to make arrangements under which money can be spent; or to make grants of financial assistance; and to form, or otherwise be involved in, companies. The arrangements, grants, programs and companies (or classes of arrangements or grants in relation to which the powers are conferred) are specified in the *Financial Framework (Supplementary Powers) Regulations 1997* (the Principal Regulations). The powers in the FFSP Act to make, vary or administer arrangements or grants may be exercised on behalf of the Commonwealth by Ministers and the accountable authorities of non-corporate Commonwealth entities, as defined under section 12 of the *Public Governance, Performance and Accountability Act 2013*.

The Principal Regulations are exempt from sunseting under section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (item 28A). If the Principal Regulations were subject to the sunseting regime under the *Legislation Act 2003*, this would generate uncertainty about the continuing operation of existing contracts and funding agreements between the Commonwealth and third parties (particularly those extending beyond 10 years), as well as the Commonwealth's legislative authority to continue making, varying or administering arrangements, grants and programs.

Additionally, the Principal Regulations authorise a number of activities that form part of intergovernmental schemes. It would not be appropriate for the Commonwealth to unilaterally sunset an instrument that provides authority for Commonwealth funding for activities that are underpinned by an intergovernmental arrangement. To ensure that the Principal Regulations continue to reflect government priorities and remain up to date, the Principal Regulations are subject to periodic review to identify and repeal items that are redundant or no longer required.

Section 32B of the FFSP Act authorises the Commonwealth to make, vary and administer arrangements and grants specified in the Principal Regulations. Section 32B also authorises the Commonwealth to make, vary and administer arrangements for the purposes of programs specified in the Principal Regulations. Section 32D of the FFSP Act confers powers of delegation on Ministers and the accountable authorities of non-corporate Commonwealth entities, including subsection 32B(1) of the Act. Schedule 1AA and Schedule 1AB to the Principal Regulations specify the arrangements, grants and programs.

Section 65 of the FFSP Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Financial Framework (Supplementary Powers) Amendment (Finance Measures No. 1) Regulations 2024* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on the Australian Political Parties for Democracy (APPD) program. The APPD program is administered by the Department of Finance.

The APPD program provides grants to Australian political parties for activities directed at assisting in the development of democratic political party systems in other countries. Qualifying political parties are currently the Australian Labor Party, the Liberal Party of Australia (including on behalf of The Nationals) and the Australian Greens.

Grants funding of \$6.6 million over three years from 2023-24 is available for the APPD program.

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 occurred with the qualifying political parties.

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 (Finance Measures No. 1) Regulations 2024*

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Finance Measures No. 1) Regulations 2024*.

Section 2 – Commencement

This section provides that the Regulations commence on the day after registration on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the Regulations are made under the *Financial Framework (Supplementary Powers) Act 1997*.

Section 4 – Schedules

This section provides that the *Financial Framework (Supplementary Powers) Regulations 1997* are amended as set out in the Schedule to the Regulations.

Schedule 1 – Amendments

Financial Framework (Supplementary Powers) Regulations 1997

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

This item adds one new table item to Part 4 of Schedule 1AB to establish legislative authority for government spending on an activity to be administered by the Department of Finance (the department).

Table item 664 – Australian Political Parties for Democracy

New **table item 664** establishes legislative authority for government spending on the Australian Political Parties for Democracy (APPD) program.

The main objective of the APPD program is for qualifying political parties (the Australian Labor Party, the Liberal Party of Australia - including on behalf of The Nationals, and the Australian Greens) to assist with the development of democratic political party systems in other countries.

Established in 2005, the APPD program aims to encourage representative, accountable, inclusive and transparent democratic political parties; support effective, responsive and sustainable democratic party processes; promote shared learning about democratic practices and integrity in party processes; and encourage international cooperation between democratic political parties.

Grants funding of \$6.6 million over three years from 2023-24 are available for eligible political parties (currently the Australian Labor Party, the Liberal Party of Australia - including on behalf of The Nationals, and the Australian Greens) to support the following activities:

- capacity building (through exchanges and learning and information sharing opportunities including through international coordination bodies) of participating institutions with individuals involved in the party system to assist with the formation, organisation and management of democratic political parties;
- assistance (through mentoring/coaching, exchanges, workshops and training) with the development of effective leadership structures within political parties, and strengthened election processes and decision-making processes within the party;
- assistance with the development of inclusive party activity that provides opportunities for public engagement in the political process, including through election campaigns, policy development, and party-building work; and
- facilitating contact-free and/or remote interactions, for example through video conferencing and on-line learning and development. This does not include the purchase of information technology supplies and other hardware such as televisions, tablets, telephones (mobile, smart or other), video and/or digital cameras, sound and/or broadcasting equipment, webcams, microphones or otherwise.

Eligible funding recipients are only able to spend grant funds on eligible activities and administrative costs as defined in the APPD program Grant Guidelines and their grant agreement.

Qualifying political parties are required to submit a separate application for each tranche (financial year) indicating the proposed activities and funding amount relevant to that tranche for consideration by the department's delegate. For each activity proposed in the application, details such as name of activity and timing, organisation/country to be assisted/visited and specific tasks and estimated costs (split into project, administrative and/or other expenses) need to be included. The assessment criteria also require a summary justifying the chosen activity and its alignment to the objectives and aims of the program, what the activity will achieve and how outcomes will be measured.

If the grant is approved, the application and signed Letter of Agreement forms a legally binding agreement between the Commonwealth, represented by the department, and the political party, who is responsible for the delivery of the approved grant activities. Grant funding is generally provided to the party in advance of the period of approved activities to which they relate, subject to the terms and conditions of the grant agreement.

Approved grant funding must be incurred between the start date, and end (or completion) date, for it to be eligible. Grant funds cannot be pooled or carried across financial years, nor is it possible to draw upon other financial years' allocations to fund activities from within the financial year for which they are claimed. If planned activities are expected to cross financial years, a detailed description and breakdown of costs, per financial year, is required with the application.

Grant funds cannot be used for financial contributions to other countries' political parties, or candidates, or for any activities determined reasonably to be contrary to Australia's interests. This includes activities that could be perceived to be interfering in other countries' political sovereignty or activities that support independence movements. Grant funds may be used to support travel by Australian party officials, but not by federal Australian parliamentarians.

Eligible funding recipients must submit reports in line with their grant agreement and APPD program Grant Guidelines including an Expenditure Progress Report, Activity Completion Report and an Acquittal Statement.

Funding amount and arrangements, merits review and consultation

Funding of \$6.6 million over three years from 2023-24 for the APPDP program comes from Program 3.1: Ministerial and Parliamentary Services, which is part of Outcome 3. Details are set out in the *Portfolio Additional Estimates Statements 2023-24, Finance Portfolio* at page 40.

The APPD program is delivered as a closed non-competitive grant process where applicants are invited by the entity to submit applications for the grant. Applications/proposals are not assessed against other applicants' submissions but assessed individually against the grant assessment criteria.

The *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and the *Commonwealth Grants Rules and Guidelines 2017* (CGRGs) govern the program and administration of funding, requiring that all commitments of public resources to be efficient, effective, economical and ethical.

The department will administer the grant. The APPD program grant is assessed by departmental officials on the merits of the application relative to the grant guidelines and the prime consideration of achieving value with relevant money. The Assistant Secretary responsible for the APPD program decides which grants to approve taking into account the availability of grant funds for the purposes of the grant program.

The APPD program grant opportunity guidelines as well as grants awarded, are listed on GrantConnect (help.grants.gov.au).

Merits review of decisions made in connection with the APPD program grant would not be considered appropriate. The grant is delivered as a closed non-competitive process with finite amount of funding available for each financial year. The allocation of funding is fixed and any variation to the funding will require further consideration from the Government. In line with the Commonwealth Grants Policy Framework, grants cannot exceed the amount of available funds. In addition, the Government determined the Australian Labor Party, the Liberal Party of Australia (including on behalf of The Nationals) and the Australian Greens to be eligible to apply for a grant. This means an allocation that has already been made to another party would be affected by overturning the original decision. The Administrative Review Council has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.11 to 4.15 of the guide, *What decisions should be subject to merit review?*).

The department consulted with the qualifying political parties on the APPD program Grant Guidelines prior to its release in July 2023. These political parties, as the recipients of the grants, and the organisations who are likely to be affected by the program, were consulted on the design and development of the guidelines.

Statement of relevant constitutional considerations

Noting that it is not a comprehensive statement of relevant constitutional considerations, the objective of the item references the following powers in the Constitution:

- the external affairs power (section 51(xxix));
- the communications power (section 51(v)); and
- the executive power and express incidental power (sections 61 and 51(xxxix)).

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, and legislation with respect to matters concerning Australia's relations with other nations.

The main purpose of the APPD program is to assist with the development of democratic political party systems in other countries, and activities eligible to be funded include those that would take place overseas or involve support to persons overseas. It is thereby likely to establish or enhance Australia's relationships with those countries.

Communications power

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

Eligible activities for APPD program grants may include facilitating contact-free and/or remote interactions, for example through video conferencing and on-line learning and development, between Australian political parties and political parties in other countries.

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 the execution and maintenance of the Constitution.

The grants will assist with information sharing, interactions and exchanges by Australian political parties with overseas counterparts which will help build their capacity and so ensure the effectiveness of Australia's parliamentary system.

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 (Finance 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 Principal 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 Principal Regulations specify the arrangements, grants and programs. The powers in the FFSP Act to make, vary or administer arrangements or grants may be exercised on behalf of the Commonwealth by Ministers and the accountable authorities of non-corporate Commonwealth entities, as defined under section 12 of the *Public Governance, Performance and Accountability Act 2013*.

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Established in 2005, the APPD program aims to encourage representative, accountable, inclusive and transparent democratic political parties; support effective, responsive and sustainable democratic party processes; promote shared learning about democratic practices and integrity in party processes; and encourage international cooperation between democratic political parties.

Grant funding of \$6.6 million over three years from 2023-24 is available for the program.

Human rights implications

This disallowable legislative instrument engages the following rights:

- the right of self determination – Article 1 of the *International Covenant on Civil and Political Rights* (ICCPR) read with Article 2;
- the right to freedom of expression – Article 19 of the ICCPR;
- the right to freedom of association – Article 22 of the ICCPR; and

- the right to take part in the conduct of public affairs, directly or through freely chosen representatives – Article 25 of the ICCPR.

Article 2 of the ICCPR requires each State Party to undertake to respect and ensure the rights recognised in the ICCPR, adopt laws or other measures to give effect to these rights, and ensure an effective remedy to any person whose rights recognised in the ICCPR are violated.

Right of Self Determination

Article 1 of the ICCPR provides that all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Right to freedom of expression

Article 19.1 of the ICCPR provides that everyone shall have the right to hold opinions without interference. The APPD program supports these rights through grants to help build the capacity of parties that support the free expression of political opinions in the democratic process. Democracy provides an environment that supports and respects human rights, allowing freedom for individuals to exercise self determination.

Right to freedom of expression

Article 22.1 of the ICCPR provides that everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests. The APPD program supports this right by assisting people to form, organise and manage democratic political parties.

Right to take part in the conduct of public affairs, directly or through freely chosen representatives

Article 25(a) of the ICCPR provides that every citizen shall have the right and the opportunity to take part in the conduct of public affairs, directly or through freely chosen representatives. The APPD program supports this right by supporting the development of inclusive party activity that provides opportunities for public engagement in the political process and effective, responsive and sustainable democratic processes.

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**