

## **EXPLANATORY STATEMENT**

### **Issued by the Authority of the Minister for Finance**

*Financial Framework (Supplementary Powers) Act 1997*

*Financial Framework (Supplementary Powers) Amendment  
(Infrastructure, Transport, Regional Development and Communications 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 (Infrastructure, Transport, Regional Development and Communications Measures No. 1) Regulations 2020* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on new activities for public communications as part of the Enhanced Electromagnetic Energy (EME) Program. The Department of Infrastructure, Transport, Regional Development and Communications (the department) will have administrative responsibility for this spending activity.

Funding will be provided for public communication activities, which will address concerns about the perceived health risks of electromagnetic energy from telecommunications facilities, counter misinformation, and provide the telecommunication industry and the public with independent information on EME.

Funding of \$4.9 million was included in the 2019-20 Mid-Year Economic and Fiscal Outlook under the measure 'Radio Frequency Electromagnetic Energy Program – Enhanced' for a period of four years from 2019-20.

Funding of \$1.8 million will be provided to the department to deliver the public communication activities.

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 it 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 Infrastructure, Transport, Regional Development and Communications.

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 (Infrastructure, Transport, Regional Development and Communications Measures No. 1) Regulations 2020***

**Section 1 – Name**

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development and Communications Measures No. 1) Regulations 2020*.

**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 Infrastructure, Transport, Regional Development and Communications (the department).

New **table item 391** provides legislative authority for government spending on the Enhanced Electromagnetic Energy Program (the Enhanced EME Program). The Enhanced EME Program will fund public communications activities to provide independent information to both the telecommunication industry and the public, address concerns about perceived health risks and counter misinformation.

The Electromagnetic Energy Program (the EME Program) was established in 1997 to provide research and information about possible health effects from radio frequency electromagnetic energy. The Health portfolio has been responsible for the delivery of the current activities under the EME Program through the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA), and the National Health and Medical Research Council (NHMCR). The role of ARPANSA has been to provide expert advice, undertake international engagement to inform Australia's regulatory standards, and provide information to the public. The role of NHMRC has been to administer a domestic research grants program.

The Enhanced EME Program will build upon the existing arrangements and will include a targeted public communications program administered by the department, in consultation with the Department of Health.

The public communications program will focus on providing communications material to the general public, and contain information that is based on ARPANSA's scientific analysis that is readily understandable by everyday Australians, families, and small and medium business.

The public communications program will better inform Australians and communities about government policies, regulation and scientific research related to electromagnetic energy from telecommunications facilities. Activities could include the development of information for websites, production of new communications materials and engagement activities.

The public communications program will include:

- market research to identify EME issues concerning individuals and the most effective method to deliver that message;
- information from research into emerging technologies from the Health portfolio;
- results from any field measurement studies undertaken by ARPANSA; and
- links or references to international studies.

This information could be delivered through:

- departmental websites, using text, videos and factsheets;
- face-to-face meetings or presentations with community stakeholders; and
- correspondence to the general public and other parties.

The information developed about electromagnetic energy under the Enhanced EME Program will be accessible to the public, but could include individuals who may be involved in a carrier's consultation process for the deployment of new telecommunications infrastructure, such as councils and community groups.

The Secretary of the department (or his delegate) will be the decision-maker for expenditure decisions under the Enhanced EME program. The money will be expended in accordance with the department's Accountable Authority Instructions and delegations on the expenditure of public money, and in accordance with the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).

The Enhanced EME Program will not involve the administration of grants. Any procurements undertaken through the program would be conducted in accordance with the *Commonwealth Procurement Rules 2019* and the PGPA Act, and will adhere to applicable approach to market and other procurement requirements. For example, the department anticipates needing to undertake a procurement process to obtain market research services, to identify the EME concerns in the community and the most effective methods to deliver information to the community.

Information about the tender and the successful tender and contract will be available on AusTender ([www.tenders.gov.au](http://www.tenders.gov.au)), as required. Decisions with respect to the procurement may be subject to review under the *Government Procurement (Judicial Review) Act 2018*. Any complaints in relation to the procurements will be handed in accordance with the department's procurement complaint process.

Decisions made in connection with the public communications program would not be subject to independent review. In accordance with usual practice, procurement decisions, once made will be final and remaking a procurement decision after entry into a contract with a successful

proponent is legally complex, impractical and would result in delays in implementation. Spending decisions will be made in accordance with the Commonwealth resource management framework, as mentioned above, to ensure that such decisions achieve value for money.

Funding of \$4.9 million was included in the 2019-20 Mid-Year Economic and Fiscal Outlook under the measure 'Radio Frequency Electromagnetic Energy Program – enhanced' for a period of four years from 2019-20. Details are set out in the *Mid-Year Economic and Fiscal Outlook 2019-20*, Appendix A: Policy decisions taken since the 2019 PEFO.

Funding of \$1.8 million will be provided to the department to deliver the enhanced EME Program.

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

#### 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 the Enhanced EME Program, the communications campaign will provide information about the safety and regulation of electromagnetic energy generated by telecommunications infrastructure.

## **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 (Infrastructure, Transport, Regional Development and Communications 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 (Infrastructure, Transport, Regional Development and Communications Measures No. 1) Regulations 2020* amend Schedule 1AB to the FF(SP) Regulations to add a new table item 391 to establish legislative authority for government spending on new activities for public communications as part of the Enhanced Electromagnetic Energy Program (the Enhanced EME Program). The Department of Infrastructure, Transport, Regional Development and Communications (the department) has administrative responsibility for this spending activity.

The Enhanced EME Program will deliver a new communications program concerning the safety of radio frequency electromagnetic energy (EME) emissions from telecommunications equipment. The Enhanced EME program would complement the activities under the existing EME Program.

The EME Program activities include research into the health effects of EME, and is the responsibility of the Health portfolio, primarily the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA), or grants administered by the National Health and Medical Research Council. ARPANSA currently runs a modest public information program about the scientific research and health impacts of EME. This highly technical information can be difficult for the general public to understand when seeking advice about the potential health effects of EME from telecommunications facilities.

EME from telecommunications infrastructure and facilities, as well as consumer devices such as mobile phones, is closely regulated. There are exposure standards in place which are set by ARPANSA and telecommunications facilities' compliance with these exposure standards is regulated by the Australian Communications and Media Authority. More research, and more accessible information about the science and regulation of EME is required to address concerns about the perceived health risks from EME. The Enhanced EME program will

perform this role through new research and testing into EME from emerging technologies (such as fifth generation mobile networks). This research and testing will then need to be communicated in accessible language to provide information to the public about EME. The new table item will give the Communications portfolio the legislative authority to undertake these communications activities.

### **Human rights implications**

This instrument does not engage any of the applicable rights or freedoms. The instrument supports both public education and information about health as it relates to EME.

### **Conclusion**

This instrument is compatible with human rights as it does not raise any human rights issues and supports the right to health information.

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