

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance

Financial Framework (Supplementary Powers) Act 1997

Financial Framework (Supplementary Powers) Amendment (Agriculture, Fisheries and Forestry Measures No. 1) 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 sunset under section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (item 28A). If the Principal Regulations were subject to the sunset 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 (Agriculture, Fisheries and Forestry Measures No. 1) Regulations 2025* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on the Rural Financial Counselling Service Program (the program). The program is administered by the Department of Agriculture, Fisheries and Forestry.

The program, originally established in 1986, is an ongoing program providing free and independent financial counselling to eligible farmers, fishers, foresters and small related businesses who are experiencing, or at risk of, financial hardship.

Existing funding of \$104.0 million over five years from 2027-28 is allocated to support farmers, fishers, foresters and small related businesses by:

- transitioning clients out of immediate financial crisis or concerns via assisting clients to apply for immediate government support or representing and advocating for clients through mediation or negotiations with banks and creditors;
- supporting case managed clients to assess business viability to make informed decisions about the future of the business; and
- supporting clients' long-term financial wellbeing by building their financial skills and connecting them with relevant professional and social services.

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 Agriculture, Fisheries and Forestry.

Details of the *Financial Framework (Supplementary Powers) Amendment (Agriculture, Fisheries and Forestry Measures No. 1) Regulations 2025*

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Agriculture, Fisheries and Forestry Measures No. 1) 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 Agriculture, Fisheries and Forestry (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 738 – Rural Financial Counselling Service Program

New **table item 738** establishes legislative authority for government spending on the Rural Financial Counselling Service Program (the program) to support new funding opportunities for the program from 2027.

The program was established in 1986 as part of the Economic and Rural Policy Statement following a review of policies to address (among other things) rapidly rising farm costs, deregulation of the financial sector, high interest rates and reduced returns.

The program aims to provide free and independent financial counselling to eligible farmers, fishers, foresters and small related businesses experiencing, or at risk of, financial hardship.

Existing funding of \$104.0 million over five years from 2027-28 is allocated to support farmers, fishers, foresters and small related businesses by:

- transitioning clients out of immediate financial crisis or concerns via assisting clients to apply for immediate government support or representing and advocating for clients through mediation or negotiations with banks and creditors;
- supporting case managed clients to assess business viability to make informed decisions about the future of the business; and
- supporting clients' long-term financial wellbeing by building their financial skills and connecting them with relevant professional and social services.

Rural financial counsellors are skilled professionals who enable farmers, fishers, foresters and small related businesses to find realistic solutions to determine their future of improved profitability or an exit from their business. Financial counselling service providers offer structured case management and proactive client engagement. Case management encompasses the initial intake and eligibility assessment, evaluation of the business' current status, goal setting and implementation, progress monitoring through an action plan, and coordination of services to achieve identified goals.

Funding amount and arrangements, merits review and consultation

Funding of \$104.0 million over five years from 2027-28 for this item will come from Program 1.12: Rural Programs, which is part of Outcome 1. Details are set out in the *Portfolio Budget Statements 2025-26, Budget Related Paper No. 1.1, Agriculture, Fisheries and Forestry Portfolio* at page 32.

Grant opportunity guidelines for the program's current funding round are published on GrantConnect under reference GO4500. The department expects to deliver a new grant opportunity for the program from 1 July 2027 to 30 June 2032. The department has worked with stakeholders to plan and design the new grant program.

Funding round for the 2027-32 grant opportunity will be administered in accordance with the relevant policy frameworks and legislation, including the *Public Governance, Performance and Accountability Act 2013*, the *Public Governance, Performance and Accountability Rule 2014* and the *Commonwealth Grants Rules and Principles 2024* (CGRPs).

Consistent with the CGRPs, the department is developing grant opportunity guidelines and will have regards to the nine key principles in administering the grants. Grant opportunity guidelines for the 2027-32 program will be published on the GrantConnect website (www.grants.gov.au) when the grant opportunity is released in early 2026. This merit based, open and competitive grant opportunity will be administered by the Community Grants Hub, part of the Department of Social Services, and assessed by the department.

The department will ensure that the grant opportunity process is fair, according to the published guidelines, incorporates appropriate safeguards against fraud, unlawful activities and other inappropriate conduct and is consistent with the CGRPs.

The department will establish a Selection Advisory Panel (the panel). The panel may include a mix of employees from the department, and other Commonwealth officers or state and Northern Territory officers with relevant specialist expertise. The panel may be assisted by technical, financial, legal and other experts as required. Any expert/adviser who is not a Commonwealth official will be required/expected to perform their duties in accordance with the CGRPs. A probity adviser will be appointed to provide advice to the panel and the department on probity matters.

The Community Grants Hub will undertake a first review of all applications for eligibility and compliance against the requirements of the application process. Applicants will be rated as eligible or ineligible, compliant or not compliant. The department's delegate will provide a final determination on eligibility and/or compliance. Only eligible applications will move to the next stage (assessment).

All applicants' financial viability will be assessed using the last two full years profit and loss statements and balance sheets (where available) in order to determine the organisation's financial risk. Based on the risk level, applicants may be subject to a more in-depth financial viability assessment.

If eligible and compliant, the panel will assess applications against the assessment criteria and against other applications. Applications will be considered on their merits against the criteria and value for money. Successful recipients will need to have capacity and/or experience to deliver case-management financial counselling, including:

- organisational capacity to deliver the program;
- innovation, flexibility and engagement strategies to target the program cohort; and
- demonstrated regional knowledge and relevant connections.

The Minister for Agriculture, Fisheries and Forestry will be responsible for the final decision in relation to expenditure and awarding grants to deliver the program. Awarded grants will be published on the GrantConnect website.

Independent merits review would not be appropriate because these decisions will relate to the allocation of finite resources between competing applicants and an allocation already made to a party would be affected by overturning the original decision. 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 4.19 of the guide, *What decisions should be subject to merit review?*).

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 appropriate transparency around decisions relating to making, varying or administering arrangements to spend relevant money.

Further, the right to judicial review under section 75(v) of the Constitution and 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 regularly consults with key stakeholders, including service providers and state and territory governments, on the ongoing program. Significant changes to the program are not proposed for the 2027-32 grant opportunity. State and territory governments strongly support the next round of funding and will continue to co-contribute to the program's administration. States and territories will also have an opportunity to provide feedback on applications for funding within their jurisdiction. Existing service providers support the forthcoming 2027-32 funding round. All have advised the department that they are likely to submit applications for funding, and some may also apply to deliver services in additional regions.

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 trade and commerce power (section 51(i));
- the communications power (section 51(v));
- the bankruptcy and insolvency power (section 51(xvii));
- the external affairs power (section 51(xxix)); and
- the express incidental power and the executive power (sections 51(xxxix) and 61), including the nationhood aspect.

Trade and commerce power

Section 51(i) of the Constitution empowers the Parliament to make laws with respect to “trade and commerce with other countries, and among the states”.

The program will support entities that are engaged in and/or support interstate or international trade and commerce, by providing financial counselling, to enable them to continue to engage in that activity.

Communications power

Section 51(v) of the Constitution empowers the Parliament to make laws with respect to “postal, telegraphic, telephonic and other like services”.

The program will deliver a significant proportion of counselling services via the internet or over the phone.

Bankruptcy and insolvency power

Section 51(xvii) of the Constitution empowers the Parliament to make laws with respect to “bankruptcy and insolvency”.

The program aims to address the consequences of a person or entity becoming insolvent or bankrupt and aims to prevent persons or entities who are at imminent risk of bankruptcy or insolvency from becoming bankrupt or insolvent.

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 has obligations under the *United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, particularly in Africa* (Desertification Convention). The general obligations of parties are set out in Article 4 of the Desertification Convention, which includes adopting an “integrated approach addressing the physical, biological and socio-economic aspects of the process of desertification and drought”. Article 5 of the Desertification Convention provides that one of the obligations of parties is to give due priority to combating desertification and mitigating the effects of drought, and allocate adequate resources in accordance with their circumstances and capabilities.

The program may provide assistance to areas affected by climate change and aims to mitigate the impacts of drought.

Australia has obligations under the *United Nations Framework Convention on Climate Change* (UNFCCC), the Kyoto Protocol to the UNFCCC and the Paris Agreement in relation to adaptation to climate change. Article 4 of the UNFCCC provides among other things that parties commit to formulate, implement, publish and regularly update national programs containing measures to facilitate adequate adaptation to climate change. Article 10 of the Kyoto Protocol to the UNFCCC provides that parties to the Convention formulate cost effective national and regional programs to reduce greenhouse emissions. Article 7 of the Paris Agreement establishes a global goal on the adaptation of enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change in the context of the temperature goal of the Paris Agreement.

The program may provide assistance to clients affected by drought and climate change and aims to support adaptation and resilience to drought and climate change.

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. The executive power in section 61 of the Constitution extends to a range of matters, including activities:

- that form part of the ordinary and well-recognised functions of government; and
- that are peculiarly adapted to the government of the nation and cannot otherwise be carried out for the benefit of the nation.

The program supports the objectives of the National Drought Agreement, through the provision of financial counselling services to enable clients to be prepared for and able to manage drought, climate change and climate variability. The program also provides emergency and short-term assistance, in the form of financial counselling, for clients affected by disasters of national significance.

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 (Agriculture, Fisheries and Forestry Measures No. 1) 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 FFSP 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 (Agriculture, Fisheries and Forestry No. 1) Regulations 2025* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on the Rural Financial Counselling Service Program (the program) to support new funding opportunities for the program from 2027. The program is administered by the Department of Agriculture, Fisheries and Forestry.

The program, established in 1986 provides free and independent financial counselling to eligible farmers, fishers, foresters and small related businesses who are experiencing, or at risk of, financial hardship. By providing these counselling services the program aims to build financially capable agricultural, fishing and forestry sectors which are profitable, financially self-reliant and better prepared to handle risks.

Existing funding of \$104.0 million over five years from 2027-28 will allow the program to provide free financial counselling services and approved directly associated costs such as travel, rent, wages, administration, overheads, board oversight and marketing and promotion of the program incurred by organisations.

Human rights implications

This disallowable legislative instrument engages the right to health – Article 12 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), read with Article 2.

Right to health

Article 2(1) of the ICESCR requires each State Party to ‘take steps... to the maximum of its available resources, with a view to achieving progressively the full realization’ of the rights recognised in the ICESCR ‘by all appropriate means, including particularly the adoption of legislative measures’.

Article 12 of the ICESCR relates to the right to health and wellbeing including the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

This disallowable legislative instrument positively engages with the right to health and wellbeing as the service provided will assist in improving the mental health of clients of the program. By providing financial counselling, the program assists to reduce stress and other mental health issues associated with being in a financial crisis.

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