**EXPLANATORY STATEMENT**

**Issued by the Authority of the Minister for Finance**

*Financial Framework (Supplementary Powers) Act 1997*

*Financial Framework (Supplementary Powers) Amendment*

*(Environment and Energy Measures No. 2) 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 (Environment and Energy Measures No. 2) Regulations 2019* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on four initiatives that will be administered by the Department of the Environment and Energy.

Funding will be provided for:

* the Energy Efficient Communities Program to provide grants to business and community organisations with the objective of helping those bodies improve their energy efficiency practices and technologies and better manage energy consumption to adjust to rising energy prices
* the Australian Heritage Grants Program to improve conservation, preservation, and access to places listed in the National Heritage List, as well as increasing community engagement and awareness of the values for which the places were listed
* the Communities Environment Program to provide small-scale, community led projects that target priority environmental issues, including reducing waste and litter, protecting natural habitats and the native species that rely on them (including threatened species); improving coasts, wetlands, and waterways; and increasing the extent and condition of native vegetation (including through greening parks and urban areas)
* the Environment Restoration Fund to provide for environmental restoration and protection projects that help ensure our environment is conserved for future generations of Australians, focusing on the following themes: protecting threatened and migratory species and their habitat; protecting Australia’s coasts, oceans and waterways; and clean-up, recovery and recycling of waste.

All initiatives will be administered by the Department of the Environment and Energy.

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 the Environment and Energy.

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 (Environment and Energy Measures No. 2) Regulations 2019***

**Section 1 – Name**

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Environment and Energy Measures No. 2) 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)**

This item adds four new table items to Part 4 of Schedule 1AB to establish legislative authority for government spending on initiatives that will be administered by the Department of the Environment and Energy (the department).

New **table item 352** establishes legislative authority for government spending to deliver the Energy Efficient Communities (EEC) Program.

On 28 February 2019, the Minister for Energy and Emissions Reduction, the Hon Angus Taylor MP, announced the EEC Program as part of a $67 million investment in energy efficiency to cut costs and emissions.

The EEC Program will provide $50 million of grants to assist businesses and community organisations to improve energy efficiency practices and technologies, better manage energy consumption to adjust to rising energy prices and deliver up to three million tonnes of carbon abatement.

Funding will be provided for more than 2,500 grants across two streams, a community stream and a business stream for the following activities:

* equipment upgrades that reduce energy consumption;
* investment in energy and emissions monitoring and management systems to better manage energy use;
* completion of energy systems assessments according to the Australian Standard, or feasibility studies to investigate energy efficiency opportunities; and
* energy generation and storage projects for the community organisations stream, such as, solar photovoltaic panels, batteries and solar hot water.

The community stream will provide individual grants of up to $12,500 to eligible organisations, which include Men’s Sheds, community owned kindergartens, welfare centres, community centres, women’s associations, country fire authorities, community owned childcare centres, community football and netball clubs, Scout or Guide groups, Aboriginal or Torres Strait Islander community groups and surf lifesaving clubs. Total funding for the community stream will be limited to $5 million.

The business stream will have two categories of grants. The first category will be for eligible small businesses with a turnover of less than $10 million per annum for individual grants of up to $20,000. It is expected that the majority of eligible dairy farms will fall within this small business category. The second category will be for eligible larger businesses, which are those that consume in excess of 0.05 petajoules per year (one petajoule is 10 or one million billion joules), which may seek individual grants of up to $25,000 but must also meet a funding co-contribution of one applicant dollar to each government dollar.

The design of the EEC Program is occurring in August 2019 and consisting of engaging a technical consultancy to recommend suitable type of projects and a technical advisory panel to determine whether the proposed projects meet with the EEC Program’s objectives.

Subject to finalisation of the program design, applications for solar-related projects from community organisations will open from 2019 and applications for non-solar-related projects from both businesses and community organisations will open from early 2020.

Grant applications will be assessed on a continual basis, using eligibility criteria only. Subject to applicant eligibility, grants will be applied on a first-come, first-served basis.

The grant period will run from the opening of applications until each financial year’s allocation is exhausted. At the commencement of each financial year, the annual funding allocation becomes available. The types of projects sought by potential applicants will be monitored to ensure funding is appropriately targeted to the sector’s needs. There will be a final evaluation at the conclusion of the Program to determine the Program’s overall effectiveness in achieving its objectives.

Grants will be delivered by the Program through an eligibility-based assessment processes. The Program will be delivered by the Business Grants Hub, with policy responsibility resting with the Department of the Environment and Energy. Grants will be administered consistent with the *Commonwealth Grant Rules and Guidelines 2017*. Information about the Program and how applicants can assess their eligibility to apply will be advertised on business.gov.au, energy.gov.au and environment.gov.au, as well as the websites of relevant Ministers. Information about available grants and awarded grants will be published on GrantConnect.

The Department of the Environment and Energy will manage and have policy responsibility for the initiative. The Business Grants Hub of the Department of Industry, Innovation and Science will deliver the grants in consultation with the Department of the Environment and Energy. The Minister for Energy and Emissions Reduction is responsible for the Program. Approval of individual grants will be formally delegated to an official of the Business Grants Hub in due course. Successful grant recipients will be advised on business.gov.au and the websites of relevant Ministers.

The EEC Program will be subject to the requirements of the Commonwealth's resource management framework including the *Public Governance, Performance and Accountability Act 2013* and the *Commonwealth Grant Rules and Guidelines*.

The Program is an eligibility-based grants program assessed against the criteria in the grant guidelines which will be publicly available. Merits review of this Program would not be appropriate because these decisions relate to the allocation of a finite resources between competing applicants, and any decision to overturn an allocation that has already been made to another party would be affected by overturning the original decision.

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

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

Funding of $61.2 million was included in the 2019-20 Budget under the measure Climate Solutions Package for a period of four years commencing in 2019-20. Details are set out in *Budget 2019-20, Budget Measures, Budget paper No. 2 2019-20, pages 73-74.*

Noting that it is not a comprehensive statement of relevant constitutional considerations, the objective of table item 352 references the external affairs power (s 51(xxix) of the Constitution).

*External affairs power*

The external affairs power enables the Parliament to make laws with respect to the implementation of Australia’s obligations under international treaties to which it is a party.

The *United Nations Framework Convention on Climate Change* [1994] ATS 2 (the UNFCCC) includes a range of obligations on Australia to take domestic actions that reduce Australia’s emissions of greenhouse gases.

The UNFCCC relevantly provides that Australia shall:

* formulate, implement, publish and regularly update national and, where appropriate, regional programs containing measures to mitigate climate change by addressing anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, and measures to facilitate adequate adaptation to climate change (Article 4.1(b));
* promote and cooperate in the development, application and diffusion of technologies, practices and processes that control, reduce or prevent anthropogenic emissions of greenhouse gases in all relevant sectors including energy, transport, industry, agriculture, forestry and waste management sectors (Article 4.1(c)); and
* adopt national policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases and protecting and enhancing its greenhouse gas sinks and reservoirs (Article 4.2(a)).

The *Kyoto Protocol to the United Nations Framework Convention on Climate Change* [2008] ATS 2 also includes obligations on Australia to take action to reduce emissions, such as Articles 3 and 10(b). Article 3 imposes obligations to ensure that Australia’s greenhouse gas emissions during a commitment period do not exceed its assigned amount. Article 10(b) imposes obligations to formulate, implement and report upon climate change mitigation and adaptation programs.

The *Paris Agreement* [2016] ATS 24 was entered into by the parties to the UNFCCC to enhance its implementation. Under the Paris Agreement, Australia has a ‘nationally determined contribution’ of a 2030 emissions reduction target of 26 to 28 per cent below 2005 levels. Relevantly, Article 4.2 of the Paris Agreement provides that ‘[e]ach Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions’.

Under the new item 352, businesses and community organisations would be funded to reduce energy use and improve energy productivity which will deliver carbon abatement through reduced greenhouse gas emissions. This will result from the upgraded equipment which reduces energy consumption and actions in response to energy management activities funded under the Program. The reduced energy use supported by the Program will therefore contribute to Australia’s obligations to reduce greenhouse gas emissions under these treaties.

New **table item 353** establishes legislative authority for government spending for the Australian Heritage Grants Program (the Program)

The broad aim of the Program is to strengthen recognition, management, conservation and public engagement with places specified in Australia’s National Heritage List (NHL). All listed places are recognised for either their natural, Indigenous, or historic heritage values. Among the Australian locations included in the NHL for their outstanding cultural and natural heritage value are the Sydney Opera House, Kakadu National Park, Uluru-Kata Tjuta National Park, the Great Barrier Reef and Fraser Island.

The objectives of the Commonwealth expenditure that would be supported by the proposed item are to improve conservation, preservation and access to places listed in the National Heritage List. The Program also aims to increase community engagement with listed places and awareness of the values for which the places were listed.

Grant applications will be assessed using eligibility criteria only. Eligible activities must directly relate to a listed place and can include activities that:

* maintain, protect, conserve and/or improve access to the listed place;
* enhance the Australian public’s understanding of the listed place, and awareness of the values for which it was listed;
* improve engagement with, and physical access to the listed place.

Individual grants between $25,000 and $400,000 will be available to owners and managers of places on the NHL (and also to interested parties with the approval of owners and managers of places) to protect and promote the national heritage listed values of the places. It will enable activities such as conservation and restoration of heritage listed places, and promotional activities aimed at increasing understanding and visitation to Australia’s national heritage places.

The Department of the Environment and Energy will manage and have policy responsibility for the initiative. The Business Grants Hub of the Department of Industry, Innovation and Science will deliver the grants in consultation with the Department of the Environment and Energy.

Grants will be delivered by the Program through an eligibility-based assessment processes. The Program will be delivered by the Business Grants Hub, with policy responsibility resting with the Department of the Environment and Energy. Grants will be administered consistent with the *Commonwealth Grant Rules and Guidelines 2017*. Information about the Program and how applicants can assess their eligibility to apply will be advertised on business.gov.au, and environment.gov.au, as well as the websites of relevant Ministers. Information about available grants and awarded grants will be published on GrantConnect.

Grants will be approved by a Business Grants Hub delegate. Successful grant recipients will be advised on business.gov.au and the websites of relevant Ministers.

Spending will be limited to the purposes of the Program. The Program will be subject to the requirements of the Commonwealth's resource management framework including the *Public Governance, Performance and Accountability Act 2013* and the *Commonwealth Grant Rules and Guidelines 2017*.

The Program is an eligibility-based grants program assessed against the criteria in the grant guidelines which will be publicly available. Merits review of this Program would not be appropriate because these decisions relate to the allocation of a finite resources between competing applicants, and any decision to overturn an allocation that has already been made to a party would be affected by overturning the original decision.

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

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

Noting that it is not a comprehensive statement of relevant constitutional considerations, the purpose/objective of the new item references the following powers of the Constitution:

* the external affairs power (s 51(xxix)); and
* the Commonwealth executive power and the express incidental power (sections 61 and 51(xxxix)), including the nationhood aspect.

*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 it is a party.

Australia is a party to the Convention for the Protection of the World Cultural and Natural Heritage (the World Heritage Convention).

Articles 4 and 5 of the World Heritage Convention require States Parties to provide protection, conservation and presentation of its cultural and natural heritage and this includes taking “financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of this heritage”.

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

The express incidental power (section 51(xxxix) of the Constitution) empowers the Parliament to make laws with respect to matters incidental to the execution of any power vested in the Parliament, the executive or the Courts by the Constitution. Together with the executive power (section 61 of the Constitution), the express incidental power extends to a range of matters, including:

* the execution and maintenance of the Constitution, and the laws of the Commonwealth, 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 National Heritage List (the NHL) is established and maintained under Part 15 of the *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act). Places included on this list have been identified as having ‘outstanding heritage value to the nation’ for one or more reasons, eg, because of the place’s importance in the course, or pattern, of Australia’s natural or cultural history (see reg 10.01A of the *Environment Protection and Biodiversity Conservation Regulations 2000*).

Part 15 of the EPBC Act also provides for Commonwealth Heritage places to be included on a Commonwealth Heritage List (CHL) by the Environment Minister. A place may be included on the CHL only if it is either:

* entirely within a Commonwealth area; or
* outside the Australian jurisdiction and is owned or leased by the Commonwealth or a Commonwealth Authority. (s 341C(2)).

Places included on the CHL have been identified as having ‘significant heritage value to the nation’ for one or more reasons, eg, because of the place’s importance in the course, or pattern, of Australia’s natural or cultural history (see reg 10.03A of the *Environment Protection and Biodiversity Conservation Regulations 2000*). Commonwealth agencies have certain statutory duties in relation to the management of Commonwealth Heritage places.

Activities to be funded under the Program will assist to protect and conserve those properties and places that have been included on the World Heritage list or have been recognised as having outstanding or significant heritage value to the nation and which are afforded various protections under Commonwealth law. Projects to be funded will enable activities that assist in

* maintaining, protecting, conserving and/or improving access to the listed property or place; and
* improving engagement with the listed property or place and awareness of the values for which it was listed.

*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’. The Program may involve the Commonwealth providing grants of financial assistance to a State that is the owner or manager of the relevant property or place.

New **table item 354** establishes legislative authority for government spending on the Communities Environment Program (the Program).

On 4 March 2019, the Program was jointly announced by the Prime Minister and the then Minister for the Environment, the Hon. Melissa Price MP, as a Government pre-Budget announcement. The Media Release can be found at <https://www.pm.gov.au/media/investing-cleaner-and-greener-communities>.

The Program would provide $150,000 in grants for each federal electorate (151) for small-scale, community-led projects that target priority environmental issues, including: reducing waste and litter; protecting natural habitats and the native species that rely on them (including our threatened species); improving coasts, wetlands, and waterways; and increasing the extent and condition of native vegetation (including through greening parks and urban areas).

The Program mirrors (with an environment focus) the Government’s successful Stronger Communities Program, which is in high demand due to the social benefits it provides for communities across Australia. Both of these programs aim to provide financial support for small community groups and projects that are often not eligible, or cannot successfully compete, in other programs. The Program also complements the proposed Environment Restoration Fund, which targets investment at larger scales, and across multiple years.

The objectives of the Program are to provide grants to community and environment groups to undertake a range of activities to improve environmental outcomes in their local area, including:

* weed, fire and pest management to protect species such as Koalas, Orange Bellied Parrots, Black Cockatoos, Tasmanian Devils, and species groups such as frogs, reptiles and fish;
* tree-planting, sand dune restoration and installation of boardwalks and walkways to enhance and protect local parks, the coast and waterways, from pressures on the environment, such as erosion, pollution, and habitat loss; and
* clean-up and education activities that support litter reduction and recycling, to build upon the work of organisations such as Clean Up Australia and Keep Australia Beautiful to improve the quality of threatened habitat areas.

In order to meet the needs of local communities a wide range of projects that conserve, protect and sustainably manage our environment will be eligible for funding. Such projects would aim to conserve and protect Australia’s biodiversity, (for example, by increasing the extent, connectivity and condition of native vegetation); or to protect and restore endangered habitat and ecosystems; or to support recovery of threatened species. Eligible projects could include activities that:

* educate and build the community’s knowledge about their local environment and how the community can conserve, protect, monitor, and/or manage it sustainably;
* encourage people to collect and contribute information about their local environment, such as monitoring local flora, fauna, water quality and marine debris;
* protect or enhance the health of the natural environment and/or support recovery of native species/communities/habitats and ecosystems;
* reduce threats and risks to the natural environment;
* reduce the impact of waste and litter on the environment and encourage re-use and recycling initiatives.

Each Member of Parliament will be strongly encouraged to consult their community to identify and nominate potential projects. A broad range of organisations will be eligible for nomination by their local Member of Parliament. This includes community clubs (including Lions clubs, rotary clubs, sports clubs), not-for-profit organisations such as Indigenous organisations, landcare groups (including bushcare, coastcare, ‘friends of’ groups), schools and other community and conservation groups.

Local governing bodies (as defined by the *Local Government (Financial Assistance) Act 1995*) and several organisations considered to be local governing bodies will also be eligible to receive funding. However, individuals, and state or territory government departments will not be eligible for funding.

Each electorate can receive up to $150,000 to fund up to 20 projects, with the minimum grant amount being $2500 and the maximum grant amount set at $20,000. Sitting Members of Parliament will be strongly encouraged to consult with their community to identify potential projects for their respective electorates. Applicants will also be encouraged to provide co-contributions and make use of volunteers in completing projects.

The Program will be managed by the Department of the Environment and Energy and the Business Grants Hub. Projects funded through the Program will be subject to monitoring and evaluation requirements, including a final evaluation of the Program to determine the Program’s overall effectiveness in achieving its objectives and the lessons learned. The Business Grants Hub will implement an appropriate assurance process to ensure projects are delivered in accordance with grant agreements. For example, funding recipients undertaking on-ground works will be required to provide before and after photos and a final report on their projects.

Funding of $22.65 million was included in the 2019-20 Budget under the measure ‘Practical Environment Restoration’ for a period of 1 year commencing in 2019-20. Details are set out in *Budget 2019-20, Budget Measures Budget Paper No. 2 2019-20* at page 76.

Note the Communities Environment Program is part of the Practical Environment Restoration measure in Paper No. 2, but the annual budget breakdown and length are not specified for the CEP – only at the *Practical Environment Restoration* measure level. A figure of $28.3m is also used but this includes Administered ($22.65m) and Departmental funds (the balance).

The selection of projects will be a closed, non-competitive process. Each Member of Parliament may consult with an existing consultation committee or establish a new consultation committee with representatives from the local community, to identify potential applicants and projects in their electorate. The Members of Parliament will advise the Business Grants Hub of the basis for project selection and provide a list of nominated applicants and projects. Nominated applicants will then be invited to submit a grant application for the identified projects to the Business Grants Hub who will assess all applications for eligibility and completeness. Projects to be recommended for funding will be short-listed where they meet all eligibility criteria, provide the best value for money, and are considered a proper use of public resources.

Whilst, the Minister for the Environment is responsible for the Program, approval of individual grants will be formally delegated to an official of the Business Grants Hub. In deciding which grants to approve, the program delegate will take into account the application assessment and the availability of grant funds.

The Department of the Environment and Energy will manage and have policy responsibility for the initiative. The Business Grants Hub of the Department of Industry, Innovation and Science will deliver the grants in consultation with the Department of the Environment and Energy. Grants will be administered consistent with the *Commonwealth Grant Rules and Guidelines* *2017*.

Information about the Program and how applicants can assess their eligibility to apply will be advertised on business.gov.au and GrantConnect. Information about available grants and awarded grants will be published on GrantConnect.

Spending will be limited to the purposes of the Program. This Program will be subject to the requirements of the Commonwealth's resource management framework including the *Public Governance, Performance and Accountability Act 2013* and the *Commonwealth Grant Rules and Guidelines 2017.*

The Program is an eligibility-based grants program assessed against the criteria in the grant guidelines which will be publicly available. Merits review of this Program would not be appropriate because these decisions relate to the allocation of a finite resource between applicants, and any decision to overturn an allocation that has already been made to a party would be affected by overturning the original decision.

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

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

Noting that it is not a comprehensive statement of relevant constitutional considerations, the purpose/objective of the new item references the following powers of the Constitution:

* the external affairs power (s 51(xxix))
* the Territories power (s 122).

*External affairs power*

The external affairs power in 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 external affairs power also supports legislation implementing treaties to which Australia is a party. The CEP will allow grants to be made to fund community projects including those directed at conservation and protection of Australia’s biodiversity, including by protecting migratory species; restoring coastal ecosystems; and the recovery of threatened species and habitats in wetlands, waterways, and coastal areas. Grants may also be made to fund activities with the aim of protecting and promoting places and properties of World Heritage, National Heritage or Commonwealth Heritage in fulfilment of Australia’s obligations under the World Heritage Convention.

*Territories power*

Section 122 of the Constitution empowers the Parliament to make laws ‘for the government of any territory’. The CEP will allow grants to be made to fund local communities located in a territory, or to fund the activities that will take place in a territory.

New **table item 355** establishes legislative authority for government spending on the Environment Restoration Fund (ERF).

On 3 May 2019, the ERF was announced as part of the Our Plan for A Cleaner Environment, a four year commitment, scheduled to commence 2019-20.

The ERF will fund activities including environmental restoration and protection projects that help ensure our environment is conserved for future generations of Australians. Projects under the ERF will be implemented by a combination of direct source procurement, funding to State Governments and discretionary grants to be delivered by the Business Grants Hub

The ERF will be flexible to enable the Government to provide national leadership on emerging and long-term environmental issues, building on the National Landcare Program and other key environmental initiatives. The ERF will benefit communities, local government, the not-for-profit sector, and natural resource management organisations that will be eligible to receive funding under the program. Regional economies will also benefit from investments that support community participation, recreation and quality of life.

The objectives of the ERF are to support a range of activities that will improve environmental outcomes, which will particularly focus on the following themes:

*Protecting threatened and migratory species and their habitat*

Projects expected to be funded under this theme would focus on restoring habitat by reducing threats to native species through activities such as: rehabilitation and revegetation to increase the extent of native vegetation; reducing threats to (and improving habitat for) listed threatened species, ecological communities and migratory species; and reducing the environmental and economic impact of invasive species (particularly vertebrate pests) and invasive plants prioritised for eradication under the Weeds of National Significance initiative agreed by Australian Governments. Projects could include:

* recovery packages for threatened species around the country, such as threatened birds (e.g. Black Cockatoo and Hooded Plover) and threatened marsupials (e.g. Dunnart, Eastern Quolls and koalas);
* ensuring that local habitat areas are preserved, including nationally listed threatened ecological communities, through planting of native species and weed management; and
* creating safe-havens for threatened species by funding the development of feral-free sanctuaries (both on mainland and on islands like Kangaroo Island, French Island and Bruny Island).

*Protecting Australia’s coasts, oceans and waterways*

Projects to be funded under this theme will address erosion, improve water quality and protect threatened and migratory coastal species. Projects could include:

* restoration of iconic and important waterways and coastal areas, like Port Phillip Bay, Moreton Bay and the Georges River;
* improving threatened habitat and the environmental health of waterways like the Hawksbury and Nepean Rivers and the Swan and Canning Rivers through riparian rehabilitation and weed management activities.

*Clean-up, recovery and recycling of waste*

Activities to be funded under this theme would aim to improve a range of waste management practices, including increasing the availability of re-use and recycling facilities across the country. Projects could include:

* supporting organisations such as Keep Australia Beautiful and Clean Up Australia to organise national community-led clean-up activities and education on litter reduction and recycling;
* advancing delivery of the National Food Waste Strategy by supporting the work of organisations like OzHarvest;
* partnering with the Australian Council of Recycling on initiatives to increase recycling in Australia, such as funding innovation challenges to use more recycled glass in building products and recycled plastic in manufactured goods, and providing better information to encourage Australians to buy recycled goods; and
* mobile recycling systems to remote and regional areas of Australia that currently do not have access to waste collection or recycling services.

The ERF will be flexible to respond to other national and priority environmental issues. The ERF will support actions across multiple scales. Medium-scale projects will support on-ground action by community groups and others, such as revegetation and beach and waterway clean-ups. Larger-scale projects will support natural resource management organisations, conservation councils, landcare groups and other larger environmentally-focused organisations, with the aim of coordinating and implementing projects including improving water quality and protecting threatened species habitat. Co-contributions from partner organisations will be encouraged.

The ERF will be managed by the Department of the Environment and Energy. It is intended to deliver the program through a mixture of direct source procurement, discretionary grants and funding to State Governments. The procurement of projects will be delivered in accordance with the *Commonwealth Procurement Rules 2019* and will be procured directly from Service Providers already contracted to the Department under the Regional Land Partnership (RLP) program. Procuring services using the existing RLP arrangements will allow projects to be quickly and efficiently negotiated and rolled out around September 2019.

Two projects (totalling $3.2 million) will delivered by State Government bodies and will be funded through project agreements under the Federal Financial Relations framework. It is expected that these arrangements can be put in place to allow projects to commence in September 2019.

The discretionary grants will be delivered on behalf of the Department of the Environment and Energy by the Business Grants Hub in accordance with the *Commonwealth Grants Rules and Guidelines 2017*. The development of ERF guidelines and ongoing stakeholder consultation will support applicants to submit eligible project proposals. All grant recipients will be assessed under the ERF’s guidelines to ensure projects align with objectives. Grant applications for projects to be delivered by the Hub are expected to commence October 2019.

Information about the discretionary grants aspect of the ERF and how applicants can assess their eligibility to apply will be advertised on business.gov.au, environment.gov.au, as well as the websites of relevant Ministers. Information about available grants and awarded grants will be published on GrantConnect. Successful projects procured under the RLP program will be reported on Austender and relevant Minsters websites.

The Minister for the Environment is responsible for the Program. Discretionary grants will be approved by the Business Grants Hub delegate.

Spending will be limited to the purposes of the ERF. This program will be subject to the requirements of the Commonwealth's resource management framework including the *Public Governance, Performance and Accountability Act 2013*, the *Commonwealth Grant Rules and Guidelines 2017* and the *Commonwealth Procurement Rules 2019*.

The ERF will be an eligibility-based program assessed against the program’s guidelines, which will be publicly available. Merits review of this program would not be appropriate because these decisions relate to the allocation of finite resources between competing applicants, and any decision to overturn an allocation that has already been made to another party would be affected by overturning the original decision.

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

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

Noting that it is not a comprehensive statement of relevant constitutional considerations, the purpose/objective of the new item references the following powers of the Constitution:

* the external affairs power (s 51(xxix));
* the Territories power (s 122)
* the Commonwealth executive power and the express incidental power (sections 61 and 51(xxxix)), including the nationhood aspect.

*External affairs power*

The external affairs power in 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.

Expenditure authorised by the item may be directed at activities concerned with the protection of Australia’s oceans (waters external to Australia).

The external affairs power also supports legislation implementing Australia’s international obligations under treaties to which it is a party.

Expenditure authorised by the item may be directed at activities concerned with the protection of Australia’s biodiversity (such as listed threatened species and ecological communities) to give effect to Australia’s obligations under the Convention on Biological Diversity). Article 6(a) of the CBD requires States Parties to develop national strategies, plans or programmes for the conservation and sustainable use of biological diversity or adapt for this purpose existing strategies, plans or programmes which shall reflect, inter alia, the measures set out in this Convention relevant to the Contracting Party concerned.

Expenditure authorised by the item may also be directed at activities concerned with the protection of migratory species to give effect to Australia’s obligations under the Convention on the Conservation of Migratory Species of Wild Animals. Article III(4)(a) requires State parties to conserve and, where feasible and appropriate, restore those habitats of the species which are of importance in removing the species from danger of extinction;

Expenditure authorised by the item may also be directed at activities concerned with the protection of nationally significant wetlands to give effect to Australia’s obligations under the Ramsar Convention. Article 3(1) of the Convention requires States Parties to formulate and implement their planning so as to promote the conservation of the wetlands included in the List, and as far as possible the wise use of wetlands in their territory.

Expenditure authorised by the item may also be directed at activities concerned with the protection of World Heritage sites to give effect to Australia’s obligations under the Convention Concerning the Protection of the World Cultural and Natural Heritage. Articles 4 and 5 of the World Heritage Convention require States Parties to provide protection, conservation and presentation of its cultural and natural heritage and this includes taking “financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of this heritage”.

*Territories power*

Section 122 of the Constitution empowers the Parliament to make laws ‘for the government of any territory’. The program will allow grants to be made to communities, local governments, not-for-profit organisations, and natural resource management organisations located in a territory or where the environmental restoration activities to be funded will take place in a territory.

*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 Parliament, the executive or the Courts 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 development of measures to fund projects of national environmental priority under the Fund, designed to protect Australia’s water, soil, plants and animals and support their productive and sustainable use, are measures that can best be carried out by the national government.

**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 (Environment and Energy Measures No. 2) 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 (Environment and Energy Measures No. 2) Regulations 2019* amend Schedule 1AB to the FF(SP) Regulations to add four new table items to establish legislative authority for government spending on initiatives that are administered by the Department of Environment and Energy.

This instrument adds the following table items to Part 4 of Schedule 1AB:

* **table item 352** for the Energy Efficient Communities Program
* **table item 353** for the Australian Heritage Grants Program
* **table item 354** for the Communities Environment Program
* **table item 355** for the Environment Restoration Fund.

**Table item 352 Energy Efficient Communities (EEC) Program**

The grant-based EEC Program will provide assistance to businesses and community organisations to improve energy efficiency practices and technologies, better manage energy consumption to adjust to rising energy prices and deliver three million tonnes of carbon abatement.

The Minister for Energy and Emissions Reduction has portfolio responsibility for this program which will be administered by the Department of the Environment and Energy.

**Human rights implications**

This instrument does not engage any of the applicable rights or freedoms.

**Conclusion**

This instrument is compatible with human rights as it does not raise any human rights issues.

**Table item 353 Australian Heritage Grants Program (AHGP)**

The AHGP will fund projects to strengthen recognition, management, protection, conservation and public engagement with places specified in Australia’s National Heritage List (NHL). All listed places are recognised for either their natural, Indigenous, or historic heritage values. Among the Australian locations included in the NHL for their outstanding cultural and natural heritage value are the Sydney Opera House, Kakadu National Park, Uluru-Kata Tjuta National Park, the Great Barrier Reef and Fraser Island.

The Minister for the Environment, the Hon Sussan Ley MP, has portfolio responsibility for this program which will be administered by the Department of the Environment and Energy.

**Human rights implications**

This instrument does not engage any of the applicable rights or freedoms.

**Conclusion**

This instrument is compatible with human rights as it does not raise any human rights issues.

**Table item 354 Communities Environment Program (CEP)**

The CEP will provide grants for each federal electorate (151) for small-scale, community-led projects that will target priority environmental issues. Proposed projects to be supported by the Program include: reducing waste and litter; protecting natural habitats and the native species that rely on them (including our threatened species); improving coasts, wetlands, and waterways; and increasing the extent and condition of native vegetation (including through greening parks and urban areas).

The Minister for the Environment, the Hon Sussan Ley MP, has portfolio responsibility for this program which will be administered by the Department of the Environment and Energy.

**Human rights implications**

This instrument does not engage any of the applicable rights or freedoms.

**Conclusion**

This instrument is compatible with human rights as it does not raise any human rights issues.

**Table item 355 Environment Restoration Fund (ERF)**

The ERF will fund projects for on-ground environmental restoration and protection projects that help ensure our environment is conserved for future generations of Australians. Proposed projects to be supported by the ERF will align with established plans that identify priorities for action, including the Threatened Species Strategy, Water Quality Improvement Plans, Regional Natural Resource Management Plans, the Marine Debris Threat Abatement Plan, and the new National Waste Policy.

The Minister for the Environment, the Hon Sussan Ley MP, has portfolio responsibility for this program which will be administered by the Department of the Environment and Energy.

**Human rights implications**

This instrument does not engage any of the applicable rights or freedoms.

**Conclusion**

This instrument is compatible with human rights as it does not raise any human rights issues.

**Senator the Hon Mathias Cormann**

**Minister for Finance**