

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. 3) 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 (Social Services Measures No. 3) Regulations 2019* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on activities in relation to providing support services to people with disability in connection with the Royal Commission for Violence, Abuse, Neglect and Exploitation of People with Disability (the Royal Commission).

The initiative will be administered by the Department of Social Services.

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 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. 3) Regulations 2019*

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Social Services Measures No. 3) 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 a new table item to Part 4 of Schedule 1AB to establish legislative authority for government spending on an activity that will be administered by the Department of Social Services (the department).

New **table item 356** establishes legislative authority for Government spending on activities in relation to providing support to people with disability in connection with the Royal Commission for Violence, Abuse, Neglect and Exploitation of People with Disability (the Royal Commission). This will include assistance with making submissions and appearances to the Royal Commission and support to those who are affected, although are not participating.

On 5 April 2019, the Government announced the establishment of the Royal Commission to inquire into several matters, including what governments, institutions and the community should do to encourage the reporting of, and prevent and better protect, people with disability from experiencing violence, abuse, neglect and exploitation. The Royal Commission is expected to undertake its inquiry through submissions from the public and private hearings with affected parties.

The support services will include advocacy, counselling, and referral services. The support services would be available to people that are participating in, or are affected by, the Royal Commission, which includes people who may have been affected even if they have not participated in the Royal Commission. Beneficiaries of the support services could include people with a disability, carers, family and paid and voluntary support workers.

The counselling service will include telephone and face-to-face counselling and referrals to existing services such as crisis support and long-term trauma counselling. The services will also need to be disability accessible and suitable for the range of people affected including, although not limited to, those with intellectual disability, acquired brain injury and mental illness and to take into account the variety of residential settings.

Advocates will provide individual advocacy support to people with disability affected by the Royal Commission to ensure they are fully informed about its purpose and assist them in determining if they want to participate. Funded advocates include a number of existing National Disability Advocacy Program (NDAP) organisations across Australia that currently deliver individual advocacy for people with disability.

All organisations have a current client base who will be informed about the Royal Commission, and the organisations will also communicate the available support via a range of communication mediums for new clients. Organisations will be expected to provide Disability Royal Commission advocacy to all eligible people. If a person is deemed ineligible (i.e. they are not a person with disability or the family member, carer or guardian of a person with disability affected by the Royal Commission) they will be referred to other appropriate services. If demand for advocacy support is exceeding the funding provided, organisations are encouraged to notify the department immediately.

Funded advocates will help people with disability understand the process, options and personal implications of providing their input to the Royal Commission and explain the difference between public hearings and written submissions.

The department monitor the demand for services, emerging requirements and the responsiveness of the market to building capability to provide these types of services as the Royal Commission proceeds and will extend the footprint of services or adjust service offers as necessary. It is possible that demand for services could change over time.

Funding of \$148.8 million was included in the 2019-20 Budget under the measure 'Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability' for a period of three years commencing in 2019-20.

The establishment of the Royal Commission, including the provision of related advocacy and counselling services for people engaging with the Royal Commission, was jointly announced by the Prime Minister, the Hon Scott Morrison MP and the then Minister for Families and Social Services on 5 April 2019.

Where grants are used as the appropriate financial arrangement, grants to organisation providing the services will be administered by the Community Grants Hub, in accordance with the *Commonwealth Grants Rules and Guidelines 2017*. Grant selection process will utilise the standard grant model of the Community Grants Hub. Information on grant availability and processes, including eligibility criteria and the application process, will be published on the website of the Community Grants Hub at www.communitygrants.gov.au.

The Minister for Families and Social Services or their delegate will be the decision-maker for funding decisions under the grant process. The Community Grants Hub will assess each eligible and compliant application on its individual merit and make recommendations to the Minister for Families and Social Services for decision.

The outcome of all grants awarded and funding rounds are published on GrantConnect no later than 21 working days after the grant agreement takes effect, in accordance with the *Commonwealth Grant Rules and Guidelines 2017*.

Decisions will be made in accordance with the applicable legislative requirements under the *Public Governance, Performance and Accountability Act 2013*, the *Commonwealth Grants Rules and Guidelines 2017* and the *Commonwealth Procurement Rules 2019*.

The funding available for the support services is specifically allocated across three financial years. Any delay to the administration of the funding may result in a loss of funding available to support organisations. This would undermine the grant process and negatively impact the security of future funding for successful organisations. A decision in relation to the funding amount will also be influenced by the number of organisations funded. As such, there is only a finite amount of resources available and an allocation that has been made to another party would be affected by a review overturning the original decision.

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.

For grants, applicants will be notified in writing of the outcomes of their applications. Unsuccessful applicants will be offered feedback on their application. Persons affected by administrative decisions would also have recourse to the Commonwealth Ombudsman where appropriate.

For procurements, suppliers the *Government Procurement (Judicial Review) Act 2018* establishes an independent complaint mechanism for alleged breaches of the *Commonwealth Procurement Rules 2019* in relation to covered procurements.

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 communications power (section 51(v))
- the territories power (section 122)
- the express incidental power and the executive power (sections 51(xxxix) and 61)
- the social welfare power (section 51(xxiiiA))
- the races power (s 51(xxvi)).

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.

Convention on the Rights of Persons with Disabilities

Australia has obligations to promote and protect the human rights and fundamental freedoms of all persons with disabilities and to promote respect for their inherent disability. In particular:

- Article 4 requires States Parties to ‘ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without

discrimination of any kind on the basis of disability'. Article 4(a) provides that States Parties undertake to adopt 'appropriate legislative, administrative and other measures' to this end.

- Article 16 requires States Parties to protect persons with disabilities from all forms of exploitation, violence and abuse. Article 16(4) requires States Parties to 'take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse'.
- Article 29 requires States Parties to 'guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others'. Article 29(b) requires the States Parties to 'promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs'.

Funding may be provided for services directed at supporting persons with disabilities who are affected by the Royal Commission, either due to participation in or exposure to the Royal Commission. For example, funding may be provided to services directed at providing counselling services before, during and after the Royal Commission to persons with disabilities who have suffered abuse to prevent further exacerbation of the trauma.

International Covenant on Economic, Social and Cultural Rights

Australia has obligations to promote the realisation of rights of people to 'freely determine their political status and freely pursue their economic, social and cultural development'.

- Article 2 provides States Parties undertake to take steps to progressively achieve 'the full realisation of the rights recognised ... by all appropriate means, including particularly the adoption of legislative measures'.
- Article 12(1) provides State Parties 'recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health'.

Funding may be provided for support services directed at promoting the rights of individuals to the highest attainable standard of living. For example, funding may be provided to services directed at supporting persons with disabilities to present their experiences to the Royal Commission, either by way of counselling or advocacy support, for the improvement of disability service delivery.

Communications power

Section 51(v) of the Constitution empowers Parliament to make laws with respect to 'postal, telegraphic, telephonic and other like services'.

Funding may be provide for support services delivered online or through a telephone service. For example, funding may be provided to services directed at providing support to an individual affected by the Royal Commission, including persons with disability, carers, family and support workers.

Territories power

The provision of funding for services in or in relation to a Territory is supported by section 122 of the Constitution. The services will provide support to individuals affected by the Royal Commission in the Northern Territory and the Australian Capital Territory.

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 that are peculiarly adapted to the government of a nation and cannot be carried out for the benefit of the nation otherwise than by the Commonwealth.

Funding may be provided for services that relate to the execution and maintenance of the *Royal Commissions Act 1902*. For example, funding may be provided to support services for persons who face difficulties as a direct result of the Royal Commission's investigative role, such as making submissions or attending hearings.

Social welfare power

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

Funding may be provided to services that support the provision of medical services, such as mental health services, provided for a medical purpose. For example, funding may be provided to therapeutic counselling services for persons affected by the Royal Commission.

Similarly, funding may also be provided for medical, or alike, services to address any health concerns, including mental health concerns, of people affected by the Royal Commission.

Races power

Section 51 (xxvi) of the Constitution empowers Parliament to make laws with respect to 'the people of any race for whom it is deemed necessary to make special laws'. The section supports legislation with respect to Aboriginal and Torres Strait Islander peoples. Funding may be provided for support services that address the specific needs of Aboriginal and Torres Strait Islander peoples affected by the Royal Commission.

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. 3) 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 (Social Services Measures No. 3) Regulations 2019* amends Schedule 1AB to the FF(SP) Regulations to add new table item 356 to Part 4 of that schedule. Item 356 establishes legislative authority for government spending on activities to fund legal, advocacy and support services for people affected by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the Royal Commission). This includes assistance with making submissions and appearances to the Royal Commission and support to those who are affected, although are not participating.

The Minister for Families and Social Services has portfolio responsibility for this initiative which will be administered by the Department of Social Services.

Human rights implications

This legislative instrument engages the following rights under international human rights laws:

- The rights of people with disability, especially Articles 16 of the *Convention on the Rights of Persons with Disabilities* (CRPD).

Rights of people with disability – Article 16 of the CRPD

Article 16 of the CRPD requires that States Parties take measures to protect persons with disabilities from all forms of exploitation, violence and abuse. The legislative instrument promotes the rights of persons with disability to be free from exploitation, violence and abuse, consistent with Australia's obligations by ensuring that supports are available to those

affected by the Royal Commission and advocating for those who have abused or exploited in the past to provide information to inform future prevention.

Providing support services to those affected by the Royal Commission promotes the rights of people with a disability by sending a strong signal to the community as a whole about the priority placed on the rights of people with disability to be safe and protected. The support services will also aim to respond appropriately to promote physical, psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services.

This recognises that people with a disability are amongst the most vulnerable people in the community and that people with a disability and their support networks have the right to be protected from exploitation, violence and abuse. The support services will aim to protect the integrity of every person with disabilities through the process of engaging with the Royal Commission, acknowledging wrongs of the past and establishing mechanism for prevention in the future.

Conclusion

This legislative instrument is compatible with human rights because it promotes the protection of human rights.

**Senator the Hon Mathias Cormann
Minister for Finance**