

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
(Infrastructure, Regional Development and Cities Measures No. 3) 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 (Infrastructure, Regional Development and Cities Measures No. 3) Regulations 2018* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending to support the safe and timely deployment of automated vehicles in Australia. The funding will be used to encourage Australian industry development, build a fit for purpose regulatory environment and plan for future digital and physical infrastructure needs.

On 4 October 2018, the Deputy Prime Minister and Minister for Infrastructure, Transport and Regional Development, the Hon Michael McCormack MP, announced the initiative, with \$9.7 million to be provided over four years, commencing in 2018-19.

The initiative will be administered by the Department of Infrastructure, Regional Development and Cities.

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 they are 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 Infrastructure, Regional Development and Cities.

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 (Infrastructure, Regional Development and Cities Measures No. 3) Regulations 2018*

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Infrastructure, Regional Development and Cities Measures No. 3) Regulations 2018*.

Section 2 – Commencement

This section provides that the Regulations commence on the day after they are 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 activity that will be administered by the Department of Infrastructure, Regional Development and Cities.

New **table item 312** establishes legislative authority for government spending to support the safe and timely deployment of automated vehicles in Australia.

On 4 October 2018, the Deputy Prime Minister and Minister for Infrastructure, Transport and Regional Development, the Hon Michael McCormack MP, announced the initiative, with \$9.7 million to be provided over four years, commencing in 2018-19.

The funding will be used to encourage Australian industry development, build a fit for purpose regulatory environment and plan for future digital and physical infrastructure needs. The objective of the proposed expenditure is to realise economic and social benefits through the safe and timely introduction of automated vehicles to Australia.

Technology in the transport sector is changing rapidly, including the development of highly automated road vehicles that do not require a driver for most of their operation. There is limited time to prepare Australia for the change. While it is likely to be several decades before a majority of vehicles are automated, most major automotive manufacturers have publicly announced their aim to offer highly automated vehicles for sale between 2020 and 2025. The Australian Government is working with state and territory governments to

ensure that policy, regulatory, digital and physical infrastructure settings are prepared for the arrival of these vehicles into the Australian market.

Automation provides an opportunity to enhance Australia's economic performance and international competitiveness. The freight industry is a key enabler of all sectors of the economy and given that three-quarters of freight is carried by road, automation would deliver economy-wide productivity improvements.

Automated vehicles will also reduce road crashes (which cost the Australian economy \$27 billion annually) and provide people with a disability, those living in regional Australia, and the elderly with improved access to employment, education and healthcare services. The tendency for automated vehicles to be electric vehicles will create opportunities to improve fuel efficiency of the fleet, thereby contributing to health and environmental outcomes.

The initiative will be delivered through the establishment of an Office of Future Transport Technologies within the Department of Infrastructure, Regional Development and Cities to lead cross-portfolio policy work on automated vehicles. The funding will be used for the following activities:

- the development of an industry engagement strategy, including:
 - an industry stakeholder engagement forum to communicate government work underway to prepare for highly automated vehicles and understand how this work can evolve to support Australian industry's participation in this emerging field;
 - developing an industry capability statement and a trials and investment prospectus. This would contribute to both positioning Australia as a potential investment destination for trials of automated vehicles and related technology, as well as showcasing Australian capability in the global supply chain;
 - a potential international trade delegation. This would build on the prospectus and provide a mechanism for government-facilitated business and government stakeholder engagement;
- desktop research and/or modelling on a range of implementation issues such as technology uptake and potential labour market impacts;
- developing a public communications strategy to ensure the community understands the likely timing of these emerging technologies and the benefits they will bring, and the work Australian governments are doing to manage issues such as safety, privacy and security; and
- working with the states, territories, local government and the private sector to understand the digital and physical infrastructure needs of new vehicle technologies and to work towards their timely provision. The 2018-19 Budget announcement of an investment in a Satellite Based Augmentation System that will improve the accuracy of positioning information used by automated vehicles, among other sectors, is an example of this work.

The required goods and services, which will arise under the work relating to the introduction of automated vehicles to Australia, will be procured under the Commonwealth's resource management and procurement frameworks, as set out in the *Public Governance, Performance and Accountability Act 2013*, the Public Governance, Performance and Accountability Rule 2014, and the Commonwealth Procurement Rules (CPRs). None of the expenditure will be awarded as grants.

Decisions about the procurement method to be utilised are yet to be taken. A suitable procurement method will be selected in line with the requirements set out in the Commonwealth's procurement framework. The assessment criteria will be published as appropriate for the procurement method selected, and will also be in line with the requirements set out in the Commonwealth's procurement framework, for example, the assessment criteria for any open tender procurement processes will be published on AusTender (www.tenders.gov.au). Given the variation in goods and services to be procured, all available methods will be considered (open tender, prequalified tender and limited tender).

Third-party service providers will be responsible for delivering the goods and services.

Information about how the Government is preparing for automated vehicles will be available at www.infrastructure.gov.au.

The officials who will be responsible for procurement decisions will vary depending on the size and nature of the procurement, but all decisions will be made either by the Minister for Infrastructure, Transport and Regional Development or their delegate, or the Secretary or their delegate, as appropriate for the size and nature of the decision.

Information about procurement decisions will be provided publicly in accordance with the CPRs (for example, contracts greater than \$10,000 and not subject to a confidentiality agreement will be listed on www.tenders.gov.au).

Funding decisions made in connection with the program are not suitable for independent review because such decisions relate to the procurement of goods and services. Procurement decisions will be made in accordance with the Commonwealth resource management framework, in the manner set out above, to ensure that such decisions achieve value for money.

In addition, decisions made in connection with the program are not for the purpose of conferring benefits (financial or otherwise) on individual persons or companies, but apply broadly for the benefit of the broader Australian community. In other words, the program will seek to provide economic and social benefits for the community more generally, as a result of the safe and timely introduction of automated vehicles to Australia, and not an individual class/es of person(s).

Funding for this item will come from Program 2.2: Surface Transport, which is part of Outcome 2. Funding was provided for in the 2018-19 Budget context and will be reflected in the 2018-19 Mid-Year Economic and Fiscal Outlook and the 2018-19 Portfolio Additional Estimates 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 interstate and international trade and commerce power (section 51(i));
- the territories power (section 122);
- the communications power (section 51(v));
- the external affairs power (section 51(xxix)); and
- the Commonwealth executive power and the express incidental power (sections 61 and 51(xxxix)), including the nationhood aspect.

Interstate and international 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 an international trade delegation to promote Australian Government and industry readiness for the introduction of automated vehicles, facilitate trials and investment in Australia and create opportunities for Australian industry to participate in global supply chains. The purpose of the trade delegation is to facilitate and encourage trade and commerce between Australia and other countries.

The program will also involve the development of an industry capability statement and a trials and investment prospectus to market Australian innovation internationally and encourage international collaboration. The purpose of such activities is to encourage automated vehicle-related trade and commerce between Australia and other countries, in particular by making international entities aware of Australian products and expertise.

The program also includes a communications strategy intended to improve automated vehicle-related trade and commerce between Australia and other countries.

Territories power

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

The program involves the development of a communications strategy aimed at informing the public about automated vehicle technology and increasing support for such technology. This is likely to involve the procurement or distribution of relevant communication materials in a territory.

Communications power

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

The program involves the development of a communications strategy aimed at informing the public about automated vehicle technology and increasing support for such technology. This information may be disseminated through services including the internet, television, radio and the post.

External affairs power

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

The international trade delegation, a key activity under the program, will take place at a location that is physically external to Australia. In addition, the development of an industry capability statement and a trials and investment prospectus will be undertaken to market Australian innovation internationally and encourage international collaboration.

Commonwealth executive power and the 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 it 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 form part of the ordinary and well-recognised functions of government; and
- activities that are peculiarly adapted to the government of the nation and cannot otherwise be carried out for the benefit of the nation.

The international trade delegation will promote Australia as a location for automated vehicle trials and general automated vehicle-related investment and create opportunities for Australian industry to participate in global supply chains. The delegation will inform overseas entities about Commonwealth policy and laws and create opportunities for an Australian business sector.

The international trade delegation and the development of an industry capability statement and a trials and investment prospectus are activities intended to benefit Australia as a nation.

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 (Infrastructure, Regional Development and Cities Measures No. 3) 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 to support the safe and timely deployment of automated vehicles in Australia. The funding will be used to encourage Australian industry development, build a fit for purpose regulatory environment and plan for future digital and physical infrastructure needs.

The initiative will be delivered through the establishment of an Office of Future Transport Technologies within the Department of Infrastructure, Regional Development and Cities to lead cross-portfolio policy work on automated vehicles.

On 4 October 2018, the Deputy Prime Minister and Minister for Infrastructure, Transport and Regional Development, the Hon Michael McCormack MP, announced the initiative, with \$9.7 million to be provided over four years, commencing in 2018-19.

The initiative will be administered by the Department of Infrastructure, Regional Development and Cities.

The Minister for Infrastructure, Transport and Regional Development has portfolio responsibility for this matter.

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**