

EXPLANATORY STATEMENT

Select Legislative Instrument No. 156, 2014

Issued by the Authority of the Minister for Finance

Financial Framework (Supplementary Powers) Act 1997

*Financial Framework (Supplementary Powers) Amendment
(2014 Measures No. 1) Regulation 2014*

Section 65 of the *Financial Framework (Supplementary Powers) Act 1997* (the FF(SP) 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.

Section 32B of the FF(SP) Act authorises the Commonwealth to make, vary and administer arrangements and grants specified in the *Financial Framework (Supplementary Powers) Regulations 1997* (the Principal Regulations). Section 32B also authorises the Commonwealth to make, vary and administer arrangements for the purposes of programmes specified in the Principal Regulations. Schedule 1AA and Schedule 1AB to the Principal Regulations specify the arrangements, grants and programmes. Section 32B was added to the *Financial Management and Accountability Act 1997* (FMA Act) in June 2012 in response to the High Court's decision in *Williams v Commonwealth* (2012) 288 ALR 410.

The FF(SP) 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, programmes and companies (or classes of arrangements or grants in relation to which the powers are conferred) are specified in the Principal Regulations.

These provisions were retained when the FMA Act was amended by the *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014*, with effect from 1 July 2014. This Act renamed the FMA Act as the FF(SP) Act, with a consequential change to the name of the Regulations supporting the renamed Act.

The FF(SP) Act applies to 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 PGPA Act). The PGPA Act replaced the FMA Act and the *Commonwealth Authorities and Companies Act 1997* to consolidate the governance, performance and accountability framework for the Commonwealth and relevant entities.

Schedule 1 to the Regulation amends the Principal Regulations to establish legislative authority in Schedule 1AB for the Commonwealth Government to spend on the following activities relating to:

- voluntary contributions to the Information Sharing Centre, established by the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia, which will allow the Australian Customs and Border Protection Service to undertake its national security obligations to eradicate piracy in the region (Immigration and Border Protection portfolio);

- funding the operational costs of the National Office of Life Education Australia associated with the ongoing development and implementation of school-based student resilience and wellbeing programmes and resources for schools (Education portfolio); and
- the establishment and funding of the Australian Government Innovation and Investment Fund – Tasmania, part of the Government’s Tasmanian Jobs and Growth Package, to support new projects that create sustainable business growth and job opportunities that will contribute to the strengthening of Tasmania’s economy (Industry portfolio).

Details of the Regulation are set out at Attachment A. A Statement of Compatibility with Human Rights is at Attachment B.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation commences on the day after registration on the Federal Register of Legislative Instruments.

Consultation

In accordance with section 17 of the *Legislative Instruments Act 2003*, consultation has taken place with: the Australian Customs and Border Protection Service; the Department of Education; and the Department of Industry.

A regulation impact statement is not required as the Regulation only applies to non-corporate Commonwealth entities and does not adversely affect the private sector.

Details of the *Financial Framework (Supplementary Powers) Amendment (2014 Measures No. 1) Regulation 2014*

Section 1 – Name of Regulation

This section provides that the title of the Regulation is the *Financial Framework (Supplementary Powers) Amendment (2014 Measures No. 1) Regulation 2014*.

Section 2 – Commencement

This section provides that the Regulation commences on the day after it is registered on the Federal Register of Legislative Instruments.

Section 3 – Authority

This section provides that the Regulation is made under the *Financial Framework (Supplementary Powers) Act 1997*.

Section 4 – Schedule(s)

This section provides that the *Financial Framework (Supplementary Powers) Regulations 1997* is amended as set out in Schedule 1 to the Regulation.

Schedule 1 – Amendments

Item 1 – Part 3 of Schedule 1AB (at the end of the table)

This item adds two items to Part 3 to establish legislative authority for the Commonwealth Government to provide grants of financial assistance to persons other than a State or Territory for matters to be administered by the Australian Customs and Border Protection Service and the Department of Education, respectively.

New **table item 4** establishes legislative authority for the Government to make voluntary contributions to the Information Sharing Centre established by the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP). The former Governor-General acceded to the ReCAAP in 2013 under Australia's treaty-making power under Chapter II of the Constitution.

The services of the Information Sharing Centre are instrumental to the strategy of the Australian Customs and Border Protection Service (ACBPS) to deter piracy in Asia. The Centre will assist the ACBPS to undertake a core function to generate awareness of activities in Australia's maritime domain, with the object of identifying security threats, assessing their likelihood of occurring and estimating their potential consequence. The Information Sharing Centre will provide a central anti-piracy information service, which will allow the ACBPS to undertake its national security obligations to eradicate piracy in the region.

The maritime industry, seafarers and the maritime law enforcement community all benefit from enhanced communications and information exchanged among participating governments and the Information Sharing Centre. Contributions to the Centre will ensure that Australia, through the ACBPS, continues to enhance the capability to eradicate piracy in the region.

There is no assessed financial contribution required under the ReCAAP. However, the ACBPS will utilise funding allocated in 2014-2015 to make a contribution to the Information Sharing Centre. Contributions in future years will be assessed on an 'as needs' basis annually from the ACBPS's budget allocation for that year. The ACBPS will make recommendations for funding to the Minister for Immigration and Border Protection for a final, non-reviewable decision. Funding guidelines do not provide for internal review of any funding decision. Internal merits review is not applicable in respect of decisions made in relation to ad-hoc or targeted funding given the non-competitive nature of the funding. There is no applicable legislation that provides for external merits review of such a decision.

The 2012 report of the Joint Standing Committee on Treaties, *Report 131 Treaties tabled on 21 August, 11 and 18 September 2012*, provides an overview of the ReCAAP. The Committee supported the ReCAAP.

Payment of this grant will be made from Programme 1.1: Border Enforcement, described in the *Portfolio Budget Statements 2014-15, Budget Related Paper No. 1.11, Immigration and Border Protection Portfolio* at page 97. Programme 1.1 comes under Outcome 1: The protection of the safety, security and commercial interests of Australians through border protection designed to support legitimate trade and travel and ensure collection of border revenue and trade statistics, described at page 95 of the *Portfolio Budget Statements 2014-15, Budget Related Paper No. 1.11, Immigration and Border Protection Portfolio*.

New **table item 5** establishes legislative authority for the Government to fund the operational costs of the National Office of Life Education Australia associated with the ongoing development and implementation of school-based student resilience and wellbeing programmes and resources for schools.

The provision of funding to Life Education Australia aligns with the Australian Government's objective to support strategic projects that aim to improve student learning outcomes in schools.

All decisions for this measure will be made in accordance with the Department of Education's Secretary Instructions and delegations on the expenditure of relevant monies as authorised under the *Public Governance, Performance and Accountability Act 2013*. Funding will be provided to Life Education Australia through a funding agreement that will comply with the Commonwealth Grants Rules and Guidelines. Payments will be made upon successful completion of milestones outlined in the funding agreement. Grant information will be published on the Department's website.

This Programme is not considered suitable for merits review given the limited allocation of funding available and the fact that the funding is being provided to assist Life Education Australia in its work.

Payments will be made from Program 2.3: Schools Support - Quality Outcomes Other Programme, described in the *Portfolio Budget Statements 2014-15, Budget Paper No. 1.5, Education Portfolio* at page 54.

Item 2 – Part 4 of Schedule 1AB (at the end of the table)

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

New **table item 63** establishes legislative authority for the Commonwealth Government to establish and fund the Australian Government Innovation and Investment Fund – Tasmania (AGIIF). The AGIIF will be administered by the Department of Industry.

The AGIIF is a scheme to encourage new sustainable economic growth and jobs in Tasmania by providing assistance to support new projects that create sustainable business growth and job opportunities that will contribute to the strengthening of Tasmania's economy.

On 23 October 2013, the Deputy Prime Minister and Minister for Infrastructure and Regional Development, the Hon Warren Truss MP, reaffirmed the AGIIF as part of the Government's \$106.0 million Tasmanian Jobs and Growth Package. This package comprises projects and investments aimed at supporting economic growth and jobs in Tasmania.

Funding of \$11.0 million has been allocated to AGIIF for three years from 2014-15 to 2016-17. The Fund will operate as an open, competitive, merit-based grants programme on a matched funding basis. Grants will be a minimum of \$50,000. The AGIIF will be delivered in Tasmania by AusIndustry, a division of the Department of Industry.

Applications for grants under the AGIIF must demonstrate that activities proposed to be funded will generate new sustainable business growth and jobs that support a sustained increase in economic activity in Tasmania. Applications are limited to applicants that (among other things) are incorporated and that engage in trading and financial activities that form a substantial or significant portion of their overall current activities. Individuals, partnerships, trusts, and Commonwealth, State and local government agencies and bodies are excluded from being an applicant. Projects that do not involve a sustained net increase in economic activity or involve a relocation of activity to Tasmania from other States and Territories will not be funded.

Grant awards under the AGIIF are unsuitable for merits review as there are limited funds available in each funding round and only a proportion of applications can be met. It is expected that there will be in excess of 130 applications for funds. A successful application for review would result in funding delays that would affect all grants under the programme, delaying the delivery of training and support to employees in industries undergoing rapid diversification and change. That said, unsuccessful applicants will be notified in writing and provided feedback on their application. If not satisfied, an unsuccessful applicant will be able to register a complaint with AusIndustry's complaints resolution procedure and/or the Commonwealth Ombudsman. It is noted, however, that the Commonwealth Ombudsman prefers complainants to first work through AusIndustry's complaints resolution procedure before a complaint about a decision is initiated with the Ombudsman.

This scheme comes within Outcome 1: Strategy (enabling growth and productivity for globally competitive industries through building skills and capability, supporting science and innovation, encouraging investment and improving regulation), Programme 3: Encouraging Investment, sub-programme 3.3: Economic transition. Funding details are set out in the *Portfolio Budget Statements 2014-15, Budget Related Paper No. 1.12, Industry Portfolio* at page 54.

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 (2014 Measures No. 1) Regulation 2014

This Regulation 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 FF(SP) Act) authorises the Commonwealth to make, vary and administer arrangements and grants specified in the *Financial Framework (Supplementary Powers) Regulations 1997* (the FF(SP) Regulations) and to make, vary and administer arrangements and grants for the purposes of programmes specified in the Regulations. This is in response to the High Court's decision in *Williams v Commonwealth* (2012) 288 ALR 410. Schedule 1AA and Schedule 1AB to the FF(SP) Regulations specify the arrangements, grants and programmes.

These provisions were retained when the *Financial Management and Accountability Act 1997* (the FMA Act) was amended by the *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014*, with effect from 1 July 2014. This Act renamed the FMA Act as the FF(SP) Act, with a consequential change to the name of the Regulations supporting the renamed Act. The FF(SP) Act applies to 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 PGPA Act). The PGPA Act replaced the FMA Act and the *Commonwealth Authorities and Companies Act 1997* to consolidate the governance, performance and accountability framework for the Commonwealth and relevant entities.

The Regulation amends the FF(SP) Regulations to establish legislative authority in Schedule 1AB for the Commonwealth Government to spend on the following grants or programmes relating to:

- voluntary contributions to the Information Sharing Centre, established by the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia, which will allow the Australian Customs and Border Protection Service to undertake its national security obligations to eradicate piracy in the region (Immigration and Border Protection portfolio);
- funding the operational costs of the National Office of Life Education Australia associated with the ongoing development and implementation of school-based student resilience and wellbeing programmes and resources for schools (Education portfolio); and
- the establishment and funding of the Australian Government Innovation and Investment Fund – Tasmania, part of the Government's Tasmanian Jobs and Growth Package, to support new projects that create sustainable business growth and job opportunities that will contribute to the strengthening of Tasmania's economy (Industry portfolio).

The items specified in Schedule 1AB are the responsibility of the relevant Minister who has portfolio responsibility for the matter.

Human rights implications

The Regulation does not engage any of the applicable rights or freedoms.

Conclusion

This regulation is compatible with human rights as it does not raise any human rights issues.

**Senator the Hon Mathias Cormann
Minister for Finance**