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THE HON BEN MORTON MP
MINISTER ASSISTING THE PRIME MINISTER AND CABINET
MINISTER FOR THE PUBLIC SERVICE
SPECIAL MINISTER OF STATE

Reference: MS22-000236

Senator the Hon Simon Birmingham
Minister for Finance
Parliament House
CANBERRA ACT 2600

Dear Minister

I am writing to seek your agreement to insert a new item in Schedule 1AB to the *Financial Framework (Supplementary Powers) Regulations 1997* to establish legislative authority for government spending on a grant with the Australian Future Leaders Foundation (the Foundation) so that it may deliver the Australian Future Leaders Program (the Program). This Schedule 1AB amendment is proposed for consideration by the Governor-General, His Excellency General the Honourable David Hurley AC DSC (Retd), at the Federal Executive Council meeting scheduled for 3 March 2022.

The Program's overall objective is to develop a group of nationally-minded multi-sector leaders who are better connected and impactful, and who jointly share a commitment to the future of Australia, its values and national interest. The Office of the Official Secretary to the Governor-General has advised the Governor-General's patronage and in-principle support for the Program.

The Program is a leadership development opportunity for emerging mid-career leaders from both government and non-government sectors including academia, not-for-profit and corporate. The Foundation intends to initially open the Program to 120 participants offering a curriculum of online and face-to-face learning events, study tours, mentoring and coaching, and alumni networking opportunities, implemented over a period of two years for each cohort.

The Department of the Prime Minister and Cabinet (PM&C) will enter into a four-year grant agreement with the Foundation for the delivery of the Program. Further funding may be put forward for consideration in the future contingent on the Program's initial performance, as well as the Foundation's ability to secure funding from other private and philanthropic donors.

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s 34(3)

Funding of \$14.0 million for the program was included in PM&C's Portfolio Additional Estimates Statements 2021-22 and will be included as a measure in the 2022-23 Budget Statements. Funding will come from Program 1: Prime Minister and Cabinet, which is part of Outcome 1 as outlined on page 23 of the statement.

s 42

To assist your department with drafting the proposed Schedule 1AB amendment and preparing explanatory materials, I have enclosed additional information about the Program at Attachment A.

Yours sincerely

s 22(1)(a)(ii)

BEN MORTON

/ / 2022

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Description of the proposed new or materially changed Commonwealth expenditure

The Government will provide funding via a grant to the Australian Future Leaders Foundation Limited to deliver the Australian Future Leaders Program (the Program). The Program is an initiative of the Department of the Prime Minister and Cabinet (PM&C) in consultation with the Office of the Official Secretary of the Governor-General.

The Program's objective is to develop a group of multi-sector, nationally-minded leaders who are better connected and impactful, and who jointly share a commitment to the future of Australia, its values and national interest. The curriculum will be uniquely focused on topics of national significance in order to promote national bonds and cohesion among the Program cohort.

Overall, the Program is intended to generate accomplished alumni who will be uniquely placed to pursue Australia's national interests through their roles as future leaders in governments, companies, educational institutions and non-profits across Australia.

The Australian Future Leaders Foundation Limited is a public company limited by guarantee (ACN 649 403 654) established on 16 April 2021. The Foundation is registered with the Australian Charities and Not-for-profits Commission (ACNC) noting its official charitable purpose is recorded as 'advancing education'. The Foundation has received Deductible Gift Recipient (DGR) endorsement, enabling it to receive donations that are tax deductible. The Foundation's purpose, as per its Constitution, is to advance education with a focus on building the skills, experience and capability of Australia's future leaders.

The Foundation was selected to deliver the Program based on a genuine unsolicited innovative proposal presented to Government, supported by extensive consultation confirming interest and support for the Program within the government, corporate, academic and not-for-profit sectors.

With a focus on leadership development for emerging mid-career leaders (approximately ten years' professional experience), the Foundation intends to initially open the Program to 120 participants via a competitive, merit-based selection process. Participants will be drawn from both government and non-government sectors including academia, not-for-profit and corporate. Participants may also be considered from international organisations and governments where there is a clear link and benefit to Australia.

The Program will:

- address topics of national importance informed by contemporary policy matters and seek to facilitate fresh thinking on Australia's critical issues from the next generation of digital native Australian leaders
- offer a curriculum of online and face-to-face learning events, study tours, mentoring and coaching, and alumni networking opportunities, implemented over a period of two years for each cohort.



- comprise cohorts that are cross sector, cross geography and cross cultural in their composition
- involve a mix of: State cohorts convening in their home States; all participants convening online; all participants convening in person; and small groups of participants convening in person and outside their home State; and
- will have an alumni aspect aimed at growing networks that cross sectors, cultures and geographies and forging bonds across the nation, and a legacy aspect aimed at improved national cohesion.

PM&C will undertake a closed non-competitive selection process to enter into a four-year grant agreement with the Foundation for the delivery of the Program.

s 42

Statement specifying constitutional head(s) of power

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 express incidental power and the executive power (ss 51(xxxix) and 61 of the Constitution), including the nationhood aspect; and
- the communications power (s 51(v) of the Constitution).



Statement of the relevance and operation of constitutional head(s) of 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 of 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.

The Program has a national focus as it seeks to build a cohort of leaders from across Australia (including across different States and Territories), who, in the course of the Program and into the future, will address topics of national significance and promote national bonds and cohesion. The Commonwealth is uniquely placed to determine the selection process for participants and the composition of any selection panel, in line with the Commonwealth's perception of who is suited to be a future national leader, as well as to identify the topics of national importance to be addressed through the Program.

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

The Program will be delivered, in part, online via a 'virtual learning' component which is supported as an activity related to the creation and use of content on a communications service (the internet).

Decisions about Commonwealth expenditure

In accordance with the Commonwealth Grants Rules and Guidelines 2017 (CGRGs), paragraph 13.11, the selection process will be closed and non-competitive to provide grant funding to the Australian Future leaders Foundation Pty Ltd to deliver the Program. An exemption will be sought from using the GrantConnect website to administer the selection process.

PM&C will administer the selection process and establish the grant using a standard Commonwealth Grant Agreement. s 42

The grant will be administered by PM&C in accordance with the Commonwealth resource management framework, including the Public Governance, Performance and Accountability Act 2013 and the Commonwealth Grants Rules and Guidelines 2017.



The Accountable Authority's delegate being Mr Peter Rush, Assistant Secretary, Government Division, PM&C, will be responsible for the final decision to enter into a grant agreement with the Foundation to deliver the Program. Mr Rush is qualified to perform this function noting that he holds the appropriate internal delegated authority and has direct oversight of this project within the department. Once known, information on the final decision will be made publicly available through the GrantConnect website.

Availability of independent merits review

Merits review of decisions made in connection with the grant would not be considered appropriate because these decisions relate to the provision of a one-off grant to a certain service provider, over other service providers. The Administrative Review Council has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.16 to 4.19 of the guide, *What decisions should be subject to merit review?*).

The Australian Future Leaders Foundation Pty Ltd was determined to be an appropriate organisation to pursue a one-off, ad hoc grant after a due diligence process. This process involved the verification of claims by the Foundation's interim Executive Director that the Foundation is uniquely positioned in Australia to pursue a whole-of-nation, multi-sector leadership program at the scale required. As the Foundation has Deductible Gift Recipient status, it is also in the rare position to receive in-kind and philanthropic support for the Program from interested non-government stakeholders.

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

Further, the right to review under section 75(v) of the Constitution and review under section 39B of the *Judiciary Act 1903* may be available. Persons affected by spending decisions would also have recourse to the Commonwealth Ombudsman where appropriate.

Consultation

The inception of the Program is based on broad consultation undertaken by the Foundation. This has included Government representatives including PM&C senior officials, the APS Commissioner, DFAT Academy and the Office of the Official Secretary to the Governor-General.

Feedback from both Government and non-government parties has been supportive of the Program and its objectives in bringing a whole-of-nation focus to building future leaders for



Australia. Having been awarded DGR status, the Foundation is in the process of securing philanthropic in-kind and financial donations to support the ongoing development and implementation of the Program.

s 47G(1)(a)

Input to the statement of compatibility with human rights

Right to Education

This legislative instrument engage Article 13(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which provides that:

The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding,



tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

In particular, Article 13(4) affirms:

The liberty of individuals and bodies to establish and direct educational institutions', provided the institutions conform to the educational objectives set out in article 13(1) and to minimum educational standards.

While the Program does not constitute a formal primary, secondary, tertiary, technical or vocational education, it is compatible with the promotion of the right to education noting its primary focus leadership development skills for application across multiple-sectors. It also affirms the liberty of the Foundation as a non-government body to establish and run an educational program.

The Program may also support:

- articles 5(e)(v) and 7 of the Convention on the Elimination of All Forms of Racial Discrimination (CERD) insofar as the selection process for the program prohibits discrimination and bias of candidates on the basis of race, colour national or ethnic origin, and promotes understanding, tolerance and friendship among nations and racial or ethnical groups by encouraging the participation of a diverse cohort of participants.
- articles 10 and 14(2)(d) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) insofar as the selection process for the program prohibits discrimination and bias of candidates on the basis of gender, including rural women, and promotes the equality of men and women.
- and article 24 of the Convention on the Rights of Persons with Disabilities (CRPD) insofar as the selection process provides for inclusivity in supporting people with disabilities to participate in the program on an equal basis to other participants without disability.

This legislative instrument is compatible with human rights because it promotes the aforementioned rights.



**Senator the Hon Simon Birmingham**

Minister for Finance
Leader of the Government in the Senate
Senator for South Australia

REF: MS22-000156

The Hon Ben Morton MP
Minister Assisting the Prime Minister and Cabinet
Parliament House
CANBERRA ACT 2600

Dear Minister

Thank you for your letter of 27 February 2022 seeking my agreement to amend Schedule 1AB to the *Financial Framework (Supplementary Powers) Regulations 1997* to establish legislative authority for government spending relating to an initiative for which you are responsible.

I agree to your request to amend Schedule 1AB, as set out in your letter, in relation to the Australian Future Leaders Program.

The necessary documentation will be submitted to the Governor-General for consideration at the Executive Council meeting currently scheduled for 3 March 2022. Once the matter has been considered by the Governor-General, my Department will advise your Department of the outcome.

Yours sincerely

s 22(1)(a)(ii)

Simon Birmingham

1 March 2022