**EXPLANATORY STATEMENT**

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

*Financial Framework (Supplementary Powers) Act 1997*

*Financial Framework (Supplementary Powers) Amendment*

*(Home Affairs Measures No. 3) 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. 3) Regulations 2020* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on certain activities that will be administered by the Department of Home Affairs.

Funding will be provided for:

* the Multicultural Community Amenities Grants in the Northern Territory program to support multicultural community organisations to fully participate in social, economic and sporting life by providing grants to enhance their existing amenities (up to
$2 million in 2020-21); and
* the Disaster Risk Reduction Package to deliver national initiatives that reduce the risk and limit the impact of disasters associated with natural hazards on Australian communities and economies ($26.1 million over five years from 2019-20).

The Multicultural Community Amenities Grants in the Northern Territory program was announced on 24 April 2019 by the Prime Minister, the Hon Scott Morrison MP, and the then Minister for Families and Social Services, the Hon Paul Fletcher MP, as an election commitment.

The Government has committed funding for a disaster risk reduction package, including national initiatives, in line with the National Disaster Risk Reduction Framework. Funding for the package was included in the 2019-20 Budget.

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. 3) 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. 3) 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 two new table items to Part 4 of Schedule 1AB to establish legislative authority for government spending on certain activities that will be administered by the Department of Home Affairs (the department).

New **table item 421** establishes legislative authority for government spending on the Multicultural Community Amenities Grants in the Northern Territory (MCAGNT) program.

The MCAGNT program was part of the Mutual Understanding, Support, Tolerance, Engagement and Respect (MUSTER) initiative, administered by the Department of Social Services, which provides grants for projects to bring Australians together through building stronger communities and providing opportunities for people to connect, contribute and thrive. The MUSTER initiative was announced in the 2018-19 Mid-Year Economic and Fiscal Outlook. Together with a number of other grants with a migrant focus, the MCAGNT program was transferred from the Department of Social Services to the department as a result of the Administrative Arrangements Order made on 29 May 2019.

The MCAGNT program will invest up to $2 million in the Northern Territory over 2020-21 to support multicultural community organisations to fully participate in social, economic and sporting life by enhancing existing amenities. As Australia’s population becomes increasingly diverse, it is essential to have appropriate amenities that can enable cultural communities to undertake activities and interact with others in order to effectively facilitate integration and encourage diverse communities to come together around a shared opportunity or challenge.

The MCAGNT program will help to implement the Government’s multicultural statement, *Multicultural Australia: United, Strong, Successful*, by building mutual obligations between government and community which strengthens resilience and sense of belonging.

On 24 April 2019, the Prime Minister, the Hon Scott Morrison MP, and the then Minister for Families and Social Services, the Hon Paul Fletcher MP, announced the MCAGNT program as an election commitment. Details of the announcement are available at https://www.liberal.org.au/latest-news/2019/04/24/morrison-government-supports-multicultural-communities-nt.

Grants under the MCAGNT program will support the delivery of one-off, time‑limited projects such as the purchase of equipment and furnishings to improve existing amenities of multicultural community organisations in the Northern Territory. All funded activities must be justified and relevant to the project.

Building works may also be considered if integral to the project and meet the program objectives and value for money criterion. Examples of building projects that may be funded include:

* upgrade of existing amenities, including improved access, such as ramps and access doors;
* provision of external shade areas to cover play areas;
* lighting and security;
* environmentally friendly additions, such as solar panelling;
* barbeque and picnic facilities; and
* printing services, computers, internet, and video conferencing facilities.

Applications for other projects that meet the objectives of the program will also be encouraged.

Applicants for the program funding for building works must have council approval where relevant; and specify who owns the premises (land and building). The requirement that expenditure of grant funds has to be restricted to activities directly related to the project will be specified in the grant guidelines.

Improvement of the amenities will encourage diverse communities to undertake social and economic activities in environments that can facilitate and respect culturally appropriate norms. The grants will help establish spaces that foster discussions about shared opportunities or challenges in the communities and in doing so, build understanding and trust.

Further details of the MCAGNT program will be provided in the grant guidelines.

The department will deliver the MCAGNT program through a targeted grant funding round in accordance with the *Commonwealth Grants Rules and Guidelines 2017* (CGRGs). The Community Grants Hub will be engaged to design the program, including the grant guidelines. Decisions regarding the grants under the MCAGNT program will be made in accordance with the *Public Governance, Accountability and Performance Act 2013* (PGPA Act).

The Community Grants Hub will be responsible for administering the grant program on behalf of the department under a partnership agreement between the two departments. Grant opportunity guidelines will set out the arrangements for the MCAGNT program, including eligibility and selection processes. Information relating to this grant opportunity will be published on GrantConnect at www.grants.gov.au.

A Selection Advisory Panel, established by the department, will review all applications and make recommendations to the decision maker for funding. The Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs will make final decisions on funding. Information about successful applicants will be published on the GrantConnect website.

Grant funding decisions made under the MCAGNT program are not considered appropriate for independent merits review because:

* there is an allocation of finite resources; and
* an allocation that has already been made to another party would be affected by overturning the original decision.

The Administrative Review Council has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see items 4.11 to 4.16 of the document *What decisions should be subject to merit review?*).

Decisions will be made in accordance with the CGRGs and the PGPA Act. The review and audit process undertaken by the Australian National Audit Office also provides a mechanism to review government spending decisions and report any concerns to the Parliament. Judicial review may also be available under section 39B of the *Judiciary Act 1903* and section 75(v) of the Australian Constitution.

Administrative accountability for this program will be achieved by ensuring that:

* the process of allocating funds is fair;
* the criteria for funding are made clear; and
* decisions are made objectively.

The department has consulted with relevant agencies in the Northern Territory on the current needs of the multicultural community and organisations/groups. Two key themes that emerged from the consultations were:

* community groups are not in a position to match funding; and
* limited community groups have their own facilities.

The department will consider the information obtained during consultations in the design of the MCAGNT program.

Funding of $60 million for the MUSTER initiative was included in the 2018-19 Mid-Year Economic and Fiscal Outlook under the measure ‘Mutual Understanding, Support, Tolerance, Engagement and Respect Initiative – establishment’ for a period of three years from 2018-19. Details are set out in the *Mid-Year Economic and Fiscal Outlook 2018-19*, Appendix A: Policy decisions taken since the 2018‑19 Budget at page 221.

Additional funding of $7 million in 2018-19 for the MUSTER initiative was included in the 2019-20 Budget under the measure ‘Mutual Understanding, Support, Tolerance, Engagement and Respect Initiative – additional funding’. Details are set out in *Budget 2019-20, Budget Measures, Budget Paper No. 2 2019-20* at page 163.

Funding for the MCAGNT program of $2 million in 2020-21 will come from Program 2.4: Refugee and Humanitarian Assistance, which is part of Outcome 2. Details are set out in the *Portfolio Additional Estimates Statements 2019-20, Home Affairs Portfolio* at pages29-30.

Noting that it is not a comprehensive statement of relevant constitutional considerations, the objective of the item references the territories power (section 122) of the Constitution.

*Territories power*

Section 122 of the Constitution enables the Commonwealth to make laws ‘for the government of any territory’.

The MCAGNT program will fund existing Northern Territory multicultural service or community groups to upgrade amenities, community halls and other local spaces to accommodate the Northern Territory’s culturally diverse communities. The purpose of the program is to fund activities specifically in the Northern Territory and in doing so, facilitate integration and diversity activities that encourage diverse communities to come together around a shared opportunity or challenge, and in turn help build understanding and trust.

New **table item 422** establishes legislative authority for government spending on the national component of the Disaster Risk Reduction Package (the Package), in line with the National Disaster Risk Reduction Framework (the Framework).

The Framework, which was endorsed by the Council of Australian Governments (COAG) on 13 March 2020, outlines a national, comprehensive approach to reduce the risk and limit the impact of disasters on Australians. The Framework will be supported by a National Action Plan detailing initiatives to be undertaken across sectors and governments, as well as monitoring, evaluation and learning arrangements to assess its implementation. The Framework is available at https://www.homeaffairs.gov.au/emergency/files/national-disaster-risk-reduction-framework.pdf.

COAG also agreed to a combined Commonwealth-State commitment of $261 million to reduce disaster risk and build a more disaster resilient Australia, and immediate action to reduce disaster risk by improving the resilience of the telecommunications network, adapting the built environment, and improving natural hazard data and intelligence.

The Commonwealth has committed $130.5 million over five years from 2019-20 for the Package. The commitment was included in the 2019-20 Budget and comprises:

* $104.4 million for a national partnership agreement to support the states and territories in reducing disaster risk (state component); and
* $26.1 million for initiatives to be delivered by the Commonwealth that reduce disaster risk at the national level (national component).

State and local risk reduction activities will be delivered through the *National Partnership Agreement on Disaster Risk Reduction*, under the provisions of the *Intergovernmental Agreement on Federal Financial Relations* which is available at www.federalfinancialrelations.gov.au/content/npa/environment/national-partnership/disaster-risk-reduction. Implementation of this agreement is underway.

The national component will deliver nationally significant initiatives, on a project-by-project basis, that reduce systemic disaster risk across Australia’s built, social, natural and economic environments. The Commonwealth will consult with states and territories on national projects to be funded through the Australia-New Zealand Emergency Management Committee.

Projects under the national component:

* are those considered to have significant national and cross-jurisdictional effect, impact or influence; and
* must demonstrate how they contribute to achieving the priorities, five-year outcomes and 2030 disaster risk reduction goals of the Framework.

Projects funded under the national component could include, but are not limited to:

* activities that support individuals, communities and/or small businesses to understand and take action to address disaster risk and impacts;
* inclusive community partnership projects with diverse stakeholders (including Indigenous Australians, people with disability, and culturally and linguistically diverse communities);
* research, innovation and knowledge initiatives to improve awareness, understanding and engagement on disaster risk and impacts (including hazard, exposure, vulnerability, capacity and environment);
* development of national technologies, systems and capabilities (including improved disaster risk information and data collection, hazard mapping and modelling, risk assessment tools, decision support systems, and emergency warning communications);
* development and review of national standards, codes and guidelines to minimise the creation of future disaster risk;
* establishment of sector-specific professional development and guidance materials to build the capability of practitioners and decision makers to make disaster risk informed decisions (including land use planning, building, construction and infrastructure); and
* creation of governance structures and planning frameworks to advance disaster risk reduction.

For example, the proposed project to develop a National Bushfire Intelligence Capability (NBIC) would provide nationally consistent and authoritative bushfire hazard and risk information for use by the Commonwealth and states and territories. It would support the COAG’s decision in March 2020 to improve natural hazard information and intelligence, and contribute to the National Disaster Risk Information Services Capability requested by the Government.

Development of the NBIC would occur over a number of years in consultation with the states and territories. This project would commence development of the NBIC stream 1 through a one-off grant to the Australasian Fire and Emergency Services Authorities Council given its expertise in bushfire management. Funding of approximately $1.35 million in 2019‑20 would enable work to commence immediately on this important initiative before the next bushfire season.

Depending on the specific project, funding will be allocated by the Commonwealth through targeted and competitive grants processes, against eligibility and merit criteria set by the department and published on GrantConnect at www.grants.gov.au. Successful grant bids will also be published on GrantConnect, in accordance with the *Commonwealth Grants Rules and Guidelines 2017* (CGRGs).

Funding may also be allocated through open and select tender processes, including drawing on existing panel arrangements. Procurement decisions will be made in accordance with the Commonwealth resource management framework, including the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and the *Commonwealth Procurement Rules* (CPRs). The department will provide an opportunity for suppliers and tenderers to make complaints if they wish, and to receive feedback. These complaints and inquiries can be made at any time during the procurement process, and will be handled in accordance with probity requirements. Information on the tender and the resultant contracts will be made available on AusTender once the contracts are signed.

The Commonwealth Minister with responsibility for emergency management is the responsible Minister for the national component of the Package. The Minister may delegate the approval of national projects for funding to a senior Commonwealth official (Director‑General Emergency Management Australia). The Minister or delegate will be the decision maker on which projects will be funded on advice from the department. The Commonwealth will consult with states and territories on national initiatives through the Australia-New Zealand Emergency Management Committee.

A range of organisations and funding arrangements may be used to deliver national risk reduction initiatives. These will be determined on a project-by-project basis depending on the nature of the activity.

Organisations may include Commonwealth, state, territory and local governments, incorporated bodies, research organisations, and not-for-profit organisations.

The Business Grants Hub will develop grant opportunity guidelines and administer grants under a memorandum of understanding with the department. Information relating to relevant grant opportunity guidelines and grant decisions will be published on GrantConnect at www.grants.gov.au.

The process for updating the National Action Plan to implement the Framework, and information gathered from related monitoring, evaluation and learning arrangements, is anticipated to provide an evidence base to inform the identification and prioritisation of future national projects for funding. The *Guidance for Strategic Decisions on Climate and Disaster Risk: Guidance on Prioritisation* (available at [knowledge.aidr.org.au/resources/strategic-disaster-risk-assessment-guidance/](file:///C%3A%5CUsers%5Chuythu%5CAppData%5CLocal%5CMicrosoft%5CWindows%5CINetCache%5CContent.Outlook%5CKK2WWJD4%5Cknowledge.aidr.org.au%5Cresources%5Cstrategic-disaster-risk-assessment-guidance%5C)) may also inform funding decisions for the national component.

Funding decisions made under the national component of the Package are not considered appropriate for an independent merits review.

Funding decisions will involve the allocation of finite resources, and as such, are not suitable for merits review because an overturned decision may affect an allocation that has already been made to another party. The Administrative Review Council has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see items 4.11 to 4.16 of the document *What decisions should be subject to merit review?*).

In accordance with usual practice, procurement decisions, once made, will be final, and not subject to merits review. Remaking a procurement decision after entry into contractual arrangements with a successful tenderer would be legally complex, impractical and result in delays to the commencement. The *Government Procurement (Judicial Review) Act 2018* enables suppliers to challenge some procurement processes for alleged breaches of certain procurement rules. This legislation might provide an additional avenue for redress (compensation or injunction) for dissatisfied providers or potential providers, depending on the circumstances.

Funding decisions will be made in accordance with the PGPA Act, CGRGs and CPRs. The review and audit process undertaken by the Australian National Audit Office also provides a mechanism to review government spending decisions and report any concerns to the Parliament.

In administering the national component of the Package, administrative accountability will be achieved by ensuring that:

* the process of allocating funds is fair;
* the criteria for funding are made clear; and
* decisions are made objectively.

The department consulted extensively with state and territory agencies in conjunction with the Department of the Prime Minister and Cabinet and the Department of the Treasury following the announcement of the Package in the 2019-20 Budget. This culminated in First Ministers signing the *National Partnership Agreement on Disaster Risk Reduction* and agreeing to fully match the Commonwealth’s $130.5 million commitment at the COAG meeting in March 2020.

The Commonwealth will continue to consult with states and territories on national initiatives over the term of the Package through the Australia-New Zealand Emergency Management Committee.

Funding of $130.5 million for the Package was included in the 2019-20 Budget under the measure ‘Natural Disaster Resilience Funding’ for a period of five years commencing in 2019‑20. Details are set out in *Budget 2019-20, Budget Measures, Budget Paper No. 2 2019‑20* at page 114.

Funding for the national component of $26.1 million over five years from 2019-20 will come from Program 1.7: National Security and Criminal Justice, which is part of Outcome 1. Details are set out in the *Portfolio Budget Statements 2019-20, Budget Related Paper No. 1.10, Home Affairs Portfolio* at pages 22 and 32.

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 census and statistics power (section 51(xi));
* the insurance power (section 51(xiv));
* the races power (section 51(xxvi));
* 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; and
* the territories power (section 122).

*Communications power*

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

The Government may provide funding for the following projects to proactively reduce the risk and limit the impact of disasters associated with natural hazards on Australian communities and economies:

* the NBIC which will involve the delivery of nationally consistent and authoritative bushfire hazard and risk information and decision making tools, which will be made available through a range of electronic means;
* the Federated Climate Information project will develop tools to streamline the delivery of future climate knowledge, to support decision making and reporting for Australia’s industries. This capability will be delivered through a ‘gateway server’ that provides online access to facilities through a centralised user management system;
* a proof of concept trial for the Public Safety Mobile Broadband electronic communication technology that will modernise public safety for Australia’s first responders, improving access to information, increasing situational awareness and providing a platform for emerging technologies to be integrated into operational practices; and
* the Register Find Reunite service managed by the Australian Red Cross, which operates through a website that helps find and reunite family, friends and loved ones during and after an emergency, and is used to identify individuals affected by disaster, identify and monitor response and recovery needs, and collect data used to inform improvements to emergency management systems and processes.

Further funding under the Package may be allocated to projects that involve the development and dissemination of disaster mitigation awareness material and the development of technology, systems or capabilities which function online or via telephone such as emergency warning communications.

*Census and statistics power*

Section 51(xi) of the Constitution empowers the Parliament to make laws with respect to ‘census and statistics’.

The Government may seek to provide support for projects under the funding package which seek to leverage, disseminate or create quantitative data relating to disaster risk reduction decision making, including statistical information.

*Insurance power*

Section 51(xiv) of the Constitution empowers Parliament to make laws with respect to ‘insurance, other than State insurance; also State insurance extending beyond the limits of the State concerned’.

The Government may seek to provide support for projects under the funding package that improve the accessibility, variety and uptake of insurance as a key stream of activity in disaster risk reduction and Government has an important role to play in facilitating progress.

*Races power*

Section 51(xxvi) of the Constitution empowers the Parliament to make laws with respect to ‘the people of any race for whom it is deemed necessary to make special laws’.

The Government may seek to provide support for projects under the funding package to address specific vulnerabilities faced by Indigenous Australians during natural disasters. Due to underlying inequalities, Indigenous Australians can be disproportionately impacted by natural disaster.

*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 obligations under treaties to which it is a party.

Australia has obligations relating to the *Convention on the Rights of Persons with Disabilities* [2008] ATS 12 (CRPD) and the *Convention on the Rights of the Child* [1991] ATS 4 (CRC).

This includes obligations relating to:

* the organisation, strengthening and extension of comprehensive habitation and rehabilitation services and programs (Article 26 of the CRPD);
* the right to protection and safety of persons with disabilities in situations of risk and humanitarian emergencies (Article 11 of the CRPD);
* undertaking all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the CRC (Article 4 of the CRC);
* children’s inherent right to life, and to ensure their survival and development to the maximum extent possible (Article 6 of the CRC); and
* the right of mentally and physically disabled children to enjoy a full and decent life, including special care (Article 23 of the CRC).

The Government may provide support for projects under the funding package to assist specific groups including persons with disability or children or to address their underlying exposure and vulnerability to natural disaster.

Australia also has obligations relating to the *Paris Agreement* [2016] ATS 24 (Paris Agreement), as well as the *United Nations Framework Convention on Climate Change* [1994] ATS 2 (UNFCCC); and the *Kyoto Protocol* [2008] ATS 2 (Kyoto Protocol).

This includes obligations relating to:

* averting losses and damage caused by climate change including extreme weather events and slow onset events (Article 8 of the Paris Agreement);
* enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change (Article 7 of the Paris Agreement);
* formulating, implementing, publishing and regularly updating national programmes containing measures to facilitate adequate adaptation to climate change (Article 4(1)(b) of the UNFCCC and 10(b) of the Kyoto Protocol).

The Government may consider providing funding for an ‘Informing Resilient Investment’ project with the private sector for data and analytic capability to inform investment decisions in respect of climate resilience and resilience investment (amongst other things), to build the resilience of socioeconomic systems, including through economic diversification. The Government may also provide support for other projects under the funding package related to climate adaptation due to the increased frequency and intensity of natural disasters.

*Commonwealth executive power and the 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. The executive power in section 61 of the Constitution extends to a range of matters, including:

* activities that are peculiarly adapted to the government of the nation and cannot otherwise be carried out for the benefit of the nation; and
* activities that form part of the ordinary and well-recognised functions of government.

Due to its systemic nature, some disaster risks are residual, cross-jurisdictional and cross‑sectoral and outside the scope of traditional responsibilities of states and territories.

The Government may seek to provide support for disaster risk reduction projects that involve research and engagement with stakeholders such as states and territories and relevant industries, in order to inform itself and develop policy related to a national response.

For example, the Government may consider providing funding for an ‘Informing Resilient Investment’ project with a research focus to enable:

* assessment of the climate resilience of investment opportunities;
* an understanding of the economics of resilience investment as it informs the business case for investment in hard and soft infrastructure and the services these provide; and
* ways of structuring the financing of investment opportunities to attract heightened levels of domestic and foreign capital.

The project would inform policy that encourages the direction of capital into financing the development of new, and/or the adaptation of existing, infrastructure to establish more appropriate levels of resilience and reduced disaster risk while concurrently deriving a financial return for investors.

*Territories power*

Section 122 of the Constitution empowers the Parliament to ‘make laws for the government of any territory’.

The Government may provide funding for the NBIC which will involve the delivery of nationally consistent and authoritative bushfire hazard and risk information and decision making tools. The NBIC capability would coordinate and integrate resources to provide national capability to predict and respond to bushfire emergencies. The Government will fund conditional grants to states and territories to deliver information and decision making tools expected to improve the availability and quality of bushfire and risk data, which would be used both by the Commonwealth and by states and territories.

**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. 3) 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. 3) Regulations 2020* amend Schedule 1AB to the FF(SP) Regulations to establish legislative authority for government spending on certain activities that will be administered by the Department of Home Affairs.

This instrument adds the following table items to Part 4 of Schedule 1AB:

* table item 421 for the Multicultural Community Amenities Grants in the Northern Territory program; and
* table item 422 for the Disaster Risk Reduction Package.

*Table item 421 – Multicultural Community Amenities Grants in the Northern Territory*

Table item 421 establishes legislative authority for government spending on the Multicultural Community Amenities Grants in the Northern Territory (MCAGNT) program.

The MCAGNT program will provide grant funding of $2 million to Northern Territory multicultural community organisations to improve existing amenities and in turn, increase their access to and participation in social, economic and sporting life in the Northern Territory.

Grant funding will support one-off, time-limited projects such as the purchase of equipment and furnishings and building works, which meet the program objectives and value for money criterion. Examples of building projects that may be funded include:

* upgrade of existing amenities, including improved access such as ramps and access doors;
* provision of external shade areas to cover play areas;
* lighting and security;
* environmentally friendly additions, such as solar panelling;
* barbeque and picnic facilities; and
* printing services, computers, internet, and video conferencing facilities

Applications for other projects that meet the objectives of the program will also be encouraged.

Improvement of amenities available to multicultural community organisations in the Northern Territory will encourage diverse communities to undertake social and economic activities in environments that can facilitate and respect culturally appropriate norms. The grants will help establish spaces that foster discussions about shared opportunities or challenges in the communities and in doing so, build understanding and trust.

**Human rights implications**

Table item 421 engages the right to non-discrimination in Article 2 of the *International Covenant on Civil and Political Rights* (ICCPR) and the obligation to combat racial discrimination and promote understanding and tolerance in Article 7 of the *International Convention on the Elimination of All Forms of Racial Discrimination* (CERD).

*Article 2 of the ICCPR*

Article 2 of the ICCPR relevantly provides that:

‘(1) Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

(2) Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant…’.

Table item 421 supports these rights to the extent that the program will make funding available to improve community facilities to make them more accessible to multicultural associations and organisations and suitable for events and initiatives that may need to accommodate culturally specific requirements (such as appropriate kitchen facilities to avoid contamination between meat and vegetarian preparation areas).

In doing so, the program will ensure that community spaces are designed to deliver events and initiatives that will foster cultural communities’ social, economic and sporting life in the Northern Territory. Improved amenities will help communities enjoy the use and benefit of shared community spaces that can accommodate their cultural needs and in turn, support their full participation in community life in Australia.

Although the program targets minority groups, this form of positive discrimination is supported by the objectives of the ICCPR as it seeks to improve access to culturally appropriate spaces, amenities and facilities that are particularly beneficial to certain ethnic, religious or linguistic minorities who might otherwise be excluded. Examples include enhancing spaces or facilities so that these groups can communicate or socialise in their native language or participate in social activities that are unique to their social or cultural group. Facilitating a sense of social and cultural belonging and connection with others in their group would improve the minority groups’ ability to integrate with the Australian community and thus be contributing and involved members of that wider community.

*Article 7 of the CERD*

Article 7 of the CERD provides:

‘States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.’

Table item 421 will fund improvements to community amenities in the Northern Territory to accommodate cultural communities and in turn, facilitate integration and activities that encourage diverse communities to come together around a shared opportunity or challenge and build understanding and trust. This is consistent with Australia’s obligations under the CERD to combat prejudices that lead to racial discrimination and to promote understanding among all racial and ethnic groups.

Facilitating a sense of social and cultural belonging and connection with others in their group through improved spaces and enhanced amenities would build tolerance, strengthen cohesion and connectedness of the various groups within the Australian community, and ultimately seek to eliminate all forms of racial discrimination.

**Conclusion**

Table item 421 is compatible with human rights as it promotes the right to non-discrimination and engages with the obligation to combat racial discrimination and promote understanding and tolerance.

*Table item 422 – Disaster Risk Reduction Package*

Table item 422 establishes legislative authority for government spending on initiatives to reduce the risk and impact of natural disasters on Australians in line with the National Disaster Risk Reduction Framework(the Framework). The Framework outlines a coordinated national approach to identifying, prioritising and reducing disaster risk.

The national component of the Disaster Risk Reduction Package (the Package) of $26.1 million over five years from 2019-20 will deliver nationally significant initiatives, on a project-by-project basis, that reduce systemic disaster risk across Australia’s built, social, natural and economic environments. The specific details of potential future projects to be funded under the national component of the Package are yet to be decided.

Projects funded under the national component could include, but are not limited to:

* activities that support individuals, communities and/or small businesses to understand and take action to address disaster risk and impacts;
* inclusive community partnership projects with diverse stakeholders (including Indigenous Australians, people with disability, and culturally and linguistically diverse communities);
* research, innovation and knowledge initiatives to improve awareness, understanding and engagement on disaster risk and impacts (including hazard, exposure, vulnerability, capacity and environment);
* development of national technologies, systems and capabilities (including improved disaster risk information and data collection, hazard mapping and modelling, risk assessment tools, decision support systems, and emergency warning communications);
* development and review of national standards, codes and guidelines to minimise the creation of future disaster risk;
* establishment of sector-specific professional development and guidance materials to build the capability of practitioners and decision makers to make disaster risk informed decisions (including land use planning, building, construction and infrastructure); and
* creation of governance structures and planning frameworks to advance disaster risk reduction.

The national component of the Package will fund nationally significant initiatives that reduce systemic disaster risk at the national level in line with the Framework. These will be initiatives that proactively reduce the risk and limit the impact of disasters associated with natural hazards on Australian communities and economies.

**Human rights implications**

It is anticipated that projects funded under the national component of the Package will enable initiatives that will, directly and indirectly, ultimately reduce loss of life, and limit the impact of natural disasters on access to work, healthcare and education.

While table item 422 does not engage human rights, the projects ultimately funded may positively engage, among others, the following human rights:

*Convention on the Rights of the Child* (CRC)

* children’s inherent right to life, and to ensure their survival and development to the maximum extent possible in Article 6; and
* the right of mentally and physically disabled children to enjoy a full and decent life, including special care in Article 23.

*International Covenant on Economic, Social and Cultural Rights* (ICESCR)

* the right to an adequate standard of living, including adequate food, clothing and housing, and to the continuous improvement of living conditions in Article 11(1);
* the right to the enjoyment of the highest attainable standard of physical and mental health in Article 12; and
* the right to education in Article 13.

*International Covenant on Civil and Political Rights* (ICCPR)

* the inherent right to life in Article 6; and
* the right to freedom from discrimination in Article 26.

*Convention on the Rights of Persons with Disabilities* (CRPD)

* the right to protection and safety of persons with disabilities in situations of risk and humanitarian emergencies in Article 11.

Disaster risk reduction initiatives intend to improve the safety and wellbeing of Australian communities. They seek to improve existing vulnerabilities that exist within societies, some of which are disproportionately felt by the groups including Indigenous Australians, people with disability, and culturally and linguistically diverse communities.

Disaster risk reduction projects funded under the national component of the Package should, where possible, seek to be sensitive of any impacts (direct or indirect) on the rights listed above or address these vulnerabilities directly in order to promote inclusion and reduce disproportionate impacts on these groups caused by natural disasters.

The funding package will enable Australia to take action to reduce the risk and limit the impact of natural disasters on communities, and take all necessary measures to keep Australian communities safe. Projects should seek to actively consider or address the experiences of Indigenous Australians, people with disability, and culturally and linguistically diverse communities during natural disasters in prevention and risk reduction activities to ensure inclusivity in the benefits of this funding package.

**Conclusion**

Table item 422 is compatible with human rights as it maintains existing arrangements and increases scope for the protection of human rights.

**Senator the Hon Mathias Cormann**

**Minister for Finance**