

REPLACEMENT EXPLANATORY STATEMENT

This Explanatory Statement replaces the Explanatory Statement registered on 10 December 2018 for the *Financial Framework (Supplementary Powers) Amendment (Agriculture and Water Resources Measures No. 4) Regulations 2018* [F2018L01720] to clarify the eligibility criteria for the Murray-Darling Basin Economic Development Program (table item 320).

Issued by the Authority of the Minister for Finance and the Public Service

Financial Framework (Supplementary Powers) Act 1997

*Financial Framework (Supplementary Powers) Amendment
(Agriculture and Water Resources Measures No. 4) Regulations 2018*

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 (Agriculture and Water Resources Measures No. 4) Regulations 2018* (the Regulations) amends Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on five activities administered by the Department of Agriculture and Water Resources.

Funding will be provided for:

- the Murray-Darling Basin Economic Development Program for activities to offset the detrimental economic effects on communities in the Murray-Darling Basin associated with measures to protect and restore environmental assets, measures to assist in achieving certain outcomes of the Basin Plan, and the recovery of environmental water from the Basin water resources (with funding of \$20 million over four years from 2018-19);

- the Established Pest Animals and Weeds Management Pipeline to combat Australia's worst established pest animals and weeds by supporting the research, development and extension of a range of tools and technologies, national coordination activities and key infrastructure to facilitate improved management and control of these species (with funding of \$6.6 million for one year in 2019-20 included in the 2018-19 Budget);
- the Biosecurity Innovation Program to support the national biosecurity system to minimise the impact of pests and diseases on Australia's economy, environment and the community (with funding of \$25.2 million over five years from 2018-19);
- the Environmental Biosecurity Protection Fund that would invest in projects that support planning and preparedness for the management of the environmental biosecurity risks relating to priority diseases and invasive pests that threaten native ecosystems, habitats or species (with funding of \$7.6 million over five years from 2018-19 for the Fund, the Chief Environmental Biosecurity Officer and support staff); and
- contingency funding for biosecurity incidents to enable the Commonwealth to undertake activities to prepare for, and respond to, emergency pest and disease incursion in areas of Commonwealth responsibility such as Norfolk Island, the Indian Ocean Territories, airports, ports, defence bases and Commonwealth national parks (with funding of \$1 million annually).

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 Agriculture and Water Resources.

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 (Agriculture and Water Resources Measures No.4) Regulations 2018*

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Agriculture and Water Resources Measures No. 4) Regulations 2018*.

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 4 of Schedule 1AB (table)

This item adds five new table items to Part 4 of Schedule 1AB to establish legislative authority for government spending on activities administered by the Department of Agriculture and Water Resources (the department).

New **table item 320** establishes legislative authority for government spending on the Murray-Darling Basin Economic Development Program (the Program) for activities to mitigate the impact of the Murray-Darling Basin Water Reform.

The Program was announced by the Minister for Agriculture and Water Resources, the Hon David Littleproud MP, on 7 May 2018, with funding of \$20 million to be provided to support communities most affected by the recovery of environmental water under the Murray-Darling Basin Plan (the Basin Plan), including Indigenous communities. The funding will be provided over four years from 2018-19 to 2021-22.

The Basin Plan, which is established under the *Water Act 2007* and was adopted in 2012, provides for the integrated management of the water resources of the Murray-Darling Basin. The Basin Plan promotes cooperation between the Commonwealth, Basin State governments, Basin stakeholders and communities.

The Commonwealth expenditure would enable selected communities to respond to the impact of water recovery activities under the Basin Plan. This funding would enable identified organisations, such as local governments, Indigenous corporations, cooperatives and

incorporated associations that are also not-for-profit organisations, in South Australia, Victoria, New South Wales and Queensland to initiate and lead a local level strategic response to the impact of water recovery through strategic planning and delivery of small-scale economic development projects.

There are direct links between Commonwealth-funded water recovery under the Basin Plan and economic impacts on communities. Research by the Murray-Darling Basin Authority (the Authority) found water recovery under the Basin Plan has led to varying economic impacts in communities. The Authority identified 14 communities in the northern and southern Basin where economic conditions have been most impacted by water recovery under the Basin Plan.

The research considered change to employment within the context of a number of factors related to Basin Plan water recovery. These include the scale, pace and method of water recovery, the influences of temporary and permanent water trade, the change in employment as a consequence of factors outside the Basin Plan, the size and economic diversity of each community, and whether employment is increasing or decreasing over the time period examined. For example, purchasing water entitlements reduces the volume of water available for crop production and when a large proportion of water entitlements is sold in communities with irrigation-dependent economies there can be a substantive direct and indirect impact on jobs. A rapid change in available water entitlements in an irrigation-dependent community results in a lower ability for local economies to adapt.

As the primary impact measured by the Authority was on jobs, economic development to create jobs will be the focus of the Program. Organisations such as councils and not-for-profit organisations are best placed to determine the type of economic development that is most suited to each region and a range of practical economic development projects may be supported. This investment would be guided by the Productivity Commission's Study Report: *Transitioning Regional Economies*. Examples of practical projects may include extending business-grade internet services in the region, or jobs or skills training for vulnerable individuals or local businesses.

Since the Authority's research, the Department of Agriculture and Water Resources conducted a number of strategic purchases of environmental water under the Basin Plan. One additional community has been assessed as adversely affected in a comparable way to the 14 communities identified in the Authority's research and will be included in the Program. In addition, there may be one to two other communities potentially affected by proposed strategic purchasing. The total number of communities involved in the Program could be between 15 and 17.

It is anticipated that the Department of Agriculture and Water Resources will provide grant funding to eligible organisations such as councils and not-for-profit organisations through the Community Grants Hub to support economic development projects that will benefit the identified communities. The Department of Agriculture and Water Resources would select projects in consultation with relevant experts. Projects would be assessed against evaluation criteria to best provide for a distribution of projects across all selected communities, including value for money and the capacity for the project to address the impacts of water recovery.

The selected organisations would be required to undertake the following activities:

- if requested by organisations with limited resources and preparedness to provide economic development projects, prepare a community adaptation plan (an economic development strategy and action plan) that details a strategic response to mitigating water recovery impacts from the Basin Plan on the relevant local community;
- submit proposals for practical economic development projects;
- implement approved economic development projects; and
- provide the Department of Agriculture and Water Resources with a final project report.

The Minister for Agriculture and Water Resources, or their delegate, will be responsible for the final decisions about the Commonwealth expenditure. Information about those decisions will be available publicly on the Department of Agriculture and Water Resources's website: www.agriculture.gov.au.

Decision-making on implementation of this Program may be subject to a review by the Productivity Commission or Australian National Audit Office. No additional independent review will be arranged, given the Program is financially capped and only the identified communities are eligible. The remaking of a decision under merits review would necessarily affect funding available to other parties and would delay the implementation of activities to mitigate the impact of the Murray-Darling Basin Water Reform. The activities will be conducted in accordance with the Commonwealth's resource management framework including the *Commonwealth Grants Rules and Guidelines 2017* and the *Public Governance, Performance and Accountability Act 2013*.

Funding will come from Program 3.1: Sustainable Rural Water Use and Infrastructure Program, which is part of Outcome 3. Details are set out in the *Portfolio Budget Statements 2018-19, Budget Related Paper No. 1.1, Agriculture and Water Resources Portfolio*, at page 57.

Noting that it is not a comprehensive statement of relevant constitutional considerations, the objective of the item references the external affairs power (section 51(xxix)) of the Constitution.

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 international treaties to which Australia is a party.

Grants under this program will be provided to communities most impacted by water recovery. Grants would only be provided to such communities for the purpose of addressing the adverse economic impacts of that water recovery, being measures under which water is acquired for environmental purposes under the Basin Plan in order to give effect to Australia's obligations under the following international conventions:

- the Convention on Wetlands of International Importance especially as Waterfowl Habitat (the Ramsar Convention), particularly Articles 3(1) and 4;
- the Convention on Biological Diversity (the Biodiversity Convention), particularly Articles 6(b), and 8(a), (b), (d), and (f);

- the United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (the Desertification Convention), particularly Articles 4(2) and 5;
- the Convention on the Conservation of Migratory Species of Wild Animals (the Bonn Convention), particularly Article III;
- the Agreement between the Government of Australia and the Government of the People's Republic of China for the Protection of Migratory Birds and their Environment (CAMBA), particularly Articles III(3), IV(a) and (b);
- the Agreement between the Government of Australia and the Government of Japan for the Protection of Migratory Birds and Birds in Danger of Extinction and their Environment (JAMBA), particularly Articles III(1), IV(3), V and VI(a);
- the Agreement with the Government of the Republic of Korea on the Protection of Migratory Birds (ROKAMBA), particularly Articles 3(3), 4 and 5(a); and
- the United Nations Framework Convention on Climate Change (the UNFCCC), particularly Articles 4(1)(d), (e) and (f).

Article 3(1) of the Ramsar Convention provides that the Parties shall formulate and implement their planning so as to promote the conservation of wetlands on the List of Wetlands of International Importance established under Article 2 and the wise use of wetlands in their territory. Article 4 of the Ramsar Convention provides that Parties must promote the conservation of wetland and waterfowl, including by establishing nature reserves on wetlands and providing adequately for their wardening.

Article 6(b) of the Biodiversity Convention provides that Parties must integrate the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programs and policies. Article 8(a), (b), (d) and (f) of the Biodiversity Convention relevantly provides that Parties must establish systems of protected areas or areas where special measures must be taken to conserve biological diversity, develop guidelines for the selection, establishment and management of such areas, promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings, and rehabilitate and restore degraded ecosystems and promote the recovery of threatened species, including through the development and implementation of plans or other management strategies.

Article 4(2) of the Desertification Convention provides that the Parties shall implement their obligations under the Convention, and that in pursuing the objectives of the Convention, they shall take various steps to, among other things, mitigate the effects of drought. Article 5 of the Desertification Convention provides that the Parties must give due priority, allocate adequate resources, establish strategies and priorities and facilitate participation of local populations with the support of non-governmental organisations to mitigate the effects of drought.

Article III of the Bonn Convention provides that Parties that are Range States of a migratory species listed in Appendix I of that Convention shall endeavour to conserve and restore the habitats of the species which are of importance in removing the species from danger of extinction, address the adverse effects of activities that impede or prevent the migration of the species, and address factors that are endangering the species, including controlling exotic species.

Article III(3) of CAMBA provides that Parties shall encourage the conservation of migratory birds, especially those species in danger of extinction. Article IV(a) and (b) provides that Parties shall endeavour to establish sanctuaries and facilities for the management and protection of migratory birds and their environment, and to take measures to preserve and enhance the environment of migratory birds, and particularly to prevent damage to migratory birds and their environment and measures as necessary to control the importation and introduction of animals and plants which are hazardous to the preservation of migratory birds and their environment.

Article III(1) of JAMBA provides that the Parties shall take special protective measures for the preservation of species of birds in danger of extinction. Article IV(3) provides that the Parties shall encourage the conservation of migratory birds and birds in danger of extinction. Article V provides that the Parties shall endeavour to establish sanctuaries and facilities for the management and protection of migratory birds and birds in danger of extinction and their environment. Article VI(a) provides that the Parties shall endeavour to take measures to preserve and enhance the environment of birds protected under JAMBA, and particularly to prevent damage to such birds and their environment.

Article 3(3) of ROKAMBA provides that the Parties shall encourage the conservation of migratory birds. Article 4 provides that the Parties shall endeavour to manage and conserve the habitat of migratory birds. Article 5(a) provides that the Parties shall endeavour to take measures to conserve and improve the environment of birds protected under Article 1 of ROKAMBA, and particularly to prevent damage to such birds and their environment.

Article 4(1)(d), (e) and (f) of the UNFCCC provides that the Parties undertake, among other things, to promote sustainable management of sinks and reservoirs of greenhouse gases, cooperate in preparing for adaptation to the impacts of climate change, develop plans for management of coastal zones, water resources and agriculture and for the protection and rehabilitation of areas affected by drought and desertification, and take climate change considerations into account in social, economic and environmental policies and actions.

New table **item 321** establishes legislative authority for government spending on the Established Pest Animals and Weeds Management Pipeline (the program).

The program will build on the Government's Agricultural Competitiveness White Paper Established Pest Animals and Weeds Management initiative, which ends in 2018-19.

The program forms part of a range of measures under the Australian Agriculture and Export Growth Plan, which was announced in the 2018–19 Budget to grow the value of agricultural trade, enhance productivity and to reduce risk to the agriculture sector. This will build on the Government's plan to create jobs and support economic growth in Australia's regional areas.

Funding will be used to combat Australia's worst established pest animals and weeds by supporting the research and development of a range of tools and technologies, and extension activities to facilitate the transfer of information, knowledge and/or skills on the control of established pest animals and weeds for landholders and farmers to facilitate improved management practices. Funding will also be used for national coordination activities and key infrastructure to help improve current management approaches across Australia.

This funding activity will continue to build a more profitable, resilient and sustainable agricultural sector to help drive a stronger Australian economy, and to meet the Government's obligations under the International Convention on Biological Diversity, by reducing the negative impact of pest animals and weeds, including on the environment. It will build on the Government's Agricultural Competitiveness White Paper commitment to protect Australia's \$60 billion agricultural sector from the biosecurity risks associated with established pest animals and weeds.

Funding will be provided for:

- long-term innovative research and development projects for new or improved tools and technologies to control established pest animals and weeds;
- extension activities to develop and deliver training and materials to support adoption and best practice for the management of pest animals and weeds along with facilitating the uptake of control tools and technologies by landholders and farmers;
- the national coordination of key established pest animal and weed species; and
- key infrastructure to help improve current management approaches.

Funding would directly benefit Australian farmers, landholders, the community and the environment.

Funding will be made available through ad hoc, targeted and/or competitive grants funding rounds and/or by agreement with states and territories, consistent with the federal financial relations framework. Funding will also be provided for a survey of landholders' established pest animal and weed issues and management costs and time, to assist in national reporting, measuring the benefit of the Government's funding to managing pest animals and weeds, and raising public awareness on the benefits of pest animal and weed control.

Funding will be used to provide the greatest return on investment and the opportunity for sustained efforts across priority established pest animals and weeds areas with a national impact to improve agricultural productivity and profitability for producers and industry, and to protect the environment from the threat of these established pest animals and weeds. This will include leveraging co-investment from state and territory governments and investing in extensive new pest animal and weed control tool and technology research, development and extension, and national collaborative management strategies for government, community and industry action on priority pest animals and weeds.

Funding of \$6.6 million in 2019-20 was included in the 2018-19 Budget under the measure 'Australian Agriculture and Export Growth Plan – established pest animals and weeds pipeline – additional funding' for a period of one year commencing in 2019-20. Details are set out in the *Portfolio Budget Statements 2018–19, Budget Related Paper No. 1.1, Agriculture and Water Resources Portfolio* at page 20. Funding will come from Program 1.2: Sustainable Management – Natural Resources, which is part of Outcome 1.

The department will deliver the program through a grant process undertaken in accordance with the *Commonwealth Grants Rules and Guidelines 2017*. Grant funding will be delivered via ad hoc, targeted and/or competitive grants that support program outcomes and objectives.

The program guidelines will be published on the GrantConnect website at www.grants.gov.au and the administered grant components will be delivered through the Department of Social Services' Community Grants Hub.

The department will make a recommendation to the Minister for Agriculture and Water Resources of grant applicants to fund, based on applications meeting program outcomes and objectives. Where open competitive grants rounds are used, an expert assessment panel may be used to assess all eligible applications on merit using the selection criteria as published in the grant guidelines. The panel will then make recommendations to the department on the merit of the applications. The department will then advise the Minister on the merit of the applications.

All final decisions for expenditure will be made by the Minister for Agriculture and Water Resources. Expenditure will be made in accordance with the *Commonwealth Grants Rules and Guidelines 2017* and departmental guidelines.

Spending decisions will be made public as required under the *Commonwealth Grants Rules and Guidelines 2017* on the GrantConnect website at www.grants.gov.au.

Merits review is not applicable in respect of decisions made in relation to ad hoc or targeted grant funding given the non-competitive nature of the funding. Where funds are allocated under a competitive selection process, with a finite allocation of funding available where only a proportion of eligible applicants may receive funding, such decisions are not considered suitable for merits review. The re-making of a decision under merits review would necessarily affect funding already allocated to other parties and would delay the implementation of the program. Further information on review mechanisms and complaints and how they will be dealt with will form part of the grant guidelines.

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 quarantine power (section 51(ix));
- the external affairs power (section 51(xxix));
- the trade and commerce power (section 51(i));
- the communications power (section 51(v));
- the territories power (section 122);
- the power to grant financial assistance to the states (section 96); and
- the express incidental power and the Commonwealth executive power (sections 51(xxxix) and 61), including the nationhood aspect.

Quarantine power

Section 51(ix) of the Constitution empowers the Parliament to make laws with respect to quarantine.

The program will involve funding programs to prevent the introduction or spread of pests that cause disease or that infest humans, animals and plants.

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 international obligations under treaties to which it is a party.

Australia is a party to the Convention on Biological Diversity [1993] ATS 32. Article 8(h) provides that ‘Each Contracting party shall, as far as possible and as appropriate... [p]revent the introduction of, control or eradicate those alien species which threaten ecosystems, habitats or species’.

Measures enabled by the program will include funding for projects to manage invasive pests and weeds that threaten native ecosystems, habitats and species.

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 program will include measures that address and manage pest animals and weeds that predominately affect agricultural products exclusively raised for export overseas, that combat pest animals and weeds that pose a threat to Australian exports, and that otherwise assist to demonstrate the absence of a weed or pest to facilitate ongoing access to overseas markets.

Communications power

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

The program will include measures that fund projects to create content for educational resources delivered via the internet that assist individuals or groups to respond to pest animals or weeds.

Territories power

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

Measures enabled by the program will involve the Commonwealth undertaking pest and weed management activities in the territories and making grants to territories.

Power to grant financial assistance to States

Section 96 of the Constitution empowers the Parliament to ‘grant financial assistance to any State on such terms and conditions as the Parliament thinks fit’.

Measures enabled by the program may involve the Commonwealth providing grants of financial assistance to states for the purposes of the states undertaking pest and weed management activities.

Commonwealth executive power and express incidental power, including the nationhood aspect

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 Commonwealth government by the Constitution. Together with the executive

power in section 61 of the Constitution, the express incidental power extends to a range of matters, including activities that are peculiarly adapted to the government of the nation and cannot otherwise be carried on for the benefit of the nation.

Measures enabled by the program will, for the benefit of the nation, provide for the funding of research into matters of national importance, including invasive pests and weeds, and measures to control such pests and weeds, particularly where the weed or pest threatens the viability of particular agricultural activities.

New **table item 322** establishes legislative authority for government spending on the Biosecurity Innovation Program (the Program).

The Program will support the national biosecurity system to work smarter into the future. The goal of the national biosecurity system is to minimise the impact of pests and diseases on Australia's economy, environment and the community, with resources targeted to manage risk effectively, while facilitating trade and the movement of animals, plants, people, goods, vectors, and vessels, to, from and within Australia.

The objectives of the national biosecurity system are to provide arrangements, structures and frameworks that:

- reduce the likelihood of exotic pests and diseases which have the potential to cause significant harm to the economy, the environment, and the community (including people, animals and plants), from entering, becoming established or spreading in Australia;
- prepare and allow for effective responses to, and management of, exotic and emerging pests and diseases that enter, establish or spread in Australia; and
- ensure that, where appropriate, significant pests and diseases already in Australia are contained, suppressed or otherwise managed.

On 29 June 2018, the Minister for Agriculture and Water Resources (the Minister), the Hon David Littleproud MP, announced a further \$137.8 million to build a smarter, stronger biosecurity system. Funding of \$25.2 million for the Program was part of the announcement. The funding will be available for five years from 2018-19.

The Program supports the Australian Government's response to the 2017 intergovernmental review on biosecurity, *Priorities for Australia's biosecurity system: An independent review of the capacity of the national biosecurity system and its underpinning intergovernmental agreement*, which recommended establishing a \$25 million Biosecurity Innovation Program, over five years, to develop solutions addressing emerging biosecurity challenges.

This recommendation is adopted through the establishment of this Program. The Program will invest in accelerating the identification, development and implementation of innovative technologies and approaches that can enhance the capacity of the national biosecurity system to manage biosecurity risk.

The Program anticipates outcomes that will generate and extend knowledge, technologies, products or processes that, if adopted may:

- enhance the national biosecurity system;
- streamline and increase the early identification of potential biosecurity threats;
- expedite import and export clearance processes; and
- enhance the production, value or quality of agriculture, fisheries or forestry products.

Ongoing investment in innovation is required to ensure the national biosecurity system can meet future challenges associated with the volume of people, aircraft, shipping and goods entering Australia, which is forecast to significantly increase by 2025, along with the effects of globalisation and increased complexity of supply chains.

Initially, funding under the Program will be provided for innovative technologies and approaches to assist with biosecurity screening of goods and travellers at Australia's international ports, leveraging and building on existing screening technologies where appropriate. Additional emerging technologies and approaches with the potential to improve early detection beyond ports will also be explored, for the primary purpose of managing biosecurity risk to improve and maintain export market access for the Australian agriculture sector.

The Program will also aim to avoid high costs associated with eradication and management by employing new technologies and approaches for the prevention and/or early detection of new and emerging pests and diseases.

Project proposals will be supported by a project sponsor, the First Assistant Secretary of the relevant business area within the Department of Agriculture and Water Resources. The Program will be governed by the Biosecurity Research and Innovation Steering Committee (the Committee) which will be made up of departmental senior executives who will be responsible for the consideration, assessment and approval of all program expenditure.

Submissions for funding will be brought forward by department division heads and assessed on merit in a competitive prioritisation process, considering the Program's aims and objectives. Taking into account the recommendations of experts, the Committee will be responsible for the consideration, assessment and final approval of program expenditure.

Projects funded under the Program will be delivered by the Department of Agriculture and Water Resources, third-party service providers (which may include industry, research entities, other government agencies or jurisdictions) or a combination of these.

Where funding is to be provided to contracted service providers, this will be done through a procurement process conducted in accordance with the *Commonwealth Procurement Rules*. A tender may be conducted if more than one suitable supplier is identified. This targeted approach will address the commercial challenges associated with producing innovative biosecurity technologies and approaches. This approach also significantly reduces regulatory burden and will achieve best value for money.

If a tender is conducted, information about where to direct complaints will be included in the procurement documentation. The department will investigate any complaints about any tender process in accordance with its complaints policy and procedures.

Information about the Program and requests for tender will be published on the Department of Agriculture and Water Resources' website (www.agriculture.gov.au).

All funded projects will be made available on the AusTender website (www.tenders.gov.au). The department may publish further information on the Department of Agriculture and Water Resources' website (www.agriculture.gov.au) as appropriate.

Decisions made in connection with the Program will not be subject to merits review. Where funding is to be provided to contracted service providers, this will be done through a procurement process also conducted in accordance with the requirements of the Commonwealth resource management framework, including the *Public Governance, Performance and Accountability Act 2013* and the *Commonwealth Procurement Rules*.

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 express incidental power and the Commonwealth executive power (sections 51(xxxix) and 61), including the nationhood aspect.

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 Program will include measures that relate to the importation of goods and that operate at the border as well as measures that support the development of technologies to assist the monitoring of biosecurity risk for the purposes of maintaining and improving access to export markets.

Commonwealth executive power and express incidental power, including the nationhood aspect

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 Commonwealth government by the Constitution. Together with the executive power in section 61 of the Constitution, the express incidental power extends to a range of matters, including activities that are peculiarly adapted to the government of the nation and cannot otherwise be carried on for the benefit of the nation.

Measures enabled by the Program will, for the benefit of the nation, provide for the funding of research into matters of national importance, including supporting innovative technologies to enhance the capacity of the national biosecurity system and in particular, technology for biosecurity screening at international ports.

New table **item 323** establishes legislative authority for government spending on the Environmental Biosecurity Protection Fund (the Fund).

The Fund supports the Australian Government's response to the 2017 intergovernmental review on biosecurity, *Priorities for Australia's biosecurity system: an independent review of the capacity of the national biosecurity system and its underpinning intergovernmental agreement*.

Once established, the Fund will invest in projects that support planning and preparedness for the management of the environmental biosecurity risks relating to priority diseases and invasive pests that threaten native ecosystems, habitats or species. The Fund will support the national biosecurity system to manage pests and diseases that impact on the environment, and improve the capacity of the Australian Government, state and territory governments, and non-government environmental and community groups to detect and eradicate environmental pests and diseases.

The Fund will also be used to leverage investment from other government and non-government funding sources in targeted projects to improve the ability to detect and eradicate environmental pests and diseases.

The Fund will be administered by the Chief Environmental Biosecurity Officer, a role that has been recently established in the department. The role was announced by the Minister for Agriculture and Water Resources, the Hon David Littleproud MP, on 29 June 2018. The Minister also announced that funding of \$7.6 million over five years from 2018-19 would be available for the Fund, the Chief Environmental Biosecurity Officer and support staff.

The proposed framework for the Fund – including eligibility criteria, the types of activities that may be funded, and any relevant delegations – will be developed by the Chief Environmental Biosecurity Officer for decision by the Minister for Agriculture and Water Resources.

Where funding is to be provided to contracted service providers, this will be done through a procurement process conducted in accordance with the *Commonwealth Procurement Rules*. Any approach to procurement will address any challenges associated with potentially innovative technologies and approaches for the management of environmental biosecurity pests and diseases, and will achieve best value for money.

Projects to deliver on Fund objectives will be delivered by the Department of Agriculture and Water Resources, third party service providers (which may include industry, research entities and other government agencies or jurisdictions) or a combination of these.

Where funding is to be provided as a grant, this will be done through a process conducted in accordance with the *Commonwealth Grants Rules and Guidelines 2017*.

Spending decisions will be made by the Minister for Agriculture and Water Resources, or delegate. The Department of Agriculture and Water Resources will be responsible for delivering this measure.

Submissions for funding will be assessed by the appointed tender evaluation panel on merit in a competitive prioritisation process, considering Fund aims and objectives, and in accordance with relevant requirements of the *Commonwealth Procurement Rules* and the *Commonwealth Grants Rules and Guidelines 2017*.

Information about the Fund, including guidelines as appropriate, will be published in accordance with the *Commonwealth Procurement Rules on AusTender* (www.tenders.gov.au) or the *Commonwealth Grants Rules and Guidelines 2017* on GrantConnect (www.grants.gov.au). The department may publish further information on the Department of Agriculture and Water Resources's website (www.agriculture.gov.au) as appropriate.

For procurement and grant activities, decisions made in connection with the Fund will generally not be subject to merits review. Where grant funds are allocated under a competitive selection process, with a finite allocation of funding available where only a proportion of eligible applicants may receive funding, such decisions are not considered suitable for merits review. The remaking of a decision under merits review would necessarily affect funding already allocated to other parties and would delay the implementation of the program.

Where funding provided to contracted service providers is done through a procurement process, this will be conducted in accordance with the Commonwealth's resource management framework including the *Commonwealth Procurement Rules* and the *Public Governance, Performance and Accountability Act 2013*.

If a tender or a grant is conducted, information about where to direct complaints will be included in the procurement or grant documentation. The department will investigate any complaints about any tender or grants process in accordance with its complaints policy and procedures.

Funding for this activity will come from Program 2.1: Biosecurity and Export Services, which is part of Outcome 2. Details will be set out in the relevant portfolio budget statements.

The measure that provides funding for the Chief Environmental Biosecurity Officer with support staff, also includes the establishment of the Fund.

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 quarantine power (section 51(ix)); and
- the external affairs power (section 51(xxix)).

Quarantine power

Section 51(ix) of the Constitution empowers the Parliament to make laws with respect to quarantine.

The Fund will provide support for measures in connection with quarantine directed at surveillance and response to environmental pest animals and weeds that cause infestation or priority diseases affecting animals and plants.

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 international obligations under treaties to which it is a party.

Australia is a party to the Convention on Biological Diversity [1993] ATS 32. Article 8(h) provides that ‘Each Contracting party shall, as far as possible and as appropriate... Prevent the introduction of, control or eradicate those alien species which threaten ecosystems, habitats or species’.

Measures enabled by the Fund will be directed at surveillance of, and response to, invasive pests and weeds that threaten native ecosystems, habitats and species.

New **table item 324** establishes legislative authority for the Government to provide contingency funding for biosecurity incidents.

The Commonwealth has primary responsibility for managing biosecurity incidents on Commonwealth land. Ensuring that it has the capacity to rapidly and effectively respond to such incidents reduces the potential impact on industry, the environment and the broader community. Rapid and effective responses also assist to maintain Australia’s favourable pest and disease status.

The funding will support the Commonwealth to undertake activities to prepare for, and respond to, emergency pest and disease incursion in areas of Commonwealth responsibility such as Norfolk Island, the Indian Ocean Territories, airports, ports, defence bases and six Commonwealth national parks. This will enhance the Commonwealth’s ability to respond rapidly to detections resulting in pests and diseases being controlled and eradicated faster, reducing the burden on businesses and the community in terms of duration of movement restrictions and the amount of damage caused to farmers, the environment and economy.

Funding of up to \$1 million per annum will be available to enable the Commonwealth to meet its responsibility to prepare for, and respond to, biosecurity incidents. The biosecurity incident contingency funding is part of the Government’s commitment of \$35 million over five years from 2018-19 of contingency funding for biosecurity emergency responses.

Funding will be able to be accessed to support the Commonwealth where it is the lead jurisdiction in a national response on areas of Commonwealth responsibility and where activities are above the Department of Agriculture and Water Resources’s business as usual activities.

Funded activities may include investigating the incident and enacting initial response activities such as containment, surveillance and diagnostic work. Funding will also be made available where a state or territory manages and undertakes a response on behalf of the Commonwealth. As an administered fund, expenditure is likely to occur through procurement, direct grants or to payment to a state or territory through the National Project Agreement for Pest and Disease Preparedness and Response Program.

This funding is limited to activities that are not covered under biosecurity cost recovery arrangements and are expenses incurred by the Commonwealth to prepare for, or respond to, emergency pest or disease incidents. Eligible activities may include:

- surveillance activities;
- emergency containment measures;
- treatment activities;
- external laboratory services;
- consumables including traps, lures and chemicals;

- communication material;
- capital costs
 - if equipment is purchased as part of response activities it must either be sold at the end of the response and the funds returned or the equipment must be made available for other departmental activities relating to Commonwealth places;
- activities that support preparing for an emergency response on a Commonwealth place; or
- research or other activities for pests of concern that specifically impact Commonwealth places.

Where a state or territory manages and undertakes a response on behalf of the Commonwealth, this will be paid from the Biosecurity Incident Contingency Fund.

Information about the Biosecurity Incident Contingency Fund will be published on the Department of Agriculture and Water Resources's website (www.agriculture.gov.au). Specific information, including guidelines as appropriate, will be published in accordance with the *Commonwealth Procurement Rules* on AusTender (www.tenders.gov.au) or the *Commonwealth Grants Rules and Guidelines 2017* on GrantConnect (www.grants.gov.au). All successful grants awarded will be published on the GrantConnect website in accordance with the *Commonwealth Grants Rules and Guidelines 2017*.

Specific decisions regarding expenditure on emergency responses is not made public due to the sensitive nature of response activities which may contain personal or trade sensitive information. Broader information about emergency pest and disease incursions, including response activities, impacts, host species, range and movement restrictions, is typically published on www.outbreak.gov.au.

The framework and guidelines for how the biosecurity incident contingency funding will be administered are currently under development. It is envisaged that the decision-maker for grants and expenditure for this activity would be a senior departmental official as the delegate of the Minister for Agriculture and Water Resources.

Where funding is to be provided to contracted service providers, this will be done through a procurement process conducted in accordance with the *Commonwealth Procurement Rules*. A limited tender may be conducted if more than one suitable supplier is identified. A targeted approach enables the delivery of emergency response activities within the urgent timeframes required of a response, unachievable through an open tender, while still achieving value for money. Where a tender is awarded, decisions will be made available on the AusTender website.

Merits review is not applicable in respect of decisions made in relation to procurement and ad hoc or targeted grant funding given the non-competitive nature of the funding. Where funds are allocated under a competitive selection process, with a finite allocation of funding available, where only a proportion of eligible applicants may receive funding, such decisions are not considered suitable for merits review. The remaking of a decision under merits review would necessarily affect funding already allocated to other parties and would delay the implementation of response activities provided through the funding. Further information on review mechanisms and complaints and how they will be dealt with will form part of the grant guidelines.

Funding for this activity will come from Program 2.1: Biosecurity and Export Services, which is part of Outcome 2. Details will be set out in the relevant portfolio budget statements.

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 Commonwealth places power (section 52(i));
- the power to grant financial assistance to the states (section 96); and
- the territories power (section 122).

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’.

Measures enabled by this funding will involve the Commonwealth undertaking biosecurity-related activities on land that is a Commonwealth place.

Power to grant financial assistance to States

Section 96 of the Constitution empowers the Parliament to ‘grant financial assistance to any State on such terms and conditions as the Parliament thinks fit’.

Measures enabled by the funding may involve the Commonwealth providing grants of financial assistance to states for the purposes of the states undertaking biosecurity-related activities.

Territories power

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

Measures enabled by the funding may involve the Commonwealth undertaking biosecurity-related activities in the territories and making grants to territories.

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 (Agriculture and Water Resources Measures No. 4) Regulations 2018

These Regulations are 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 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 Regulations amend Schedule 1AB to the FF(SP) Regulations to establish legislative authority for government spending on five activities that will be administered by the Department of Agriculture and Water Resources.

Funding will be provided for:

- the Murray-Darling Basin Economic Development Program for activities to offset the detrimental economic effects on communities in the Murray-Darling Basin associated with measures to protect and restore environmental assets, measures to assist in achieving certain outcomes of the Basin Plan, and the recovery of environmental water from the Basin water resources (with funding of \$20 million over four years from 2018-19);
- the Established Pest Animals and Weeds Management Pipeline to combat Australia's worst established pest animals and weeds by supporting the research, development and extension of a range of tools and technologies, national coordination activities and key infrastructure to facilitate improved management and control of these species (with funding of \$6.6 million for one year in 2019-20 included in the 2018-19 Budget);
- the Biosecurity Innovation Program to support the national biosecurity system to minimise the impact of pests and diseases on Australia's economy, environment and the community (with funding of \$25.2 million over five years from 2018-19);
- the Environmental Biosecurity Protection Fund that would invest in projects that support planning and preparedness for the management of the environmental biosecurity risks relating to priority diseases and invasive pests that threaten native ecosystems, habitats or species (with funding of \$7.6 million over five years from 2018-19 for the Fund, the Chief Environmental Biosecurity Officer and support staff); and

- contingency funding for biosecurity incidents to enable the Commonwealth to undertake activities to prepare for, and respond to, emergency pest and disease incursion in areas of Commonwealth responsibility such as Norfolk Island, the Indian Ocean Territories, airports, ports, defence bases and Commonwealth national parks (with funding of \$1 million annually).

The Minister for Agriculture and Water Resources has portfolio responsibility for these matters.

Human rights implications

The Regulations do not engage any of the applicable rights or freedoms.

Conclusion

These Regulations are compatible with human rights as they do not raise any human rights issues.

**Senator the Hon Mathias Cormann
Minister for Finance and the Public Service**