

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. 6) 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 powers in the FF(SP) Act to make, vary or administer arrangements or grants may be exercised on behalf of the Commonwealth by 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. 6) Regulations 2020* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on certain activities administered by the Department of Agriculture, Water and the Environment.

Funding is provided for:

- the Tracking Waste Program, which will involve the development and operation of an online platform displaying visualised data relating to waste and including analytical capabilities, in order to reveal opportunities to invest in waste collection, recycling and manufacturing (\$24.6 million over four years from 2020-21);
- a grant to establish a national food waste governance entity, which will work with industry and researchers to reduce food waste in the supply chain through a voluntary commitment program and to influence behavioural change in business and households (up to \$4 million over four years from 2020-21);
- the provision of financial counselling services to small regional businesses facing financial hardship due to drought, the 2019-20 bushfires or the COVID-19 pandemic (\$12.8 million over two years from 2019-20); and
- the Bushfire Recovery for Species and Landscapes (Tranche 2 Emergency Intervention Fund) program to support emergency intervention works for threatened

species and landscapes affected by the 2019-20 bushfire emergency (\$149.7 million over two years from 2020-21).

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. 6) 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. 6) 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

Financial Framework (Supplementary Powers) Regulations 1997

Item 1 – In the appropriate position in Part 4 of Schedule 1AB (table)

This item adds four new table items to Part 4 of Schedule 1AB to establish legislative authority for government spending on certain activities administered by the Department of Agriculture, Water and the Environment (the department).

New **table item 440** establishes legislative authority for government spending on the Tracking Waste Program (the program), which will involve the development and operation of an online platform displaying visualised data relating to waste and including analytical capabilities, in order to reveal opportunities to invest in waste collection, recycling and manufacturing.

On 6 July 2020, the Minister for the Environment, the Hon Sussan Ley MP, and the Assistant Minister for Waste Reduction and Environmental Management, the Hon Trevor Evans MP, announced the program as part of the Government's \$1 billion strategy to transform Australia's waste and recycling capacity (available at <https://minister.awe.gov.au/ley/media-releases/1-billion-waste-and-recycling-plan-transform-waste-industry>).

The program will build on the existing work to improve data and reporting under the *National Waste Policy*, Australia's national framework for waste and resource recovery until 2030 (available at <https://www.environment.gov.au/protection/waste-resource-recovery/publications/national-waste-policy-2018>). The development of the platform will

also enhance the implementation of the *National Waste Policy Action Plan* (available at <https://www.environment.gov.au/protection/waste-resource-recovery/publications/national-waste-policy-action-plan>). The Plan presents targets and actions to implement the *National Waste Policy*, which will guide investment and national efforts to 2030 and beyond.

The objective of the program is to build a publicly available digital platform that will display volumes of waste and recyclable materials at different locations across Australia. It will also enable users to track the movement of these materials between regions. Government expenditure on the program will be in the form of procuring services to develop the platform and populate it with data supplied by industry and state, territory and local governments. In addition to the development and implementation of the platform, the program will enable investment to support data interoperability and connection to the platform, and an engagement program for the platform.

The platform will be underpinned by a system of data access arrangements that will require extensive consultation with stakeholders. The department will co-design the system with stakeholders in industry and state, territory and local governments. The system will be built progressively over four years from 2020-21. Initially, the platform will display readily available and public data. Further data will be added in consultation with government and industry stakeholders, which will increase the scope of the data and the frequency of updates over time.

Once operational, the platform will bring together the latest data available from industry and state, territory and local governments on the quantities, locations and movements of various types of waste and recyclable materials. No system like this currently exists in Australia. Current national reporting on waste depends on highly aggregated data made available only in static formats and provides historical information only. The new system will enable governments, businesses and communities to make better-informed choices that will help to reduce the economic and environmental costs of waste.

The platform will support a range of uses by government, the general public and industry. This will help to increase public understanding of how waste is managed in local areas and regions. In addition, the platform will have analytical tools for advanced users to access and interpret the data, which are likely to be beneficial to industry.

Improved access to detailed information aims to encourage private sector innovation and investment in waste management services and manufacturing. Manufacturers will benefit from information needed to target investments and develop markets for recycled products or new technologies. Governments will benefit from better access to information needed to adjust policy and regulatory settings and to report on outcomes in line with community expectations. The platform will enable monitoring of waste exports and landfill statistics.

Government expenditure on the program will be allocated by conducting procurement activities, in accordance with the Commonwealth resource management framework including the *Public Governance, Performance and Accountability Act 2013* and the *Commonwealth Procurement Rules*.

The procurement of technical services to develop the platform will use a competitive approach to market either through an open tender method or using existing standing offer arrangements. Information relating to the outcome of the procurement activity will be

published on AusTender as required at www.tenders.gov.au. Spending decisions will be made by the Secretary of the department, or a delegate of the Secretary of the department, taking into account the recommendations of an assessment by departmental officers of value for money against evaluation criteria. The department will be responsible for ongoing operation of the program.

Procurement decisions made in connection with the program are not considered suitable for independent merits review, as they are decisions relating to the allocation of a finite resource, from which all potential claims for a share of the resource cannot be met. In addition, any funding that has already been allocated would be affected if the original decision was overturned. The Administrative Review Council has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.11 to 4.19 of the guide, *What decisions should be subject to merit review?*).

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 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.

The waste management sector was consulted on strategies and actions to increase access to information and to improve data and reporting during the 2018 update of the *National Waste Policy* (released in 2009), and the development of the *National Waste Policy Action Plan* in 2019. The sector is broadly supportive of increasing access to information. The consultations also involved other industry stakeholders, non-government organisations, and state, territory and local governments. Governments agreed to make comprehensive, economy-wide and timely data publicly available, and to undertake actions to achieve this target. In addition, the Minister for the Environment, the Hon Sussan Ley MP, has written to the states and territories inviting them to contribute to tracking waste in the context of investing in recycling.

Funding for the program of \$24.6 million over four years from 2020-21 was included in the July 2020 Economic and Fiscal Update under the measure ‘Transforming Australia’s Waste and Recycling Industry’. Details are set out in the *Economic and Fiscal Update July 2020*, Appendix A: Policy decisions taken since the 2019-20 MYEFO at page 99. Funding will come from Program 1.1: Sustainable Management of Natural Resources and the Environment, which is part of Outcome 1.

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

Section 51(v) of the Constitution empowers the Parliament to make laws with respect to ‘postal, telegraphic, telephonic and other like services’. The program will provide funding for the development and operation of an online visualisation platform relating to waste. The

program will also provide funding for activities and programs that support the development and operation of the online platform.

New **table item 441** establishes legislative authority for the Government to provide a grant to establish a national food waste governance entity (the governance entity), which will work with industry and researchers to reduce food waste in the supply chain through a voluntary commitment program and by influencing behavioural change in business and households, among other actions.

Each year, Australia produces around 7.3 million tonnes of food waste across the supply and consumption chain. Food waste costs the economy around \$20-25 billion a year. The environmental cost is also high, with food waste accounting for about 5 per cent of Australia's national greenhouse gas emissions. Over 1,460 gigalitres of water is used annually to grow Australian produce which is then discarded.

The department will partner with an experienced organisation to establish the governance entity, which will play a key role in delivering the *National Food Waste Strategy* (<https://www.environment.gov.au/protection/waste-resource-recovery/publications/national-food-waste-strategy>). The Strategy was launched in 2017 to provide a framework to support collective action towards halving Australia's food waste by 2030. The Strategy seeks to leverage efforts already made across the country, and identifies four priority areas where improvements can be made: policy support; business improvements; market development; and behaviour change.

Funding of up to \$4 million over four years from 2020-21 for the establishment of the governance entity is also part of the \$35 million funding commitment to deliver Commonwealth-led actions under the *National Waste Policy Action Plan* (available at <https://www.environment.gov.au/protection/waste-resource-recovery/publications/national-waste-policy-action-plan>). The Plan presents targets and actions to implement the *National Waste Policy*, which will guide investment and national efforts to 2030 and beyond.

Seed funding to create a new independent entity responsible for driving food waste reduction in Australia was announced by the Minister for the Environment, the Hon Sussan Ley MP, and the Assistant Minister for Waste Reduction and Environmental Management, the Hon Trevor Evans MP, on 7 August 2020 (available at <https://minister.awe.gov.au/ley/media-releases/new-body-cut-australias-food-waste-half>).

A preferred partner to establish and run the governance entity will be identified through an open competitive, merit-based Partnership Call round whereby suitably experienced and skilled entities were invited to submit a partnering proposal for the department's consideration. The successful partner will then be invited to apply for a one-off grant.

The department will work with the successful partner organisation to establish the governance entity, which will drive collaboration among industry, researchers and other relevant organisations, to implement innovative solutions to achieve the goal of the *National Food Waste Strategy*. A key deliverable by the governance entity will be implementing a national voluntary commitment program for businesses across the supply and consumption chain, to engage in food waste reduction activities and to encourage industry-led action.

The voluntary commitment program has been designed with four main work program areas that aim to normalise consideration of food waste in business policies, practices and processes. These include:

- embed new criteria into design, buying and sourcing;
- optimise whole supply chain to produce more with less;
- influence consumer and business behaviours and reduce food waste; and
- find innovative ways to make the best use of waste and surplus food.

Over the four-year funded period, the successful partner is expected to build its revenue to ensure the governance entity continues under a self-funded model beyond the one-off grant. This will be done through industry membership fees and partnership contributions from organisations across the food supply chain, including food producers and food processors through to retail organisations.

Government funding will be provided through an ad hoc grant to be administered by the Community Grants Hub of the Department of Social Services. Grant expenditure will be subject to the requirements of the Commonwealth resource management framework including the *Public Governance, Performance and Accountability Act 2013* and the *Commonwealth Grants Rules and Guidelines 2017*.

A Partnership Call invited organisations to submit partnering proposals for the department's consideration. The proposals will be assessed against eligibility and assessment criteria available at <https://www.environment.gov.au/about-us/partnerships/partnership-call-food-waste>.

The decision on the successful organisation who will be invited to apply for a grant and establish the governance entity will be made by the Minister for the Environment, based on the recommendations provided by the departmental assessment panel. This may be either a single partnering organisation or a consortium represented by a lead partner. Following this decision, the successful organisation will enter into a grant agreement with the Community Grants Hub. The Minister for the Environment will be the final decision maker for grant expenditure. The grant outcome will be published on GrantConnect at www.grants.gov.au.

Funding decisions made in connection with the grant are not considered suitable for independent review, as they are decisions relating to the allocation of a finite resource, from which all potential claims for a share of the resource cannot be met. In addition, any funding that has already been allocated to another party would be affected if the original decision was overturned. The Administrative Review Council has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.11 to 4.14 of the guide, *What decisions should be subject to merit review?*).

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 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.

Establishment of a food waste governance entity was recommended by *A Roadmap for reducing Australia's food waste by half by 2030*, which was developed by Food Innovation Australia Ltd (FIAL) in consultation with the National Food Waste Steering Committee (which included representatives from food and retail industry peak bodies, agricultural research organisations, food waste research organisations, and supply chain and logistics industry bodies) and state and territory governments. FIAL has been contracted by the Australian Government to develop the Roadmap (<https://www.environment.gov.au/protection/waste-resource-recovery/publications/roadmap-reducing-food-waste>).

The department also liaised with state and territory governments regarding the process to establish the governance entity. The department has consulted with the Community Grants Hub in developing the grant guidelines.

In addition to funding provided through the grant agreement, the department will work with the successful partner to guide the establishment of the governance entity and deliver on the shared objective to halve Australia's food waste by 2030. The partnering agreement will outline the scope and process for this collaboration. More information on the department's approach to partnering is available at <http://www.environment.gov.au/partnerships>.

Funding for the grant of up to \$4 million over four years from 2020-21 was included in the July 2020 Economic and Fiscal Update under the measure 'Transforming Australia's Waste and Recycling Industry'. Details are set out in the *Economic and Fiscal Update July 2020*, Appendix A: Policy decisions taken since the 2019-20 MYEFO at page 99. Funding will come from Program 1.1: Sustainable Management of Natural Resources and the Environment, which is part of Outcome 1.

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.

Section 51(xxix) of the Constitution empowers the Parliament to make laws with respect to 'external affairs'. The external affairs power supports legislation implementing Australia's obligations under international treaties to which it is a party.

Australia has obligations relating to the *United Nations Framework Convention on Climate Change* [1994] ATS 2 (UNFCCC), the *Kyoto Protocol* to the UNFCCC [2008] ATS 2 and the *Paris Agreement* [2016] ATS 24.

Australia has committed to:

- formulate, implement, publish and regularly update national and, where appropriate, regional programs containing measures to mitigate climate change, and measures to facilitate adequate adaptation to climate change (Article 4(1)(b) of the UNFCCC and Article 10(b) of the *Kyoto Protocol*);
- promote and cooperate in the development of practices and processes that reduce or prevent anthropogenic emissions of greenhouse gases in all relevant sectors including waste management sector (Article 4(1)(c) of the UNFCCC);

- promote and cooperate in education, training and public awareness related to climate change and encourage the widest participation in this process (Article 4(1)(i) of the UNFCCC);
- adopt national policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases and protecting and enhancing its greenhouse gas sinks and reservoirs (Article 4(2)(a) of the UNFCCC);
- achieve the long-term temperature goal to reach global peaking of greenhouse gas emissions to achieve a balance between anthropogenic emissions of greenhouse gases by sources and removals by sinks of greenhouse gases (Article 4 of the Paris Agreement); and
- cooperate in taking measure to enhance climate change education, training, public awareness, public participation and public access to information (Article 12 of the Paris Agreement).

The funding will assist the governance entity with activities directed to reducing food waste to meet international obligations in Australia. In doing so, the governance entity will reduce greenhouse gas emissions in particular from landfill and will improve transportation and primary production efficiencies which will lower fuel and energy consumption.

New **table item 442** establishes (and renews) legislative authority for government spending on the provision of financial counselling services to small regional businesses facing financial hardship due to drought, the 2019-20 bushfires or the COVID-19 pandemic (the program).

As part of the 2019 election commitment, the Government agreed to provide an additional \$7 million in 2019-20 to the Rural Financial Counselling Service (RFCS) to pilot financial counselling services for small regional businesses affected by drought. Following its commencement in January 2020, the pilot was expanded in mid-2020 to also support small regional businesses affected by the 2019-20 bushfires and the COVID-19 pandemic, with total funding increased to \$12.8 million until the end of 2020-21.

The program provides free financial counselling services to small regional businesses affected by drought, the 2019-20 bushfires or COVID-19, helping them remain resilient while facing a downturn and maintain the capacity to rebound when normal trading conditions resume. The program forms part of the Government's response to the drought, bushfires and COVID-19.

The program was established in January 2020 as an ad hoc grant opportunity and is delivered nationally by the 12 existing RFCS providers. The program is supported by grant opportunity guidelines, as amended in August 2020, that clearly outline the program objectives and intended outcomes, client eligibility criteria, and the terms and conditions of the grant, including the selection process, eligible grant activities and reporting requirements.

The RFCS has been in operation since 1986, providing free financial counselling services nationally to farmers, fishing enterprises and small, related businesses suffering financial hardship. At this stage, the RFCS has been funded until 30 June 2021. Through the provision of rural financial counselling services, the RFCS seeks to help eligible clients understand their financial position and the viability of their enterprise, and develop and implement plans to improve their financial self-sufficiency.

Each service provider is an incorporated entity run by a board of directors comprising a chairperson and other members. Service providers are run on a not-for-profit basis, with the majority of funding provided by the Commonwealth. The RFCS is a well-established service, with the current 12 service providers ideally placed to deliver the program. The 12 providers have national coverage and are experienced in case managed financial counselling and promoting their service. The RFCS is locally focussed and trusted in regional communities.

The program will support small regional businesses to improve their financial capability through the:

- employment of 22 full-time equivalent (FTE) small business financial counsellors in regional communities over 18 months, with an additional 22 FTE small business financial counsellors and 10 FTE support staff in the final 12 months of the program, from 1 July 2020 to 30 June 2021. A breakdown of the geographical distribution of the RFCS staff is set out in the program guidelines available at <https://www.agriculture.gov.au/sites/default/files/documents/dcsbsp-grant-guidelines.pdf>; and
- establishment of a Professional Services Fund to be administered by each RFCS provider for the purpose of enabling their clients, where appropriate, to access specialist third-party advice, such as financial planning, legal, specialist taxation and accounting advice. Expenditure from the Professional Services Fund is capped at \$5,000 per client and subject to approval by the grantee's Executive Officer.

The intended outcomes of the program are to:

- assist eligible small businesses to understand their financial position and identify options and implement plans to improve the viability of their enterprise over the long term;
- collect key data to inform future demand for small business financial counselling and assess the impact of the program; and
- test innovative approaches to service delivery and program administration to maximise counsellor reach and client engagement.

Within a case management framework, the role of counsellors includes helping eligible small businesses:

- understand their financial position;
- understand the benefits and drawbacks of different options to manage financial issues;
- develop budgets and cash flows;
- negotiate with creditors;
- access dispute resolution services;
- understand their rights and access broader professional advice and support; and
- access government and community grants, programs or schemes.

To be eligible to receive counselling, a small business must:

- employ 19 or fewer people;
- be, in the opinion of the financial counsellor, experiencing, or at imminent risk of, financial hardship as a result of drought, COVID-19 and/or bushfires;
- be located in a regional area (defined as 'MMM2' to 'MMM7' using the Department of Health's Modified Monash Model rurality classification. More information on the

Modified Monash Model is available at <https://www.health.gov.au/health-workforce/health-workforce-classifications/modified-monash-model>); and

- be ineligible to access services under the existing RFCS (for primary producers).

The program is administered as an ad-hoc grant opportunity, in accordance with the Commonwealth resource management framework including the *Public Governance, Performance and Accountability Act 2013* and the *Commonwealth Grants Rules and Guidelines 2017* (CGRGs).

Grant opportunity guidelines that support the objective of the program have been developed and published. Final decisions on expenditure are made by the Minister for Agriculture, Drought and Emergency Management or the Minister's delegate, on advice from the department. Grants awarded are reported on GrantConnect at www.grants.gov.au and delivered through the Community Grants Hub of the Department of Social Services.

As this is an ad-hoc grant opportunity with funding allocated to the existing RFCS providers, independent review of grant funding decisions is not available. The initial grants to these providers were allocated through a competitive grants process, which involved an assessment against the criteria in the publicly available grant opportunity guidelines. Merits review was not considered appropriate for decisions made in connection with that process as they related to the allocation of finite resources between competing applicants, and any decision to overturn an allocation that had already been made to another party would have been affected by overturning the original decision. The Administrative Review Council has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.11 to 4.19 of the guide, *What decisions should be subject to merit review?*). Using the RFCS providers as an existing (and proven) delivery mechanism was considered vital to ensure timely and cost-effective provision of services to clients in immediate need.

The design and development of the program included consultation with a range of Commonwealth small business policy development and service delivery entities. These included the Department of Education, Skills and Employment, the Department of Social Services, and the Department of the Treasury. The program design was also informed by the Australian Bureau of Statistics and the Australian Bureau of Agricultural and Resource Economics and Sciences (part of the department) data on small business density, as well as feedback from the RFCS providers about anticipated demand in each region.

The RFCS providers are required to report regularly to the department as part of the program monitoring and evaluation regime. Providers submit monthly data reports, which capture information such as the number of serviced clients, promotional activities undertaken and the Professional Services Fund expenditure. In addition, providers undertake more detailed reporting each quarter, which includes data on a client's business type, financial situation and predominant cause of hardship, and more granular detail about the type and volume of service support provided. The department will also survey small businesses that have exited the program to seek feedback on their experience of the service.

Funding for the program of \$12.8 million was included in the July 2020 Economic and Fiscal Update under the measure 'Drought Communities Small Business Support Program – expansion' for a period of two years commencing in 2019-20. Details are set out in the *Economic and Fiscal Update July 2020*, Appendix A: Policy decisions taken since the 2019-20 MYEFO at page 95.

Funding for the program comes from Program 3.12: Rural Programs, which is part of Outcome 3. Details are set out in the *Portfolio Additional Estimates Statements 2019-20, Agriculture, Water and Environment Portfolio* at page 70.

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 treaty implementation aspect of the external affairs power (section 51(xxix)); and
- the express incidental power and the executive power (sections 51(xxxix) and 61), including the nationhood aspect.

External affairs power

Section 51(xxix) of the Constitution empowers the Parliament to make laws with respect to ‘external affairs’. The external affairs power supports legislation implementing Australia’s obligations under international treaties to which it is a party.

Australia has obligations under the *United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa* [2000] ATS 18. In particular:

- Article 4(2)(a) which provides that Parties shall adopt an integrated approach addressing the physical, biological and socio-economic aspects of the processes of desertification and drought;
- Article 5(a) which provides that Parties undertake to give due priority to combatting desertification and mitigating the effects of drought, and allocate adequate resources in accordance with their circumstances and capabilities;
- Article 5(b) which provides that Parties undertake to establish strategies and priorities, within the framework of sustainable development plans and/or policies, to combat desertification and mitigate the effects of drought;
- Article 5(c) which provides that Parties undertake to address the underlying causes of desertification and pay special attention to the socio-economic factors contributing to desertification processes; and
- Article 5(e) which provides that Parties undertake to provide an enabling environment by strengthening, as appropriate, relevant existing legislation and, where they do not exist, enacting new laws and establishing long-term policies and action programmes.

Spending under the program is in part directed towards addressing socioeconomic effects of drought, by allocating resources to assist with the financial viability of drought affected communities (and specifically, small businesses within those communities).

Executive power and express incidental power, including the nationhood aspect

The express incidental power in section 51(xxxix) of the Constitution empowers the Parliament to make laws with respect to matters incidental to the execution of any power vested in the Parliament, the executive or the courts by the Constitution. Section 61 of the Constitution supports activities that are peculiarly adapted to the government of a nation and cannot be carried out for the benefit of the nation otherwise than by the Commonwealth.

The program includes activities which are directed towards supporting businesses which have experienced, or are at risk of experiencing, financial hardship as a result of the 2019-20 bushfires or the COVID-19 pandemic, unforeseen crises or immediate national significance.

New **table item 443** establishes legislative authority for government spending on the Bushfire Recovery for Species and Landscapes (Tranche 2 Emergency Intervention Fund) program (the program) to support emergency intervention works for threatened species and landscapes affected by the 2019-20 bushfire emergency.

The program will provide \$149.7 million over two years from 2020-21 to continue the Government's emergency intervention works for threatened species and landscapes in the wake of the 2019-20 bushfires. The program builds on the Government's initial commitment of \$50 million for emergency wildlife and habitat recovery announced on 13 January 2020 (<https://minister.awe.gov.au/ley/media-releases/initial-commitment-50-million-emergency-wildlife-and-habitat-recovery>). The Minister for the Environment, the Hon Sussan Ley MP, announced the program on 12 May 2020 (<https://minister.awe.gov.au/ley/media-releases/150-million-funding-boost-for-bushfire-affected-wildlife-and-plants>).

Following the announcement of the initial \$50 million commitment, the Government established the Wildlife and Threatened Species Bushfire Recovery Expert Panel (the Expert Panel) to assist in prioritising recovery actions for native species, ecological communities, natural assets and their cultural values for Indigenous Australians, which had been affected by the extreme 2019-20 fire events. Members of the Expert Panel were selected to provide expertise on key thematic and strategic priorities, including fire ecology, conservation biology and environmental decision-making.

At its first meeting on 15 January 2020, the Expert Panel set a series of objectives to guide immediate recovery efforts, specifically to:

- reduce the immediate suffering of native animals directly impacted by the fires;
- prevent extinction and limit decline of native species;
- maximise the chances for long-term recovery of native species and communities;
- and
- ensure learning and continual improvement is at the core of the response.

The Expert Panel has further recommended that, in addition to immediate emergency needs, medium-term commitment (over six months to two years after the fires) should focus on the provision of shelter, ongoing rehabilitation, population management (captive breeding for animals, seed banking for plants, and genetic rescue and translocations for plants and animals), feral animal and weed control, active revegetation and regeneration, monitoring of recovery and management, protection of refugia (unburnt areas), management to maintain landscape complexity (including Indigenous fire and land management), and assessment of the conservation status of species and updates to conservation planning documents. More information about the Expert Panel's recommendations is available at <http://www.environment.gov.au/biodiversity/bushfire-recovery/expert-panel>.

The program will provide funding for the following activities as recommended by the Expert Panel:

- *regional recovery activities* – \$117.3 million (including administrative costs) to deliver practical on-ground action across seven regions distributed according to the vulnerability and impact of fires;

- *community grants* – \$12.8 million (including administrative costs) in small grants for community organisations to participate in the recovery effort by undertaking projects that conserve their local environment and manage the natural resources base;
- *Indigenous cultural burning and land management workshops* – \$3.2 million (including administrative costs) to partner with traditional owners to conduct 50 Indigenous cultural burning and land management workshops to build capacity for better land management through incorporating Indigenous cultural knowledge in fire management practices; and
- *scientific assessment of fire-impacted species* – \$16.4 million to scientifically assess conservation status of all high priority species and update conservation planning documents so that decisions under environmental law are based on the best possible information.

Regional recovery activities

Seven bushfire affected regions have been identified for strategic on-ground support:

- the rainforests of the NSW north coast and tablelands (NSW);
- the World Heritage listed Greater Blue Mountains (NSW);
- the forests of the NSW south coast (NSW);
- alpine environments (NSW and VIC);
- the forests and coastal ecosystems of East Gippsland (VIC);
- the rainforests of south-east Queensland (QLD); and
- Kangaroo Island (SA).

The Government is collaborating with stakeholders, including state governments and natural resource management groups, to develop region specific plans for action. This will assist in coordinating effort and leveraging investment to best support wildlife and habitat recovery. Investment in these regions will be delivered through payments to states, procurements and non-competitive grants, focusing on preventing extinction and limiting species decline, including interventions such as feral animal and weed control, revegetation and regeneration, protection of refugia and landscape management that delivers benefits for multiple plants and animals.

Community grants

The program will include an open competitive funding round to provide small grants (from \$5,000 to \$150,000) to Landcare groups, land managers, traditional owners and local community groups who will be invited to submit projects to conserve and protect their local environment and/or manage the natural resources base by, for example:

- undertaking revegetation activities, including tree planting, in burnt areas;
- replacing fencing to keep herbivores out of sensitive areas;
- managing feral animals; and
- protecting waterways by controlling erosion and repairing riparian areas.

These community groups will leverage the efforts of local volunteers who stand ready to contribute, and will provide jobs in regional areas.

The competitive grants program will be available to communities in southern Australia and south-east Queensland impacted by the 2019-20 bushfires and will be delivered by the

Business Grants Hub, part of the Department of Industry, Science, Energy and Resources. Grant applications are expected to open in October 2020, with agreements finalised in February 2021.

Indigenous cultural burning and land management workshops

There is an increasing recognition of the role Indigenous fire and land management practices can play in delivering environmental benefits such as fuel reduction, flora regeneration, and habitat protection and weed management. A targeted competitive grant funding round will be conducted to provide opportunities for Indigenous communities to share knowledge about Indigenous cultural burning and land management practices.

This grants program will be available nationally to traditional owner groups, Indigenous organisations and Indigenous businesses only. It will be delivered by the Business Grants Hub, with grant applications expected to open in November 2020 and agreements finalised in April 2021 (or earlier).

Scientific assessment of fire-impacted species

The Expert Panel has identified more than 300 listed threatened species and other previously unlisted species potentially affected by fires. Many of these species require new, or increased, protection under environmental laws. There is a significant increase in the scientific studies required to do this work, including undertaking on-ground assessments and working with scientific experts to understand the impact on populations. The department will rapidly assess species, ensure they have the right protections, and develop plans to guide their recovery, focusing on species in the priority regions.

Program funding will be delivered through payments to states in which the seven bushfire affected regions are located, procurements and grants (including those provided to organisations that can deliver cross-jurisdictional projects within the seven bushfire affected regions).

Procurements will be conducted in accordance with the Commonwealth resource management framework, including the *Public Governance, Performance and Accountability Act 2013* and the *Commonwealth Procurement Rules*. Procurement methods may include an open tender, a limited tender or an existing standing offer (for example, a departmental panel arrangement). Examples of services that may be procured include those that contribute to regional bushfire recovery such as predator and herbivore control, habitat restoration and protection, weed control and seed banking. The Minister for the Environment will be the final decision maker on successful tenderers and procurement funding allocation. Information about the tenders will be published and final contracts reported on AusTender at www.tender.gov.au as required.

Grants will be administered in accordance with the *Commonwealth Grants Rules and Guidelines 2017*. Grant selection processes will include an open competitive funding round (community grants), a targeted competitive funding round (Indigenous cultural burning and land management workshops) and closed non-competitive grants to organisations with capacity to deliver recovery actions, including across multiple bushfire affected regions and jurisdictions (regional recovery). Grant opportunity guidelines containing eligibility and assessment criteria will be developed and made available on GrantConnect at

www.grants.gov.au as required. Grant recipients will be required to demonstrate that their projects meet the program objectives before receiving a grant. The Minister for the Environment will be the final decision maker on successful grantees and grant funding allocation, based on the department's recommendations taking into account the merits of each proposal. Information about grants awarded will be published on GrantConnect.

Procurement and grant funding decisions made in connection with the program are not considered suitable for independent merits review, as they are decisions relating to the allocation of a finite resource, from which all potential claims for a share of the resource cannot be met. In addition, any funding that has already been allocated would be affected if the original decision was overturned. The Administrative Review Council has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.11 to 4.19 of the guide, *What decisions should be subject to merit review?*).

In addition, the review and audit process undertaken by the Australian National Audit Office 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 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.

The program was developed having regard to advice and recommendations of the Expert Panel. The Minister for the Environment, the Hon Sussan Ley MP, held a national roundtable in August 2020 and a series of regional workshops in August and September 2020 to co-design the Government's approach to regional bushfire recovery. Consultations with representatives from state and territory governments, Indigenous groups, environmental non-government organisations, landholders and natural resource management groups are informing the prioritisation of government investment in each of the seven bushfire affected regions. Stakeholders are supportive of the program and consultation has helped identify the investment priorities in each region, potential projects that would best deliver the program objectives, and opportunities for partnerships to leverage funding. The Government will partner with states and territories, Indigenous communities, scientists, zoos, Landcare groups, non-government organisations and local communities to deliver the program.

The Indigenous Advisory Committee, a statutory committee under the *Environment Protection and Biodiversity Conservation Act 1999*, was consulted on the program at their 27 August 2020 meeting and are broadly supportive of the program activities. Additional targeted consultation with Indigenous experts who do not have an interest in seeking funds under the program has occurred. The National Indigenous Australians Agency was consulted to ensure the application process is accessible to intended applicants and consultation will continue throughout the program. The National Bushfire Recovery Agency was also consulted to ensure alignment of this element of bushfire response with the broader measures. Consultation has supported the need for and proposed approach to delivering the program.

Funding for the program of \$149.7 million over two years from 2020-21 was included in the July 2020 Economic and Fiscal Update under the measure 'National Bushfire Recovery Fund'. Details are set out in *July 2020 Economic and Fiscal Update*, Appendix A: Policy

decisions taken since the 2019-20 MYEFO at pages 107 to 111. Funding for the program will come from Program 1.1: Sustainable Management of Natural Resources and the Environment, which is part of Outcome 1.

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 treaty implementation aspect of the external affairs power (section 51(xxix));
- the race power (section 51(xxvi)); and
- the express incidental power and the executive power (sections 51(xxxix) and 61), including the nationhood aspect.

External affairs power

Section 51(xxix) of the Constitution empowers the Parliament to make laws with respect to ‘external affairs’. The external affairs power supports legislation implementing Australia’s obligations under international treaties to which it is a party.

Australia has obligations under the *Convention on Biological Diversity* [1993] ATS 32. In particular:

- Article 6 which provides that Contracting Parties will develop national strategies, plans or programs for the conservation and sustainable use of biological diversity;
- Article 7 which provides that Contracting Parties will undertake certain identification and monitoring activities regarding conservation and biological diversity;
- Article 8 which provides that Contracting Parties will regulate or manage biological resources important for the conservation of biological diversity with a view to ensuring their conservation and sustainable use; promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings; rehabilitate and restore degraded ecosystems and promote the recovery of threatened species; and prevent the introduction of, control or eradicate those alien species which threaten ecosystems, habitats or species; and
- Article 12 which provides that Contracting Parties will undertake certain research and training activities for the identification, conservation and sustainable use of biological diversity and its components.

Spending under the program is directed towards conserving and protecting species and ecosystems that are matters of national environmental significance; protecting other native species and ecosystems from threats posed by feral animals and other invasive pests; undertaking scientific assessment and monitoring of the conservation status of species and landscapes and their recovery; and undertaking environmental recovery activities in bushfire affected regions to prevent extinction and limit the decline of native species.

Race power

Section 51(xxvi) of the Constitution empowers the Parliament to make laws with respect to ‘the people of any race for whom it is deemed necessary to make special laws’.

Spending under the program may include projects undertaken by particular communities of Indigenous Australians.

Executive power and express incidental power, including the nationhood aspect

The express incidental power in section 51(xxxix) of the Constitution empowers the Parliament to make laws with respect to matters incidental to the execution of any power vested in the Parliament, the executive or the courts by the Constitution. Section 61 of the Constitution supports activities that are peculiarly adapted to the government of a nation and cannot be carried out for the benefit of the nation otherwise than by the Commonwealth.

The program includes activities which are directed towards emergency intervention works for threatened species and landscapes affected by the 2019-20 bushfire emergency, a crisis of immediate national significance.

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. 6) 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 powers in the FF(SP) Act to make, vary or administer arrangements or grants may be exercised on behalf of the Commonwealth by 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. 6) Regulations 2020* amend Schedule 1AB to the FF(SP) Regulations to establish legislative authority for government spending on certain activities administered by the Department of Agriculture, Water and the Environment (the department).

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

- table item 440 for the Tracking Waste Program;
- table item 441 for a grant for national food waste governance entity;
- table item 442 for the financial counselling for small regional businesses affected by drought, bushfires or COVID-19; and
- table item 443 for the Bushfire Recovery for Species and Landscapes (Tranche 2 Emergency Intervention Fund) program.

Table item 440 – Tracking Waste Program

Table item 440 establishes legislative authority for government spending on the Tracking Waste Program (the program), which will involve the development and operation of an online platform displaying visualised data relating to waste and including analytical capabilities, in order to reveal opportunities to invest in waste collection, recycling and manufacturing.

The objective of the program is to build a publicly available digital platform that will display volumes of waste and recyclable materials at different locations across Australia. It will also enable users to track the movement of these materials between regions. Government expenditure on the program will be in the form of procuring services to develop the platform and populate it with data supplied by industry and state, territory and local governments. In addition to the development and implementation of the platform, the program will enable

investment to support data interoperability and connection to the platform, and an engagement program for the platform.

Human rights implications

Table item 440 does not engage any of the applicable rights or freedoms.

Conclusion

Table item 440 is compatible with human rights as it does not raise any human rights issues.

Table item 441 – Grant for national food waste governance entity

Table item 441 establishes legislative authority for the Government to provide a grant to establish a national food waste governance entity (the governance entity), which will work with industry and researchers to reduce food waste in the supply chain through a voluntary commitment program and by influencing behavioural change in business and households, among other actions.

Government funding of up to \$4 million over four years from 2020-21 to establish and run the governance entity will be provided to a preferred partner who will be identified through an open Partnership Call round. The successful partner will then be invited to apply for a one-off grant.

The department will work with the successful partner organisation to establish the governance entity, which will drive collaboration among industry, researchers and other relevant organisations, to implement innovative solutions to achieve the goal of the *National Food Waste Strategy*. The Strategy was launched in 2017 to provide a framework to support collective action towards halving Australia's food waste by 2030.

A key deliverable by the governance entity will be implementing a national voluntary commitment program for businesses across the supply and consumption chain, to engage in food waste reduction activities and to encourage industry-led action. The voluntary commitment program has been designed with four main work program areas that aim to normalise consideration of food waste in business policies, practices and processes. These include:

- embed new criteria into design, buying and sourcing;
- optimise whole supply chain to produce more with less;
- influence consumer and business behaviours and reduce food waste; and
- find innovative ways to make the best use of waste and surplus food.

Over the four-year funded period, the successful partner is expected to build its revenue to ensure the governance entity continues under a self-funded model beyond the one-off grant. This will be done through industry membership fees and partnership contributions from organisations across the food supply chain including food producers and food processors through to retail organisations.

Human rights implications

Table item 441 does not engage any of the applicable rights or freedoms.

Conclusion

Table item 441 is compatible with human rights as it does not raise any human rights issues.

Table item 442 – Financial counselling for small regional businesses affected by drought, bushfires or COVID-19

Table item 442 establishes (and renews) legislative authority for government spending on the provision of financial counselling services to small regional businesses facing financial hardship due to drought, the 2019-20 bushfires or the COVID-19 pandemic (the program).

As part of the 2019 election commitment, the Government agreed to provide an additional \$7 million in 2019-20 to the Rural Financial Counselling Service (RFCS) to pilot financial counselling services for small regional businesses affected by drought. Following its commencement in January 2020, the pilot was expanded in mid-2020 to also support small regional businesses affected by the 2019-20 bushfires and the COVID-19 pandemic, with total funding increased to \$12.8 million until the end of 2020-21.

The program provides free financial counselling services to small regional businesses affected by drought, the 2019-20 bushfires or COVID-19, helping them remain resilient while facing a downturn and maintain the capacity to rebound when normal trading conditions resume. The program forms part of the Government’s response to the drought, bushfires and COVID-19.

The program was established in January 2020 as an ad hoc grant opportunity and is delivered nationally by the 12 existing RFCS providers. The RFCS has been in operation since 1986, providing free financial counselling services nationally to farmers, fishing enterprises and small, related businesses suffering financial hardship. Through the provision of rural financial counselling services, the RFCS seeks to help eligible clients understand their financial position and the viability of their enterprise, and develop and implement plans to improve their financial self-sufficiency. Service providers are run on a not-for-profit basis, have national coverage and are experienced in case managed financial counselling and promoting their service. The RFCS is locally focussed and trusted in regional communities.

The program will benefit small regional businesses and communities facing hardship as a result of drought, the 2019-20 bushfires or COVID-19.

Human rights implications

Table item 442 engages the right to work in Article 6 of the *International Covenant on Economic, Social and Cultural Rights* (the ICESCR), read with Article 2 of the ICESCR.

Right to work

Article 2 of the ICESCR requires States Parties to take steps to progressively achieve the full realisation of the rights recognised in the ICESCR by all appropriate means. Article 6 of the ICESCR protects the right to work. Article 6(2) provides that, to achieve the full realisation of this right, States Parties should take steps to include ‘technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural

development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual’.

The program will provide rural financial counselling services to help eligible clients understand their financial position and the viability of their enterprise and develop and implement plans to improve their financial self-sufficiency. The program will engage and promote the right to work as it will support eligible clients to remain resilient while facing a downturn and maintain the capacity to rebound when normal trading conditions resume.

Conclusion

Table item 442 is compatible with human rights because it promotes the right to work under the ICESCR.

Table item 443 – Bushfire Recovery for Species and Landscapes (Tranche 2 Emergency Intervention Fund)

Table item 443 establishes legislative authority for government spending on the Bushfire Recovery for Species and Landscapes (Tranche 2 Emergency Intervention Fund) program (the program) to support emergency intervention works for threatened species and landscapes affected by the 2019-20 bushfire emergency.

The program will provide \$149.7 million over two years from 2020-21 to continue the Government’s emergency intervention works for threatened species and landscapes in the wake of the 2019-20 bushfires. The program builds on the Government’s initial commitment of \$50 million for emergency wildlife and habitat recovery announced on 13 January 2020.

Following the announcement of the initial commitment, the Government established the Wildlife and Threatened Species Bushfire Recovery Expert Panel (the Expert Panel) to assist in prioritising recovery actions for native species, ecological communities, natural assets and their cultural values for Indigenous Australians, which had been affected by the extreme 2019-20 fire events.

The program will provide funding for the following activities as recommended by the Expert Panel:

- *regional recovery activities* – \$117.3 million to deliver practical on-ground action across seven regions distributed according to the vulnerability and impact of fires;
- *community grants* – \$12.8 million in small grants for community organisations to participate in the recovery effort by undertaking projects that conserve their local environment and manage the natural resources base;
- *Indigenous cultural burning and land management workshops* – \$3.2 million to partner with traditional owners to conduct 50 Indigenous cultural burning and land management workshops to build capacity for better land management through incorporating Indigenous cultural knowledge in fire management practices; and
- *scientific assessment of fire-impacted species* – \$16.4 million to scientifically assess conservation status of all high priority species and update conservation planning documents so that decisions under environmental law are based on the best possible information.

Human rights implications

Table item 443 does not engage any of the applicable rights or freedoms.

Conclusion

Table item 443 is compatible with human rights as it does not raise any human rights issues.

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