**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. 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 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 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. 2) Regulations 2024* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on the Support to Peacebuilding and Peacekeeping program to be administered by officials within the Department of Defence.

Grant funding of $14.0 million over two years from 2024‑25 will be available for activities outside Australia to support the Government’s commitment to the United Nations and the global rules-based order.

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.

**Attachment A**

**Details of the *Financial Framework (Supplementary Powers) Amendment***

***(Defence Measures No. 2) Regulations 2024***

**Section 1 – Name**

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Defence 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 – Part 4 of Schedule 1AB**

Item 1 inserts new table item 683 in Part 4 of Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on the Support to Peacebuilding and Peacekeeping program (the program) to be administered by the Department of Defence (the department).

The program will provide grant payments to the United Nations (UN) and related peacebuilding and peacekeeping organisations that provide support to peacebuilding and peacekeeping activities outside Australia. The is expected to increase the scope of recipients of, and diversify Australia’s contributions to, peacebuilding and peacekeeping according to our multilateral strategic objectives.

In particular, the department will make grant payments to the following recipients:

* **The UN Department of Peace Operations and Department of Operational Support** to support ongoing improvements and innovations in the performance and safety of peacekeeping missions. Funding will also support the development of an Environmental Management Training Course. The training will focus on improving environmental and climate conscious management practices in UN peacekeeping missions. Climate change issues remain a high priority for our Pacific partners.
* **The Elsie Initiative Fund** to support projects targeting barriers to uniformed women’s participation in peace operations. Australia has been a key financial contributor since 2019 and is the third largest donor to the Fund.
* **UN Women** to enable UN Women to deliver one iteration of the Women’s Military Peace Operations Course in Thailand in 2024. The pre‑deployment course prepares female military officers for UN peacekeeping roles. Funding this training enhances Australia’s reputation as a leader in implementing the UN Women, Peace and Security Agenda.

*Funding amount and arrangements, merits review and consultation*

Funding of $14.0 million for the program was included in the 2024–25 Budget under the measure ‘Defence Assistance – regional and global support’ for a period of two years commencing in 2024–25. Details are set out in *Budget 2024–25, Budget Measures, Budget Paper No. 2 2024–25* at page 78.

Funding for this item will come from Program 2.1: Strategy, Policy, and Industry, which is part of Outcome 2. Details are set out in the *Portfolio Budget Statements 2024–25, Budget Related Paper No. 1.4A* at page 52.

Although the foreword of the *Commonwealth Grants Rules and Guidelines 2017* (CGRGs) refers to grant hubs as the means by which grants may be administratively supported, this item is excluded from that requirement as the hubs have a domestic grants focus and do not have the necessary authorities to develop and manage international legal instruments and agreements; this rests with specialists within the Department of Defence under the *Legal Services Directions 2017*.

It is intended that the First Assistant Secretary, International Policy Division within the department would hold delegated authority from the Secretary of Defence to administer the payments under section 32D of the *Financial Framework (Supplementary Powers) Act 1997*.

This grant opportunity has been established as a closed non-competitive (non-application based) grant. The UN and related peacebuilding and peacekeeping organisations are the only eligible recipients for this grant opportunity.

Details of the grant recipient will be published no later than 21 days after the funding agreement for the grant takes effect, in accordance with the CGRGs.

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 recipient, in circumstances where there may not be another recipient, or where one recipient may be selected over another recipient. Decisions relate to the allocation of a finite resource, from which all potential claims for a share of the resource cannot be met and any funding that has already been allocated would be affected if the original decision was overturned. The Administrative Review Council (ARC) has recognised 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)).The ARC has acknowledged that no effective remedy could be provided, as a successful application for review by one service provider would require a reduction in funding to other service providers.

The ARC guide 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. Defence considers that these requirements will be met, given the detailed and robust governance arrangements surrounding the administration of the program. The grants will be administered in accordance with the Commonwealth’s resource management framework, including the *Public Governance, Performance and Accountability Act 2013* and the CGRGs.

Defence has consulted the Department of Foreign Affairs and Trade and the Department of Finance in the development of the program. Public consultation is not necessary or appropriate given the program is an existing program and is a closed non‑competitive (non‑application based) grant.

*Constitutional considerations*

Noting it is not a comprehensive statement of relevant constitutional considerations, the objective of the item references the external affairs power (s 51(xxix)) in 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.

The grant payments under this program will be used for peacebuilding and peacekeeping activities that will take place outside of Australia.

**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 (Defence 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 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*.

The *Financial Framework (Supplementary Powers) Amendment (Defence Measures No. 2) Regulations 2024* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on the Support to Peacebuilding and Peacekeeping program (the program) which will be administered by the Department of Defence.

This disallowable legislative instrument inserts table item 683 ‘Support for peacebuilding and peacekeeping’ in Part 4 of Schedule 1AB.

The program provides grant payments to the United Nations (UN) and related peacekeeping organisations that provide support to peacebuilding and peacekeeping activities outside Australia. The UN views Australia as a dependable and pragmatic partner, capable of providing niche contributions to peace operations through training and capacity building, and financial commitments.

The grant funding for the peace operations program will contribute to the UN and related peacekeeping organisations in education, training, capacity building, research, and improved equipment. It is expected to increase the scope of recipients and diversify Australia’s contributions to peacekeeping according to our multilateral strategic objectives.

Funding of $14.0 million is available over two years from 2024-25 for the peace operations program to make grant payments to the following recipients:

* **The UN Department of Peace Operations and Department of Operational Support** to:
	+ support ongoing improvements and innovations in the performance and safety of peacekeeping missions; and
	+ support the development of an Environmental Management Training Course. The training will focus on improving environmental and climate conscious management practices in UN peacekeeping missions. Climate change issues remain a high priority for our Pacific partners.
* **The Elsie Initiative Fund** – to support projects targeting barriers to uniformed women’s participation in peace operations. Australia has been a key financial contributor since 2019 and is currently the third largest donor to the Elsie Initiative Fund.
* **UN Women** – to enable UN Women to deliver one iteration of the Women’s Military Peace Operations Course in Thailand in 2024. The pre-deployment course prepares female military officers for UN peacekeeping roles. Funding this training enhances Australia’s reputation as a leader in implementing the UN Women, Peace and Security Agenda.

**Human rights implications**

Table item 683 engages the right to equality in Article 3 of the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW).

*Right to Equality*

Article 3 of the CEDAW requires States Parties to take, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

To the extent that the right to equality is engaged, the grants will support projects and training, targeting barriers to enable women’s meaningful participation in peace operations outside Australia.

Table item 683 is compatible with human rights because it promotes the right to equality of women and the protection of human rights.

**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**