

## **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. 1) Regulations 2019*

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. 1) Regulations 2019* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on an activity that will be administered by the Department of Foreign Affairs and Trade.

The 2018-19 Mid-Year Economic and Fiscal Outlook included funding to establish the Australian Infrastructure Financing Facility for the Pacific (AIFFP), to be operational by 1 July 2019. The AIFFP will consist of a \$1.5 billion loan facility and a \$500 million grant component to fund priority infrastructure projects in the Pacific and Timor-Leste.

The Regulations will insert a new table item to provide legislative authority for government spending to provide grants for the development or enhancement of infrastructure in the Pacific and Timor-Leste.

Legislative authority for loans will be established through an amendment to the *Export Finance and Insurance Corporation Act 1991*.

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.1) Regulations 2019***

**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. 1) Regulations 2019*.

**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)**

**Items 1** inserts new **table item 336** in Part 4 of Schedule 1AB to the *Financial Framework (Supplementary Powers) Regulations 1997*.

**New Table item 336** establishes legislative authority for government spending on grants by the Australian Infrastructure Financing Facility for the Pacific (AIFFP). The Government has agreed to establish the AIFFP, to be operational by 1 July 2019, to provide loans and Official Development Assistance (ODA) grant finance to fund infrastructure projects in the Pacific and Timor-Leste.

The AIFFP will provide finance for economic infrastructure projects, such as transport, water, energy and telecommunications projects, in the Pacific and Timor-Leste. It will target projects that have a positive economic effect within individual countries and around the region.

The AIFFP can be used to leverage finance from other partners, including the United States of America, Japan, New Zealand, the Multilateral Development Banks, including the International Finance Corporation, as well as private sources.

The AIFFP will use the existing mechanisms and skills within the Department of Foreign Affairs and Trade (DFAT) and the Export Finance and Insurance Corporation (Efic). It will be established within DFAT with a DFAT-managed ‘front office’, and supported by an Efic ‘back office’.

The AIFFP's front office will consist of DFAT staff, contracted expertise and secondees from other Commonwealth Government departments. The front office will identify and assess projects, structure loan and grant packages, provide secretariat services to the AIFFP Board and external advisory panel, provide grant administration (managing grant finances, delegation to spend according to the *Public Governance, Performance and Accountability Act 2013* and reporting in line with DFAT policies), and deliver AIFFP branding and communications.

The AIFFP's back office will be supported by Efic. The back office will consist of Efic staff, and will conduct credit assessments, establish and conduct loan transactions, finalise loan agreements and monitor the repayment of those loans. Efic will provide a comprehensive due diligence report to the DFAT front office on the commercial viability of financial proposals, conducting processes in line with existing practices. DFAT and Efic will work together on project origination, using the networks and systems of both organisations to source projects and develop loan and grant packages.

A direction from the Minister for Trade, Tourism and Investment to Efic in advance of establishment of the AIFFP will outline the circumstances in which Efic is required to support AIFFP-related proposals for consideration by the Government. Efic processes will occur in close coordination with DFAT and the AIFFP Board.

Project proposals will be generated through a number of avenues, including consultations with Pacific Island countries, direct approaches from the private sector, ministerial referrals, Efic activity, or engagement with Multilateral Development Banks and other donors.

Projects will be assessed according to an investment mandate. A detailed assessment of the project, including safeguards (environmental and social), financial parameters, economic impact and risk will be undertaken. Loan terms, pricing and possible grant components will be developed in this assessment.

In developing the project, the AIFFP may draw on advice from an advisory panel of subject matter experts, appointed by the Board, to provide expert advice on project elements, structuring and risks. Advisory panel members may be asked to present to the AIFFP Board but would not have decision-making authority.

The AIFFP Board will make a recommendation to the Minister for Foreign Affairs (the Foreign Minister). The Foreign Minister will then take the project to the Government for consideration.

The AIFFP transactions may be a loan, a grant or contain both loan and grant elements, noting that the legislative authority for loans will be provided by provisions in the Export Finance and Insurance Corporation Amendment (Support for Infrastructure Financing) Bill 2019 that was introduced into the Parliament on 13 February 2019.

The AIFFP grants complement the loans, by reducing the amount the project proponent needs to borrow. Grants could be used to fund overall project construction and funding requirements, or be used to directly fund discrete project elements, such as client legal costs, feasibility studies, environmental and social safeguards assessments, project management office operations, or construction of a required lead road.

The AIFFP will be subject to regular independent financial audits and reporting as required under Australian Financial Services Licensing requirements. DFAT will embed into the AIFFP design a strong monitoring, evaluation and reporting framework which will require reporting on the achievement of financial and program objectives.

The *Commonwealth Procurement Rules* and the *Commonwealth Grants Rules and Guidelines 2017* will be considered. DFAT's complaints handling guideline details the process for dealing with complaints. This is available on the DFAT website ([www.dfat.gov.au](http://www.dfat.gov.au)).

As set out under paragraph 4.18 and 4.23 of the Administrative Review Council's guidance, a merits review process is not warranted for the ODA grants that will be provided under the AIFFP. The decision to allocate the \$500 million in ODA grants is a policy decision of the Government. Any considerations relating to the AIFFP that are made by the Minister for Foreign Affairs and endorsed by Government relate to Australia's relations with other countries.

The 2018-19 Mid-Year Economic and Fiscal Outlook measure 'Australian Infrastructure Financing Facility for the Pacific – establishment' included funding to establish the AIFFP. Details are set out in the *Mid-Year Economic and Fiscal Outlook 2018-19*, Appendix A: Policy decisions taken since the 2018-19 Budget, at page 244.

The funding for the \$500 million in ODA grants is being reprioritised from within the existing Official Development Assistance (ODA) budget and sits within Program 1.2: Official Development Assistance – Administered, which is part of DFAT's Outcome 1. Details are set out in the *2018-19 Portfolio Additional Estimates Statements, Foreign Affairs and Trade portfolio* (page 26 and 29 refer).

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 AIFFP will provide loans and grants to fund priority infrastructure projects in the Pacific and Timor-Leste. The AIFFP will have a particular emphasis on improving capacity for investing in infrastructure sectors (for example, telecommunications, energy, transport and water) that will underpin economic growth and the movement of people, goods and services within countries around the region.

## **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. 1) Regulations 2019***

This disallowable legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Legislative Instrument**

Section 32B of the *Financial Framework (Supplementary Powers) Act 1997* (the 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 FF(SP) 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 *Financial Framework (Supplementary Powers) Amendment (Foreign Affairs and Trade Measures No. 1) Regulations 2019* inserts new table item 336 in Part 4 of Schedule 1AB to the FF(SP) Regulations to establish legislative authority for government spending relating to the Australian Infrastructure Financing Facility for the Pacific (AIFFP). Funding will be provided under the AIFFP as loans and grants for infrastructure projects in the Pacific and Timor-Leste.

The AIFFP, through the Department of Foreign Affairs and Trade (DFAT) and the Export Finance and Insurance Corporation (Efic), will provide loans and grants to sovereign (government) and private sector partners in the Pacific and Timor-Leste. DFAT will be responsible for the operation of the AIFFP, including administering grants in accordance with DFAT's existing processes for its aid program. Efic will issue loans for the AIFFP in accordance with the *Export Finance and Insurance Corporation Act 1991* (Cth).

Infrastructure financed through the AIFFP is expected to have a positive economic impact and facilitate the movement of people, goods and services within individual countries and around the region. Infrastructure projects are likely to relate to water, energy, transport and telecommunications.

Each AIFFP funded project will comply with:

- the Australian Aid Program's rigorous safeguards and principles, which address environmental protection; gender equality and the rights of the children, vulnerable and disadvantaged groups; and
- the Export Finance and Insurance Corporation's (Efic's) policy for environmental and social review of transactions, which adopts the International Finance Corporation's Environmental and Social Performance Standards (global best practice).

## **Human rights implications**

This legislative instrument engages the following human rights:

- Rights of equality and non-discrimination - Article 26 - International Covenant on Civil and Political Rights (ICCPR); Article 3 - Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); Article 3 - Convention on the Rights of the Child (CRC); and Article 9 - Convention on the Rights of Persons with Disabilities (CRPD).

### *Rights of equality and non-discrimination*

Article 26 of the ICCPR provides that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law.

Article 3 of the CEDAW provides that State Parties shall pursue measures to ensure the economic development and advancement of women.

Article 3 of the CRC provides that public policies and institutions must ensure the rights of the child are a primary consideration.

Article 9 of the CRPD provides that people with a disability will have the right to access all aspects of society on an equal basis with others including physical environment, transportation, information and communications.

Civil, political, economic, social and cultural rights will be positively affected through development of economic infrastructure, and associated economic opportunity, in targeted countries. Infrastructure projects financed under the AIFFP will be required to comply with global best practice standards on environmental, social and corporate governance and the Australian Aid Program's rigorous safeguards and principles on furthering gender equality; ensuring child protection; and promoting equal rights, opportunity and access for people with disabilities. Partners financed through the AIFFP will provide commitments to adhere with the Australian Aid Program's Child Protection Policy, and broader infrastructure improvements will enhance vulnerable children's access to services.

The Minister for Foreign Affairs has portfolio responsibility for this matter.

## **Conclusion**

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

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