

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance

Financial Framework (Supplementary Powers) Act 1997

Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development and Communications Measures No. 4) Regulations 2020

The *Financial Framework (Supplementary Powers) Act 1997* (the FF(SP) 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 FF(SP) Act applies to Ministers and the accountable authorities of non-corporate Commonwealth entities, as defined under section 12 of the *Public Governance, Performance and Accountability Act 2013*.

Section 65 of the FF(SP) 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.

Section 32B of the FF(SP) 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. Schedule 1AA and Schedule 1AB to the Principal Regulations specify the arrangements, grants and programs.

The *Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development and Communications Measures No. 4) Regulations 2020* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on two initiatives that will be administered by the Department of Infrastructure, Transport, Regional Development and Communications.

Funding will be provided to support:

- the re-establishment of border services (biosecurity, immigration and customs control) as part of the redevelopment of the Gold Coast Airport terminal, with funding of up to \$8.4 million over two years from 2020-21; and
- the continued production of original, public interest journalism in Australia, including in regional areas, through the Public Interest News Gathering grants program, with funding of up to \$50 million over two years from 2019-20.

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 the instrument is registered 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 Infrastructure, Transport, Regional Development and Communications.

A regulation impact statement 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 (Infrastructure, Transport, Regional Development and Communications Measures No. 4) Regulations 2020*

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development and Communications Measures No. 4) Regulations 2020*.

Section 2 – Commencement

This section provides that the Regulations commence on the day after the instrument is registered 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

Item 1 – In the appropriate position in Part 3 of Schedule 1AB (table)

This item adds a new table item to Part 3 of Schedule 1AB to establish legislative authority for government spending on an initiative that will be administered by the Department of Infrastructure, Transport, Regional Development and Communications (the department).

New **table item 42** establishes legislative authority for the Government to provide a one-off grant of up to \$8.4 million to QAL Finance Pty Ltd to contribute to the costs of re-establishing border services (biosecurity, immigration and customs control) as part of the redevelopment of the terminal at Gold Coast Airport.

QAL Finance Pty Ltd is a subsidiary of Queensland Airports Limited, which owns and operates Gold Coast Airport. The grant will be provided to QAL Finance Pty Ltd in two instalments. The first instalment will be for \$5.9 million in the 2020-21 financial year and the second instalment will be for \$2.5 million in the 2021-22 financial year.

This grant recognises the unique circumstances that apply to Gold Coast Airport. The then Minister for Infrastructure and Regional Development, the Hon Warren Truss MP, approved the Major Development Plan (MDP) for the Gold Coast Airport terminal redevelopment in 2016. This was prior to changes to the policy framework for the provision of border services at new and redeveloping ports. At the time the MDP was approved, the Commonwealth was responsible for costs associated with the establishment and relocation of border services at international terminals.

The new policy, introduced in March 2018, requires airport operators to meet the cost of re-establishing border services. Gold Coast Airport is the only airport to have received ministerial approval for its project prior to the policy change. Information regarding the new policy is publicly available at

<https://www.infrastructure.gov.au/aviation/international/internationalairports.aspx>.

The new policy, coupled with delays in construction to avoid disruption to the 2018 Commonwealth Games, meant Gold Coast Airport subsequently became liable for the additional costs associated with the re-establishment of border services. The Government has agreed that Gold Coast Airport should not be adversely affected by the delays in construction, so the funding arrangements in place at the time the MDP was approved (in 2016) should apply. The total estimated cost to redevelop border services facilities and infrastructure at Gold Coast Airport, including re-establishing or replacing facilities and equipment, is \$14.5 million. Gold Coast Airport is expected to contribute up to \$6.1 million towards these costs. This represents the amount Gold Coast Airport would have had to contribute prior to the changes to the policy framework for the provision of border services at new and redeveloping ports.

This grant ensures the Government continues to support international services to regional ports, in line with its policy to increase the dispersal of international tourists and benefit regional areas. Gold Coast Airport is investing \$370 million in its airport terminal, with the redeveloped precinct contributing an estimated \$818 million per annum to gross regional product in the Tweed-Gold Coast region, and supporting 20,000 jobs by 2037.

The department will provide the funding as a one-off grant, through an ad hoc grant process, in accordance with applicable legislative requirements under the *Public Governance, Performance and Accountability Act 2013* and the *Commonwealth Grants Rules and Guidelines 2017*. The grant guidelines will not be publicly available as ad hoc grant guidelines are generally not made public. The Deputy Prime Minister and Minister for Infrastructure, Transport and Regional Development will be the final decision maker for the grant. The grant award will be reported on the GrantConnect website at www.grants.gov.au.

The funding decision made in connection with this grant will not be subject to independent merits review. It is a one-off grant to QAL Finance Pty Ltd. The purpose of the grant is not to confer benefits (financial or otherwise) on individual persons or companies, rather it is for the benefit of the broader Australian community. The grant will seek to provide economic and social benefits for the community more generally, as a result of improved airport capacity to provide for future growth in domestic and international passengers.

The funding is limited to a one-off grant payment to a certain provider. The Administrative Review Council has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see items 4.16 to 4.17 of the document *What decisions should be subject to merit review?*). Any reversal of the decision to award the grant to QAL Finance Pty Ltd has the potential to impact future investment in infrastructure at Gold Coast Airport, and any additional costs incurred by the Gold Coast Airport are likely to be passed on to airlines and the travelling public. Additional costs may discourage tourism numbers in the region and mitigate any associated benefits.

Additional costs to Gold Coast Airport associated with a change in government policy over the course of its terminal redevelopment project could affect confidence in future investments in Gold Coast Airport and other Australian airports. Given the benefits to the regional Tweed-Gold Coast economy of \$818 million annually by 2037, it is important that airport operators can make investment decisions with confidence and certainty with respect to government policy.

The grant will be managed by the Aviation and Airports Division of the department and administered by the Business Grants Hub at the Department of Industry, Science, Energy and Resources.

With respect to the financial assistance to support the re-establishment of border services at Gold Coast Airport, the following entities were consulted – the Department of the Prime Minister and Cabinet; the Department of Home Affairs (including the Australian Border Force); the Department of Agriculture, Water and the Environment; the Department of Industry, Science, Energy and Resources via the Business Grants Hub; Queensland Airports Limited, which owns and operates Gold Coast Airport, and QAL Finance Pty Ltd (the grant recipient) which is a subsidiary of Queensland Airports Limited.

Funding for this grant of \$8.4 million over two years from 2020-21 will be included in the 2020-21 Budget and the Portfolio Budget Statements 2020-21 for the Infrastructure, Transport, Regional Development and Communications Portfolio.

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

- the interstate and overseas trade and commerce power (section 51(i)); and
- the power with respect to Commonwealth places (section 52(i)).

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 grant will contribute to the re-establishment of border services at Gold Coast Airport, which is an interstate/international airport.

Commonwealth places

Section 52(i) of the Constitution empowers the Parliament to make laws with respect to ‘places acquired by the Commonwealth for public purposes’. The places referred to in section 52(i) are often called ‘Commonwealth places’.

The Gold Coast Airport site is owned by the Commonwealth and is therefore a Commonwealth place.

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

This item adds a new table item to Part 4 of Schedule 1AB to establish legislative authority for government spending on an initiative that will be administered by the department.

New **table item 416** establishes legislative authority for government spending on the Public Interest News Gathering (PING) program to provide direct support and encourage the continued production of original, high quality public interest journalism in Australia, including in regional areas.

The PING program is a grants program to provide financial assistance to media organisations including radio broadcasters, television broadcasters, and online and offline newspapers. The PING program implements the Government's response to the Recommendation 10 of the Australian Competition and Consumer Commission's (ACCC's) Digital Platforms Inquiry. The Government's response is available at <https://treasury.gov.au/publication/p2019-41708>.

The PING program replaces the existing Regional and Small Publishers Jobs and Innovation Package (RSPJI Package) with a new broader and enhanced grants program for original, public interest journalism. An immediate priority of the program is to address the shortfalls in public interest journalism in regional Australia in light of financial challenges faced by the sector due to decreased advertising revenues and the COVID-19 pandemic. Under the PING program, there will be direct support for the continued production of original local and regional journalism during the pandemic phase and into the recovery phase.

The PING program was announced by the Minister for Communications, Cyber Safety and the Arts, the Hon Paul Fletcher MP, on 15 April 2020. Details of the announcement are available at <https://minister.infrastructure.gov.au/fletcher/media-release/immediate-covid-19-relief-australian-media-harmonisation-reform-process-also-kicks>.

'Public interest journalism' is to be interpreted broadly as journalism concerning matters of public interest and significance to citizens and residents, providing information or analysis or insight about the community in which they live – whether local, regional or national. It includes journalism that investigates and explains public policy or matters of local or public significance, engages citizens in public debate, or informs democratic decision-making. Up to \$50 million will be allocated through a demand-driven grants process over two years from 2019-20. The program design will differ from the RSPJI Package by having no cap on the amount that can be provided. Funding will be allocated through a grant round commencing in May 2020.

Subject to meeting the eligibility criteria, regional newspapers, radio and television stations will be eligible to apply for funding. The national broadcasters (Australian Broadcasting Corporation and the Special Broadcasting Service) will not be eligible to apply. Applications will be accepted from regional broadcasters and newspapers that:

- have their central management and control in Australia;
- are a publisher (offline or online) or broadcaster that produces public interest journalism with an Australian perspective; and
- do not have formal affiliations with a political party, union, financial institution, non-government organisation or policy lobby group where that affiliation would influence, or might be seen to influence, the content produced by the applicant.

The Program Guidelines will be made publicly available on GrantConnect at www.grants.gov.au.

The department will administer the program. The funding round will be advertised and reported on GrantConnect as well as promoted through departmental media and

communications channels. Successful grant recipients must enter into a legally binding grant agreement to deliver the agreed activity within defined terms and conditions. Grant recipients will be required to provide meaningful data to the department on both the production and consumption of public interest journalism.

The Minister for Communications, Cyber Safety and the Arts (the Minister) will be the decision maker for grant expenditure under the PING program. All relevant approvals are subject to the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). The department will assess applications against the eligibility criteria and in accordance with the Program Guidelines, and make recommendations to the Minister on whether to approve a grant application.

The Minister's decision will be final for all matters, including the approval of grants, the grant funding amounts to be awarded, and the terms and conditions of grants. The Minister will not approve the grant if the PING program funding available across financial years will not accommodate the funding offer, and/or the application does not represent value for relevant money.

Funding decisions will be made objectively and in accordance with the assessment process set out in the Program Guidelines and applicable requirements under the PGPA Act. Information on funding decisions will be publicly available on GrantConnect.

Funding decisions made in connection with the PING program are not considered appropriate for independent merits review. The Minister's decision to approve funding will be based on the allocation of finite resources between applicants with the capacity to successfully deliver program objectives.

Where funding applications significantly exceed the limit of the available funding, only a proportion of suitable applications can be funded. A reviewed decision made in relation to one grant would also affect decisions in relation to all others, particularly around timing and funding amounts, which could jeopardise recommended activities. The Administrative Review Council has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see items 4.11 to 4.16 of the document *What decisions should be subject to merit review?*).

In order to address accountability issues related to the exclusion of a merits review, the program design and assessment process places great emphasis on the administrative accountability for decisions to allocate funding. This includes ensuring that:

- the criteria for funding are made clear;
- advice on applications is sought from independent expert advisers; and
- decisions are made objectively and in accordance with applicable requirements under the PGPA Act.

Applicants can make complaints to the department's Program Manager in the first instance. If the complainant is not satisfied with the way the complaint is handled, they also have recourse to the department, in accordance with the department's Client Service Charter. Such complaints will be investigated under the department's complaints policy and procedures. Information on the Charter and the handling of complaints is available at www.communications.gov.au/who-we-are/departments/client-service-charter.

If the complainant is not satisfied with the outcome of the department's assessment or investigation of their complaint, they will be able to contact the Commonwealth Ombudsman as a final recourse.

The PING program responds to the ACCC's Digital Platforms Inquiry (DPI) which recommended that the RSPJI Package be replaced with a \$50 million per year platform-neutral targeted grants program that supports the production of original local and regional journalism, including that related to local government and local courts (Recommendation 10 refers). The ACCC undertook extensive consultations in conducting the DPI including with the applicant groups that would be eligible for the PING program. In addition, in releasing the DPI report on 26 July 2019 the Government undertook a further 12 week consultation process with industry stakeholders on the DPI report's recommendations to inform the Government's response.

Following this consultation, on 12 December 2019 the Government announced it would enhance the RSPJI Package to better support the production of high quality news, particularly in regional and remote areas of Australia, with a particular focus on the production of public interest journalism that is at greatest risk of being under-provided.

Delegated legislation such as the *Financial Framework (Supplementary Powers) Regulations 1997* is considered to be an appropriate mechanism to establish legislative authority for government spending under the PING program because the program involves relatively minor expenditure, and has a limited purpose and clearly described eligibility criteria.

Funding for the PING program of \$50 million over two years from 2019-20 will be included in the 2020-21 Budget and the Portfolio Budget Statements 2020-21 for the Infrastructure, Transport, Regional Development and Communications Portfolio.

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

- the communications power (section 51(v));
- the trade and commerce power (section 51(i));
- the race power (section 51(xxvi));
- the external affairs power (section 51(xxix));
- the territories power (section 122); and
- the executive power and express incidental power (sections 61 and 51(xxxix)).

Communications power

Section 51(v) of the Constitution empowers the Parliament to make laws with respect to 'postal, telegraphic, telephonic, and other like services'.

Expenditure under the PING program will support the delivery of public interest news services, by media organisations, through print, digital, radio or television media.

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'.

Expenditure under the PING program may support the production of journalism that involves, or operates as a medium for, interstate trade and commerce.

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’.

Expenditure under the PING program may support the delivery of media services for or by indigenous Australians.

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 implementing Australia’s obligations under treaties to which it is a party.

Australia has obligations under the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). In particular:

- Article 2 which provides that States Parties will undertake steps, particularly including adopting legislative measures, to achieve progressive realisation of the rights recognised by the ICESCR.
- Article 6 which recognises ‘the right to work’ and requires States Parties to ‘take appropriate steps to safeguard this right’ including the implementation of ‘programmes ... to achieve ... full and productive employment’.

Australia also has obligations under the International Labour Organizations’s (ILO) Convention concerning Employment Policy (ILO Convention 122) and the ILO Convention concerning Vocational Guidance and Vocational Training in the Development of Human Resources (ILO Convention 142). In particular:

- Articles 1 and 2 of the ILO Convention 122 require Members to pursue ‘an active policy designed to promote full, productive and freely chosen employment’, including deciding on and keeping under review measures to attain this objective.
- Articles 1 and 2 of the ILO Convention 142 oblige Members to adopt policies and programs of vocational guidance and training, linked with employment. These policies and programs, whether offered in the formal education system or outside it, should be designed to improve the ability of the individual to understand and influence the working and social environment, and should encourage and enable all persons, without discrimination, to develop and use their capabilities for work in their own best interests and aspirations, account being taken of the needs of society.
- Article 3 of the ILO Convention 142 requires Members to extend its systems of vocational guidance to ensure that comprehensive information is available to all children, young persons and adults, including appropriate programs for all handicapped and disabled persons.
- Article 4 of the ILO Convention 142 requires Members to extend systems of vocational training systems to meet the needs for vocational training throughout the life of young persons and adults in all sectors and at all levels of skill and responsibility.

Spending under the PING program is intended to encourage the employment of journalists and vocational training of journalists, including encouraging the engagement and training of cadet journalists by media organisations.

Territories power

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

Expenditure under the PING program may support the delivery of media services to or in a territory.

Executive power and express incidental power

The express incidental power in section 51(xxxix) of the Constitution empowers the Parliament to make laws with respect to matters incidental to the execution of any power vested in the Parliament, the executive or the courts by the Constitution. Section 61 of the Constitution supports activities that are peculiarly adapted to the government of a nation and cannot be carried out for the benefit of the nation otherwise than by the Commonwealth.

Expenditure under the PING program will assist to mitigate the negative nationwide economic impact of the global COVID-19 pandemic by supporting the media sector.

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 (Infrastructure, Transport, Regional Development and Communications Measures No. 4) Regulations 2020

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 FF(SP) Act) authorises the Commonwealth to make, vary and administer arrangements and grants specified in the *Financial Framework (Supplementary Powers) Regulations 1997* (the FF(SP) Regulations) and to make, vary and administer arrangements and grants for the purposes of programs specified in the FF(SP) Regulations. Schedule 1AA and Schedule 1AB to the FF(SP) Regulations specify the arrangements, grants and programs. The FF(SP) Act applies to 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 (Infrastructure, Transport, Regional Development and Communications Measures No. 4) Regulations 2020* amend Schedule 1AB to the FF(SP) Regulations to add two new table items to establish legislative authority for government spending on certain activities that will be administered by the Department of Infrastructure, Transport, Regional Development and Communications.

This instrument adds:

- table item 42 to Part 3 of Schedule 1AB to support the re-establishment of border services (biosecurity, immigration and customs control) as part of the redevelopment of the Gold Coast Airport terminal; and
- table item 416 to Part 4 of Schedule 1AB to support the continued production of original, public interest journalism in Australia, including in regional areas, through the Public Interest News Gathering (PING) program.

Table item 42 – Gold Coast Airport

Table item 42 establishes legislative authority for the Government to provide a one-off grant to QAL Finance Pty Ltd to contribute to the costs of re-establishing border services (biosecurity, immigration and customs control) as part of the redevelopment of the terminal at Gold Coast Airport.

The Government will provide funding of up to \$8.4 million to Gold Coast Airport (through QAL Finance Pty Ltd). QAL Finance Pty Ltd is a subsidiary of Queensland Airports Limited, which owns and operates Gold Coast Airport.

This grant ensures the Government continues to support international services to regional ports, in line with its policy to increase the dispersal of international tourists and benefit

regional areas. The redeveloped Gold Coast Airport precinct will contribute an estimated \$818 million per annum to gross regional product in the Tweed-Gold Coast region, and support 20,000 jobs by 2037.

In providing this funding to QAL Finance Pty Ltd, the Government recognises the importance of:

- supporting airport facilities for international flights outside of the major gateways of Sydney, Melbourne, Brisbane and Perth, given the economic importance of tourism for Australia's regions, including the Tweed-Gold Coast region; and
- policy consistency in ensuring investor confidence in large infrastructure projects, such as the redevelopment of Gold Coast Airport's terminal.

Human rights implications

Table item 42 engages the following human rights:

- Right to security of person in Article 3 of the *Universal Declaration of Human Rights (UDHR)*.

Article 3 of the UDHR recognises 'everyone has the right to life, liberty and the security of person'.

The grant will support the efficient re-establishment of border services and security infrastructure to enable users of the Airport to travel and work in a secure environment.

Conclusion

Table item 42 is compatible with human rights because it promotes the protection of human rights.

Table item 416 – PING program

Table item 416 establishes legislative authority for government spending on the PING program to provide direct support and encourage the continued production of original, high quality public interest journalism in Australia, including in regional areas.

The PING program is a demand-driven grants program to provide financial assistance to media organisations including radio broadcasters, television broadcasters, and online and offline newspapers. Up to \$50 million will be allocated under the PING program over two financial years from 2019-20.

The PING program implements the Government's response to the Australian Competition and Consumer Commission's (ACCC's) Digital Platforms Inquiry. The PING program replaces the existing Regional and Small Publishers Jobs and Innovation Package with a new broader and enhanced grants program for original, public interest journalism. An immediate priority of the program is to address the shortfalls in public interest journalism in regional Australia in light of financial challenges faced by the sector due to decreased advertising revenues and the COVID-19 pandemic. Under the PING program, there will be direct support for the continued production of original local and regional journalism during the pandemic phase and into the recovery phase.

The PING program will support the production of original, public interest journalism through the provision of financial assistance to organisations with a proven track record of delivering news services which incorporate original, public interest journalism. The PING program will be platform-neutral and include all types of media organisations (newspapers, television, radio and online) within its scope.

‘Public interest journalism’ is to be interpreted broadly as journalism concerning matters of public interest and significance to citizens and residents, providing information or analysis or insight about the community in which they live – whether local, regional or national. It includes journalism that investigates and explains public policy or matters of local or public significance, engages citizens in public debate, or informs democratic decision-making.

Human rights implications

Table item 416 engages the following human rights:

- Article 6 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).

Article 6 of the ICESCR recognises the ‘right to work’.

The PING program will support employment in the media sector, including the employment of cadet journalists.

Conclusion

Table item 416 is compatible with human rights because it promotes the protection of human rights.

Senator the Hon Mathias Cormann
Minister for Finance