

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance

Financial Framework (Supplementary Powers) Act 1997

*Financial Framework (Supplementary Powers) Amendment
(Social Services Measures No. 4) 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 government spending on a number of initiatives administered by the Department of Social Services.

Funding will be provided for:

- the Bali Lifetime Rehabilitation Program to provide Australian residents injured in the 12 October 2002 and the 1 October 2005 ‘Bali Bombings’ with financial assistance for out-of-pocket rehabilitation costs over the course of their lifetimes;
- the Community Resilience grant program, part of the Strong and Resilient Communities Activity, to support projects in high needs communities directed at addressing actual or potential, or early signs of, low social cohesion or racial, religious or cultural intolerance that could ultimately pose a risk to Australia’s national security; and
- the Inclusive Communities grant program, part of the Strong and Resilient Communities Activity, to increase the social and economic participation of vulnerable and disadvantaged individuals and families within their communities and enhance their lifetime wellbeing and sense of community belonging.

The Regulations also amend table item 199 in Part 4 of Schedule 1AB, which establishes legislative authority for government spending on the prevention of domestic violence measures under the Third Action Plan 2016-2019 of the *National Plan to Reduce Violence*

against Women and their Children 2010 – 2022. The amendment corrects the reference to the name of an international covenant.

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 the instrument is 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 Social Services.

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 (Social Services Measures No. 4) Regulations 2017*

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Social Services Measures No. 4) Regulations 2017*.

Section 2 – Commencement

This section provides that the Regulations commence on the day after the instrument is 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 – Part 4 of Schedule 1AB (table item 199, column headed “Objective(s)”, subparagraph (d)(i))

This item amends **table item 199** in Part 4 of Schedule 1AB by repealing and substituting subparagraph (d)(i). The amendment corrects a typographical error in the reference to the International Covenant on Economic, Social and Cultural Rights.

Table item 199 establishes legislative authority for government spending on measures to address deep-seated attitudes and practices that excuse, justify and promote violence against women and their children. These measures are part of the Third Action Plan 2016-2019 of the *National Plan to Reduce Violence against Women and their Children 2010-2022*. Detailed information about this table item is available in the Explanatory Statement registered on 14 March 2017 for the *Financial Framework (Supplementary Powers) Amendment (Social Services Measures No. 1) Regulations 2017* [F2017L00220ES].

Item 2 – In the appropriate position in Part 4 of Schedule 1AB (table)

This item adds three new table items to Part 4 of Schedule 1AB to establish legislative authority for government spending on certain activities administered by the Department of Social Services.

New **table item 247** establishes legislative authority for government spending on the Bali Lifetime Rehabilitation Assistance Program (the Bali Program).

The purpose of the Bali Program is to provide Australian residents injured in the 12 October 2002 and the 1 October 2005 ‘Bali Bombings’ with financial assistance for out-of-pocket rehabilitation costs, that is, costs over and above general medical expenses, over the course of their lifetimes. The Bali Program is complementary to the Balimed Program administered by the Department of Human Services, which covers out-of-pocket medical, hospital and allied health service costs for people affected by the Bali Bombings.

Out-of-pocket expenses are those not normally covered by the Commonwealth, State and Territory, or local government programs and services. The Bali Program clients are generally reimbursed for out-of-pocket expenses.

The Bali Program is delivered flexibly, with a focus on the most appropriate care for each individual client. This may include supporting a client to be more independent at home and in the community. Where appropriate, assistance may include home, vehicle, work or school modifications, or a one-off individual assessment of need.

A contracted service provider administers the Bali Program on behalf of the Department of Social Services and provides case management services to clients in accordance with the Bali Program Guidelines. Clients receive a program of individualised assistance identified by the service provider or the department as being necessary to facilitate the wellbeing of the client.

The Bali Program Guidelines were developed collaboratively with other stakeholder government entities at the time the Bali Program commenced. The other stakeholder government entities included the Department of the Prime Minister and Cabinet, the then Department of Health and Ageing and the Department of Human Services. While program payments are not classified as grants, payment decisions under the Bali Program are made in accordance with probity considerations and the principles in the *Commonwealth Grants Rules and Guidelines*.

Due to the small scale of the Bali Program, limited number of its clients and privacy considerations, the Bali Program Guidelines are not publicly available. However, they are available on request.

From its inception in 2003 until June 2016, the Bali Program was delivered by the Department of Human Services through the Commonwealth Rehabilitation Service. The responsibility for the Program was subsequently transferred to the Department of Social Services, which engaged WorkFocus Australia to provide services under the Program. No further procurements are currently planned for the Bali Program.

WorkFocus Australia manages the Bali Program, which includes authorising and arranging reimbursements, acting as a single point of contact for clients, and where appropriate arranging rehabilitation assessments. WorkFocus Australia does not reject any claim for assistance without first consulting with the department. In such circumstances, a delegate of the Secretary of the department considers the circumstances of a client before making a decision.

The requirements under the *Public Governance, Performance and Accountability Act 2013* apply to decisions made under the Bali Program. Funding decisions are not published due to privacy considerations.

The Bali Program is not suitable for independent merits review as funding decisions are made subject to eligibility based on medical assessments and a consideration of whether there is another State, Territory, Commonwealth or local program that has responsibility for funding the particular rehabilitation expenses. Further, the remaking of decisions under merits review may cause delays in assessing clients' eligibility for funding, which may affect the timely provision of support to clients.

Feedback is available to all clients of the Bali Program. Clients also have recourse to the department's complaints management system (www.dss.gov.au/contact/feedback-compliments-complaints-and-enquiries/complaints-page). If they are not satisfied with the department's response, clients have recourse to the Commonwealth Ombudsman (www.ombudsman.gov.au). The guaranteed right of review under section 75(v) of the Constitution, and review under section 39B of the *Judiciary Act 1903*, would still be available.

Funding for this item comes from Sub-program 1.4.1: Payments under Special Circumstances, which is part of Program 1.4: Income Support for People in Special Circumstances, which comes under Outcome 1. Funding of \$5.5 million over four years from 2017-18 was included in the 2017-18 Budget. Details are set out in the *Portfolio Budget Statements 2017-18, Budget Related Paper No. 1.15, Social Services Portfolio* at page 37.

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 medical services, pharmaceutical benefits, hospital benefits and sickness benefits power (section 51(xxiiiA)); and
- the external affairs power (section 51(xxix)).

Social welfare power

Section 51(xxiiiA) of the Constitution empowers the Parliament to make laws with respect to the provision of various social welfare benefits and services, including pharmaceutical, hospital and sickness benefits and medical services.

The Program will assist eligible Bali Bombings victims with out-of-pocket health and medical expenses relating to their rehabilitation needs.

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 treaties to which Australia is a party.

Australia has obligations relating to persons with disabilities under the Convention on the Rights of Persons with Disabilities [2008] ATS 12. In particular, Article 26 relates to rehabilitation and requires Australia to take effective and appropriate measures to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life.

The Program will assist disabled victims of the Bali Bombings with their rehabilitation needs.

New **table item 248** establishes legislative authority for government spending on the Community Resilience program under the Strong and Resilient Communities (SARC) Activity.

The SARC Activity will replace the current Strengthening Communities Activity from 1 April 2018. It will include three grant programs to support the Government's commitment to build stronger and more resilient communities by supporting local organisations in their efforts to solve complex social problems in their communities. These programs include:

- the Community Resilience program;
- the Inclusive Communities program; and
- the National Research program.

Grant funding under the SARC Activity will help foster community cohesion by increasing people's sense of belonging and engagement. The grants will help to strengthen the capacity of communities to become more self-reliant and empowered to address local issues.

The SARC Activity aims to build on the Strengthening Communities Activity by ensuring that funding is targeted to areas of greatest need, as well as more strongly linked to the Government's efforts to increase integration and reduce community disunity, disengagement and radicalisation. Funding will be provided for one-off, time-limited projects and activities to ensure continued funding flexibility and availability to address new and emerging areas of need.

Funding will focus on creating the conditions necessary for successfully integrated, resilient and cohesive communities. It will help to build the enabling structures within communities that are central to socially cohesive communities, including stronger community leadership and engagement, increased social and economic participation, more equitable access to services, and reduced levels of racial, religious and cultural discrimination.

Funding of up to \$45.3 million will be available for the SARC Activity over four years from 2017-18, which will be allocated flexibly among the three grant programs.

The Community Resilience program aims to build strong, resilient and cohesive communities to help make Australia more secure and harmonious as a whole. This will be achieved through providing grants to support projects directed at addressing actual or potential, or early signs of, low social cohesion or racial, religious or cultural intolerance. Low social cohesion can have long-term implications for community productivity, prosperity and harmony, and could ultimately pose a risk to Australia's national security.

The Community Resilience projects must address social cohesion issues. Successful projects will also embrace diversity and community belonging, and/or address barriers to social and economic participation in the target community.

The types of projects that will be funded under the program include those aimed at:

- helping people connect with government and non-government services;
- strengthening community leadership to foster greater community cohesion;
- promoting mutual respect, understanding and fair treatment for all Australians;
- promoting understanding of Australia's democratic principles, rights and obligations and the unifying value of citizenship;
- leadership training to empower women in new and emerging community groups;
- addressing racial, cultural or religious tensions between particular groups in the community through educational, social, cultural or sporting activities that bring people of different cultures or faiths together;
- facilitating increased participation in social, economic and community life;
- facilitating initiatives and activities to build a better understanding of Australia's cultural diversity;
- providing youth at risk of marginalisation with welcoming and non-threatening access to services that aim to build trust and increase their community participation; and
- an online platform that aims to provide information for marginalised youth and help to challenge extreme views.

The Community Resilience projects may include a trial project, seed or start-up funding to establish new activities, and/or short-term interventions to resolve a particular community issue. Projects may also include a multicultural arts or festivals event as a sub-component of the project proposal. All Community Resilience projects must include a Harmony Day event. The Harmony Day, held on 21 March each year, is a celebration for everyone who calls Australia home.

Under the current Community Resilience funding round which opened on 13 July 2017, applications for a minimum of \$20,000 and up to a maximum of \$150,000 a year for up to three and a quarter years will be considered. The funding will be available from 1 April 2018 to 30 June 2021. The total allocation for the Community Resilience grants will be decided on completion of the selection process. This will depend on the number and quality of applications received and the funding allocated through other SARC grant programs.

The Minister for Social Services, the Hon Christian Porter MP, announced the Community Resilience program on 13 July 2017 (www.christianporter.dss.gov.au/media-releases/65-million-to-champion-community-cohesion).

Information about the Community Resilience program, including the Grant Opportunity Guidelines, is available on GrantConnect at www.grants.gov.au and the Community Grants Hub website at www.communitygrants.gov.au/grants.

Funding will be available to eligible community, not-for-profit organisations. Applicants must involve key stakeholders from their respective communities to demonstrate the project has their endorsement by providing a letter of support as part of the application process. Applicants are also encouraged to collaborate with other organisations formally (for example, through consortium arrangements) and informally (for example, through referral partnerships) to address the grant program's objectives.

The Community Resilience program will be based on competitive grant processes. However, there may be some instances where it will be necessary for the Department of Social Services to directly approach potential grant recipients and invite them to apply.

An assessment team will assess all eligible and compliant applications based on their merits. The assessment team will be comprised of the departmental staff. An expert panel, also comprised of the departmental staff, will then review all ranked applications for consistency and accuracy in order to inform the funding recommendations. The assessment team will make recommendations to the decision-maker (the policy delegate), the Branch Manager of the Multicultural and Communities Branch (the delegate of the Secretary of the department), who will make the final decision whether to approve a particular grant.

The policy delegate's decision is final in all matters, including:

- the approval of the grant;
- the grant amount to be awarded; and
- the terms and conditions of the grant.

Grant decisions will be made publicly available at www.dss.gov.au/grants. All applicants will be notified in writing of the outcome of their applications. All unsuccessful applicants will receive feedback on their applications. All applicants will be offered an opportunity to be debriefed regarding the outcome of their grant application.

Applicants will also be able to request information pertaining to the decisions through the department's complaints management process. Further information about this process is available at www.dss.gov.au/contact/feedback-compliments-complaints-and-enquiries. When an individual requests information pertaining to the outcome of their application, the department will assess why the decision was made and provide a formal response to the applicant.

There is no appeal mechanism for decisions to approve or not to approve a grant. While there will be no formal merits review process for funding decisions under the Community Resilience program, funding decisions will be made and grant processes will be undertaken in accordance with probity and the *Commonwealth Grants Rules and Guidelines*. All spending decisions will comply with the *Public Governance, Performance and Accountability Act 2013*.

The Community Resilience program is part of the broader SARC Activity. The remaking of a decision under merits review may affect funding provided to other SARC applicants and cause delays in finalising funding decisions for other organisations delivering time-limited projects under the SARC Activity, which would affect the timely provision of important activities for vulnerable individuals, families and communities – the overarching aim of the SARC Activity.

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

While no procurements are currently planned under the Community Resilience program, should a need for procurements arise, such as in relation to an evaluation of the SARC Activity, the procurement processes will be undertaken in accordance with the *Commonwealth Procurement Rules*.

Funding for this item will come from Program 2.1: Families and Communities, which is part of Outcome 2. Details are set out in the *Portfolio Budget Statements 2017-18, Budget Related Paper No. 1.15, Social Services Portfolio* at page 67.

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 Commonwealth executive power and the express incidental power (sections 61 and 51(xxxix)); and
- the external affairs power (section 51(xxix)).

Commonwealth executive power and express incidental power

The executive power in section 61 of the Constitution, together with section 51(xxxix) of the Constitution, supports activities that the Commonwealth can carry out for the benefit of the nation.

Under the Community Resilience program, the department will fund projects directed at addressing actual or potential, or early signs of, low social cohesion or racial, religious or cultural intolerance that could ultimately pose a risk to Australia's national security. These projects may include, for example, strengthening community leadership to foster greater community cohesion and providing youth at risk of marginalisation with access to services to increase their participation in the community. Projects may also include a multicultural arts or festivals event or a Harmony Day event.

External affairs power

Section 51(xxix) of the Constitution gives the Parliament the power 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 international obligations relating to racial intolerance under the International Convention on the Elimination of All Forms of Racial Discrimination [1975] ATS 40 (ICERD). Article 2 of the ICERD requires States Parties to condemn racial discrimination and undertake 'to pursue by all appropriate means ... a policy of eliminating racial discrimination in all its forms and promoting understanding among all races'. Article 7 requires States Parties to 'adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups'.

Australia has international obligations relating to freedom and security of religious practice, freedom of expression and the rights of minorities under the International Covenant on Civil and Political Rights [1980] ATS 23 (ICCPR). Article 18 of the ICCPR provides that '[e]veryone shall have the right to freedom of thought, conscience and religion' and Article 19 provides that '[e]veryone shall have the right to freedom of expression'. Article 27

provides that ‘minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language’. Article 2 requires States Parties to ‘take the necessary steps ... to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant’.

Under the Community Resilience program, the department will fund projects directed at eliminating racial, cultural or ethnic discrimination within the community. Projects may include a multicultural arts or festivals event or a Harmony Day event.

New **table item 249** establishes legislative authority for government spending on the Inclusive Communities program under the SARC Activity.

The Inclusive Communities program aims to increase the social and economic participation of vulnerable and disadvantaged individuals and families within their communities and enhance their lifetime wellbeing and sense of community belonging. Funding will be available for one-off, time-limited projects that support the social and economic participation of people in their communities.

The types of projects that will be funded under the program include:

- projects directed at children and youth under 18 years to:
 - support the development of disengaged and marginalised children and youth through early intervention, mentoring, sport or recreational activities;
 - support the development of children at risk of marginalisation or poor educational outcomes through activities that encourage school attendance and retention;
 - support the development of children at risk of marginalisation or poor educational outcomes through mentoring and support programs;
- projects directed at unemployed people to:
 - provide them with technical and vocational guidance and training programs, including opportunities which will provide them with a pathway to paid employment and improve their work skills;
- projects directed at addressing issues of discrimination against women to:
 - support women in exercising their rights and freedoms on an equal basis with men;
- projects directed at people with disability or mental health issues to support their full and equal participation in society on an equal basis with others to:
 - support them to become and remain independent and participate fully in the community, including through skills training;
- projects directed at non-Australian citizens, which would generally include humanitarian entrants or newly arrived migrants from culturally diverse backgrounds, to support the social and economic participation of these non-Australian citizens in their communities. This could include but is not limited to:
 - referral to training and work experience opportunities within mainstream organisations to improve language, social and work skills;
 - empowering women through leadership training;
- projects delivered online to support the social and economic participation of people within their communities. This could include but is not limited to:
 - an online service that increases community participation for individuals experiencing or at risk of social isolation;

- an online service to deliver information and support services to people living in regional and remote communities; and
- projects to support the social and economic participation of Indigenous Australians within their communities. This could include but is not limited to:
 - life skills, leadership training and entrepreneurial opportunities;
 - information, training and referral to community activities to build self-confidence, skills and capabilities.

The Inclusive Communities projects may include a trial project, seed or start-up funding to establish new activities, and/or short-term interventions to resolve a particular issue. Projects may also include a multicultural arts or festivals event as a sub-component of the project proposal, and a Harmony Day event. The Harmony Day, held on 21 March each year, is a celebration for everyone who calls Australia home.

Under the current Inclusive Communities funding round which opened on 13 July 2017, applications for a minimum of \$20,000 and up to a maximum of \$150,000 a year for up to three and a quarter years will be considered. The funding will be available from 1 April 2018 to 30 June 2021. The total allocation for the Inclusive Communities grants will be decided on completion of the selection process. This will depend on the number and quality of applications received and the funding allocated through the other SARC grant programs.

Funding of up to \$45.3 million will be available for the SARC Activity over four years from 2017-18, which will be allocated flexibly among the three grant programs (the Community Resilience program, the Inclusive Communities program, and the National Research program).

The Minister for Social Services, the Hon Christian Porter MP, announced the Inclusive Communities program on 13 July 2017 (www.christianporter.dss.gov.au/media-releases/65-million-to-champion-community-cohesion).

Information about the Inclusive Communities program, including the Grant Opportunity Guidelines, is available on GrantConnect at www.grants.gov.au and the Community Grants Hub website at www.communitygrants.gov.au/grants.

Funding will be available to eligible community, not-for-profit organisations. Applicants must involve key stakeholders from their respective communities to demonstrate the project has their endorsement by providing a letter of support as part of the application process. Applicants are also encouraged to collaborate with other organisations formally (for example, through consortium arrangements) and informally (for example, through referral partnerships) to address the grant program's objectives.

The Inclusive Communities program will be based on competitive grant processes. However, there may be some instances where it will be necessary for the Department of Social Services to directly approach potential grant recipients and invite them to apply.

An assessment team will assess all eligible and compliant applications based on their merits. The assessment team will be comprised of the departmental staff. An expert panel, also comprised of the departmental staff, will then review all ranked applications for consistency and accuracy in order to inform the funding recommendations. The assessment team will make recommendations to the decision-maker (the policy delegate), the Branch Manager of

the Multicultural and Communities Branch (the delegate of the Secretary of the department), who will make the final decision whether to approve a particular grant.

The policy delegate's decision is final in all matters, including:

- the approval of the grant;
- the grant amount to be awarded; and
- the terms and conditions of the grant.

Grant decisions will be made publicly available at www.dss.gov.au/grants. All applicants will be notified in writing of the outcome of their applications. All unsuccessful applicants will receive feedback on their applications. All applicants will be offered an opportunity to be debriefed regarding the outcome of their grant application.

Applicants will also be able to request information pertaining to the decisions through the department's complaints management process. Further information about this process is available at www.dss.gov.au/contact/feedback-compliments-complaints-and-enquiries. When an individual requests information pertaining to the outcome of their application, the department will assess why the decision was made and provide a formal response to the applicant.

There is no appeal mechanism for decisions to approve or not to approve a grant. While there will be no formal merits review process for funding decisions under the Inclusive Communities program, funding decisions will be made and grant processes will be undertaken in accordance with probity and the *Commonwealth Grants Rules and Guidelines*. All spending decisions will comply with the *Public Governance, Performance and Accountability Act 2013*.

The Inclusive Communities program is part of the broader SARC Activity. The remaking of a decision under merits review may affect funding provided to other SARC applicants and cause delays in finalising funding decisions for other organisations delivering time-limited projects under the SARC Activity, which would affect the timely provision of important activities for vulnerable individuals, families and communities – the overarching aim of the SARC Activity.

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

While no procurements are currently planned under the Inclusive Communities program, should a need for procurements arise, such as in relation to an evaluation of the SARC Activity, the procurement processes will be undertaken in accordance with the *Commonwealth Procurement Rules*.

Funding for this item will come from Program 2.1: Families and Communities, which is part of Outcome 2. Details are set out in the *Portfolio Budget Statements 2017-18, Budget Related Paper No. 1.15, Social Services Portfolio* at page 67.

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 external affairs power (section 51(xxix));
- the social welfare power (section 51(xxiiiA));
- the aliens power (section 51(xix));
- the communications power (section 51(v));
- the races power (section 51(xxvi)); and
- the Commonwealth executive power and the express incidental power (sections 61 and 51(xxxix)).

External affairs power

Section 51(xxix) of the Constitution gives the Parliament the power 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 international obligations relating to the rights of children under the Convention on the Rights of the Child [1991] ATS 4 (CROC). Article 6 of the CROC requires States Parties to 'ensure to the maximum extent possible the survival and development of the child'. Articles 28 and 29 relate to the rights of children to education and, amongst other things, require States Parties to take measures to encourage regular attendance at schools and the reduction of drop-out rates. Article 31 requires States Parties to 'promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity'. Article 4 requires States Parties to 'undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention'.

Under the Inclusive Communities program, the department will fund projects directed at supporting the development of children who are disengaged or marginalised, or at risk of marginalisation, or at risk of poor educational outcomes, including through early intervention and recreational activities, and activities that encourage school attendance.

Australia has international obligations relating to racial intolerance under the International Convention on the Elimination of All Forms of Racial Discrimination [1975] ATS 40 (ICERD). Article 2 of the ICERD requires States Parties to condemn racial discrimination and undertake 'to pursue by all appropriate means ... a policy of eliminating racial discrimination in all its forms and promoting understanding among all races'. Article 7 requires States Parties to 'adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups'.

Australia has international obligations relating to freedom and security of religious practice, freedom of expression and the rights of minorities under the International Covenant on Civil and Political Rights [1980] ATS 23 (ICCPR). Article 18 of the ICCPR provides that '[e]veryone shall have the right to freedom of thought, conscience and religion' and Article 19 provides that '[e]veryone shall have the right to freedom of expression'. Article 27 provides that 'minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language'. Article 2 requires States Parties to 'take the necessary steps ... to adopt

such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant’.

Under the Inclusive Communities program, the department will fund projects directed at eliminating racial, cultural or ethnic discrimination within the community. These projects may include, for example, educational and awareness activities and community workshops and forums. Projects may also include a multicultural arts or festivals event or a Harmony Day event.

Australia has international obligations relating to the elimination of discrimination against women under the Convention on the Elimination of All Forms of Discrimination against Women [1983] ATS 9 (CEDAW). Article 3 of CEDAW requires States Parties to ‘take ... all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men’.

Under the Inclusive Communities program, the department will fund projects directed at addressing issues of discrimination against women to support women in exercising their rights and freedoms on an equal basis with men.

Australia has international obligations relating to the rights of people with disabilities under the Convention on the Rights of Persons with Disabilities [2008] ATS 12 (CRPD). For example, Article 26 of the CRPD requires States Parties to ‘take effective and appropriate measures ... to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life’. Article 19 relates to living independently and being included in the community and Article 27 relates to work and employment. Article 4 requires States Parties to ‘adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention’.

Under the Inclusive Communities program, the department will fund projects directed at people with disabilities to support their full and equal participation in society on an equal basis with others, and to support them to become and remain independent, including through skills training.

Australia has international obligations under the International Covenant on Economic, Social and Cultural Rights [1976] ATS 5 (ICESCR). Article 6 of ICESCR recognises ‘the right of everyone to the opportunity to gain his living by work’ and requires States Parties to ‘take appropriate steps to safeguard this right’ including the implementation of ‘programmes ... to achieve ... full and productive employment’. Australia is also a party to various International Labour Organization’s Conventions, including ILO Convention 122 concerning Employment Policy [1970] ATS 17 (ILO Convention 122). Article 1 of ILO Convention 122 requires each Member ‘to declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment’. Article 1 further provides that the policy shall, amongst other objectives, aim at ensuring ‘there is work for all who are available for and seeking work’.

Under the Inclusive Communities program, the department will fund projects directed at unemployed people to provide them with technical and vocational guidance and training programs, including opportunities which will provide them with a pathway to paid employment and improve their work skills.

Social welfare power

Section 51(xxiiiA) of the Constitution gives the Parliament the power to make laws with respect to social welfare services and benefits, including unemployment and sickness benefits.

Under the Inclusive Communities program, the department may fund projects that involve the provision of unemployment and sickness benefits.

Aliens power

Section 51(xix) of the Constitution gives the Parliament the power to make laws with respect to ‘naturalization and aliens’. The aliens power supports legislation with respect to non-citizens.

Under the Inclusive Communities program, the department will fund projects directed at supporting the social and economic participation of non-citizens in their communities. These projects may include, for example, providing non-citizens with information about volunteering opportunities and empowering non-citizen women through leadership training.

Communications power

Section 51(v) of the Constitution gives the Parliament to power to make laws with respect to ‘postal, telegraphic, telephonic and other like services’.

Under the Inclusive Communities program, the department will fund projects directed at delivering online projects to support the social and economic participation of people in their communities. These projects may include, for example, developing online services that increase community participation for individuals at risk of social isolation and online support services for people living in remote and regional communities.

Races power

Section 51(xxvi) of the Constitution gives the Parliament the power to make laws with respect to ‘the people of any race for whom it is deemed necessary to make special laws’. The races power supports legislation with respect to Indigenous Australians.

Funding under the Inclusive Communities program will be directed at supporting the social and economic participation of Indigenous Australians within their communities. These projects may include, for example, providing leadership training, entrepreneurial opportunities, and other services to build self-confidence, skills and capabilities.

Commonwealth executive power and express incidental power

The executive power in section 61 of the Constitution, together with section 51(xxxix) of the Constitution, supports activities that the Commonwealth can carry out for the benefit of the nation.

Projects funded under the Inclusive Communities program may include a Harmony Day event. Harmony Day is a national event celebrating cultural diversity.

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 (Social Services Measures No. 4) Regulations 2017

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 a number of initiatives administered by the Department of Social Services.

Funding will be provided for:

- the Bali Lifetime Rehabilitation Program to provide Australian residents injured in the 12 October 2002 and the 1 October 2005 ‘Bali Bombings’ with financial assistance for out-of-pocket rehabilitation costs over the course of their lifetimes;
- the Community Resilience grant program, part of the Strong and Resilient Communities Activity, to support projects in high needs communities directed at addressing actual or potential, or early signs of, low social cohesion or racial, religious or cultural intolerance that could ultimately pose a risk to Australia’s national security; and
- the Inclusive Communities grant program, part of the Strong and Resilient Communities Activity, to increase the social and economic participation of vulnerable and disadvantaged individuals and families within their communities and enhance their lifetime wellbeing and sense of community belonging.

The Regulations also amend table item 199 in Part 4 of Schedule 1AB, which establishes legislative authority for government spending on the prevention of domestic violence measures under the Third Action Plan 2016-2019 of the *National Plan to Reduce Violence against Women and their Children 2010 – 2022*. The amendment corrects the reference to the name of an international covenant.

The Minister for Social Services has portfolio responsibility for these matters.

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 Financee**