**EXPLANATORY STATEMENT**

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

*Financial Framework (Supplementary Powers) Act 1997*

*Financial Framework (Supplementary Powers) Amendment*

*(Climate Change, Energy, the Environment and Water Measures No. 2) Regulations 2025*

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 sunsetting under section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (item 28A). If the Principal Regulations were subject to the sunsetting 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 FFSP 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 FFSP Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the FFSP Act.

The *Financial Framework (Supplementary Powers) Amendment (Climate Change, Energy, the Environment and Water Measures No. 2) Regulations 2025* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on the First Nations Clean Energy Grants and Toolkit (the program). The program will be administered by the Department of Climate Change, Energy, the Environment and Water.

The program will directly support initial implementation of the First Nations Clean Energy Strategy and its goals by creating opportunities for First Nations peoples to lead and benefit from the clean energy transition. Funding of $70.0 million will be provided over three years from 2025-26 for the program to address barriers in economic participation through the provision of grants and toolkit support.

The three components of the program are:

* First Nations Clean Energy Advice Grants to empower First Nations groups and peoples' participation in the clean energy transition through access to independent advice and expertise;
* toolkit and project support for successful uptake of the grants and delivery of on the ground and online support, project development and education assistance to enable First Nations awareness and participation in the energy transformation; and
* support First Nations proponents to progress towards commercial investment decisions through business case, technical and financial development support.

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 taken place with the Department of Climate Change, Energy, the Environment and Water.

**Attachment A**

**Details of the *Financial Framework (Supplementary Powers) Amendment
(Climate Change, Energy, the Environment and Water Measures No. 2) Regulations 2025***

**Section 1 – Name**

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Climate Change, Energy, the Environment and Water Measures No. 2) Regulations 2025.*

**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* (the Principal Regulations) 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 Climate Change, Energy, the Environment and Water (the department).

**Item 1 – In the appropriate position in Part 4 of Schedule 1AB (table)**

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

*Table item 716 – First Nations Clean Energy Grants and Toolkit*

New **table item 716** establishes legislative authority for the First Nations Clean Energy Grants and Toolkit program (the program) to support Indigenous Australians’ participation and engagement with clean energy project development. The terms ‘First Nations’ and ‘Indigenous Australians’ are used interchangeably, and no distinction is intended.

The program supports the implementation of the *First Nations Clean Energy Strategy*
*2024-2030* (the Strategy), released by the Government on 6 December 2024 (www.energy.gov.au/energy-and-climate-change-ministerial-council/working-groups/first-nations-engagement-working-group/first-nations-clean-energy-strategy).

The Strategy is a national framework to guide investment, influence policy and support First Nations peoples to self-determine how they participate in and benefit from the clean energy transition. It is a priority initiative under the National Energy Transformation Partnership and supports the Government’s First Nations Economic Empowerment agenda.

The goals of the strategy are to achieve economic benefits with First Nations peoples, enable equitable partnerships, and power First Nations communities with clean energy. The program will directly support initial implementation of the Strategy goals by creating opportunities for Indigenous Australians to participate in the clean energy transformation. Funding of $70.0 million over three years from 2025-26 will allow the provision of grants and toolkit support, to address the barriers relating to a lack of capacity and resources that are preventing Indigenous Australians participation.

The program will deliver a series of interlocking and complementary measures through various grant, procurement, and implementation approaches. Development and implementation of all elements of the program will be designed and delivered in partnership with First Nations organisations. First Nations services providers and technical advisors will also be prioritised through grant guidelines and all component procurements. This will ensure that the initiatives are culturally sensitive, expert informed, and effectively meet the needs of First Nations peoples.

Activities under the program will include:

*First Nations Clean Energy Advice Grants*

Grants of $39.5 million will be allocated for this activity to provide up to 1,433 grants over the three-year period, to empower First Nations groups and peoples’ participation in the clean energy transition through access to independent advice and expertise.

Subject to further development of grant guidelines:

* eligible entities for the grants will include First Nations organisations and communities in high intensity clean energy project development areas;
* eligible activities for the grant will include, but are not limited to, clean energy technical expertise, negotiation support, financial advice, and renewable resource mapping;
* eligibility criteria will be clearly linked to the achievement of value for relevant money; and
* grants will be demand-driven, applications will be assessed on eligibility criteria, with no merit criteria, and no requirement for co-contributions from grant recipients.

The overall intended outcome of the grants program is to increase First Nations economic participation in and benefit from the energy transformation. The grants program is expected to be launched in October 2025 and will be administered by the Business Grants Hub within the Department of Industry, Science and Resources.

*Toolkit and Project Support*

Funding of $19.7 million over three years from 2025-26 will be allocated to this initiative to deliver a toolkit of resources and project support. This will underpin successful uptake of the proposed grants and deliver on the ground and online support, project development and educational assistance to enable First Nations awareness and participation in the energy transformation. The support aims to directly address barriers to uptake available grants outlined by community during consultations and the experience in programs such as the Australian Renewable Energy Agency’s Regional Microgrids program.

The initiative will also develop culturally appropriate guidance and resources along with collating existing resources tailored for First Nations audiences. It will provide a dedicated website focused on First Nations end-users to house the resources. Key beneficiaries will include First Nations organisations and communities, First Nations households and First Nations businesses.

Key deliverables will include:

* development of a website with a suite of culturally appropriate resources for Indigenous Australians;
* First Nations Clean Energy Leadership forums;
* industry dialogue/workshops;
* First Nations Clean Energy Outreach and Extension support services;
* on-Country clean energy resource mapping and planning support with First Nations communities;
* wrap around support to ensure grant uptake by First Nations; and
* where required, translation services and engagement costs to ensure activities are culturally appropriate, reach intended First Nations beneficiaries, and that First Nations inform the design of program deliverables.

The intended outcome of the Toolkit and Project Support initiative is to strengthen First Nations awareness of the clean energy transformation and access to support and resources to improve their economic participation in and benefit from the transformation.

A combination of limited and open tender procurements will be undertaken to deliver the initiative. Procurements will be on a fee-for-service basis.

*Pilot Project Incubator*

Funding of $10.9 million over three years from 2025-26 will be allocated to support First Nations proponents with early-stage project development to progress towards commercial investment decisions through business case, technical and financial development support. The support will be designed in close collaboration with relevant First Nations and clean energy government entities. The key deliverable will be to support First Nations led clean energy projects to progress towards Final Investment Decision.

The intended outcome of the Pilot Project Incubator is to create an evidence base to increase the proportion of First Nations-led clean energy projects and support economic participation in the clean energy transformation. A limited or open tender procurement will be undertaken to deliver the Pilot Project Incubator. The procurement will be on a fee-for-service basis.

*Funding amount and arrangements, merits review and consultation*

Total funding of $70.0 million for the program was included in the 2024-25 Mid-Year Economic and Fiscal Outlook under the measure ‘Future Made in Australia – accelerating investment in Australian industries’ for a period of three years commencing in 2025-26. Details are set out in the *Mid-Year Economic and Fiscal Outlook 2024-25*, *Appendix A: Policy decisions taken since the 2024-25 Budget* at pages 227 and 228.

Funding for this item will come from Program 1.2: Support reliable, secure and affordable energy, which is part of Outcome 1. Details are set out in the *Portfolio Additional Estimates Statements 2024-25, Climate Change, Energy, the Environment and Water Portfolio* at page 32.

Program guidelines and eligibility criteria for the First Nations Clean Energy Advice Grants will be developed by the department. Grants activity will be administered in accordance with the relevant policy frameworks and legislation, including the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), the *Public Governance, Performance and Accountability Rule 2014* and the *Commonwealth Grants Rules and Principles 2024* (CGRPs)*.*

Consistent with the CGRPs, the department will develop grant opportunity guidelines and will have regard to the nine key principles in administering the grant.

Program guidelines and successful grantees will be published on the dedicated First Nations Clean Energy website. Where the Business Grants Hub administers the grants, program guidelines and successful grantees will be published on the GrantConnect website (www.grants.gov.au).

It is anticipated that the Minister for Climate Change and Energy or a delegate of the Secretary of the department will be the decision maker for grant expenditure. The departmental delegate will either be the Senior Executive Service (SES), an Executive Level (EL) 2 or EL1 with appropriate financial delegation and understanding of the program, including skills and experience to exercise their administrative power.

The decision making would only be delegated to an EL2 or an EL1 level where the value of the financial approval required is within their delegation in accordance with the department’s approved financial delegations, the PGPA Act and the *Financial Framework (Supplementary Powers) Act 1997* (FFSP Act). This would be appropriate because it will support the department to deliver the grant expenditure effectively and efficiently in line with the intent of the financial delegation’s framework, while complying with all the department’s financial accountability and spending requirements.

Procurements for the Toolkit and Project Support and Pilot Project Incubator activities under the program will be a combination of open competitive tender and limited tender. All procurements will be in accordance with the Commonwealth resource management framework, including the PGPA Act, the *Commonwealth Procurement Rules*,and the *Australian Government Indigenous Procurement Policy 2020.* Tender documentation will be available on the AusTender website (www.tenders.gov.au).

It is anticipated that the Accountable Authority and/or their delegate will be the decision maker for the program expenditure. The departmental delegate at the SES, EL2 or EL1 level will perform this administrative function in line with the department’s financial delegations, the PGPA Act and FFSP Act.

The delegate will have sufficient understanding and oversight of the program to comply with the department’s financial accountability requirements. This would be appropriate as it is anticipated that some procurements will be low value and within the delegation of EL2 and EL1 level officers. Administering the procurements in accordance with the approved financial delegations will support the department to deliver the procurement expenditure effectively and efficiently in line with the intent of the financial delegation’s framework, while complying with all the department’s financial accountability and spending requirements.

Grant decisions will be made on a first-in first served process, where applications that satisfy the eligibility criteria will receive funding, up to the limit of available appropriation. As there will be no merit criteria, there is limited scope for merits review. Even if there is scope for merits review, grant decisions are not considered suitable for independent merits review as they are decisions relating to the allocation of a finite resource, from which all potential claims for a share of the resource cannot be met. In addition, any funding that has already been allocated would be affected if the original decision were overturned. The Administrative Review Council (ARC) has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.11 to 4.19 of the guide, *What decisions should be subject to merit review?* (ARC guide)).

Procurement decisions will also not be subject to independent merits review. Procurement decisions relate to the allocation of a finite resource, and an allocation that has already been made to a procured party would be affected by overturning the original decision. The ARC has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.11 to 4.19 of the ARC guide).

The remaking of a procurement decision after entry into a contractual arrangement with a successful provider is legally complex, impractical, and could result in delays in providing services under the program. The *Government Procurement (Judicial Review) Act 2018* enables suppliers to challenge some procurement processes for alleged breaches of certain procurement rules. This legislation might provide an additional avenue of redress (compensation or injunction) for dissatisfied providers or potential providers, depending on the circumstances.

In addition, the review and audit process undertaken by the Australian National Audit Office also provides a mechanism to review Australian Government spending decisions and report any concerns to the Parliament. These requirements and mechanisms help to ensure the proper use of Commonwealth resources and provide appropriate transparency around decisions relating to making, varying, or administering arrangements to spend relevant money.

Further, the right to review under section 75(v) of the Constitution and review under section 39B of the *Judiciary Act 1903* may also be available. Persons affected by spending decisions would also have recourse to the Commonwealth Ombudsman where appropriate.

The department and the National Indigenous Australians Agency consulted extensively on the development of the Strategy, which underpins the program. Entities consulted include First Nations communities across Australia, the First Nations Clean Energy Network, First Nations Clean Energy and Climate Change Advisory Committee, First Nations Engagement Working Group of the Energy and Climate Change Ministerial Council, and a diverse range of energy industry, non-government, and government organisations.

Stakeholders were supportive of the Strategy, with 89 per cent of responses received through the public ‘Have your Say’ process expressing dedicated support for the Strategy framework. Stakeholder feedback informed the development of the Strategy and was incorporated into the final published version. A summary of stakeholder feedback was also attached as an Appendix to the published Strategy.

The Strategy was open for public comment between 14 November 2023 and 9 February 2024. A total of 99 submissions were received from a broad range of stakeholders including First Nations representatives, academics, energy industry representatives, environmental organisations, and individuals. Submissions were broadly supportive of the Strategy and stakeholder feedback was incorporated into the final version.

*Constitutional considerations*

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

* the race power (section 51(xxvi)); and
* the external affairs power (section 51(xxix)).

*Race power*

Section 51(xxvi) of the Constitution empowers the Parliament to make laws with respect to ‘the people of any race for whom it is deemed necessary to make special laws’.

The purpose of the program is to create opportunities for Indigenous Australians to participate in the clean energy transition.

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

Australia is a party to the *United Nations Framework Convention on Climate Change* (UNFCCC) and the Kyoto Protocol to the UNFCCC. Article 4 of the UNFCCC commits Parties to ‘formulate, implement, publish and regularly update national … programmes containing measures to mitigate climate change’ (see Article 4.1(b)) and ‘promote and cooperate in education, training and public awareness related to climate change and encourage the widest participation in this process, including that of non-governmental organizations’ (see Article 4.1(i)).

Article 10(b) of the Kyoto Protocol requires parties to ‘formulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate change’, including programmes concerning the energy sector (see Article 10(b)(i)).

The program seeks to fulfil Australia’s international obligations under the UNFCCC and the Kyoto Protocol by assisting Indigenous Australians’ participation in the clean energy transformation through projects and improved access to training, funding opportunities and other resources.

Australia is also a party to the Paris Agreement. Article 4 of the Paris Agreement requires Parties to ‘aim to reach global peaking of greenhouse gas emissions as soon as possible’ (see Article 4.1) and provides that ‘[e]ach Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve’ and ‘pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions’ (see Article 4.2). Specifically, Australia’s Nationally Determined Contribution is to reduce greenhouse gas emissions by 43 per cent below 2005 levels by 2030.

The purpose of the program will contribute to the achievement of Australia’s nationally determined greenhouse gas reduction.

**Attachment B**

**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 (Climate Change, Energy, the Environment and Water Measures No. 2) Regulations 2025***

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 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 (Climate Change, Energy, the Environment and Water Measures No. 2) Regulations 2025* (the Regulations) amend Schedule 1AB to the Principal Regulations toestablish legislative authority for government spending on the First Nations Clean Energy Grants and Toolkit (the program). The program will be administered by the Department of Climate Change, Energy, the Environment and Water.

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The program comprises three components:

* First Nations Clean Energy Advice Grants to empower First Nations groups and peoples’ participation in the clean energy transition through access to independent advice and expertise;
* Toolkit and project support for successful uptake of the grants and delivery of on the ground and online support, project development and education assistance to enable First Nations awareness and participation in the energy transformation; and
* support First Nations proponents to progress towards commercial investment decisions through business case, technical and financial development support.

**Human rights implications**

This disallowable legislative instrument engages the right to self-determination – Article 1 of the *Internation Covenant on Civil and Political Rights* (ICCPR), read with Article 2, and Article 1 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), read with Article 2.

*Right to self-determination*

The rights of peoples to freely determine their political states and freely pursue their economic, social and cultural development is contained in Article 1 of the ICCPR and Article 1 of the ICESCR. This right is a collective right applying to groups of peoples, in contrast to rights to culture which protect the rights of individuals within a group.

Article 2 of the ICCPR provides that each State Party undertakes to take the necessary steps to adopt such laws or other measures as may be necessary to give effect to the rights recognised in the Covenant.

Article 2 of the ICESCR provides that each State Party undertakes to take steps to the maximum of its available resources with a view to achieving progressively the full realisation of the rights recognised in the Covenant, by all appropriate means.

The CCPR General Comment No. 12: Article 1 (Right to Self-determination) has been interpreted by the Parliamentary Joint Committee on Human Rights; Guide to Human Rights (2015) as requiring the State to give access to and to ensure representation of Indigenous groups in the democratic process, particularly in relation to decision-making on issues affecting traditional land and economic activities. This includes the right of Indigenous Australians to preserve their group identity and culture, to lead lives of dignity and to be consulted on issues affecting them.

This disallowable legislative instrument positively engages the right to self-determination by supporting First Nations peoples to self-determine how they participate in and benefit from the clean energy transformation. Through the provision of grants and toolkit support, the program will address the barriers of lack of capacity and resources that are preventing First Nations participation. Development and implementation of all elements of the program will be designed and delivered in partnership with First Nations organisations. First Nations service providers and technical advisors will also be prioritised through grant guidelines and all component procurements. This will ensure that the initiatives are culturally sensitive, expert informed, and effectively meet the needs of First Nations peoples.

**Conclusion**

This disallowable legislative instrument is compatible with human rights as it promotes the protection of human rights.

**Senator the Hon Katy Gallagher**

**Minister for Finance**