

## **EXPLANATORY STATEMENT**

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

*Financial Framework (Supplementary Powers) Act 1997*

*Financial Framework (Supplementary Powers) Amendment  
(Finance Measures No. 3) 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 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 (Finance Measures No. 3) Regulations 2024* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for the Government to provide a loan to Snowy Hydro Limited (Snowy Hydro) to finance the construction of the Snowy 2.0 project. The loan will be administered by the Department of Finance.

Snowy 2.0 is critical to the security of the National Electricity Market, providing renewable electricity generation, facilitating additional renewable development and placing downward pressure on peak wholesale electricity prices.

The Commonwealth expenditure is a \$4.5 billion loan on commercial terms to Snowy Hydro for the construction of Snowy 2.0.

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 occurred with the Department of Climate Change, Energy, the Environment and Water, and the recipient of the funding, Snowy Hydro.

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 (Finance Measures No. 3) Regulations 2024***

**Section 1 – Name**

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Finance Measures No. 3) 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 Finance (the department).

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

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

**Table item 6 – Arrangement with Snowy Hydro Limited**

New **table item 6** establishes legislative authority for the Government to provide a loan to Snowy Hydro Limited (Snowy Hydro) to continue construction of the Snowy 2.0 pumped hydro project.

Snowy Hydro operates 16 power stations with more than 5,500 megawatt of generating capacity across New South Wales (NSW), Victoria and South Australia. In May 2017, Snowy 2.0 was announced. This pumped hydro expansion of the Snowy Scheme will link two existing dams, Tantangara and Talbingo, through a 27 kilometer underground tunnel and a new underground power station. In March 2018, the Australian Government reached agreement with the NSW and Victorian Governments to take full ownership of Snowy

Hydro. Construction of the Snowy 2.0 project commenced in 2019 and will underpin Australia's transition to renewables.

In May 2024, the Australian Government announced it would provide Snowy Hydro an additional \$7.1 billion, including a \$4.5 billion construction period loan and \$2.6 billion in equity, to support continued construction of Snowy 2.0.

The Government will further provide \$2.0 million over four years from 2024-25 (and \$2.4 million from 2028-29 to 2033-34) to the department to administer the loan and \$1.5 million over four years from 2024-25 (and \$0.4 million per year ongoing) to the Department of Climate Change, Energy, the Environment and Water to administer the equity investment.

Snowy 2.0 is critical to enhancing security of the National Electricity Market (NEM), providing firming to intermittent renewable electricity generation, facilitating additional renewable development and placing downward pressure on peak wholesale electricity prices. The project is a key enabler for the national renewable energy transition and meeting the related 82 per cent target.

The objective of Snowy 2.0 is to boost Australia's renewable energy storage capacity and assist the country in its transition to a lower emissions economy. Increased capacity and storage will lower energy prices for consumers. The storage of Snowy 2.0 dams will assist stability and reliability of the NEM, providing 2,200 megawatt of generation and 350,000 megawatt hour of storage.

Additional renewable capacity of the NEM is enabled by firming intermittent wind and solar, as covering lulls in generation unlocks renewable penetration. Snowy 2.0 will provide valuable deep firming, being able to run continuously for seven days, compared to back up from batteries typically lasting up to four hours. In addition, the project creates economic opportunities for local businesses in the Snowy Mountains and significant employment.

#### Funding amount and arrangements, merits review and consultation

Funding of \$4.5 billion for the loan to Snowy Hydro, and \$2.0 million to the department to administer the loan, was included in the 2024-25 Budget under the measure 'Snowy Hydro Limited' for a period of four years commencing in 2024-25. Details are set out in *Budget 2024-25, Budget Measures, Budget Paper No. 2* at page 101.

Funding for the department will come from Program 2.1: Public Sector Governance, which is part of Outcome 1. Details are set out in the *Portfolio Budget Statements 2024-25, Budget Related Paper No. 1.7, Finance Portfolio* at pages 19-20.

The joint Shareholder Ministers for Snowy Hydro, the Minister for Finance and the Minister for Climate Change and Energy, are responsible for overseeing the governance and reporting of Snowy Hydro as a wholly Commonwealth-owned Government Business Enterprise (GBE). The Minister for Finance will lead responsibilities for loan arrangements in accordance with the *Financial Framework (Supplementary Powers) Act 1997*, the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and the *Public Governance, Performance and Accountability Rule 2014*.

The department will administer the commercial loan to Snowy Hydro. The department's policy frameworks governing the administration of the loan are the Government Business Enterprise Resource Management Guide (RMG) 126 and Commonwealth Investment Framework RMG 308. With legislative authority in place, Shareholder Ministers will enter a debt agreement with Snowy Hydro which will be drafted in accordance with the RMGs 126 and 308 and the PGPA Act.

The department is responsible for ensuring appropriate mechanisms are in place to facilitate the implementation and management of the loan. Joint shareholder departments will undertake active monitoring and evaluation throughout the lifecycle of the loan including monitoring loan profiles and construction milestones for Snowy 2.0. Public transparency will be provided through annual reports and corporate plans, published by Snowy Hydro on their website.

Independent merits review will not be appropriate for the loan because the funding decisions are not directed towards the circumstances of particular persons, but apply generally to the community. Such 'legislation-like decisions' are unsuitable for review. The Administrative Review Council (ARC) has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraph 3.1 of the guide, *What decisions should be subject to merit review?* (ARC guide)).

In addition, the loan satisfies criteria where the decision falls within a classification that may exclude merits review as the nature of the decision is a 'financial decision with a significant public interest element'. As set out in paragraph 4.34 of the ARC guide, this class of decision subject to exception combine a significant public interest element, together with either:

- a need to take rapid action to restore or maintain investor confidence in the market; or
- an aspect that makes them essentially government financial policy decisions, rather than decisions about the merits of particular applications.

The department consulted with Snowy Hydro and the Department of Climate Change, Energy, the Environment and Water as a joint shareholder department of the GBE, during the 2024-25 Budget. No public consultation occurred due to commercial sensitivities.

### Constitutional considerations

Noting that it is not a comprehensive statement of relevant constitutional considerations, the purpose of the item references the following powers of the Constitution:

- the trade and commerce power (section 51(i)); and
- the external affairs power (section 51(xxix)).

### *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 interconnected nature of the NEM means that electricity generated in any part of the NEM can be used in any other part of the NEM. The provision of Commonwealth financial support to generate electricity and storage in the NEM would foster and encourage interstate trade.

### *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 obligations under treaties to which it is a party.

Australia has obligations to reduce greenhouse gas emissions under the *United Nations Framework Convention on Climate Change* [1994] ATS 2 (UNFCCC) and continuing obligations of the Kyoto Protocol [2006] ATS 2 (such as Art 10(b)) and the Paris Agreement [2016] ATS 24.

Under Article 4 of the UNFCCC, Australia has obligations to:

- formulate, implement and regularly update national programs containing measures to mitigate climate change by addressing anthropogenic emissions by sources and removal by sinks of all greenhouse gases not controlled by the Montreal Protocol (Article 4.1 (b));
- 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 (Article 4.1(c));
- 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 (Article 4.2(a)).

Article 10(b) of the Kyoto Protocol obliges contracting parties to ‘formulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate change and measures to facilitate adequate adaptation to climate change’.

Article 4.2 of the Paris Agreement obliges contracting parties to ‘prepare, communicate and maintain successive nationally determined contributions that it intends to achieve’ and to ‘pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions’.

Article 7.1 of the Paris Agreement establishes for contracting parties the ‘global goal on adaptation of enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change, with a view to contributing to sustainable development and ensuring an adequate adaptation response in the context of the temperature goal referred to in Article 2’.

The loan for construction of Snowy 2.0 gives effect to the above obligations by providing support to renewable energy generation and firming capacity, facilitating additional renewable development, reducing greenhouse gas emissions, and enhancing adaptive capacity and resilience in the NEM. Snowy 2.0 will be a major enabler for the national renewable energy transition and meeting the Australian Government’s related target for 82 per cent renewable energy by 2030.

## **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 (Finance Measures No. 3) 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 (Finance Measures No. 3) Regulations 2024* amend Schedule 1AB to the Principal Regulations to establish legislative authority for the Government to provide a loan to Snowy Hydro Limited (Snowy Hydro) to finance the construction of the Snowy 2.0 project. The loan will be administered by the Department of Finance.

The Commonwealth expenditure is a \$4.5 billion loan on commercial terms to Snowy Hydro for construction of Snowy 2.0. Two existing dams will be linked, Talbingo and Tantangara, incorporating 27 kilometer of tunnels and a new 2,200 megawatt underground power station. Approximately 350,000 megawatt hour of large-scale storage would be available to the National Electricity Market (NEM).

The objective of Snowy 2.0 is to boost Australia's renewable energy storage capacity and assist the country in its transition to a lower emissions economy. Increased capacity and storage will lower energy prices for consumers. The storage facility of Snowy 2.0 dams will assist stability and reliability of the NEM, facilitating further renewable energy generation. In addition, the project is intended to create economic opportunities for local businesses in the Snowy Mountains and significant employment.

### **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**