

## EXPLANATORY STATEMENT

### **Issued by the Authority of the Minister for Finance**

*Financial Framework (Supplementary Powers) Act 1997*

*Financial Framework (Supplementary Powers) Amendment  
(Agriculture, Water and the Environment Measures No. 2) Regulations 2021*

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. 2) Regulations 2021* (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 Underwater Cultural Heritage Program, which will provide grants of financial assistance to each state and the Northern Territory to protect and conserve Australia's underwater cultural heritage (\$510,000 a year through three-year service level agreements);
- the Indigenous Rangers Biosecurity Program to support increased economic opportunities for Indigenous persons, entities and communities through activities that enhance biosecurity outcomes in northern Australia (\$25.3 million over three years from 2020-21); and
- the Indigenous Rangers Coastal Clean-Ups Project to support increased economic opportunities for Indigenous persons, entities and communities through activities that protect biodiversity and preserve natural habitat in northern Australia (up to \$14.8 million over four 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. 2) Regulations 2021***

**Section 1 – Name**

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Agriculture, Water and the Environment Measures No. 2) Regulations 2021*.

**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 three 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 477** establishes (and renews) legislative authority for the Underwater Cultural Heritage Program (UCHP), which provides grants of financial assistance to each state and the Northern Territory to protect and preserve Australia's underwater cultural heritage (UCH). The protected UCH includes shipwrecks, sunken aircraft and other submerged UCH sites, along with individual artefacts associated with these sites.

The UCHP, a longstanding program which was previously known as the Historic Shipwrecks Program, commenced in 1983 to facilitate the Commonwealth's coordination of the delivery of day-to-day functions delegated under the *Historic Shipwrecks Act 1976* (HS Act) to the states, Northern Territory and Norfolk Island. On 1 July 2019, the HS Act was repealed and replaced by the *Underwater Cultural Heritage Act 2018* (the UCH Act) and the Historic Shipwrecks Program was renamed the UCHP.

The delegated and cooperative administration of the UCH Act ensures that historic shipwrecks, submerged aircraft and other UCH sites are managed in a consistent manner which better protects the property rights of the Commonwealth, the rights of other legal owners of shipwrecks, submerged aircraft and other UCH sites and the international shared heritage interests of other nations.

New table item 477 establishes legislative authority for government spending in relation to:

- grants of financial assistance to states and territories;
- grants of financial assistance to states and territories to provide funding to the Australasian Institute for Maritime Archaeology Incorporated (AIMA);
- grants of financial assistance to states and territories to provide funding for UCH activities at Norfolk Island; and
- UCH outside the Australian jurisdiction.

#### *Grants to states and territories*

The UCHP provides annual funding to states and the Northern Territory to enable them to administer statutory functions under the UCH Act, such as issuing permits to persons engaging with UCH, reporting on discovery of UCH and maintaining a publicly available database of UCH in Australia.

This annual funding also covers other related activities which are not provided for in the UCH Act. Such activities include day-to-day management, protection and research of UCH which is protected under the UCH Act, and promoting public awareness of Australia's UCH.

The states and the Northern Territory undertake these activities within Australian waters adjacent to their coasts, the Commonwealth is responsible for the same activities in Australia's external territories (such as the Coral Sea Islands territory, Christmas Island and the Coco Keeling Islands). The Commonwealth is also responsible for Australia's UCH located outside Australian waters including sunken military vessels and aircraft, and the general administration of the UCH Act including the coordination of compliance and enforcement activities.

New table item 477 provides legislative authority for funding to states and the Northern Territory to support the following activities, which are not included in the UCH Act:

- the identification, protection and conservation of Australia's UCH, including:
  - the inspection, survey, excavation and/or conservation of protected sites;
  - the purchase of vessels, vehicles, equipment and services necessary to carry out the inspection, survey and/or conservation of protected sites; and
  - the conservation, storage and display of artefacts associated with protected sites;
- the cooperative implementation of national and international maritime heritage responsibilities; and
- promotion of public awareness, understanding, appreciation and appropriate use of Australia's UCH, including support for education, publication and research concerning protected sites and associated artefacts.

Other related activities may also be funded by mutual agreement between the parties such as collaborative national priority projects on particular thematic issues (for example, submerged

Indigenous heritage or Australia's World War II submerged heritage) or methodological projects (for example, developing protocols to facilitate the rapid excavation and reburial of protected shipwrecks to facilitate development).

The current breakdown of annual funding provided to states and the Northern Territory is as follows:

- \$71,000 to New South Wales;
- \$60,000 to the Northern Territory;
- \$74,000 to South Australia;
- \$60,000 to Tasmania;
- \$71,000 to Queensland;
- \$71,000 to Victoria; and
- \$71,000 to Western Australia.

#### *Grants to states and territories to provide to AIMA*

In the past, states and the Northern Territory have agreed to allocate a portion of their funding to AIMA to promote public awareness and understanding of UCH. AIMA is a national incorporated non-government organisation that advocates for the protection of UCH and promotes ethical standards around the handling of UCH.

A grant of \$12,000 per annum for the purposes of continuing to support AIMA's activities, will be provided to Victoria to host the AIMA annual conference, commencing in 2020-21. Ongoing arrangements will be reviewed. The funding is intended to assist AIMA in promoting public awareness of UCH by delivering an international conference in person or online, and publishing newsletters and a peer reviewed journal.

#### *Grants to states and territories to provide to Norfolk Island*

The UCHP will provide \$20,000 per annum over three years to a state or territory to support UCH activities in Norfolk Island, commencing in 2020-21. The purpose of this funding will be to support the Norfolk Island Museum to have a central ongoing role in the Norfolk Island community in the documentation, protection, interpretation, conservation and display of UCH in Norfolk Island.

Norfolk Island has many significant UCH sites including the remains of the First Fleet flagship, HMS *Sirius*. The protected artefacts from the *Sirius* and other UCH sites are housed and conserved at the Norfolk Island Museum. Norfolk Island has received annual funding in the past as a self-governing territory of Australia.

#### *UCH outside the Australian jurisdiction*

The UCHP may also provide limited direct funding for the conservation and preservation of Australian UCH outside Australian jurisdiction, such as sunk military vessels and aircraft. The capacity to give money on a project basis for activities that would occur outside Australian waters is to help preserve shared heritage of significance, subject to available funding.

The UCHP is administered as a grant process by the department in accordance with the Commonwealth resource management framework, including the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).

The UCHP provides funding of \$510,000 per annum, most recently through three-year service level agreements. The funding is classified as ‘grants of financial assistance’, which are taken not to be grants for the purpose of the *Commonwealth Grants Rules and Guidelines 2017* (CGRGs) (refer paragraph 2.6 (g) ‘financial assistance provided to a State in accordance with section 96 of the Australian Constitution’).

The funding is provided to the state and the Northern Territory agency of the delegates of the Minister for the Environment (the responsible Minister), appointed under the UCH Act for each jurisdiction. A delegate is normally the senior heritage official in each state or the Northern Territory responsible for similar underwater heritage legislation.

The department will undertake an assessment of appropriate funding amounts based on criteria in the grants of financial assistance agreements. The final decision to approve the grants will be made by the Assistant Secretary, Heritage Branch, who is the Commonwealth delegate of the responsible Minister under the UCH Act and the responsible Minister’s delegate under the *Financial Framework (Supplementary Powers) Act 1997*.

Funding decisions made in connection with the UCHP are not considered suitable for independent merits review, as these relate to the allocation of finite resources between competing applicants and an allocation already made to another party would be affected by overturning the original decision. The Administrative Review Council (ARC) 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 (ANAO) 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 to 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.

Consultation occurs with the responsible Minister’s delegates appointed under the UCH Act in each state and the Northern Territory, the senior officer of the Norfolk Island Museum and the AIMA executive when determining the appropriate allocation of funding. The apportioning of the available funding is made in agreement with the responsible Minister’s delegates at their bi-annual meetings.

Funding for the UCHP of \$510,000 per annum over three years from 2020-21 will come from Program 1.4: Conservation of Australia’s Heritage and Environment, which is part of Outcome 1. Details are set out in the *Portfolio Additional Estimates Statements 2020-21, Agriculture, Water and Environment Portfolio* at page 36.

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

Section 51(xxix) of the Constitution empowers the Parliament to make laws with respect to external affairs. The external affairs power supports legislation in relation to places, persons, matters or things outside the geographical limits of Australia.

The UCHP provides direct funding for the protection and conservation of sunk military vessels and aircraft which are geographically outside of Australian jurisdiction.

#### Funding to states and territories

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.

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

The UCHP provides financial assistance to each state and the Northern Territory on terms and conditions that are outlined in the three-year service level agreement between each state or territory and the Commonwealth. Such funding to states and territories can also include funding to a state, on the condition that a portion is provided to AIMA or Norfolk Island.

New **table item 478** establishes (and renews) legislative authority for government spending on the Indigenous Rangers Biosecurity Program (IRBP), which aims to enhance biosecurity capability in northern Australia through activities that support economic opportunities for Aboriginal and Torres Strait Islander people. The funding is supporting the ongoing delivery of the IRBP and involvement of Indigenous communities in biosecurity.

Northern Australia has biosecurity risk pathways that are spread across vast and isolated geographic regions that are difficult to access and costly to monitor. This poses a critical risk to Australia's more than \$65 billion agricultural industries.

At the same time remote Indigenous communities in northern Australia have limited potential for economic development and there are limited employment opportunities for Indigenous Australians on country. There is also a lack of opportunity for Indigenous ranger groups to develop skills through training that will advance their communities.

The IRBP benefits Indigenous Australians by providing economic opportunities, including employment and training, and benefits farmers through the ongoing strengthening of biosecurity response capability across northern Australia to ensure threats are identified and managed early to help limit the establishment of exotic pests and diseases.

The IRBP in its current form has been in operation since 2016 and the Australian Government's continued funding will support further biosecurity activities, capability building, biosecurity business grants, community education and traineeships.

### *Biosecurity activities*

There has been a significant increase in the number of Indigenous ranger groups (from 39 in 2015-16 to 65 in 2020-21) working with the department to deliver biosecurity activities across northern Australia. Over 400 biosecurity activities valued at over \$350,000 have been delivered annually since 2018-19.

Funding will be provided through fee-for-service arrangements with Aboriginal and Torres Strait Islander ranger groups and Indigenous land and sea managers to deliver monitoring for exotic pests and diseases to help de-risk Australian agriculture, support northern development, and assure overseas exports.

Indigenous rangers are employed by organisations across northern Australia and draw upon their traditional knowledge of country to undertake a wide range of conservation and compliance activities for a number of government agencies. The department currently has fee-for-service contracts with 47 organisations relating to 65 Indigenous ranger groups and three Indigenous cattle stations to undertake a range of biosecurity surveillance activities designed by the department's Northern Australia Quarantine Strategy scientists to provide early detection of exotic pests and diseases entering Australia through unregulated pathways in the north.

In 2020-21, these 65 ranger groups were engaged to do over 900 fee-for-service activities. The activities include animal, plant and aquatic health surveillance; insect trapping and surveillance; and plant host mapping.

The biosecurity activities are based upon biosecurity risk pathways and national priorities. The work is important to monitor for exotic pests and diseases, help support northern development and maintain overseas export market access. Surveillance activities that the rangers undertake on behalf of the department contribute samples and data that can be used to show that a region is free of a disease or pest. This is an important evidence that helps demonstrate that Australia is free of exotic pests and diseases.

Activities such as data collection have been significantly improved through the development of a Biosecurity Reporting Tool (Ranger App). The Ranger App is a mobile application to digitalise data collection for ranger groups conducting biosecurity work (for example, coastal surveillance, aquatic biosecurity, community animal health reporting, and plant host mapping). The Ranger App has been reviewed to enhance functionality.

### *Capability building*

Funding will be provided to support capability building initiatives for Aboriginal and Torres Strait Islander ranger groups to develop, maintain and increase biosecurity capability.

These initiatives include:

- the Biosecurity Fundamentals Training run by the department for ranger groups, which enables rangers to better contextualise the importance of the data collection and



activities performed by ranger groups for biosecurity. The initiative commenced in 2017 and is regarded as a strong contributor to increasing Indigenous ranger biosecurity knowledge;

- the Capability Building Grants, which are provided through a competitive grants process to organisations with existing fee-for-service contracts with the department to enable the purchase of essential equipment, training and facilitate other capability building activities. The department also procures training and essential equipment, which is gifted to ranger groups to build their capacity to undertake biosecurity activities for the department. Examples include items such as radios, GPSs, cameras, iPads and training in radio operations, 4WD, marine vessel and stock handling.
- the Annual Ranger Forums (the forums) to engage with ranger groups across northern Australia, promote biosecurity awareness, deliver training, and provide opportunities for ranger groups to strengthen collaborative networks. The forums generally attract 300 to 400 rangers across northern Australia who participate in biosecurity sessions to build skills around issues such as Weeds of National Significance, animal autopsies, marine biosecurity surveys, and work health and safety in the field. The forum format is currently being reviewed to ensure continued benefit into future years.

#### *Biosecurity business grants*

Funding will be provided to encourage Aboriginal and Torres Strait Islander businesses and not-for-profit organisations in northern Australia to view biosecurity as a business opportunity through the development of innovative business ideas. Examples of potential grant proposals which may be funded include:

- establishing a biosecurity treatment or de-contamination service providing insecticidal, fumigation or de-contamination/wash down services;
- developing biosecurity risk mitigation/management plans to protect Indigenous values in a local area; and
- collaborative activities to highlight to community, including farmers, tourists and businesses, the impacts of biosecurity incursions on land and sea country.

#### *Community education*

Funding will be provided to deliver biosecurity education and support material for Aboriginal and Torres Strait Islander rangers, schools and northern Australia communities. The department will be responsible for this initiative and may engage Indigenous rangers and/or organisations to assist in developing the materials in accordance with the *Commonwealth Procurement Rules* (CPRs).

#### *Traineeships*

Funding will be provided for biosecurity traineeships for Aboriginal and Torres Strait Islander people to help build biosecurity capacity across northern Australia encompassing formal and ‘on the job’ biosecurity training. Trainees will be supported to undertake an 18-month program comprising ‘on the job’ biosecurity and operational training, internal and external formal learning including a formal Certificate III in Government qualification, and cross-agency work experience placements. Five trainees will be based in Cairns and the Torres Strait for the first intake, with future intakes to consider other locations such as Darwin.

A pilot traineeship was implemented in early 2017 and ran for around two years concentrating on Cape York and the Torres Strait. Four trainees successfully completed the program.

A competency-based accredited training course (Certificate IV) in Tropical Biosecurity has been developed since 2018, which includes reference manuals, instructional materials, online training and face-to-face training. The course is in the process of being implemented and aims to build the scientific, biosecurity and leadership capabilities of senior rangers and ranger coordinators working in biosecurity related roles in remote, northern Australia.

The department delivers the IRBP through expenditure for staffing and operational costs, as well as a suite of procurements and grants. The administration of the IRBP will be subject to the requirements of the Commonwealth resource management framework, including the PGPA Act, the CPRs and the CGRGs.

The department and the National Indigenous Australians Agency (NIAA) will be working closely together to deliver streamlined outcomes for Aboriginal and Torres Strait Islander communities.

Ranger biosecurity activities are delivered through procurement from existing arrangements under the fee-for-service arrangements with Indigenous ranger organisations. Fee-for-service arrangements are entered into based on geographic biosecurity risk areas. Contracts are entered into with organisations for three-year terms and contain fixed hourly rates. Payments are made when organisations complete activities in their activity plan and provide the department with a valid tax invoice in accordance with the contract.

Essential equipment and capability building for rangers are provided through direct delivery and gifting by the department of goods and services (through a combination of open and limited tender processes) and grants awarded through a competitive grants process, which is restricted to organisations with existing fee-for-service contracts with the department.

Applicants must address the following selection criteria:

- grant activities must contribute to maintaining or increasing ranger capability to do biosecurity work; and
- grant activities must offer value for money, be delivered to a high standard and not pose an unacceptable risk.

Biosecurity business grants are offered through an open competitive process subject to eligibility requirements to ensure funds are directed to opportunities for Indigenous Australians in northern Australia. Applicants must be Indigenous people or organisations or other organisations which are working closely with Indigenous people to deliver economic/business opportunities to Indigenous people. The selection criteria for grants are:

- grant activities must contribute to biosecurity outcomes in northern Australia;
- the activities must support increased business, economic or employment opportunities for Indigenous people; and
- the applicant must have the capability, capacity and resources to undertake the grant activities.

All decisions relating to expenditure through grants are made in accordance with grant opportunity guidelines, developed in compliance with the CGRGs and published on the

GrantConnect website ([www.grants.gov.au](http://www.grants.gov.au)). Grant funding will be administered by the Department of Social Services' Community Grants Hub.

All decisions relating to expenditure through procurements are made in accordance with the CPRs and the department's procurement policy. Details of contracts awarded are made available on AusTender ([www.tenders.gov.au](http://www.tenders.gov.au)) in accordance with the CPRs.

All final expenditure decisions for the IRBP are made by an appropriate delegate of the Secretary of the department, in accordance with the PGPA Act.

Funding decisions made in connection with the IRBP are not subject to an independent merits review. Merits review would not be appropriate because the decisions being made (whether by the Secretary or the Secretary's delegates) relate to the allocation of finite resources between competing applicants and an allocation already made to a party would be affected by overturning the original decision. The ARC 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 ANAO 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 to 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 IRBP was subject to an evaluation in 2018. The evaluation focussed on data-at-hand and involved direct consultation with a wide selection of rangers (from Queensland, the Northern Territory and Western Australia), ranger coordinators, community liaison officers, departmental scientists, veterinarians, managers and program administrators. The intent of the evaluation was to:

- assess progress towards delivering the benefits of the Indigenous rangers (biosecurity) initiative, including its strengths and limitations;
- determine the perceived value of Indigenous rangers' fee-for-service work in delivering biosecurity monitoring and compliance activities to stakeholders against current government and community priorities and expectations; and
- identify opportunities to expand the yield of benefits of the initiative.

The evaluation found that the program was contributing to safeguarding Australia's animal and plant health. It also found that the program has provided direct and indirect benefits to communities by unlocking significant and new employment opportunities 'on country'. For example, in addition to new ranger groups undertaking work for the department, the training provided and the capabilities developed under the program have allowed rangers to undertake service contracts for other organisations which created more employment opportunities.

Consequently, the IRBP meets *Closing the Gap* objectives, particularly around building enhanced education and employment opportunities for Aboriginal and Torres Strait Islander peoples, and builds on the highly successful *Developing Northern Australia* and *Agricultural*

*Competitiveness White Paper* projects. The *Our North, Our Future: White Paper on Developing Northern Australia* is available at [www.industry.gov.au/data-and-publications/our-north-our-future-white-paper-on-developing-northern-australia](http://www.industry.gov.au/data-and-publications/our-north-our-future-white-paper-on-developing-northern-australia) and the *Agricultural Competitiveness White Paper* is available at [www.agriculture.gov.au/ag-farm-food/agriculture-white-paper](http://www.agriculture.gov.au/ag-farm-food/agriculture-white-paper).

Funding for the IRBP of \$25.3 million over three years from 2020-21 comes from Program 4.1: Biosecurity and Export Services, which is part of Outcome 4. Details are set out in the *Portfolio Additional Estimates Statements 2020-21, Agriculture, Water and Environment Portfolio* at page 52. Funding for the IRBP is ongoing.

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

### Races power

The races power in 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. This provision has been held to allow the enactment of laws that single out Indigenous Australians.

The objectives of the IRBP are expressly targeted at Aboriginal and Torres Strait Islander peoples, insofar as they are directed at supporting increased economic opportunities for Australia's Indigenous peoples, entities and communities, through capability building, training and business opportunities, while also contributing to enhanced biosecurity outcomes in northern Australia.

New **table item 479** establishes legislative authority for government spending on the Indigenous Rangers Coastal Clean-Ups Project (IRCCP). The objectives of the IRCCP are to facilitate economic opportunities for Aboriginal and Torres Strait Islander peoples by increasing the capacity and number of Indigenous rangers engaged in coastal clean-ups in northern Australia, with a focus on the Gulf of Carpentaria; target marine plastic pollution; and promote Australia's Indigenous peoples' ongoing stewardship of land and water.

These objectives will be met through engaging Indigenous ranger groups under fee-for-service arrangements to conduct field expeditions to locate and retrieve (or 'clean up') marine debris and ghost nets from coastal areas of their country and simultaneously collect relevant data about the debris (for example, to identify its place of origin). The rangers will then transport the collected debris to suitable disposal or recycling facilities.

The removal of the marine debris will immediately reduce the harm caused to turtles and other culturally important marine species from marine plastic pollution and will increase Indigenous stewardship of land and water through the direct engagement of Indigenous rangers on their country. The field expeditions will require the funding of additional Indigenous rangers and staff time and therefore will provide economic opportunities in these remote communities.

The main beneficiaries of the IRCCP are the Indigenous ranger groups that will be engaged in delivery of the program, and will ensure the conservation objectives of the expenditure are met. Indigenous communities are also likely to benefit from the expenditure, with increased

local employment and engagement of associated third party service providers (for example, transport providers or marine debris waste disposal services).

Funding to support the IRCCP activities is part of the Australian National Parks (ANP) Fund, which will receive a total of \$14.8 million to support marine debris (including ghost nets) clean-ups. The ANP Fund is managed by the Director of National Parks (the Director).

The Director is responsible for the management of 58 Australian Marine Parks, including a North Network of Marine Parks in the offshore waters of the Gulf of Carpentaria and northern Australia. Funding of activities managed by the Director will be undertaken in accordance with its functions under section 514B of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), including to:

*‘protect, conserve and manage biodiversity and heritage in Commonwealth reserves and conservation zones’ and ‘contribute to the protection, conservation and management of biodiversity and heritage in areas outside Commonwealth reserves and conservation zones’.*

The Director is a corporate Commonwealth entity and has obligations under the EPBC Act in relation to the expenditure of its monies from the ANP Fund.

Activities to be funded under the ANP Fund will have a particular focus on coastal clean-up of ghost nets and include regional ghost net retrieval and disposal projects, including equipment and technology to track, map, retrieve and recycle ghost nets. Third parties may be engaged, for example the Maritime Border Command to locate ghost nets and the Australian Fisheries Management Authority to retrieve and dispose of ghost nets. Other third party researchers, project administrators and contractors may also be engaged.

New table item 479 provides legislative authority for spending on the IRCCP activities managed by the department. The Director will engage the department through a direct procurement process under a head agreement to deliver the IRCCP. The department will then subcontract the performance of these clean-up services to Indigenous ranger groups under existing fee-for-service arrangements.

All decisions relating to expenditure by the Director under the head agreement with the department will be made by the Director or his delegate in accordance with the Director’s financial obligations under the EPBC Act, PGPA Act and CPRs (as they each apply to the Director) and the Director’s procurement policy. The department will invite Indigenous ranger groups to participate in the project through a targeted risk based process, taking into consideration locations of highest marine debris and ghost net density within the geographical limits of Australia and opportunities for capacity building amongst groups.

Under the head agreement, specific additional activities to be funded through the existing fee-for-service arrangements will be determined annually on a case-by-case basis by the Director. The department will be responsible for securing the approval of the delegate of the Secretary of the department for the expenditure, pursuant to the PGPA Act.

Funding will be administered from the ANP Fund, with the services to be performed by the department as part of the Indigenous Ranger Biosecurity Program (see table item 478 above). Details about the project will be provided on the Australian Marine Parks website (<https://parksaustralia.gov.au/marine/>), the Biosecurity in Australia website

(<https://www.agriculture.gov.au/biosecurity/australia>) and the regular *Frontline Ranger Newsletter*. Details about funding awarded under the initiative will be made publicly available on AusTender in accordance with the CPRs.

Expenditure of funds under the IRCCP will not be subject to merits review. Merits review would not be appropriate because the decisions being made (whether by the Secretary or the Director or their delegates) will relate to the allocation of finite resources between competing applicants and an allocation already made to a party would be affected by overturning the original decision. The ARC 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 ANAO provides a mechanism to review spending decisions by the Commonwealth and the Director and report any concerns to the Parliament. This mechanism helps 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 to 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 department is engaged in ongoing discussions with the NIAA about the design and delivery of the IRCCP. Initial consultation has indicated the NIAA is supportive of delivering funding to Indigenous ranger groups through the department. Representatives from the Northern Territory and Queensland governments have been engaged in bilateral discussions with Parks Australia about the broader Ghost Nets Initiative, as well as the Australian Fisheries Management Authority, the Australian Border Force, the Australian Maritime Safety Authority, and a range of key stakeholders from the commercial fishing industry, Indigenous organisations and the research and not-for-profit sectors. These stakeholders have expressed their support for the Australian Government taking action to address the significant marine debris pollution, particularly ghost nets, problem in northern Australia.

On-the-ground consultation with Indigenous ranger groups with respect to the activities proposed to be funded under the IRCCP is planned to commence prior to 30 June 2021, in advance of when expenditure under the project is proposed to commence in July 2021.

Funding for the IRCCP over four years from 2020-21 was included in the 2020-21 Budget as part of the \$14.8 million measure ‘Supporting Healthy Oceans’. Details are set out in the *Budget 2020-21, Budget Measures, Budget Paper No. 2 2020-21* at page 54.

Funding comes from Program 1.1: Supporting Healthy Oceans, which is part of Outcome 1 for the Director. Details are set out in the *Portfolio Budget Statements 2020-21, Budget Related Paper No. 1.1, Agriculture, Water and Environment Portfolio* at page 243.

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 races power (section 51(xxvi)); and
- the external affairs power (section 51(xxix));

Races power

The races power in 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’.

The objectives of the project are expressly targeted at Australia’s Indigenous peoples, insofar as they are directed at supporting increased economic opportunities for Aboriginal and Torres Strait Islander peoples, entities and communities in the Gulf of Carpentaria, through cleaning up of coastal areas to protect biodiversity and preserve natural habitat.

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 international obligations under treaties to which it is a party.

Australia has relevant obligations under the United Nations *Convention on Biological Diversity* (the Biodiversity Convention) in relation to the activities proposed to be funded by the project, including the obligations to:

- promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings (Article 8(d)); and
- rehabilitate and restore degraded ecosystems and promote the recovery of threatened species (Article 8(f)).

Marine debris, including ghost nets, affect species and ecosystems in the marine environment and coastal areas. In locating, retrieving and disposing of marine debris, including ghost nets, and so protecting and restoring coastal ecosystems, and allowing for the recovery of threatened species in coastal areas, the project promotes Australia’s obligations under Article 8(d) and (f) of the Biodiversity Convention.

## **Statement of Compatibility with Human Rights**

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

### ***Financial Framework (Supplementary Powers) Amendment (Agriculture, Water and the Environment Measures No. 2) Regulations 2021***

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. 2) Regulations 2021* 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.

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

- table item 477 for the Underwater Cultural Heritage Program;
- table item 478 for the Indigenous Rangers Biosecurity Program; and
- table item 479 for the Indigenous Rangers Coastal Clean-Ups Project.

#### **Table item 477 – Underwater Cultural Heritage Program**

Table item 477 establishes (and renews) legislative authority for the Underwater Cultural Heritage Program (UCHP), which provides grants of financial assistance to each state, the Northern Territory (NT) and Norfolk Island to protect and conserve Australia's underwater cultural heritage (UCH). The UCH includes sites, vessels, aircraft and other vehicles, and articles associated with vehicles, aircraft or other vehicles, which have a cultural, heritage or archaeological character and are located underwater.

The UCHP, a longstanding program which was previously known as the Historic Shipwrecks Program, commenced in 1983 to facilitate the Commonwealth's coordination of the delivery of day-to-day functions delegated under the *Historic Shipwrecks Act 1976* (HS Act) to the states, NT and Norfolk Island. On 1 July 2019, the HS Act was repealed and replaced by the *Underwater Cultural Heritage Act 2018* (the UCH Act) and the Historic Shipwrecks Program was renamed the UCHP.



New table item 477 provides legislative authority for government spending in relation to:

- grants of financial assistance to states and territories;
- grants of financial assistance to states and territories to provide funding to the Australasian Institute for Maritime Archaeology Incorporated (AIMA);
- grants of financial assistance to states and territories to provide funding for UCH activities at Norfolk Island; and
- UCH outside the Australian jurisdiction.

### **Human rights implications**

Table item 477 does not engage any of the applicable rights or freedoms.

### **Conclusion**

Table item 477 is compatible with human rights as it does not raise any human rights issues.

### **Table item 478 – Indigenous Rangers Biosecurity Program**

Table item 478 establishes (and renews) legislative authority for government spending on the Indigenous Rangers Biosecurity Program (IRBP), which aims to enhance biosecurity capability in northern Australia through activities that support economic opportunities for Aboriginal and Torres Strait Islander people. The funding is supporting the ongoing delivery of the IRBP and involvement of Indigenous communities in biosecurity.

Northern Australia has biosecurity risk pathways that are spread across vast and isolated geographic regions that are difficult to access and costly to monitor. This poses a critical risk to Australia's more than \$65 billion agricultural industries. At the same time remote Indigenous communities in northern Australia have limited potential for economic development and there are limited employment opportunities for Indigenous Australians on country. There is also a lack of opportunity for Indigenous ranger groups to develop skills through training that will advance their communities.

The IRBP benefits Indigenous Australians by providing economic opportunities, including employment and training, and benefits farmers through the ongoing strengthening of biosecurity response capability across northern Australia to ensure threats are identified and managed early to help limit the establishment of exotic pests and diseases.

### **Human rights implications**

Table item 478 engages the following rights:

- the right for ethnic, religious or linguistic minorities to enjoy their own culture – Article 27 of the *International Covenant on Civil and Political Rights* (ICCPR), read with Article 2; and
- the right to take part in cultural life – Article 15 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), read with Article 2.

### ***Right to cultural enjoyment and right to take part in cultural life***

Article 2 of the ICCPR and ICESCR requires each State Party to take steps to progressively achieve the full realisation of the rights recognised by all appropriate means.

Article 27 of the ICCPR provides that ethnic, religious or linguistic minorities shall not be denied the right, in community with the other members of their group to enjoy their own culture, to profess and practice their own religion, or to use their own language.

Article 15(1)(a) of the ICESCR states that the States Parties ‘recognise the right of everyone to take part in cultural life’.

Table item 478 will support the right of Australia’s Indigenous peoples under Article 27 of the ICCPR and Article 15 of the ICESCR to enjoy and take part in their culture, by providing dedicated funding for economic opportunities for Aboriginal and Torres Strait Islander ranger groups to undertake activities on country, through training, capability building and business opportunities, directed at enhancing biosecurity capability.

By providing funding targeted at Indigenous peoples (primarily Indigenous ranger groups), the IRBP recognises that it is culturally appropriate for Indigenous peoples to undertake work on country to which they are connected. Further, the economic opportunities provided by the program will assist Indigenous peoples to remain on and undertake work on country, often in remote areas of Australia where there are otherwise limited employment opportunities, and so maintain enjoyment of their cultural connections.

## **Conclusion**

Table item 478 is compatible with human rights as it promotes the right to cultural enjoyment in Article 27 of the ICCPR and the right to take part in cultural life in Article 15 of the ICESCR.

### *Table item 479 – Indigenous Rangers Coastal Clean-Ups Projects*

Table item 479 establishes legislative authority for government spending on the Indigenous Rangers Coastal Clean-Ups Project (IRCCP). The objectives of the IRCCP are to facilitate economic opportunities for Aboriginal and Torres Strait Islander peoples by increasing the capacity and number of Indigenous rangers engaged in coastal clean-ups in northern Australia, with a focus on the Gulf of Carpentaria; target marine plastic pollution; and promote Australia’s Indigenous peoples’ ongoing stewardship of land and water.

These objectives will be met through engaging Indigenous ranger groups under fee-for-service arrangements to conduct field expeditions to locate and retrieve (or ‘clean up’) marine debris and ghost nets from coastal areas of their country and simultaneously collect relevant data about the debris (for example, to identify its place of origin). The rangers will then transport the collected debris to suitable disposal or recycling facilities.

The removal of the marine debris will immediately reduce the harm caused to turtles and other culturally important marine species from marine plastic pollution and will increase Indigenous stewardship of land and water through the direct engagement of Indigenous rangers on their country. The field expeditions will require the funding of additional Indigenous rangers and staff time and therefore will provide economic opportunities in these remote communities.

## **Human rights implications**

Table item 479 engages the following rights:

- the right for ethnic, religious or linguistic minorities to enjoy their own culture – Article 27 of the ICCPR, read with Article 2; and
- the right to take part in cultural life – Article 15 of the ICESCR, read with Article 2.

Article 2 of the ICCPR and ICESCR requires each State Party to take steps to progressively achieve the full realisation of the rights recognised by all appropriate means.

Article 27 of the ICCPR provides that ethnic, religious or linguistic minorities shall not be denied the right, in community with the other members of their group to enjoy their own culture, to profess and practice their own religion, or to use their own language.

Article 15(1)(a) of the ICESCR states that the States Parties ‘recognise the right of everyone to take part in cultural life’.

Table item 479 will support the right of Australia’s Indigenous peoples under Article 27 of the ICCPR and Article 15 of the ICESCR to enjoy and take part in their culture, by providing dedicated funding to engage Indigenous rangers to locate, retrieve and dispose of marine debris (such as discarded fishing equipment) on coastal areas in northern Australia, with a focus on the Gulf of Carpentaria.

Funding of these activities will allow Indigenous rangers to clean up and protect biodiversity and the natural habitat on country to which they are connected. The project’s promotion of protection of country through funding of coastal clean-up activities will further the ability of Indigenous peoples’ in northern Australia to maintain their connection to country and so their cultural enjoyment. Further, providing economic opportunities will assist Indigenous peoples in the areas receiving funding to remain on and undertake work on country, and so maintain cultural connections to country and their ability to take part in cultural life.

## **Conclusion**

Table item 479 is compatible with human rights as it promotes the right to cultural enjoyment in Article 27 of the ICCPR and the right to take part in cultural life in Article 15 of the ICESCR.

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