

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance

Financial Framework (Supplementary Powers) Act 1997

Financial Framework (Supplementary Powers) Amendment (Defence Measures No. 1) Regulations 2018

The *Financial Framework (Supplementary Powers) Act 1997* (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, 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 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 65 of 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 Principal Regulations. Section 32B also authorises the Commonwealth to make, vary and administer arrangements for the purposes of programs specified in the Principal Regulations. Schedule 1AA and Schedule 1AB to the Principal Regulations specify the arrangements, grants and programs.

The purpose of the *Financial Framework (Supplementary Powers) Amendment (Defence Measures No. 1) Regulations 2018* (the Regulations) is to amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on the Supporting Sustainable Access to Drinking Water program administered by the Department of Defence.

Funding of \$55.2 million over five years from 2018-19 will be used to provide a sustainable source of drinking water to properties reliant on bores for drinking water containing per- and poly-fluoroalkyl substances (PFAS) above the Australian Drinking Water Guidelines value. The program will be available in communities surrounding Army Aviation Centre Oakey, Royal Australian Air Force (RAAF) Base Williamtown, RAAF Base Tindal, and RAAF Base Pearce. This program will, as a precautionary measure, remove the primary exposure pathway for people impacted by PFAS contamination, which has been identified as ingestion of contaminated ground water. Under the program, support will include packaged water until alternative water infrastructure is provided.

This program was announced in the 2018-19 Budget.

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 they are registered 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 Defence.

A regulation impact statement 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 (Defence Measures No. 1) Regulations 2018*

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Defence Measures No. 1) Regulations 2018*.

Section 2 – Commencement

This section provides that the Regulations commence on the day after they are registered 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

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 to establish legislative authority for government spending on an activity administered by the Department of Defence (the department).

New **table item 297** establishes legislative authority for government spending on the Supporting Sustainable Access to Drinking Water program (the program).

Funding will be used to provide sustainable access to drinking water and necessary water infrastructure to properties reliant on bores for drinking water containing per- and poly-fluoroalkyl substances (PFAS) above the Australian Drinking Water Guidelines value. These guidelines can be accessed at www.nhmrc.gov.au/guidelines/publications/eh52. The program will, as a precautionary measure, remove the primary exposure pathway for people impacted by PFAS contamination, which has been identified as ingestion of contaminated ground water.

The program will provide packaged water and/or water infrastructure in communities surrounding Army Aviation Centre Oakey, Royal Australian Air Force (RAAF) Base Williamtown, RAAF Base Tindal, and RAAF Base Pearce where environmental site assessments have identified property owners who use bores as their primary source of drinking water.

Where possible, eligible property owners will be offered connection to reticulated town water. If a property cannot be connected to reticulated water, new or additional rainwater tanks will be provided where sufficient catchment exists, or can be installed, to meet the domestic requirements of the property. Until the installation of water infrastructure is complete, occupants of an eligible property will be offered sufficient packaged water to meet the domestic requirements of the property.

If a sustainable and adequate source of drinking water is already available to the property, no additional assistance will be offered.

Funding of \$55.2 million over five years from 2018-19 was included in the 2018-19 Budget under the measure 'Supporting Sustainable Access to Drinking Water'. Details are set out in *Budget 2018-19, Budget Measures, Budget Paper No. 2 2018-19* at page 81.

There is no formal application process for this program. The circumstances of each property owner will be considered against the program's eligibility criteria. No specific guidelines will be published for the program and no direct funding will be provided to residents. All necessary support will be provided by the department and its contracted providers, as appropriate.

In most cases, the department will work with its environmental consultants to identify affected properties that are eligible for assistance under the program, with bores being sampled to determine the level of PFAS contamination present. Eligible property owners will be approached by the department to offer appropriate assistance under the program. Alternatively, property owners can contact the department if they believe they are eligible to receive support under the program. Contact information on each investigation is available at <http://www.defence.gov.au/Environment/PFAS/Contacts.asp>.

The department will work with affected residents to determine their eligibility and appropriate water support arrangements under the program. Procurement processes will be used to engage contractors to undertake environmental investigations through a standing offer panel arrangement. Procurement processes will be undertaken in accordance with the *Public Governance, Performance and Accountability Act 2013*, the *Commonwealth Procurement Rules*, and departmental procurement requirements and processes.

Final decisions on eligibility and the provision of support to residents under the program will be made by the relevant delegate of the Secretary of the department. These decisions will not be published as they contain the private information of residents.

Property owners will be able to request an internal merits review for decisions in relation to the provision of assistance under the program. Internal reviews will be conducted by a senior departmental public official at a level that is higher than the level of the original decision-maker.

An external merits review (such as the Administrative Appeals Tribunal) will not be available to property owners, as the program will not be a legislative scheme. The department will endeavour to resolve all requests to reach mutually agreeable outcomes for all parties.

Property owners who are dissatisfied with their internal review may contact the Commonwealth Ombudsman. The department will carefully consider and comply with recommendations made by the Commonwealth Ombudsman where possible.

Residents are encouraged to contact the department if they wish to discuss any aspect of the program. Further information on the department's PFAS Investigation & Management Program, and associated community support and engagement, is available on the department's website at <http://www.defence.gov.au/Environment/PFAS/>.

Funding for this item comes from Program 2.10: Estate and Infrastructure which is part of Outcome 2. Details are set out in the *Portfolio Budget Statements 2018-19, Budget Related Paper No. 1.4A, Defence Portfolio* at page 20.

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

Section 51(vi) of the Constitution empowers the Parliament to make laws with respect to 'the naval and military defence' of the Commonwealth and States, and 'the control of the forces to execute and maintain the laws of the Commonwealth'.

Funding will be provided to assist individuals and businesses affected by PFAS contamination resulting from activities conducted on Australian Defence Force bases, by funding the provision of sustainable access to drinking water.

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 (Defence Measures No. 1) Regulations 2018

These Regulations are 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 programs specified in the Regulations. Schedule 1AA and Schedule 1AB to the FF(SP) Regulations specify the arrangements, grants and programs. 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 Regulations amend Schedule 1AB to the FF(SP) Regulations to establish legislative authority for government spending on the Supporting Sustainable Access to Drinking Water program administered by the Department of Defence.

Funding of \$55.2 million over five years from 2018-19 will be used to provide a sustainable source of drinking water to properties reliant on bores for drinking water containing per- and poly-fluoroalkyl substances (PFAS) above the Australian Drinking Water Guidelines value. The program will be available in communities surrounding Army Aviation Centre Oakey, Royal Australian Air Force (RAAF) Base Williamtown, RAAF Base Tindal, and RAAF Base Pearce. This program will, as a precautionary measure, remove the primary exposure pathway for people impacted by PFAS contamination, which has been identified as ingestion of contaminated ground water. Under the program, support will include packaged water until alternative water infrastructure is provided.

This program was announced in the 2018-19 Budget.

The Minister for Defence has portfolio responsibility for this matter.

Human rights implications

The Regulations do not engage any of the applicable rights or freedoms.

Conclusion

These Regulations are compatible with human rights as they do not raise any human rights issues.

Senator the Hon Mathias Cormann
Minister for Finance