**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. 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 (Health Measures No. 3) Regulations 2019* (the Regulations) amend Schedule 1AB of the Principle Regulations to establish legislative authority for government on a grant to the DP Jones Nursing Home (the service). The Department of Health (the department) will have policy responsibility for the grant.

Funding will be provided to enable the administrator to continue operating the facility while they seek to finalise the sale of the facility to a new provider and to assist with the cost of the sale. The funding terms, including the drawdown schedule, will be determined through negotiations between the department and the administrator, and as a result, the funding amount will be commercial-in-confidence, and not suitable for publication.

Details of the funding measure will be included in the 2019-20 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 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. 3) Regulations 2019***

**Section 1 – Name**

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Health Measures No. 3) Regulations 2019*.

**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 3 of Schedule 1AB (table)**

This item adds a new table item to Part 3 of Schedule 1AB to establish legislative authority for government spending on an initiative that will be administered by the Department of Health (the department).

New **table item 38** establishes legislative authority for funding to the appointed liquidator for the operation of the DP Jones Nursing Home (the service) in Murchison, Victoria.

The purpose of the expenditure is to enable the administrator to continue to operate the facility in the short-term, while they seek to finalise the sale of the facility to a new provider. The funding will ensure residents in Murchison during this time continue to be able to access Commonwealth funded aged care services.

Funding would be used for the continued operation of the service, for example the ongoing wages of employees, allied health services and food supplies.

The department will use a closed, non-competitive process to award the grant in accordance with applicable legislative requirements under the *Public Governance, Performance and Accountability Act 2013* and the *Commonwealth Grants Rules* *and Guidelines 2017* (CGRGs) The relevant Minister will make the final decision to approve funding.

The decision to provide the grant will not be subject to independent review as it is a budgetary decision of a policy nature, rather than a decision immediately affecting any particular person’s interests, as discussed at paragraph 4.18 of the Administrative Review Council’s publication What decisions should be subject to merit review? (1999).

The funding terms, including the drawdown schedule, will be determined through negotiations between the department and the administrator, and as a result, the funding amount will be commercial-in-confidence, and not suitable for publication.

Details of the funding measure will be included in the 2019-20 Mid-Year Economic and Fiscal Outlook.

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 social welfare power (s 51(xxiiiA));
* the bankruptcy and insolvency power (s 51(xvii)); and
* the external affairs power (s 51(xxix)).

*Social Welfare Power*

The social welfare power in section 51(xxiiiA) of the Constitution empowers the Parliament to make laws with respect to the provision of certain social welfare benefits including ‘sickness and hospital benefits’.

This initiative will support the operation of the service while a sale is considered, thereby allowing residents to continue to receive services in accordance with their particular medical and other health needs.

*Bankruptcy and Insolvency Power*

Section 51(xvii) of the Constitution empowers the Parliament to make laws with respect to ‘bankruptcy and insolvency’.

Under this initiative, funding will be provided to the liquidator for the operation of the service to deal with the consequences of insolvency while a sale is being considered and to support a sale to a new provider, which would be beneficial to residents and other creditors.

*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 it is a party.

Australia is a party to the International Covenant on Economic, Social and Cultural Rights [1976] ATS 5 (ICESCR). Article 12(1) of the ICESCR recognises the ‘right of everyone to the enjoyment of the highest attainable standard of physical and mental health’. Article 12(2)(d) relevantly requires State Parties in taking steps to realise the right to health to ‘[create] … conditions which would assure to all medical service and medical attention in the event of sickness’. Pursuant to Article 2(1), State Parties to the ICESCR are required to ‘take steps … to the maximum of its available resources, with a view to achieving progressively the full realization’ of this right by all appropriate means.

Under this initiative, funding will be provided to support the operation of the service while a sale is being considered, thereby allowing residents in Murchison to continue to be able to access Commonwealth-funded aged care services and receive services during this time to address their needs.

**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. 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 (Health Measures No. 3) Regulations 2019* amend Schedule 1AB to the FF(SP) Regulations to add a new table item 38 to Part 3 of that schedule. The new table item establishes legislative authority for the Government to provide grant funding to the DP Jones Nursing Home (the service) which will be administered by the Department of Health (the department).

The legislative authority will enable the Commonwealth to fund a liquidator for the continued operation of the service and to seek expressions of interest for the purchase and future operation of the service. This measure will ensure residents in Murchison continue to be able to access Commonwealth-funded aged care services and receive services during this time to address their needs.

**Human rights implications**

This instrument engages Article 12(1) of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) which recognises the ‘right of everyone to the enjoyment of the highest attainable standard of physical and mental health’. Article 12(2)(d) relevantly requires State Parties in taking steps to realise the right to health to ‘[create] … conditions which would assure to all medical service and medical attention in the event of sickness’. Pursuant to Article 2(1), State Parties to the ICESCR are required to ‘take steps … to the maximum of its available resources, with a view to achieving progressively the full realization’ of this right by all appropriate means.

Funding will be provided to support the operation of the service while a sale is being considered, thereby allowing residents in Murchison to continue to be able to access Commonwealth-funded aged care services and to have their needs addressed.

**Conclusion**

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

**Senator the Hon Mathias Cormann**

**Minister for Finance**