

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. 2) 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 (Climate Change, Energy, the Environment and Water Measures No. 2) Regulations 2024* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for Government spending on the Cultural Flows Planning for Cultural Economies program (the program). The program will be administered by the Department of Climate Change, Energy, the Environment and Water.

The program will provide funding to Aboriginal and Torres Strait Islander communities in the Murray-Darling Basin (Basin Communities) to prepare cultural flows plans and develop business plans that support water dependent business opportunities.

The program will support Basin Communities to build governance, business and planning foundations. These foundations are necessary to own and manage water in the Murray-Darling Basin, and enable and support:

- robust governance structures of individual Basin Communities to complement the enduring governance of the Murray-Darling Basin Aboriginal Water Entitlements Program;
- business planning that enables Basin Communities to pursue water acquisitions effectively; and
- building on Basin Communities work and cultural flows planning done to date.

There are over 50 Basin Communities, and the funding will provide for up to \$300,000 for each community per application. The amount of funding provided to each applicant will be determined by the complexity and needs of the application. Funding for cultural water planning for cultural economies will support self-determined research, education and infrastructure that respects cultural values and practices, creating a bridge between cultural water science and contemporary water management.

Funding of \$20.0 million over three years from 2024-25 will be available for the program.

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 Climate Change, Energy, the Environment and Water.

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.

Details of the *Financial Framework (Supplementary Powers) Amendment (Climate Change, Energy, the Environment and Water Measures No. 2) 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. 2) 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

The item in Schedule 1 amends Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on an activity to be administered by the Department of Climate Change, Energy, the Environment and Water (the department).

Item 1 – In the appropriate position in Part 4 of Schedule 1AB (table)

This item adds a new table item to Part 4 of Schedule 1AB.

Table item 689 – Cultural Flows Planning for Cultural Economies

New **table item 689** establishes legislative authority for government spending on the Cultural Flows Planning for Cultural Economies program (the program).

The program will enable Aboriginal and Torres Strait Islander communities across the Murray-Darling Basin (Basin Communities) to be equitably prepared to own and manage water in a self-determined manner.

Basin Communities are at different stages of cultural flows planning. Some communities have completed cultural flows planning, while other communities have not had the same opportunities.

On 28 November 2023, the Prime Minister, the Hon Anthony Albanese, committed \$20.0 million for the program as part of a suite of non-legislative measures that supported the passage of the *Water Amendment (Restoring our Rivers) Act 2023*. The funding supports the Australian Government commitment to increasing Basin Communities' ownership and management of water.

The objectives of the program are to:

- enable Basin Communities with opportunities to initiate, continue, or finalise cultural flows planning;
- equip Basin Communities with necessary support for cultural flows planning, business enterprise planning, and capability development, including financial, logistical, human resource, and other identified forms of assistance;
- facilitate the development of private and social enterprises as cultural economies, integrating them into natural resource management planning and water management strategies; and
- promote self-determination by empowering Basin Communities to make decisions regarding water ownership and management in line with their cultural values and aspirations.

The program builds on Basin Communities cultural flows planning work done to date by the Murray Lower Darling Indigenous Nations, Northern Basin Aboriginal Nations, Northern Australian Indigenous Land and Sea Management Alliance, and the University of Melbourne (with support by a range of project partners/supporters).

Examples of these works include:

- National Cultural Flows – the National Cultural Flows Research Project was a research project driven by Aboriginal people, for Aboriginal people. The project was working to secure a future where Aboriginal and Torres Strait Islander peoples' water allocations are embedded within Australia's water planning and management regimes, to deliver cultural, spiritual and social benefits as well as environmental and economic benefits, to Basin Communities and beyond.
- Cultural Water for Cultural Economies – this project identified key pathways to water access for, as well as the significant barriers to, the use of water by Aboriginal and Torres Strait Islander peoples.

The program will further support the development of robust governance structures of individual Basin Communities. The program aims to complement the enduring governance mechanism developed for the Aboriginal Water Entitlements Program and support the development of business planning to enable Basin Communities to take a stronger role in ownership and management of water resources.

In the Murray-Darling Basin, home to over 50 Aboriginal and Torres Strait Islander communities, water is a vital part of the connection to Country. However, the impacts of colonisation have deeply affected these communities' access to water. Now, Aboriginal and Torres Strait Islander peoples own less than 0.2 percent of surface water entitlements. The \$100.0 million Aboriginal Water Entitlements Program is a significant initiative to help address these impacts. The program is a complementary program that will support Basin Communities to prepare for ownership and management of water.

The program is expected to open in the first quarter of 2025, subject to final consultation, and will end on 30 June 2027.

The program will be administered through a grants-based arrangement using the Business Grants Hub within the Department of Industry Science and Resources. There will be one round of grant funding available with amounts expected to range from \$10,000 to \$300,000 per grant. Exact approved grant amounts will be determined by the complexity and the need of the individual application.

Eligibility criteria is still yet to be settled. They will be informed by the consultation and co-design process and will be finalised in the grant opportunity guidelines following appropriate delegate approval. Likely inclusions are below:

- applicant/s must be a Traditional Owner of Country within the Murray-Darling Basin and be making the application in respect to that geographical location only;
- applicant/s must be in need of funding to commence, progress or finalise cultural flows planning, enhance governance structures or water dependent business plans in relation to water in the Murray-Darling Basin; and
- applicant/s can provide sufficient evidence to satisfy the above two criteria.

The applicant/s may be able to make more than one application within the round if the applicant can demonstrate the need and satisfy the necessary criteria.

The grants model will enable funding to be provided directly to Basin Communities and will support equitable participation and benefit to all eligible communities. It will offer flexibility for recipients, recognising the diverse needs and stages of cultural planning among Basin Communities.

The program will provide funding for Basin Communities to develop plans. It will not provide funds to implement activities or purchase capital items identified in the plans that are produced as part of this program or that may already exist.

Funding amount and arrangements, merits review and consultation

Funding of \$20.0 million was included in the 2023-24 Mid-Year Economic and Fiscal Outlook under the measure ‘Murray-Darling Basin Plan – delivering commitments’ for a period of three years commencing in 2024-25. Details are set out in the *Mid-Year Economic and Fiscal Outlook 2023-24, Appendix A: Policy decisions taken since the 2023-24 Budget* at page 223.

Funding for this item will come from Program 4.1: Protect, restore and sustainability manage Australia’s water resources, which is part of Outcome 4. Details are set out in the *Portfolio Additional Estimates Statements 2023-24, Climate Change, Energy, The Environment And Water Portfolio* at pages 17 and 20.

Grants administration will be undertaken in line with the Commonwealth resource management framework, including the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), the *Public Governance, Performance and Accountability Rule 2014* and the *Commonwealth Grants Rules and Principles 2024* (CGRPs).

Consistent with the CGRPs, the department will develop grant opportunity guidelines and will have regard to the nine key principles in administering the grant.

The selection process will follow an open targeted non-competitive criterion. A hybrid assessment and selection process will be applied to the program utilising the Business Grants Hub secretariat for initial screening, eligibility and merit assessment followed by a secondary review/assessment by a departmental assessment panel. This will ensure that effective probity, ethics and conflict of interest management is maintained, and high-quality and defensible assessments of applications are conducted. The departmental assessment panel will make recommendations about approved program applications to the delegate (Senior Executive Service Band 2, Water Policy Division who has the relevant skills, knowledge and experience) for final decision. The *Financial Framework (Supplementary Powers) Act 1997*, CGRPs and the PGPA Act will govern assessment, selection and expenditure under the program.

The department will develop a dedicated program webpage where all relevant information about the program can be found. Additionally, the grant guidelines and awards, and supporting documentation will be available on the business grants hub portal (grants.gov.au).

Independent 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 fund 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 4.11 to 4.19 of the guide, *What decisions should be subject to merit review?*).

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.

From 28 June 2024 to 19 July 2024, the program team conducted extensive consultation on program design via face-to-face meetings, an online 'Have Your Say' Survey, three separate virtual roundtable sessions and direct engagement with interested Nations.

During the consultations, 29 Basin Communities participated. The National Indigenous Australians Agency, the Murray-Darling Basin Authority, the Indigenous Land and Sea Corporation, State Governments, and supporting organisations, were also invited to engage in these discussions.

The concerns raised by the Basin Communities underscore the need for a more inclusive, transparent, and respectful approach to cultural flows planning, funding distribution, land management, and the definition of cultural economies. Addressing these issues through comprehensive consultation, clear guidelines, and robust dispute resolution frameworks will be crucial for building trust and fostering positive relationships with the Basin Communities.

Additionally, the effectiveness of cultural flows plans will be enhanced by implementing the recommended improvements, such as:

- increasing funding availability;
- providing flexible options;
- extending project timelines;
- offering specialist support; and
- developing governance resources.

Establishing mechanisms for regular monitoring and evaluation of funded projects is essential to ensure Basin Communities meet their objectives, with ongoing feedback and support being vital for continuous improvement.

Constitutional considerations

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

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 aims to complement the enduring governance mechanism developed for the Aboriginal Water Entitlements Program and support the development of business planning to enable Basin Communities to take a stronger role in ownership and management of water resources.

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. 2) 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 Principal 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 Principal 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. 2) Regulations 2024* (the Regulations) amend the Principal Regulations to establish legislative authority for government spending on the Cultural Flows Planning for Cultural Economies program (the program). The program will be administered by the Department of Climate Change, Energy, the Environment and Water.

The program will provide funding to Aboriginal and Torres Strait Islander communities in the Murray-Darling Basin (Basin Communities) to prepare cultural flows plans and develop business plans that support water dependent business opportunities. These plans could potentially support the Basin Communities to manage and own water in the future.

The program will support Basin Communities to build governance, business and planning foundations. These foundations are necessary to own and manage water in the Murray-Darling Basin, and enable and support:

- robust governance structures of individual Basin Communities to complement the enduring governance of the Aboriginal Water Entitlements Program;
- business planning that enables Basin Communities to pursue water acquisitions effectively; and
- building on Basin Communities work and cultural flows planning done to date.

There are over 50 Basin Communities, and the funding will provide for up to \$300,000 for each community per application. The amount of funding provided to each applicant will be determined by the complexity and needs of the application. Funding for cultural water planning for cultural economies will support self-determined research, education and

infrastructure that respects cultural values and practices, creating a bridge between cultural water science and contemporary water management.

Funding of \$20.0 million over three years from 2024-25 will be available for the program.

Human rights implications

This disallowable legislative instrument engages the following right:

- the right to self-determination – Article 1 of the *International Covenant on Civil and Political Rights* (ICCPR), read with Article 2, and Article 1 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), read with Article 2.

Right to self-determination

The rights of peoples to freely determine their political states and freely pursue their economic, social and cultural development is contained in Article 1 of the ICCPR and Article 1 of the ICESCR. This right is a collective right applying to groups of peoples, in contrast to rights to culture which protect the rights of individuals within a group.

Article 2 of the ICCPR provides that each State Party undertakes to take the necessary steps to adopt such laws or other measures as may be necessary to give effect to the rights recognised in the ICCPR.

Article 2 of the ICESCR provides that each State Party undertakes to take steps to the maximum of its available resources with a view to achieving progressively the full realisation of the rights recognised in the ICESCR, by all appropriate means.

This disallowable legislative instrument positively engages the right to self-determination for Basin Communities to make decisions regarding water ownership in line with their cultural values and aspirations. This disallowable legislative instrument will support Basin Communities to be better prepared to own and manage water in a self-determined manner.

Conclusion

This disallowable legislative instrument is compatible with human rights because it promotes the protection of human rights.

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