**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. 3) 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 that Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to that 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. 3) Regulations 2019* (the Regulations) amends Schedule 1AB to the Principal Regulations to establish legislative authority for government spending the National Product Stewardship Investment Fund (the NPSIF). The Department of Environment and Energy will have policy responsibility for the NPSIF.

The NPSIF will provide grant funding to accelerate the development of new industry-led product stewardship schemes and improve recycling rates of new and existing schemes.

Funding of $20 million over four years from 2019-20 is available for the NPSIF, with details to be included in the 2019-20 Mid-Year Economic and Fiscal Outlook.

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 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. 3) 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. 3) 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 a new table item to Part 4 of Schedule 1AB to establish legislative authority for government spending on an initiative. The Department of Environment and Energy
(the department) will have policy responsibility for this initiative.

New **table item 377** establishes legislative authority for government spending on the National Product Stewardship Investment Fund (the NPSIF).

The NPSIF will enable greater levels of recycling across Australia by supporting the establishment of new product stewardship schemes and improving recycling rates of new and existing schemes.

A product stewardship scheme is where producers or importers take individual or collective responsibility for their products by providing financial resources for the management of products, particularly at the end of a products life. Examples of activities that support product stewardship include recycling to reduce landfill costs or recovering valuable resources that can be used to make new products.

Product stewardship aims to ensure that those involved in producing, selling, using and disposing of products have a shared responsibility to ensure that those products or materials are managed in a way that reduces their impact, throughout their lifecycle, on the environment and on human health and safety. Product stewardship can target the design, reuse or recycling of products. Most schemes in Australia and overseas focus on the safe recycling of products and recovery of materials.

The *Product Stewardship Act 2011* provides a framework for product stewardship in Australia, and includes three types of product stewardship schemes: voluntary; co-regulatory; and mandatory. The NPSIF is separate from, but complimentary to, the existing legislative framework.

The funding will support small and medium size national projects through a mix of ad-hoc grants and a competitive grants program.

Activities that may be supported by the NPSIF could include identifying and finding solutions for issues that products might cause throughout their lives, such as release of hazardous materials contained in those products; impacts on landfills; and loss of precious resources. For example:

* Lithium batteries contain valuable materials, can cause fires in garbage trucks and at Material Recovery Facilities.
* Photovoltaic panels, commonly known as solar panels, can contain hazardous materials and take up valuable space in a landfill. In addition some jurisdictions have imposed e-waste bans to landfill such as Victoria and photovoltaic systems represent a growing stream of waste given their 15-20 year lifespan.

The types of work that could be undertaken include, for example:

* Waste audits, baseline studies, product impact analysis, life cycle analysis and stakeholder mapping.
* Developing product stewardship scheme designs, e.g. for batteries or photovoltaic systems – scheme design, feasibility studies, regulation impact analysis, cost-benefit analysis, Australian Competition and Consumer Commission authorisation (for the introduction of an industry levy for the product) and industry engagement.
* Establishing new national schemes – operational set-up, governance structure, recruitment of industry participants, development of industry standards and recycling trials.
* Improving the performance of existing schemes - best practice advice, monitoring and assurance, market development, collaboration, remote area collection and awareness raising.

NPSIF funding will be prioritised to provide funding to projects that address certain products, including:

* batteries;
* electrical and electronic products;
* photovoltaic systems; and
* plastic oil containers.

The Business Grants Hub in the Department of Industry, Innovation and Science will administer the delivery of the grants program with oversight and policy support provided by the department. Grant guidelines will be developed by the department, and will be publicly available on the Business Grants Hub website (www.grants.gov.au/), as well as through the grants and assistance page of Business.gov.au (www.business.gov.au/assistance/search).

An assessment panel will be established to assess grant proposals for recommendation to the Minister for the Environment (The Minister). The Minister will make the final decision about Commonwealth expenditure. Successful proposals will be published on the Business Grants Hub website ([www.grants.gov.au/](http://www.grants.gov.au/)).

The NPSIF 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 NPSIF is an eligibility-based grants program assessed against the criteria in the grant guidelines which will be publicly available. Merits review is not applicable in respect of decisions made in relation to ad-hoc or targeted grants given the non-competitive nature of the funding. Merits review of decisions relating to the competitive grants aspect of the NPSIF will not be appropriate because these decisions relate to an 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 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 $20 million over four years from 2019-20 will be available for the NPSIF initiative. Details will be included in the 2019-20 Mid-Year Economic and Fiscal Outlook.

Noting that it is not a comprehensive statement of relevant constitutional considerations, the objective of the item references the Commonwealth executive power and the express incidental power (sections 61 and 51(xxxix) of the Constitution), including the nationhood aspect.

*Express incidental power*

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 are peculiarly adapted to the government of the nation and cannot otherwise be carried out for the benefit of the nation.

The NPSIF will accelerate the development of new industry-lead product stewardship schemes and improve recycling rates of new and existing schemes.

The funding will support small and medium size national projects. National coordination is required for product stewardship schemes to avoid movement of waste between states and/or territories to avoid costs of recycling and to promote national harmonisation of standards and requirements.

**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. 3) Regulations 2019***

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 *Financial Framework (Supplementary Powers) Amendment (Environment and Energy Measures No. 3) Regulations 2019* amend Schedule 1AB to the FF(SP) Regulations to add a new table item 377 to Part 4 of that schedule to establish legislative authority for government spending on the National Product Stewardship Investment Fund (the NPSIF). The Department of Environment and Energy will have policy responsibility for the NPSIF.

The NPSIF will provide $20 million of grant funding between 2019-20 to 2023-24 to accelerate the development of new industry-led product stewardship schemes and improve recycling rates of new and existing schemes. Priority will be given to products identified
in the commitment and currently listed by the Minister for the Environment under the
*Product Stewardship Act 2011*, including batteries, electrical and electronic products, photovoltaic systems and plastic oil containers.

**Human rights implications**

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

**Conclusion**

This instrument is compatible with human rights as they do not raise any human rights issues.

**Senator the Hon Mathias Cormann**

**Minister for Finance**