

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance

Financial Framework (Supplementary Powers) Act 1997

Financial Framework (Supplementary Powers) Amendment (Defence 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 (Defence Measures No. 1) Regulations 2025* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on the Australian Submarine Industrial Uplift Program (the program). The program will be administered by the Australian Submarine Agency, part of the Defence portfolio.

The program aims to build the capacity and capability of the Australian submarine industrial base and increase participation in global nuclear-powered submarine supply chains, including by supporting Australian vendors to obtain necessary qualifications.

Funding of \$262.4 million over three years from 2024-25 is available for the program to fund new and boost support for existing initiatives, including:

- acceleration of the qualification of Australian suppliers by expanding current, and establishing new, vendor and product qualification pathways;
- development of sovereign steel testing capabilities to support the qualification of Australian hull steel for use in the construction of Australia's conventionally-armed nuclear-powered submarines; and
- expansion of the Global Supply Chain Program to enable major submarine Defence companies identify and realise commercial opportunities for Australian suppliers, helping Australian industry to participate in trilateral supply chains.

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 Australian Submarine Agency.

Details of the *Financial Framework (Supplementary Powers) Amendment (Defence Measures No. 1) Regulations 2025*

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Defence 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* (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 Australian Submarine Agency (ASA), part of the Defence portfolio.

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 721 – Australian Submarine Industrial Uplift Program

New **table item 721** establishes legislative authority for government spending on the Australian Submarine Industrial Uplift Program (the program).

On 14 March 2023, the leaders of Australia, the United Kingdom (UK) and the United States (US) announced the Optimal Pathway to deliver conventionally armed, nuclear-powered submarines (NPS) for Australia under the AUKUS partnership. The media release from the Deputy Prime Minister, the Hon Richard Marles MP is available at www.minister.defence.gov.au/media-releases/2023-03-14/aucus-nuclear-powered-submarine-pathway.

The Optimal Pathway consists of three phases of collaboration among AUKUS partners:

- increased visits of US submarines commencing in 2023 and UK submarines from 2026, and, beginning in 2027, a rotational presence of UK and US submarines in Australia through an initiative called Submarine Rotational Force-West;
- the acquisition by Australia from the US of three Virginia class submarines, with an option to seek agreement for up to two more if needed from as early as the 2030s; and
- a trilateral program to develop and build a next-generation conventionally armed, nuclear-powered submarine (SSN-AUKUS), incorporating technology from all three AUKUS partners, with Australia to commence construction of its SSN-AUKUS submarines in South Australia by the end of this decade.

Australia's acquisition, construction and sustainment of conventionally armed, nuclear-powered submarines will be a complex, multi-decade and whole-of-nation undertaking. Under the Optimal Pathway, Australian companies will be employed in the construction and maintenance of SSN-AUKUS, as well as the maintenance of visiting UK and US submarines, while providing increased resilience to all three nations through contributions to the trilateral submarine industrial base.

The Australian Government has committed to invest over \$30.0 billion in the Australian defence industrial base by 2055, in recognition that a significant uplift in Australia's industrial capability and capacity is required in order to achieve the Optimal Pathway.

Funding of \$262.4 million of targeted investments have been approved to support local defence industry uplift and develop Australia's AUKUS NPS submarine supply chain. Over the next two years, this funding will support a range of initiatives to uplift Australia's submarine industrial base, supporting around 125 businesses across Australia to invest in their own capabilities to meet the high standards of submarine build and sustainment activities in AUKUS nations.

Specifically, the initiatives include those that enable Australian industry to access trilateral submarine industrial bases through the expansion of Market Access initiatives, including:

Defence Industry Vendor Qualification (DIVQ) Program

The DIVQ Program was launched in January 2024 to uplift the resilience of the trilateral submarine industrial base by empowering capable Australian companies to export into US and UK submarine supply chains. Further investment will be made to accelerate the qualification of Australian businesses to supply their products and services through the release of additional product families in accordance with trilateral priorities.

Australian Submarine Supplier Qualification (AUSSQ) Pilot

The pilot was launched in March 2025 as a DIVQ complementary activity to accelerate Australian vendor qualification aimed at Huntington Ingalls Industries' US shipbuilding supply chain. Aligned to the DIVQ program, the AUSSQ Pilot targets vendors and products for which the US industrial base has a shortfall of supply, to maximise the likelihood that orders will follow successful qualification.

Qualification of Australian Hull Steel

Australian made steel will be used in the construction of Australia's conventionally-armed nuclear-powered submarines, subject to a comprehensive qualification process. The Australian Government entered into a contract with an Australian steel manufacturer in 2023 to qualify Australian steel to both UK and US standards. Additional investment will be made to develop sovereign steel testing capabilities required for steel qualification for the life of the SSN-AUKUS capability, building on the qualification of steel plates manufactured in Australia.

Global Supply Chain (GSC) Program

The program is an existing initiative managed by the Department of Defence (Defence) that contracts major global Defence companies (primes) to integrate Australian businesses into their global supply chains, across both defence and civil sectors. The program is a complementary support program that provides tailored assistance to Australian companies qualified through DIVQ to move beyond engineering capability to achieve business mastery in trilateral supply chains. Additional investment is being made to expand the GSC Program to increase the number of submarine related primes to support Australian suppliers realise commercial opportunities and increase their participation in trilateral supply chains.

The ASA will continue to monitor industry uplift requirements over time and engage across Australian Government departments and agencies to ensure that the Australian submarine industrial base has the financial, regulatory and workforce-related support required to achieve the Optimal Pathway.

Funding amount and arrangements, merits review and consultation

Funding of \$262.4 million was included in the 2024-25 Mid-Year Economic and Fiscal Outlook under the measure 'Nuclear-Powered Submarine Program – security and industry growth' for a period of three years commencing in 2024-25. 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 233.

Funding for this item will come from Program 2.16: Nuclear-Powered Submarines, which is part of Outcome 1. Details are set out in the *Portfolio Additional Estimates Statements 2024-25, Defence Portfolio, Australian Submarine Agency* at page 57.

ASA will deliver the program by a range of procurement methods, such as foreign military sales (FMS), open and limited tenders or procurements under existing arrangements. The selection of which procurement method to be used will depend on the activity.

Procurements through FMS are conducted as a formal contract between the US and Australian Government documented in a Letter of Offer and Acceptance (LOA), authorised by the *Arms Export Control Act (AECA) 1976* and the *Foreign Assistance Act (FAA) 1961*. Before an LOA can be offered to foreign customers, notifications to the US Congress may be required depending on whether one of the thresholds identified by AECA Section 36(b)(1) are met. Notifications to the US Congress will appear on the Defence Security Cooperation Agency's website under Press & Media – Major Arms Sales.

Following acceptance of the LOA by the Australian Government, the US Government is authorised to enter into a subsequent contractual arrangement with US industry on behalf of the FMS customer.

Procurements via tendering processes will be competitive, with limited tenders considered where necessary due to bespoke expertise and in accordance with the Commonwealth resource management framework, including the *Public Governance, Performance and Accountability Act 2013* and the *Commonwealth Procurement Rules* (CPRs). Contracts will be managed by the ASA. Tender documentation for open tenders will be made available on AusTender and where appropriate, advertised on the Industry Capability Network portal. The ASA will evaluate tender responses with an appropriately knowledgeable and suitable panel.

Information about tenders and resultant contracts will be made available on AusTender (www.tenders.gov.au) once the contracts are signed, as required under the CPRs. Procurement decisions will be based on value for money, including capability and capacity to deliver, and price and risk considerations.

Final procurement decisions regarding the Market Access initiatives will be made by the Secretary of Defence (in the case of the GSC Program), the Director-General of the ASA (in relation to the other Market Access initiatives) or an appropriate delegate at the Senior Executive Service level. The delegate is responsible for administering the particular initiatives and will have the appropriate skills and qualifications to perform this administrative power in accordance with the Commonwealth resource management framework and the Defence and ASA's separate Accountable Authority Instructions.

Procurement decisions made in connection with the program 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 Administrative Review Council has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.11 to 4.19 of the guide, *What decisions should be subject to merit review?*).

The 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 program 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 ASA will provide an opportunity for suppliers and tenderers to make complaints if they wish, and to receive feedback. These complaints and inquiries can be made at any time during the procurement process and will be handled in accordance with probity requirements.

The ASA has undertaken extensive consultation and engagement with state governments, trilateral AUKUS partners and industry associations in designing and planning the implementation of the program. Over the course of 2024, the ASA ran a series of industry engagement seminars and leveraged key national and state events to:

- build awareness of the NPS program;
- share high-level industry sector requirements and discuss how Australian suppliers could be positioned to contribute to both Australia's NPS program and trilateral submarine supply chains; and
- discuss proposed industry uplift initiatives and how these can support Australian suppliers to accelerate their participation in trilateral submarine supply chains.

Consultations have included:

- a series of ASA led industry engagement seminars delivered across South Australia, Western Australia, Victoria, Queensland and the Australian Capital Territory, attended by state government officials, industry associations and Australian businesses;
- co-hosting an industry engagement event alongside the Victorian Government and the Australian Industry Defence Network; and
- leading presentations at the Australian Defence Magazine South Australian Defence Summit and City of Rockingham Defence Industry Forum to provide an overview of the Optimal Pathway and industry uplift opportunities.

Consultations will be ongoing until the conclusion of the initiatives under the program.

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 trade and commerce power (section 51(i)); and
- the defence power (section 51(vi)).

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.'

Funding for the initiatives that are delivered under the program will uplift Australia's submarine industrial base for the purpose of promoting trade and commerce with other countries.

Defence power

Section 51(vi) of the Constitution empowers the Parliament to make laws with respect to 'the naval and military defence' of the Commonwealth and States, and 'the control of forces to execute and maintain the laws of the Commonwealth.'

The program will support the purpose of ensuring Australia can meet its strategic defence objectives through supporting local defence industry uplift and increasing Australian industry participation in global nuclear-powered submarine supply chains.

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 (Defence 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 (Defence Measures No. 1) Regulations 2025* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on the Australian Submarine Industrial Uplift Program (the program). The program will be administered by the Australian Submarine Agency, part of the Defence portfolio.

The program aims to build the capacity and capability of the Australian submarine industrial base and increase participation in global nuclear-powered submarine (NPS) supply chains, including by supporting Australian vendors to obtain necessary qualifications.

Funding of \$262.4 million over three years from 2024-25 is available for the program to fund new and boost support for existing initiatives, including:

- acceleration of the qualification of Australian suppliers by expanding current, and establishing new, vendor and product qualification pathways;
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Human rights implications

This disallowable legislative instrument engages the right to work and rights at work – Articles 6, 7 and 8 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), read with Article 2; Article 1 of the International Labour Organization’s *Convention concerning Employment Policy* (ILO Convention 122); and Articles 1 to 4 of the International Labour Organization’s *Convention concerning Vocational Guidance and Vocational Training in the Development of Human Resources* (ILO Convention 142).

Right to work and rights at work

Article 2 of the ICESCR requires that each State Party to the Covenant undertakes to take steps to the maximum of its available resources, especially economic and technical, to realise the rights recognised in the Covenant, particularly through legislative measures.

Article 6 of the ICESCR recognises the right to work and provides that the States Parties will take appropriate steps to achieve the realisation of the right to work, including through technical and vocational training.

Article 7 of the ICESCR recognises the right of everyone to the enjoyment of just and favourable conditions of work.

Article 8 requires States Parties to the Covenant to ensure:

- a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
- b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;
- c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others; and
- d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

Article 1 of the ILO Convention 122 provides that ‘each Member shall declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment’.

Articles 1 to 4 of the ILO Convention 142 relate to the adoption and development of comprehensive and coordinated policies and programs of vocational guidance and training, including providing broadest possible information and guidance, which are closely linked with employment for all people.

To the extent that the right to work and rights at work are engaged, the disallowable legislative instrument will promote the right to work by increasing vocational and training opportunities for individuals employed in companies and businesses that support Australia's NPS program. The individuals will strengthen and broaden their skills sets and capabilities by undertaking such work, expanding their opportunities in the Australian submarine supply chain.

The program will encourage the uptake of a variety of industry specific work. Further, the program will promote access for individuals employed in industry to participate fully in productive and freely chosen employment.

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**