

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance

Financial Framework (Supplementary Powers) Act 1997

*Financial Framework (Supplementary Powers) Amendment
(Agriculture, Water and the Environment Measures No. 2) Regulations 2020*

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, Water and the Environment Measures No. 2) Regulations 2020* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on the initiatives to reduce regulatory burden and streamline audit arrangements for the dairy industry (the Dairy Initiatives). The Department of Agriculture, Water and the Environment (the department) has responsibility for the Dairy Initiatives.

Funding of \$14.8 million over six years to 2024-25 will be provided for three initiatives to modernise the dairy export regulatory system through:

- minimising the regulatory burden for new exporters;
- streamlining audit arrangements as part of commercial quality assurance programs; and
- reducing regulatory intervention through improved data.

These initiatives are expected to deliver ongoing benefits to the dairy industry through facilitating growth and expansion in exports as small to medium businesses will be more likely to export, reducing regulatory costs in the supply chain, and providing greater farm gate returns for dairy producers.

In order to implement the initiatives, part of the funding will be provided to Dairy Australia (an industry-owned rural research and development corporation) and Dairy Food Safety Victoria to support work on its Dairy RegTech 2022 initiative.

The Dairy Initiatives were announced in a media release on 3 March 2020 by the Minister for Agriculture, Drought and Emergency Management, the Hon David Littleproud MP.

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, Water and the Environment.

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, Water and the Environment Measures No. 2) Regulations 2020*

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Agriculture, Water and the Environment Measures No. 2) Regulations 2020*.

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 activity that will be administered by the Department of Agriculture, Water and the Environment (the department).

New **table item 405** establishes legislative authority for government spending on the Dairy Initiatives.

The dairy export supply chain includes dairy exporters, dairy suppliers, and registered establishments that produce, process and store dairy products for export. Generally, for a business to export a dairy product, it must meet the Commonwealth export requirements under export legislation (the *Export Control Act 1982*) and the *Export Control (Milk and Milk Products) Orders 2005* (the Milk Orders). Many of the export requirements relate to food safety and fitness for human consumption, which are broadly similar to food safety requirements under state legislation. Compliance with these export requirements is managed through, among other things, audits under Part 6 of the Milk Orders.

The department and state governments co-regulate Australia's dairy production and export systems. This partnership approach reduces regulatory burden by facilitating a single audit process that covers both state and Commonwealth food safety, export and market access requirements.

In line with the Government's commitment to help the Australian agriculture sector reach a farm gate output of \$100 billion by 2030, the Dairy Initiatives are expected to deliver ongoing benefits to the dairy industry through facilitating growth and expansion in exports as small to medium businesses will be more likely to export, reducing regulatory costs in the supply chain, and providing greater farm gate returns for dairy producers. The Dairy Initiatives are part of the Government's Deregulation Agenda aimed at reducing the regulatory compliance burden on businesses and coordinated through the Deregulation Taskforce led by the Treasurer.

Funding will be provided for three initiatives that aim to modernise the dairy regulatory system through:

- minimising the regulatory burden for new exporters;
- streamlining audit arrangements as part of commercial quality assurance programs; and
- reducing regulatory intervention through improved data.

Minimising the regulatory burden for new exporters

Under this initiative, the department intends to partner with Dairy Australia to work with industry to develop awareness training and increase capability for producers, exporters and state regulators to better understand the key differences in food safety and regulatory standards required to meet export and importing country requirements.

Streamlining audit arrangements as part of commercial quality assurance programs

Where an establishment is export registered and also undertakes third party quality assurance audits (for access to commercial supply chains), the establishment will undergo several audits throughout the year. This initiative aims to reduce the audit burden on regulated parties by seeking formal recognition of government food safety regulatory audits and having the commercial entities exclude those aspects from their commercial quality audits.

The department intends to work with Dairy Australia to deliver this project.

Reducing regulatory intervention through improved data

This initiative will fund research to be undertaken in partnership with Dairy Australia to develop a set of reliable food safety indicators for a range of dairy products. Production data will be analysed with a view to revise regulatory interventions based on the assurance provided through data collection and verification systems.

This project will also endeavour to work closely with Dairy Food Safety Victoria's RegTech 2022 data collection project – where cultural and empirical data is collected and potentially used to inform regulatory oversight and audit intervention.

It is intended that the Dairy Initiatives will be delivered by procuring services using a direct source method, in accordance with the *Commonwealth Procurement Rules*. Tender documentation and the outcome of the procurement process will be published on the AusTender website at www.tenders.gov.au.

The tender process will be undertaken by the department, with the final funding decision made by a delegate of the Minister for Agriculture, Drought and Emergency Management.

The financial contribution to Dairy Food Safety Victoria will not be considered a grant for the purposes of the *Commonwealth Grants Rules and Guidelines 2017* as it will fall under financial assistance provided to a state government statutory authority in accordance with section 96 of the Constitution.

Funding decisions made in connection with the Dairy Initiatives are not considered appropriate for independent merits review as there will be no competing applicants. Targeted funding is expected to be provided to deliver relevant components of the Dairy Initiatives. Dairy Australia is a trusted research and development corporation that the department frequently engages to deliver projects on its behalf. The Dairy Food Safety Victoria's project is complementary to the Dairy Initiatives' objectives.

The Treasury Deregulation Taskforce has consulted with a number of dairy export industry participants in regard to potential regulatory reform for the industry. The Dairy Initiatives were developed following industry feedback. This consultation was undertaken in addition to extensive business-as-usual contact the department maintains with the dairy industry about the export system.

The initiatives will be delivered in partnership with industry participants, industry bodies and state government regulators.

Funding for this item will come from Program 4.1: Biosecurity and Export Services (Reducing Regulatory Burden and Streamlining Audit Arrangements in the Dairy Sector), which is part of Outcome 4. Details will be set out in the *Portfolio Budget Statements 2020-21, Budget Related Paper No. 1.1, Agriculture, Water and the Environment Portfolio*.

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 trade and commerce power (section 51(i)); and
- the power to grant financial assistance to the States (section 96).

Trade and commerce power

Section 51(i) of the Constitution empowers the Parliament to make laws with respect to 'trade and commerce with other countries, and among the states'.

The program will protect, foster and encourage trade and commerce through measures directed towards reducing regulatory burden arising from export requirements and facilitating export trade for businesses in the dairy export supply chain.

Power to grant 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 will involve a grant of financial assistance to a State. The funding will assist Dairy Food Safety Victoria to support the establishment of the Dairy RegTech 2022 initiative.

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, Water and the Environment Measures No. 2) Regulations 2020

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 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, Water and the Environment Measures No. 2) Regulations 2020* amend Schedule 1AB to the FF(SP) Regulations to establish legislative authority for government spending on the initiatives to reduce regulatory burden and streamline audit arrangements for the dairy industry (the Dairy Initiatives). The Department of Agriculture, Water and the Environment (the department) has responsibility for the Dairy Initiatives.

For Australia to remain a leading producer and exporter of safe and high quality dairy products, the Australian Government must ensure that the industry remains competitive over the long term. The Government can assist by making sure that Australia's regulatory system remains fit for purpose. A modern system will provide opportunity for small to medium businesses to enter the export supply chain; empower industry to better manage risks; ensure decision making is data driven and science based; and be flexible and dynamic to recognise good performance – allowing greater focus on high risk manufacturers and exporters. Importantly, such a system will reduce unnecessary regulatory burden on compliant businesses and focus on improving the performance of non-compliant businesses.

Funding will be provided for three initiatives that aim to modernise the dairy regulatory system through:

- minimising the regulatory burden for new exporters;
- streamlining audit arrangements as part of commercial quality assurance programs; and
- reducing regulatory intervention through improved data.

These initiatives will run concurrently over six years to modernise the dairy regulatory system. It is intended the department will partner with Dairy Australia to deliver all three initiatives.

The first initiative will involve working with industry to develop awareness training and increase capability for producers, exporters and state regulators to better understand the key differences in food safety and regulatory standards required to meet export and importing country requirements.

The second initiative focuses on food safety in commercial assurance programs. Where an establishment is export registered and also undertakes third party quality assurance audits (for access to commercial supply chains), the establishment will undergo several audits throughout the year. This initiative aims to reduce the audit burden on regulated parties by seeking formal recognition of government food safety regulatory audits and having the commercial entities exclude those aspects from their commercial quality audits.

The third initiative will fund research to develop food safety assurance indicators for a range of dairy products. Data will be analysed with a view to revise regulatory interventions based on the assurance provided through data collection and verification systems. This initiative will also endeavour to work closely with Dairy Food Safety Victoria's RegTech 2022 data collection project – where cultural and empirical data is collected and potentially used to inform regulatory oversight and audit intervention.

Human rights implications

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

Conclusion

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

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