

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. 3) Regulations 2024*

The *Financial Framework (Supplementary Powers) Act 1997* (the FFSP Act) confers on the Commonwealth, in certain circumstances, powers to make arrangements under which money can be spent; or to make grants of financial assistance; and to form, or otherwise be involved in, companies. The arrangements, grants, programs and companies (or classes of arrangements or grants in relation to which the powers are conferred) are specified in the *Financial Framework (Supplementary Powers) Regulations 1997* (the Principal Regulations). The powers in the FFSP Act to make, vary or administer arrangements or grants may be exercised on behalf of the Commonwealth by Ministers and the accountable authorities of non-corporate Commonwealth entities, as defined under section 12 of the *Public Governance, Performance and Accountability Act 2013*.

The Principal Regulations are exempt from sunseting under section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (item 28A). If the Principal Regulations were subject to the sunseting regime under the *Legislation Act 2003*, this would generate uncertainty about the continuing operation of existing contracts and funding agreements between the Commonwealth and third parties (particularly those extending beyond 10 years), as well as the Commonwealth's legislative authority to continue making, varying or administering arrangements, grants and programs.

Additionally, the Principal Regulations authorise a number of activities that form part of intergovernmental schemes. It would not be appropriate for the Commonwealth to unilaterally sunset an instrument that provides authority for Commonwealth funding for activities that are underpinned by an intergovernmental arrangement. To ensure that the Principal Regulations continue to reflect government priorities and remain up to date, the Principal Regulations are subject to periodic review to identify and repeal items that are redundant or no longer required.

Section 32B of the FFSP Act authorises the Commonwealth to make, vary and administer arrangements and grants specified in the Principal Regulations. Section 32B also authorises the Commonwealth to make, vary and administer arrangements for the purposes of programs specified in the Principal Regulations. Section 32D of the FFSP Act confers powers of delegation on Ministers and the accountable authorities of non-corporate Commonwealth entities, including subsection 32B(1) of the FFSP Act. Schedule 1AA and Schedule 1AB to the Principal Regulations specify the arrangements, grants and programs.

Section 65 of the FFSP Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Financial Framework (Supplementary Powers) Amendment (Attorney-General's Portfolio Measures No. 3) Regulations 2024* (the Regulations) amend Schedule 1AA and Schedule 1AB to the Principal Regulations in relation to activities administered by the Attorney-General's Department.

The Regulations repeal table item 402.013 in Part 4 of Schedule 1AA relating to the Native title system. Table item 402.013 is appropriate for repeal as legislative authority for spending activities under the program will be supported by a new table item 701.

The Regulations also insert one new table item 701 to Schedule 1AB to establish legislative authority for government spending on the Native Title Anthropologist Grant Program (the program).

The program seeks to increase native title anthropology capacity by supporting native title anthropologists working in the system and supporting the entry and training of prospective and early-career anthropologists. This facilitates native title parties having access to qualified and experienced anthropologists, to support the resolution of native title claims, the effective management of native title, and post-determination and compensation efforts.

Funding of \$1.1 million over three years from 2025-26 is currently allocated for the program.

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. 3) 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. 3) Regulations 2024*.

Section 2 – Commencement

This section provides that the Regulations commence on the day after registration on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the Regulations are made under the *Financial Framework (Supplementary Powers) Act 1997*.

Section 4 – Schedules

This section provides that the *Financial Framework (Supplementary Powers) Regulations 1997* are amended as set out in the Schedule to the Regulations.

Schedule 1 – Amendments

Part 1 – Amendments

Financial Framework (Supplementary Powers) Regulations 1997

The items in Part 1 amend Schedules 1AA and 1AB to the Principal Regulations in relation to activities administered by the Attorney-General's Department (the department).

Item 1 – Part 4 of Schedule 1AA (table item 402.013)

Item 1 repeals table item 402.013 in Part 4 of Schedule 1AA.

Table item 402.013 relates to the Native title system. Table item 402.013 is appropriate for repeal as legislative authority for spending activities under the program will be supported by new table item 701 in Part 4 of Schedule 1AB.

This is a minor technical amendment which does not affect existing spending.

Item 2 – In the appropriate position in Part 4 of Schedule 1AB (table)

Item 2 adds one new table item to Part 4 of Schedule 1AB.

Table item 701 – Native Title Anthropologist Grant Program

New **table item 701** establishes legislative authority for government spending on the Native Title Anthropologist Grant Program (the program).

The program, announced in the 2009-10 Budget, seeks to increase native title anthropology capacity by supporting native title anthropologists working in the system and supporting the entry and training of prospective and early-career anthropologists. This facilitates native title parties having access to qualified and experienced anthropologists, to support the resolution of native title claims, the effective management of native title, and post-determination and compensation efforts.

This work supports the recognition and management of native title rights and interests for First Nations people. The determination of native title also contributes to land tenure certainty and supports economic opportunities for First Nations people.

The program is aligned with the Government's commitments to the *National Agreement on Closing the Gap* (<https://www.closingthegap.gov.au/national-agreement>), which sets out four Priority Reforms and 17 socioeconomic outcomes that aim to improve the lives of First Nations people. In particular, the program contributes to Outcome 15 '*Aboriginal and Torres Strait Islander people maintain a distinctive cultural, spiritual, physical and economic relationship with their land and waters.*'

The program's objective is to support the native title system. Eligible grant activities must relate directly to the program's spending objectives and contribute to its outcomes. Activities must either:

- increase capacity for anthropology work across the native title system, for instance:
 - development of skills and training (including internships and placements) for prospective, junior or early career anthropologists, to grow the future field and improve understanding of native title;
 - support for emerging senior anthropologists, including to encourage greater capacity and diversity in this group;
 - formal mentoring programs to pass on skills and experience from 'exemplary' staff to early and mid-career anthropologists; and
 - improved data sharing practices between anthropologists and native title claimants and holders in alignment with Priority Reform 4 of the National Agreement on Closing the Gap (shared access to locally relevant data and information);
- create stronger links between academic and applied anthropological work, to ensure anthropological skills are available to support the resolution of ongoing native claims and the effective management of native title into the future, including:
 - training which involves collaboration or shared, targeted learning within the native title anthropological sector;
 - practical placements, for example within the entities responsible for making native title claims or administering native title rights (Native Title Representative Bodies and Service Providers, and Prescribed Bodies Corporate), including with academic supervision;
 - organising conferences, networking events, seminars or meetings that provide for collaboration and information sharing among native title anthropologists and with other key participants in the native title sector; and

- senior academics supervising and mentoring native title anthropologists during research and joint publication;
- provide professional development and support for currently practising or prospective native title anthropologists, in particular to build claims resolution, post-determination agreement-making, compensation and broader legal skills, including:
 - training to develop specialised skills in legal writing, understanding court proceedings, data management (including Indigenous Data Sovereignty), etc; and
 - building native title anthropologists’ capacity to support governance arrangements for native title holders and other post-determination work.

Since the program commenced in 2010, approximately \$6.0 million has been allocated through 29 grants to 13 separate recipients. Most funding recipients have been:

- universities (six recipients with 19 grants); and
- native title representative bodies, service providers or prescribed bodies corporate (six recipients with nine grants).

In the program’s grant round for 2022-25, eight applications were received. Following an open competitive selection process, grant funding was awarded to the:

- Centre for Native Title Anthropology (at the Australian National University);
- Jamukurnu Yapalikurnu Aboriginal Corporation; and
- Yamatji Marlpa Aboriginal Corporation.

Preparations are now underway to establish a new grant round for 2025-28. This round is planned to open in early 2025, with funded activities to commence in July 2025. Consistent with previous rounds, this will be an open competitive round. Fewer than 10 applications are expected to be filed.

Funding amount and arrangements, merits review and consultation

Funding of \$1.1 million over three years from 2025-26 for this item comes from Program 1.4: Justice Services (Native Title System), 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.

Funding recipients are selected through an open-competitive process. The final decision on funding rests with the department’s Decision Maker (as a delegate of the Accountable Authority). Under both the 2022-25 round guidelines and the proposed 2025-28 round guidelines, the Decision Maker is the Assistant Secretary of the Native Title and Priority Reforms Branch. The Decision Maker will perform their administrative power in accordance with the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and the *Financial Framework (Supplementary Powers) Act 1997* (FFSP Act) provided they are satisfied, after reasonable enquiry, that giving effect to the spending proposal would be a ‘proper’ use of public resources. As the Assistant Secretary of the Native Title and Priority Reforms Branch, the Decision Maker has the relevant subject matter expertise, skills and qualifications to exercise this function.

The Decision Maker is advised by the Selection Advisory Panel, which includes a probity adviser. The Selection Advisory Panel rates applications against three selection criteria:

1. does the proposal address the needs of native title anthropologists and the native title anthropology sector;

2. does the proposal achieve positive outcomes; and
3. does the organisation have the capacity to deliver the grant activity on time and on budget.

Successful recipients are provided the agreed funding amount through instalments over a three-year period. Payments are subject to sufficient progress being made against agreed activities. There is no minimum or maximum grant amount. Applicants may apply for a grant of the total amount of available funds. Grants cannot exceed the amount of available funds. Grant funding will not be provided to a recipient who receives funding from another government source for the same purpose. Applicants may submit only one application.

The grant has been and will continue to be administered in accordance with the Commonwealth resource management framework, including the PGPA Act, the *Public Governance, Performance and Accountability Rule 2014* and the *Commonwealth Grants Rules and Principles 2024* (CGRPs).

Consistent with the CGRPs, grant opportunity guidelines are developed, and the department will have regard to the nine key principles in administering the grant together with the Community Grants Hub, which is part of the Department of Social Services.

Information about the grant and the grant awards will be made available on the GrantConnect website (www.grants.gov.au).

Independent merits review is not considered suitable for decisions made in connection with the program, 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 Administrative Review Council 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?*).

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

In 2022, Inside Policy, a First Nations-owned consulting firm, conducted a qualitative review of the program. As part of the review, the firm consulted with a wide range of stakeholders in the native title sector, including:

- current and past grant recipients;
- Native Title representative bodies and service providers;
- National Native Title Council;
- prescribed bodies corporate;
- Federal Court of Australia;
- National Native Title Tribunal;

- Minerals Council of Australia;
- state and territory government agencies;
- Office of the Registrar of Indigenous Corporations;
- National Indigenous Australians Agency, and
- Attorney-General's Department.

The review found that the program was successfully meeting its objectives and represented good value for money. In particular, stakeholders reported that the program actively supports the needs and sustainability of the native title anthropology sector by creating a community of practice, facilitating networks, encouraging the perspectives of women in the sector, and enabling an interdisciplinary focus that engages the sector as a whole.

The department also regularly consults with the programs recipients, other government agencies and the states and territories, to seek feedback on the operation of the program and ensure that the program continues to represent good value for money.

Constitutional considerations

Noting that it is not a comprehensive statement of relevant constitutional considerations, the objective of the item references the race power (sections 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 program will support the professional development of current and prospective native title anthropologists working in the native title system and will facilitate the provision of qualified and experienced anthropologists to native title parties. This will support the resolution of native title claims and enhance the management of native title rights and interests held by Aboriginal and Torres Strait Islander peoples.

Part 2 — Transitional provisions

Financial Framework (Supplementary Powers) Regulations 1997

Item 3 – In the appropriate position in Part 3

Item 3 inserts a new Division 7 in Part 3 of the Principal Regulations. Division 7 contains section 32 'Power to vary or administer grants of arrangements'.

The transitional provisions continue the operation of one redundant item being repealed, table item 402.013 in Part 4 of Schedule 1AA, for the purposes of the FFSP Act to permit the administration or variation of grants or arrangements which were made before the repeal under that item. The inclusion of the provisions does not have the effect of authorising any new spending by the Commonwealth.

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. 3) Regulations 2024

This disallowable legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

Section 32B of the *Financial Framework (Supplementary Powers) Act 1997* (the FFSP Act) authorises the Commonwealth to make, vary and administer arrangements and grants specified in the *Financial Framework (Supplementary Powers) Regulations 1997* (the Principal Regulations) and to make, vary and administer arrangements and grants for the purposes of programs specified in the Regulations. Schedule 1AA and Schedule 1AB to the Principal Regulations specify the arrangements, grants and programs. The powers in the FFSP Act to make, vary or administer arrangements or grants may be exercised on behalf of the Commonwealth by Ministers and the accountable authorities of non-corporate Commonwealth entities, as defined under section 12 of the *Public Governance, Performance and Accountability Act 2013*.

The *Financial Framework (Supplementary Powers) Amendment (Attorney-General's Portfolio Measures No. 3) Regulations 2024* amend Schedule 1AA and Schedule 1AB to the Principal Regulations in relation to activities administered by the Attorney-General's Department (the department).

This disallowable legislative instrument makes the following amendments to the Principal Regulations:

- repeals table item 402.013 'Native title system' in Part 4 of Schedule 1AA; and
- adds table item 701 'Native Title Anthropologist Grant Program' in Part 4 of Schedule 1AB.

Repealed table item 402.013 – Native title system

The repealed table item 402.013 in Schedule 1AA relates to the Native title system. Table item 402.013 is appropriate for repeal as legislative authority for spending activities under the program will be supported by new table item 701.

The amendment is technical and does not affect existing spending.

Human rights implications

The repeal of table item 402.013 does not engage any of the applicable human rights or freedoms.

The repeal of table item 402.013 is compatible with human rights as it does not raise any human rights issues.

Table item 701 – Native Title Anthropologist Grant Program

Table item 701 establishes legislative authority for government spending on the Native Title Anthropologist Grant Program (program).

The program, announced in the 2009-10 Budget, seeks to increase native title anthropology capacity by supporting native title anthropologists working in the system and supporting the entry and training of prospective and early-career anthropologists. This facilitates native title parties having access to qualified and experienced anthropologists and supports the resolution of native title claims, the effective management of native title, and post-determination and compensation efforts.

This work supports the recognition and management of native title rights and interests for First Nations people. The determination of native title also contributes to land tenure certainty and supports economic opportunities for First Nations people.

Eligible grant activities must relate directly to program objectives and contribute to program outcomes, including to:

- increase capacity for anthropology work across the native title system
- encourage stronger linkages between academic and practicing native title anthropologists
- provide professional development and support for currently practising or prospective native title anthropologists.

Funding of \$1.1 million over three years from 2025-26 is currently allocated for the program.

Human Rights Implications

Table item 701 engages the following rights:

- the right to self-determination – Article 1 of the *International Covenant on Civil and Political Rights* (ICCPR), read with Article 2, and Article 1 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), read with Article 2; and
- the right to cultural participation – Article 27 of the ICCPR, Article 15 of the ICESCR and Article 5 of the *Convention on the Elimination of all forms of Racial Discrimination* (CERD), read with Article 2.

Right to self-determination

The ICCPR and ICESCR are legally binding treaties of which Australia is party to. Article 1 of both the ICCPR and ICESCR stipulate that all peoples have the right to self-determination, and by virtue of that right should be able to freely pursue their economic, social and cultural development.

Article 2 of the ICCPR states that each State Party to the Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the Covenant, without distinction of any kind, such as race, colour, sex,

language, religion, political or other opinion, national or social origin, property, birth or other status. Article 2 of the ICESCR requires States Parties to take steps to progressively achieve the full realisation of the rights recognised in the Covenant by all appropriate means.

Native title recognises legal rights and interests of Traditional Owners to maintain culture and connection to Country. Determining native title claims also contributes to land tenure certainty and is central to enabling First Nations people to achieve their economic aspirations.

The program upholds the right to self-determination by facilitating access for native title parties to qualified and experienced anthropologists to support the resolution of native title claims, the effective management of native title rights and interests, and native title compensation claims.

Right to cultural participation

Article 27 of the ICCPR, Article 15 of the ICESCR and Article 5(e)(vi) of the CERD protect the rights of ethnic and linguistic minorities to enjoy their own culture and recognise the universal right of everyone to take part in cultural life.

Article 2 of the CERD requires States Parties to undertake to pursue by all appropriate means a policy of eliminating racial discrimination in all its forms and promoting understanding among all races.

The program supports First Nations peoples' rights to cultural participation through the recognition and protection of native title. Native title recognises First Nations peoples' legal rights and interests in land and supports their distinctive cultural, spiritual, physical and economic relationships with their lands and waters.

Table item 701 is compatible with human rights because it promotes the protection of human rights.

Conclusion

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

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