

## **EXPLANATORY STATEMENT**

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

#### *Financial Framework (Supplementary Powers) Act 1997*

#### *Financial Framework (Supplementary Powers) Amendment (Consequential Amendments) Regulations 2024*

The *Financial Framework (Supplementary Powers) Act 1997* (the Principal 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 Principal 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 sunset under section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (item 28A). If the Principal Regulations were subject to the sunset 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 Principal 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.

Section 39B of the Principal Act authorises the Commonwealth to form companies, or participate in the formation of companies, specified in the Principal Regulations and whose objects or proposed activities are specified in the Principal Regulations. Schedule 1B to the Principal Regulations specifies the companies and their objects or proposed activities.

Section 65 of the Principal Act provides that the Governor-General may make regulations prescribing matters required or permitted by that Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to that Act.

The *Financial Framework (Supplementary Powers) Amendment Act 2024* (the Amending Act) passed the Senate on 27 March 2024 and the House of Representatives on 16 May 2024.

The Amending Act makes amendments to sections 32B and 39B of the Principal Act to clarify the operation of those sections in respect of both future spending and past spending.

In particular, the Amending Act amends each section to remove words that may be construed as limiting the relevant power: “If ... apart from this subsection, the Commonwealth does not have power to” make, vary or administer the arrangement or grant, or to engage in one of the specified activities in relation to a company.

Following the amendments made by the Amending Act, certain references in the Principal Regulations are no longer correct because the internal numbering in the provisions is different.

The purpose of the *Financial Framework (Supplementary Powers) Amendment (Consequential Amendments) Regulations 2024* (the Amendment Regulations) is to update references in the Principal Regulations to those provisions of the Principal Act which are renumbered following the commencement of amendments made by the Amending Act.

The amendments to the Principal Regulations are consequential to the commencement of the Amending Act and are minor and technical in nature.

Details of the Amendment Regulations are set out at [Attachment A](#). A Statement of Compatibility with Human Rights is at [Attachment B](#).

The Amendment Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Amendment Regulations commence on the day after registration on the Federal Register of Legislation.

## **Consultation**

Consultation was undertaken during the development of the Amending Act but was not considered necessary in relation to the Amendment Regulations as the changes are minor and technical in nature and only update references to provisions in the Principal Act which have been renumbered by the Amending Act.

A regulatory impact analysis is not required by the Office of Impact Analysis as the Amendment Regulations are minor and technical in nature.

**Details of the *Financial Framework (Supplementary Powers) Amendment (Consequential Amendments) Regulations 2024***

**Section 1 – Name**

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Consequential Amendments) Regulations 2024* (the Amendment Regulations).

**Section 2 – Commencement**

This section provides that the Amendment Regulations commence on the day after registration on the Federal Register of Legislation.

**Section 3 – Authority**

This section provides that the Amendment Regulations are made under the *Financial Framework (Supplementary Powers) Act 1997* (Principal Act).

**Section 4 – Schedules**

This section provides that the *Financial Framework (Supplementary Powers) Regulations 1997* (the Principal Regulations) are amended as set out in the Schedule to the Amendment Regulations.

**Schedule 1 – Amendments**

***Financial Framework (Supplementary Powers) Regulations 1997***

The *Financial Framework (Supplementary Powers) Amendment Act 2024* (the Amending Act) passed the Senate on 27 March 2024 and the House of Representatives on 16 May 2024.

The Amending Act makes amendments to section 32B (which confers power on the Commonwealth to make, vary or administer an arrangement or grant) and section 39B (which confers power on the Commonwealth to form a company, participate in the formation of a company, acquire shares in a company, or become a member of a company) to clarify the operation of those sections in respect of both future spending and past spending.

In particular, the Amending Act amends each section to remove words that may be construed as limiting the relevant power: “If ... apart from this subsection, the Commonwealth does not have power to” make, vary or administer the arrangement or grant, or to engage in one of the specified activities in relation to a company.

The purpose of the Amendment Regulations is to update references in the Principal Regulations to those provisions of the Principal Act which are renumbered following the commencement of amendments made by the Amending Act.

The amendments are minor and technical in nature and do not otherwise affect the operation of the Principal Regulations.

**Item 1 – Subregulation 16(1)**

Item 1 amends subregulation 16(1) to replace the reference to paragraph 32B(1)(b) with subsection 32B(2) of the Principal Act.

**Item 2 – Subregulation 16(1) (note)**

Item 2 amends the note following subregulation 16(1) to replace the reference to subsection 32B(3) with subsection 32B(4) of the Principal Act.

**Item 3 – Subregulation 16(3)**

Item 3 amends subregulation 16(3) to replace the reference to paragraph 32B(1)(b) with subsection 32B(2) of the Principal Act.

**Item 4 – Subregulation 16(3) (note)**

Item 4 amends the note following subregulation 16(3) to replace the reference to subsection 32B(3) with subsection 32B(4) of the Principal Act.

**Item 5 – Subregulation 22AB(1)**

Item 5 amends subregulation 22AB(1) to replace the reference to subparagraph 39B(1)(b)(i) with paragraph 39B(1)(a) and subparagraph 39B(2)(b)(i) with paragraph 39B(2)(a) of the Principal Act.

**Item 6 – Subregulation 22AB(2)**

Item 6 amends subregulation 22AB(2) to replace the reference to subparagraph 39B(1)(b)(ii) with paragraph 39B(1)(b) and subparagraph 39B(2)(b)(ii) with paragraph 39B(2)(b) of the Principal Act.

**Attachment B****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 (Consequential Amendments) 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 Principal Act) authorises the Commonwealth to make, vary and administer arrangements and grants specified in the *Financial Framework (Supplementary Powers) Regulations 1997* (Principal Regulations) and to make, vary and administer arrangements and grants 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 powers in the Principal 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 39B of the Principal Act authorises the Commonwealth to form companies, or participate in the formation of companies, which are specified in the Principal Regulations and whose objects or proposed activities are specified in the Principal Regulations. Schedule 1B to the Principal Regulations specifies the companies and their objectives and activities.

The *Financial Framework (Supplementary Powers) Amendment Act 2024* (the Amending Act) passed the Senate on 27 March 2024 and the House of Representatives on 16 May 2024.

The *Financial Framework (Supplementary Powers) Amendment (Consequential Amendments) Regulations 2024* (the Amendment Regulations) make amendments to the Principal Regulations which are consequential to the commencement of the Amending Act.

The Amending Act makes amendments to sections 32B and 39B of the Principal Act to clarify the operation of those sections in respect of both future spending and past spending.

In particular, the Amending Act amends each section to remove words that may be construed as limiting the relevant power: “If ... apart from this subsection, the Commonwealth does not have power to” make, vary or administer the arrangement or grant, or to engage in one of the specified activities in relation of a company.

Following the amendments made by the Amending Act, certain references in the Principal Regulations are no longer correct because the internal numbering in the provisions is different.

The purpose of the Amendment Regulations is to update references in the Principal Regulations to sections 32B and 39B of the Principal Act which will be renumbered following the commencement of amendments made by the Amending Act.

The amendments are minor and technical in nature and do not otherwise affect the operation of the Principal Regulations.

### **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 they do not raise any human rights issues.

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