

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance

Financial Framework (Supplementary Powers) Act 1997

*Financial Framework (Supplementary Powers) Amendment
(Attorney-General's Portfolio Measures No. 2) Regulations 2017*

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 Regulations amend Schedule 1AB to the Principal Regulations to establish legislative authority for the Government to fund the National Facial Biometric Matching Capability (the Capability).

The Capability is a key measure under the National Identity Security Strategy which was endorsed by the Council of Australian Governments in 2007. As the lead agency for the Strategy, the Attorney-General's Department is responsible for managing the Capability on behalf of participating government and law enforcement agencies.

The Capability comprises the following technical components:

- the central interoperability Hub which transmits image matching requests and responses between agencies participating in the Capability; and
- the National Driver Licence Facial Recognition Solution which will make driver licence facial images available to agencies participating in the Capability.

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 Attorney-General's Department.

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 (Attorney-General's Portfolio Measures No. 2) Regulations 2017*

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Attorney-General's Portfolio Measures No. 2) Regulations 2017*.

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

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

This item adds a new item to Part 4 of Schedule 1AB to establish legislative authority for government spending on an initiative that will be administered by the Attorney-General's Department.

New **table item 240** establishes legislative authority for the Government to fund the National Facial Biometric Matching Capability (the Capability).

The Capability facilitates secure, automated and accountable sharing and matching of facial images and related information amongst relevant government agencies for identity security, national security and law enforcement purposes, while maintaining robust privacy safeguards.

The face matching services that will be supported by the Capability will use both biometric information (photographs) and biographic information on identity documents to assist in verifying a person's identity, ascertaining the identity of an unknown person, or detecting cases where a person is using multiple fraudulent identities or multiple identity documents in the community.

The Capability is a key measure under the National Identity Security Strategy. The Strategy was endorsed as part of an intergovernmental agreement by the Council of Australian Governments in 2007 to recognise the importance of the preservation and protection of a person's identity. As the lead agency for the National Identity Security Strategy,

the Attorney-General's Department is responsible for managing the Capability on behalf of participating government and law enforcement agencies.

Government agencies can already verify biographic information (for example, name, date of birth, and address details) on identity documents such as driver licences and passports using the Document Verification Service, another key initiative under the Strategy. However, this Service cannot detect when a fraudulent photo is used with otherwise legitimate details on identity documents. Identity takeover exposes the vulnerabilities in name-based checking.

The Capability comprises the following technical components:

- the central interoperability Hub (the Hub) which transmits image matching requests and responses between agencies participating in the Capability; and
- the National Driver Licence Facial Recognition Solution (the Solution) which will make driver licence facial images available to agencies participating in the Capability.

The Hub commenced operation in October 2016 to support an initial face matching service between selected Commonwealth agencies. Implementation of the Solution has commenced, with a view to commencing operation in 2017-18.

The Hub and the Solution are being built to support the face matching services provided by the Capability. These services include the Face Verification Service and the Face Identification Service.

The Face Verification Service enables a facial image and associated biographic details of a person to be compared on a one-to-one basis against an image held on a specific government record for that same individual. The Face Verification Service is now operational, providing access to immigration and citizenship images held by the Department of Immigration and Border Protection. Other types of images such as passport photos will be added over time, with access expanded to other Commonwealth, state and territory government agencies.

The Face Identification Service searches or matches facial images on a one-to-many basis to help determine the identity of an unknown person, or detect instances where a person may hold multiple fraudulent identities. The Face Identification Service will be restricted to law enforcement, national security, anti-corruption agencies and specialised anti-fraud areas in certain government agencies. The Face Identification Service is expected to commence in 2017 and access will be provided over time to agencies such as the Australian Federal Police; the Australian Security Intelligence Organisation; the Department of Immigration and Border Protection; the Department of Foreign Affairs and Trade; the Australian Criminal Intelligence Commission; and state and territory law enforcement agencies.

Funding of \$18.5 million for the Capability was included in the 2014-15 Mid-Year Economic and Fiscal Outlook under the measure 'National Security – additional counter-terrorism funding' for a period of four years commencing in 2014-15. Details are set out in the *Mid-Year Economic and Fiscal Outlook 2014-15*, Appendix A: Policy decisions taken since the 2014-15 Budget at pages 135 to 136.

Further funding of \$2.5 million in 2017-18 was included in the 2017-18 Budget under the measure 'GovPass Program – trusted digital identity framework'. Details are set out in *Budget 2017-18, Budget Measures, Budget Paper No. 2 2017-18* at page 140.

On 9 September 2015, the Minister for Justice and Minister Assisting the Prime Minister for Counter-Terrorism, the Hon Michael Keenan MP, announced the establishment of the Capability.

Implementation of the Capability involves procurement activities, which use competitive tender methods commensurate with the value and nature of the procurement activity. Where possible, the Attorney-General's Department seeks tenders from the whole-of-government panel arrangements, such as the Department of Human Services' Information and Communications Technology contractor services panel, or pre-qualified tenderers where the Secretary has authorised an exemption to undertake a limited tender.

Procurement opportunities and contracts with a value of \$10,000 or more are advertised and reported on the AusTender website at www.tenders.gov.au, where exemptions do not apply. Some procurement activities have already taken place. The department was granted an exemption from reporting on two procurements. All other procurements have been reported on AusTender.

Procurements and contract management are carried out consistent with the *Public Governance, Performance and Accountability Act 2013*, the *Commonwealth Procurement Rules*, the Secretary Instructions and departmental guidelines, with appropriate senior oversight and accountability.

Procurement decisions are made by a delegate of the Secretary of the Attorney-General's Department with an appropriate financial delegation as set out in the Secretary's *Public Governance, Performance and Accountability Financial Delegation 2017*.

Spending decisions in connection with the Capability are not subject to merits review arrangements as they relate to procurement activities conducted in accordance with the *Commonwealth Procurement Rules*. Participants or tenderers will be selected on the basis of technical expertise, capability and value for money.

Funding for this item will come from Program 1.2: Attorney-General's Department Operating Expenses – National Security and Criminal Justice, which is part of Outcome 1. Details are set out in the *Portfolio Budget Statements 2017-18, Budget Related Paper No. 1.2, Attorney-General's Portfolio* at page 19.

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 communications power (section 51(v));
- the defence power (section 51(vi));
- the aliens power (section 51(xix));
- the immigration power (section 51(xxvii));
- the Commonwealth executive power and the express incidental power (sections 61 and 51(xxxix)); and
- the territories power (section 122).

Communications power

With respect to the communications power, the Capability allows transmission of photographic and biographic information between the Commonwealth, state and territory agencies using a nationwide online communications service.

Defence power

With respect to the defence power, the Capability enables law enforcement and intelligence agencies to obtain and verify identity information to uphold national security.

Aliens power and immigration power

With respect to the aliens power and the immigration power, the Capability enables government agencies to verify or establish the identity of a person seeking to enter or remain in Australia.

Commonwealth executive power and express incidental power

With respect to the Commonwealth executive power and the express incidental power, the delivery of the Capability, which involves Commonwealth funding for its establishment and ongoing costs, requires the Attorney-General's Department to research, build and test the Hub and the Solution and negotiate agreements with agencies accessing or contributing to the Capability. Also with respect to these powers, the Capability enables law enforcement and intelligence agencies to obtain and verify identity information for the prevention and enforcement of offences under the Commonwealth national security laws.

Territories power

With respect to the territories power, the Capability supports the electronic sharing of information between the Commonwealth and territory agencies.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

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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 the Government to fund the National Facial Biometric Matching Capability (the Capability).

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The Minister for Justice and Minister Assisting the Prime Minister for Counter-Terrorism has responsibility for this initiative.

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**