

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance

Financial Framework (Supplementary Powers) Act 1997

*Financial Framework (Supplementary Powers) Amendment
(Health and Aged Care Measures No. 5) 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 (Health and Aged Care Measures No. 5) Regulations 2024* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on four-wheel drive (4WD) buses for remote sports access in the Northern Territory (NT) (the program). The program will be administered by the Department of Health and Aged Care.

The 4WD buses will be used for sports teams to travel between communities and across the NT for competitions, and after-school activities.

Grants funding of \$1.1 million in 2024-25 will be provided to three NT regional councils (West Arnhem Regional Council, West Daly Regional Council and East Arnhem Regional Council) to purchase five 4WD buses. The on-cost of the buses will be the responsibility of each regional council.

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 Health and Aged Care.

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 (Health and Aged Care Measures No. 5) Regulations 2024*

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Health and Aged Care Measures No. 5) 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 Department of Health and Aged Care (the department).

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

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

Table item 696 – 4WD buses for remote sports—Northern Territory

New **table item 696** establishes legislative authority for government spending on four-wheel drive (4WD) buses for remote sports access in the Northern Territory (NT) (the program).

The program forms part of the broader *Investing in Our Communities and Priority Community Infrastructure* package in response to the Government's 2022 election commitment published in the *Plan for a Better Future*.

The program aligns with the department's Outcome 4: Sport and Physical Activity, to improve opportunities for community participation in sport and physical activity, excellence in high-performance athletes, and protecting the integrity of sport through investment in sport infrastructure.

The program will provide funding of \$1.1 million in 2024-25 for the purchase of five 4WD buses, which will be used for sports teams to travel between communities and across the NT for competitions and after-school activities.

The five community buses will be owned by three NT regional councils: West Arnhem Regional Council, West Daly Regional Council and East Arnhem Regional Council and operated in accordance with the program's objective. Each regional council will be responsible for meeting maintenance and overhead expenses for the buses.

The objectives of the program are to:

- facilitate active involvement and support in various sporting events at local, regional, and national levels; and
- encourage collaboration and coordination among stakeholders to address sport-related challenges and promote effective sports culture.

The intended outcomes of the program are to:

- improve opportunities for community participation in sport and physical activity;
- increase involvement in sporting events; and
- break down barriers through effective coordination and cooperation on sport issues.

Funding amount and arrangements, merits review and consultation

Funding of \$1.1 million for the program will come from Program 4.1: Sport and Physical Activity, which is part of Outcome 4. Details are set out in the *Portfolio Budget Statements 2024-25, Budget Related Paper No. 1.9, Health and Aged Care Portfolio* at page 103.

The funding will be delivered via closed non-competitive grants to three NT regional councils by 30 June 2025. The department will be the lead agency to administer the funding, and the Community Grants Hub within the Department of Social Services will provide support in the establishment and manage phases of the grants.

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* 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 grants. The guidelines will be published on GrantConnect at grants.gov.au.

The Minister for Sport will be the responsible minister and will likely delegate decision-making, for awarding of grants, to a department delegate (Assistant Secretary, Office for Sport), who will be responsible for making final decisions in accordance with the *Financial Framework (Supplementary Powers) Act 1997*. The Assistant Secretary has

appropriate experience in overseeing delivery of related programs, from grant development and assessment, delivery and evaluation.

An assessment panel of several departmental officers with probity expertise will make recommendations to the delegate. Any recommendations will be supported by evidence and consistent with the requirements of the CGRPs.

Applicants will need to:

- read all available documentation about the grant opportunity provided on GrantConnect;
- complete the application form on GrantConnect;
- address all eligibility criteria and assessment criteria;
- include all necessary attachments; and
- submit the application by the closing date to GrantConnect.

A record of any funding agreement arrangement will be published on grants.gov.au.

Independent merits review of decisions made in connection with this program would not be considered appropriate as the decisions relate to the provision of a one-off grant to three NT regional councils, over other service providers. The regional councils were considered as they already provide sport and recreation services for members of the community for all ages including after-school activities, youth programs and some aged care services. 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 4.16 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 November 2023, the local member's office sought agreement from the department that they have the opportunity to revisit the program with regional stakeholders. This was to ensure the program's final model was appropriate and sustainable. This was supported by the department.

The local member's office further consulted with stakeholders including the local Aboriginal community representatives and regional councils on the design of the program to ensure a sustainable outcome. This consultation resulted in three councils being identified as well placed to receive, own and operate the five buses with operational costs also to be met by these councils.

Constitutional considerations

Noting that it is not a comprehensive statement of relevant constitutional considerations, the objective of the item references the territories power (section 122) of the Constitution.

Territories power

Section 122 of the Constitution empowers the Parliament to ‘make laws for the government of any territory’.

The 4WD buses will be used by regional councils to provide access to sport in the NT.

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 (Health and Aged Care Measures No. 5) 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 (Health and Aged Care Measures No. 5) Regulations 2024* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on four-wheel drive (4WD) buses for remote sports access in the Northern Territory (NT) (the program). The program will be administered by the Department of Health and Aged Care.

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Human rights implications

This disallowable legislative instrument engages the following right:

- the right to enjoy and benefit from culture – Articles 12 and 15 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), read with Article 2.

Right to enjoy and benefit from culture

Article 2(2) of the ICESCR recognises the right to culture be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. According to the United Nations Committee on Economic, Social and Cultural Rights, the right to culture includes sports and games.

Article 12(1) recognises the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Sport and physical activity play an important role in both physical and mental wellbeing.

Article 15(1)(a) of the ICESCR recognises the right of everyone to take part in cultural life. This right encompasses access to culture, which includes the availability and access to sporting activities.

This disallowable legislative instrument will provide reliable and a safe form of transport in remote and unpredictable environments enabling community access to cultural events such as sporting activities.

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**