

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance

Financial Framework (Supplementary Powers) Act 1997

*Financial Framework (Supplementary Powers) Amendment
(Attorney-General's Portfolio 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 (Attorney-General's Portfolio Measures No. 2) Regulations 2024* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on the Enhancing First Nations Justice Policy Outcomes program (the program), which provides funding to support the Justice Policy Partnership (JPP). The program is administered by the Attorney-General's Department.

The JPP is a partnership between all Australian governments and Aboriginal and Torres Strait Islander peak bodies and justice experts under the National Agreement on Closing the Gap.

Funding of \$10.7 million over four years from 2024-25 is available to support the operations of the JPP.

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 Attorney-General's Department.

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 (Attorney-General's Portfolio Measures No. 2) Regulations 2024*

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Attorney-General's Portfolio 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

The item in Schedule 1 amends Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on an activity to be administered by the Attorney-General's Department (the department).

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

This item adds a new table item to Part 4 of Schedule 1AB.

Table item 692 – Enhancing First Nations Justice Policy Outcomes

New **table item 692** establishes legislative authority for government spending on the Enhancing First Nations Justice Policy Outcomes program (the program).

The program aims to enhance justice policy outcomes for Aboriginal and Torres Strait Islander people by supporting the Justice Policy Partnership (JPP), implementing the priorities agreed from time to time by the parties to that partnership, and evaluating the effectiveness of that partnership. The terms 'First Nations' and 'Aboriginal and Torres Strait Islander' are used interchangeably and no distinction is intended.

The JPP was established in 2021 as a formal partnership under the *National Agreement on Closing the Gap* (the National Agreement). The National Agreement is a collaborative framework between Australian governments and the Coalition of Aboriginal and Torres Strait Islander Peak Organisations (the Coalition of Peaks). Its goal is to address and overcome inequalities faced by Aboriginal and Torres Strait Islander people by setting specific socio-economic targets and implementing reforms.

More information on the National Agreement is available at: www.closingthegap.gov.au/national-agreement. More information on the JPP is available at: www.ag.gov.au/legal-system/closing-the-gap/justice-policy-partnership.

The purpose of the JPP is to develop a national joint approach to Aboriginal and Torres Strait Islander justice policy, with a focus on reducing the overincarceration of Aboriginal and Torres Strait Islander adults and young people (Targets 10 and 11 of the National Agreement).

The JPP is made up of ten Aboriginal and Torres Strait Islander members (five from the Coalition of Peaks and five independent Aboriginal and Torres Strait Islander justice experts) and nine government members (one from the Australian Government and one from each state and territory government). It is co-chaired by the Commonwealth and the National Aboriginal and Torres Strait Islander Legal Services (NATSILS). The priorities and initiatives of the JPP are set by its members in line with its terms of reference.

The Government has committed funding of \$10.7 million over four years from 2024-25 to support the JPP. The funding allows the JPP to continue operating beyond June 2024, and to commence the implementation of its Strategic Framework to improve justice outcomes on the ground.

Funding supports the following activities:

- Engage Aboriginal and Torres Strait Islander experts and organisations to work with the JPP and justice agencies to scope or commence work on the four domains of the JPP Strategic Framework. The four domains of the JPP Strategic Framework are: Transform Justice Systems, Partnerships and Accountability, Community-led Change, and Holistic and Inclusive Approaches. Aboriginal and Torres Strait Islander experts and organisations may be engaged by the JPP to assist with these initiatives by, for example, scoping anti-racism strategies, developing outcomes frameworks to map and measure improvements in justice systems, planning and delivering forums, workshops or community consultations, and provide expert advice on effective Aboriginal and Torres Strait Islander-led programs and approaches.
- Fund the NATSILS, as the peak Aboriginal and Torres Strait Islander organisation in the law and justice sector, to continue to partner with the department to provide secretariat and policy support for the JPP. This allows NATSILS to engage strategy, administrative, and executive staff to undertake NATSILS' shared secretariat responsibilities (with the department) for the JPP. In addition, the funding would also allow NATSILS to support the 10 non-government members of the JPP through sitting fees and travel expenses.
- Procure a data expert or organisation to scope and explore specific justice related datasets to identify areas for systems improvement and innovation in line with Priority Reform Four (shared access to data and information at a regional level). This may

include mapping existing data collections within the justice sector and the development of a proposal for using the findings to drive better decision-making.

- Evaluate the JPP to measure the effectiveness of the partnership and opportunities to enhance its operations for the final years of the current justice Targets (2031).

The funding will be delivered through a mix of grant funding to NATSILS and procurements, with an emphasis on procuring the services of majority Aboriginal and Torres Strait Islander-owned businesses, consistent with the Australian Government's Indigenous Procurement Policy. The exact expenditure of aspects of the funding, including the engagement of Aboriginal and Torres Strait Islander experts and organisations on aspects of the JPP's Strategic Framework, and the procurement of a data expert, will be determined via shared decision-making by the JPP.

Funding amount and arrangements, merits review and consultation

Funding of \$10.7 million for the program was included in the 2024-25 Budget under the measure 'Enhancing First Nations Justice Policy Outcomes' for a period of four years commencing in 2024-25. Details are set out in *Budget 2024-25, Budget Measures, Budget Paper No. 2* at page 48.

Funding for this item will come from Program 1.4: Justice Services, which is part of Outcome 1. Details are set out in the *Portfolio Budget Statements 2024-25, Budget Related Paper No. 1.2, Attorney-General's Portfolio* at page 22.

The funding will be delivered partly via a grant to NATSILS (for NATSILS staffing and costs, JPP project work, resourcing for non-government member sitting fees and travel expenses), and partly through procurements conducted by the department (for evaluations and reviews of the JPP and data projects).

NATSILS funding is provided to the Aboriginal Legal Service NSW/ACT as the auspisor for NATSILS. The funding announced in the 2024-25 Budget will be added to an existing grant with NATSILS, through a variation and extension of the grant.

The grant is being delivered and managed by the department in collaboration with the Community Grants Hub within the Department of Social Services. The grant is administered in accordance with the Commonwealth resource management framework, including the *Public Governance, Performance and Accountability Act 2013*, the *Public Governance, Performance and Accountability Rule 2014* and the *Commonwealth Grants Rules and Principles 2024* (CGRPs).

Consistent with the CGRPs, the department will develop grant opportunity guidelines and will have regard to the nine key principles in administering the grant. Notification for the grant and the grant opportunity guidelines will be published on GrantsConnect (www.grants.gov.au) in accordance with the CGRPs.

Pursuant to section 32B of the *Financial Framework (Supplementary Powers) Act 1997* (FFSP Act), the Secretary of the department, as the accountable authority of a non-corporate Commonwealth entity, is permitted to authorise the administration of the grant, and is the final decision maker in relation to the delivery of the grant.

The grant is provided to NATSILS in a closed non-competitive selection process as it is the only organisation able to perform the functions, as the organisation nominated by the Coalition of Peaks to co-lead the JPP.

Procurements for JPP evaluations and data work will be managed in accordance with the *Commonwealth Procurement Rules* (CPRs), with priority given to Aboriginal or Torres Strait Islander owned organisations, consistent with the *Indigenous Procurement Policy*.

The JPP has a website (www.ag.gov.au/legal-system/closing-the-gap/justice-policy-partnership) that provides public updates on its activities and funding.

Information about the tender and the resultant contracts will be made available on AusTender (www.tenders.gov.au) once the contract is signed. Procurement decisions will be based on value for money, including capability and capacity to deliver, and price and risk considerations.

The final decisions about expenditure in relation to the JPP evaluation and data work will be made by the relevant and appropriately qualified delegate in accordance with the department's *Public Governance, Performance and Accountability Financial Delegation 2024* and *Financial Framework (Supplementary Powers) Financial Delegation 2022*.

Merits review of decisions made in connection with the grant would not be considered appropriate because this grant was provided to NATSILS in a closed non-competitive selection process, over other possible recipients, as NATSILS is the relevant peak body and nominated by the Coalition of Peaks to co-lead the JPP and therefore the only suitable organisation to perform the activities of the grant. In addition, any funding that had already been allocated would be affected if the original decision was overturned. 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)).

Procurement decisions made in connection with the JPP are not considered suitable for independent merits review, as they are decisions relating to the allocation of a finite resource, from which all potential claims for a share of the resource cannot be met. In addition, any funding that had already been allocated would be affected if the original decision was overturned. The 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).

The remaking of a procurement decision after entry into a contractual arrangement with a successful provider is legally complex, impractical, and could result in delays. The *Government Procurement (Judicial Review) Act 2018* enables suppliers to challenge some procurement processes for alleged breaches of certain procurement rules. This legislation might provide an additional avenue of redress (compensation or injunction) for dissatisfied providers or potential providers, depending on the circumstances.

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.

The National Agreement is an agreement made between the Coalition of Peaks and all Australian Governments (including the Commonwealth, States and Territories, and Local Government Associations), and includes specific agreement to establish a Justice Policy Partnership. The Coalition of Peaks represents Aboriginal and Torres Strait Islander community-controlled organisations and determines the relevant peak bodies to lead each Policy Partnership under the National Agreement.

NATSILS and other JPP members will be consulted on the allocation of the funding for strategic framework initiatives, evaluation of the JPP and data work at one of the JPP's quarterly meetings, where JPP members discuss, agree and progress JPP initiatives.

Under its original *Agreement to Implement the Justice Policy Partnership*, it was agreed by the parties to the National Agreement that the JPP will be reviewed at the end of its initial three-year term with a view to being extended or renewed. This review will include consultation with all JPP members and relevant stakeholders and will inform how the JPP operates in future years.

Public consultation regarding the specific instrument and allocation of funding was not undertaken as they are machinery in nature and give effect to the National Agreement by authorising the spending and operationalising the JPP. Individual JPP initiatives may be subject to public consultation as the JPP progresses them.

Constitutional considerations

Noting that it is not a comprehensive statement of relevant constitutional considerations, the objective of the item references the race power (section 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 JPP is a partnership arising from the National Agreement. The purpose of the JPP is to develop a national joint approach to Aboriginal and Torres Strait Islander justice policy, with a focus on reducing adult and youth incarceration, for the benefit of Aboriginal and Torres Strait Islander peoples. It is made up of ten Aboriginal and Torres Strait Islander members (five from the Coalition of Peaks) and five independent Aboriginal and Torres Strait Islander experts) and nine government members (one from the Australian Government and one from each state and territory government). The priorities and initiatives of the JPP are set by its members in line with its terms of reference.

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 (Attorney-General's Portfolio 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 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 (Attorney-General's Portfolio Measures No. 2) Regulations 2024* establishes legislative authority for government spending on the Enhancing First Nations Justice Policy Outcomes program (the program), which provides funding to support the Justice Policy Partnership (JPP). The program is administered by the Attorney-General's Department (the department).

The JPP is a partnership between all Australian governments and Aboriginal and Torres Strait Islander peak bodies and justice experts under the National Agreement on Closing the Gap (the National Agreement). The purpose of the JPP is to develop a national joint approach to Aboriginal and Torres Strait Islander justice policy, with a focus on reducing adult and youth incarceration.

Funding of \$10.7 million over four years from 2024-25 is available to support the operations of the JPP. The funding allows the JPP to continue operating beyond June 2024, and to commence the implementation of its Strategic Framework, improve justice outcomes and work to transform the justice system to reduce adult and youth incarceration rates for Aboriginal and Torres Strait Islander peoples (Targets 10 and 11 of the National Agreement on Closing the Gap).

In particular, the funding will enable the department and the National Aboriginal and Torres Strait Islander Legal Services to work in partnership to provide secretariat and policy support to the JPP through hiring staff, paying for costs of meetings, providing sitting fees and paying expenses for non-government JPP members, evaluating the JPP, as well as progressing and

implementing the JPP's priorities, including by procuring the services of experts, consultants and researchers.

Human rights implications

This disallowable legislative instrument engages the following rights:

- the right to self-determination – Article 1 of the *International Covenant on Civil and Political Rights* (ICCPR) and Article 1 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR);
- the right to equality and non-discrimination – Article 26 of the ICCPR and Article 5 of the *International Convention on the Elimination of All Forms of Racial Discrimination* (CERD);
- the right to participate in public affairs – Article 25 of the ICCPR;
- the right to health and wellbeing – Article 12 of the ICESCR; and
- the right to cultural participation – Article 27 of the ICCPR and Article 15 of the ICESCR.

Right to self-determination

- Article 1 of the ICCPR and Article 1 of the ICESCR recognise the right of all peoples to self-determination, allowing them to freely determine their political status and freely pursue their economic, social, and cultural development.

The JPP's commitment to embedding self-determination and establishing formal partnerships for shared decision-making contributes directly to the right to self-determination.

Each article stipulates that all people should be able to freely determine their political status and pursue their development. The JPP's role under the National Agreement is to ensure that justice policies and programs are designed and implemented with Aboriginal and Torres Strait Islander communities' active participation.

Right to equality and non-discrimination

- Article 26 of the ICCPR requires that all persons are equal before the law and are entitled without discrimination to the equal protection of the law, prohibiting discrimination on grounds such as race, sex, religion, and language.
- Article 5 of the CERD obliges States Parties to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone, regardless of race, to equality before the law.

The JPP's priorities include transforming justice systems by eliminating racism, which directly promotes the right to equality and non-discrimination.

The relevant articles stipulate that all individuals should be equal before the law and entitled to protection against discrimination, including on the grounds of race and ethnicity. The JPP's focus on reducing disproportionate representation of Aboriginal and Torres Strait Islander peoples in the criminal justice system and supporting culturally appropriate policies and

programs aligns with these articles, aspiring for Aboriginal and Torres Strait Islander peoples to be free from racial discrimination within the justice system.

Right to participate in public affairs

- Article 25 of the ICCPR ensures that every citizen has the right and opportunity, without discrimination, to take part in the conduct of public affairs, either directly or through freely chosen representatives.

The JPP model of formal partnership and shared decision-making promotes the right to participate in public affairs.

The article states that all citizens, should have the opportunity to influence decision-making processes that affect their lives. The JPP enables Aboriginal and Torres Strait Islander peoples to have a voice in the justice system reforms that impact their communities.

Right to health and wellbeing

- Article 12 of the ICESCR recognises the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, calling on states to ensure the provision of necessary medical services and to address the underlying determinants of health.

The JPP priorities include delivering holistic, integrated, and inclusive systems that meet the diverse needs and wellbeing of Aboriginal and Torres Strait Islander people, promoting the right to health and wellbeing.

The relevant article supports the notion that all people should have access to appropriate healthcare and services that address the broader social determinants of health. The JPP's emphasis on holistic approaches ensures that justice reforms also contribute to the overall physical, mental, and social wellbeing of Aboriginal and Torres Strait Islander communities.

Right to cultural participation

- Article 27 of the ICCPR protects the rights of minorities to enjoy their own culture, to profess and practice their own religion, and to use their own language, in community with the other members of their group.
- Article 15 of the ICESCR recognises the right of everyone to take part in cultural life.

The JPP's focus on ensuring policies and programs are culturally appropriate promotes the right to cultural participation.

This disallowable legislative instrument promotes the right of people to preserve, develop, and engage with their cultural traditions and expressions. By integrating cultural

considerations into justice system reforms, the JPP supports the preservation and promotion of Aboriginal and Torres Strait Islander cultural identity.

Conclusion

This disallowable legislative instrument is compatible with human rights as it promotes the protection of human rights.

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