

## **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  
(Health 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 (Health Measures No. 1) Regulations 2020* (the Regulations) amend Schedule 1AB of the Principal Regulations to establish legislative authority for government spending to provide mental health support for individuals, families and communities, including first responders, who have been impacted by the recent bushfire emergency and to develop a cross-jurisdictional mental health framework to enable whole of government preparedness for future national disasters. The Department of Health has administrative responsibility for the spending activity.

On 12 January 2020, the Government announced the ‘Immediate Mental Health Services Deployed Into Fire Affected Communities’ package, which included funding for the *Supporting the Mental Health of Australians Affected by Bushfires* initiative (the initiative).

The objectives of the initiative include: immediate front line distress and trauma counselling for those who were impacted by the recent bushfires; to provide training for front-line personnel and volunteers who attended, or were affected by the recent bushfires to recognise the signs of trauma and support help seeking; to establish bushfire trauma response coordinators, who will be a single point of contact for individuals and communities and ensure that people will receive the right service at the right time; to support communities with grants for activities at the grass-roots level to strengthen social connectedness; and to develop

a cross-jurisdictional mental health framework to enable whole of government preparedness for future national disasters.

The initiative forms part of the \$2 billion National Bushfire Recovery Fund and is the Government's national response to the 2019-20 bushfires.

Funding of \$23.1 million over three years from 2019-20 will be included in the 2020-21 Budget under the measure '*Supporting the Mental Health of Australians Affected by Bushfires*'.

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. 1) Regulations 2020***

**Section 1 – Name**

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Health 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 an initiative that will be administered by the Department of Health (the department).

New **table item 392** establishes legislative authority for government spending to provide mental health support for individuals, families and communities, including first responders, who have been impacted by the recent bushfire emergency and to develop a cross-jurisdictional mental health framework to enable whole of government preparedness for future national disasters.

On 12 January 2020, the Government announced the ‘Immediate Mental Health Services Deployed Into Fire Affected Communities’ package, which included funding for the *Supporting the Mental Health of Australians Affected by Bushfires* initiative (the initiative).

The initiative forms part of the \$2 billion National Bushfire Recovery Fund and is the Government’s national response to the 2019-20 bushfires.

Government funding will be provided for the following elements of the initiative:

***Bushfire Recovery Access Program***

Immediate front line distress and trauma counselling will be provided by social workers and allied health professionals for those who were affected by the recent bushfires.

Individuals and families impacted by the bushfires will be able to access immediate and ongoing support to reduce the distress and trauma experienced in the face of these fires. This includes front line personnel and volunteers. Funding for this element will be \$14.7 million over three years from 2019-20.

#### Training for front-line personnel

Training will be provided for front-line personnel and volunteers who attended, or were affected, or are supporting people affected by the bushfires, to recognise the signs of trauma and support help seeking. Training will be available through a range of service providers including training organisations currently contracted with the department. Employers of front-line staff will also be trained to identify the widespread impact of trauma, recognise signs and symptoms of trauma, identify personnel at risk and develop and integrate policies and procedures to protect personnel. This will not duplicate existing training already offered to frontline personnel and community members by state and territory governments or other organisations. Funding for this element will be \$2 million over three years from 2019-20.

#### Bushfire trauma response coordinators

The coordinators will be a single point of contact for individuals, families and communities directly impacted by the bushfires to ensure people receive the right service at the right time. Bushfire trauma response coordinators will be located within Primary Health Networks (PHNs) and will link in with the social supports provided through Services Australia mobile centres as well as state and local government services. Funding for this element will be \$3.2 million over three years from 2019-20.

#### Supporting communities in recovery

PHNs will commission additional mental health services to meet the increased demands and needs of individuals affected by the recent bushfires.

Grants of up to \$10,000 will be provided to communities for activities at the grass-roots level to strengthen social connectedness and peer support activities, as well as assertive outreach initiatives to prevent suicide and identify post-traumatic stress disorder. The grants will be administered by PHNs, which will link to community recovery plans and build on the success of community resilience grants in drought affected communities.

Supporting recovery and resilience through community-led activities will provide peer support, identify those whose mental health is at risk and encourage people to seek help when they need it. Funding for this element will be \$2.7 million over three years from 2019-20.

#### Cross-jurisdictional mental health framework

The framework will be developed to enable whole of government preparedness for future national disasters. The National Mental Health Commission will work across portfolios and jurisdictions to develop and implement the mental health framework that will set out a joint approach to disasters, the response and recovery with a focus on accountability and transparency by each of the parties. Funding for this element will be \$0.5 million over three years from 2019-20.

The department will use a closed, non-competitive process to award the grant funding to PHNs and training organisations in accordance with applicable legislative requirements under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and the *Commonwealth Grants Rules and Guidelines 2017* (CGRGs). In accordance with the CGRGs, grant guidelines will be developed and details of the grant will be made publicly available on GrantConnect ([www.grants.gov.au](http://www.grants.gov.au)).

The department will approach the impacted PHNs through the department's existing Grant arrangements to commission the bushfire trauma response coordinators and administer the community grants.

The department will approach the training organisations through the department's existing Grant arrangements to commission training for front-line personnel and volunteers affected by the bushfires.

With reference to the applicable legislative requirements under the PGPA Act and the CGRGs, the delegate of the Minister of Health will make the final decision and approve funding. The Minister's delegate will consider whether the proposals represents an efficient, effective, ethical and economical use of Commonwealth resources, and whether any specific requirements need to be imposed as a condition of funding.

The decision of the Minister's 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.

Funding will be provided to the National Mental Health Commission through their existing appropriation to develop and implement the mental health framework.

The provision of funds to the PHNs to respond to the bushfire emergency is not considered suitable for independent merits review because the scope is limited to PHNs directly impacted by the bushfires, and the expenditure is time-limited.

To reconsider this decision under merits review would substantially delay implementation of the measure and would impede the policy intent of providing immediate support to individuals, families, communities and front-line service personnel across Australia that have been directly impacted by the bushfires during 2019-20.

Funding of \$23.1 million over three years from 2019-20 will be included in the 2020-21 Budget under the measure '*Supporting the Mental Health of Australians Affected by Bushfires*'.

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 social welfare power (section 51(xxiiiA))
- the external affairs power (section 51(xxix))
- the Commonwealth executive power and the express incidental power (sections 61 and 51(xxxix)), including the nationhood aspect.

### Communications Power

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

Under this initiative, funding will be provided for training of front-line personnel, volunteers and their employers, including training developed for delivery, and delivered, online or via telephone or teleconferencing. Funding will also be provided for additional staffing of mental health hotlines which are delivered over the telephone.

### 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 ‘the provision of ...medical...services’.

Under this initiative, funding will be provided for services to persons affected by the bushfire, including medical services, services directed at improving the quality and effectiveness of Commonwealth-funded medical services, and services or activities that improve community health and reduce reliance on Commonwealth-funded medical services. Services will include, for example, front line distress and trauma counselling, trauma coordinators enabling access to medical services and treatment, additional mental health services commissioned by Primary Health Networks and coordination of services for individuals and communities, and activities to prevent suicide and identify post-traumatic stress disorder.

### 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’. 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. Article 12(2) further provides a non-exhaustive list of ‘steps’ to be taken by the State parties to achieve the full realisation of the right to health, including:

- steps necessary for ‘the prevention, treatment and control of epidemic, endemic, occupational and other diseases’ (Art 12(2)(c))
- steps necessary for ‘the creation of conditions which would assure to all medical service and medical attention in the event of sickness’ (Art 12(2)(d)).

Under this initiative, funding will be provided for mental health services to be provided to persons in a bushfire affected community, including medical services provided by medical practitioners and allied health practitioners. Funding will also be provide to raise awareness of, and support preventative measures in respect of, mental health.

Article 7 of the ICESCR recognises the right of everyone to just and favourable conditions of work. Specifically, Art 7(b) identifies ‘safe and healthy working conditions’ as part of this right.

Under this initiative, funding will be provided for training of employers of front-line personnel to realise the widespread impact of trauma, recognise the signs and symptoms of trauma, identify personnel at risk, and develop and integrate policies and procedures to protect personnel.

*Executive power and express incidental power, including the nationhood aspect*

The express incidental power in 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 the Parliament, the executive or the courts by the Constitution. Section 61 of the Constitution 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.

Under this initiative, funding will be provided in response to the natural bushfire disaster that occurred in the 2019-20 financial year. Funding will be provided for immediate or short-term bushfire recovery activities such as front line distress and trauma counselling and additional in-demand mental health services commissioned by Primary Health Networks. Funding is also being provided for the development and finalisation of a cross-jurisdictional mental health framework to enable whole of government preparedness for future national disasters.

## **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. 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 (Health Measures No. 1) Regulations 2020* amend Schedule 1AB to the FF(SP) Regulations to add a new table item 392 to Part 4 of that schedule. The new table item establishes legislative authority for government spending to provide mental health support for individuals, families and communities, including first responders, who have been impacted by the recent bushfire emergency.

On 12 January 2020, the Government announced the ‘Immediate Mental Health Services Deployed Into Fire Affected Communities’ package, which included funding for the *Supporting the Mental Health of Australians Affected by Bushfires* initiative (the initiative).

The initiative forms part of the \$2 billion National Bushfire Recovery Fund and is the Government’s national response to the 2019-20 bushfires.

Government funding will be provided for the following elements of the initiative:

- Training for front-line personnel and volunteers who attended, or were impacted by the recent bushfires to recognise the signs of trauma and support help seeking.
- Bushfire trauma response coordinators, who will be a single point of contact for individuals and communities, will ensure people receive the right service at the right time.
- A cross-jurisdictional mental health framework which will be developed to enable whole of government preparedness for future national disasters.
- Supporting communities in recovery, through Primary Health Networks by providing community grants of up to \$10,000 for activities at the grass-roots level to strengthen



social connectedness and peer support activities, as well as assertive outreach initiatives to prevent suicide and identify post-traumatic stress disorder.

### **Human rights implications**

This instrument engages the rights under Articles 2(1) and 12 of the *International Covenant on Economic, Social and Cultural Rights* [1976] ATS 5, specifically the right to the highest attainable standard of physical and mental health.

Funding for the initiative provides for the human right to health by utilising existing resources to provide mental health information and services for the realisation of the highest attainable standard of health.

### **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 Finance Minister, Parliamentary Secretary to the Treasurer**