

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. 2) Regulations 2020*

The *Financial Framework (Supplementary Powers) Act 1997* (the FF(SP) Act) confers on the Commonwealth, in certain circumstances, powers to make arrangements under which money can be spent; or to make grants of financial assistance; and to form, or otherwise be involved in, companies. The arrangements, grants, programs and companies (or classes of arrangements or grants in relation to which the powers are conferred) are specified in the *Financial Framework (Supplementary Powers) Regulations 1997* (the Principal Regulations). The 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 (Industry, Science, Energy and Resources Measures No. 2) Regulations 2020* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on certain activities that will be administered by the Department of Industry, Science, Energy and Resources.

Funding will be provided for:

- the Powering Communities Program, which will provide grants to not-for-profit community organisations to improve their energy efficiency practices and technologies leading to a reduction in energy use, improvement in energy productivity and delivery of carbon abatement (\$12 million over three years from 2020-21);
- the Building Energy Efficiency Program, which aims to reduce energy use, improve energy productivity and deliver carbon abatement in buildings, through the provision of information, tools, training resources, assessments and ratings relating to building energy efficiency, energy performance and efficiency of heating, ventilation and air conditioning systems in buildings (\$39.1 million over five years from 2020-21);
- the Technology Co-Investment Fund to support activities that reduce energy use, improve energy productivity and deliver carbon abatement in the industrial, transport and agricultural sectors, including through industrial and energy productivity

- benchmarking, improving transport fuel efficiency, increasing soil carbon and reducing livestock emissions (\$20.1 million over six years from 2020-21); and
- the Hydrogen Export Hub Program, which will support the development of hydrogen production, hydrogen demand and hydrogen export supply chains, and hydrogen safety (\$73.9 million over six years from 2019-20).

Details of the Regulations are set out at [Attachment A](#). A Statement of Compatibility with Human Rights is at [Attachment B](#).

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*. The Regulations commence on the day after the instrument is registered on the Federal Register of Legislation.

Consultation

In accordance with section 17 of the *Legislation Act 2003*, consultation has taken place with the Department of 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. 2) 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. 2) Regulations 2020*.

Section 2 – Commencement

This section provides that the Regulations commence on the day after the instrument is registered on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the Regulations are made under the *Financial Framework (Supplementary Powers) Act 1997*.

Section 4 – Schedules

This section provides that the *Financial Framework (Supplementary Powers) Regulations 1997* are amended as set out in the Schedule to the Regulations.

Schedule 1 – Amendments

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 that will be administered by the Department of Industry, Science, Energy and Resources (the department).

New **table item 450** establishes legislative authority for government spending on the Powering Communities Program (the program).

The program is part of the Government's \$1.9 billion investment package in future technologies to lower greenhouse gas emissions, which would support jobs, cut costs for households and improve the reliability of Australia's energy supply. The package was jointly announced by the Prime Minister, the Hon Scott Morrison MP, and the Minister for Energy and Emissions Reduction, the Hon Angus Taylor MP, on 17 September 2020 (media release is available at <https://www.pm.gov.au/media/investment-new-energy-technologies>).

The program will provide grant funding to support not-for-profit community organisations improve their energy efficiency practices and technologies and better manage energy use to adjust to rising energy prices through:

- upgrading equipment to reduce energy use;
- undertaking energy management activities and assessments, such as energy systems assessments and feasibility studies;

- investing in energy monitoring and management systems; and
- investing in on-site renewable energy and solar-connected batteries.

Grants will be available in each federal electorate to support activities such as:

- equipment upgrades that reduce energy use;
- energy generation projects such as installing solar panels or battery storage;
- investment in energy monitoring and management systems to better manage energy use;
- completion of energy systems assessments according to relevant Australian standards; and
- feasibility studies to investigate energy efficiency opportunities.

Activities and equipment, which will be supported through grant funding, will be those that:

- have a high probability of resulting in energy bill savings in most situations, or relate to medium to high energy use functions for community groups; and
- are directly related to the work of the community organisation or the building that the community organisation occupies, with the permission of the building owner.

Grant funding of \$10.2 million in 2021-22 will be offered under a closed non-competitive grant opportunity. An equal amount of funding will be available in every federal electorate, from which a maximum number of 12 grants (of between \$5,000 to \$12,000) can be awarded, with no co-contributions required. Members of Parliament will be strongly encouraged to consult their community to identify and nominate projects in their electorates that support the objectives of the program and are consistent with the eligibility criteria for applicants and projects as set out in the grant opportunity guidelines which will be made publicly available. These project proponents will be invited to submit a grant application to AusIndustry, a division within the department which administers the Business Grants Hub.

Not-for-profit community organisations eligible for nomination by their local Member of Parliament will include Men's Sheds, community owned kindergartens, welfare centres, community centres, women's associations, community owned childcare centres, community football and netball clubs, Scout or Guide groups, Aboriginal or Torres Strait Islander community groups, and surf life saving clubs.

The department will manage and have policy responsibility for the program. The Business Grants Hub within the department will deliver the grants, in accordance with the *Commonwealth Grants Rules and Guidelines 2017*. Applications will be assessed against the program eligibility criteria. Decisions about the award of grants will be made by a delegate of the Minister for Energy and Emissions Reduction, an official of the department.

Information about the program and how applicants can assess their eligibility to apply will be available at www.business.gov.au, once grant opportunity guidelines are published. General information on the program will also be available at www.energy.gov.au. Information about the grant opportunity and grants that have been awarded under the program will be published on GrantConnect at www.grants.gov.au.

Independent merits review of funding decisions made in connection with the program is not considered appropriate because these decisions relate to the allocation of finite resources between competing applicants, and any decision to overturn an allocation that has already been made to a party would be 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?*).

In addition, the review and audit process undertaken by the Australian National Audit Office provides a mechanism to review Australian 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 be available. Persons affected by spending decisions would also have recourse to the Commonwealth Ombudsman where appropriate.

The activities which will be supported under the program reflect those supported for community organisations under the Energy Efficient Communities (EEC) Program. The EEC Program, which was announced in February 2019 as part of the Government's Climate Solutions Package, offered grant funding of \$40 million to assist businesses and community groups to improve their energy efficiency practices and technologies and better manage energy use to reduce their power bills.

Grants under the EEC Program could be used by community organisations for:

- equipment upgrades that reduce energy use;
- energy and emissions monitoring and management systems to better manage energy use;
- energy systems assessments according to relevant Australian standards or feasibility studies to investigate energy savings opportunities; and
- energy generation and storage projects including solar photovoltaics (PV) and batteries.

For the EEC Program, the department consulted with state and territory jurisdictions, industry bodies and energy efficiency experts. Feedback was that the measures proposed for the community sector were generally appropriate since the major energy use was associated with heating, cooling and lighting.

The department consulted with a smaller group of stakeholders on proposed eligible activities under the current program in early November 2020. These stakeholders were selected due to their expertise and understanding of renewable energy generation and energy efficiency measures covering a wide range of technologies and applications including in the community sector.

Funding of \$52.2 million over five years from 2020-21 was included in the 2020-21 Budget under the measure 'JobMaker Plan – investment in new energy technologies', including funding for the program of \$12 million over three years from 2020-21. Details are set out in *Budget 2020-21, Budget Measures, Budget Paper No. 2 2020-21* at pages 118 to 119.

Funding for this item will come from Program 3.1: Supporting Reliable, Secure and Affordable Energy, which is part of Outcome 3. Details are set out in the *Portfolio Budget Statements 2020-21, Budget Related Paper No. 1.9, Industry, Science, Energy and Resources Portfolio* at page 70.

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).

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

The *United Nations Framework Convention on Climate Change* [1994] ATS 2 (the UNFCCC) includes a range of obligations on Australia to take domestic actions that reduce Australia's emissions of greenhouse gases.

The UNFCCC relevantly provides that Australia shall:

- formulate, implement, publish and regularly update national and, where appropriate, regional programs containing measures to mitigate climate change by addressing anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, and measures to facilitate adequate adaptation to climate change (Article 4.1(b));
- promote and cooperate in the development, application and diffusion of technologies, practices and processes that control, reduce or prevent anthropogenic emissions of greenhouse gases in all relevant sectors including energy, transport, industry, agriculture, forestry and waste management sectors (Article 4.1(c)); and
- 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)).

The *Kyoto Protocol to the United Nations Framework Convention on Climate Change* [2008] ATS 2 also includes obligations on Australia to take action to reduce emissions, such as Article 10(b). Article 10(b) imposes obligations to formulate, implement and report upon climate change mitigation and adaptation programs.

The *Paris Agreement* [2016] ATS 24 was entered into by the parties to the UNFCCC to enhance its implementation. Under the Paris Agreement, Australia has a 'nationally determined contribution' of a 2030 emissions reduction target of 26 to 28 per cent below 2005 levels. Relevantly, Article 4.2 of the Paris Agreement provides that '[e]ach Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions'.

Under the program, community organisations will be funded to improve energy efficiency practices and better manage energy use, which will deliver carbon abatement through reduced greenhouse gas emissions. This will result from the upgraded equipment which reduces energy use and actions in response to energy management activities funded under the program. The reduced energy use supported by the program will therefore contribute to Australia's obligations to reduce greenhouse gas emissions under these treaties.

New **table item 451** establishes legislative authority for government spending on the Building Energy Efficiency Program (the program).

Building energy efficiency provides one of the least cost abatement options to support Australia's greenhouse gas emissions reduction efforts, delivering up to 45 million tonnes in emissions reductions by 2030. Australian households are responsible for around 24 per cent of Australia's electricity use and 12 per cent of Australia's greenhouse gas emissions. The commercial building sector is responsible for around 25 per cent of Australia's electricity use and 10 per cent of Australia's greenhouse gas emissions.

The program is part of the Government's \$1.9 billion investment package in future technologies to lower greenhouse gas emissions, which would support jobs, cut costs for households and improve the reliability of Australia's energy supply. The package was jointly announced by the Prime Minister, the Hon Scott Morrison MP, and the Minister for Energy and Emissions Reduction, the Hon Angus Taylor MP, on 17 September 2020 (media release is available at <https://www.pm.gov.au/media/investment-new-energy-technologies>).

The program will address information barriers in relation to energy efficiency identified in the *Report of the Expert Panel examining additional sources of low cost abatement* (the King Review) – recommendations 8.2, 8.3, 8.4 and 8.5. The King Review is available at <https://www.industry.gov.au/data-and-publications/examining-additional-sources-of-low-cost-abatement-expert-panel-report>.

The Government's investment package in future technologies supports actions under the first *Low Emissions Technology Statement* (the Statement) in the *Technology Investment Roadmap* (the Roadmap), which was prepared with advice from the Ministerial Reference Panel chaired by Australia's Chief Scientist, Dr Alan Finkel AO. The Statement is available at <https://www.industry.gov.au/data-and-publications/technology-investment-roadmap-first-low-emissions-technology-statement-2020>. The discussion paper for the Roadmap, which informed the Statement, is available at <https://consult.industry.gov.au/climate-change/technology-investment-roadmap>.

The program will also support the implementation of the former Council of Australian Governments (COAG) Energy Council's *Trajectory for Low Energy Buildings* and its Addendum (the Trajectory), a roadmap which was agreed by Energy Ministers in 2019 to deliver a range of energy efficient improvements for both new and existing buildings. The Trajectory is available at <http://coagenergycouncil.gov.au/publications/trajectory-low-energy-buildings>.

The objective of the program is to reduce energy use, improve energy efficiency and energy productivity (which essentially means doing more using the same or less energy), and deliver carbon abatement in buildings. This will result from actions being taken in response to the building energy efficiency information, training resources, ratings and tools funded under the program. The target group for the program is industry (including builders, designers and managers of both residential and commercial buildings) and consumers (including building owners).

The program will support the following activities:

- development of best practice information, training resources and tools to improve the energy efficiency and performance of residential and commercial buildings, which will enable greater consumer choice and increase skills in the industry;
 - This will include new zero energy ready house plans and analysis, whole-of-home energy rating tools for new and existing residential buildings,

information materials to support energy efficient precincts, and the rollout of associated training resources. These information resources and energy rating tools will connect industry to training opportunities being developed and implemented by industry sectors, and build on successful online platforms such as Your Home (yourhome.gov.au). The department will deliver this program activity.

- expansion of the National Australian Built Environment Rating System (NABERS);
 - NABERS (nabers.gov.au) is a national voluntary rating system that measures the environmental performance of Australian buildings, tenancies and homes, including energy efficiency. Energy rating tools are available for office buildings, hotels, shopping centres, data centres, apartment buildings and public hospitals. NABERS will be expanded to suitable building types in other sectors such as residential aged care and retirement living, retail stores, schools, and industrial buildings (for example, warehouses). NABERS is administered by the NSW Department of Planning, Industry and Environment (DPIE), with oversight provided by an intergovernmental steering committee chaired by the Australian Government. The DPIE will deliver this program activity.
- development of a voluntary energy performance certification to cover the remaining 15 per cent of buildings not covered by NABERS rating tools;
 - While NABERS rating tools work well for sectors such as offices and hotels, there are some sectors where buildings are too variable for a rating tool to be viable. These buildings will be targeted by a voluntary energy performance certification instead. The DPIE will provide basic energy use information for these building owners, allowing them to establish a baseline understanding and take steps to reduce their energy use. The DPIE will deliver this program activity, with an oversight from the NABERS steering committee.
- expansion of the Nationwide House Energy Rating Scheme (NatHERS) to include whole-of-home assessments;
 - NatHERS (nathers.gov.au) is a star rating system (out of ten) that rates the energy efficiency of a new home based on its design. Currently, NatHERS provides an assessment and rating of a home's thermal performance based on the home's design, construction materials and the climate where it is being built. NatHERS is one of the pathways in the National Construction Code (NCC) to demonstrate compliance with minimum energy requirements.
 - Expansion of NatHERS to offer information and tools to assess and rate the energy performance of the whole home, including the energy performance of the appliances (heating and cooling appliances, hot water systems, lighting, and pool pumps), will enable least cost compliance with the future changes to energy efficiency provisions for residential buildings in the NCC (expected to commence in 2022). The department will deliver this program activity.
 - NatHERS is administered by the Australian Government on behalf of Energy Ministers and state and territory governments. NatHERS activities are overseen by a steering committee, which includes representatives from the Australian Government and all state and territory governments. The Australian Building Codes Board is responsible for implementing changes to the NCC, which take effect through state and territory regulations.
- delivery of a voluntary home energy rating scheme and energy efficiency disclosure framework for existing homes supported by extension of NatHERS to include existing home assessments; and

- NatHERS is currently used primarily for rating new homes. There are around nine million existing homes in Australia. Energy Ministers agreed to leverage NatHERS to deliver a home energy rating scheme for existing homes. They also agreed to establish a national framework for energy efficiency disclosure, which outlines the settings for disclosure schemes that can be adopted and implemented by states and territories. The department will deliver this program activity.
- encouraging building owners to replace old, inefficient heating, ventilation and air conditioning (HVAC) systems.
 - The department will engage expert engineering firms to provide energy assessments of HVAC systems in a target group of ageing mid-tier buildings. This activity will be targeted at building owners and technicians to support upgrading to more energy efficient systems and encouraging market growth for new HVAC technologies.

Government spending on the program activities will take the form of procurements of services such as reports and expert advice. Funding for NABERS related activities will be provided to the DPIE as financial assistance provided to a State in accordance with section 96 of the Constitution.

Procurement methods may involve open tender, limited tender and procurements from existing arrangements, with all activities conducted and reported in accordance with the *Public Governance, Performance and Accountability Act 2013* and the *Commonwealth Procurement Rules*. Procurement decisions will be made by delegates of the Secretary of the department, and information about open tenders and successful procurements will be available on AusTender (www.tenders.gov.au).

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 to a selected service provider 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?*).

Covered procurements under the program will be subject to the *Government Procurement (Judicial Review) Act 2018*.

Persons who are otherwise affected by decisions or who have complaints about the program will also have recourse to the department, which will investigate any complaints about the program in accordance with its complaints policy and procedures (www.industry.gov.au/about-us/contact-us/complaints-and-feedback). If a person is not satisfied with the way the department handles the complaint, they may lodge a complaint with the Commonwealth Ombudsman.

Consultation with relevant stakeholders will occur as part of the work on each program activity, including with industry, industry associations, consumer groups and government bodies. Consultation is ongoing for each program activity.

Comprehensive stakeholder consultation on the *Trajectory for Low Energy Buildings* was undertaken from 2017 to 2019. This included state and territory government officials, and the Trajectory Stakeholder Reference Group comprising over 500 stakeholders from industry, consumer groups and peak bodies.

For NatHERS related program activities, industry stakeholders who are part of the NatHERS Stakeholder Consultative Group and Technical Advisory Committee have been engaged regularly since September 2019. In relation to NABERS, the DPIE consults via sector specific advisory panels when developing new rating tools. Consultation for Your Home online platform occurs via a stakeholder consultative group.

Funding of \$52.2 million over five years from 2020-21 was included in the 2020-21 Budget under the measure ‘JobMaker Plan – investment in new energy technologies’, including \$28.2 million over four years from 2021-22 for the program. Details are set out in *Budget 2020-21, Budget Measures, Budget Paper No. 2 2020-21* at pages 118 to 119.

Funding of \$10.9 million in 2020-21 for the program was also included in the 2019-20 Mid-Year Economic and Fiscal Outlook under the measure ‘Energy and Emissions Reductions for Residential and Commercial Buildings’. 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 218.

Funding for this item will come from Program 3.1: Supporting Reliable, Secure and Affordable Energy, which is part of Outcome 3. Details are set out in the *Portfolio Budget Statements 2020-21, Budget Related Paper No. 1.9, Industry, Science, Energy and Resources Portfolio* at pages 70 to 71.

Noting that it is not a comprehensive statement of relevant constitutional considerations, the objective of the item references the following powers of the Constitution:

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

External affairs power

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

The *United Nations Framework Convention on Climate Change* [1994] ATS 2 (the UNFCCC) includes a range of obligations on Australia to take domestic actions that reduce Australia’s emissions of greenhouse gases.

The UNFCCC relevantly provides that Australia shall:

- formulate, implement, publish and regularly update national and, where appropriate, regional programs containing measures to mitigate climate change by addressing anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, and measures to facilitate adequate adaptation to climate change (Article 4.1(b));
- promote and cooperate in the development, application and diffusion of technologies, practices and processes that control, reduce or prevent anthropogenic emissions of

- greenhouse gases in all relevant sectors including energy, transport, industry, agriculture, forestry and waste management sectors (Article 4.1(c)); and
- 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)).

The *Kyoto Protocol to the United Nations Framework Convention on Climate Change* [2008] ATS 2 also includes obligations on Australia to take action to reduce emissions, such as Article 10(b). Article 10(b) imposes obligations to formulate, implement and report upon climate change mitigation and adaptation programs.

The *Paris Agreement* [2016] ATS 24 was entered into by the parties to the UNFCCC to enhance its implementation. Under the Paris Agreement, Australia has a ‘nationally determined contribution’ of a 2030 emissions reduction target of 26 to 28 per cent below 2005 levels. Relevantly, Article 4.2 of the Paris Agreement provides that ‘[e]ach Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions’.

Under the program, a broad range of building energy efficiency activities will be funded to reduce energy use and improve energy productivity which will deliver carbon abatement through reduced greenhouse gas emissions. This will result from actions in response to the building energy efficiency information, ratings and tools funded under the program. The reduced energy use supported by the program will therefore contribute to Australia’s obligations to reduce greenhouse gas emissions under these treaties.

Power to grant financial assistance to States

Section 96 of the Constitution empowers the Parliament to ‘grant financial assistance to any State on such terms and conditions as the Parliament thinks fit’.

Financial assistance may be provided under the program to state governments.

Territories power

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

Financial assistance may be provided under the program to territory governments.

New **table item 452** establishes legislative authority for government spending on the Technology Co-Investment Fund (the Fund), which will support activities that reduce energy use, improve knowledge sharing, increase energy productivity (which essentially means doing more using the same or less energy), and deliver carbon abatement in the industrial, transport and agricultural sectors.

The Fund is part of the Government’s \$1.9 billion investment package in future technologies to lower greenhouse gas emissions, which would support jobs, cut costs for households and improve the reliability of Australia’s energy supply. The package was jointly announced by the Prime Minister, the Hon Scott Morrison MP, and the Minister for Energy and Emissions

Reduction, the Hon Angus Taylor MP, on 17 September 2020 (media release is available at <https://www.pm.gov.au/media/investment-new-energy-technologies>).

The Fund is a central element of the Australian Government response to the *Final Report of the Expert Panel examining additional sources of low-cost abatement* (the King Review), which identified significant barriers that severely limit the capacity for businesses to reduce emissions in sectors such as transport, agriculture and manufacturing. These barriers include a lack of knowledge about cost effective abatement activities; a lack of knowledge about carbon markets; a lack of trust in the parties offering information; and a lack of access to carbon markets due to the cost of participation. The King Review also recommended the establishment of a goal-oriented technology co-investment program to accelerate the uptake of transformative, high abatement potential technologies that are not currently cost effective (recommendation 10.1).

The department has undertaken preliminary consultation with stakeholders in the early stages of developing the policy proposal for the Fund. During 2019, the King Review conducted targeted consultation with the industrial, manufacturing, transport and agricultural sectors, and energy efficiency stakeholders. Submissions were received by the King Review from more than 50 industry, research and non-government organisations and informed the review recommendations. Details of consultation for activities to be administered by the department are set out below as part of the description of relevant components of the Fund.

Grant funding will be provided by the Australian Renewable Energy Agency (ARENA) under the *Australian Renewable Energy Agency Act 2011* for some aspects of the Fund, while the department will be responsible for the following components to be authorised through new table item 452:

- industrial and energy productivity benchmarks;
- transport fuel efficiency; and
- soil carbon and livestock emissions.

Industrial and energy productivity benchmarks

The industrial and energy productivity benchmarks will enable manufacturing, construction and agricultural sectors, as well as gas intensive industrial sectors, to identify energy waste in their processes and facilities, and make changes to save money and energy. The benchmarks will be developed through up to 15 procurement processes in a user friendly, digital format. They will have nationwide coverage, be freely available on the departmental website, and rely on accessible business information. Funding of \$5.6 million over four years from 2020-21 will be available for this component, with \$3.7 million for procuring the benchmarks and \$1.9 million for hosting and maintaining the benchmarks.

All procurement processes to be administered by the department under the Fund 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* (CPRs). The procurement method is expected to be through either a whole-of-government panel arrangement or another existing panel arrangement. An assessment panel will make recommendations to the relevant delegate of the Secretary of the department, who will make decisions about successful suppliers to deliver the benchmarks. Information regarding the decisions will be made publicly available on AusTender at www.tenders.gov.au, in accordance with the requirements under the CPRs.

The department conducted consultation with energy intensive industries and industry bodies as part of the Barriers to Industrial Energy Efficiency consultancy. This involved targeted interviews with company executives and energy managers representing the top 60 industry energy users, who account for 50 per cent of energy used in Australia.

Transport fuel efficiency

The transport fuel efficiency component will provide road freight operators with verified information on energy and emissions reduction opportunities available in the freight sector, in order to increase investment in energy efficient freight technologies.

Among other activities, this component will involve the following two procurements:

- design of a webpage to provide objective, verified information on energy use and emissions reduction opportunities available in the freight sector; and
- development of a voluntary fuel efficiency certification system for freight operators.

The development of the webpage will occur in 2021-22, with ongoing costs for the maintenance of the webpage over the following years until 2025-26. The voluntary certification system will be developed through a consultancy in 2021-22. These activities will have nationwide coverage. The target group is the Australian road freight industry, including specialised transport operators, large businesses such as supermarkets or mining businesses who operate their own fleets, and small business owner operators. Funding of \$0.5 million over five years from 2021-22 will be available for these activities to be authorised through new table item 452, out of the total funding of \$4 million over six years from 2020-21 for the component.

The procurement method is expected to be through either a whole-of-government panel arrangement or another existing panel arrangement. Information about the procurements will be available through the Request for Quote, consistent with the CPRs. An assessment panel will make recommendations to the relevant delegate of the Secretary of the department, who will make decisions about successful suppliers, considering the best value for money. Information regarding the decisions will be made publicly available on AusTender, in accordance with the requirements under the CPRs.

The department consulted with industry through the Smart Trucks consultancy. This involved a technical reference group, including members of industry groups such as the Truck Industry Council, Heavy Vehicle Industry Australia and the Bus Industry Confederation, and a field test group, including vehicle manufacturers such as Volvo and Tesla.

Soil carbon and livestock emissions

Total funding of \$14 million over five years from 2020-21 will be available for this component, which consists of:

- the soil carbon program; and
- the livestock emissions reduction program.

The component will provide funding to collect data that demonstrates emissions reductions following the implementation of new abatement technologies that increase soil carbon sequestration and reduce methane emissions from livestock. This data will be used to

measure and model changes resulting from the use of new technologies and management practices and provide improved accounting frameworks that will encourage an increase in uptake of these agricultural technologies and practices, including through the Emissions Reduction Fund (ERF). The ERF is a government scheme that provides financial incentives to businesses, including farmers and landholders, to use new practices and technologies to reduce their greenhouse gas emissions. Participants in the scheme can earn Australian carbon credit units (ACCUs) for every tonne of carbon dioxide equivalent they store or avoid emitting. ACCUs can be sold and can generate participants an income.

Soil carbon program

Data collection needs will be identified through the engagement of an expert consultant. The soil carbon program will be delivered through procuring the services of consortium members comprising industry, research and potentially state and territory government partners. The program will include collection of soil sample data over a period of four years from 2021-22 from identified sites across Australia to measure the impact of management activities. It will also include analysis of data and contribute to developing simpler, cheaper approaches to estimate soil carbon. Allocated funding will vary between consortium members depending on their expertise and capacity to deliver the required services (for example, coordinating soil carbon measurement collection or analysis, or engaging with landholders). Data and analysis will be used to support innovative approaches to estimate soil carbon sequestration for application in national greenhouse gas accounts and future ERF methodologies.

The procurement method is expected to be through an existing panel arrangement, limited or open tender process, as appropriate. Eligibility for participation in the program will be subject to expertise and the identified data requirements. An assessment panel will make recommendations to the relevant delegate of the Secretary of the department, who will make procurement decisions. Information regarding the decisions will be made publicly available on AusTender, in accordance with the requirements under the CPRs.

Livestock emissions reduction program

The livestock emissions reduction program will be delivered through a grant to an industry partner who will engage with grazing and feedlot producers, researchers and industry to collect data that will allow the development of an accounting framework for use in the national inventory and potential future ERF methods. The program will build capacity of livestock businesses including feedlots to move to using low emissions forage feeds and supplements. The selected industry partner will identify participant groups and emissions reduction technologies that can provide data to fill known research gaps.

The grant to the industry partner will be administered by the Business Grants Hub, which is part of the department, in accordance with the Commonwealth resource management framework including the *Commonwealth Grants Rules and Guidelines 2017* (CGRGs). The relevant delegate of the Secretary of the department will make decisions about the successful grant recipient. The industry partner will be responsible for providing support to livestock producers and researchers to use methane reducing feeds and supplements and undertake data collection. Grant opportunity guidelines for the selection of an industry partner, including eligibility criteria and evaluation information, and information about the grant awarded will be published on GrantConnect at www.grants.gov.au.

The department has conducted extensive consultation with a range of stakeholders on the data needs for soil carbon and methane reduction from livestock, and these knowledge gaps will be addressed through these programs. Targeted consultation on the development and implementation of these programs commenced in October 2020. Industry representative groups and experts will be engaged to advise and deliver the programs.

Funding decisions made in connection with the Fund are not considered suitable for independent merits review because these decisions relate to the allocation of finite resources between competing applicants, and any decision to overturn an allocation that has already been made to a party would be 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?*).

Covered procurements will be subject to the *Government Procurement (Judicial Review) Act 2018*.

In addition, the review and audit process undertaken by the Australian National Audit Office provides a mechanism to review Australian 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 be available. Persons affected by spending decisions would also have recourse to the Commonwealth Ombudsman where appropriate.

Funding of \$95.4 million for the Fund was included in the 2020-21 Budget under the measure ‘JobMaker Plan – investment in new energy technologies’ for a period of six years commencing in 2020-21. This includes funding of 20.1 million over six years from 2020-21 for the activities to be authorised through new table item 452. Details are set out in *Budget 2020-21, Budget Measures, Budget Paper No. 2 2020-21* at pages 118 to 119.

Funding for this item will come from Program 2.1: Reducing Australia’s Greenhouse Gas Emissions, which is part of Outcome 2. Details are set out in the *Portfolio Budget Statements 2020-21, Budget Related Paper No. 1.9, Industry, Science, Energy and Resources Portfolio* at page 61.

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).

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

The *United Nations Framework Convention on Climate Change* [1994] ATS 2 (the UNFCCC) includes a range of obligations on Australia to take domestic actions that reduce Australia’s emissions of greenhouse gases.

The UNFCCC relevantly provides that Australia shall:

- formulate, implement, publish and regularly update national and, where appropriate, regional programs containing measures to mitigate climate change by addressing anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, and measures to facilitate adequate adaptation to climate change (Article 4.1(b));
- promote and cooperate in the development, application and diffusion of technologies, practices and processes that control, reduce or prevent anthropogenic emissions of greenhouse gases in all relevant sectors including energy, transport, industry, agriculture, forestry and waste management sectors (Article 4.1(c)); and
- 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)).

The *Kyoto Protocol to the United Nations Framework Convention on Climate Change* [2008] ATS 2 also includes obligations on Australia to take action to reduce emissions, such as Article 10(b). Article 10(b) imposes obligations to formulate, implement and report upon climate change mitigation and adaptation programs.

The *Paris Agreement* [2016] ATS 24 was entered into by the parties to the UNFCCC to enhance its implementation. Under the Paris Agreement, Australia has a ‘nationally determined contribution’ of a 2030 emissions reduction target of 26 to 28 per cent below 2005 levels. Relevantly, Article 4.2 of the Paris Agreement provides that ‘[e]ach Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions’.

Under the Fund, a range of businesses, organisations and activities in the industrial, transport and agricultural sectors will be funded to reduce energy use, improve energy productivity or reduce direct emissions, which will deliver carbon abatement through reduced greenhouse gas emissions. The Fund will involve both directly funding certain activities that reduce emissions and funding information, such as benchmarking, which results in actions to reduce emissions. The support for soil sampling will also further method development and abatement under the *Carbon Credits (Carbon Farming Initiative) Act 2011*. The reduced energy use and emissions supported by the Fund will therefore contribute to Australia’s obligations to reduce greenhouse gas emissions under these treaties.

New **table item 453** establishes legislative authority for government spending on the Hydrogen Export Hub Program (the program).

The program will support growth of Australia’s hydrogen industry and stimulate domestic and international demand for hydrogen (and its derivatives, such as ammonia) through the establishment of hydrogen export supply chains and the activation of a hydrogen export hub (a region where various hydrogen users and exporters are co-located) that will supply to at least one partner country. The program will also provide funding to enable international research collaboration, undertake supply chain feasibility studies, and support safety training for emergency services personnel.

The program is part of the Government’s \$1.9 billion investment package in future technologies to lower greenhouse gas emissions, which would support jobs, cut costs for

households and improve the reliability of Australia's energy supply. The package was jointly announced by the Prime Minister, the Hon Scott Morrison MP, and the Minister for Energy and Emissions Reduction, the Hon Angus Taylor MP, on 17 September 2020 (media release is available at <https://www.pm.gov.au/media/investment-new-energy-technologies>).

The former Council of Australian Governments (COAG) Energy Council's *Australia's National Hydrogen Strategy* (the Strategy) sets a vision for Australia to be a global clean hydrogen powerhouse. The Strategy identifies the creation of hubs as the most efficient and effective approach to bring Australia's hydrogen industry to scale and bring down the costs of production. Hubs will provide a focal point for developing supply chains and infrastructure cost effectively. Grouping demand will promote efficiencies from economies of scale, foster innovation, increase workforce skills development, and enable new ways of linking energy systems, with efficiencies and advantages for users and the environment. The Strategy is available at <https://www.industry.gov.au/data-and-publications/australias-national-hydrogen-strategy>.

Hubs will also support the Government's goal of achieving hydrogen production at under \$2 per kilogram established through the first *Low Emissions Technology Statement* (the Statement) in the *Technology Investment Roadmap*. Reaching this goal will require a focus on scaling up quickly and cost effectively. By achieving scale, fixed expenditure can be spread over larger volumes of supply, lowering hydrogen costs and unlocking new sources of demand. The Statement, which was prepared with advice from the Ministerial Reference Panel chaired by Australia's Chief Scientist, Dr Alan Finkel AO, is available at <https://www.industry.gov.au/data-and-publications/technology-investment-roadmap-first-low-emissions-technology-statement-2020>.

The program will support the following activities:

- international research and development relevant to hydrogen technologies, hydrogen industry expansion and export supply chains to stimulate research connections, collaboration and knowledge sharing;
- pilots, trials and demonstrations of the production, transport, storage, transformation and use of hydrogen to stimulate industry growth and accelerate its market uptake;
- supply chain feasibility studies for supply of hydrogen to emerging hydrogen markets;
- the creation of a regional hub, which will stimulate domestic demand and advance the development of international supply chains with at least one key hydrogen bilateral trading partner; and
- training for emergency services personnel to ensure safety for industry development.

These activities will support industry development along the supply chain and complement funding provided to the industry to support commercial scale deployment of renewable hydrogen production in Australia by the Australian Renewable Energy Agency and the Clean Energy Finance Corporation.

The program will offer funding for the hub project, research collaborations and supply chain studies through open competitive grant processes which will be delivered by the department, mostly through the Business Grants Hub which is also part of the department, 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*.

Selection for the hub project and its location will follow a competitive expression of interest (EOI) process that calls for an Australian consortium that can meet the requirements of a hub. The consortium will comprise Australian private sector industry organisations that will come together to create anchor hub projects. It will be expected to develop a regional hub that will support an international hydrogen supply chain with at least one partner country. The selection method for one or more partner countries will be determined following the program design.

From the EOI, a shortlist will be developed of suitable applicants, which will be invited to submit a full application before proceeding to final selection. The shortlist will be determined by a panel made up of departmental officials. Final selection and funding decisions in relation to the hub project will be made by the Minister for Energy and Emissions Reduction. Grant opportunity guidelines and information about successful applicants will be made available on GrantConnect at www.grants.gov.au, and the grant process will be administered by the Business Grants Hub in accordance with the requirements under the CGRGs.

Grant funding for research collaborations will be provided to Australian research institutions who can undertake hydrogen research through an open competitive selection process administered by the Business Grants Hub. The selection method for international research collaboration partners will be determined following the program design, based on Australia's strategic interests for international hydrogen trade. Decisions in relation to grant funding for research collaborations will be made by a delegate of the Secretary of the department.

Grant funding for supply chain feasibility studies will be provided to a consortium comprising Australian industry and research partners that will form the Australian partners for an international study with a partner country. The selection of grant recipients will be conducted via an open competitive grant process. Grants for all but one of the studies will be administered by the Business Grants Hub (with the one exception to be administered by the department), and may include the establishment of a cross-agency assessor panel. Decisions in relation to grant funding for supply chain feasibility studies will be made by a delegate of the Secretary of the department. Grant opportunity guidelines and information about successful applicants for research collaborations and supply chain feasibility studies will be made available on GrantConnect at www.grants.gov.au, in accordance with the requirements under the CGRGs.

Funding will also be provided to state and territory governments to support safety training for their emergency services personnel. Emergency services bursaries made under the program will be in the form of one-off grants either to states and territories or directly to emergency services agencies (police, fire and ambulance) as determined by the relevant state or territory government. The bursary will enable emergency services personnel to travel to the United States of America for training delivered by the Center for Hydrogen Safety. Each state or territory will receive \$6,000 per year for two nominated people (each person will receive a \$3,000 bursary). Total expenditure therefore amounts to \$144,000 for eight jurisdictions for three years from 2020-21.

Emergency services bursaries funding will be provided to states and territories by the department. These grants will not be competitive and will be provided equitably across states and territories. Decisions in relation to emergency services bursaries will be made by a delegate of the Secretary of the department. The jurisdictions will determine how they

provide the allocated funds to recipients as funding from the Commonwealth is only part of the cost of the personnel training. As these will not be competitive grants, there will be no grant opportunity guidelines.

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 finite resources between competing applicants, and any decision to overturn an allocation that has already been made to a party would be 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?*).

In addition, the review and audit process undertaken by the Australian National Audit Office provides a mechanism to review Australian 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 be available. Persons affected by spending decisions would also have recourse to the Commonwealth Ombudsman where appropriate.

Stakeholder consultation was conducted as part of the development of the Strategy, which was published in November 2019. The Strategy outlines the intentions of the Australian Government towards building a large scale, globally competitive hydrogen industry in Australia. The Strategy also identifies early actions for industry development, which include the creation of hubs, development of supply chains, and research and development activities to support technology deployment and industry growth. Consultation was undertaken with community representatives with an interest in the development of the hydrogen industry, including business organisations and peak bodies, corporations, academics, government representatives and officials, community members and representatives. Stakeholder feedback was broadly supportive of the proposed activities under the program.

Community education and consultation is also proposed to be undertaken to support the development of a hydrogen hub. Consultants will be engaged to undertake consultation, with an exact approach to be determined at a later date.

Funding for the development of a technology neutral regional hydrogen export hub of \$70.2 million over five years from 2020-21 was included in the 2020-21 Budget under the measure ‘JobMaker Plan – investment in new energy technologies’. Details are set out in *Budget 2020-21, Budget Measures, Budget Paper No. 2 2020-21* at pages 118 to 119.

Funding of \$13.4 million over four years from 2019-20 was also included in the 2019-20 Mid-Year Economic and Fiscal Outlook under the measure ‘Measures to Support the National Hydrogen Strategy’. This includes funding for supply chain feasibility studies of \$3.6 million over four years from 2019-20, and funding for emergency services bursaries of \$144,000 over three years from 2020-21. Details are set out in the *Mid-Year Economic and Fiscal Outlook 2019-20, Appendix A: Policy decisions taken since the 2019 PEFO* at pages 220 to 221.

Funding for this item will come from Program 2.1: Reducing Australia's Greenhouse Gas Emissions, which is part of Outcome 2. Details are set out in the *Portfolio Budget Statements 2020-21, Budget Related Paper No. 1.9, Industry, Science, Energy and Resources Portfolio* at page 61.

Noting that it is not a comprehensive statement of relevant constitutional considerations, the objective of the item references the following powers of the Constitution:

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

Trade and commerce power

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

Many of the activities to be funded under the program are directly related to promoting international trade in hydrogen, through export hubs and international hydrogen supply chains. Interstate trade in hydrogen is also likely to be supported.

External affairs power

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

The *United Nations Framework Convention on Climate Change* [1994] ATS 2 (the UNFCCC) includes a range of obligations on Australia to take domestic actions that reduce Australia's emissions of greenhouse gases.

The UNFCCC relevantly provides that Australia shall:

- formulate, implement, publish and regularly update national and, where appropriate, regional programs containing measures to mitigate climate change by addressing anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, and measures to facilitate adequate adaptation to climate change (Article 4.1(b));
- promote and cooperate in the development, application and diffusion of technologies, practices and processes that control, reduce or prevent anthropogenic emissions of greenhouse gases in all relevant sectors including energy, transport, industry, agriculture, forestry and waste management sectors (Article 4.1(c)); and
- 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)).

The *Kyoto Protocol to the United Nations Framework Convention on Climate Change* [2008] ATS 2 also includes obligations on Australia to take action to reduce emissions, such as Article 10(b). Article 10(b) imposes obligations to formulate, implement and report upon climate change mitigation and adaptation programs.

The *Paris Agreement* [2016] ATS 24 was entered into by the parties to the UNFCCC to enhance its implementation. Under the *Paris Agreement*, Australia has a ‘nationally determined contribution’ of a 2030 emissions reduction target of 26 to 28 per cent below 2005 levels. Relevantly, Article 4.2 of the *Paris Agreement* provides that ‘[e]ach Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions’. The *Paris Agreement* also includes an obligation in Article 10.2 to ‘strengthen cooperative action on technology development and transfer’.

Under the program, a range of activities and businesses related to hydrogen production, hydrogen demand, hydrogen export supply chains and a hydrogen export hub will be supported, with consequential increased use of clean hydrogen both in Australia and overseas. The use of hydrogen would displace higher emissions fossil fuel use and contribute to reducing emissions in Australia and overseas where exported hydrogen is used there. The reduced emissions resulting from the program in Australia will therefore contribute to Australia’s obligations to reduce greenhouse gas emissions under these treaties. Other activities related to technology development and transfer and overseas emissions reductions will contribute to other obligations under these treaties, such as Article 10.2 of the *Paris Agreement*.

The external affairs power also supports legislation with respect to matters or things outside the geographical limits of Australia. Aspects of this program will support activities outside Australia necessary to develop international supply chains for hydrogen production.

Power to grant financial assistance to States

Section 96 of the Constitution empowers the Parliament to ‘grant financial assistance to any State on such terms and conditions as the Parliament thinks fit’.

Financial assistance may be provided under the program to state governments.

Territories power

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

Financial assistance may be provided under the program to territory governments.

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. 2) Regulations 2020

This disallowable legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

Section 32B of the *Financial Framework (Supplementary Powers) Act 1997* (the FF(SP) Act) authorises the Commonwealth to make, vary and administer arrangements and grants specified in the *Financial Framework (Supplementary Powers) Regulations 1997* (the FF(SP) Regulations) and to make, vary and administer arrangements and grants for the purposes of programs specified in the FF(SP) 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 (Industry, Science, Energy and Resources Measures No. 2) Regulations 2020* amend Schedule 1AB to the FF(SP) Regulations to establish legislative authority for government spending on certain activities that will be administered by the Department of Industry, Science, Energy and Resources (the department).

This instrument:

- adds table item 450 in Part 4 of Schedule 1AB for the Powering Communities Program;
- adds table item 451 in Part 4 of Schedule 1AB for the Building Energy Efficiency Program;
- adds table item 452 in Part 4 of Schedule 1AB for the Technology Co-Investment Fund; and
- adds table item 453 in Part 4 of Schedule 1AB for the Hydrogen Export Hub Program.

Table item 450 – Powering Communities Program

Table item 450 establishes legislative authority for government spending on the Powering Communities Program (the program).

The program will provide grant funding to support not-for-profit community organisations improve their energy efficiency practices and technologies and better manage energy use to adjust to rising energy prices through:

- upgrading equipment to reduce energy use;
- undertaking energy management activities and assessments, such as energy systems assessments and feasibility studies;

- investing in energy monitoring and management systems; and
- investing in on-site renewable energy and solar-connected batteries.

Grant funding of \$10.2 million in 2021-22 will be offered under a closed non-competitive grant opportunity. An equal amount of funding will be available in every federal electorate, from which a maximum number of 12 grants (of between \$5,000 to \$12,000) can be awarded, with no co-contributions required. Members of Parliament will be strongly encouraged to consult their community to identify and nominate projects in their electorates that support the objectives of the program and are consistent with the eligibility criteria for applicants and projects as set out in the grant opportunity guidelines which will be made publicly available. These project proponents will be invited to submit a grant application to AusIndustry, a division within the department which administers the Business Grants Hub.

Not-for-profit community organisations eligible for nomination by their local Member of Parliament will include Men's Sheds, community owned kindergartens, welfare centres, community centres, women's associations, community owned childcare centres, community football and netball clubs, Scout or Guide groups, Aboriginal or Torres Strait Islander community groups, and surf life saving clubs.

Human rights implications

Table item 450 does not engage any of the applicable rights or freedoms.

Conclusion

Table item 450 is compatible with human rights as it does not raise any human rights issues.

Table item 451 – Building Energy Efficiency Program

Table item 451 establishes legislative authority for government spending on the Building Energy Efficiency Program (the program).

Building energy efficiency provides one of the least cost abatement options to support Australia's greenhouse gas emissions reduction efforts, delivering up to 45 million tonnes in emissions reductions by 2030. Australian households are responsible for around 24 per cent of Australia's electricity use and 12 per cent of Australia's greenhouse gas emissions. The commercial building sector is responsible for around 25 per cent of Australia's electricity use and 10 per cent of Australia's greenhouse gas emissions.

The program is part of the Government's \$1.9 billion investment package in future technologies to lower greenhouse gas emissions, which would support jobs, cut costs for households and improve the reliability of Australia's energy supply. The program will address information barriers in relation to energy efficiency identified in the *Report of the Expert Panel examining additional sources of low cost abatement* (the King Review). The program will also support the implementation of the former Council of Australian Governments (COAG) Energy Council's *Trajectory for Low Energy Buildings*.

The program aims to reduce energy use, improve energy productivity and deliver carbon abatement in buildings through the following activities:

- development of best practice information, training resources and tools to improve the energy efficiency and performance of residential and commercial buildings, which will enable greater consumer choice and increase skills in the industry;
- expansion of the National Australian Built Environment Rating System (NABERS);
- development of a voluntary energy performance certification to cover the remaining 15 per cent of buildings not covered by NABERS rating tools;
- expansion of the Nationwide House Energy Rating Scheme (NatHERS) to include whole-of-home assessments;
- delivery of a voluntary home energy rating scheme and energy efficiency disclosure framework for existing homes supported by extension of NatHERS to include existing home assessments; and
- encouraging building owners to replace old, inefficient heating, ventilation and air conditioning (HVAC) systems.

The target group for the program is industry (including builders, designers and managers of both residential and commercial buildings) and consumers (including building owners).

Human rights implications

Program activities that relate to residential building standards, ratings and disclosure engage positively with the right to an adequate standard of living in Article 11(1) of the *International Covenant on Economic, Social and Cultural Rights* (the ICESCR), read with Article 2 of the ICESCR, including food, water and housing by providing a basis to measure and improve the efficiency and comfort of housing.

Article 11(1) of the ICESCR provides that States Parties to the ICESCR ‘recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions ...’.

Pursuant to Article 2(1), each State Party to the ICESCR is required to ‘take steps ... to the maximum of its available resources, with a view to achieving progressively the full realization’ of this right by all appropriate means, including particularly the adoption of legislative measures.

Table item 451 does not limit any of the applicable rights or freedoms, which are set out in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The program will be conducted in accordance with existing legal and human rights frameworks. It is not anticipated that government spending to reduce energy use, improve energy productivity and deliver carbon abatement in buildings in Australia will require an amendment to any existing human rights laws in Australia or overseas.

Conclusion

Table item 451 is compatible with human rights as it engages positively with human rights.

Table item 452 – Technology Co-Investment Fund

Table item 452 establishes legislative authority for government spending on the Technology Co-Investment Fund (the Fund), which will support activities that reduce energy use, improve knowledge sharing, increase energy productivity (which essentially means doing more using

the same or less energy), and deliver carbon abatement in the industrial, transport and agricultural sectors.

The Fund is a central element of the Australian Government response to the *Final Report of the Expert Panel examining additional sources of low-cost abatement* (the King Review), which identified significant barriers that severely limit the capacity for businesses to reduce emissions in sectors such as transport, agriculture and manufacturing. These barriers include a lack of knowledge about cost effective abatement activities; a lack of knowledge about carbon markets; a lack of trust in the parties offering information; and a lack of access to carbon markets due to the cost of participation. The King Review also recommended the establishment of a goal-oriented technology co-investment program to accelerate the uptake of transformative, high abatement potential technologies that are not currently cost effective (recommendation 10.1).

The department will be responsible for the following components of the Fund to be authorised through table item 452:

- industrial and energy productivity benchmarks;
- transport fuel efficiency; and
- soil carbon and livestock emissions.

Industrial and energy productivity benchmarks

The industrial and energy productivity benchmarks will enable manufacturing, construction and agricultural sectors, as well as gas intensive industrial sectors, to identify energy waste in their processes and facilities, and make changes to save money and energy. The benchmarks will be developed through up to 15 procurement processes in a user friendly, digital format. They will have nationwide coverage, be freely available on the departmental website, and rely on accessible business information.

Transport fuel efficiency

The transport fuel efficiency component will provide road freight operators with verified information on energy and emissions reduction opportunities available in the freight sector, in order to increase investment in energy efficient freight technologies.

Among other activities, this component will involve the following two procurements:

- design of a webpage to provide objective, verified information on energy use and emissions reduction opportunities available in the freight sector; and
- development of a voluntary fuel efficiency certification system for freight operators.

Soil carbon and livestock emissions

This component will consist of the soil carbon program and the livestock emissions reduction program, and provide funding to collect data that demonstrates emissions reductions following the implementation of new abatement technologies that increase soil carbon sequestration and reduce methane emissions from livestock. This data will be used to measure and model changes resulting from the use of new technologies and management practices and provide improved accounting frameworks that will encourage an increase in uptake of these agricultural technologies and practices, including through the Emissions Reduction Fund (ERF). The ERF is a government scheme that provides financial incentives

to businesses, including farmers and landholders, to use new practices and technologies to reduce their greenhouse gas emissions. Participants in the scheme can earn Australian carbon credit units (ACCUs) for every tonne of carbon dioxide equivalent they store or avoid emitting. ACCUs can be sold and can generate participants an income.

Human rights implications

Table item 452 does not engage any of the applicable human rights or freedoms.

Conclusion

Table item 452 is compatible with human rights as it does not raise any human rights issues.

Table item 453 – Hydrogen Export Hub Program

Table item 453 establishes legislative authority for government spending on the Hydrogen Export Hub Program (the program).

The program will support growth of Australia's hydrogen industry and stimulate domestic and international demand for hydrogen (and its derivatives, such as ammonia) through the establishment of hydrogen export supply chains and the activation of a hydrogen export hub (a region where various hydrogen users and exporters are co-located) that will supply to at least one partner country. The program will also provide funding to enable international research collaboration, undertake supply chain feasibility studies, and support safety training for emergency services personnel.

The former Council of Australian Governments (COAG) Energy Council's *Australia's National Hydrogen Strategy* (the Strategy) sets a vision for Australia to be a global clean hydrogen powerhouse. The Strategy identifies the creation of hubs as the most efficient and effective approach to bring Australia's hydrogen industry to scale and bring down the costs of production.

The program will support the following activities:

- international research and development relevant to hydrogen technologies, hydrogen industry expansion and export supply chains to stimulate research connections, collaboration and knowledge sharing;
- pilots, trials and demonstrations of the production, transport, storage, transformation and use of hydrogen to stimulate industry growth and accelerate its market uptake;
- supply chain feasibility studies for supply of hydrogen to emerging hydrogen markets;
- the creation of a regional hub, which will stimulate domestic demand and advance the development of international supply chains with at least one key hydrogen bilateral trading partner; and
- training for emergency services personnel to ensure safety for industry development.

These activities will support industry development along the supply chain and complement funding provided to the industry to support commercial scale deployment of renewable hydrogen production in Australia by the Australian Renewable Energy Agency and the Clean Energy Finance Corporation.

Human rights implications

Table item 453 does not limit any of the applicable rights or freedoms, which are set out in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Program activities will not directly affect human rights of any individual in a positive or negative way. These economic activities will be conducted in accordance with existing legal and human rights frameworks. It is not anticipated that government spending to support growth of Australia's hydrogen industry will require an amendment to any existing human rights laws in Australia or overseas.

Conclusion

Table item 453 is compatible with human rights as it does not raise any human rights issues.

**Senator the Hon Simon Birmingham
Minister for Finance**