

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. 5) 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. 5) 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:

- research and development corporations and industry representative bodies to support the development and implementation of online measures to improve price transparency in perishable goods industries (\$5.4 million over four years from 2021-22); and
- the establishment, development and operation of agricultural innovation hubs that support innovation in the agricultural, aquaculture, fishery and forestry industries (\$21.7 million over two years from 2021-22).

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. 5) 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. 5) 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 two 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 522** establishes legislative authority for government spending on online measures to improve price transparency in perishable goods industries (the initiative).

The initiative responds to Recommendation 4 of the Australian Competition and Consumer Commission’s (ACCC) Perishable Agricultural Goods (PAG) inquiry (www.accc.gov.au/publications/perishable-agricultural-goods-inquiry-report) that governments and industries should explore measures to increase price transparency in PAG industries, in order to increase competition in those industries.

The initiative also supports *Ag2030*, which is the goal to grow the agriculture sector to \$100 billion annually by 2030 (www.agriculture.gov.au/sites/default/files/documents/ag-2030.pdf). Ensuring that Australia has fair, strong and resilient supply chains where everyone is treated fairly and pays their share is essential to achieving the goal.

Addressing price and quality information asymmetry in the Australian PAG supply chain is critical to ensure farmers have access to fair and transparent markets and make informed

business decisions. Improving market transparency will enable producers to allocate resources more effectively, adapt production in a timely manner and implement appropriate risk management strategies. This in turn brings confidence and improves the ability of producers to negotiate contract terms with purchasers, which will enhance productivity, profitability and sustainability of PAG industries. Productive and sustainable agricultural industries directly contribute to Australia's economic growth, enhance food security and improve international competitiveness.

In the 2021-22 Budget, the Australian Government committed \$5.4 million to support PAG industries to explore their specific market transparency issues and requirements and fund projects to address these issues across PAG industries. The initiative includes two key elements:

- workshops with interested PAG industries to identify industry-specific market transparency issues, determine benefits and risks of improving market transparency, as well as co-design potential projects to improve price and market transparency; and
- funding for PAG industries through the provision of grants to research and development corporations (RDCs) and/or industry representative bodies to generate knowledge, technologies, products or processes that improve price and market transparency.

Table item 522 will provide legislative authority for grants to non-statutory RDCs and PAG industry representative bodies, which is a component of the second element of the initiative.

Co-design workshops

The seafood, chicken meat, wine grapes, red meat, horticulture and dairy industries have participated in the workshops. Market transparency workshops started in August 2021 with seafood, wine grapes and chicken meat industries. Dairy, red meat and horticulture workshops commenced in September and October 2021. Workshops included participants from across the supply chain and government representatives, including the department and the ACCC.

The co-design workshops provided a unique opportunity to bring stakeholders from across supply chains together to hold meaningful conversations on complex problems. The workshops, which were facilitated by an external service provider, allowed PAG industries and the government to identify and mitigate any unintended consequences of improving market transparency in the early stages of project design.

On 10 August 2021, the Minister for Agriculture and Northern Australia, the Hon David Littleproud MP, and the Assistant Minister for Forestry and Fisheries and Assistant Minister for Industry Development, Senator the Hon Jonathon Duniam, jointly announced the workshops to improve market transparency in PAG industries. The media release is available at <https://minister.awe.gov.au/littleproud/media-releases/perishable-agricultural-goods-workshops>.

Grants for market transparency tools

Following the conclusion of the workshops, a grants program will open in the first quarter of 2022, with first payments made to successful applicants in July 2022. PAG industries will be able to access \$5 million available over the life of the grants program to implement price transparency measures online (from 2022-23 to 2024-25). Each project will be able to access up to \$1 million, with funding available for projects over multiple years. Program guidelines will be developed to outline requirements of participation, eligibility requirements and maintenance and ownership of the price transparency tools beyond the provision of government funding. The department will finalise program guidelines following the co-design workshops with industries to ensure they accurately reflect the types of projects industries will bring forward.

Grants funding will be provided for projects that generate knowledge, technologies, products or processes that improve market transparency appropriate for the relevant supply chain. Project bids should be supported by partners from across the relevant supply chains and must include non-matching (monetary and in-kind) co-contributions from industry participants.

The grants program will be administered through the Community Grants Hub using a targeted competitive selection method. Funding will only be open to industries who participated in the workshops. Grant opportunity guidelines will be clear, consistent, fit-for-purpose and align with the principles of the *Commonwealth Grants Rules and Guidelines 2017* (CGRGs). Grant opportunity guidelines and grants awarded will be made available on GrantConnect at www.grants.gov.au.

The department will make recommendations to the decision maker, based on the advice of an assessment panel. The Minister responsible for the Agriculture portfolio matters will be responsible for final decisions about Commonwealth expenditure.

Expenditure for the grants program will be subject to the requirements of the Commonwealth resource management framework, including the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and the CGRGs.

Funding decisions under the grants program will not be subject to merits review. Merits review would not be considered appropriate as they are decisions relating to the allocation of a finite resource, from which all potential claims for a share of the resource cannot be met. In addition, any funding that has already been allocated would be affected if the original decision was overturned. The Administrative Review Council (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 *What decisions should be subject to merit review?* (ARC guide)).

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.

The department undertook broad consultation in the development of the initiative. This included engagement with the Department of Foreign Affairs and Trade on potential trade implications and unintended consequences. The department also undertook consultation with several PAG industries to understand price transparency issues and whether these industries would be interested in working with government to improve price transparency. The ideas provided through PAG industry consultations helped shape the design of the program. The PAG industries' interest in the initiative was demonstrated by their high rate of participation in the workshops.

Funding of \$5.4 million was included in the 2021-22 Budget under the measure 'Agriculture 2030' for a period of four years commencing in 2021-22. Details are set out in *Budget 2021-22, Budget Measures, Budget Paper No. 2 2021-22* at pages 51 to 55.

Funding for this item will come from Program 3.10: Agricultural Resources, which is part of Outcome 3. Details are set out in the *Portfolio Budget Statements 2021-22, Budget Related Paper No. 1.1, Agriculture, Water and Environment Portfolio* at pages 32 and 71.

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

Communications power

Section 51(v) of the Constitution empowers the Parliament to make laws with respect to 'postal, telegraphic, telephonic, and other like services'.

The initiative provides expenditure for activities that will support price transparency measures that would be implemented over the internet to improve market transparency in PAG supply chains.

New **table item 523** establishes legislative authority for government spending on the agricultural innovation hubs program (the program).

The Australian Government is supporting the agriculture industry to reach its goal of \$100 billion in production by 2030 (Ag2030). Despite consistent growth, reaching this goal is highly ambitious and without increased uptake of agricultural innovation, higher economic returns will be difficult to achieve. As part of driving better returns, the Australian Government is committed to the *National Agricultural Innovation Agenda* (the Innovation Agenda) (<https://www.awe.gov.au/agriculture-land/farm-food-drought/innovation/national-ag-innovation-agenda>), which plays a key part in how the Government is helping the agriculture industry deliver on Ag 2030.

The program will provide for the eight existing Future Drought Fund – Drought Resilience Adoption and Innovation Hubs (Hubs) to expand beyond their current remit of drought resilience to broader agricultural innovation activities and outcomes as set out in the Innovation Agenda. Funding administered under the *Future Drought Fund Act 2019* can only be used for drought resilience.

The program will provide \$20 million (administered funding) over two years from 2021-22 to support the Hubs to undertake activities, which will lead to practical uptake of innovation by producers, stimulate collaboration and increase commercialisation outcomes. Through development, extension, adoption and testing of new agricultural innovations, the scaled-up Hubs will be supported in translating innovation research and knowledge to deliver productivity improvements for agriculture, as well as fisheries and aquaculture. There may be an opportunity in the future to extend the remit of the Hubs to include forestry, if there is merit.

The Hubs are expected to play an important role in Australia's agricultural innovation system translating research and knowledge to make real impact on the ground. The early work and engagement of the Hubs has confirmed the value of them taking on a broader role. In practical terms, it is hard to make a clear distinction between activities that support drought resilience and activities that support broad agricultural innovation. This points to efficiencies and opportunities to be gained by integrating the two roles. It also points to risks in terms of stakeholder engagement if the two functions are not integrated – end users do not want to have to make the nuanced distinction when they engage with people about innovation and adoption.

The expanded Hubs and their networks will drive greater uptake of innovation and commercialisation prospects, stimulate sector-wide collaboration and create jobs in regional areas. The Hubs provide the physical platform for stakeholders such as RDCs, state government agencies, cooperative research centres (CRCs), farm systems groups and research institutions to work directly with producers and engage on research, development, extension, adoption and commercialisation priority setting and activities. Through their activities, the Hubs will continue to leverage existing initiatives and support agricultural innovation.

Importantly, the Hubs are focused on extension, adoption and commercialisation – not research. However, they will inform and draw from research and development outputs from RDCs, CRCs and others. Their focus is on translating research into impact in two ways:

- ensure research efforts are driven by regional and end user needs and opportunities; and
- translate research and development into practical on-ground action through support for extension, adoption and commercialisation.

The Hubs will also support RDCs and others in their development role, by providing networks and capabilities that can be used to do trials and field tests. Based on the existing Hubs, key activities of the Hubs are expected to include:

- developing regionally focused and responsive innovation and adoption strategies;
- providing a local 'shopfront' to access knowledge, advice and support;
- collating knowledge relevant to the region so it is accessible and available for adoption, and to understand knowledge gaps and priorities;
- trialling of new technologies and practices that are high priority for their region;
- demonstration, extension and communication to support uptake and scaling up of successful innovations;
- working with researchers to improve their ability to co-design research, so it delivers to end user needs and context;
- developing and supporting use of information and decision support tools that help farmers and agri-businesses understand and respond to risks and opportunities;

- attracting commercial investors and otherwise supporting commercialisation; and
- building regionally-based entrepreneurial skills and leadership.

The program also includes resourcing of \$1.7 million (departmental funding) over two years from 2021-22 to enable the department to administer this funding and measure its success. The additional resourcing will also allow one additional member to be added to the existing Advisory Committee to provide oversight of the scaled-up work of the Hubs, make linkages between the Hubs and ensure they are aligned with national priorities, advances and strategic objectives.

The department will deliver the program through a suite of grant or procurement processes, in accordance with the requirements of the Commonwealth resource management framework, including the PGPA Act, the CGRGs and the *Commonwealth Procurement Rules* (CPRs).

Where grants are involved, grant opportunity guidelines will be developed, including eligibility and assessment criteria, and published on GrantConnect, if necessary. The Grants Hubs will be used to facilitate the process as appropriate. Where procurement processes are involved, the department will develop information in accordance with the CPRs, and relevant information will be published on AusTender, as required. The Minister responsible for the Agriculture portfolio matters will be the final decision maker in relation to any grant or procurement funding decisions. Grant funding decisions or procurement details will be made publicly available, as appropriate.

Funding decisions made in connection with grants or procurements will not be subject to merits review. Merits review would not be considered appropriate, as they are decisions relating to the allocation of a finite resource, from which all potential claims for a share of the resource cannot be met. In addition, any funding that has already been allocated would be affected if the original decision was overturned. The 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 ARC guide).

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 be available. Persons affected by spending decisions would also have recourse to the Commonwealth Ombudsman where appropriate.

The re-making of a procurement decision after entry into a contractual arrangement with a successful provider is legally complex, and could result in delays to providing services under the project. The *Government Procurement (Judicial Review) Act 2018* enables suppliers to challenge some procurement processes for alleged breaches of certain procurement rules. This legislation might provide an additional avenue of redress (compensation or injunction) for dissatisfied providers or potential providers, depending on the circumstances.

The program stems from, in part, a recommendation in the 2019 Ernst and Young report, *Agricultural Innovation – A National Approach to Grow Australia's Future*, which

recommended the Australian Government scale-up Innovation Hubs. This project collected more than 12,000 observations from over 550 stakeholders using a co-design approach that included interviews, workshops, focus groups and online surveys. The engagement targeted participants including researchers and research institutions, RDCs, industry representatives, producers, processors, investors, government agencies, input providers, multinationals and entrepreneurs across the start-up, accelerator and incubator community.

Throughout the program development the department consulted other Commonwealth agencies and a range of farming systems groups with overall positive outcomes. There was widespread support for the program and complementary initiatives were identified that the department can leverage through implementation of this program including but not limited to:

- the National Recovery and Resilience Agency’s pilot National Resilience Hub;
- the Food and Agribusiness growth centre; and
- the National Artificial Intelligence Centre and Digital Capability Hubs announced in the Government’s Artificial Intelligence Action plan.

In addition, the department is in continuous consultation with the Directors of the Hubs, the Hubs Advisory Committee and the Future Drought Fund Consultative Committee to identify the best implementation approach. These key groups will assist in the successful delivery of the program.

Total funding of \$21.7 million for a period of two years commencing in 2021-22 is expected to be included in the 2021-22 Mid-Year Economic and Fiscal Outlook and the Portfolio Additional Estimates Statements for the Agriculture, Water and the Environment Portfolio. Funding will come from Program 3.10: Agricultural Resources, which is part of Outcome 3.

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 communications power (section 51(v));
- the fisheries power (section 51(x));
- the external affairs power (section 51(xxix));
- the express incidental power and the executive power (sections 51(xxxix) and 61); and
- the territories power (section 122).

Communications power

Section 51(v) of the Constitution empowers the Parliament to make laws with respect to ‘postal, telegraphic, telephonic, and other like services’.

The Hubs will support uptake and scaling up of successful innovations, and provide accessible collated knowledge through online or telephone measures.

Fisheries power and external affairs power

Section 51(x) of the Constitution empowers the Parliament to make laws with respect to ‘fisheries in Australian waters beyond territorial limits’.

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

The program will include the development, extension, adoption and testing of new agricultural innovations, which will deliver productivity impacts for those working in fisheries, which includes areas in Australian waters beyond territorial limits.

Executive power and express incidental power, including the nationhood aspect

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

The program helps deliver on the Innovation Agenda, which the Australian Government has committed to in order to increase uptake of agricultural innovation, which will further drive growth in the agricultural industries. The agricultural industry is an industry of national importance in Australia and the program will include funding of research into agricultural innovation with a view to increasing productivity and profitability in the sector.

Territories power

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

The program will scale-up the eight existing Hubs, some of which may operate in the Northern Territory, Australian Capital Territory or other Australian Territory.

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. 5) 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. 5) 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 disallowable legislative instrument adds the following table items to Part 4 of Schedule 1AB:

- table item 522 ‘Online measures to improve price transparency in perishable goods industries’; and
- table item 523 ‘Agricultural innovation hubs program’.

Table item 522 – Online measures to improve price transparency in perishable goods industries

New table item 522 establishes legislative authority for government spending on online measures to improve price transparency in perishable goods industries (the initiative).

The initiative responds to Recommendation 4 of the Australian Competition and Consumer Commission’s Perishable Agricultural Goods (PAG) inquiry that governments and industries should explore measures to increase price transparency in PAG industries, in order to increase competition in those industries. The initiative also supports *Ag2030*, which is a goal to grow the agriculture sector to \$100 billion annually by 2030.

The initiative includes two key elements:

- workshops with interested PAG industries to identify industry-specific market transparency issues, determine benefits and risks of improving market transparency, as well as co-design potential projects to improve price and market transparency; and
- funding for PAG industries through the provision of grants to research and development corporations (RDCs) and/or industry representative bodies to generate knowledge, technologies, products or processes that improve price and market transparency.

Table item 522 will provide legislative authority to deliver grants to non-statutory RDCs and PAG industry representative bodies, which is a component of the second element of the initiative.

Human rights implications

Table item 522 does not engage any of the applicable rights or freedoms.

Conclusion

Table item 522 is compatible with human rights because it does not raise any human rights issues.

Table item 523 – Agricultural innovation hubs program

New table item 523 establishes legislative authority for government spending on the agricultural innovation hubs program (the program).

The program will provide for the eight existing Future Drought Fund – Drought Resilience Adoption and Innovation Hubs (Hubs) to expand beyond their drought remit to service the broader *National Agricultural Innovation Agenda* (the Innovation Agenda). The Innovation Agenda is a key part of how the Government is helping the agriculture industry deliver on Ag2030.

The program will provide funding to support the Hubs to undertake activities which will lead to practical uptake of innovation by producers, stimulate collaboration and increase commercialisation outcomes. Through development, extension, adoption and testing of new agricultural innovations, the scaled-up Hubs will be supported in translating innovation research and knowledge to deliver productivity impacts for agriculture, as well as fisheries and aquaculture. There may be opportunity in the future to extend the remit of the hubs activities to include forestry, if there is merit.

Key activities of the Hubs are expected to include:

- developing regionally focused and responsive innovation and adoption strategies;
- providing a local ‘shopfront’ to access knowledge, advice and support;
- collating knowledge relevant to the region so it is accessible and available for adoption, and to understand knowledge gaps and priorities;
- trialling of new technologies and practices that are high priority for their region;
- demonstration, extension and communication to support uptake and scaling up of successful innovations;

- working with researchers to improve their ability to co-design research, so it delivers to end user needs and context;
- developing and supporting use of information and decision support tools that help farmers and agri-businesses understand and respond to risks and opportunities;
- attracting commercial investors and otherwise supporting commercialisation; and
- building regionally-based entrepreneurial skills and leadership.

Human rights implications

Table item 523 does not engage any of the applicable rights or freedoms.

Conclusion

Table item 523 is compatible with human rights because it does not raise any human rights issues.

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