**EXPLANATORY STATEMENT**

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

*Financial Framework (Supplementary Powers) Act 1997*

*Financial Framework (Supplementary Powers) Amendment*

*(Foreign Affairs and Trade Measures No. 2) 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 (Foreign Affairs and Trade Measures No. 2) Regulations 2018* (the Regulations) amends Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on the Emerging Markets Impact Investment Fund (EMIIF) which will be delivered as part of Australia’s aid program. The core objective of the EMIIF is to improve access to finance for small and medium enterprises in South and South East Asia.

The then Minister for Foreign Affairs, the Hon Julie Bishop MP, announced the EMIIF on 14 November 2017 at the Impact Investment Asia Pacific Summit.

Funding of $40 million for the EMIIF was included in the 2018-19 Budget for a period of four years commencing in 2018-19. The EMIIF will be implemented over 10 years from 2019.

The Department of Foreign Affairs and Trade has administrative responsibility for the initiative.

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 Foreign Affairs and Trade.

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 (Foreign Affairs and Trade Measures No. 2) Regulations 2018***

**Section 1 – Name**

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Foreign Affairs and Trade Measures No. 2) 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 a new table item to Part 4 of Schedule 1AB to establish legislative authority for government spending on an initiative that will be administered by the Department of Foreign Affairs and Trade (DFAT).

New **table item 316** establishes legislative authority for government spending on the Emerging Markets Impact Investment Fund (EMIIF) which will be delivered as part of Australia’s aid program. The core objective of the EMIIF is to improve access to finance for small and medium enterprises (SMEs) in South and South East Asia. This will enable them to grow, providing social and economic benefits to their communities in support of Australia’s international development objectives.

Despite the social and economic benefits that SMEs bring to their communities in the region, access to capital constrains their ability to operate and grow. Managed by an Investment Manager, the EMIIF will invest in fund managers that service early-stage SMEs that benefit poor communities and enhance gender equality. In doing so, the EMIIF will attract greater investment into these SMEs working across a number of sectors including but not limited to, agriculture, healthcare, education, clean energy, financial services and technology. It will also provide technical assistance to funds and businesses to improve management capacity, financial skills and business operating practices. The EMIIF will be implemented over 10 years from 2018-19 to 2028-29.

The then Minister for Foreign Affairs, the Hon Julie Bishop MP, announced the EMIIF on 14 November 2017 at the Impact Investment Asia Pacific Summit. The speech is at: https://foreignminister.gov.au/speeches/Pages/2017/jb\_sp\_171114.aspx?w=tb1CaGpkPX%2FlS0K%2Bg9ZKEg%3D%3D.

Funding of $40 million for the EMIIF was included in the 2018-19 Budget for a period of four years commencing in 2018-19. The funding will come from Official Development Assistance for infrastructure, trade facilitation and competitiveness as outlined on page 79 of the *Australian Aid Budget Summary 2018-19*. This item sits within Program 1.2: Official Development Assistance – Administered, which is part of Outcome 1. Details are set out in the *Portfolio Budget Statements 2018-19, Budget Related Paper No. 1.8, Foreign Affairs and Trade portfolio* at page 23.

The EMIIF will be established as a non-unitised Trust and will be delivered through a legal structure involving an independent Trustee and an Investment Manager. The Trustee will hold the EMIIF’s funds in the Investment Trust and the Investment Manager will manage and deliver the EMIIF objectives in accordance with the EMIIF Investment Strategy which has been developed by DFAT. The EMIIF will make investments in, and provide technical assistance to, funds or companies that finance small and medium enterprises (SME Funds) based on an open, competitive process. Decisions relating to the investments and technical assistance delivered by the EMIIF will be made by an independent Investment Committee.

The Investment Committee will consist of two members from the Investment Manager and three independent members who will be approved by DFAT. DFAT will not sit on the Investment Committee and has no right of review of Investment Committee decisions. Information and guidance to be provided by the Investment Manager to the Investment Committee to inform investment decisions will include, but is not necessarily limited to: macro-economic factors and private equity markets in country/region of investment; the experience and knowledge of the management team including their track record; their investment strategy and proposed pipeline of investments; their approach to managing social and environmental safeguards; and their approach to managing fiduciary risk. If a blended finance structure is proposed, that is, an investment structure that comprises both concessional and commercial capital, the Investment Committee will also have regard to the OECD guidelines on the use of concessionary financing.

The Investment Manager will identify, select and make investments in SME Funds, based on the investment strategy and parameters that have been established by DFAT. The Investment Manager will propose investments, including any accompanying technical assistance to the Investment Committee for decision and will be responsible for implementing Investment Committee decisions.

The EMIIF will make investments (including loans, equity and guarantees) into SME Funds with portfolios of SMEs that benefit poor communities and enhance gender equality through their products and services, supply chains and/or employment practices. It will also provide technical assistance to SME Funds and SMEs to improve their business management and the development impact of their operations.

The EMIIF will operate in countries where the Australian Government provides bilateral development assistance. Target countries are Vietnam, Cambodia, Myanmar, Laos, Bangladesh, Sri Lanka, Indonesia, the Philippines, Pakistan, Papua New Guinea, the Solomon Islands, Vanuatu, Fiji, Tonga, Samoa and other Pacific Islands.

The direct beneficiaries of the EMIIF will be SMEs in the target countries which receive investment from the EMIIF’s investee funds. EMIIF investment will enable the growth of these SMEs. In turn those SMEs will: provide poor consumers with products and services; purchase products and services from poor communities; and provide employment for poor communities. The EMIIF will have a strong focus on gender equality and women’s economic empowerment by encouraging investment in enterprises that positively impact women, for example, through SMEs that are led by women, provide products or services for women and girls, or adopt workplace policies that promote gender equality.

Two separate competitive open procurement processes are being undertaken to select an independent Trustee and an Investment Manager to deliver the EMIIF. The procurement processes are being conducted in accordance with the *Commonwealth Procurement Rules*. Responsibility for the final decisions relating to the selection of the Investment Manager and Trustee is held by the delegate for the Secretary, that is, the First Assistant Secretary of the Multilateral Development and Finance Division, DFAT.

Information regarding the EMIIF procurement and design document is available at www.dfat.gov.au/emiif. Details regarding the outcomes of the current procurement processes will be released on this website and on AusTender (www.tenders.gov.au). Once selected and engaged, the Investment Manager will be responsible for developing a website to share information about the EMIIF initiative.

The Investment Committee will act as an independent decision-maker regarding the selection and terms of investments and technical assistance provided through the EMIIF. In line with standard practice for the Australian Government’s aid program, there will be no provision for the independent review of funding decisions.

The EMIIF will be subject to regular independent financial audits and reporting as required under Australian Financial Services Licensing requirements. The EMIIF design includes a monitoring, evaluation and reporting framework which requires the Investment Manager to track and report on the achievement of financial and program objectives. As part of this requirement, an evaluation of the EMIIF will be undertaken by suitably qualified and experienced monitoring, evaluation and learning practitioner/s engaged by the Investment Manager, at three key points during the 10 years of the initiative.

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.

Section 51(xxix) of the Constitution empowers the Parliament to make laws with respect to ‘external affairs’. The external affairs power supports legislation with respect to matters or things outside the geographical limits of Australia. The EMIIF will help small and medium enterprises in developing countries (being Bangladesh, Cambodia, Indonesia, Laos, Myanmar, the Philippines, Sri Lanka, Vietnam, as well as Pakistan and other Pacific Island countries) to access finance in order to reduce poverty and achieve sustainable development.

**Statement of Compatibility with Human Rights**

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

***Financial Framework (Supplementary Powers) Amendment (Foreign Affairs and Trade Measures No. 2) 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 the Emerging Markets Impact Investment Fund (EMIIF) which will be delivered as part of Australia’s aid program. The core objective of the EMIIF is to improve access to finance for small and medium enterprises in South and South East Asia.

Funding of $40 million for the EMIIF was included in the 2018-19 Budget for a period of four years commencing in 2018-19. The EMIIF will be implemented over 10 years from 2019.

The Minister for Foreign Affairs has portfolio responsibility for this initiative which will be administered by the Department of Foreign Affairs and Trade.

**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**