**EXPLANATORY STATEMENT**

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

*Financial Framework (Supplementary Powers) Act 1997*

*Financial Framework (Supplementary Powers) Amendment*

*(Veterans’ Affairs 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.

The purpose of the *Financial Framework (Supplementary Powers) Amendment (Veterans’ Affairs Measures No. 1) Regulations 2018* (the Regulations) is to amend Part 3 of the Principal Regulations and Schedule 1AA to the Principal Regulations. The amendments repeal item 430.015 (Veterans’ Children Education Scheme) of Part 4 of Schedule 1AA as another source of legislative authority has been identified for this program. The amendments also include transitional provisions in Part 3 of the Principal Regulations to preserve the capacity for the Commonwealth to take action in relation to a grant or arrangement entered into prior to the repeal of item 430.015 of Part 4 of Schedule 1AA as if this item continues in force, should the need for such action arise in the future.

The Regulations also amend item 237 (Prime Minister’s Veterans’ Employment Program) of Part 4 of Schedule 1AB to establish legislative authority for government spending on the Veterans’ Employment Commitment Framework (the Commitment Framework), which is part of the Prime Minister’s Veterans’ Employment Program administered by the Department of Veterans’ Affairs. The Commitment Framework aims to raise awareness of the benefits to businesses of employing former members of the Australian Defence Force (ADF) and the spouses of serving ADF members, and encourage businesses to employ veterans.

Funding for the Commitment Framework was included in the 2018-19 Budget.

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 Veterans’ Affairs.

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 (Veterans’ Affairs Measures No. 1) Regulations 2018***

**Section 1 – Name**

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

**Section 2 – Commencement**

This section provides that sections 1 to 4, item 3 in Schedule 1 to the Regulations, and anything in the Regulations not elsewhere covered by the table in this section commence on the day after the instrument is registered on the Federal Register of Legislation. This section also provides that items 1 and 2 in Schedule 1 to the Regulations commence on 1 January 2019.

**Section 3 – Authority**

This section provides that the Regulations are made under the *Financial Framework (Supplementary Powers) Act 1997* (the FF(SP) Act).

**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**

**Item 1 – In the appropriate position in Part 3**

This item adds new Division 3 – Amendments made by the Financial Framework (Supplementary Powers) Amendment (Veterans’ Affairs Measures No. 1) Regulations 2018 – in the appropriate position in Part 3 of the Principal Regulations.

New regulation 28 (power to vary or administer grants or arrangements) ensures that, despite the repeal of table item 430.015 of Part 4 of Schedule 1AA by Schedule 1 to the Regulations, there are transitional provisions in place to preserve the power for the Commonwealth to vary or administer grants or arrangements entered into prior to the repeal of that table item as if that item continues in force for the purposes of sections 32B (power to make, vary and administer arrangements and grants) and 32C (terms and conditions for grants) of the FF(SP) Act, should the need for such action arise in the future. Such a need could arise because a grant or arrangement entered into prior to the repeal has not expired as expected or because there is a need to administer a continuing obligation in such an agreement (for example, to recover funds in the event that a breach of the agreement is later identified).

The transitional provisions also preserve the capacity for Ministers and accountable authorities of non‑corporate Commonwealth entities to issue delegations in respect of this power. The transitional provisions do not provide the authority for the Commonwealth to make any new commitments to spend money in reliance on the table item being repealed (for example, a grant or arrangement could not be varied to increase any amount payable by the Commonwealth). The provisions would however authorise spending pursuant to any contractual commitment entered into prior to the repeal of item 430.015 of Part 4 of Schedule 1AA, including where:

* a grant or arrangement has not expired prior to the repeal of the item as expected and a payment becomes due, under the terms of the grant or arrangement, after the repeal; or
* a payment made under the grant or arrangement before the repeal of the item was miscalculated and underpaid and the contractor is entitled, under the terms of the grant or arrangement, to an additional payment.

**Item 2 – Part 4 of Schedule 1AA (table item 430.015)**

This item amends Part 4 of Schedule 1AA by repealing table item 430.015.

**Item 3 – Part 4 of Schedule 1AB (table item 237, column headed “Objective(s)”, after paragraph (c) (first occurring)))**

This item amends **table item 237** by adding a new objective to establish legislative authority for government spending on the Veterans’ Employment Commitment Framework (the Commitment Framework), which is part of the Prime Minister’s Veterans’ Employment Program (the Program). The Program is administered by the Department of Veterans’ Affairs (the department).

The Program, which was announced by the Prime Minister, the Hon Malcolm Turnbull MP, in November 2016, aims to raise awareness in the Australian business community of the unique skills and experience that veterans can bring to the civilian workplace, and increase employment opportunities for veterans.

Development of a framework for employers to make a public commitment to veterans’ employment was recommended by the Industry Advisory Committee on Veterans’ Employment (the IAC) which has been established under the Program. The IAC consists of 14 members which represent small, medium and large businesses across a range of industries. The IAC’s role is to develop and provide advice to Australian businesses on practical measures to embed veterans’ employment strategies into their recruitment practices.

The purpose of the Commitment Framework is to raise awareness of the benefits to businesses of employing former members of the Australian Defence Force (ADF) and the spouses of serving ADF members, and encourage businesses to employ veterans. To participate, businesses would sign a commitment to implement policies and procedures to support the recruitment and retention of veterans. On signing the commitment, a business would have access to a brand to identify it as a committed employer of veterans. The brand will be developed by the IAC and the department. No funding would be provided to the business to meet their commitments, nor would a fee be charged for use of the brand.

Funding will be used to establish ICT infrastructure and administrative processes to manage the veterans’ employment commitments made by businesses. The Commitment Framework will be included in the ongoing promotion of the Program, including through the program website at www.veteransemployment.gov.au.

Funding of $2 million for the Commitment Framework was included in the 2018-19 Budget as part of the measure ‘Support Veterans’ Employment Opportunities – continuation’ for a period of two years commencing in 2018-19. Details are set out in *Budget 2018-19, Budget Measures, Budget Paper No. 2 2018-19* at pages 192 to 193.

The Commitment Framework is being developed by the IAC, in consultation with the department. Participation by businesses would be voluntary. No funding or grants would be provided to businesses to help them meet their commitments. The commitments would be declaratory and not intended to constitute legally enforceable contracts between the businesses and the IAC and/or the Commonwealth.

The department will develop processes and ICT infrastructure to enable the commitments made by businesses to be registered, monitored and publicised, and allow monitoring of the use of a brand provided to committed businesses. This may involve market testing of the veterans’ employment commitment document and the associated branding through an open, competitive procurement process, and engaging ICT and other contractors. Final funding decisions will be made by a delegate of the Secretary of the department.

Funding decisions made in connection with the Program will not be subject to independent review arrangements. Procurement processes will be conducted in accordance with the requirements of the Commonwealth’s resource management framework, including the *Public Governance, Performance and Accountability Act 2013* and the *Commonwealth Procurement Rules*. Tenderers will be selected on the basis of technical expertise, capability and value for money.

Funding for this item will come from Programs 1.1 to 1.6, which are part of Outcome 1, and Program 2.5, which is part of Outcome 2. Details are set out in the *Portfolio Budget Statements 2018‑19, Budget Related Paper No. 1.4B, Defence Portfolio (Department of Veterans’ Affairs)* at pages 22, 24 and 25.

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)); and
* the defence power (section 51(vi)).

*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 involves the establishment of ICT infrastructure, including a website which will publish commitments of participating businesses and promote the Commitment Framework to Australian businesses.

*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’.

The Commitment Framework will encourage employers to recruit and retain veterans and the spouses of serving ADF members to increase their employment opportunities and assist veterans in the transition to civilian life.

**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 (Veterans’ Affairs 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 Part 3 of the FF(SP) Regulations and Schedule 1AA to the FF(SP) Regulations. The amendments repeal item 430.015 (Veterans’ Children Education Scheme) of Part 4 of Schedule 1AA as another source of legislative authority has been identified for this program. The amendments also include transitional provisions in Part 3 of the FF(SP) Regulations to preserve the capacity for the Commonwealth to take action in relation to a grant or arrangement entered into prior to the repeal of item 430.015 of Part 4 of Schedule 1AA as if this item continues in force, should the need for such action arise in the future.

The Regulations also amend item 237 (Prime Minister’s Veterans’ Employment Program) of Part 4 of Schedule 1AB to establish legislative authority for government spending on the Veterans’ Employment Commitment Framework (the Commitment Framework), which is part of the Prime Minister’s Veterans’ Employment Program administered by the Department of Veterans’ Affairs. The Commitment Framework aims to raise awareness of the benefits to businesses of employing former members of the Australian Defence Force (ADF) and the spouses of serving ADF members, and encourage businesses to employ veterans.

Funding for the Commitment Framework was included in the 2018-19 Budget.

The Minister for Veterans’ Affairs has 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 Finance**