

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance

Financial Framework (Supplementary Powers) Act 1997

*Financial Framework (Supplementary Powers) Amendment
(Industry, Science and Resources Measures No. 2) Regulations 2023*

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 powers in the FF(SP) 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 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. Section 32D of the FF(SP) 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 FF(SP) 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 (Industry, Science and Resources Measures No. 2) Regulations 2023* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for the Government to acquire shares in Silicon Quantum Computing Pty Ltd (SQC). The initiative will be administered by the Department of Industry, Science and Resources.

SQC, launched in May 2017 is one of the world's leading companies developing a quantum computer. The Government will make an equity investment in SQC in 2023-24 to enable SQC to continue its work to develop a large-scale quantum computer in Australia.

Quantum technologies have been identified as critical technologies in the national interest. The investment in SQC enables the continued development of what could be one of the first large-scale error-corrected computers in the world, helps grow the Australian quantum workforce, and contributes to an important national capability supporting Australia's security.

The investment supports the implementation of the Government's National Quantum Strategy, which sets out a long-term vision for how Australia will take advantage of the opportunities of quantum technologies.

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 been undertaken with the Department of Industry, Science and Resources.

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 (Industry, Science and Resources Measures No. 2) Regulations 2023*

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Industry, Science and Resources Measures No. 2) Regulations 2023*.

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

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

This item adds a new table item to Part 1 of Schedule 1AB to establish legislative authority for government spending on an initiative administered by the Department of Industry, Science and Resources (the department).

New **table item 3** establishes legislative authority for the Government to acquire shares in Silicon Quantum Computing Pty Ltd (SQC).

SQC, launched in May 2017 is one of the world’s leading companies developing a quantum computer. The Government will make an equity investment in SQC in 2023-24 to enable SQC to continue its work to develop a large-scale quantum computer in Australia, and to grow the Australian quantum ecosystem.

Quantum technologies have been identified as critical technologies in the national interest. The investment in SQC enables the continued development of what could be one of the first large-scale error-corrected computers in the world, helps grow the Australian quantum workforce, and contributes to an important national capability supporting Australia’s security.

As an early-stage deep-tech company, private sector investment can be difficult to secure, creating a need for additional government investment. The investment from the Commonwealth in SQC is expected to leverage additional investment from other existing shareholders. The additional equity investment of \$15 million in 2023-24 would support the Government's quantum technology policy objectives, including the implementation of the Government's National Quantum Strategy, as well as policy objectives on critical technologies. The reinvestment would ensure the company's intellectual property and workforce remain in Australia, retaining sovereign capability in a critical technology.

Quantum technologies are expected to enable a transformational shift in how Australians go about their daily lives, in areas as diverse as new medical discoveries, more accurate positioning and new clean technologies. By 2030, the Australian quantum sector could generate around 8,700 jobs, rising to 19,400 by 2045. The growth of the sector would also support employment across the wider economy, with a total investment impact of over 35,000 jobs by 2045 (Commonwealth Scientific and Industry Research Organisation, 2022; Centre for International Economics, 2022). For these reasons, among others, quantum technologies are identified as a critical technology in the national interest.

Quantum technology is also an enabling capability under the National Reconstruction Fund (an Australian Government Fund which helps secure Australia's future prosperity and drive sustainable economic growth through financing projects in priority areas to leverage Australia's natural and competitive strength), and an important element of the Government reaching 1.2 million tech-related jobs by 2030.

The arrangements will be conducted in accordance with the *Financial Framework (Supplementary Powers) Act 1997* (FF(SP) Act) and the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). Relevant information about the Commonwealth's shareholding will be made publicly available on the department's website.

Funding will be committed by the Commonwealth through a contractual agreement to acquire shares in SQC and related investments. The Minister for Industry and Science (the Minister) will be responsible for approving the commitment of funding and the expenditure in accordance with the FF(SP) Act and the PGPA Act.

The investment will be managed by the Minister and the Commonwealth's Shareholder Representative for SQC, the Head of Division, Technology and Digital Division in the department. Information about the equity investment will be made publicly available in a media release following the conclusion of the capital raising round.

Funding decisions in relation to the equity investment are not suitable for independent merits review because they relate to the allocation of a finite resource, from which all potential claims for a share of the resource cannot be met. If another party were successful in seeking to overturn the original decision, the allocation made to SQC would be affected, and would adversely affect the company's business activities. 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 4.15 of the guide, *What decisions should be subject to merit review?*).

In considering the equity investment, the Government consulted with the Chief Scientist Dr Cathy Foley AO PSM, within government, and with SQC. The Government also consulted with fellow shareholders.

Consultation on the equity investment beyond these stakeholders was not appropriate due to commercial sensitivities.

Funding of \$15 million for the equity investment was included in the 2023-24 Budget under the measure ‘Silicon Quantum Computing Reinvestment’ for a period of one year commencing in 2023-24. This measure and its funding were not published in the Budget Papers due to commercial sensitivities at that point in time.

Funding for the item will come from Program 1.2: Investing in science, technology and commercialisation, which is part of Outcome 1: Support economic growth, productivity and job creation for all Australians by investing in science, technology and commercialisation, growing innovative and competitive businesses, industries and regions, and supporting resources.

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 executive power and express incidental power, including the nationhood aspect (sections 61 and 51(xxxix)).

Executive power and express incidental power, including the nationhood aspect

The express incidental power in section 51(xxxix) of the Constitution empowers the Parliament to make laws with respect to matters incidental to the execution of any power vested in the Parliament, the executive, or the courts by the Constitution. Section 61 of the Constitution supports activities that are peculiarly adapted to the government of a nation and cannot be carried out for the benefit of the nation otherwise than by the Commonwealth.

The acquisition of shares in SQC is intended to support its nationally significant research and development activities in the field of quantum computing for the benefit of the nation.

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 (Industry, Science and Resources Measures No. 2) Regulations 2023

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 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 powers in the FF(SP) 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*.

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Human rights implications

This disallowable legislative instrument does not engage any of the applicable human 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