

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance

Financial Framework (Supplementary Powers) Act 1997

Financial Framework (Supplementary Powers) Amendment (Foreign Affairs and Trade Measures No. 1) 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 sunset under section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (item 28A). If the Principal Regulations were subject to the sunset regime under the *Legislation Act 2003*, this would generate uncertainty about the continuing operation of existing contracts and funding agreements between the Commonwealth and third parties (particularly those extending beyond 10 years), as well as the Commonwealth's legislative authority to continue making, varying or administering arrangements, grants and programs.

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

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

Section 65 of the FFSP Act provides that the Governor-General may make regulations prescribing matters required or permitted by the 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 (Foreign Affairs and Trade Measures No. 1) Regulations 2025* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on certain activities to be administered by the Department of Foreign Affairs and Trade.

Funding will be provided for:

- an amendment of support for the Cook Islands to provide ongoing financial assistance to, or for the benefit of, the Cook Islands, including for initiatives relating to regional issues in the Pacific (\$8.0 million over four years from 2024-25); and
- support for the Republic of Nauru by way of financial assistance and other forms of support to, or for the benefit of, Nauru, in connection with the Nauru–Australia Treaty signed on 9 December 2024 (\$120.6 million over four years from 2024-25).

Details of the Regulations are set out at Attachment A. A Statement of Compatibility with Human Rights is at Attachment B.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence on the day after registration on the Federal Register of Legislation.

Consultation

In accordance with section 17 of the *Legislation Act 2003*, consultation has taken place with the Department of Foreign Affairs and Trade.

A regulatory impact analysis is not required as the Regulations only apply to non-corporate Commonwealth entities and do not adversely affect the private sector.

Details of the *Financial Framework (Supplementary Powers) Amendment (Foreign Affairs and Trade Measures No. 1) Regulations 2025*

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Foreign Affairs and Trade Measures No. 1) 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* are amended as set out in the Schedule to the Regulations.

Schedule 1 – Amendments

Financial Framework (Supplementary Powers) Regulations 1997

The items in Schedule 1 amend Schedule 1AB to the Principal Regulations to provide legislative authority for government spending on activities to be administered by the Department of Foreign Affairs and Trade (the department).

Item 1 – Part 4 of schedule 1AB (Table item 417)

Amended table item 417 – Support for the Cook Islands

Item 1 amends table item 417 by repealing and substituting the full item. Table item 417 in Part 4 of Schedule 1AB establishes legislative authority for the Government to provide support for the Cook Islands through the Australia-Cook Islands Partnership Program (the Partnership Program).

The Partnership Program will advance the department's Outcome 1: The advancement of Australia's international strategic, security and economic interests including through bilateral, regional and multilateral engagement on Australian Government foreign, trade and international development policy priorities. It will provide funding to the Cook Islands Government (CIG) to facilitate bilateral engagement on Australian Government priorities.

Continued non-Official Development Assistance support for the Cook Islands is an important demonstration of Australia's tangible commitment to the bilateral relationship, to all members of the Pacific Islands Forum.

The Partnership Program will establish an efficient funding mechanism directly linking Australian funding with the priorities of the CIG. It will broaden, and strategically enhance, current bilateral efforts into a genuine partnership, reflecting the mutual priorities as identified in the pillars of the Australia-Cook Islands 'Oa Tumanava Partnership; strengthening people-to-people links, enhancing security cooperation, pursuing greater prosperity, cooperation on regional and international issues and fostering closer institutional linkages and supporting resilient and inclusive societies.

Recognising the CIG as best placed to identify their own national priorities, specific activities funded by the Partnership Program will depend on the funding proposal submitted annually by the CIG. The type of activities that could be conducted include:

- enhancing cooperation in the tourism and trade sector;
- reciprocal superannuation portability arrangements;
- deeper economic integration underpinned by the Pacific Agreement on Closer Economic Relations Plus and working together with Pacific partners to bolster regional governance arrangements; and
- strengthening regional coordination and integration and promoting gender equality and inclusion considerations.

The key objectives of the Partnership Program are to:

- empower CIG ownership and direction of funding priorities in line with undertakings as identified in the 'Oa Tumanava Partnership;
- support CIG to improve its fiscal resilience to withstand future shocks through increased finance, reduced fiscal shortfalls and improved planning;
- advance the bilateral relationship through stronger alignment and collaboration between Australia's funding and CIG priorities;
- continued assistance to the CIG to strengthen and mature the bilateral relationship and support the engagement of Australia's High Commission in Cook Islands; and
- establish greater trust and confidence in the CIG national systems to support ongoing direct financing arrangements.

The key outcomes of the Partnership Program are to:

- establish an administratively simple funding mechanism that creates a direct link between Australian funding and its support to the 'Oa Tumanava Partnership and the CIG priorities; and
- present Australia as a constructive and genuine partner to the Cook Islands.

Funding amount and arrangements, merits review and consultation

Reallocated funding of \$8.0 million over four years from 2024-25 (and \$2.0 million per year ongoing) to the Partnership Program will be included in the 2024-25 Portfolio Additional Estimates Statements for the Foreign Affairs and Trade portfolio. Funding will come from Program 1.1: Foreign Affairs and Trade Operations, which is part of Outcome 1.

Funding will be provided to the CIG through a closed non-competitive grant process, recognising the CIG as the governing entity of the Cook Islands and signatory of the 'Oa Tumanava Partnership.

The Partnership Program requires the CIG to provide an annual funding proposal to be assessed by the department evaluation panel (the Panel). The Panel will comprise three personnel: the director of Tonga, Cook Islands, Niue, and Tokelau section and two other officers; one within and one outside, the department's Office of the Pacific. The Panel will assess proposals in accordance with the selection criteria in the Partnership Program Grant Guidelines and provide recommendations to the Program Delegate.

The Program delegate will be the Senior Executive Service (SES) Band 1 of the Polynesia, and Partnerships Branch and responsible for approving all funding and entering into all relevant arrangements. The Program Delegate will have the appropriate skills and experience and will be responsible for approving Commonwealth funding provided under the Partnership Program as a recognised delegate of the Secretary of the department under the *Financial Framework (Supplementary Powers) Act 1997* (FFSP Act). A new arrangement will be entered into with each round of funding and the program delegate will be the department signatory for the arrangement.

The department's Office of the Pacific will administer the grant in accordance with the Commonwealth resource management framework, including the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule), the *Commonwealth Grants Rules and Principles 2024* (CGRPs) and the Partnership Program Grant Guidelines. The Grant Guidelines will be published on GrantConnect (www.grants.gov.au).

Australia's High Commission in the Cook Islands will be responsible for the ongoing management of the Partnership Program, however, will not be involved in the annual decision-making process.

Where possible, information about the grant will be made available on the GrantConnect website (www.grants.gov.au).

The Partnership Program is a decision by government to allocate funding to a program as a whole. It is a closed non-competitive grant process, where a decision to allocate funding is of a policy nature and not affecting any particular person's interests. The Administrative Review Council (ARC) has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.16 to 4.19 of the guide, *What decisions should be subject to merit review?* (ARC guide)).

The Program Delegate's decision is final in all matters, including: the approval of the grant, the grant amount to be awarded, and the terms and conditions of the grant. If at any time the Program Delegate determines further information is required, the Program Delegate will direct Australia's High Commissioner to re-engage the CIG officials to further develop the proposal for resubmission. This will then be resubmitted to the assessment panel for consideration prior to the Program Delegate. Recognising the CIG as the sole eligible entity, multiple resubmissions are permitted. If unsuccessful, feedback can be requested within two weeks of being advised of the outcome with feedback given within one month of the request.

The review and audit process undertaken by the Australian National Audit Office (ANAO) also provides a mechanism to review Australian Government spending decisions and report any concerns to the Parliament. These requirements and mechanisms help to ensure the proper use of Commonwealth resources and appropriate transparency around decisions relating to the making, varying, or administering of arrangements to spend relevant money.

The department underwent internal consultations alongside consultation with the CIG via Australia's High Commissioner to the Cook Islands. The most recent engagement occurred during the Australia-Cook Islands Senior Officials Talks, held in October 2024. The narrow focus of the consultations reflects the closed, non-competitive nature of the grant and the CIG as the sole eligible applicant. Ongoing consultation with the CIG will occur to ensure the Partnership Program continues to meet its objectives and remains fit for purpose.

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 external affairs power (section 51(xxix)); and
- the Pacific Islands power (section 51(xxx)).

External affairs power

Section 51(xxix) of the Constitution empowers the Parliament to make laws with respect to 'external affairs'. The external affairs power supports legislation with respect to matters or things outside the geographical limits of Australia.

The spending for the Partnership Program would be supported on the basis that activities would primarily be conducted in the Cook Islands.

Pacific island relations power

Section 51(xxx) of the Constitution empowers the Parliament to make laws with respect to the 'relations of the Commonwealth with the islands of the Pacific'.

The Partnership Program will provide assistance to, and enhance bilateral relationships with, the Cook Islands, a Pacific Islands nation.

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 709 – Support for the Republic of Nauru

New **table item 709** establishes legislative authority for the Government to provide support for the Republic of Nauru to further strengthen Australia’s economic, security and social partnership with Nauru.

Nauru faces significant economic challenges due to its limited natural resources, connectivity, geographic isolation, narrow economic base, and small exclusive economic zone. These vulnerabilities, compounded by de-banking and climate change risks, demand urgent, collaborative action to build resilience and sustainable growth.

On 9 December 2024, the Prime Minister of Australia, the Hon Anthony Albanese MP and the President of Nauru, His Excellency David Waiau Ranibok Adeang MP, announced an elevation in the long-standing bilateral relationship to an integrated economic, social and security partnership by signing the Nauru-Australia Treaty (the Treaty). Details of the announcement are available at <https://www.pm.gov.au/media/nauru-australia-treaty>.

The Treaty supports Australia’s interests in the Pacific through securing commitments from Nauru that recognises that Australia’s interests are intertwined and that decisions taken by one can affect the interests of the other. The treaty requires Australia to mutually agree any third-party engagement in security, banking and telecommunications. In return, Australia is committing to sustain Nauru’s existing banking services and access to the international financial system, bolster Nauru’s economic resilience and prosperity, and deepen security cooperation.

At the centre of this agreement is a commitment from Australia to sustain Nauru’s existing access to banking services in the face of Nauru’s sole bank – Bendigo & Adelaide Bank - departing in 2025. Australia has worked closely with the Commonwealth Bank of Australia to enter Nauru to provide ongoing access to banking services to its people from mid-2025 – and thereby remain connected to the global financial system.

Under the Treaty, Australia will provide \$100.0 million over five years in direct budget support to further strengthen Nauru’s economic security and resilience. This support will help give the Government of Nauru fiscal certainty to invest in Nauru’s future, including by making deeper and long-term investments to enhance the well-being of the Nauruan people.

Budget support payments will begin as soon as possible, classified as official development assistance funding until 31 December 2025. The department will administer the budget support payments and engage specialist financial advisors to oversee Nauru’s management and disbursement of funds to mitigate fraud and corruption risks. Work to design a delivery mechanism for this budget support is underway.

Australia has also committed to maintaining its standing as Nauru’s primary security partner through \$40.0 million over five years in new investments that will support Nauru’s policing and security needs. This includes Australian support for police and broader national security, capital infrastructure, training, equipment, recruitment and retention. This policing and

security uplift will be administered by the department and delivered through the Bilateral Security Treaty Implementation Program (BSTIP) by allocating funding to Commonwealth entities, such as the Australian Federal Police, to implement activities.

To underpin this commitment, both countries will mutually agree on any engagement by others in Nauru's security and key critical infrastructure sectors and have agreed that critical infrastructure shall not be used by any third party for security purposes.

A Joint Committee chaired by the department has been established to support the Treaty's implementation with an intention for the Treaty to enter into force as soon as possible in 2025. Alongside the Australia-Tuvalu Falepili Union, prompt delivery of the Treaty will reiterate the Government's commitment to listen and creatively respond to Pacific priorities, and advance shared interests in fostering a stable, peaceful, and prosperous region.

Funding amount and arrangements, merits review and consultation

Funding of \$120.6 million was included in the 2024-25 Mid-Year Economic and Fiscal Outlook under the measure 'Enhancing Pacific Engagement' over a period of four years commencing in 2024-25 (and \$42.0 million in 2028-29 and \$2.0 million per year ongoing from 2029-30). 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 pages 250 and 251.

Funding for the item will come from Program *1.1 Foreign Affairs and Trade Operations*, which is part of *Outcome 1*. Details are set out in the 2024-25 Portfolio Additional Estimates Statements for the Foreign Affairs and Trade portfolio.

The department will undertake design and procurement processes to uplift Nauru's security capability across national security, policing, maritime, border, cyber and other core security areas, and engage services in relation to budget support management. These activities will be undertaken in accordance with applicable legislative requirements under the PGPA Act, the Commonwealth Procurement Rules (CPRs) and the department's Accountable Authority Instructions.

A range of procurement methods may be used such as open and limited tenders or procurements under existing arrangements. The selection of which procurement method to use will depend on the activity. Final spending decisions are made by the Secretary of the department or an appropriate delegate including:

- SES Band 1 to the value of \$25.0 million for a period of commitment of 10 years; or
- Executive Level 2 to the value of \$3.0 million for a period of commitment of four years.

This is outlined in the department's *Public Governance, Performance and Accountability (Department of Foreign Affairs and Trade (DFAT) Secretary to DFAT Officials) Delegation 2022 (No.1)*, Part 1. When exercising a delegated power, delegates must comply with any directions issued by the Minister for Finance and any instruction provided in DFAT's Secretary's Instructions and supporting policy and guidance material. The delegates are required to have the appropriate skills and experiences to perform their role and the delegation instrument is designed to assist them to make decisions at the appropriate level and with the appropriate job specific expertise.

The department will procure the following services, pending engagement with the Government of Nauru, in order to co-design a fit-for-purpose program:

- two specialist financial advisors to oversee Nauru's management and disbursement of budget support funds to mitigate fraud and corruption risks;
- policing and wider security capital infrastructure, training and equipment, potentially including:
 - a new Nauru Police Force Headquarters;
 - critical equipment such as forensics consumables, first aid packs, unexploded ordnance safety equipment, drug testing kits; and
 - armoury refurbishments.
- training and support for existing maritime assets; and
- two managing contractors to oversee implementation of security programs through the BSTIP.

The department will:

- manage all contracts for the above services;
- contract, train and manage in-house contractors to support program implementation; and
- report on performance and evaluation of the Treaty commitments in their entirety.

Procurement decisions will be made in accordance with the Commonwealth resource management framework, including the PGPA Act and the CPRs. The department will provide an opportunity for suppliers and tenderers to provide feedback and, if they wish, to make complaints. These complaints and inquiries 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.

Procurement decisions made in connection with the Treaty are not considered suitable for independent merits review, as they are decisions relating to the allocation of a finite resource from which all potential claims for a share of the resource cannot be met. In addition, any funding that has already been allocated would be affected if the original decision was overturned. The ARC has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.14 to 4.23 of the ARC guide).

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

available from the Commonwealth Ombudsman or the Federal Court. In this case, all information about the complaint and proposed resolution must be provided by the department, when requested.

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

The Treaty and supporting arrangements were negotiated in-confidence following a proposal from the Government of Nauru for an enhanced, more integrated bilateral partnership with Australia. Australia discussed the Treaty with senior Pacific decision-makers through diplomatic posts, respectively, immediately following signature on 9 December 2024.

No public consultation was undertaken on the Treaty prior to its announcement as commitments relate to bilateral security cooperation and sensitive commercial matters. The terms of the treaty needed to be settled in-confidence first with the Government of Nauru. In the interests of transparency, the Treaty was published on the department's website (<https://www.dfat.gov.au/geo/nauru>) immediately following its signing, and it has been the subject of academic, media and public debate, and will be tabled in Parliament at the earliest opportunity. Funding to operationalise Australia's commitments have been published through the 2024-25 Mid-Year Economic and Fiscal Outlook.

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 external affairs power (section 51(xxix)); and
- the Pacific Islands power (section 51(xxx)).

External affairs power

Section 51(xxix) of the Constitution empowers the Parliament to make laws with respect to 'external affairs'. The external affairs power supports legislation with respect to matters concerning Australia's relations with other nations.

Assisting Nauru's security capability across national security, policing, maritime, border, cyber and other core security areas, strengthens relations with Nauru in support of Australia's strategic interests.

Pacific relations power

Section 51(xxx) of the Constitution empowers the Parliament to make laws with respect to the 'relations of the Commonwealth with the islands of the Pacific'.

The initiative provides financial and other forms of support to Nauru therefore affecting Australia's relations with the Pacific.

Statement of Compatibility with Human Rights

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

Financial Framework (Supplementary Powers) Amendment (Foreign Affairs and Trade Measures No. 1) 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 (Foreign Affairs and Trade Measures No. 1) Regulations 2025* amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on certain activities administered by the Department of Foreign Affairs and Trade (the department).

This disallowable legislative instrument makes the following amendments to Part 4 of Schedule 1AB:

- amends table item 417 ‘Support for the Cook Islands’; and
- adds table item 709 ‘Support for the Republic of Nauru’.

Amended table item 417 – Support for the Cook Islands

The amended table item 417 establishes legislative authority for the Government to provide support for the Cook Islands through the Australia-Cook Islands Partnership Program (the Partnership Program).

Funding of \$8.0 million over four years 2024-25 will be provided to the Cook Islands Government (CIG) to facilitate bilateral engagement on Australian Government priorities.

Recognising the CIG as best placed to identify their own national priorities, specific activities funded by the Partnership Program will depend on the funding proposal submitted annually by the CIG. The type of activities that could be conducted include:

- enhancing cooperation in the tourism and trade sector;
- reciprocal superannuation portability arrangements;

- deeper economic integration underpinned by the Pacific Agreement on Closer Economic Relations Plus and working together with Pacific partners to bolster regional governance arrangements; and
- strengthening regional coordination and integration and promoting gender equality and inclusion considerations.

Human rights implications

The amended table item 417 engages the following human rights:

- the rights of equality and non-discrimination – Article 26 of the *International Covenant on Civil and Political Rights* (ICCPR), read with Article 2, Article 3 of the *Covenant on Economic, Social and Cultural Rights* (ICESCR), read with Article 2, Articles 3 and 15 of the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW), read with Article 2, Article 5 of the *Convention on the Elimination of All Forms of Racial Discrimination* (CERD), read with Article 2, Article 5 of the *Convention on the Rights of Persons with Disabilities* (the CRPD), read with Article 4 and Article 2 of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP);
- the rights of people with disability – Articles 5, 8, 9, 19 and 30 of the CRPD;
- the protection against exploitation, violence, and abuse – Article 20 of the ICCPR, Article 5 of CERD, Article 10 of the ICESCR and Article 16 of the CRPD; and
- the right to an adequate standard of living, including food, water, and housing – Article 11 of the ICESCR, Article 14 of CEDAW and Article 28 of the CRPD.

Article 2 of the ICCPR, the ICESCR, the CEDAW and the CERD and Article 4 of the CRPD requires that each State Party undertake to take steps to the maximum of its available resources to realise the rights recognised, particularly through legislative measures.

The amended table item 417 will enable expenditure on activities that support the five Pillars of the Australia-Cook Islands ‘Oa Tumanava Partnership. These activities will promote the rights identified above.

Rights of equality and non-discrimination

Article 26 of the ICCPR recognises the right to equality and non-discrimination on, among other grounds: race, sex, colour, language, national origin or ‘other status’.

Article 3 of the ICESCR provides that States Parties to the ICESCR undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the ICESCR.

Article 3 of CEDAW provides that States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 15(1) of CEDAW provides that States Parties accord women equality with men before the law.

Article 5 of CERD provides that States Parties undertake to prohibit and eliminate discrimination in all its forms to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to the enjoyment of a number of rights. Including the right to freedom of expression, freedom of thought and conscience and the right to equal participation in cultural activities.

Article 5 of the CRPD provides that States Parties shall prohibit discrimination on the basis of a disability and that in order to promote equality and eliminate discrimination, States shall take all appropriate steps to ensure that reasonable accommodations are provided.

Article 2 of UNDRIP recognises that Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Reflecting the Government of Australia's commitment to ensuring the rights of equality and non-discrimination, the Partnership Program will ensure sufficient support, training and consideration of gender equality and non-discrimination is incorporated within all funded activities, including within relevant national policies and governance processes. Recognising Australia and the Cook Islands as signatories of the Pacific Leaders' Gender Equality Declaration, the Partnership Program will support activities to ensure women are able to have full, equal, and meaningful participation and leadership in political, economic, cultural, and social life.

This may take the form of working with civil society, non-government organisations, government institutions and the private sector to eliminate all forms of gender-based violence and discrimination against women and girls, accelerate the achievement of gender equality, increase women's and girls' empowerment, leadership and decision-making opportunities at all levels, and strengthen women's economic empowerment. Supporting these activities will promote the right to equality and non-discrimination.

Rights of people with disability

Article 5 of the CRPD provides that States Parties shall prohibit discrimination on the basis of a disability and that in order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodations are provided.

Article 8 of the CRPD provides for States Parties to raise awareness regarding persons with a disability including through, raising awareness throughout society, fostering respect for the rights and dignity of persons with disabilities, combatting stereotypes and harmful practices relating to persons with disabilities and promoting awareness of the capabilities and contributions of persons with disabilities.

Article 9 of the CRPD provides for States Parties to take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas.

Article 19 of the CRPD recognises the right of persons with a disability to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community.

Article 30 of the CRPD recognises the rights of persons with a disability to participate in cultural, recreation, leisure and sport.

The amended table item 417 would promote the rights of people with disability through Australian engagement with the Cooks Islands Government to continue supporting activities to promote these rights such as through using the shared passion for sport to explore opportunities to support athletes, coaches, sporting exchange and competition between both countries, that strengthen people-to-people links and contribute to disability inclusion.

Protection against exploitation, violence and abuse

Article 20 of the ICCPR provides that any propaganda for war shall be prohibited by law and any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 5 of CERD provides that States Parties undertake to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, including in the enjoyment of the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution.

Article 10 of the ICESCR recognises, among other things, that children and young persons should be protected from economic and social exploitation.

Article 16 of the CRPD provides that States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.

Positively interacting with the right for protection against exploitation, violence and abuse, the Partnership Program will seek to reinforce Australia's longstanding priority of ensuring these principles underpin all activities these funds will support. The Partnership Program will adopt an inclusive approach to all activity decision-making, ensuring protection against exploitation, violence and abuse is appropriately integrated, alongside other considerations, including gender equality, inclusion of people with disabilities and those disadvantaged through geographic location or socio-economic circumstances.

Right to an adequate standard of living, including food, water and housing

Article 11 of the ICESCR recognises 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. It also recognises the fundamental right of everyone to be free from hunger, and provides that States take, individually and through international co-operation, measures necessary to achieve this, including through, making full

use of technical and scientific knowledge and by taking into account the problems of both food-importing and food-exporting countries.

Article 14 of CEDAW, recognising the unique problems faced by rural women, provides that State parties take measures to ensure the rights of those women, including with respect to enjoy an adequate standard of living.

Article 28 of the CRPD recognises the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realisation of this right without discrimination on the basis of disability.

The amendment positively affects the right to an adequate standard of living through the Partnership Program's intent to continue Australia's support promoting strategies and measures to improve the living standards of the Cook Islands population and to incorporate climate change considerations within decision-making frameworks that is relevant and informed and that will contribute to improving an individual's standard of living, including food, water, and housing.

The amended table item 417 is compatible with human rights because it would promote or positively affect human rights.

Table item 709 – Support for the Republic of Nauru

New **table item 709** establishes legislative authority for the Government to provide support for the Republic of Nauru to further strengthen Australia's economic, security and social partnership with Nauru.

On 9 December 2024, the Prime Minister of Australia and the President of Nauru announced an elevation in the long-standing bilateral relationship to an integrated economic, social and security partnership by signing the Nauru-Australia treaty (the treaty).

The Treaty supports Australia's interests, including the need for Nauru to mutually agree with Australia any third-party engagement in security, banking and telecommunications. In return, Australia is committing to sustain Nauru's existing banking services and access to the international financial system, bolster Nauru's economic resilience and prosperity, and deepen security cooperation. This also supports Australia's interests by strengthening Pacific resilience and Pacific-led solutions to our region's challenges.

To give effect to Australia's commitments under the Treaty, the Government agreed to a support package of \$120.6 million over four years from 2024-25 that will provide support to further strengthen Nauru's economic security and resilience; new investments to respond to Nauru's policing and security needs; and a banking solution through the Commonwealth Bank of Australia (no associated cost).

Human rights implications

Table item 709 engages the following rights:

- the right to life – Article 6 of the ICCPR, read with Article 2;
- the protection against exploitation, violence and abuse – Article 7 of the ICCPR;
- the right to work and rights in work – Article 7 of the ICESCR, read with Article 2;
- the right to education – Article 13 of the ICESCR;
- the right to health – Article 12 of the ICESCR; and
- the right to social security – Article 9 of the ICESCR.

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

Right to life

Article 6(1) of the ICCPR states every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his or her life.

The Treaty will promote the right to life through bolstering the law enforcement capability of the Nauru Police Force. Through the provision of support to security capital infrastructure, training and equipment, the policing uplift will contribute to ensuring the safety and protection of the Nauruan community from threats to life, with police capability to enforce law relating to the right to life.

Protection against exploitation, violence and abuse

Article 7 of the ICCPR states no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Australia has committed under the Treaty to support Nauru's policing and security needs, including Australian support for police and broader national security training. This training will directly promote the protection of rights under Article 7 relating to the appropriate treatment of individuals involved in matters referred to the police, and capacity to respond in accordance with the law, to instances of torture, cruel, inhuman or degrading treatment or punishment of individuals.

Rights to work and rights in work

Article 7(b) of the ICESCR recognises the right of everyone to the enjoyment of just and favourable conditions of work, including ensuring safe and healthy working conditions.

Through the support provided under the policing uplift, the Treaty will provide support to security capital infrastructure, training and equipment. Pending program design, this could potentially include a new Nauru Police Force Headquarters, critical equipment such as first aid packs and unexploded ordnance safety equipment, and armoury refurbishments. This uplift will ensure the safety of Nauru Police Force officers in the workplace through fit-for-purpose equipment and infrastructure, as required in promoting obligations under Article 7(b). Through the current bilateral development program, Australia supports Nauru's

economic vitality. Australia's governance partnership with Nauru supports strengthening public sector management and local capacity building.

Right to education

Article 13 of the ICESCR requires that functioning educational institutions and programs must be available in sufficient quantity within a country. Education must be within safe physical reach, and all institutions and programs are likely to require appropriate physical facilities, trained teachers receiving domestically competitive salaries, teaching materials, libraries and computer facilities.

In promoting Article 13 under the Treaty, Australia will provide direct budget support to the Government of Nauru to invest in Nauru's future, including by making deeper and long-term investments in areas, as outlined by the Prime Minister, such as education, health and social security to enhance the well-being of the Nauruan people. Allocation of the budget support to education programs is at the discretion of the Government of Nauru, with Australia to undertake verification of funding delivery to identified programs. Through the current bilateral development program, Australia invests in early childhood education, work readiness and skills for labour mobility, and opportunities for women in training and employment pathways through Australia Awards (Sustainable Development Goals (SDG) 4 – Quality Education, 8 – Decent Work and Economic Growth). Aligned with Australia's new International Gender Equality Strategy, the Nauru program supports gender and social inclusion (SDG 5 – Gender Equality).

Right to Health

Article 12 of the ICESCR recognises the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, including the reduction of the stillbirth-rate and of infant mortality; healthy development of the child; improvement of all aspects of environmental and industrial hygiene; prevention, treatment and control of epidemic, endemic, occupational and other diseases; and creation of conditions which would assure to all medical service and medical attention in the event of sickness.

As above, in promoting Article 12 under the Treaty, Australia will provide direct budget support to the Government of Nauru to invest in Nauru's future, including by making deeper and long-term investments in areas, as outlined by the Prime Minister, such as education, health and social security to enhance the well-being of the Nauruan people. Allocation of the budget support to health programs is at the discretion of the Government of Nauru, with Australia to undertake verification of funding delivery to identified programs. Through the current bilateral development program, Australia invests in Nauru's health system to strengthen health preparedness through community-based health clinics and targeted technical assistance. The new health program, 'Raña Tsimorum' ('look after your life') will be implemented to strengthen Nauru's health system to support specific population groups, and human development (SDG 3 – Good Health and Well-being).

Right to social security

Article 9 of the ICESCR recognises the right of everyone to social security, including social insurance.

In advancing rights under Article 9, under the Treaty, Australia will provide direct budget support to the Government of Nauru to invest in Nauru's future, including by making deeper and long-term investments in areas, as outlined by the Prime Minister, such as education, health and social security to enhance the well-being of the Nauruan people. Allocation of the budget support to social security programs is at the discretion of the Government of Nauru, with Australia to undertake verification of funding delivery to identified programs. Through the current bilateral development program, Australia supports long-term economic resilience and contributes annually to the Nauru Inter-generational Trust Fund for Nauru's long-term economic future. In the spirit of the Treaty, an early good-faith payment of \$15 million has been deposited into the Trust Fund. Whilst this constitutes the first instalment of the \$100 million economic resilience package, the remaining funds will be delivered through the agreed direct budget support mechanisms over the remaining 4 years.

Table item 709 is compatible with human rights as it promotes human rights, or to the extent that it may limit human rights those limitations are reasonable, necessary and proportionate.

Conclusion

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

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