

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 2024*

The *Financial Framework (Supplementary Powers) Act 1997* (the FFSP 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 FFSP 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 FFSP 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 FFSP Act confers powers of delegation on Ministers and the accountable authorities of non-corporate Commonwealth entities, including subsection 32B(1) of the FFSP Act. Schedule 1AA and Schedule 1AB to the Principal Regulations specify the arrangements, grants and programs.

Section 65 of the FFSP 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 2024* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on the Forestry Workforce Training Program (the program). The program will be administered by the Department of Agriculture, Fisheries and Forestry.

The program provides \$9.5 million over three years from 2023-24 to support the delivery of qualifications, competencies or credentials to meet the specific training and accreditation needs of the forest, wood, pulp and paper industries.

The Australian Government is committed to supporting the forestry and wood product sectors to achieve and maintain appropriate skill levels within the workforce. This investment will improve training pathways for incoming workers and create greater career progression.

Initial funding of \$0.5 million was allocated in 2022-23 to support a scoping study to inform the implementation of the program. The scoping study and engagement with the forestry and wood products industries, training providers and relevant government agencies was completed in October 2023. Informed by the recommendations from the scoping study, the program will deliver a range of activities from 2023-24.

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 2024*

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 2024*.

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 an activity administered by the Department of Agriculture, Fisheries and Forestry (the department).

New **table item 653** establishes legislative authority for government spending on the Forestry Workforce Training Program (the program).

The program provides \$9.5 million over three years from 2023-24 to support the delivery of qualifications, competencies or credentials to meet the specific training and accreditation needs of the forest, wood, pulp and paper industries.

This program forms part of the Australian Government's 2022 election commitment to strengthen, support and continue a sustainable forestry sector. As part of those commitments, the government will deliver a suite of initiatives totalling over \$300.0 million to support Australia's forest industries to innovate and improve the capacity and capability of the sector.

Initial funding of \$0.5 million was allocated in 2022-23 to support a scoping study to inform the implementation of the program. The scoping study and engagement with the forestry and

wood products industries, training providers and relevant government agencies was completed in October 2023.

The final report from the scoping study highlighted barriers affecting the industries' ability to access training, including geographic barriers, thin training markets, the high cost of training infrastructure, funding inequity in the vocational education and training system, and evolving drivers, preferences and demand from the forest and wood products industries.

The key issues identified in the scoping study final report were:

- Geographic barriers: the majority of forestry businesses are located in regional areas across Australia. Due to their location, access to Technical and Further Education is not easy as many providers do not offer forestry specific courses, and private trainers are not easily able to travel to the region. As a result, trainees are required to take time away from work, impacting on productions, and travel to undertake training.
- Thin markets: the forestry and wood products industry directly employ approximately 51,000 people across Australia. The relatively small pool for trainees and the high cost of the equipment required results in private training organisation not being economically viable.
- Structural barriers to training and skills development, making training more expensive than in other sectors. This could be due to the regional location, the small cohort of trainees and the expensive nature of the equipment.
- Funding barriers: declining support for private registered training organisations, which are often the only training providers that meet the industry specific needs.
- Evolving training drivers, preferences and demand: over time, the industry preference has shifted towards emphasising job requirements over qualifications. As a result, trainees and workers seek access to micro-credentials or short courses, as opposed to longer certificates or diplomas.

An external service provider will be engaged to deliver forestry industry reforms in line with recommendations from the scoping study with the aim of providing solutions to the structural impediments identified in the scoping study and resulting in long-term sustainable solutions for the industry to access the required training.

These reforms will include:

- Developing the industry's capability through workplace skills and training, including through linking workplace procedures to competency standards, trialling the application of micro-credentials and skills sets, developing workplace-based training and assessment capability and capacity, and recognising skills and knowledge through training and assessment.
- Enhancing registered training organisations (RTOs) and training assessment capability in the industry, including through developing and trialling efficient 'virtual RTO' and travelling assessor capabilities for critical industry, and coordinating and aggregating training demand to improve viability for RTOs.
- Supporting career long learning and skills development, including through developing and supporting purpose-designed qualifications and traineeships, creating school to training to work relationships and linkages for First Nations peoples, developing the skills of mid-career workplace leaders, supporting industry-led action to improve tertiary education in the industry, developing a specific program to embed gender diversity in training systems, processes and materials, and supporting women's participation in the industry through 'ready for work' training.

- Developing critical training materials and infrastructure, including through developing required training and assessment resources, supporting initiatives to place relevant qualifications online, establishing an online catalogue and library of relevant training resources, and developing First Nations cultural awareness and engagement training programs.

The Australian Government is committed to supporting the forestry and wood product sectors to achieve and maintain appropriate skill levels within the workforce. This investment will improve training pathways for incoming workers and increase career progression opportunities. This may include a combination of accredited, non-accredited courses and on the job training. The program will attempt to map the career pathways for jobs and careers that exist within the forest and wood products industry, clarify those pathways, identify any duplications or synergies and formalise existing arrangements that are not currently recognised within the industry.

The department will deliver the program through an open tender procurement process in line with the *Commonwealth Procurement Rules* (CPRs). The program will be governed by the CPRs and the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).

The selection process will be run by the Forestry and Agricultural and Veterinary Chemicals Branch in the department who will also be responsible for administering the program. Determination of shortlisted and successful applicants will be through an assessment panel who will make recommendations to the decision maker.

The Minister for Agriculture, Fisheries and Forestry (the Minister) or their delegate will be responsible for the final decision about Commonwealth expenditure. The delegate of the Minister would be an SES employee, or acting SES employee of the department, who has the relevant expertise in, and understanding of, the forestry industry and be able to perform relevant functions in accordance with the Commonwealth resource management framework.

The tender will be published on AusTender (www.tenders.gov.au) and on the department's website. Funding under the program will be made in accordance with the PGPA Act and CPRs.

Merits review of decisions made in connection with the program would not be considered appropriate because these decisions relate to the provision of funding to a certain service provider, over other service providers. Merits review would not be appropriate in relation to funding of activities that involve a competitive procurement process, because the decisions will relate to allocation of finite resources between competing applicants and an allocation already made to a party would be affected by overturning the original decision. The Administrative Review Council has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.16 to 4.19 of the guide, *What decisions should be subject to merit review?*).

The review and audit process undertaken by the Australian National Audit Office provides a mechanism to review Australian Government spending decisions and report any concerns to the Parliament. These mechanisms help to ensure the proper use of Commonwealth resources and appropriate transparency around decisions relating to making, varying or administering arrangements to send relevant money. 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 under the program would also have recourse to the Commonwealth Ombudsman, where appropriate.

In completing the scoping study for the program, the department contracted ForestWorks Ltd to undertake extensive industry consultation with a wide range of stakeholders on topics relevant to the program. Consultation sessions were held with a range of industry stakeholders from across the forestry and wood products industries supply chain, First Nations groups, training providers, unions, state and territory governments and the Australian Forest Products Association (AFPA).

Additionally, the department consulted separately with relevant industry organisations, including the Construction Forestry Maritime Mining and Energy Union (CFMEU) and AFPA regarding the program and scoping study. On receipt of the final report of the scoping study, the department consulted with the Department of Employment and Workplace Relations, the Department of Finance and the Department of the Prime Minister and Cabinet on potential implementation approaches.

The consultation highlighted numerous barriers affecting the forestry and wood products industries' ability to access training, and shaped the focus and delivery mechanisms of the remainder of the program. The outcomes of all consultation sessions were captured in the scoping study final report.

Total funding of \$10.0 million was included in the 2022-23 October Budget under the measure 'A Better Plan for Forestry and Forest Products' for a period of four years commencing in 2022-23. Details are set out in *Budget October 2022-23, Budget Measures, Budget Paper No. 2*, at page 43.

Funding for this item will come from Program 1.3: Forestry Industry, which is part of Outcome 1. Details are set out in the *Portfolio Budget Statements 2022-23 (October), Budget Related Paper No. 1.1, Agriculture, Fisheries and Forestry Portfolio*, at pages 23 and 38.

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

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 program will support the delivery of online learning systems, online qualifications and online course content or training materials specifically targeted towards the Forestry industry.

Race power

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 program will include measures that support positive outcomes for First Nations peoples within the Forestry industry, including through vocational guidance and increased engagement with First Nations peoples.

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 obligations under the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), including to:

- pursue a policy of eliminating discrimination against women ‘by all appropriate means’, including through the adoption of legislative measures (Article 2);
- ensure the full development and advancement of women (Article 3); and
- take all appropriate measures to eliminate discrimination against women in the field of employment (Article 11).

Australia has relevant obligations under the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), including to:

- take steps to realise the rights recognised in the Covenant ‘by all appropriate means’, including through the adoption of legislative measures (Article 2(1)); and
- recognise the right to work and take appropriate steps to realise this right, including through ‘technical and vocational guidance and training programmes, policies and techniques’ (Articles 6(1) and 6(2)).

Australia also has obligations under the International Labour Organization’s *Convention concerning Employment Policy* (ILO Convention 122) and the *Convention concerning Vocational Guidance and Vocational Training in the Development of Human Resources* (ILO Convention 142). These include to:

- pursue ‘an active policy designed to promote full, productive and freely chosen employment’ (Article 1, ILO Convention 122);
- decide on and keep under review measures to be adopted for attaining the objective specified in Article 1 (Article 2, ILO Convention 122);
- adopt policies and programs of vocational guidance and training, linked with employment (Article 1, ILO Convention 142); and
- establish and develop open, flexible and complementary systems of general, technical and vocational education, educational and vocational guidance, and vocational training, whether these activities take place within the system of formal education or outside it (Article 2, ILO Convention 142).

The program will contribute to the fulfilment of obligations under the CEDAW (Articles 2, 3 and 11), the ICESCR (Articles 2 and 6), the ILO Convention 122 (Articles 1 and 2) and the ILO Convention 142 (Articles 1 and 2). The program will provide educational and vocational guidance and training aimed at achieving steady economic, social and cultural development and full and productive employment by ensuring a sustainable forestry sector. Measures within the program will also support women’s participation and gender diversity in the forestry industry.

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 2024

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 FFSP Act) authorises the Commonwealth to make, vary and administer arrangements and grants specified in the *Financial Framework (Supplementary Powers) Regulations 1997* (the FFSP 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 FFSP Regulations specify the arrangements, grants and programs. The powers in the FFSP 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, Fisheries and Forestry Measures No. 1) Regulations 2024* amend Schedule 1AB to the FFSP Regulations to establish legislative authority for government spending on the Forestry Workforce Training Program (the program). The program will be administered by the Department of Agriculture, Fisheries and Forestry.

The program provides \$9.5 million over three years from 2023-24 to support the delivery of qualifications, competencies or credentials to meet the specific training and accreditation needs of the forest, wood, pulp and paper industries.

The Australian Government is committed to supporting the forestry and wood product sectors achieve and maintain appropriate skill levels within the workforce. This investment will improve training pathways for incoming workers and improve career progression opportunities.

Initial funding of \$0.5 million in 2022-23 was allocated to a scoping study to inform the implementation of the program. The scoping study and engagement with the forestry and wood products industries, training providers and relevant government agencies was completed in October 2023. Informed by the recommendations from the scoping study, the program will a range of activities through one procurement process.

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**