

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument No. 212, 2014**

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

*Financial Framework (Supplementary Powers) Act 1997*

*Financial Framework (Supplementary Powers) Amendment  
(2014 Measures No. 3) 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.

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 *Financial Framework (Supplementary Powers) Regulations 1997* (the Principal Regulations).

Section 32B of the FF(SP) 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 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 FMA Act was renamed the FF(SP) Act, with a consequential change to the name of the Regulations supporting the renamed Act from 1 July 2014. 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*.

Section 39B of the FF(SP) Act expressly provides the Commonwealth with the statutory authority to form and participate in the formation of companies, or acquire shares in, or become a member of a company. Section 39B also provides that such a company must be specified in the Principal Regulations together with the company's objects or proposed activities. Schedule 1B to the Principal Regulations specifies the companies, their objects and proposed activities.

Schedule 1 to the Regulation amends the Principal Regulations to establish legislative authority in Schedule 1AB for spending by the Australian Government to provide dedicated resources to the Global Infrastructure Hub, a key outcome of the Group of Twenty (G20) meeting in November 2014. The Global Infrastructure Hub will create a knowledge network that will help lower barriers to investment, increase the availability of investment-ready projects, help match potential investors with projects, and improve policy delivery around the world.

Schedule 1 to the Regulation also amends Schedule 1B to the Principal Regulations to establish legislative authority for the Government to form the Global Infrastructure Hub, a company limited by guarantee. The amendment to Schedule 1B lists the company's objectives and proposed activities.

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 Department of the Treasury.

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

**Details of the *Financial Framework (Supplementary Powers) Amendment (2014 Measures No. 3) Regulation 2014***

**Section 1 – Name**

This section provides that the title of the Regulation is the *Financial Framework (Supplementary Powers) Amendment (2014 Measures No. 3) 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 – Schedules**

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

**Schedule 1 – Amendments**

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

This item adds a new item to Part 4 of Schedule 1AB to establish legislative authority for spending on the activity which will be administered by the Department of the Treasury.

New **table item 71** provides legislative authority for the Australian Government to fund the Global Infrastructure Hub (the Hub). The Hub was a key outcome of the Group of Twenty (G20) meeting on 15 to 16 November 2014 in Brisbane.

The Hub will be established in Sydney to increase global investment in infrastructure by facilitating better information sharing and collaboration between the private sector, governments, development banks and international organisations on infrastructure investment.

With a four year mandate, the Hub will work internationally to help countries improve their general investment climates, reduce barriers to investment, increase the availability of investment-ready projects, help match potential investors with projects, and improve delivery of infrastructure policy around the world.

The Hub will, among other things, look to develop a global knowledge-sharing network; identify and where possible address key data gaps that may inhibit investment; identify practices that assist governments put in place the conditions and frameworks necessary to encourage greater infrastructure investment; build the capacity of officials and government

institutions; share best practices; and develop a database of infrastructure projects to help match potential investors with projects.

The Hub will help achieve these practical outcomes by working collaboratively with governments, the private sector, development banks, international organisations and other stakeholders. It will help draw together the collective expertise of these organisations to yield ongoing improvements to the functioning of infrastructure markets. Further details on the Hub can be found on the G20 website ([www.g20.org](http://www.g20.org)) and the Prime Minister's announcement on 16 November 2014.

The Australian Government along with other G20 member countries, non-member countries, international organisations, non-government stakeholders and the private sector are expected to contribute to the Hub.

The activities of the Hub are not considered suitable for a merits review given the nature of the international mandate provided by the G20.

The Department of the Treasury will administer this activity. Funding for the Hub will come within Outcome 1: Informed decisions on the development and implementation of policies to improve the wellbeing of the Australian people, including by achieving strong, sustainable economic growth, through the provision of advice to government and the efficient administration of federal financial relations. Payments will be from Programme 1.3: Support for Markets and Business.

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

- external affairs power (section 51(xxix)); and
- Commonwealth executive power and the express incidental power (sections 61 and 51(xxxix)).

## **Item 2 – Schedule 1B (at the end of the table)**

This item adds a new item to Schedule 1B, new **table item 21**, and provides legislative authority for the Australian Government to form a company, the Global Infrastructure Hub (the Hub), which will be established as a company limited by guarantee. Details about the Hub are set out above in new table item 71 for Part 4 of Schedule 1AB.

## **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. 3) 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.

Section 39B of the FF(SP) Act expressly provides the Commonwealth with the statutory authority to form and participate in the formation of companies, or acquire shares in, or become a member of a company. Section 39B also provides that such a company must be specified in the FF(SP) Regulations together with the company's objects or proposed activities. Schedule 1B to the FF(SP) Regulations specifies the companies, their objects and proposed activities.

The Regulation amends Schedule 1AB to the FF(SP) Regulations to establish legislative authority for the Australian Government to provide dedicated resources to the Global Infrastructure Hub. The Global Infrastructure Hub was a key outcome of the Group of Twenty (G20) meeting in Brisbane on 15 to 16 November 2014. The Global Infrastructure Hub, which will be located in Sydney, will create a knowledge network that will help lower barriers to investment, increase the availability of investment-ready projects, help match potential investors with projects, and improve policy delivery around the world.

The Regulation also amends Schedule 1B to provide legislative authority for the Australian Government to form a company, the Global Infrastructure Hub, which would be established as a company limited by guarantee.

The item specified in Schedule 1AB is the responsibility of the Treasurer who is responsible for the Global Infrastructure Hub.

#### **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**