**EXPLANATORY STATEMENT**

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

*Financial Framework (Supplementary Powers) Act 1997*

*Financial Framework (Supplementary Powers) Amendment*

*(Attorney-General’s Portfolio Measures No. 2) Regulations 2025*

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 sunsetting under section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (item 28A). If the Principal Regulations were subject to the sunsetting 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 FFSP Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the FFSP Act.

The *Financial Framework (Supplementary Powers) Amendment (Attorney-General’s Portfolio Measures No. 2) Regulations 2025* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on the Family Violence Prevention and Legal Services in the Jervis Bay Territory (the program). The program will be administered by the Attorney-General’s Department.

On 6 September 2024, the National Cabinet signed a Heads of Agreement for the National Access to Justice Partnership 2025-30 (NAJP). The Heads of Agreement set out that the Commonwealth would invest $3.9 billion in frontline legal services to be provided through the new 5-year NAJP from 2025-26. The Heads of Agreement also set out that the continuation of funding for family violence prevention and legal services (FVPLS), which is currently funded through the Indigenous Advancement Strategy, would transition to the NAJP from 1 July 2025.

The FVPLS will maintain and enhance the provision of culturally appropriate legal assistance and non-legal support services to Aboriginal and Torres Strait Islander victims and survivors experiencing, at risk of and/or recovering from family, domestic and sexual violence, and their families and relevant kinship.

Funding of $0.5 million over five years from 2025-26 is available for the program under the broader NAJP funding package.

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.

**Attachment A**

**Details of the *Financial Framework (Supplementary Powers) Amendment***

***(Attorney-General’s Portfolio Measures No. 2) Regulations 2025***

**Section 1 – Name**

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Attorney-General’s Portfolio Measures No. 2) Regulations 2025.*

**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* (the Principal Regulations) are amended as set out in the Schedule to the Regulations.

**Schedule 1 – Amendments**

***Financial Framework (Supplementary Powers) Regulations 1997***

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

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

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

*Table item 714 – Family Violence Prevention and Legal Services in the Jervis Bay Territory*

New **table item 714** establishes legislative authority for the Family Violence Prevention and Legal Services in the Jervis Bay Territory (the program).

On 6 September 2024, the Government announced the National Cabinet had signed a Heads of Agreement for a new National Access to Justice Partnership (NAJP) to support the legal assistance sector, with a focus on uplifting legal services responding to gender-based violence. The Heads of Agreement set out that the Commonwealth would invest $3.9 billion in frontline legal services to be delivered through the new 5-year partnership agreement with the states and territories.

Details of the media release are available at https://www.pm.gov.au/media/national-access-justice-partnership and details of the Heads of Agreement are available at https://federation.gov.au/national-cabinet/media/2024-09-12-heads-agreement-national-access-justice-partnership.

The terms of the NAJP were agreed through the Standing Council of Attorneys-General meeting on 22 November 2024 in accordance with the Heads of Agreement, which was announced by the Attorney-General, the Hon Mark Dreyfus KC MP (https://ministers.
ag.gov.au/media-centre/new-national-access-justice-partnership-22-11-2024). Under the NAJP, funding of $367.0 million over five years from 2025-26 will be provided for family violence prevention and legal services (FVPLS).

The National Indigenous Australians Agency currently funds FVPLS across Australia, including the Jervis Bay Territory, through the Indigenous Advancement Strategy. In the 2024-25 Mid-Year Economic and Fiscal Outlook, the Government announced that from 1 July 2025, administrative responsibility for FVPLS will transfer from the Indigenous Advancement Strategy to states and territories under the new NAJP. The NAJP will take effect on 1 July 2025, once the National Legal Assistance Partnership 2020-25 expires on 30 June 2025.

Administrative responsibility for the program (FVPLS in the Jervis Bay Territory), which will receive funding of $0.5 million from the broader FVPLS funding package will also be transferred to the department from 1 July 2025, given the Jervis Bay Territory is a territory of the Commonwealth.

The FVPLS will maintain and enhance the provision of culturally appropriate legal assistance and non-legal support services to Aboriginal and Torres Strait Islander victims and survivors experiencing, at risk of and/or recovering from family, domestic and sexual violence, and their families and relevant kinship.

Through the FVPLS service delivery model, legal and non-legal support services provided may include:

* legal advice and casework assistance which prioritises clients experiencing family violence;
* court support;
* counselling for victims of family violence and sexual assault;
* community engagement and outreach programs focused on improved family safety outcomes;
* early intervention and family violence prevention programs and support;
* community legal education programs; and
* referral, information and support services that contribute to the improvement of family safety outcomes.

The majority of the FVPLS funding will be administered by state and territory governments under the NAJP, with legislative authority supported under the *Federal Financial Relations Act 2009*. However, the department will administer funding for the FVPLS delivered in the Jervis Bay Territory from 1 July 2025, with legislative authority supported by table item 714 in Schedule 1AB to the Principal Regulations.

The department will procure an external services provider to deliver the FVPLS via a limited tender. The Aboriginal Legal Service (NSW/ACT) Limited is the current and sole provider of the FVPLS in the Jervis Bay Territory and is the only provider with the necessary experience and expertise to deliver the FVPLS in the Jervis Bay Territory from 1 July 2025. This program is critical to ensure the continuity of existing service provision to the community in the Jervis Bay Territory, in line with the policy objectives announced by the National Cabinet and implemented via the NAJP.

The Aboriginal Legal Service (NSW/ACT) Limited also delivers Aboriginal and Torres Strait Islander Legal Services and the FVPLS across New South Wales and the Australian Capital Territory under the NAJP. To minimise administrative burden on the provider, providing funding through a procurement will align with payment dates under the NAJP, with funding to be paid in two equal instalments each financial year. The first instalment will be paid on 7 July and the second instalment will be paid on 7 January of each financial year.

Provision of the FVPLS contributes to Targets 10, 11, 12 and 13 of the *National Agreement on Closing the Gap* (Closing the Gap) by ensuring the provision of culturally appropriate legal assistance and non-legal support services to Aboriginal and Torres Strait Islander women and children experiencing or at risk of family and domestic violence. The FVPLS will also contribute to Priority Reform Two of the Closing the Gap by supporting the development of a strong and sustainable Aboriginal and Torres Strait Islander community-controlled sector. In addition, the continuation of the FVPLS funding contributes to the Commonwealth’s broader policy objectives of ending gender-based violence. Further information on the Closing the Gap can be found at www.closingthegap.gov.au/national-agreement.

*Funding amount and arrangements, merits review and consultation*

Funding of $3.9 billion for the NAJP was included in the 2024-25 Mid-Year Economic and Fiscal Outlook under the measure ‘National Access to Justice Partnership’ for a period of five years commencing in 2025-26. Details are set out in the *Mid-Year Economic and Fiscal Outlook 2024‑25, Appendix A: Policy decisions taken since the 2024‑25 Budget* at page 216.

Funding for this item of $0.5 million over five years from 2025-26 will come from Program 1.4: Justice Services (Support for Specialist Family Violence Legal Services), which is part of Outcome 1. Details are set out in the *Portfolio Additional Estimates Statements 2024-25, Attorney-General’s Portfolio* at page 21, which shows funding as part of a broader program.

The department will deliver the program in accordance with applicable legislative requirements under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule)*,* the *Commonwealth Procurement Rules* (CPRs) and the department’s Accountable Authority Instructions. Final spending decisions will be made by the Secretary of the department or an appropriate delegate in accordance with the PGPA Act and the *Financial Framework (Supplementary Powers) Act 1997*. The delegate will possess the appropriate skills, qualifications and experience to exercise their administrative power.

Consistent with the department’s delegation instrument, established under the PGPA Act, the following officers in the department have an appropriate delegation to enter into a contract for services valued at $0.5 million over five years:

* Senior Executive Service Band 3 – spending delegation of up to $10.0 million;
* Senior Executive Service Band 2 – spending delegation of up to $5.0 million; and
* Senior Executive Service Band 1 – spending delegation of up to $2.5 million.

The department will:

* manage the contract(s) for the above services;
* facilitate dissemination of reporting to relevant Government agencies;
* administer program delivery, quality, compliance, and audit activities; and
* report on performance of the program.

Procurement decisions will be made in accordance with the Commonwealth resource management framework, including the PGPA Act, PGPA Rule and the CPRs. The department will provide an opportunity for suppliers and tenderers to make complaints if they wish, and to receive feedback. These complaints and enquiries can be made at any time during the procurement process and will be handled in accordance with probity requirements. Information about the tender and the resultant contracts will be made available on AusTender (www.tenders.gov.au) once the contracts are signed. Procurement decisions will be based on value for money, including capability and capacity to deliver, and price and risk considerations.

Funding decisions made in connection with the program are not considered suitable for independent merits review, as they will be decisions by government to allocate funding to programs or initiatives as a whole, and therefore budgetary decisions of a policy nature, rather than decisions immediately affecting any particular person's interests. Further, decisions to provide one-off payments to certain service providers, over other service providers, are also excluded from merits review. The Administrative Review Council has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraph 4.16 to 4.19 of the guide, *What decisions should be subject to merit review?*).

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* enables suppliers to challenge some procurement processes for alleged breaches of certain procurement rules. This legislation might provide an additional avenue of redress (compensation or injunction) for dissatisfied providers or potential providers, depending on the circumstances.

The department consulted with the Aboriginal Legal Service (NSW/ACT) Limited and the FVPLS sector peak body, First Nations Advocates Against Family Violence, to support the consideration of the most appropriate arrangements to provide funding for the program. Feedback from the consultations was generally supportive and noted the importance of minimising administrative burden for the provider, as well as supporting the continuity of funding for and minimising disruption of the FVPLS in the Jervis Bay Territory.

*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 territories power (section 122); and
* the race power (section 51(xxvi)).

*Territories power*

Section 122 of the Constitution empowers the Parliament to ‘make laws for the government of any territory.’ The program will fund the delivery of legal assistance services to Aboriginal and Torres Strait Islander women and children in the Jervis Bay Territory.

*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’. FVPLS provided under the procurement will be provided by an Aboriginal community-controlled organisation to Aboriginal and Torres Strait Islander women and children in the Jervis Bay Territory and will be tailored to their needs.

**Attachment B**

**Statement of Compatibility with Human Rights**

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

***Financial Framework (Supplementary Powers) Amendment (Attorney-General’s Portfolio Measures No. 2) Regulations 2025***

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. 2) Regulations 2025* (the Regulations) amend Schedule 1AB to the Principal Regulations toestablish legislative authority for government spending on the Family Violence Prevention and Legal Services in the Jervis Bay Territory (the program). The program will be administered by the Attorney-General’s Department (the department).

On 6 September 2024, the National Cabinet signed a Heads of Agreement for the National Access to Justice Partnership 2025-30 (NAJP). The Heads of Agreement set out that the Commonwealth would invest $3.9 billion in frontline legal services to be provided through the new 5-year NAJP from 2025-26. The Heads of Agreement also set out that the continuation of funding for family violence prevention and legal services (FVPLS), which is currently funded through the Indigenous Advancement Strategy, would transition to the NAJP from 1 July 2025.

The FVPLS will maintain and enhance the provision of culturally appropriate legal assistance and non-legal support services to Aboriginal and Torres Strait Islander victims and survivors experiencing, at risk of and/or recovering from family, domestic and sexual violence, and their families and relevant kinship.

Through the FVPLS service delivery model, legal and non-legal support services provided may include:

* legal advice and casework assistance which prioritises clients experiencing family violence;
* court support;
* counselling for victims of family violence and sexual assault;
* community engagement and outreach programs focused on improved family safety outcomes;
* early intervention and family violence prevention programs and support;
* community legal education programs; and
* referral, information and support services that contribute to the improvement of family safety outcomes.

Funding of $0.5 million over five years from 2025-26 is available for the program under the broader NAJP funding package. This funding will be administered by the department, outside of the NAJP, as the Jervis Bay Territory is a Commonwealth administered territory.

**Human rights implications**

This disallowable legislative instrument engages the following rights:

* the right to full development and advancement of women – Article 3 of the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), read with Article 2;
* the right of women in all matters relating to marriage and family relations – Article 16 of the CEDAW;
* the right of everyone to an adequate standard of living – Article 11 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), read with Article 2;
* the right of a child – Article 19 of the *Convention on the Rights of the Child* (CRC), read with Article 4;
* the right to physical and psychological recovery and social reintegration of children who are victims of any form of neglect, exploitation, or abuse – Article 39 of the CRC; and
* the right to equality and non-discrimination – Articles 16 and 26 of the *International Covenant on civil and Political Rights* (ICCPR), read with Article 2.

*Right to full development and advancement of women*

Article 2 of the CEDAW – the elimination of discrimination against women. Domestic violence, a form of violence that disproportionately affects women, is a form of discrimination against women. FVPLS provide targeted, trauma-informed legal and non‑legal support services to support Aboriginal and Torres Strait Islander women experiencing or at risk of domestic violence, leave violent and abusive relationships, navigate the justice system and to recover and achieve economic security. By providing funding for FVPLS, the disallowable legislative instrument supports the goal of empowering women and improving their financial capacity and economic independence following the breakdown of a relationship.

Article 3 of the CEDAW – the full development and advancement of women. Through the disallowable legislative instrument, the expanded funding for legal and non-legal support services will improve Aboriginal and Torres Strait Islander women’s workforce participation, earning potential and economic independence, assisting them to improve their legal, economic and societal circumstances. This is because legal assistance services generate
long-term improvements for women experiencing family violence, including increased financial self-sufficiency, decreased physical and mental health costs, and increased productivity.

*Right of women in all matters relating to marriage and family relations*

Article 16 of the CEDAW – the elimination of discrimination against women relating to marriage and relationships and the aim of the achievement of equality. The disallowable legislative instrument supports this goal by helping women exercise the same rights and responsibilities as men during marriage and at its dissolution, with respect to the ownership, acquisition, management, administration, enjoyment and disposition of property.

Victims of domestic violence often accept an unfair division of property when separating from a violent partner in order to escape further violence. The disallowable legislative instrument supports spending that will assist women to resolve complex legal and financial issues arising out of relationship breakdowns by funding targeted, trauma-informed legal and non-legal support services for Aboriginal and Torres Strait Islander women experiencing or at risk of family, domestic or sexual violence.

*Right of everyone to an adequate standard of living*

Article 2 of ICESCR – parties to ICESCR guarantee that the rights under ICESCR will 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.

Article 11 of the ICESCR – the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. Access to appropriate legal assistance services, including FVPLS, supports Aboriginal and Torres Strait Islander women and children who are experiencing or at risk of family, domestic or sexual violence to address their broader needs such as housing and social security. In particular, FVPLS supports Aboriginal and Torres Strait Islander women and their children experiencing family, domestic or sexual violence with culturally appropriate services that prioritise safety while maintaining connection with community and relevant kinship. This reduces the incidence of Aboriginal and Torres Strait Islander children entering the child protection system, and prioritises keeping women and children in their homes.

*Right of a child*

Article 4 of the CRC – parties to the CRC shall undertake all appropriate legislative, administrative, and other measures for the implementation of all rights under the CRC.

Article 19 of the CRC – the protection of children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of a parent. FVPLS provide targeted,
trauma-informed legal and non-legal support services to Aboriginal and Torres Strait Islander children experiencing or at risk of family, domestic or sexual violence. By providing funding for FVPLS, the disallowable legislative instrument supports the protection of children from all forms of physical or mental violence.

*Right to physical and psychological recovery and social reintegration*

Article 39 of the CRC – the promotion of the physical and psychological recovery and social reintegration of children who are victims of any form of neglect, exploitation, or abuse. The disallowable legislative instrument will provide funding for FVPLS to provide support services referrals, such as trauma counselling for children, to assist with their recovery where they have been victims of, or exposed to, family, domestic or sexual violence.

*Right to equality and non-discrimination*

Article 2 of the ICCPR – each state that is a party to the ICCPR undertakes to respect and ensure that all individuals subject to its jurisdiction the rights recognised in the ICCPR, 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 16 of the ICCPR – everyone shall have the right to recognition everywhere as a person before the law.

Article 26 of the ICCPR - all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The program engages the right to equality and non-discrimination in that it recognises and responds to the disproportionate levels of family, domestic and sexual violence experienced by Aboriginal and Torres Strait Islander women and children compared to non-Indigenous women and children in Australia. To the extent that the program will involve differential treatment based on Indigenous status, as FVPLS are provided only to Aboriginal and Torres Strait Islander women and children, this can be justified because it is for a legitimate aim, based on reasonable and objective criteria, and proportionate to the aims of the program.

In this sense, the program may be characterised as a form of discrimination that benefits Aboriginal and Torres Strait Islander people in a way that promotes other human rights and accords with discrimination law despite differential treatment. The ICCPR recognises it is legitimate to take such ‘special measures’ that assist or recognise the interests of particular groups in the community who may be disadvantaged by seeking to eliminate the conditions which serve to perpetuate discrimination prohibited in the ICCPR.

Furthermore, the NAJP, the primary mechanism for Commonwealth legal assistance funding, provides $3.9 billion over 5 years from 2025-26 for legal assistance delivered by Legal Aid Commissions, Community Legal Centres, Women’s Legal Services, Aboriginal and Torres Strait Islander Legal Services and FVPLS. States and territories allocate Commonwealth funding to legal assistance providers within their jurisdiction according to the terms of the NAJP, including in line with the national priority client groups identified in the NAJP.

Aboriginal and Torres Strait Islander people are one of eleven priority client groups identified by the NAJP. Therefore, while the program will involve differential treatment based on Indigenous status to facilitate the continuation of a specific existing service, the broader NAJP will provide legal assistance services to a variety of Australians experiencing particular vulnerabilities.

**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**