

## **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. 3) 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 (Infrastructure, Transport, Regional Development, Communications and the Arts Measures No. 3) Regulations 2024* (the Regulations) amend table item 33 in Part 3 of Schedule 1AB to the Principal Regulations to establish legislative authority for the government to provide grants to Free TV Australia Ltd (Free TV) to distribute Australian television content in the Indo-Pacific region for transmission by local broadcasters (PacificAus TV). These grants will be administered by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts.

Formed in 1960, the Federation of Australian Commercial Television Stations (now known as Free TV) is an established industry representative of all of Australia's commercial free-to-air broadcasters. Free TV has received funding from the Government since 2019 to make programming rights to Australian content available to South Pacific broadcasters.

PacificAus TV's objective is to project an accurate image of modern Australia through increased access to high quality, trusted and credible content, contributing to a diversity of media in the Indo-Pacific. Providing news and information content strengthens Australia's contribution to discussion on issues of regional importance, whilst entertainment content showcases Australia's lifestyle and culture.

Additional funding of \$11.4 million over two years from 2023-24 is provided to Free TV to make broadcast rights to at least 2,000 hours of Australian television content available to broadcasters in the following South Pacific countries: Papua New Guinea, Fiji, Vanuatu, Solomon Islands, Kiribati, Tuvalu, Nauru, Tonga and Samoa. This content includes lifestyle programs, news, current affairs, children's programs, drama, reality TV and sport.

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 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.

**Details of the *Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development, Communications and the Arts Measures No. 3) 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. 3) 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 – Part 3 of Schedule 1AB (table item 33)**

This item amends one table item in Part 3 of Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on an activity administered by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the department).

**Table item 33 – Grants to Free TV Australia Ltd**

Item 1 amends table item 33 in Part 3 of Schedule 1AB by repealing and substituting the full text of the item. The amended table item 33 establishes legislative authority for the Government to provide grants to Free TV Australia Ltd (Free TV) to distribute Australian television content in the Indo-Pacific region for transmission by local broadcasters (PacificAus TV).

Formed in 1960, the Federation of Australian Commercial Television Stations (now known as Free TV) is an established industry representative of all of Australia's commercial free-to-air broadcasters. Since 2019, the Government has committed total funding of \$34.1 million to Free TV to make programming rights to Australian content available to South Pacific broadcasters.

The amended table item 33 will broaden Free TV's distribution into the Indo-Pacific region. The objective of the initiative is to project an accurate image of modern Australia through increased access to high quality, trusted and credible content, contributing to a diversity of media in the Indo-Pacific. Providing news and information content strengthens Australia's contribution to discussion on issues of regional importance, whilst entertainment content showcases Australia's lifestyle and culture.

The intended outcome of the initiative is to maintain Australia's broadcasting voice in the Indo-Pacific region by providing content to broadcast partners in the Pacific. Partners make independent decisions on the programming of content provided, ensuring the content meets audience and broadcasting needs and complies with all relevant requirements in each jurisdiction.

In the 2023-24 Budget, the Government provided an additional \$23.0 million over four years from 2023-24 to extend the PacificAus TV initiative and maintain Australia's broadcasting voice in the Pacific region until 30 June 2027. The continuation of funding for this initiative is part of the Australian Government's commitment to deliver an Indo-Pacific Broadcasting Strategy, which aims to boost the availability of Australian content, deepen media connections and strengthen the resilience of media outlets in the region.

Under the first two years of funding included in the 2023-24 Budget (2023-24 to 2024-25), Free TV will make broadcast rights to at least 2,000 hours of Australian television content available to broadcasters in the following nine South Pacific countries: Papua New Guinea, Fiji, Vanuatu, Solomon Islands, Kiribati, Tuvalu, Nauru, Tonga and Samoa. This content includes lifestyle programs, news, current affairs, children's programs, drama, reality TV and sport.

As part of its funding obligations, Free TV is also required to scope the possibility of bringing content rights to additional Indo-Pacific countries and territories, including but not limited to: the Federated States of Micronesia, Republic of Marshall Islands, Palau, Cook Islands, Niue, New Caledonia, French Polynesia and Timor-Leste. The second two years of funding will be delivered following a mid-point review to determine if the existing delivery model remains fit for purpose.

#### *Funding amount and arrangements, merits review and consultation*

Total funding of \$23.0 million for the program was included in the 2023-24 Budget under the measure 'Enhancing Pacific Engagement' for a period of four years commencing in 2023-24. Details are set out in *Budget 2023-24, Budget Measures, Budget Paper No. 2* at page 119.

Funding for this item will come from Program 5.1: Digital Technologies and Communications Services (administered) and Program 5.2: Program Support for Outcome 5 (departmental), which is 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.

Grant funding to Free TV from 2023 to 2025 is being delivered as a non-competitive grant. The grant is administered in accordance with the Commonwealth resource management framework, including the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and the *Commonwealth Grants Rules and Guidelines 2017* (CGRGs).

Funding decisions will be made objectively, and in accordance with the assessment process set out in the grant opportunity guidelines and applicable legislative requirements under the PGPA Act.

The grant is administered by the department. As the program delegate, a Senior Executive Service (SES) officer in the department is responsible for the approval of the grant and the grant funding amount to be awarded. Program officers within the department provide a recommendation following assessment of the application against the assessment criteria and in accordance with the grant guidelines.

The grant guidelines will include outcomes and objectives, eligibility and merit criteria, details of the assessment process, contracting arrangements and a timeline. The grant guidelines are publicly available on GrantConnect at [help.grants.gov.au](https://help.grants.gov.au).

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 are made according to an agreed schedule set out in the grant agreement. Payments are subject to satisfactory progress on the project.

Free TV is required to provide annual financial statements as well as an independently audited financial statement, which will verify that they have spent the grant in accordance with the grant agreement.

Merits review of decisions made in connection with the grant would not be considered appropriate because these decisions relate to the provision of a non-competitive 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?* (ARC guide)).

Free TV was determined to be an appropriate organisation to pursue a non-competitive grant after a due diligence process. The process for the grant involved the consideration of the suitability of other providers, an assessment of Free TV's delivery of the previous PacificAus TV grant agreement from 2019 to 2023, and the development of a mid-point review process. Free TV was identified as the appropriate recipient as it has proven to be a strong delivery

manager for the program since 2019, and given its role as the central repository of commercial industry content knowledge and ability to draw widely on its comprehensive commercial television network member base, as well as acquiring content from the national broadcasters.

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. Persons affected by spending decisions would also have recourse to the Commonwealth Ombudsman where appropriate.

Consultation with the Department of Foreign Affairs and Trade (DFAT) and Free TV continues to be undertaken by the department as part of ongoing delivery of the PacificAus TV program.

The department, in collaboration with Free TV and DFAT, will continue to consult with Indo-Pacific broadcasters and overseas Australian diplomatic posts to determine what content is in demand by Indo-Pacific audiences, to ensure that the most relevant and appropriate content is delivered. Ultimately, Indo-Pacific broadcasters in the participating countries and territories will have full determination over their programming rights.

#### *Statement of relevant constitutional considerations*

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

Funding for the PacificAus TV program will involve the distribution of Australian programming rights to broadcasters external to Australia. The funding will also promote Australian values in the Indo-Pacific region and the presence of Australian media with Indo-Pacific nations.

## **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. 3) 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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Solomon Islands, Kiribati, Tuvalu, Nauru, Tonga and Samoa. This content includes lifestyle programs, news, current affairs, children’s programs, drama, reality TV and sport.

### **Human rights implications**

This disallowable legislative instrument engages the following rights:

- the rights of all people to take part in cultural life – Article 15 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), read with Article 2; and
- the right to freedom of expression – Article 19 of the *International Covenant on Civil and Political Rights* (ICCPR), read with Article 2.

#### *Rights of all people to take part in cultural life*

Article 2 of the ICESCR requires States Parties to take steps to progressively achieve the full realisation of the rights recognised in the Covenant by all appropriate means.

Article 15 of the ICESCR recognises the rights of all people to take part in cultural life.

The UN Committee on Economic, Social and Cultural Rights has given a very broad interpretation to the term ‘culture’. This could potentially include the ability to access cultural events through viewing these events on television. The measure is expected to include programming rights relating to Australian content about sporting-related events, drama, comedy, children’s content, lifestyle and art among others. Arguably, the measure promotes both the right to receive information and to take part in cultural life or enjoy culture in the form of the broadcast television content.

PacificAus TV upholds the rights outlined in Article 15 by promoting the ability of Indo-Pacific audiences to participate in cultural life by accessing Australian television content via local free-to-air broadcasters.

Additionally, as outlined in the Parliamentary Joint Committee on Human Rights Guide to Human Rights, the right to culture is a key human right that Australia has commitments to uphold. PacificAus TV upholds the right to culture by making cultural goods and services (in this context, broadcast television content) available for everyone to enjoy.

This disallowable legislative instrument impacts on cultural life and consequently must be culturally appropriate.

#### *Right to freedom of expression*

Article 2(1) of the ICCPR requires States Parties to the Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the Covenant, 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 19(2) of the ICCPR recognises the right to freedom of expression, including the right to 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 a person’s choice.



PacificAus TV upholds the rights outlined in Article 19 by increasing access to a wide variety of information and ideas (through broadcast television content) in the Indo-Pacific.

### **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**