

## **EXPLANATORY STATEMENT**

**Issued by the Authority of the Assistant Minister for Finance, Charities and Electoral Matters, Parliamentary Secretary to the Minister for Finance, Parliamentary Secretary to the Treasurer**

*Financial Framework (Supplementary Powers) Act 1997*

*Financial Framework (Supplementary Powers) Amendment  
(Home Affairs Measures No. 1) Regulations 2020*

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 (Home Affairs Measures No. 1) Regulations 2020* (the Regulations) amend Schedule 1AB of the Principal Regulations to establish legislative authority for the government to provide supplementary one-off payments to eligible families under the Australian Government Disaster Recover Payment who are adversely affected by the bushfires. The Department of Home Affairs has policy responsibility for this spending activity.

On 15 January 2020, the Government announced the ‘Delivering more immediate support to Australians impacted by bushfires’ package, which included funding for the initiative.

The initiative aims to provide additional support to affected children and their families to return to normality as soon as possible after the bushfires. This helps to aid recovery and ensure a smooth transition for school aged children to commence and return to school. More broadly it is expected that the funding will boost local economies through the purchase of school uniforms, books and stationery.

Current funding of \$10 million in 2019-20 is available for this demand driven initiative and is uncapped to meet the needs of more families who may be eligible for the AGDRP.

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 Home 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 (Home Affairs Measures No. 1) Regulations 2020***

**Section 1 – Name**

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Home Affairs Measures No. 1) Regulations 2020*.

**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 the *Support to bushfire-affected communities: payments for children* initiative (the initiative). The Department of Home Affairs (the department) has policy responsibility for the initiative.

New **table item 393** establishes legislative authority for the government to provide supplementary one-off payments to eligible families adversely affected by bushfires.

On 15 January 2020, the Government announced the *Delivering more immediate support to Australians impacted by bushfires* package, which included funding for the initiative.

The initiative aims to provide additional support to affected children and their families to return to normality as soon as possible after the 2019-20 bushfires. This helps to aid recovery and ensure a smooth transition for school aged children to commence and return to school. More broadly, it is expected that the funding will boost local economies through the purchase of school uniforms, books and stationery.

Government funding of \$400 per child aged under 16 will be available to families who are eligible for payment under the Australian Government Disaster Recovery Payment (AGDRP) and located within the bushfire-declared Local Government Areas (LGAs), which have been activated for AGDRP assistance. The payment is in addition to the AGDRP and is not subject to income tax.

The additional payments will also be available to New Zealand citizens (holding a Special Category (Subclass 444) visa) who are adversely affected while residing in Australia. This is to ensure consistent application with those who are in receipt of the ‘ex-gratia AGDRP’ between 1 July 2019 and 30 June 2020 in the same bushfire-declared LGAs.

The additional payment is expected to support the families of the nearly 20,000 children affected by bushfires in 46 declared LGAs across New South Wales, Queensland, South Australia, Tasmania and Victoria.

Services Australia will administer the payments on behalf of the department and the initiative will be available over a 12 month period from 2019-20. Eligible persons who have already received the AGDRP for their child/children will not need to reapply—the additional \$400 child payment will be automatically paid.

The department, in consultation with Services Australia, will prepare grant guidelines that will stipulate how the initiative will operate and ensure payments are made to those who are eligible. The administration of the grant will be conducted in accordance with the Commonwealth grants framework, including the *Commonwealth Grants Rules and Guidelines 2017* (the CGRGs). In accordance with the CGRGs, grant guidelines will be developed and made publicly available on GrantConnect ([www.grants.gov.au](http://www.grants.gov.au)), together with information on the grant.

The funding will be expended in accordance with the CGRGs and the *Public Governance, Performance and Accountability Act 2013* (the PGPA Act). All funding decisions will be made by the delegate of the Secretary of Services Australia. The decision of the delegate is final in all matters, including the approval of the grant, the grant funding amount to be awarded, and the terms and conditions of the grant.

A review process will be provided by a senior responsible officer within Services Australia who is independent of the original process of reviewing eligibility for payment.

Independent merits review is not considered suitable for the initiative as decisions are automatic or mandatory in nature. The grant guidelines provide that the decision to make a payment by a Services Australia official is very limited and is procedural. For example, to be eligible for the payment applicants must have already received the AGDRP child payment or will receive the AGDRP child payment. Eligible families who have already received the AGDRP will not need to re-apply and payment will automatically be paid.

Current funding of \$10 million in 2019-20 is available for this demand driven initiative and is uncapped to meet the needs of more families who may be eligible for the AGDRP.

Noting it is not a comprehensive statement of relevant constitutional considerations, the objective of the item references the social welfare power in section 51 (xxiiiA) of the Constitution:

#### *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, in particular with respect to child endowment and family allowances.

The payment will be available to families who are eligible for payment under the AGDRP and New Zealand citizens (holding a Special Category (Subclass 444) visa and are residing in Australia) with children under the age of 16, who have been adversely affected by the bushfires and who have already received, or are eligible to receive, the Australian Government Disaster Recovery Payment (AGDRP) or the equivalent 'ex-gratia' AGDRP.

These payments are intended to provide one-off financial assistance to help families meet the costs associated with supporting their child or children to commence or return to school, such as for uniforms, books and stationery.

## **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 (Home Affairs Measures No. 1) Regulations 2020***

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 (Home Affairs Measures No. 1) Regulations 2020* amend Schedule 1AB to the FF(SP) Regulations to add a new table item 393 to Part 4 of that schedule. The new table item establishes legislative authority for government to make payments to eligible persons with children under the age of 16, who have been adversely affected by the bushfires and who have already received, or are eligible to receive, the Australian Government Disaster Recovery Payment (AGDRP) under s1061K of the *Social Security Act 1991* or the equivalent 'ex-gratia AGDRP'. Broadly speaking, the persons who are eligible for these AGDRP and ex-gratia payments are Australian citizens, Australian permanent residents, and New Zealand citizens who are residing in Australia as Special Category Visa holders and who, like permanent residents, have the right to remain in Australia indefinitely.

These payments are intended to provide one-off financial assistance to help families meet the costs associated with supporting their child or children to commence or return to school, such as for uniforms, books and stationery.

#### **Human rights implications**

This Disallowable Legislative Instrument engages the following rights:

- The right to freedom from discrimination in Article 26 of the *International Covenant on Civil and Political Rights* (ICCPR)
- The right to education in Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and Article 28 of the *Convention on the Rights of the Child* (CRC).

### ***Freedom from discrimination***

Article 26 of the ICCPR states:

*All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

In its General Comment 18, the UN Human Rights Committee stated that:

*The Committee observes that not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.*

Similarly, in its General Comment on Article 2 of the ICESCR (E/C.12/GC/20), UNCESCR has stated (at 13) that:

*Differential treatment based on prohibited grounds will be viewed as discriminatory unless the justification for differentiation is reasonable and objective. This will include an assessment as to whether the aim and effects of the measures or omissions are legitimate, compatible with the nature of the Covenant rights and solely for the purpose of promoting the general welfare in a democratic society. In addition, there must be a clear and reasonable relationship of proportionality between the aim sought to be realized and the measures or omissions and their effects.*

The additional payments will be available to eligible Australian citizens and permanent residents. They will also be available to eligible New Zealand citizens who have the right to reside in Australia indefinitely as holders of a Special Category Visa (which is not a permanent visa) and who are contributing to the tax system. They are also available to certain other temporary visa holders in Australia such as holders of partner visas and temporary protection visas. This means that the payments may not be available to other temporary residents in Australia. This however is broadly consistent with social security measures where some differentiation is permitted for the benefit of the general welfare of society through a sustainable social security system. This differentiation also does not limit any current rights of persons who are not eligible for this additional payment. Rather, the payment is intended as an additional benefit for persons residing in Australia permanently or who are in certain other similar circumstances.

### ***Right to education***

Article 13 of ICESCR and Article 28 of CRC provide for a right of everyone to education. This Disallowable Legislative Instrument supports access of school children to the right to education by assisting the parents and guardians of school children under the age of 16 who have been adversely affected by bushfires and who have received, or are eligible to receive, the Australian Government Disaster Recovery Payment, to receive an additional one-off additional payment of \$400. The payment will support families to meet the costs associated with those children returning to school, such as acquiring uniforms, books, supplies and stationery. While the right to education is not limited by the current bushfire crisis, the effect of the Disallowable Legislative Instrument will be to assist families, through the one-off payment, to better support affected school children to exercise this right.

**Conclusion**

This instrument is compatible with human rights as it maintains existing arrangements and promotes the protection of human rights.

**Senator the Hon Zed Seselja**  
**Assistant Minister for Finance, Charities and Electoral Matters**  
**Parliamentary Secretary to the Minister for Finance**  
**Parliamentary Secretary to the Treasurer**