

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance

Financial Framework (Supplementary Powers) Act 1997

*Financial Framework (Supplementary Powers) Amendment
(Agriculture 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 (Agriculture Measures No. 2) Regulations 2019* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on two initiatives that will be administered by the Department of Agriculture.

Funding will be provided for:

- the Promoting Sustainable Fisheries and Combating Illegal, Unreported and Unregulated Fishing in Southeast Asia and Pacific Islands Program, which will support Australia's step up in engagement on maritime issues with Southeast Asia (with funding of \$14.4 million over four years commencing in 2019-20); and
- the Fisheries Habitat Restoration Program, which aims to support more sustainable and productive fisheries through the improvement of fish habitat and water quality in estuaries and coastal environments (with funding of \$8 million over four years commencing in 2019-20).

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 Agriculture.

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 (Agriculture Measures No. 2) Regulations 2019*

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Agriculture 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 two new table items to Part 4 of Schedule 1AB to establish legislative authority for government spending on two activities that will be administered by the Department of Agriculture (the department).

New **table item 380** establishes legislative authority for government spending on Promoting Sustainable Fisheries and Combating Illegal, Unreported and Unregulated Fishing in Southeast Asia and Pacific Islands (the program).

The program will support the development and delivery of initiatives to provide technical assistance at the national and regional level to Southeast Asian countries to promote sustainable fisheries, increase their capacity to counter illegal, unreported and unregulated (IUU) fishing and enhance maritime domain awareness.

In November 2018, the Prime Minister announced that Australia would enhance its engagement with Southeast Asia on maritime issues. Under this announcement, the Department of Foreign Affairs and Trade (DFAT) agreed to support a proposal by the department and the Australian Fisheries Management Authority (AFMA), for regional partners to combat IUU fishing.

The program objectives are to:

- build domestic capacity in the area of fisheries management across Southeast Asia;
- improve domestic monitoring, control and surveillance practices across Southeast Asia;

- increase regional cooperation on fisheries management and enforcement across Southeast Asia; and
- enhance Australia's international reputation as a responsible fishing nation.

The program objectives closely align with Australia's 2017 Foreign Policy White Paper objectives under *Global Cooperation* (see chapter 6). The section 'Protecting the oceans' specifically outlines Australia's commitment to working with regional partners to ensure the long-term sustainability of fish resources and to tackle IUU fishing. It also states that Australia will continue to assist communities in its region, including through development assistance, to sustainably manage fish stocks and marine ecosystems.

The program objectives accord with Australia's commitments under the United Nation's 2030 Agenda for Sustainable Development, specifically:

- Goal 2. End hunger, achieve food security and improved nutrition and promote sustainable agriculture.
- Goal 12. Ensure sustainable consumption and production patterns.
- Goal 14. Conserve and sustainably use the oceans, seas and marine resources for sustainable development (including 'Life Below Water' which specifies targets that address IUU fishing and sustainable development of fisheries.
- Goal 16. Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.

The program objectives will be met by:

- Supporting legislative best practice, policy development and implementation, fish stock assessments, and ecological risk assessments.
- Enhancing vessel monitoring systems, increasing regional information sharing, and establishing a cooperative monitoring control and surveillance network.
- Strengthening national and regional institutions, particularly the Regional Plan of Action to Promote Responsible Fishing Practices including Combating IUU Fishing in the Regions (RPOA-IUU).
- Advocating Australia's status as a reliable long-term partner in Southeast Asia to protect Australia's fishing industry from the detrimental effects of IUU fishing, including the impact of over-exploitation of migratory and straddling fish stocks in our bordering waters.

Methods of delivery will include:

- analytical assessments;
- capacity building activities, including on-the-ground learning opportunities in Australia for representatives of RPOA-IUU member countries; and
- strengthening national and regional architecture for addressing IUU fishing.

The expected outcomes are:

- improved domestic and regional fisheries management practices;
- improved regional coordination, policy and legislation;
- improved domestic monitoring, control and surveillance;
- improved regional information sharing and cooperative networks; and
- heightened awareness and recognition of Australia's status as a reliable long-term partner in Southeast Asia.

The delivery model will likely use consultants to undertake analysis and deliver outcomes in country through workshops, as well as capacity-assistance provided directly from appropriate Government experts.

Program initiatives will be managed by the department and AFMA, and directed towards signatories to the RPOA-IUU. A detailed implementation plan to deliver the expected outcomes will be developed and agreed to between DFAT, AFMA, and the department.

It is envisaged that some activities will be delivered by direct subject matter experts within the Government. These would likely be the activities proposed for delivery by AFMA such as workshops, fisheries exchange programs and other operational capacity building activities. In other activities that require assessments, it is likely that consultants with expertise in particular areas will be engaged through DFAT's expert panel, open tender or perhaps through a direct engagement mechanism if deemed appropriate.

In-house delivery of activities by AFMA constitutes value for money by avoiding independent consultant fees. Where consultants are engaged, the use of DFAT's expert panel will ensure fees fall within the Government's approved Advisor Remuneration Framework (ARF). If open tender or direct engagement are used, we would ensure fees are within the ARF, unless extenuating circumstances exist and then appropriate approval would be sought.

Any tender or grants processes will be conducted in accordance with applicable policies including the *Commonwealth Grants Rules and Guidelines 2017* and the *Commonwealth Procurement Rules* to ensure value for money.

For any open market tender processes, an evaluation panel will assess proposals in accordance with selection criteria as per the approved procurement plan, including probity assurances.

Governance arrangements will be in line with requirements and approaches set out within DFAT's Aid Programming Guide. A Program Steering Committee consisting of SES Band 1 stakeholders from the department, AFMA, and DFAT will be established to oversee key programmatic decisions. The progress of the program against its objectives and expected outputs will be monitored and evaluated at least twice annually through the Program Steering Committee. A Program Working Group will convene in between Steering Committee meetings as required.

The design and implementation of the governance arrangements for this program will address decision transparency. The program will be subject to all of DFAT's project monitoring and evaluation standards. Information about the program's progress may be periodically posted on the department's websites and social media channels.

A Record of Understanding and Activity Schedule form the agreement between the department and DFAT and all funding will be provided to the department to deliver the program. Under a separate Memorandum of Understanding between the department and AFMA, some of this funding will then be directed to AFMA to deliver operational aspects of the program.

The decision to allocate the funding to the program is not considered suitable for merits review, as consistent with the Administrative Review Council's Guide on *'What decisions should be subject to merits review?'*, as it is a decision by government to allocate funding to a program as a whole; and is therefore a budgetary decision of a policy nature, rather than a decision immediately affecting any particular person's interests.

The program will be subject to DFAT auditing and the Australian National Audit Office review processes.

The proposed funding of approximately \$14.4 million will be drawn from DFAT's Official Development Assistance Budget allocation under Program 1.2: Official Development Assistance – Administered and Program 1.1: Foreign Affairs and Trade Operations – Departmental of which both programs form part of DFAT's Outcome 1. Details are set out in the *2019-20 Portfolio Budget Statements, Budget Related Paper No. 1.8, Foreign Affairs and Trade portfolio* (pages 22 and 25 refer).

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 external affairs power (section 51(xxix));
- the Pacific Islands power (section 51(xxx));
- the fisheries power (section 51(x)); and
- the executive power and express incidental power (section 61 and section 51(xxxix)).

External affairs powers

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 and with respect to matters concerning Australia's relations with other nations.

The program will involve activities to foster and enhance cooperation between the Commonwealth and Southeast Asian nations to develop approaches and frameworks to address illegal, unreported and unregulated fishing.

Pacific Islands power

Section 51(xxx) of the Constitution empowers the Parliament to make laws with respect to 'the relations of the Commonwealth with the islands of the Pacific'.

The program may involve activities to foster and enhance cooperation with Pacific Island nations.

Fisheries power

Section 51(x) of the Constitution empowers the Parliament to make laws with respect to 'fisheries in Australian waters beyond territorial limits'.

The program will seek to combat illegal, unreported and unregulated fishing and to promote sustainable fisheries in the Southeast Asian region. This may include an impact on fisheries in Australian waters.

Executive power and 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. The executive power in section 61 of the Constitution supports activities that form part of the ordinary and well-recognised functions of government.

The program will involve the participation of Australian Government officials and consultants in the provision of foreign aid.

New **table item 381** establishes legislative authority for government spending on the Fisheries Habitat Restoration (FHR) Program to conduct fisheries habitat restoration activities in coastal areas around Australia.

The FHR Program aims to support more sustainable and productive fisheries through the improvement of fish habitat and water quality in estuaries and coastal environments. The health of many fisheries and fish stocks depend on the health and proper functioning of our estuaries, which provide critical nursery habitats.

The FHR Program will provide funding to organisations, which may include non-government organisations, fishing clubs and local land care groups, to deliver restoration projects. Projects will include: the removal or modification of barriers to fish passage; rehabilitation of riparian lands along river banks, wetlands, mangrove forests and saltmarshes; re-snagging of waterways with timber structure to provide additional habitat; removal of exotic vegetation from waterways, and bank stabilisation works.

The FHR Program will target coastal areas around Australia and provide funding of up to \$8 million over four years from 2019-20 to organisations involved in habitat restoration activities.

Spending decisions will be based on a competitive grants process, or a procurement process through the existing Landcare Regional Land Partnerships (RLP) program service providers, a component of the Australian Government's National Landcare Program.

Where the department delivers the FHR Program through grants processes, this will be undertaken in accordance with the *Commonwealth Grant Rules and Guidelines 2017* (CGRGs).

Where the department delivers the FHR Program through the existing RLP program service agreements, this will be undertaken in accordance with the *Commonwealth Procurement Rules* (CPR).

The department will be making recommendations to the Minister for Agriculture (the Minister) on what restoration projects to fund based on meeting program outcomes and objectives. An expert panel may be used to assess all eligible projects on merit using the selection criteria published as part of the program guidelines. The panel would then make recommendations to the department on the merit of the projects. The department will subsequently advise the Minister on the merit of the projects.

All final decisions for administered expenditure through departmental delivery of grants or procured services will be made by the Assistant Minister for Forestry and Fisheries. Expenditure will be made in accordance with the CGRGs or CPRs and departmental guidelines. All decisions will be made public. If delivered through a grants process this will be published on the GrantsConnect website at www.grants.gov.au as per the requirements under the CGRGs. If the FHR Program is delivered through the existing RLP program service agreements, decisions will be published on <http://www.nrm.gov.au/regional-land-partnerships>.

Where funds are allocated under a competitive selection process, with a finite allocation of funding available only a proportion of eligible applicants may receive funding, such decisions are not considered suitable for merits review. The remaking of a decision under merits review would necessarily affect funding already allocated to other parties and would delay the implementation of the FHR Program. Further information on review mechanisms and complaints and how they would be dealt with will for part of the program guidelines.

Funding of \$8 million for the FHR Program will be provided through the 2019-20 Appropriation Bills under the measure '*Fish Habitat Restoration Program*' for a period of four years commencing in 2019-20.

Funding will come from Program 1.4: Fishing Industry, which is part of Outcome 1. Details are set out in the *Portfolio Budget Statements 2019-20, Budget Related Paper No. 1.1, Agriculture Portfolio* at page 33.

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 external affairs power (section 51(xxix));
- the power to grant financial assistance to the States (section 96); and
- the territories power (section 122).

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 FHR Program will involve activities directed at restoring habitats in coastal waters and improving the health of coastal and offshore fisheries.

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

Australia is party to the *Convention on Biological Diversity* [1993] ATS 32 (Biodiversity Convention). As a party to the Biodiversity Convention, Australia has committed to:

- Article 6(a) – develop national strategies, plans or programs for the conservation and sustainable use of biological diversity;
- Article 6(b) – integrate the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programs or policies;
- Article 7(c) – identify processes and categories of activities which have or are likely to have significant adverse impacts on the conservation and sustainable use of biodiversity, and monitor their effects;
- Article 8(d) – promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings;
- Article 8(f) – rehabilitate and restore degraded ecosystems and promote the recovery of threatened species;
- Article 8(h) – prevent the introduction of, control or eradicate those alien species which threaten native ecosystems, habitats or species;
- Article 8(i) – endeavour to provide the conditions needed for compatibility between present uses and the conservation of biological diversity and the sustainable use of its components;
- Article 8(l) – where a significant adverse effect on biological diversity has been determined under art 7, regulate or manage the relevant processes and categories of activities;
- Article 10(b) – adopt measures relating to the use of biological resources to avoid or minimise adverse impacts on biological diversity;
- Article 10(d) – support local populations to develop and implement remedial action in degraded areas where biological diversity has been reduced; and
- Article 10(e) – encourage cooperation between its government authorities and its private sector in developing methods for sustainable use of biological resources.

The FHR Program will involve activities directed towards conserving and restoring features of the natural environment and other conservation of biological diversity. The FHR Program may include activities related to the removal of exotic vegetation, the rehabilitation and planting of native vegetation in riverbanks, wetlands, mangrove forests and saltmarshes and supporting and improving populations of native fish.

Power to grant financial assistance to the 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 FHR Program may involve the Commonwealth making payments to the States.

Territories power

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

The FHR Program may involve the Commonwealth making payments to the Territories.

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 (Agriculture 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 (Agriculture Measures No. 2) Regulations 2019* amend Schedule 1AB to the (FF(SP) Regulations to add two new table items to establish legislative authority for government spending on certain activities that are administered by the Department of Agriculture (the department).

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

- **table item 380** on Promoting Sustainable Fisheries and Combatting Illegal, Unreported and Unregulated Fishing in Southeast Asia and Pacific Islands; and
- **table item 381** for the Fisheries Habitat Restoration Program.

Table item 380 – Promoting Sustainable Fisheries and Combatting Illegal, Unreported and Unregulated Fishing in Southeast Asia and Pacific Islands

Table item 380 establishes legislative authority for government spending on Promoting Sustainable Fisheries and Combatting Illegal, Unreported and Unregulated Fishing in Southeast Asia and Pacific Islands (the program).

The program will include activities that focus on the following key areas:

- building capacity in fisheries management across Southeast Asia by supporting legislative best practice, policy development and implementation, including with respect to forced labour in the IUU fishing industry;
- assisting with fish stock assessments and ecological risk assessments;
- improving monitoring control and surveillance practices across Southeast Asia, including through enhanced vessel monitoring systems;

- increasing regional information sharing and establishing a cooperative monitoring control and surveillance network; and
- increasing regional cooperation on fisheries management and enforcement through strengthened regional institutions, particularly the Regional Plan of Action to Promote Responsible Fishing Practices including Combating IUU fishing in the Region (RPOA-IUU).

Program activities will accord with Australia's commitments under the UN's 2030 Agenda for Sustainable Development. Goal 14: 'Life Below Water' specifies targets that address IUU fishing and sustainable development of fisheries.

The program also aligns with Australia's Foreign Policy White Paper objectives under *Global Cooperation* (Chapter 6). The section 'Protecting the oceans' specifically outlines Australia's commitment to working with regional partners to ensure the long-term sustainability of fish resources and to tackle IUU fishing. It also states that Australia will continue to assist communities in its region, including through development assistance, to sustainably manage fish stocks and marine ecosystems.

Program initiatives will be managed by the department and the Australian Fisheries Management Authority and directed towards signatories to the RPOA-IUU.

Human rights implications

Table item 380 engages the following human rights:

- **Right to an adequate standard of living, including food, water and housing** – Articles 11(1) and 11(2)(a) of the International Covenant on Economic, Social and Cultural Rights (ICESCR); and
- **Right to freedom from slavery and forced labour** – Article 8 of the International Covenant on Civil and Political Rights (ICCPR).

Right to an adequate standard of living, including food, water and housing

Article 11(1) of the ICESCR recognizes the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions; and State Parties will take appropriate steps to ensure realization of this right.

Table item 380 promotes this right by stating that Australia will work with regional partners to ensure the long-term sustainability of fish resources. Table item 380 also states that Australia will continue to assist communities in its region to sustainably manage fish stocks and marine ecosystems. This will promote article 11(1) as it improves the availability and sustainability of an adequate supply of nutritious food.

Article 11(2) (a) of the ICESCR recognizes the fundamental right of everyone to be free from hunger. State Parties will take measures (including implementing specific programmes) to improve methods of production, conservation and distribution of food; and disseminate knowledge to achieve the most efficient development and utilization of natural resources.

Table item 380 promotes this right through its focus on promoting sustainable fisheries and combating IUU fishing. Both objectives contribute to the conservation of wild fish stocks that will ultimately secure the long-term viability of fish production. Planned capacity building activities will share knowledge with partners to achieve the most efficient utilisation of natural resources, as required of State Parties under this Article.

Right to freedom from slavery and forced labour

Article 8 of the ICCPR provides that no one shall be held in slavery or required to perform forced and compulsory labour; and slavery and the slave-trade in all their forms shall be prohibited.

Table item 380 seeks to enhance capacity to promote sustainable fishing and combat IUU fishing across Southeast Asia. It will approach this through various activities that improve domestic and regional fisheries management practices and improve regional coordination, policy and legislation. IUU fishing is known for its use of modern slavery and forced labour. All aspects of the program that target, and reduce the degree of IUU fishing in our region will engage with the right to freedom from slavery and forced labour.

Conclusion

Table item 380 is compatible with human rights because it promotes the protection of human rights, in particular right to an adequate standard of living, including food, water and housing; and the right to freedom from slavery and forced labour.

Table item 381 – Fisheries Habitat Restoration Program

Table item 381 establishes legislative authority for government spending for the Fisheries Habitat Restoration (FHR) Program

The FHR Program aims to support more sustainable and productive fisheries through the improvement of fish habitat and water quality in estuaries and coastal environments. The health of many fisheries and fish stocks depend on the health and proper functioning of our estuaries, which provide critical nursery habitats.

The FHR Program will provide funding to deliver restoration projects including: the removal or modification of barriers to fish passage; rehabilitation of riparian lands along river banks, wetlands, mangrove forests and saltmarshes; re-snagging of waterways with timber structure to provide additional habitat; removal of exotic vegetation from waterways, and bank stabilisation works.

The FHR Program includes funding of \$8 million over four years from 2019-20. The funding will be provided to conduct fisheries habitat restoration activities in coastal areas around Australia.

Human rights implications

Table item 381 does not engage any of the applicable rights or freedoms.

Conclusion

Table item 381 is compatible with human rights because it does not raise any human rights issues.

**Senator the Hon Mathias Cormann
Minister for Finance**