

## **EXPLANATORY STATEMENT**

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

*Financial Framework (Supplementary Powers) Act 1997*

*Financial Framework (Supplementary Powers) Amendment  
(Agriculture, Fisheries and Forestry Measures No. 1) Regulations 2023*

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*.

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 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. Section 32D of the FF(SP) 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 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.

The *Financial Framework (Supplementary Powers) Amendment (Agriculture, Fisheries and Forestry Measures No. 1) Regulations 2023* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on the National livestock traceability reform to enhance agricultural biosecurity in relation to exports program (the program). The program is administered by the Department of Agriculture, Fisheries and Forestry.

The program forms part of the Government's election commitment to support the adoption of livestock traceability reforms, as stated in *Backing Australian agriculture (Building a Better future)*, and is also part of the Government's election commitment to deliver long-term, sustainable funding to directly strengthen Australia's biosecurity.

The Government will provide an ad hoc grant of up to \$26.6 million in 2022-23 to an appropriate industry organisation (or organisations) to support the improvement and enhancement of Australia's livestock traceability database and supporting system. The National Livestock Identification System is Australia's system for the identification and tracking of livestock, including cattle, sheep and goats for food safety, disease control, animal welfare, and to meet market access commitments.

Funding for the program will ensure Australia's livestock traceability systems remain contemporary and fit for purpose, and able to support faster emergency response (contact tracing and movement controls) and recovery of the agricultural export trade sector from an exotic disease incursion, such as foot and mouth disease and lumpy skin disease.

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 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, Fisheries and Forestry.

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, Fisheries and Forestry Measures No. 1) Regulations 2023***

**Section 1 – Name**

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Agriculture, Fisheries and Forestry Measures No. 1) Regulations 2023*.

**Section 2 – Commencement**

This section provides that the Regulations commence on the day after registration 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 one new table item to Part 4 of Schedule 1AB to establish legislative authority for government spending on a certain activity to be administered by the Department of Agriculture, Fisheries and Forestry (the department).

New **table item 606** establishes legislative authority for government spending on the National livestock traceability reform to enhance agricultural biosecurity in relation to exports program (the program).

The program will deliver on the Government’s election commitment to support the adoption of livestock traceability reforms, as stated in *Backing Australian Agriculture (Building a Better Future)*. It was announced by the Minister for Agriculture, Fisheries and Forestry, Senator the Hon Murray Watt on 26 October 2022. The media release can be accessed at <https://minister.agriculture.gov.au/watt/media-releases/biosecurity-budget-funding>.

The program is part of the three-year measure *Bolstering Australia’s Biosecurity System – protecting Australia from escalating exotic animal disease risks*. This measure will provide \$46.7 million over three years from 2022-23 to cover the following two traceability components:

- \$26.6 million in 2022-23 to improve and enhance the national livestock traceability system; and
- \$20.1 million over three years from 2022-23 to co-invest with states and territories to improve on-farm and off-farm traceability.

Legislative authority through **table item 606** is required to support the first component. Funding to states and territories will be delivered from the Council of Australian Governments Reform Fund Special Account in accordance with the *Federal Financial Relations Act 2009*.

The traceability of livestock is crucial for both biosecurity and market access. The program is an initiative to improve and enhance Australia's livestock traceability database and supporting systems. This is to ensure they are nationally consistent, fit for purpose, and able to support faster emergency response (contact tracing and movement controls) and recovery of Australia's \$65 billion agricultural export trade sector from an exotic disease incursion, such as foot and mouth disease and lumpy skin disease. Food manufacturing businesses and workers, and exporters, will benefit from a consistent national livestock traceability system that provides assurance on food safety and quality to meet Australian consumer and international export market expectations and requirements.

The National Livestock Identification System (NLIS) is the existing primary database for tracking livestock movements, including cattle, sheep, pigs and goats for food safety, disease control, animal welfare, and to meet market access commitments. The improvement and enhancement of the national livestock traceability database under the program will ensure an increased level of 'contact tracing' that is both efficient and effective at tracking individual level movements. This capability is limited under the current system, as the NLIS database has been in operation for over 23 years and is nearing the end of its maintainable life and has varying identification and reporting requirements. This poses a risk to future export market access and economic returns.

The Government funding commitment of \$46.7 million for the overarching measure is contingent on a one-third co-investment and delivery commitment from both state and territory governments and industry. Funding of up to \$26.6 million will be awarded to an appropriate industry organisation (or organisations) to improve and enhance the NLIS in order to mitigate the risk. Industry management of this database will be consistent with current arrangements for management of the NLIS and enable greater responsiveness to users and regulators. Given the co-funded nature of the system, selection of the final provider will be made by the Commonwealth in accordance with the *Commonwealth Grants Rules and Guidelines*, in consultation with state and territory governments and industry.

Key selection criteria will include:

- demonstrated experience and ability to develop and successfully deliver a national system that provides for fit for purpose, future-focussed livestock traceability data capture, storage, management and distribution;
- strong national stakeholder consultation and engagement skills and experience, including change management;
- strong project/program management and delivery skills and experience; and
- strong project/program governance skills and experience.

The faster and more accurately animals are traced, the better prepared and faster the response and recovery from a pest or disease outbreak. The outcomes for improvement and enhancement of the database through this funding include (but are not limited to):

- data quality and assurance;
- analytical and reporting capability;
- opportunities for automation of processes and reporting;
- support for regulatory compliance and enforcement activities;
- scalability to support current and future use requirements; and
- ability for integration and interoperability with other systems and platforms.

The department will deliver the program through an ad hoc grant process. Program administration will be undertaken by the department with support for grant administration from the Community Grants Hub and will be governed by the *Commonwealth Grants Rules and Guidelines 2017* and the *Public Governance, Performance and Accountability Act 2013*. Grant opportunity guidelines will be developed and information about the program will be available on the department's website ([www.agriculture.gov.au](http://www.agriculture.gov.au)) and GrantConnect ([www.grants.gov.au](http://www.grants.gov.au)).

The delegate of the Minister for Agriculture, Fisheries and Forestry (the Minister) will be responsible for making the final decision about Commonwealth expenditure, taking into account the recommendations made by departmental officers. The delegate of the Minister would be an SES employee, or an acting SES employee, of the department, who would have relevant expertise in, and understanding of, agriculture policy, and be able to perform relevant functions in accordance with the Commonwealth resource management framework.

Expenditure decisions in relation to the program will not be subject to independent merits review as decisions will relate to the provision of an ad hoc grant to a certain service provider over other service providers. The Administrative Review Council has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.16 to 4.19 of the guide, *What decisions should be subject to merits review?*).

Persons who are otherwise affected by decisions or who have concerns about the program will be able to provide feedback to the department. The department investigates any complaints about the program in accordance with its complaints policy and procedures. If a person is not satisfied with the way the department handles the complaint, they may lodge a complaint with the Commonwealth Ombudsman.

Consultation processes are ongoing and build on previous work of industry and governments to improve Australia's traceability systems. Efforts to date include an industry-government co-design exercise, hosted between 12 August and 2 November 2022, with 32 stakeholder groups participating. This exercise provided an opportunity to identify and collate areas of reform for national traceability arrangements including the database. Overall, there is strong support from across governments and peak industry bodies for improving the national livestock traceability database and its associated arrangements and activities.

Consultation will continue throughout the grant program with states and territories, industry, and the livestock database administrator, Integrity Systems Company, to confirm the scope and program of work. Supporting governance arrangements including a committee of key stakeholders will be established to ensure stakeholder needs and expectations are considered to ensure the program is fit for purpose.

Funding of \$46.7 million (which includes funding of \$26.6 million in 2022-23 for the program) was included in the October 2022-23 Budget under the measure ‘Bolstering Australia’s Biosecurity System – protecting Australia from escalating exotic animal disease risks’ for a period of three years commencing in 2022-23. Details are set out in *Budget October 2022-23, Budget Measures, Budget Paper No. 2* at pages 44 and 45.

Funding for the item will come from Program 2.1: Biosecurity and Export Services, which is part of Outcome 2. Details are set out in the *Portfolio Budget Statements 2022-23, Budget Related Paper No. 1.1, Agriculture, Fisheries and Forestry Portfolio* at pages 24, 27 and 55.

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

#### 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’.

The program provides funding to ensure that the livestock traceability database and tracking system is fit for purpose and nationally consistent, which would demonstrate the safety and quality of Australian food to key export markets.

## **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, Fisheries and Forestry 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*.

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#### **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**