**EXPLANATORY STATEMENT**

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

*Financial Framework (Supplementary Powers) Act 1997*

*Financial Framework (Supplementary Powers) Amendment*

*(Climate Change, Energy, the Environment and Water 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 sunsetting under section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (item 28A). If the Principal Regulations were subject to the sunsetting 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 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 (Climate Change, Energy, the Environment and Water Measures No. 1) Regulations 2024* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for Government spending on activities administered by the Department of Climate Change, Energy, the Environment and Water (the department).

Funding is provided for:

* First Nations Water Security program to fund development and delivery of activities that will facilitate Aboriginal and Torres Strait Islander peoples’ decision making about water infrastructure for their communities and improve water security outcomes in remote communities ($5.0 million over four years from 2023-24); and
* Voluntary Emissions Reporting Standards for Agriculture and Land Program to develop and maintain greenhouse gas emissions estimation and reporting frameworks for the agriculture, fisheries and forestry industries ($2.8 million over four years from 2024‑25, and $0.4 million ongoing).

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.

A regulatory impact analysis is not required as the Regulations only apply to non‑corporate Commonwealth entities and do not adversely affect the private sector.

**Attachment A**

**Details of the *Financial Framework (Supplementary Powers) Amendment***

***(Climate Change, Energy, the Environment and Water Measures No. 1) Regulations 2024***

**Section 1 – Name**

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Climate Change, Energy, the Environment and Water 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 two new table items to Part 4 of Schedule 1AB to establish legislative authority for government spending on activities administered by the Department of Climate Change, Energy, the Environment and Water(the department).

*Table item 672 –* *First Nations Water Security*

New **table item 672** establishes legislative authority for Government spending on the First Nations Water Security program (the program) to support delivery of activities to build First Nations understanding and capability relating to water infrastructure and empower First Nations communities to benefit from improved water infrastructure.

Safe and reliable water is fundamental to human health and wellbeing. Many First Nations communities in regional and remote Australia face water security challenges, such as contaminated water, insufficient water, or limited or unreliable access to water. The program supports the outcomes of the Government’s commitment through the National Water Grid Fund (NWGF), which jointly funds water infrastructure projects with the states and territories to provide safe and reliable water for remote and regional First Nations communities. The commitment through the NWGF, combined with this program, provides a holistic approach that strengthens long-term, sustainable water security outcomes for these communities.

The program empowers First Nations communities to make better informed decisions about water infrastructure for their communities and funds activities – via grants and procurements – that build community understanding of water resources and potential infrastructure solutions.

Projects funded under the program may include:

* development of materials to support community understanding of water infrastructure, including advice on technology solutions;
* interpretation and communication of resources in local languages; and
* development of information dashboards to provide water quality advice to communities.

Providing complementary resources will help address barriers to robust decision making on water in First Nations communities. The resources will be culturally appropriate and not duplicative of state and territory resources.

Information about the program will be available on the National Water Grid website (https://www.nationalwatergrid.gov.au/).

*Funding amount and arrangements, merits review and consultation*

Funding of $5.0 million for the program was included in the 2023-24 MYEFO under the measure *National Water Grid Fund – delivering commitments* for a period of 4 years commencing in 2023-24. Details are set out in the *Mid-Year Economic and Fiscal Outlook 2023-24*, *Appendix C:* *Mid-Year Economic and Fiscal Outlook 2023-24* at page 224.

Funding for this item will come from Program 4.1: National Water Grid Fund, which is part of Outcome 4. Details are set out in the *Portfolio Additional Estimates Statements 2023-24*, *Department of Climate Change, Energy, the Environment and Water* at pages 17 and 45.

Departmental delegates will be responsible for assessing potential projects and making funding recommendations, informed by advice from the department’s First Nations Branch and engagement with stakeholders. Final decisions on the Commonwealth expenditure under this program will be made by the Senior Executive Service Band 1 of the Water Grid Infrastructure Investment Branch, or for contract values up to $500,000, an appropriate Executive Level 2 delegate with knowledge of the subject matter.

Funding is delivered via grants or procurement. Where the program uses a grants process, the Water Grid Infrastructure Investment Branch will use the Business Grants Hub. This is through a targeted closed non-competitive process, or one-off, ad hoc grants provided to First Nations service providers, non‑government organisations or research bodies, or those with First Nations expertise. Additional funding has not been provided for this purpose so any Business Grants Hub costs may be drawn from the $5.0 million funding allocation.

The Water Grid Infrastructure Investment Branch will manage the financial arrangements for procurement activities. External service providers or organisations will be engaged through open tender or limited tender if the conditions apply (such as requiring specific expertise of an organisation or to procure a prototype or service intended for limited trial).

Additional details on the expenditure process are being developed. All expenditure and program administration will adhere to the relevant policy frameworks and legislation such as the *Public Governance, Performance and Accountability Act 2013*, Commonwealth Grants Rules and Guidelines 2017, and Commonwealth Procurement Rules, and the Australian Government Indigenous Procurement Policy 2020.

Information about grants under the program will be made available on the GrantConnect website (help.grants.gov.au).

Merits review would not be appropriate for this program because the funding decisions will relate to the allocation of finite resources and an allocation already made 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 items 4.11 to 4.19 of ‘*What decisions should be subject to merit review*?’ (ARC Guide)).

Engagement with stakeholders, including through the ‘Better Water for the Bush’ forum (the forum) held in Alice Springs in 2023, jointly hosted by the department (which administers the NWGF), the Goyder Institute and Desert Knowledge Australia, indicated that:

* many remote First Nations communities have no access to information about their water consumption or quality;
* in communities where water testing and analysis take place, communication of the results is often limited, and not fit for purpose for an audience where English may not be a primary language or there may be a limited understanding of water quality scientific analysis; and
* there is an information gap in understanding potential infrastructure solutions that best align with the identified water security issues. Some communities are inclined to want the same water infrastructure as neighbouring communities, despite the water issues being different and therefore better addressed by alternative solutions.

The forum brought together diverse participants from across Australia, including Aboriginal community representatives, land councils, utilities, health regulators, service providers and national, state and territory, and local government agencies. Feedback from the forum indicated 12 focus areas to help Close the Gap on First Nations water security in Australia.

The department undertakes frequent, ongoing consultation with Australian Government agencies as part of the NWGF commitment to First Nations water infrastructure to inform and guide decisions around holistically improving water security for First Nations communities and ensuring program objectives are realised.

Commonwealth engagement includes:

* National Indigenous Australians Agency
* Department of Health and Aged Care
* National Health and Medical Research Council
* Department of Infrastructure, Transport, Regional Development, Communications and the Arts.

The department will leverage these existing relationships and information sharing to identify and prioritise communities and potential projects through the program.

State and territory governments and state-based water service providers are frequently engaged during the broader management of the NWGF and on the First Nations water infrastructure commitment. This engagement will continue as the program is developed and administered.

Relationships with the states and territories facilitate better Commonwealth understanding of contextual settings, existing state programs that support First Nations capacity building, and where the Commonwealth can add value by playing a coordinating role, providing advice around national issues, facilitating information sharing across the jurisdictions and incentivising activities in the national interest in the jurisdictions.

States and territories have been asked for ideas on how the program funding can be best directed towards projects that will amplify the impact of the NWGF commitment. This will contribute to program design.

*Constitutional considerations*

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

*Race power*

Section 51(xxvi) of the Constitution empowers the Commonwealth to legislate with respect to ‘the people of any race, for whom it is deemed necessary to make special laws’.

The program supports improved First Nations water security and will be designed in conjunction with First Nations communities.

*Table item 673 – Voluntary Emissions Reporting Standards for Agriculture and Land Program*

New **table item 673** establishes legislative authority for Government spending on the Voluntary Emissions Reporting Standards for Agriculture and Land Program (the program) to develop, publish and maintain voluntary greenhouse gas emissions estimation and reporting standards for the agriculture, fisheries and forestry industries.

The objective of the program is to harmonise and streamline estimation and reporting frameworks to reduce the burden on farmers and land managers.

Government leadership in the development of estimation and reporting standards assists with bringing together industry, supply chains, the finance sector and other stakeholders to develop a shared approach to greenhouse gas accounting. Standards also help drive improvements in the reliability of on-farm accounting tools/calculators and create greater transparency in relation to their performance.

The program is part of the Government’s measures to support emissions reductions in the agriculture and land sector and is part of the Government’s broader policy agenda of net zero emissions by 2050.

*Funding amount and arrangements, merits review and consultation*

Funding of $2.8 million over four years from 2024-25 and $0.4 million ongoing was included in the 2024-25 Budget under the broader measure Agriculture and Land Sectors – low emissions future. Details are set out in *Budget 2024-25*, *Budget Measures, Budget Paper No. 2* at page 56.

Funding for this item will come from Program 1.1: Reduce Australia’s greenhouse gas emissions, which is part of Outcome 1. Details are set out in the *Portfolio Budget Statements 2024-25*, *Budget Related Paper No. 1.3, Climate Change, Energy, the Environment and Water Portfolio* at page 25.

Expenditure will be undertaken in a manner consistent with the Commonwealth Procurement Rules and the *Public Governance, Performance and Accountability Act 2013*. The method of procurement used will be open tender or standing offer where a suitable standing offer arrangement is available. The department is responsible for administering the selection process. Assessment panels will be established to determine the successful applicants and make recommendations to the decision maker. Final decisions about Commonwealth expenditure will be made by the accountable authority’s delegate. The decision maker will be established at the Senior Executive Service Band 1 level consistent with the delegation set out in the *DCCEEW (Accountable Authority) Financial Delegation 2023* for the procurement of consultancy services with a contract value limit of $500,000. Information about the procurements will be made available on the AusTender website at www.tenders.gov.au.

Merits review would not be appropriate for this program because the funding decision will relate to the allocation of finite resources and an allocation already made from the program 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 items 4.11 to 4.19 of the ARC guide).

In addition, the review and audit process undertaken by the Australian National Audit Office also 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 also be available. Persons affected by spending decisions would also have recourse to the Commonwealth Ombudsman where appropriate.

The Department of Agriculture, Fisheries and Forestry undertook an extensive consultation process in late 2023, with the support of the department, as a first step in developing the Agriculture and Land Sector Decarbonisation Plan. The process included 11 in-person workshops and three online workshops to engage with key stakeholders. Stakeholders were also invited to make public submissions in response to a discussion paper and 238 submissions were received. Submissions came from industry representatives, farmers and landholders, not-for-profit organisations, First Nations groups, research and academia, state and territory governments and members of the public. The need for better accounting systems, standards and tools was one of the main topics raised by stakeholders during the consultation. Specifically, stakeholders requested that the Government prioritise the development of common standards for estimating and reporting agriculture and land sector emissions and removals. This feedback led to the development of the program. Further consultation will be undertaken to refine the scope of the standards once the program commences.

*Constitutional considerations*

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

*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 relevant to this item under a number of international agreements to reduce its greenhouse gas emissions, and ultimately to move towards net zero emissions.

The primary agreement is the United Nations Framework Convention on Climate Change (UNFCCC).The fundamental objective in Article 2 is the ‘stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.’

Article 4.1(b) of the UNFCCC obliges parties to ‘formulate, implement, publish and regularly update national and where appropriate, regional programs containing measures to mitigate climate change by addressing anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol’, and ‘measures to facilitate adequate adaptation to climate change’.

Article 4.1(c) obliges parties to ‘promote and cooperate in the development, application and diffusion, including transfer of technologies, practices and processes that control, reduce or prevent anthropogenic emissions of greenhouse gases in all relevant sectors, including energy, transport, industry, agriculture, forestry and waste management sectors’.

Article 4.2(a) obliges parties to ‘adopt national policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases and protecting and enhancing its greenhouse gas sinks and reservoirs’.

The Paris Agreement obliges Parties to take domestic measures ‘with the aim of achieving the objectives’ of Australia’s Nationally Determined Contribution (which is to reduce greenhouse gas emissions by 43 per cent below 2005 levels by 2030, and to produce net zero emissions by 2050). Article 4.2 of the Paris Agreement obliges parties to ‘pursue domestic mitigation measures with the aim of achieving’ nationally determined contributions.

The Kyoto Protocol to the UNFCCC also imposes obligations in relation to climate change mitigation, including through emissions reduction. Article 10(b) of the Kyoto Protocol obliges parties to formulate, implement, publish and regularly update national and regional programs containing measures to mitigate climate change and measures to facilitate adequate adaptation to climate change.

Improved greenhouse gas accounting at farm level through the development of emissions estimation and reporting standards is directed at promoting uptake of emissions reduction actions in the sector and assisting Australia to meet its obligations under international treaties, particularly in relation to achieving net-zero greenhouse gas emissions.

**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 (Climate Change, Energy, the Environment and Water 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 (Climate Change, Energy, the Environment and Water Measures No. 1) Regulations 2024* (the Regulations) amend Schedule 1AB to the FFSP Regulations to establish legislative authority for Government spending on activities administered by the Department of Climate Change, Energy, the Environment and Water (the department).

This disallowable legislative instrument inserts the following table items in Part 4 of Schedule 1AB:

* table item 672 ‘First Nations Water Security’; and
* table item 673 ‘Voluntary Emissions Reporting Standards for Agriculture and Land Program.

*New table item 672 – First Nations Water Security*

New **table item 672** establishes legislative authority for Government spending on the First Nations Water Security program, to be administered by the department to fund activities that build First Nations community understanding of water resources and potential infrastructure solutions, and in turn, improve the ability of those communities to benefit from improved water infrastructure.

The program would seek to empower First Nations communities to make better informed decisions about water infrastructure for their community.

Funding may be directed to projects that address the needs of multiple communities and are broadly applicable (for example, simple advice on a number of water infrastructure options or technologies), or projects that address specific barriers to empowerment for water infrastructure decision making in individual communities (for example, water resource guidance translated into local languages).

Project types that may be delivered through this program include:

* development, interpretation and communication of water-related resources into local languages or pictorial representations;
* development of information dashboards to provide up to date and place-based water quality advice; and
* development and trialling of coordinated education programs to build skills and capacities for local communities, in partnership with state-based water providers.

Funding of $5.0 million over four years from 2023-24 is available for the program.

**Human rights implications**

Table item 672 does not engage any of the applicable rights or freedoms.

*Table item 673 – Voluntary Emissions Reporting Standards for Agriculture and Land Program*

New **table item 673** establishes legislative authority for Government spending on voluntary standards for estimating and reporting greenhouse gas (GHG) emissions for the agriculture, fisheries and forestry industries.

The voluntary GHG accounting standards program is one of the Government’s measures to support emissions reductions in the agriculture and land sector and is part of the Government’s broader policy agenda of net zero emissions by 2050.

Funding of $2.8 million over four years from 2024-25 would be available for the development, publishing and maintenance of voluntary greenhouse gas emissions estimation and reporting standards for the agriculture, fisheries and forestry industries. The objective of the voluntary GHG accounting standards program is to harmonise the estimation and reporting requirements for farmers and land managers and improve the quality and consistency of accounting tools.

The development of estimation and reporting standards will help to bring together industry, supply chains, the finance sector and other stakeholders to develop a shared approach to greenhouse gas accounting. This is intended to reduce the burden of the requirements imposed on farmers and land managers. Provision of standards will also help drive improvements to the reliability of on-farm accounting tools/calculators and create greater transparency about their performance.

**Human rights implications**

Table item 673 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**