

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance

Financial Framework (Supplementary Powers) Act 1997

*Financial Framework (Supplementary Powers) Amendment
(Foreign Affairs and Trade Measures No. 4) 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 sunset under section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (item 28A). If the Principal Regulations were subject to the sunset 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 (Foreign Affairs and Trade Measures No. 4) Regulations 2024* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on activities to be administered by the Department of Foreign Affairs and Trade.

Funding will be provided for the:

- Trade Diversification and Free Trade Agreement Modernisation Program to enable Australian entities, including industry stakeholders and peak bodies, to conduct activities to identify priorities for the modernisation of Australia's free trade agreement network and progress mutual recognition arrangements with other countries (\$4.4 million over two years from 2024-25); and
- Investment Deal Teams Project Development Support Program to facilitate Australian investment in projects located overseas (\$48.8 million over four years from 2023-24).

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 Foreign Affairs and Trade.

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 (Foreign Affairs and Trade Measures No. 4) Regulations 2024*

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Foreign Affairs and Trade Measures No. 4) 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 activities to be administered by the Department of Foreign Affairs and Trade (the department).

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

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

Table item 687 – Trade Diversification and Free Trade Agreement Modernisation Program

New **table item 687** establishes legislative authority for government spending on the Trade Diversification and Free Trade Agreement Modernisation Program (the Program) to enable Australian entities, including industry stakeholders and peak bodies, to conduct activities to identify priorities for the modernisation of Australia's free trade agreement network and progress mutual recognition arrangements with other countries.

The Program delivers on the Government's election commitments under the Trade Diversification Plan and Deepening Australia's Engagement with Southeast Asia to enable the Trade 2040 Taskforce (the Taskforce) to address one of its policy mandates that relates to Australia's Free Trade Agreements. The Taskforce brings together government, industry,

unions and community representatives to serve as a key consultation forum to progress the Government's trade policy agenda.

The Program responds to recommendations from the *Invested: Australia's Southeast Asia Economic Strategy to 2040* (the Moore Report), developed by Special Envoy for Southeast Asia, Mr Nicholas Moore AO. The Moore Report (<https://www.dfat.gov.au/sites/default/files/invested-southeast-asia-economic-strategy-2040.pdf>) was launched in September 2023 and sets out a pathway to strengthen Australia's economic engagement with the region by mapping emerging trade and investment opportunities in Southeast Asia and matching those with Australian capabilities.

The Program consists of two grant programs:

- the Free Trade Agreements Modernisation Grant program to support Australia's trade and investment exposed entities identify priorities for upgrading of Australia's existing free trade agreements (FTAs); and
- the Southeast Asia Mutual Recognition of Professional Services Grant program to assist accreditation and licensing bodies negotiate mutual recognition arrangements for professional services.

Free Trade Agreements Modernisation (FTAM) Grant program

The FTAM was announced in the 2024-25 Budget and responds to Recommendation 10 of the Moore Report for the Taskforce, in collaboration with Southeast Asian partners, to review the scope of existing FTAs to determine priorities for agreement upgrade negotiations.

The FTAM is an initiative to support Australian trade-exposed industries, peak bodies and representative organisations identify opportunities for improved utilisation, modernisation and enhancement of Australia's network of FTAs. The FTAM will feed into and inform the department's review of Australia's FTAs in Southeast Asia. The outcomes will assist the Taskforce in making recommendations on upgrade negotiation priorities, progressing Recommendation 10, and reviewing the scope of existing FTAs to determine priorities for agreement upgrade negotiations.

The FTAM's objectives are to:

- inform the Australian government's Southeast Asian trade and investment agenda to 2040;
- inform how the Australian government prioritises the modernisation and enhancement of Australia's network of FTAs in Southeast Asia; and
- liberalise and facilitate trade and investment and contribute to closer economic integration in the region.

The FTAM's intended outcomes are to enable Australian trade and investment exposed industries to clearly identify and provide recommendations on:

- current or possible impediments, opportunities or areas for further liberalisation, under our existing FTAs in the Southeast Asia region or as part of future FTAs in the region, not yet in place; and
- opportunities for the inclusion or enhancement and modernisation, in Australia's FTAs, of new and emerging trade and investment thematic and/or progressive chapters, such as digital economy, green economy, labour, critical minerals,

environmental standard, clean energy, First Nations trade, gender and inclusivity, sustainable agriculture, food security and other areas of interest to industry.

To be eligible for funding, proposed grant activities must address the intended outcome of the FTAM and be undertaken between the agreed start and end dates as specified in the grant agreement. The activity must also result in an informational product for use by government. Organisations will be required to report amounts spent and progress on projects at the mid-way point, on completion and (where required) on an ad hoc basis.

Eligible activities will be set out in the relevant grant agreement, must be related to modernisation or enhancement of Australia's FTAs and may include:

- quantitative and qualitative research;
- forecasting, modelling, statistical analysis and feasibility studies;
- competitor, sector or market analyses;
- stakeholder engagement and activities facilitating stakeholder engagement;
- developing and drafting strategies to influence further liberalisation of one or many economies towards commercially meaningful, improved market access or regulatory reforms; and
- result in an evidence-based informational product including recommendations, and provide priorities and identification of areas for improved trade and investment liberalisation.

The grant program will run from 2024-25 to 2025-26, terminating 30 June 2026.

Most grant activities will have a co-contribution from the organisation applying. Organisations will be encouraged and are expected to co-fund the grant activities. Grant periods will be between six months and one year. Non-government organisations will receive a one-off, ad-hoc grant to deliver their identified activity in line with the criteria.

Southeast Asia Mutual Recognition of Professional Services (SEAMRPS) Grant program

The SEAMRPS was also announced in the 2024-25 Budget and responds to Recommendation 68 of the Moore Report, which refers to supporting mutual recognition of professional qualifications, licensing and registration in priority professional services sectors, including through advocacy and grants to professional services bodies.

The SEAMRPS is a part of an initiative to support Australian professional services accreditation and licensing bodies negotiate mutual recognition arrangements (MRAs) with their Southeast Asian counterparts. The final design of the grant program will be informed by an independent report to be commissioned by the department to investigate and identify which professional service sectors and countries in Southeast Asia are best suited for such MRA engagement and negotiation.

The SEAMRPS' objectives are to:

- assist the Taskforce with its aim to deliver targeted policy that can contribute to strengthening Australia's economic resilience, productivity and global competitiveness;
- deepen and diversify Australia's trading relationships, particularly in the Indo-Pacific; and

- liberalise and facilitate the professional services trade between Australia and Southeast Asia and contribute to closer economic integration.

The SEAMRPS' intended outcome is to enable Australian professional services bodies to negotiate mutual recognition of professional qualifications, licensing and registration with their Southeast Asian counterparts.

The grant program will run over two years from 2024-25, terminating on 30 June 2026.

Funding amount and arrangements, merits review and consultation

Funding of \$4.4 million for the Program was included in the 2024-25 Budget under the measure 'Trade and Tourism Strategies – additional funding' for a period of two years commencing in 2024-25. Details are set out in *Budget 2024-25, Budget Measures, Budget Paper No. 2* at pages 107-108.

Funding for this item will come from Program 1.1: Foreign Affairs and Trade Operations, which is part of Outcome 1. Details are set out in the *Portfolio Budget Statements 2024-25, Budget Related Paper No. 1.8, Foreign Affairs and Trade Portfolio* at pages 24 and 28.

The department will deliver the two grants programs to select applicants through a competitive grant process available to applicants based on specialised requirements of the grant activity. The grants will be administered in accordance with the Commonwealth resource management framework, including the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule) 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. Information about the grants, including the grant guidelines, will be made available on the GrantConnect website (www.grants.gov.au) and the grants will be administered by the department using SmartyGrants.

Funding arrangement for the grants programs are as follows:

FTAM Grant program

The grant will be open to peak industry bodies, nationally representative organisations and members organisations exposed to trade and outward investment. Applicant organisations must be registered in Australia and have an Australian Business Number. This will ensure the outputs are broadly applicable to Australian trade and investment exposed industries. To be eligible, each funding recipient's grant activity must produce an evidence-based informational product with recommendations.

To apply, grant applicants must address assessment criteria in the application. The department will assess the applications based on criteria, including that the activity must:

- relate to at least one of Australia's in-force FTAs with a Southeast Asian economy or a possible future Australian FTA in the region;
- relate to the export of goods, services, or investment from Australia or new and emerging progressive trade issues;

- relate to the enhancement or modernisation of FTAs with a view to identifying barriers, opportunities, ways or approaches to increase Australian exports and investment and/or to facilitate trade for Australian businesses; and
- be forward looking and have consideration for the relevance of the activity to at least 2040.

A selection panel made up of government officials with expertise in international trade, investment and trade agreements will be established. The panel will consider value for money, capability and capacity to deliver, and price and risk considerations, alongside the proposed grant activities' alignment with the criteria. The panel will be responsible for reviewing and assessing the eligible applications, shortlisting applicants and making recommendations to the delegate of the Secretary of the department, who will be responsible for the final decision on the selection of grant recipients and allocation of grants money.

The delegate will be the Senior Executive Service (SES) Band 1, FTA Implementation and Inclusive Trade Branch, Free Trade Agreements and Stakeholder Engagement Division (or any equivalent successor branch or division), delegated under the *Financial Framework (Supplementary Powers) Act 1997* (FFSP Act) and will be responsible for approving Commonwealth funding to grant recipients. The delegate has extensive experience in treaty implementation and international trade. Information about final decisions will be made publicly available on GrantConnect within 21 days of the decision.

SEAMRPS Grant program

The department will only accept applications from Australian professional service accreditation and licensing bodies. Applicants also must be Australian citizens. To apply, grant recipients must address weighted assessment criteria in the application, which is yet to be determined but will be finalised along with the final design of the program.

A selection panel made up of officials from the department with expertise in trade services and MRAs will be established. The panel will consider value for money, including capability and capacity to deliver, and price and risk considerations, alongside the actual proposed grant activities' alignment with criteria. The panel will review the eligible applications and make recommendations to the delegate of the Secretary of the department, who will be responsible for the final decision on the allocation of grants. The delegate will be the SES Band 1, FTA Services, Mobility and Coordination Branch, Free Trade Agreements and Stakeholder Engagement Division, delegated under the FFSP Act and will be responsible for approving Commonwealth funding to grant recipients. The delegate has extensive experience in treaty implementation and international trade. Information about final decisions will be made publicly available on GrantConnect within 21 days of the decision.

Funding decisions made in connection with the two grants programs are not considered suitable for independent merits review, as these decisions relate 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 has already been allocated would be affected if the original decisions were 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 4.11 to 4.19 of the guide, *What decisions should be subject to merit review?* (ARC guide)).

The remaking of a grant decision after entry into a contractual arrangement with a successful applicant is complex, impractical, and could result in delays to the development of products and services from one or more grant recipients.

While the decisions are not considered suitable for independent merits review, the grant criteria outlined in the grant opportunity guidelines and the use of a mixed panel are efforts to ensure the processes for allocating funds are fair and transparent, the criteria for funding are made clear, and decisions are made objectively. The department is the most appropriate organisation to administer grants specifically relating to FTAs and to assess and analyse the validity and appropriateness of potential recommendations. The overall process is informed by the verification of claims in the department's project proposal, consideration of suitability of the applicants and development of a multi-stage assessment and selection methodology.

The review and audit process undertaken by the Australian National Audit Office (ANAO) 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 the making, varying or administering of arrangements to spend relevant money.

The Government has, in the course of its usual business, and through targeted stakeholder engagement sessions, consulted with industry, trade-exposed stakeholders, unions, peak bodies, community groups and state and territory governments, among others, on:

- whether Australia's network of FTAs are fit for purpose and how Australia's FTAs could be enhanced; and
- Australia's professional services and mutual recognition commitments and how those commitments could be enhanced.

Under the FTAM grant program, the Moore Report was guided by extensive stakeholder engagement across Australia as well as a variety of submissions including from individuals and organisations with international trade and investment expertise, ultimately informing the recommendation to identify opportunities to modernise and enhance Australia's FTAs in Southeast Asia.

The department will also conduct stakeholder outreach approximately three months ahead of the grants program being published, to inform how best to shape the grant opportunity and to gauge the kinds of activities that would be most beneficial for the government's Trade Agenda to 2040. The consultations will specifically target stakeholders likely to be affected by the grants program and will be carried out across states and territories.

The department is in regular contact with whole-of-government stakeholders who contribute to the department's ongoing awareness of areas for potential modernisation and enhancement in Australia's network of FTAs, as well as identifying industries and sectors who would benefit from consultation and any subsequent modernisation.

In parallel with the grants program, the department is conducting a comprehensive review of Australia's FTAs with Southeast Asia, which will involve consultation with the diplomatic network, partner governments, FTA chapter subject matter experts, and a call for submissions from the public on where the government's efforts should be focused regarding the modernisation of our FTAs. This review process will inform the department's approach to the

grants program, particularly the second round of grants, which is expected to open in July 2025.

Under the SEAMRPS grant program, through the course of regular engagement with Australia's professional service bodies, the department will discuss the grant program to inform how best to shape the grant opportunity and to gauge the kinds of activities that would be most beneficial to undertake. The department will also commission an independent report in 2024 to investigate and identify the opportunities for mutual recognition of Australian professional services in Southeast Asia which will assist in the final design of the grant program.

Constitutional considerations

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

- the trade and commerce power (section 51(i)); and
- the external affairs power (section 51(xxix)).

Trade and commerce power

Section 51(i) of the Constitution empowers the Parliament to make laws with respect to 'trade and commerce with other countries, and among the states'.

The spending for the two grants programs will support laws that protect or foster trade externally or within the states. The FTAM Grant program will provide funding to Australian entities, including industry stakeholders and peak bodies, to enable them to conduct activities to identify priorities for the modernisation of Australia's free trade agreement network. The SEAMRPS Grant program will provide funding for accreditation and licencing bodies to facilitate and streamline the two-way movement of professionals between Australia and Southeast Asian countries. These are intended to foster and encourage international trade and commerce.

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 concerning Australia's relations with other nations.

The FTAM Grant program will enhance Australia's network of FTAs in Southeast Asia, promoting Australia's relationship with Southeast Asian nations. Enhancing FTAs in Southeast Asia will better liberalise and facilitate trade and investment, and contribute to closer economic integration in the region.

The SEAMRPS Grant program aims to promote international trade and commerce between Australia and Southeast Asian nations. Australia's international trade and investment relationship with other nations underpins Australia's economic relations with other nations. The bilateral FTA and trading blocs with Indonesia for example promotes Australia's bilateral economic relationship with Indonesia more broadly.

The external affairs power supports legislation with respect to matters outside the geographical limits of Australia.

The FTAM Grant program and the SEAMRPS Grant program are both concerned with matters of international trade outside the geographical limits of Australia. FTAs are trade treaties with trading partners located outside of geographic confines of Australia. Additionally, to be eligible for the FTAM Grant program, funding recipient's grant activity must relate to at least one of Australia's in-force FTAs with a Southeast Asian economy or a possible future Australian FTA in the region. The SEAMRPS Grant program is also part of an initiative to support Australian professional services accreditation and licensing bodies negotiate MRAs with their Southeast Asian counterparts.

Table item 688 – Investment Deal Teams Project Development Support Program

New **table item 688** establishes legislative authority for government spending on the Investment Deal Teams Project Development Support Program (the program) to facilitate Australian investment in projects located overseas.

The program forms part of the broader \$70.2 million Investment Deal Teams initiative, announced on 6 September 2023 by the Prime Minister, the Minister for Foreign Affairs, Treasurer and the Minister for Trade and Tourism as an initial response to the Moore report. The media release is available at www.pm.gov.au/media/invested-southeast-asia.

The overarching objective of the Investment Deal Teams initiative is to increase Australian investment in Southeast Asia. Investment Deal Teams have been established across Southeast Asia comprising staff from the department, Austrade and Export Finance Agency (EFA). Each agency has posted staff to hubs in Ho Chi Minh City, Jakarta and Singapore. The department has also posted staff to “spoke” offices in Bandar Seri Begawan, Bangkok, Hanoi, Kuala Lumpur, Manila and Phnom Penh.

The Investment Deal Teams are working with government and businesses across Australia and Southeast Asia to identify potential investment opportunities and support Australian institutional and corporate investors to assess and pursue these opportunities. The support the Investment Deal Teams provides to potential Australian investors includes market intelligence, general advice, including on regulatory processes, liaising with host governments, and helping identify local commercial partners.

The program will be provided with \$20.9 million over four years from 2023-24. This will facilitate Australian investment in projects located overseas by informing and supporting proponents of projects located overseas which have the potential for Australian investment and Australian investors in relation to investment opportunities located overseas.

The program will support the Investment Deal Teams to develop the pipeline of potential investment-ready projects for Australian business consideration. The program will be delivered by a managing contractor who will procure projects to facilitate Australian investment. Projects could include feasibility studies; commercial and legal advice; and advice to ensure compliance with gender, disability and social inclusion approaches and environmental safeguards.

The department will also receive \$27.7 million from the Investment Deal Teams initiative for staff costs including the deployment of staff to nine Southeast Asian posts and to lead coordination and provide policy advice across deals team network.

Funding amount and arrangements, merits review and consultation

Funding of \$70.2 million for the Investment Deal Teams was included in the 2023-24 Mid-Year Economic and Fiscal Outlook under the measure ‘Southeast Asia Economic Strategy to 2040’ for a period of four years commencing in 2023-24. Details are set out in *Budget 2023-24, Mid-Year Economic and Fiscal Outlook 2023-24, Appendix A: Policy decisions taken since the 2023-24 Budget* at page 252.

Funding of \$48.8 million over four years from 2023-24 for this item will come from Program 1.1: the Southeast Asia Economic Strategy to 2040, which is part of Outcome 1. Details are set out in the *Portfolio Additional Estimates Statements 2023-24, Foreign Affairs and Trade Portfolio* at pages 11, 17, 18, 19 and 29.

The program will be delivered by a contractor engaged through a two-step open procurement process. This approach is commensurate with the scope, scale and risk of the procurement. The procurement will be conducted in accordance with the Commonwealth resource management framework, including the PGPA Act, the PGPA Rule and the *Commonwealth Procurement Rules* (CPRs).

To ensure a wide-ranging supplier response, notice of the procurement will be published on relevant departmental procurement pages and the AusTender website (www.tenders.gov.au) and advertised through appropriate media. A Statement of Requirement for potential suppliers will be drafted in consultation with partner agencies and posts and departmental program specialists. Following a Request for Expression of Interest process, short-listed suppliers will be asked to tender for the project.

An Evaluation Committee, comprising members with relevant knowledge and programming experience and approved at the Assistant Secretary level, will make recommendations on appropriate supplier. The Committee will include members such as representatives of the Export Finance and Strategic Investment Branch, the Connectivity and Infrastructure Policy Branch and the Southeast Asia Development Policy and Programs Branch. All members will make conflict of interest declarations as a condition of membership.

The Office of Southeast Asia’s First Assistant Secretary, Strategy and Development Division will be responsible for the final decision on the procurement. This delegate will have the necessary qualifications and experience to make the procurement decisions.

Procurement decisions made in connection with the program 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 has 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 to providing services to platform users. The *Government Procurement (Judicial Review) Act 2018* (GPJR)

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 and where the parties are unable to resolve the tenderer's concerns through the complaints handling process. The GPJR applies to any procurement decisions made under the instrument, where such decisions are 'covered procurements' within the meaning of section 5 of the GPRJ.

The department has a Complaints Handling Policy (available at www.dfat.gov.au/about-us/publications/complaint-handling-procedures-procurement) that sets out the process for responding to any procurement complaints received. This includes investigations to resolve the complaint by reaching a fair and independent view on the issues raised by the complainant. If the department finds a complaint has merit and the complainant has been inconvenienced or disadvantaged through their interactions with the department, an apology or other form of suitable remedy such as providing additional information, changing or reconsidering a decision or expediting action may be appropriate. If the complainant is still not satisfied with the response, they may seek an internal review of how the complaint was managed. If the complainant is still dissatisfied, the option to seek independent review is available from the Commonwealth Ombudsman or the Federal Court. In this case, all information about the complaint and proposed resolution must be provided by the department, when requested.

The review and audit process undertaken by the ANAO also provides a mechanism to review the department's 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.

In developing the Moore report that included the recommendation on Investment Deal Teams, the Special Envoy visited Southeast Asia and consulted widely across the federal government, state and territory governments, Southeast Asian governments, Think Tanks, Australian and Southeast Asian businesses and investors. The Special Envoy engaged with over 750 individuals from over 350 organisations and received over 200 submissions. There are further details on the consultation, including a list of all the individuals and organisations consulted, in Appendix D of the Moore report at www.dfat.gov.au/countries-economies-and-regions/southeast-asia/invested-australias-southeast-asia-economic-strategy-2040.

The Investment Deal Teams initiative was positively received by a range of interlocutors from business, think tanks and governments. Immediately prior to the launch of the strategy and the announcement of the initiative, the Special Envoy and senior departmental staff briefed Southeast Asian (except Myanmar) Heads of Missions or their representatives.

Consultation on implementation is ongoing, including through domestic campaigns, business and investment missions and with the support of Business Champions, one for each Southeast Asian country (excluding Myanmar).

The department is also in close and regular consultation with agencies across multiple levels on overall implementation of the Moore report, including Austrade, EFA, the Department of the Treasury, the Department of Industry Science and Resources, and the Department of Agriculture, Fisheries and Forestry.

Constitutional considerations

Noting that it is not a comprehensive statement of relevant constitutional considerations, the objective 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. The external affairs power also supports legislation with respect to matters concerning Australia's relations with other nations.

The program will support Investment Deal Teams to identify potential investment opportunities in Southeast Asia, support Southeast Asian proponents to ready their projects for consideration by Australian investors and to support Australian institutional and corporate investors to assess and pursue these investment opportunities in Southeast Asia.

The program will involve activities either conducted in Southeast Asian countries, or for the purpose of facilitating Australian investment in Southeast Asia.

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 (Foreign Affairs and Trade Measures No. 4) 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 (Foreign Affairs and Trade Measures No. 4) Regulations 2024* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for Government spending on activities to be administered by the Department of Foreign Affairs and Trade.

This disallowable legislative instrument inserts the following items into Part 4 of Schedule 1AB:

- table item 687 ‘Trade Diversification and Free Trade Agreement Modernisation Program’; and
- table item 688 ‘Investment Deal Teams Project Development Support Program’.

Table item 687 – Trade Diversification and Free Trade Agreement Modernisation Program

Table item 687 establishes legislative authority for government spending on the Trade Diversification and Free Trade Agreement Modernisation Program (the Program) to enable Australian entities, including industry stakeholders and peak bodies, to conduct activities to identify priorities for the modernisation of Australia’s free trade agreement network and progress mutual recognition arrangements with other countries, as well as broader activities to develop trade and investment policy including two grant programs.

The Program comprises two grants programs: the Free Trade Agreements Modernisation (FTAM) Grant program, and the Southeast Asia Mutual Recognition of Professional Services (SEAMRPS) Grant program.

The FTAM Grant program would support Australia's trade and investment exposed industries and identify priorities for upgrading Australia's existing free trade agreements. It would provide funding to Australian entities, including industry stakeholders and peak bodies, to enable them to conduct activities to identify priorities for the modernisation of Australia's free trade agreement network. This is intended to foster and encourage international trade and commerce.

The SEAMRPS Grant program would assist accreditation and licensing bodies negotiate mutual recognition arrangements for professional services. Funding to these bodies would facilitate and streamline the two-way movement of professionals between Australia and Southeast Asian countries. This is intended to foster and encourage international trade and commerce. The intended outcome of this grants program is to enable Australian professional services bodies to negotiate mutual recognition of professional qualifications, licensing and registration with their Southeast Asian counterparts.

Funding of \$4.4 million over two years from 2024-25 is available for the Grant programs.

Human rights implications

The exact trade and investment related topics that the grant activities will provide information or make recommendations on under the FTAM and SEAMRPS Grant programs are not finalised. The exact rights that would be engaged and the manner in which they would be engaged, will depend on the final activities that are undertaken, as well as whether any of the information and recommendations provided by the grantees are taken up by government for implementation.

Table item 687 may engage the following rights:

- the right to self-determination – Article 1 of the *International Covenant on Civil and Political Rights* (ICCPR), Article 1 of the *Covenant on Economic, Social and Cultural Rights* (ICESCR) and Article 3 of the *United Nations Declaration on the Rights of Indigenous Peoples* (DRIP);
- the right to work and rights at work – Articles 6 and 7 of the ICESCR, and Articles 8 and 22 of the ICCPR;
- the rights of people with disability – Article 27 of the *Convention on the Rights of Persons with Disabilities* (CRPD), read with Article 4; and
- the right of equality and non-discrimination – Articles 3, 11 and 13 of the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), read with Article 2.

Right to self-determination

Article 2 of the ICESCR requires that each State Party to undertake to take steps to the maximum of its available resources to realise the rights recognised, particularly through legislative measures.

The right to self-determination is contained in Article 1 of the ICCPR and Article 1 of the ICESCR.

Article 1 of the ICCPR and ICESCR states the entitlement of peoples to have control over their destiny and to be treated respectfully. This includes being free to pursue their economic, social and cultural development.

Article 3 of the DRIP states that indigenous 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.

While there is no universally accepted agreement as to the content of the right to self-determination, it is agreed that at a minimum, it entails the entitlement of peoples to have control over their destiny and to be treated respectfully. This includes peoples being free to pursue their economic, social and cultural development.

The ICCPR identifies, by virtue of the right of self-determination, that all peoples can ‘freely determine their political status and freely pursue their economic... development’. First Nations economic inclusion is becoming a standard part of Australia’s FTA agenda and addressing First Nations inclusion in trade and investment has the potential to be raised by grant recipients.

The FTAM and SEAMRPS Grant programs could support the right to self-determination as some grantees may provide information and recommendations that seek to promote First Nations economic, social and cultural development through Australia’s FTAs in Southeast Asia. Grantees will have the opportunity to determine their proposed grant activities under the four criteria of the FTAM Grant program. Under the SEAMRPS Grant program, Australian professional services accreditation and licensing bodies will have the ability negotiate MRAs with their Southeast Asian counterparts.

An inclusive First Nations trade and investment agenda has the potential to deliver economic growth and economic prosperity for First Nations businesses and their communities. It also has the potential to elevate and reaffirm First Nations perspectives in climate change, sustainable development, traditional knowledge, and protecting the integrity of First Nations arts and cultural products. The grant opportunity criteria will be designed with consideration for enabling activities that focus on inclusive trade. As these activities could enable First Nations peoples to advocate for upgrades that improve their economic, social and cultural development, they will be promoting the right to self-determination.

As an example, the Australia-United Kingdom Free Trade Agreement (A-UKFTA) contains commitments to implement reciprocal arrangements to provide for royalties to be paid to Australian artists where their artworks are resold in the UK – benefiting First Nations artists. The agreement also contains commitments that provide recognition of the importance of genetic resources, traditional knowledge and traditional cultural expression, including a commitment that the UK work with Australia at the World Intellectual Property Organization at the United Nations to progress a multilateral solution to the protection of Indigenous traditional knowledge.

Grant recipients through their activities could provide information on or recommend commitments of this sort be considered by Government for inclusion in Australia’s FTAs with Southeast Asian countries.

Right to work and rights at work

Article 2 of the ICESCR requires that each State Party to the ICESCR undertakes to take steps to the maximum of its available resources, especially economic and technical, to realise the rights recognised in the ICESCR, particularly through legislative measures.

Article 6 of ICESCR conveys that States Parties will recognise the right to work, which includes the right of everyone to the opportunity to gain their living by work which is freely chosen or accepted and will take appropriate steps to safeguard this right. The right to work also provides that the labour market is open to everyone without discrimination (including that work be physically accessible for people with disability).

Article 7 of the ICESCR recognises the right of everyone to just, favourable and safe conditions of work, including fair wages, equal pay and conditions for women and men and periodic paid holidays.

The right to work includes the right of everyone to the opportunity to gain his or her living by work which he or she freely chooses or accepts. Rights in work include the enjoyment of just and favourable conditions of work and to form and join trade unions.

The ICESCR recognises the ‘right of everyone to the enjoyment of just and favourable conditions of work...’. Labour is an increasingly prevalent topic in Australia’s trade agreements and has the potential to be raised by grant recipients. Supporting grant activities that seek to provide information or make recommendations on the regulation of labour in international trade would contribute to labour rights being engaged with and promoted as part of Australia’s network of FTAs. This in turn means that the grant programs could increase the ability of persons in Australia and abroad, to enjoy just and favourable working conditions.

As an example, the A-UKFTA contains a labour chapter. The Chapter affirms the parties’ obligations as members of the International Labour Organisation (ILO). The chapter requires parties adopt and maintain laws and regulations consistent with a range of rights under the ILO Declaration, and to enforce labour laws through a sustained and recurring course of action or inaction in a manner affecting trade or investment between the Parties. The ILO Declaration affirms the obligations and commitments that are inherent in membership of the ILO, namely:

1. freedom of association and the effective recognition of the right to collective bargaining;
2. the elimination of all forms of forced or compulsory labour;
3. the effective abolition of child labour;
4. the elimination of discrimination in respect of employment and occupation; and
5. a safe and healthy working environment.

Grant recipients through their activities could provide information on or recommend commitments similar to those in the A-UKFTA be considered by government for inclusion in Australia’s FTAs with Southeast Asian countries.

Rights of people with disability

Article 4 of the CRPD requires the States Parties to ensure and promote the full realisation of all human rights and fundamental freedoms for all persons with disability without discrimination of any kind on the basis of disability.

Article 27 (1) of the CRPD requires States Parties to recognise the right of persons with disabilities to work, on an equal basis with others

The CRPD recognises the barriers that people with a disability may face in realising their rights. The rights under all human rights treaties apply to everyone, including people with disability. However, the CRPD applies human rights specifically to the context of people with disability.

Article 27 of the CRPD recognises the ‘right of persons with disabilities to work, on an equal basis with others...’ and ‘gain a living by work freely chosen or accepted...’. Inclusivity is an increasingly prevalent topic in Australia’s trade agreements and has the potential to be raised by grant recipients. Inclusion of persons with disabilities in trade agreements is part of broader efforts in Australia to ensure FTAs benefit all peoples. The grant opportunity criteria will be designed with consideration for enabling activities that focus on inclusive trade. If disability inclusion is raised as a grant activity, it would promote economic participation of persons with disabilities and the right of persons with disabilities to work on an equal basis with others.

Rights of equality and non-discrimination

Article 3 of the CEDAW states that States Parties shall take in all fields, 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.

Article 11 of the CEDAW states that States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights. Including, employment opportunities, free choice of profession and employment, promotion, job security, and all benefits and conditions of service and the right to receive vocational training and retraining.

Article 13 of the CEDAW states that States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights.

Equality affirms that all human beings are born free and equal. Equality presupposes that all individuals have the same rights and deserve the same level of respect. All people have the right to be treated equally. This means that laws, policies and programs should not be discriminatory, and that public authorities should not apply or enforce laws, policies and programs in a discriminatory or arbitrary manner.

The CEDAW requires Parties ‘take appropriate measures... to ensure the full development and advancement of women’ in ‘political, social and economic’ fields, and ‘eliminate other

areas of discrimination against women in areas of economic and social life'. Inclusivity is an increasingly prevalent topic in Australia's trade agreements and has the potential to be raised by grant recipients. Inclusion of women in trade agreements is part of an effort in Australia to ensure FTAs benefit all peoples. The grant opportunity criteria will be designed with consideration for enabling activities that focus on inclusive trade. If inclusion of women is raised in the context of the grant activities, it would promote the development and advancement of women and eliminate discrimination.

Table item 687 is compatible with human rights. To the extent the instrument may interact with human rights, it does so in a way that would promote or positively affect human rights.

New table item 688 – Investment Deal Teams Project Development Support Program

Table item 688 establishes legislative authority for government spending on the Investment Deal Teams Project Development Support Program (the program) to facilitate Australia investment in projects located overseas, particularly in the Southeast Asia region.

The program forms part of the broader \$70.2 million Investment Deal Teams initiative in respond to the Government's implementation of Recommendation 45 of the *Invested: Southeast Asia Economic Strategy to 2040* (the Moore report).

The objective of the Investment Deal Teams is to increase Australian investment in Southeast Asia. The Investment Deal Teams would work with government and businesses across Australia and Southeast Asia to identify potential investment opportunities and support Australian institutional and corporate investors to assess and pursue these investment opportunities.

The program will be provided with \$20.9 million over four years from 2023-24 to support the facilitation of Australian investment in projects located overseas by informing and supporting proponents of projects located overseas which have the potential for Australian investment and Australian investors in relation to investment opportunities located overseas.

The program will support the Investment Deal Teams to develop the pipeline of potential investment-ready projects for Australian business consideration. The program will be delivered by a managing contractor who will procure projects to facilitate Australian investment. Projects could include feasibility studies, commercial and legal advice, and advice to ensure compliance with gender, disability and social inclusion approaches and environmental safeguards.

Human rights implications

Table item 688 engages the following rights:

- the right to work and rights at work – Article 6 of the ICESCR, read with Article 1 of the International Labour Organization's Convention concerning Employment Policy (ILO Convention 122); and
- the right to equality and non-discrimination – Article 2 of the ICESCR, Article 26 of the ICCPR, Articles 2, 3 and 4 of the CEDAW and Articles 1, 2 and 5 of the CERD.

Right to work and the rights at work

Article 6 of ICESCR states that States Parties will recognise the right to work, which includes the right of everyone to the opportunity to gain their living by work which is freely chosen or accepted, and will take appropriate steps to safeguard this right. The right to work also provides that the labour market is open to everyone without discrimination (including that work be physically accessible for people with disability).

Article 1 of the ILO Convention 122 provides that ‘each Member shall declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment’.

Southeast Asia is a centre of economic activity and business, and one of the fastest-growing regions in the world. The region will see one of the most dramatic economic transformations of the 21st century. Population growth, increasing large and affluent middle classes, and urbanisation trends will create growing demand for greater investment and a wider range of goods, services and skills. Greater integration with the dynamic markets of Southeast Asia will ultimately help deliver business development opportunities and jobs for Australians.

Australian businesses are underrepresented in Southeast Asia. Table item 688 engages with the right to work by increasing the opportunities for Australian businesses to enter or expand their operations in Southeast Asia. The development and expansion of Australian businesses helps create new jobs that will assist people in Australia and Southeast Asia to access the right to work.

Right to equality and non-discrimination

Article 2(2) of the ICESCR and Article 26 of the ICCPR state that rights will be exercised without discrimination of any kind on any ground including race, colour, sex and other status. Equality affirms that all human beings are born free and equal. Equality presupposes that all individuals have the same rights and deserve the same level of respect. All people have the right to be treated equally.

Non-discrimination is an integral part of the principle of equality. It ensures that no one is denied their rights because of factors such as race, colour, sex, language, religion, political or other opinion, national or social origin, property or birth. In addition to those grounds, discrimination on certain other grounds may also be prohibited. These grounds include age, nationality, marital status, disability, place of residence within a country and sexual orientation.

Article 2 of CEDAW condemns discrimination against women in all its forms and requires states to pursue by all appropriate means and without delay a policy of eliminating discrimination against women. Article 3 of the CEDAW requires states to take all appropriate measures, in particular in the political, social, economic and cultural fields, to ensure the full development and advancement of women. Article 4 of the CEDAW states that temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination.

Table item 688 engages the right to equality and non-discrimination because the design of the Project Development Support will ensure the program provides specific support for women

and First Nations businesses. The Project Development Support will include specific measures to ensure First Nations or women-led businesses can overcome barriers to accessing business development opportunities through the program.

Article 1(4) of the CERD allows States to adopt special measures for the sole purpose of securing adequate advancement of certain racial or ethnic groups as long as this does not lead to the maintenance of separate rights after these objectives have been achieved. Such measures are not deemed to be racial discrimination.

The program will engage Article 1(4) of the CERD by developing specific measures as part of the program design to ensure First Nations business people can benefit alongside non-Indigenous led businesses from the support on offer under the initiative.

To the extent that the program limits the right to equality and non-discrimination in that it is has specific opportunities for First Nations participation, this is reasonable and proportionate to achieving the legitimate purposes of providing opportunities which may otherwise have been less accessible to this group.

Table item 688 is compatible with human rights because it promotes the protection of human rights and, to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

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**