

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance

Financial Framework (Supplementary Powers) Act 1997

*Financial Framework (Supplementary Powers) Amendment
(Industry, Science, Energy and Resources Measures No. 1) 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 (Industry, Science, Energy and Resources Measures No. 1) Regulations 2020* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on the National Radioactive Waste Management Facility (NRWMF) New Community Benefit Program (the program). The Department of Industry, Science, Energy and Resources has responsibility for the program.

Grant funding of \$4 million over two years from 2020-21 will be provided to support the participation of the communities of Lyndhurst, Napandee and Wallerberdina (Kimba and Hawker, South Australia) in the selection process for the potential establishment and operation of the NRWMF under the *National Radioactive Waste Management Act 2012*.

On 8 October 2019, the then Minister for Resources and Northern Australia, Senator the Hon Matt Canavan, announced the program to encourage ongoing community participation in the site selection process.

The objective of the program is to encourage and support community participation in the site selection process by funding activities that will mitigate and manage the social cohesion impacts of the process on those communities, and by delivering projects and initiatives that can further diversify the local economies and deliver new services in areas such as mental health. The program will also support activities to contribute to the siting and establishment of the NRWMF more generally.

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 Industry, Science, Energy and Resources.

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 (Industry, Science, Energy and Resources Measures No. 1) Regulations 2020*

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Industry, Science, Energy and Resources Measures No. 1) 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 a certain activity administered by the Department of Industry, Science, Energy and Resources (the department).

New **table item 418** establishes legislative authority for government spending on the National Radioactive Waste Management Facility (NRWMF) New Community Benefit Program (the program).

The program will provide \$4 million in grant funding to support the participation of the communities of Lyndhurst, Napandee and Wallerberdina in the selection process for the potential establishment and operation of the NRWMF under the *National Radioactive Waste Management Act 2012*.

The objective of the program is to support community participation in the site selection process, by funding activities that will mitigate and manage social cohesion impacts of the process on those communities and by delivering projects and initiatives that can further diversify the local economies and deliver new services in areas such as mental health. The program will also support activities to contribute to the siting and establishment of the NRWMF more generally.

On 1 February 2020, following a consultation and technical assessment process covering more than four years, the Government announced Napandee, near Kimba in South Australia,

as the site to host Australia's NRWMF. The NRWMF will be used for the permanent disposal of legacy and future low level Australian radioactive waste and the temporary storage of intermediate level waste.

To inform a decision on a suitable site, the Government assessed the technical suitability of the site and engaged closely with the communities under consideration for the site. Consultation included a public submissions process, surveys with local businesses, local community ballots and facilitation of open face-to-face consultation through the placement of a community liaison officer in each of the local communities. Community Consultative Committees and Economic Working Groups were also established in each community with more than 40 meetings held to date.

Successive ministers have made a commitment that the NRWMF will be established in a community where there is broad community support. Community sentiment was gauged through ballots, public submissions, and business and neighbour surveys. The majority (61.58 per cent) of participants in a ballot conducted by the Kimba District Council voted in favour of the NRWMF being established near Kimba. Until 13 December 2019, Wallerberdina Station near Hawker in South Australia was also under consideration, however, it was ruled out after consultation indicated there was not enough community support for the NRWMF to be hosted there.

On 8 October 2019, the then Minister for Resources and Northern Australia, Senator the Hon Matt Canavan, announced the program to encourage community participation in the site selection process, recognising that such participation was an important element in establishing a radioactive waste management facility under the *National Radioactive Waste Management Act 2012*. Details of the announcement are available at <https://www.minister.industry.gov.au/ministers/canavan/media-releases/new-community-benefit-program-kimba-hawker-and-quorn-communities>.

On 5 May 2020, the Minister for Resources, Water and Northern Australia, the Hon Keith Pitt MP, and the Member for Grey, Rowan Ramsey MP, jointly announced the launch of the program and the opening of applications. Details of the announcement are available at <https://www.minister.industry.gov.au/ministers/pitt/media-releases/national-radioactive-waste-management-facility-community-benefit>.

While community engagement in the site selection process has generally been constructive and respectful, the process has impacted community cohesion and there remains some opposition and division within the communities in relation to the NRWMF. The objective of the program is to encourage and support community participation in the site selection process by funding activities that will mitigate and manage this impact, in addition to supporting activities that contribute to the siting and establishment of the NRWMF more generally.

Grants will be awarded for projects that will provide social and/or economic benefits to the communities of the sites that were shortlisted during the selection process. To qualify, projects must be delivered either within 50 km of Wallerberdina Station and in the remainder of the Local Government Area of the Flinders Ranges Council, or within the Local Government Area of the District Council of Kimba. Those boundaries were also used to determine eligibility to participate in the community ballots to gauge support for the establishment of the NRWMF at each of the three sites that were shortlisted.

Grants will be awarded in priority areas including:

- health (particularly mental health);
- community infrastructure;
- economic development;
- expanding education and training;
- youth engagement;
- indigenous business opportunities; and
- tourism.

The intended outcomes of the program are reduced social cohesion impacts on communities located near sites that were under consideration, and increased economic diversity and opportunities in affected communities.

The entities that are eligible to apply are:

- companies incorporated in Australia;
- incorporated trustees on behalf of a trust;
- not-for-profit organisations, including community groups with voting and/or financial membership of at least five individuals;
- Aboriginal and/or Torres Strait Islander organisations, councils or incorporated associations;
- the Flinders Ranges Council and the District Council of Kimba; and
- the Outback Communities Authority.

Entities must have an Australian Business Number.

A total of \$2 million is available for this grant opportunity to each community over two years from 2020-21. The grant amount will be up to 100 per cent of eligible project costs (grant percentage). The minimum grant amount is \$5,000 and the maximum amount is \$1 million.

Applications opened on 5 May 2020 and close on 11 August 2020. All projects must be completed by 31 May 2022.

The program builds on support delivered through a previous Community Benefit Programme that invested in projects and initiatives in Kimba and Hawker. Since January 2017, \$5.75 million in grants have been delivered under the Community Benefit Programme, supporting 57 projects in the two communities. The program, which is similar to payments made in comparable countries, was developed to assist in mitigating any potential impacts associated with the ongoing consultation period, and to support the local community during the site selection activities. The program has delivered tangible outcomes for the communities.

Example of projects funded under a previous Community Benefit Programme include:

- Kimba:
 - new amenities block at the Kimba recreation reserve (\$174,000);
 - air conditioning of the Kelly Pioneer Memorial Hall (\$6,425);
 - public Wi-Fi in the town centre (\$34,600);
 - moisture probe and weather station network (\$19,721); and
 - improvements to the Kimba men's shed (\$12,824).

- Wallerberdina:
 - refurbishment of the Hawker institute (\$75,000);
 - disabled amenities at the Hawker racetrack (\$76,844);
 - all weather access to local tourist trails (\$5,800); and
 - independent living at Hawker (\$515,950).

The department will deliver the program through an open competitive grant process, conducted in accordance with the *Commonwealth Grants Rules and Guidelines 2017*. The *Public Governance, Performance and Accountability Act 2013* is also applicable in relation to delegations and entering into contracts. To ensure that funding is allocated to projects that support the Kimba and Hawker communities to manage the impacts of participating in the site selection process for the NRWMF, there will be associated eligibility and assessment criteria. These criteria will be available at www.business.gov.au and on GrantConnect at www.grants.gov.au. The grant payments will be administered by the Business Grants Hub.

The program will be administered by AusIndustry (a division within the department) in accordance with set guidelines including eligibility criteria for projects that have a social and/or economic benefit to the local community. AusIndustry will be responsible for the assessment of applications and ongoing progress/performance reporting by recipients.

Applications will be referred to the Local Consultative Committee and Economic Working Group in each region. These groups are made up of community representatives with local knowledge of each area. Their responses will contribute to the assessment of grant applications.

AusIndustry will make the approved guidelines and associated information available at www.business.gov.au and on GrantConnect at www.grants.gov.au. An AusIndustry manager with responsibility for the program will be the Program Delegate responsible for determining successful applicants.

The Program Delegate will have responsibility for final decisions about the projects that will be funded. All applicants will be notified in writing of the outcome of their application. Successful projects will be published at www.business.gov.au and on GrantConnect at www.grants.gov.au.

The Program Delegate's decisions are final in all matters, including the approval of applications for funding, the amount of grant funding awarded, and the terms and conditions of the funding. The Program Delegate will also not review decisions in relation to the merits of funding.

The program will not be subject to merits review as it involves the allocation of finite resources and an allocation that has been made to another party would be affected if the original decision was overturned. It also implements a clear policy decision made by the Government about how the successful community would be supported through the delivery of the program.

The Administrative Review Council has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see items 4.11 to 4.16 of the document *What decisions should be subject to merit review?*).

The NRWMF Taskforce, which was established within the department, regularly liaised with AusIndustry in regard to the development and implementation of the grant guidelines. Consultation was conducted face-to-face, via phone and email. Representatives from AusIndustry have also participated in workshops held with the local communities.

Following the announcement of the program in October 2019, discussions were held with the Local Consultative Committee and Economic Working Group members of the communities surrounding the voluntarily nominated land for the NRWMF. These groups are made up of community representatives with local knowledge of each area.

Workshops were held with the Barndioota Consultative Committee on 11 December 2019 and with the Kimba Consultative Committee on 12 December 2019. Representatives from the NRWMF Taskforce and AusIndustry participated in the workshops.

The discussions aimed to identify the current economic and socio-economic needs of those communities. The discussions also aimed to ensure that the program would deliver projects and initiatives that could further diversify the local economies and improve the livelihood of each community.

Funding of \$4 million was included in the 2019–20 Mid-Year Economic and Fiscal Outlook under the measure ‘Community Benefit Program for Hawker and Kimba — establishment’ for a period of two years commencing in 2019–20. Details are set out in the *Mid-Year Economic and Fiscal Outlook 2019–20*, Appendix A: Policy decisions taken since the 2019 PEFO at page 251. Subsequent to this, approval was provided to move the funding to 2020–21 and 2021–22.

Funding for the program will come from Program 1.2: Growing Business Investment and Improving Business Capability, which is part of Outcome 1. Details are set out in the *Portfolio Additional Estimates Statements 2019–20, Industry, Science, Energy and Resources Portfolio* at pages 15 and 34.

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

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 treaties to which it is a party.

Australia has obligations under the *Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management* (the Joint Convention).

In particular, Article 1 provides that the objectives of the Joint Convention are:

- (i) to achieve and maintain a high level of safety worldwide in spent fuel and radioactive waste management, through the enhancement of national measures and international co-operation, including where appropriate, safety-related technical co-operation;
- (ii) to ensure that during all stages of spent fuel and radioactive waste management there are effective defenses against potential hazards so that individuals, society and the

environment are protected from harmful effects of ionizing radiation, now and in the future, in such a way that the needs and aspirations of the present generation are met without compromising the ability of future generations to meet their needs and aspirations;

- (iii) to prevent accidents with radiological consequences and to mitigate their consequences should they occur during any stage of spent fuel or radioactive waste management.

Article 11 of the Joint Convention requires that each Contracting Party shall ‘take the appropriate steps to ensure that at all stages of radioactive waste management individuals, society and the environment are adequately protected against radiological and other hazards’.

Under the program, grants will be made available to local projects and initiatives in the Kimba and Hawker communities, to support their participation in the site selection process under the *National Radioactive Waste Management Act 2012* for the NRWMF. The *National Radioactive Waste Management Act 2012* sets out steps for the selection of a site for, and the establishment and operation of, a radioactive waste management facility, which will enable the management of radioactive waste and the protection of individuals, society and the environment from radiological and other hazards. A range of projects and initiatives can meet criteria for funding through the program, including local infrastructure upgrades, expanding education and training, youth engagement and mental health initiatives. Funding under the program recognises that community participation in the process for selecting a site under the *National Radioactive Waste Management Act 2012* facilitates that process, which in turn is essential to the establishment of a radioactive waste management facility.

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 (Industry, Science, Energy and Resources Measures No. 1) 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 (Industry, Science, Energy and Resources Measures No. 1) Regulations 2020* amend Schedule 1AB to the FF(SP) Regulations to establish legislative authority for government spending on an activity that will be administered by the Department of Industry, Science, Energy and Resources.

New table item 418 establishes legislative authority for government spending on the National Radioactive Waste Management Facility (NRWMF) New Community Benefit Program (the program). Grant funding of \$4 million over two years from 2020-21 will be provided to the two communities (\$2 million per community) that were considered to host the site of the NRWMF (Kimba and Hawker, South Australia).

To inform the communities of the implications of hosting the NRWMF and provide a platform for the community to interact with departmental staff and subject matter specialists, the department and former Minister undertook a significant program of engagement work. The consultation and technical assessment process has spanned more than four years.

Consultation has included a public submissions process, surveys with local businesses, local community ballots, and facilitation of open face-to-face consultation through the placement of a community liaison officer in each of the local communities. Community Consultative Committees and Economic Working Groups were also established in each community with more than 40 meetings held to date.

Successive ministers have made a commitment that the NRWMF will be established in a community where there is broad community support. On 8 October 2019, the then Minister for Resources and Northern Australia, Senator the Hon Matt Canavan, announced the program to encourage community participation in the site selection process, recognising that such participation was an important element in establishing radioactive waste management

facility under the *National Radioactive Waste Management Act 2012*. Community sentiment was gauged through ballots, public submissions and business and neighbour surveys. The majority (61.58 per cent) of participants in a ballot conducted by the Kimba District Council voted in favour of the NRWMF being established near Kimba. Until 13 December 2019, Wallerberdina Station near Hawker in South Australia was also under consideration, however, it was ruled out after consultation indicated there was not enough community support for the NRWMF to be hosted there.

While community engagement in the site selection process has generally been constructive and respectful, the process has impacted community cohesion and there remains some opposition and division within the communities in relation to the NRWMF. The program will support the communities to manage the impacts of the consultation process.

The program will also deliver projects and initiatives that can further diversify the local economies and deliver new services to the community. Priority areas identified for the grant opportunity include:

- health (particularly mental health);
- community infrastructure;
- economic development;
- expanding education and training;
- youth engagement;
- indigenous business opportunities; and
- tourism.

Human rights implications

This instrument engages the following rights:

- the right to health – Article 12 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR);
- the right to education – Article 13 of the ICESCR;
- the right to an adequate standard of living – Article 11(1) of the ICESCR; and
- the rights to equality and non-discrimination – Articles 2, 16 and 26 of the *International Covenant on Civil and Political Rights* (ICCPR) and Article 2 of the ICESCR.

Right to health, right to education and right to an adequate standard of living

Article 12(1) of the ICESCR recognises the right of every person to enjoy the highest attainable standard of physical and mental health. While the ICESCR does not include a specific definition of health, the UN Committee on Economic, Social and Cultural Rights has stated that the right to health is not the right to be healthy. Instead, it is a right to have access to adequate health care and to live in conditions that promote a healthy life. This includes access to food and nutrition, housing, safe drinking water, healthy working conditions and a healthy environment. The right to health also requires that public health and health care facilities, services and programs are within safe physical reach for all sections of the population.

Article 13 of the ICESCR recognises the right of everyone to education. This includes primary, secondary (including technical and vocational secondary education) and higher

education. The right extends to all people, including adults, ensuring that everyone has the right to life-long learning. According to the UN Committee on Economic, Social and Cultural Rights, the right to education requires that educational institutions and programs are readily available and are within safe physical reach. This can be through either attendance at a reasonably convenient geographic location or via access to ‘distance learning’ programs.

The right to an adequate standard of living is contained in Article 11(1) of the ICESCR, which recognises that everyone has the right to an adequate standard of living including adequate food, clothing and housing and to the continuous improvement of living conditions. According to the UN Committee on Economic, Social and Cultural Rights, the key obligations are that countries must ensure the availability and accessibility of the resources that are essential to the realisation of the right.

In addition to the above, Article 2(2) of the ICESCR recognises the guarantee by the States Parties to the Covenant that the right to health, the right to education and the right to an adequate standard of living may be exercised without discrimination of any kind.

Following the announcement of the program, discussions were held with the Local Consultative Committee and Economic Working Group members of the communities surrounding the voluntarily nominated land for the NRWMF, to identify the current economic and socio-economic needs of those communities. The discussions aimed to ensure that the program would deliver projects and initiatives that could further diversify the local economies and to improve the livelihood of each community. From these consultations, health (particularly mental health) and the expansion of education and training were identified as two of the priority areas for the grant opportunities available through the program. In addition, projects that support economic development and indigenous business opportunities were also identified as priority areas.

This instrument promotes the right to health and the right to education by making grant opportunities available to projects that support health and the expansion of education and training in the rural communities of Kimba and Hawker. The instrument also promotes the right to an adequate standard of living by making grants available for projects that support economic development and indigenous business opportunities in the communities, which will in turn promote the ability to afford basic necessities, increase employment opportunities and improve the livelihood of the community.

Rights to equality and non-discrimination

The rights to equality and non-discrimination are contained in Articles 2, 16 and 26 of the ICCPR. The right to equality requires that all people are afforded the same rights and deserve the same level of respect. This means that laws, policies and programs should not be discriminatory, and that public authorities should not apply or enforce laws, policies and programs in a discriminatory or arbitrary manner.

Fundamental to equality is non-discrimination. This ensures that no one is denied their rights due to factors such as race, colour, sex, language, religion, political or other opinion, national or social origin, property or birth. Discrimination on certain other grounds may also be prohibited including age, nationality, marital status, disability, place of residence within a country and sexual orientation.

The rights to equality and non-discrimination do not require identical treatment in every instance. The principle of substantive equality sometimes requires positive action on the basis of a protected status to reflect relevant differences between groups. This differential treatment can be justified if it is based on objective and reasonable criteria and seeks to achieve a legitimate goal.

The instrument engages the rights to equality and non-discrimination because it positively differentiates between the communities that were considered as potential hosts for the NRWMF and the broader public by providing for the establishment of a \$4 million program. The investment will support the communities to manage the impacts of the consultation process. The site selection process has impacted community cohesion and there remains some opposition and division within the communities in relation to the NRWMF. The program will support the communities to manage the impacts of the consultation process.

Key objectives of the program are to support local communities throughout the site selection process and deliver projects and initiatives that can further diversify the local economies. Eligible applicants must have an Australian Business Number and be one of the following entities: a company incorporated in Australia; an incorporated trustee on behalf of a trust; a not-for-profit organisation, including a community group with voting and/or financial membership of at least five individuals; an Aboriginal and/or Torres Strait Islander organisation, council or incorporated association; the Flinders Ranges Council; the District Council of Kimba; and the Outback Communities Authority.

While there are no restrictions on where applicants reside, projects must be delivered:

- within 50km of Hawker (Wallerberdina Station), South Australia, plus the remainder of the Local Government Area of the Flinders Ranges Council; or
- within the Local Government Area of the District Council of Kimba.

The program will focus on a number of priority areas, including indigenous business opportunities.

To the extent that the instrument engages with rights to equality and non-discrimination, it does so in a reasonable and proportionate way and does not operate to limit or restrict those rights.

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**