

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance

Financial Framework (Supplementary Powers) Act 1997

Financial Framework (Supplementary Powers) Amendment (Finance Measures No. 1) Regulations 2023

The *Financial Framework (Supplementary Powers) Act 1997* (the 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 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* (PGPA Act).

The Principal Regulations are exempt from sunseting under section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (item 28A). If the Principal Regulations were subject to the sunseting regime under the *Legislation Act 2003*, this would generate uncertainty about the continuing operation of existing contracts and funding agreements between the Commonwealth and third parties (particularly those extending beyond 10 years), as well as the Commonwealth's legislative authority to continue making, varying or administering arrangements, grants and programs.

Additionally, the Principal Regulations authorise a number of activities that form part of intergovernmental schemes. It would not be appropriate for the Commonwealth to unilaterally sunset an instrument that provides authority for Commonwealth funding for activities that are underpinned by an intergovernmental arrangement. To ensure that the Principal Regulations continue to reflect government priorities and remain up to date, the Principal Regulations are subject to periodic review to identify and repeal items that are redundant or no longer required.

Section 32B of the 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. Section 32D of the Act confers powers of delegation on Ministers and the accountable authorities of non-corporate Commonwealth entities, including subsection 32B(1) of the Act. Schedule 1AA and Schedule 1AB to the Principal Regulations specify the arrangements, grants and programs.

Section 65 of the 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.

The *Financial Framework (Supplementary Powers) Amendment (Finance Measures No. 1) Regulations 2023* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for the Commonwealth to enter into arrangements to acquire interests in CEA Technologies Pty Limited (CEA), or any company incorporated for the purpose of acquiring and holding shares in CEA. The arrangements will be administered by the Department of Finance.

The Commonwealth will acquire interests in CEA, a company with objects to undertake research on, design, manufacture, assemble, develop, support, maintain and provide other services in relation to radar and communications systems and products for Australia's defence and national security, or to be exported, and undertake related activities.

CEA is a privately owned company, established in 1983, to design and support radar and communications systems for the Australian Defence Force (ADF). The company is at the forefront of innovation and is an internationally recognised supplier of products and services.

The arrangements will enable the Commonwealth to expand its sovereign defence capability through the interests held in CEA. The funding amount for the arrangement is not for publication due to commercial-in-confidence sensitivities.

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 registration in the Legislation Register.

Consultation

In accordance with section 17 of the *Legislation Act 2003*, consultation has taken place with the Department of Finance.

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 (Finance Measures No. 1) Regulations 2023*

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Finance Measures No. 1) Regulations 2023*.

Section 2 – Commencement

This section provides that the Regulations commence on the day after registration.

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 1 of Schedule 1AB (table)

This item adds one new table item to Part 1 of Schedule 1AB to establish legislative authority for government spending on a certain activity to be administered by the Department of Finance.

New **table item 2** adds a new table item to Part 1 of Schedule 1AB to establish legislative authority for the Commonwealth to enter into arrangements to acquire interests in CEA Technologies Pty Limited (CEA), or any company incorporated for the purpose of acquiring and holding shares in CEA.

CEA is a privately owned company, established in 1983, to design and support radar and communications systems for the Australian Defence Force (ADF). The company is at the forefront of innovation and is an internationally recognised supplier of products and services.

The Departments of Defence and Finance have worked together to negotiate the arrangements with relevant stakeholders.

The arrangements will enable the Commonwealth to expand its sovereign defence capability through the interests held in CEA. The arrangements will ensure that CEA remains within Australian control.

CEA is expected to become a Commonwealth company for the purposes of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) in the future.

The Minister for Finance may prescribe the company as a Government Business Enterprise (GBE). CEA will continue to operate at arms-length from the Government and the business will continue operating as a for-profit company.

The arrangements will be conducted in accordance with the *Financial Framework (Supplementary Powers) Act 1997* (FF(SP) Act). The PGPA Act will apply to CEA as a Commonwealth company when section 89(2) of the PGPA Act is satisfied. From this stage, relevant information about the Commonwealth's shareholding will be made publicly available on the Department of Finance's website.

Funding will be committed by the Commonwealth through a contractual agreement to acquire shares in CEA and related investments, including in a company incorporated solely for the purpose of acquiring and holding shares in CEA.

The Minister for Finance will be responsible for approving the commitment of funding and the expenditure in accordance with the FF(SP) Act and the PGPA Act.

Funding decisions made in relation to the proposed arrangements will not be suitable for an independent merits review as these decisions relate to the allocation of a finite resource and only require limited funds to acquire interests in CEA or any company incorporated for the purpose of acquiring and holding shares in CEA.

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

Funding for the arrangements will be included in the 2023-24 Budget and the Portfolio Budget Statements for the Finance Portfolio. The financial implication for this arrangement is not for publication due to commercial-in-confidence sensitivities. It is the intent of the Government to inform the Parliament under section 72(1) of the PGPA Act, in due course.

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

- the defence power (section 51(vi));
- the trade and commerce power (section 51(i)); and
- the external affairs power (section 51(xxix)).

Defence power

Section 51(vi) of the Constitution empowers the Parliament to make laws with respect to 'the naval and military defence' of the Commonwealth and States, and 'the control of the forces to execute and maintain the laws of the Commonwealth'.

The item will authorise the Commonwealth to enter into arrangements for the purpose of acquiring an interest in CEA, a company the primary activities of which include to undertake research on, design, manufacture, assemble, develop, support, maintain and provide other services in relation to radar and communications systems and products for Australia's defence and national security.

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’.

CEA’s activities may also include exporting products overseas.

External affairs power

Section 51(xxix) of the Constitution empowers the Parliament to make laws with respect to matters or things outside the geographical limits of Australia.

CEA’s activities may also include exporting products overseas. More generally, CEA may conduct some of its activities outside Australia.

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 (Finance Measures No. 1) Regulations 2023

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 (Finance Measures No. 1) Regulations 2023* amend Schedule 1AB to the Principal Regulations to establish legislative authority for the Commonwealth to enter into arrangements to acquire interests in CEA Technologies Pty Limited (CEA) or any company incorporated for the purpose of acquiring and holding shares in CEA. The arrangements will be administered by the Department of Finance.

The Commonwealth will acquire interests in CEA, a company with objects to undertake research on, design, manufacture, assemble, develop, support, maintain and provide other services in relation to radar and communications systems and products for Australia's defence and national security, or to be exported, and undertake related activities.

It is the Government's intention that CEA will become a Commonwealth company for the purposes of the PGPA Act and the Minister for Finance may prescribe the company as a Government Business Enterprise in the future.

Human rights implications

This disallowable legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

This disallowable legislative instrument is compatible with human rights as it does not raise any human rights issues.

**Senator the Hon Katy Gallagher
Minister for Finance**