

## **EXPLANATORY STATEMENT**

### **Issued by the Authority of the Minister for Finance and the Public Service**

*Financial Framework (Supplementary Powers) Act 1997*

*Financial Framework (Supplementary Powers) Amendment  
(Communications and the Arts Measures No. 1) Regulations 2019*

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 the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the 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 *Financial Framework (Supplementary Powers) Amendment (Communications and the Arts Measures No. 1) Regulations 2019* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on two initiatives that will be administered by the Department of Communications and the Arts.

Funding will be provided for:

- the National Online Safety Awareness Campaign to raise awareness of how to address the potential risks children face online
- the Government's contribution towards terrestrial television retransmission infrastructure near Stroud in New South Wales to rectify television reception issues at that location.

The awareness campaign is part of the 'Keeping our Children Safe Online' package jointly announced by the Prime Minister, the Hon Scott Morrison MP, the Minister for Communications and the Arts, Senator the Hon Mitch Fifield, and the Minister for Education, the Hon Dan Tehan MP, on 16 December 2018.

The Government's contribution of \$300,000 towards the construction of retransmission infrastructure near Stroud was announced in the 2018-19 Mid-Year Economic and Fiscal Outlook.

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 they are 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 Communications and the Arts.

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 (Communications and the Arts Measures No. 1) Regulations 2019***

**Section 1 – Name**

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Communications and the Arts Measures No. 1) Regulations 2019*.

**Section 2 – Commencement**

This section provides that the Regulations commence on the day after they are 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 two new table items to Part 4 of Schedule 1AB to establish legislative authority for government spending on activities that will be administered by the Department of Communications and the Arts (the department).

New **table item 327** establishes legislative authority for government spending on the National Online Safety Awareness Campaign (the campaign) to raise awareness of how to address the potential risks children face online.

The campaign is part of the ‘Keeping our Children Safe Online’ package jointly announced by the Prime Minister, the Hon Scott Morrison MP, the Minister for Communications and the Arts, Senator the Hon Mitch Fifield, and the Minister for Education, the Hon Dan Tehan MP, on 16 December 2018.

The national advertising campaign will be aimed at addressing the lack of awareness of existing online safety resources in the community and directing people who do not know where to look for online safety help to the Australian Office of the eSafety Commissioner.

The objective of the campaign is to enhance the awareness of online safety resources throughout Australia, and provide children, parents, carers and teachers with the tools and information needed to address online safety issues and concerns. This includes raising awareness of the Office of the eSafety Commissioner and promoting its online safety role, particularly in relation to children and available resources for parents, carers and teachers.

As well as the broad national awareness campaign, there will be a series of targeted messages focused on the needs of vulnerable communities. These communities include Indigenous Australians, people from culturally and linguistically diverse backgrounds, and those living in regional and remote areas of Australia.

The campaign will be delivered through a range of mass media channels. The messaging and content for the campaign will be developed in close consultation with the Office of the eSafety Commissioner. The campaign will be developed in accordance with the requirements of the government advertising framework.

Funding for the campaign was included in the 2018-19 Mid-Year Economic and Fiscal Outlook (MYEFO) as part of the measure 'Children's Online Safety Package'. Total funding of \$17 million has been allocated for the package for a period of five years commencing in 2018-19. Details are set out in the *Mid-Year Economic and Fiscal Outlook 2018-19*, Appendix A: Policy decisions taken since the 2018-19 Budget, at page 161. Funding for the campaign will come from Program 1.1: Digital Technologies and Communications Services, which is part of Outcome 1. Funding details are set out in the *2018-19 Portfolio Additional Estimates Statements, Communications and the Arts Portfolio*.

Funding for the campaign will be administered by the department through a series of procurement processes, some of which will be done through competitive tenders. These tenders will be conducted in accordance with the Commonwealth Procurement Rules and information about them will be available on AusTender, the Australian Government's procurement information system, at [www.tenders.gov.au](http://www.tenders.gov.au). A senior departmental official will have the relevant financial delegation for expenditure relating to the campaign.

Details of the campaign, including expenditure on each medium, will be included in the *Report on Campaign Advertising by Australian Government Departments and Agencies* which is published by the Department of Finance each year and is available at [www.finance.gov.au](http://www.finance.gov.au).

Funding decisions made in connection with the campaign are not considered appropriate for independent merits review. The procurements will be conducted in accordance with the requirements of the Commonwealth's resource management framework, including the Commonwealth Procurement Rules and the *Public Governance, Performance and Accountability Act 2013*. Aspects of the campaign will be procured through competitive tendering services from a pre-approved government panel of service providers conducted in accordance with procurement processes. Unsuccessful tenderers will be advised of reasons for the decision on request and will be able to lodge a complaint with the department about the conduct of the process.

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 external affairs power (section 51(xxix)).

### Communications power

Section 51(v) of the Constitution empowers the Parliament to make laws with respect to ‘postal, telegraphic, telephonic and other like services’. Measures enabled by the campaign will support funding for the Commonwealth to develop and deliver information or services through a variety of media about safety online and address the lack of awareness around existing online safety resources.

### External affairs power

Section 51(xxix) of the Constitution empowers the Parliament to make laws with respect to ‘external affairs’. The external affairs power supports legislation implementing Australia’s international obligations under treaties to which Australia is a party.

The campaign aims to enhance children’s safety online by raising awareness of existing online safety resources in order to give effect to Australia’s obligations under Articles 3(2), 4, 17, 19, 34 and 36 of the Convention on the Rights of the Child [1991] ATS 4 (the CROC).

Article 3(2) of the CROC requires States Parties to undertake to ensure the child such protection and care as is necessary for his or her wellbeing and, to this end, take all appropriate legislative and administrative measures.

Article 4 of the CROC requires States Parties to respect the responsibilities, rights and duties of parents, and other legal guardians as appropriate, to provide appropriate direction and guidance in the exercise by the child of the rights recognised in the CROC.

Article 17 of the CROC requires States Parties to ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral wellbeing and physical and mental health.

Article 19 of the CROC requires States Parties to take all appropriate measures, including legislative and administrative measures, to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of any person who has care of the child.

Article 34 of the CROC requires States Parties to take appropriate measures to prevent ‘the inducement or coercion of a child to engage in any unlawful sexual activity’ and the ‘exploitative use of children in pornographic performances and materials’.

Article 36 of the CROC requires States Parties to protect the child against all other forms of exploitation prejudicial to any aspects of the child’s welfare.

New **table item 328** establishes legislative authority for government spending on terrestrial television retransmission infrastructure at Peppers Mountain, near Stroud in New South Wales, to rectify television reception issues at that location. The retransmission infrastructure will support access to free-to-air television broadcasts.

Regional Australian television viewers in Stroud have been impacted by severe atmospheric ducting since the switchover to digital television transmission, and this has increased over recent years. Ducting occurs when atmospheric conditions allow signals from a distant transmitter to travel to the affected area and interfere with a local transmitter operating on the same frequency.

Funding of \$300,000 has been allocated in the 2018-19 MYEFO for the Government's contribution towards the construction and operation of terrestrial television retransmission infrastructure, in cooperation with Regional Broadcasting Australia Holdings (RBAH), at a site at Peppers Mountain to remedy the reception interference at Stroud. RBAH is a private company that is owned by regional commercial broadcasters and manages the installation of commercial free-to-air television services within the regional broadcasters' licence areas. Arrangements will also enable the national broadcasting services to be transmitted from the new facility.

The funding is for one year from 2019-20. Details are set out under the measure 'Regional Broadcasting' in the *Mid-Year Economic and Fiscal Outlook 2018-19*, Appendix A: Policy decisions taken since the 2018-19 Budget, at page 163. Funding for this item will come from Program 1.1: Digital Technologies and Communications Services, which is part of Outcome 1. Details are set out in the *2018-19 Portfolio Additional Estimates Statements, Communications and the Arts Portfolio*.

Funding will be delivered through a direct grant to RBAH in accordance with the program guidelines, which will be developed in line with the *Commonwealth Grants Rules and Guidelines 2017*. It is expected that the Community Grants Hub will provide administration services for the grant. It is anticipated that information about the grant and related guidelines will be made available on GrantConnect at [www.grants.gov.au](http://www.grants.gov.au).

The Minister for Regional Services will be the decision-maker for the grant expenditure, and all relevant approvals will be subject to the *Public Governance, Performance and Accountability Act 2013* (the PGPA Act). The Minister will be supported by officers in the department, who will negotiate the arrangements with RBAH in accordance with the applicable legislative requirements under the PGPA Act.

The decision to approve or not approve a grant application made by an eligible applicant under the program is not subject to any secondary or external merits review.

The program involves the allocation of finite resources (specifically, an individual grant to construct television retransmission infrastructure) across one financial year. No other applications are anticipated for this grant, as RBAH is a company specifically set up by regional broadcasters for the purpose of constructing and managing regional television transmission infrastructure.

In line with the department's complaints policy and procedures, any applicant who is dissatisfied about the handling of their grant application by the department will be able to lodge a complaint to the program manager for consideration. People who are otherwise affected by decisions or who have complaints about the program also have recourse to the department, in accordance with the department's Client Service Charter, and such complaints would be investigated under the department's complaints policy and procedures. Information on the Charter and the handling of complaints is available at

[www.communications.gov.au/who-we-are/department/client-service-charter](http://www.communications.gov.au/who-we-are/department/client-service-charter). If the person is not satisfied with the outcome of the department's assessment or investigation of their complaint, the person will be able to contact the Commonwealth Ombudsman as a final recourse.

Noting that it is not a comprehensive statement of relevant constitutional considerations, the objective of the item references the communications power in section 51(v) of the Constitution.

Section 51(v) of the Constitution empowers the Parliament to make laws with respect to 'postal, telegraphic, telephonic and other like services'. The item relates to the funding of television retransmission infrastructure to allow for the provision of television services.

## **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 (Communications and the Arts Measures No. 1) Regulations 2019***

This disallowable legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Legislative Instrument**

Section 32B of the *Financial Framework (Supplementary Powers) Act 1997* (the 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 FF(SP) 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 *Financial Framework (Supplementary Powers) Amendment (Communications and the Arts Measures No. 1) Regulations 2019* amend Schedule 1AB to the FF(SP) Regulations to add two new table items to Part 4 of that schedule to establish legislative authority for government spending on two initiatives that will be administered by the Department of Communications and the Arts.

The two new items added to Part 4 of Schedule 1AB by this instrument are:

- table item 327 for the National Online Safety Awareness Campaign to raise awareness of how to address the potential risks children face online
- table item 328 for the Government's contribution towards terrestrial television retransmission infrastructure near Stroud in New South Wales to rectify television reception issues at that location.

The Minister for Communications and the Arts has portfolio responsibility for the National Online Safety Awareness Campaign. The Minister for Regional Services has responsibility for the funding contribution for the television retransmission infrastructure.

#### **Table item 327 – National Online Safety Awareness Campaign**

Table item 327 of this instrument establishes legislative authority for government spending on the National Online Safety Awareness Campaign which will raise awareness of the potential risks that children face online and the tools and information available to address online safety issues and concerns. This will include promoting awareness of the Office of the eSafety Commissioner. There will also be a series of targeted messages focused on the needs of vulnerable communities. The campaign will deliver advertising via a broad range of mass media channels.



## Human rights implications – National Online Safety Awareness Campaign

Table item 327 engages the following human rights:

- the rights of the child in Articles 2(2), 3(2), 4, 5, 19, 34 and 36 of the Convention on the Rights of the Child [1991] ATS 4 (CROC).

Article 2(2) of the CROC requires States Parties to take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members. Article 3(2) of the CROC requires States Parties to undertake to ensure the child receives such protection and care as is necessary for his or her wellbeing and, to this end, take all appropriate legislative and administrative measures.

The campaign will provide vulnerable children with further opportunities to seek assistance when experiencing cyberbullying, discrimination and exploitation online. The campaign will address service awareness gaps, enabling greater protection for children. In enhancing awareness of options available to children and their parents and guardians around online safety issues, the campaign will promote the best interests of the child, bridging existing knowledge gaps and bringing support services to the fore.

Article 4 of the CROC requires States Parties to undertake all appropriate legislative, administrative, and other measures for the implementation of the rights. This instrument provides the legislative authority to undertake the campaign.

Article 5 of the CROC requires States Parties to respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognised in the present Convention.

Aspects of the campaign will be directed towards parents, carers and teachers to build awareness of options to address cyberbullying directed towards children and other online safety risks. Greater awareness will, in turn, enable these interested adults to help children facing online safety issues seek appropriate assistance and assert their rights.

Article 19 of the CROC requires States Parties to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

The campaign will raise awareness of the Office of the eSafety Commissioner. Functions of the Office include educational programs as specified in paragraph 15(1)(f) of the *Enhancing Online Safety Act 2015*. This function supports Article 19.

Article 34 of the CROC requires States Parties to take appropriate measures to prevent 'the inducement or coercion of a child to engage in any unlawful sexual activity', and the 'exploitative use of children in pornographic performances and materials'.

In 2017-18, the Office of the eSafety Commissioner received over 12,000 reports about child sexual abuse material, an increase of 54 per cent from 2016-17. Promoting awareness of the services available can educate children about the risks of online communication, contribute to a greater level of education about risk and options to improve online safety and therefore reduce incidences of exploitation.

### **Conclusion**

Table item 327 of this instrument is compatible with human rights. It engages with and promotes human rights.

### **Table item 328 – Television retransmission infrastructure**

Table item 328 of this instrument establishes legislative authority for government spending in relation to a television retransmission tower to be constructed in New South Wales.

The Government will provide funding of up to \$300,000 to Regional Broadcasting Australia Holdings towards the construction and operation of the terrestrial retransmission infrastructure at a site at Peppers Mountain to remedy the reception interference at Stroud. Regional Australian television viewers in Stroud have been impacted by severe atmospheric ducting since the switchover to digital television transmission, and this has increased over recent years. Ducting occurs when atmospheric conditions allow signals from a distant transmitter to travel to the affected area and interfere with a local transmitter operating on the same frequency.

### **Human rights implications – Television retransmission infrastructure**

Table item 328 of this instrument does not engage any of the applicable rights or freedoms.

### **Conclusion**

Table item 328 of this instrument is compatible with human rights as it does not raise any human rights issues.

**Senator the Hon Mathias Cormann  
Minister for Finance and the Public Service**