

## **EXPLANATORY STATEMENT**

### **Issued by the Authority of the Minister for Finance**

*Financial Framework (Supplementary Powers) Act 1997*

*Financial Framework (Supplementary Powers) Amendment  
(Treasury 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 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 (Treasury Measures No. 2) Regulations 2024* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for the Government to provide a grant for an organisation to design and deliver a program to build the capacity of Aboriginal and Torres Strait Islander Community Controlled Housing Organisations (ATSI CCHOs) to better engage with the Government's housing finance program. The grant is administered by the Department of the Treasury.

The program responds to feedback from First Nations organisations provided during consultation on the implementation of the Housing Australia Future Fund (HAFF) and the National Housing Accord (the Accord). The program is critical to both the success of the HAFF and the Accord, and the overall growth of the social and affordable housing sector.

Funding of \$500,000 over 2 years from 2024-25 will deliver support specific to ATSI CCHOs which will help build their capabilities to engage with Government housing finance programs and to best manage projects and housing stock to deliver better housing outcomes for First Nations communities.

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 the Treasury.

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

**Section 1 – Name**

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Treasury 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 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 the Treasury (Treasury).

New **table item** 674 establishes legislative authority for the Government to provide a grant to an organisation to design and deliver a program to build the capacity of Aboriginal and Torres Strait Islander Community Controlled Housing Organisations (ATSICCHOs) to better engage with the Government's housing finance programs.

The program responds to feedback from First Nations organisations provided during consultation of the implementation of the Housing Australia Future Fund (HAFF) and the National Housing Accord Facility (the Accord) of the lack of participation of ATSICCHOs in the Government's housing financing programs.

The tailored capacity building program is wholly designed, developed, and delivered by an organisation experienced in tailoring and delivering programs to First Nations organisation. The objective of the program is to help build capabilities required for ATSICCHOs to better engage with Government housing financing programs.

The program is available nationally and will cater to the differences in capabilities of individual ATSI CCHOs. The grant recipient organisation will help identify gaps, provide training, and support services to prepare ATSI CCHOs to better engage with the Government's housing financing programs. Some of the potential gaps are likely to require improved capabilities in financial and project management, business planning, property management and development and risk management among others.

The aim of the program is to support approximately 30 to 45 ATSI CCHOs engaging with or participating in the Government's housing financing programs, ultimately maturing each organisation, and resulting in delivery of better housing outcomes in First Nations communities.

Treasury will enter into a services agreement with the Department of Industry Science and Resources (DISR) for the administration of this grant. The grant will be administered by DISR's Business Grants Hub through a closed, non-competitive round.

Due to the limited number of organisations that have the resources and capability to deliver a national capacity building program, Treasury will select and shortlist a pool of organisations based on internal criteria which will include experience with First Nations education and support programs and national reach capabilities. Upon consideration of their expertise, the most suitable organisation will be invited to submit an application through the Business Grants Hub for the capacity building program grant.

The grant will be administered in accordance with the Commonwealth resource management framework, including the *Public Governance, Performance and Accountability Act 2013*, the *Commonwealth Grant Rules and Guidelines 2017* (CGRGs) and departmental grant requirements and processes.

As a delegate of the Secretary, the Deputy Secretary (SES Band 3) of the Small Business, Housing, Corporate and Law Group will be responsible for approving the grant, in accordance with the *Financial Framework (Supplementary Powers) Act 1997*. Treasury will provide advice to the decision maker to support the decision-making process, drawing on the Business Grants Hub's assessment.

Information about the grant, including the grant opportunity guidelines and information about the final decision, will be made available on the GrantConnect website ([www.grants.gov.au](http://www.grants.gov.au)).

Independent merits review of decisions made in connection with the grant would not be considered appropriate because the decisions relate to the allocation of finite resources and an allocation already made to a party would be affected by overturning the original decision. The Administrative Review Council (ARC) has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.11 to 4.19 of the ARC guide, *What decisions should be subject to merit review?*).

Initial consultation with the National Indigenous Australian Agency (NIAA), Housing Australia and peak bodies such as the Community Housing Industry Association (CHIA) and the National Aboriginal and Torres Strait Islander Housing Association (NATSIHA) have identified the need for support for ATSI CCHOs. Treasury will consult further with these organisations and broader industry including potential applicant organisations experienced in tailoring educational or capacity building type programs to ATSI CCHOs. In turn the

successful grant recipient organisation responsible for the design, development and delivery of the program will continue to further consult relevant stakeholders to inform and promote the details of the program across Government, peak bodies, and housing providers.

Funding of \$500,000 for the ATSIICCHO capacity building program was included in the 2024-25 Budget under the measure ‘Housing Support’ for a period of 2 years commencing in 2024-25. Details are set out in Budget Paper No. 2, *Budget Measures 2024–25* at page 74.

Funding for this item will come from Program 1.1: Department of the Treasury, which is part of Outcome 1: Supporting and implementing informed decisions on policies for the good of the Australian people, including for achieving strong, sustainable economic growth, through the provision of advice to Treasury Ministers and efficient administration of Treasury’s functions. Details are set out in Budget Related Paper No. 1.15, *Portfolio Budget Statements 2024-25, Treasury Portfolio* at page 35.

Noting that it is not a comprehensive statement of relevant constitutional considerations, the purpose of the item references the race power (s 51(xxvi) of the Constitution).

#### Race Power

Section 51(xxvi) of the Constitution empowers the Parliament to make laws with respect to the people of any race for whom it is deemed necessary to make special laws.

The proposed program would support the conferral of benefits on Aboriginal and Torres Strait Islander people in the form of housing and related services to Aboriginal and Torres Strait Islander communities.

## **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 (Treasury 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 (Treasury Measures No. 2) Regulations 2024* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for the Government to provide a grant for an organisation to design and deliver a program to build the capacity of Aboriginal and Torres Strait Islander Community Controlled Housing Organisations (ATSICCHOs) to better engage with the Government's housing finance program. The grant is administered by the Department of the Treasury.

The program responds to feedback from First Nations organisations provided during consultation on the implementation of the Housing Australia Future Fund (HAFF) and the National Housing Accord (the Accord). The program is critical to both the success of the HAFF and the Accord, and the overall growth of the social and affordable housing sector.

Funding of \$500,000 over 2 years from 2024-25 will deliver support specific to ATSICCHOs which will help build their capabilities to engage with Government housing finance programs and to best manage projects and housing stock to deliver better housing outcomes for First Nations communities.

Funding will help support approximately 30 to 45 ATSICCHOs engaging with or participating in the Government's housing financing programs through improving capabilities in financial and project management, business planning, property management and development and risk management, ultimately maturing each organisation and resulting in delivery of better housing outcomes in First Nations communities.

## **Human rights implications**

Table item 274 engages the following rights:

- Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) – the right to an adequate standard of living, read with Article 2 of the ICESCR; and
- Article 21 of the United Nations Declaration on the Rights of Indigenous Peoples – the right of Indigenous peoples to the improvement of their economic and social conditions, including in the area of housing.

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

Article 11 of the ICESCR requires the State Parties to take appropriate steps to ensure the realisation of the right of everyone to an adequate standard of living for themselves and their family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

Article 21 of the United Nations Declaration on the Rights of Indigenous Peoples provides for the right of Indigenous peoples to the improvement of their economic and social conditions, including in the area of housing. State Parties are required to take effective and, where appropriate, special measures to ensure continuing improvement of Indigenous Peoples' economic and social conditions.

The item seeks to promote these rights by funding an organisation to design and deliver a program to build the capacity of ATSICCHOs to better engage with the Government's housing finance programs. This supports ATSICCHOs, which are Aboriginal and Torres Strait Islander community organisations that deliver housing services, to be better able to provide housing services to First Nations communities.

## **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**