

## **EXPLANATORY STATEMENT**

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

*Financial Framework (Supplementary Powers) Act 1997*

*Financial Framework (Supplementary Powers) Amendment  
(Health Measures No. 1) Regulations 2018*

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.

Schedule 1 to the *Financial Framework (Supplementary Powers) Amendment (Health Measures No. 1) Regulations 2018* (the Regulations) amends Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on the Royal Australian Air Force (RAAF) Base Tindal community support package for Katherine in the Northern Territory and its surrounding areas. The package will provide health related support services and assistance to individuals affected by the use of per- and poly-fluoroalkyl substances (PFAS) at RAAF Base Tindal and contribute to the understanding of the potential health effects associated with exposure to PFAS.

The support package consists of:

- an epidemiological study to investigate the potential human health implications of exposure to PFAS;
- a voluntary blood testing program which, with consent from individuals, will inform the epidemiological study; and
- dedicated mental health and counselling services to assist those affected by PFAS contamination in Katherine and its surrounding areas.

Funding for the support package of \$5.7 million over four years from 2017-18 was included in the 2017-18 Mid-Year Economic and Fiscal Outlook. The package is administered by the Department of Health.

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 Health.

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 (Health Measures No. 1) Regulations 2018***

**Section 1 – Name**

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Health Measures No. 1) Regulations 2018*.

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

This item adds a new table item to Part 4 of Schedule 1AB to establish legislative authority for government spending on an initiative administered by the Department of Health (the department).

New **table item 269** establishes legislative authority for government spending on the Royal Australian Air Force (RAAF) Base Tindal community support package for Katherine in the Northern Territory (NT) and its surrounding areas. The package aims to provide health related support services and assistance to individuals living and working, or who have lived or worked, in the Katherine community who have been affected by the use of per- and poly-fluoroalkyl substances (PFAS) at RAAF Base Tindal.

PFAS have been used since the 1950s in industrial processes, in a range of common household products, and some types of firefighting foams. Their use in firefighting foams has raised some environmental concerns in Australia as PFAS has contaminated sites where the foams have been used.

On 3 December 2017, the Minister for Health, the Hon Greg Hunt MP, the Minister for Defence, Senator the Hon Marise Payne, and the Minister for Indigenous Affairs, Senator the Hon Nigel Scullion, announced the RAAF Base Tindal community support package. The package is consistent with the services currently provided to the communities of Williamtown, New South Wales and Oakey, Queensland.

Funding of \$5.7 million was included in the 2017-18 Mid-Year Economic and Fiscal Outlook under the measure ‘Management of Per- and Poly-Fluorinated Alkyl Substances – community support package for RAAF Base Tindal’ for a period of four years commencing in 2017-18. Details are set out in the *Mid-Year Economic and Fiscal Outlook 2017-18*, Appendix A: Policy decisions taken since the 2017-18 Budget at page 161.

Funding for this item comes from Program 2.1: Mental Health and Program 5.2: Health Protection and Emergency Response, which are part of Outcomes 2 and 5 respectively. Details are set out in the *Portfolio Additional Estimates Statements 2017-18, Health Portfolio* at pages 36 and 53 respectively.

The RAAF Base Tindal community support package consists of:

- an epidemiological study to investigate the potential human health implications of exposure to PFAS;
- a voluntary blood testing program which, with consent from individuals, will inform the epidemiological study; and
- dedicated mental health and counselling services to assist those affected by PFAS contamination in Katherine and its surrounding areas.

#### *Epidemiological study*

The department will fund the Australian National University (ANU) to conduct an epidemiological study to investigate the potential human health implications of exposure to PFAS in the RAAF Base Tindal investigation area. This funding will support the expansion of the existing epidemiological study currently conducted in Williamtown, New South Wales and Oakey, Queensland in relation to PFAS contamination.

Individuals will be able to participate in the epidemiological study by:

- providing their consent on the pathology request form when having their blood tested under the voluntary blood testing program described below; or
- contacting the ANU study team directly; or
- responding to the ANU study team when they approach the community.

Participation in the epidemiological study will be voluntary. The policy objective is for people who live or work, or who have lived or worked, in the RAAF Base Tindal investigation area to be eligible to participate in the study. The extent of contamination and human exposure pathways have been established. A map of the investigation area is available at [www.defence.gov.au/environment/pfas/Tindal/publications.asp](http://www.defence.gov.au/environment/pfas/Tindal/publications.asp).

The final eligibility criteria to participate in the epidemiological study will be determined by the ANU study team once a detailed research study protocol has been developed. The criteria may be revised to include other conditions developed by the study team to ensure the validity and reliability of the study but will take into consideration the above policy objective.

Information on the eligibility criteria and the epidemiological study will be made available on the ANU website ([nceph.anu.edu.au/pfas-health-study](http://nceph.anu.edu.au/pfas-health-study)) once the detailed research study protocol has been developed by the ANU study team.

The decision to fund the expansion of the epidemiological study will be made by a senior departmental official as a delegate of the Secretary of the department. Funding will be

provided through a deed of variation to the existing contract for services between the ANU and the Commonwealth. Under the current contract for services, the ANU is conducting the epidemiological study in the areas surrounding RAAF Base Williamtown and Army Aviation Centre Oakey. The contract will be varied to include RAAF Base Tindal.

The current contract for services was awarded to the ANU following a targeted approach to market and procurement process. The procurement was conducted in accordance with the *Public Governance, Performance and Accountability Act 2013* and the *Commonwealth Procurement Rules*. Information about this contract is available on AusTender at [www.tenders.gov.au](http://www.tenders.gov.au) (CN ID: CN3473078). The contract variation to include RAAF Base Tindal in the epidemiological study will also be reported on AusTender.

The decision to provide funding to the ANU for the expansion of the epidemiological study is not considered appropriate for an independent review because:

- the expenditure for the procurement of services is subject to the requirements of the Commonwealth's resource management framework, including the *Public Governance, Performance and Accountability Act 2013* and the *Commonwealth Procurement Rules*;
- the expenditure is time limited until 2021, and the Government has committed to commencing the study by early 2018;
- the ANU is uniquely able to conduct the epidemiological study in the timeframe required, and the direct source arrangement is considered appropriate as the ANU is already conducting an epidemiological study in the RAAF Base Williamtown and the Army Aviation Centre Oakey communities; and
- an independent review would substantially delay implementation of the epidemiological study from the timeframe committed to by the Government.

An independent review of decisions in relation to eligibility to participate in the epidemiological study is not considered appropriate as the eligibility criteria will be designed to capture the potentially exposed population. Individuals that have never lived or worked within the RAAF Base Tindal investigation area are unlikely to have been exposed to PFAS at a level above that of the general population.

#### *Voluntary blood testing program*

The department will fund a voluntary blood testing program which will provide one free PFAS blood test for individuals who live or work, or have lived or worked, in the RAAF Base Tindal investigation area. Funding will be provided to a pathology service provider to conduct the blood testing.

The blood testing program will be conducted in conjunction with the epidemiological study. Where individual consent is provided, blood test results will be provided to the ANU to help inform the epidemiological study.

Participation in the blood testing program will be voluntary. Individuals will be eligible to participate in the program by completing a statutory declaration that they live or work, or have lived or worked, within the RAAF Base Tindal investigation area and visiting their general practitioner to seek a referral for a blood test. The statutory declaration and a pathology request form will be provided to a pathology service provider at the time when the

blood sample is collected. Information on the eligibility criteria and access to the voluntary blood testing program is available on the departmental website at [www.health.gov.au/pfas](http://www.health.gov.au/pfas).

The decision to fund the expansion of the blood testing program to include the RAAF Base Tindal investigation area will be made by a senior departmental official as a delegate of the Secretary of the department. Funding will be provided through a deed of variation to the existing contract for services between Sonic Healthcare Ltd and the Commonwealth. Under the current contract for services, Sonic Healthcare Ltd is providing pathology services in the RAAF Base Williamtown and the Army Aviation Centre Oakey investigation areas. The contract will be varied to include the RAAF Base Tindal investigation area.

The current contract for services was awarded to Sonic Healthcare Ltd following a targeted approach to market and procurement process. The procurement was conducted in accordance with the *Public Governance, Performance and Accountability Act 2013* and the *Commonwealth Procurement Rules*. Information about this contract is available on AusTender at [www.tenders.gov.au](http://www.tenders.gov.au) (CN ID: CN3394142). The contract variation to include the RAAF Base Tindal investigation area will also be reported on AusTender.

The decision to provide funding to Sonic Healthcare Ltd for the expansion of the voluntary blood testing program is not considered appropriate for an independent review because:

- the expenditure for the procurement of services is subject to the requirements of the Commonwealth's resource management framework, including the *Public Governance, Performance and Accountability Act 2013* and the *Commonwealth Procurement Rules*;
- the expenditure is time limited until 2021, and the Government has committed to commencing the program in early 2018;
- Sonic Healthcare Ltd is uniquely able to provide the blood testing services in the timeframe required, and the direct source arrangement is considered appropriate as Sonic Healthcare Ltd is already providing these services in the RAAF Base Williamtown and the Army Aviation Centre Oakey communities; and
- an independent review would substantially delay implementation of the program from the timeframe committed to by the Government.

An independent review of decisions in relation to eligibility to participate in the program is not considered appropriate as the eligibility criteria will be designed to capture the potentially exposed population. Individuals that have never lived or worked within the RAAF Base Tindal investigation area are unlikely to have been exposed to PFAS at a level above that of the general population.

#### *Dedicated mental health and counselling services*

The Government provides funding to 31 Primary Health Networks (PHNs) across Australia to lead mental health and suicide prevention planning at a regional level. Through a flexible primary mental health care funding pool, PHNs improve outcomes for people with or at risk of mental illness and/or suicide, in partnership with relevant services.

PHNs are required to commission primary mental health services using a person-centred, stepped care approach so that a range of service types are available within local regions to better match with individual and local population needs. Stepped care is defined as an evidence-based, staged system comprising a hierarchy of services, from the least to the most

intensive, matched to the individual's needs. Each PHN is required to commission services across six priority areas, including psychological therapies for people in under-serviced and/or hard to reach populations, including rural and remote populations.

The department will fund the NT PHN to commission new dedicated mental health and counselling services to support the Katherine community. The NT PHN will conduct a needs-based assessment of the services already available in the area and commission additional services in accordance with demand, and in a way that does not duplicate existing services. In addition to traditional mental health and counselling services, the NT PHN may support community wellbeing activities such as peer support groups.

Former Katherine residents will be able to receive support from existing state-based services in their area or through their local PHN. However, if these mental health and counselling services were not available, there would be flexibility to receive them face-to-face from another PHN, subject to a mutual agreement being made between that PHN and the NT PHN.

The department will also fund On the Line Australia Ltd to provide online and telephone mental health and counselling services to support those who do not wish to engage in face-to-face services, or who have moved away from the Katherine area.

The dedicated mental health and counselling services will be available to anyone in the Katherine community, or who was previously a part of the Katherine community, who needs support due to issues raised by PFAS contamination.

Eligibility for access to the dedicated mental health and counselling services will be broader than for participation in the epidemiological study and the voluntary blood testing program. In addition to people in the Katherine region who have been affected by PFAS contamination emanating from RAAF Base Tindal, those individuals within the broader Katherine community that experience stress or anxiety related to PFAS contamination, even if they have not been directly exposed, will be able to access these services on a voluntary basis, including face-to-face, online and telephone mental health and counselling services and community wellbeing programs.

Individuals will be able to self-identify as being eligible to access the dedicated mental health and counselling services. The service providers would then ask a series of questions to determine whether an individual's needs are within the scope of the services. If they are not within the scope of the services, the individual would be referred to an appropriate mental health or counselling service. Information on the eligibility criteria and the mental health and counselling services will be available on the NT PHN and Support Now websites, as well as the departmental website at [www.health.gov.au/pfas](http://www.health.gov.au/pfas).

Funding decisions for the provision of face-to-face, online and telephone mental health and counselling services and community wellbeing programs to the Katherine community will be made by a senior departmental official as a delegate of the Secretary of the department. Funding to the NT PHN will be provided through a deed of variation to their existing Schedule for Mental Health and Suicide Prevention Activity under the Core Funding Agreement 2016-17 – 2018-19 between PHNs and the Commonwealth.

Grant funding was originally awarded to 31 PHNs through an open competitive approach to market and grant process conducted in accordance with the *Public Governance, Performance*

*and Accountability Act 2013* and the *Commonwealth Grants Rules and Guidelines*. Information about the NT PHN grant is available on the departmental website at [www.health.gov.au/internet/main/publishing.nsf/Content/pfps-grantsreporting](http://www.health.gov.au/internet/main/publishing.nsf/Content/pfps-grantsreporting).

Funding to On the Line Australia Ltd for online and telephone mental health and counselling services will be provided through a deed of variation to the existing funding agreement between On the Line Australia Ltd and the Commonwealth. Under the current funding agreement, On the Line Australia Ltd is providing online and telephone mental health and counselling services for the RAAF Base Williamtown and the Army Aviation Centre Oakey surrounding areas. The funding agreement has been varied to include the RAAF Base Tindal surrounding area.

The current funding agreement was awarded to On the Line Australia Ltd following a targeted approach to market and grant process conducted in accordance with the *Public Governance, Performance and Accountability Act 2013* and the *Commonwealth Grants Rules and Guidelines*. Information about this grant, including the variation to the funding agreement to include Katherine, is available on the departmental website at [www.health.gov.au/internet/main/publishing.nsf/Content/pfps-grantsreporting](http://www.health.gov.au/internet/main/publishing.nsf/Content/pfps-grantsreporting).

The decision to provide funding to the NT PHN for face-to-face mental health and counselling services and community wellbeing activities will not be subject to an independent review because:

- the funding is one-off, non-competitive and targeted;
- the expenditure is subject to the requirements of the Commonwealth's resource management framework, including the *Public Governance, Performance and Accountability Act 2013* and the *Commonwealth Grants Rules and Guidelines*;
- the NT PHN is the most appropriate organisation to deliver these services as it is best placed to determine the local needs of the Katherine community in the timeframe required. The direct source arrangement is considered appropriate due to the NT PHN's established relationships with primary health care providers in their region and its ability to conduct needs assessments for local areas. The RAAF Base Tindal and Katherine surrounds fall within the NT PHN region; and
- the expenditure is time limited until 2021, and an independent review would substantially delay implementation of the services from the timeframe committed to by the Government.

The decision to provide funding to On the Line Australia Ltd for online and telephone mental health and counselling services is not considered appropriate for an independent review because:

- the expenditure is subject to the requirements of the Commonwealth's resource management framework, including the *Public Governance, Performance and Accountability Act 2013* and the *Commonwealth Grants Rules and Guidelines*;
- the expenditure is time limited until 2021;
- On the Line Australia Ltd is uniquely able to provide the services in the timeframe required, and the direct source arrangement is considered appropriate because On the Line Australia Ltd is already providing online and telephone mental health and counselling services for the RAAF Base Williamtown and the Army Aviation Centre Oakey communities; and
- an independent review could directly impact the availability of these services which are already being provided to the Katherine community.



Under their funding agreements, the NT PHN and On the Line Australia Ltd must use the funding to provide services to those people in the Katherine community who have been affected by PFAS contamination emanating from RAAF Base Tindal. The NT PHN with guidance from the department will determine eligibility for the face-to-face mental health and counselling services and community wellbeing activities. On the Line Australia Ltd with guidance from the department will determine eligibility for the online and telephone mental health and counselling services.

An independent review of decisions in relation to eligibility to access the dedicated mental health and counselling services is not considered appropriate. Individuals self-identify as being eligible and if their needs are not within the scope of the dedicated mental health and counselling services, they will be referred to a more appropriate service.

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 territories power (section 122); and
- the Commonwealth executive power and the express incidental power (sections 61 and 51(xxxix)).

#### *Communications power*

Under section 51(v) of the Constitution, the Commonwealth has power to legislate with respect to ‘postal, telegraphic, telephonic and other like services’.

Under the additional mental health and counselling services component, funding will be provided to administer online and telephone mental health and counselling services to individuals affected by PFAS contamination emanating from RAAF Base Tindal. This will provide access to mental health and counselling services to those who do not wish to engage in face-to-face services, or have moved away from the RAAF Base Tindal investigation area and Katherine region.

Under the support package, funding will be provided to inform affected individuals about the health related effects of PFAS exposure and the availability of programs and services for them. This may include online and hard copy communications materials (such as fact sheets), broadcast and print media advertising, and a departmental telephone PFAS general information line that is separate to the telephone mental health and counselling services.

#### *Defence power*

Section 51(vi) of the Constitution empowers the Parliament to make laws with respect to the naval and military defence of the Commonwealth and States, and the control of the forces to execute and maintain the laws of the Commonwealth.

Under the support package, funding is provided for programs and services to support and assist individuals affected by PFAS contamination emanating from RAAF Base Tindal.

*Territories power*

The provision of funding for activities in or in relation to a Territory is supported by section 122 of the Constitution.

Under the RAAF Base Tindal community support package, funding will be provided for programs and services specifically for individuals who live or work, or have lived or worked, in the areas of the Northern Territory surrounding RAAF Base Tindal affected by PFAS contamination.

*Commonwealth executive power and express incidental power*

The express incidental power (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 it by the Constitution. Together with the executive power (section 61 of the Constitution), section 51(xxxix) supports activities within the ordinary and well-recognised functions of government.

Under the epidemiological study, funding will be provided to inform the Commonwealth about potential human health implications associated with exposure to PFAS in the RAAF Base Tindal investigation area.

Funding will also be provided for a voluntary blood testing program to be conducted in conjunction with the epidemiological study. The voluntary blood testing program will provide a free blood test for PFAS to individuals who live or work, or have lived or worked, in the RAAF Base Tindal investigation area. Where individual consent is provided, the results of PFAS blood tests will contribute to the epidemiological study.

## **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 (Health Measures No. 1) Regulations 2018***

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 the Royal Australian Air Force (RAAF) Base Tindal community support package for Katherine in the Northern Territory and its surrounding areas. The package will provide health related support services and assistance to individuals affected by the use of per- and poly-fluoroalkyl substances (PFAS) at RAAF Base Tindal and contribute to the understanding of the potential health effects associated with exposure to PFAS.

The support package consists of:

- an epidemiological study to investigate the potential human health implications of exposure to PFAS;
- a voluntary blood testing program which, with consent from individuals, will inform the epidemiological study; and
- dedicated mental health and counselling services to assist those affected by PFAS contamination in Katherine and its surrounding areas.

Funding for the support package of \$5.7 million over four years from 2017-18 was included in the 2017-18 Mid-Year Economic and Fiscal Outlook. The package is administered by the Department of Health.

The Minister for Health has portfolio responsibility for this matter.

#### **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**