

REPLACEMENT EXPLANATORY STATEMENT

This Explanatory Statement replaces the Explanatory Statement registered on 29 June 2020 for the *Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development and Communications Measures No. 5) Regulations 2020* [F2020L00818] to provide information about consultation in relation to the instrument.

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. 5)
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. 5) Regulations 2020* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on the Telecommunications Emergency Resilience Package (the package). The Department of Infrastructure, Transport, Regional Development and Communications will have responsibility for the package.

The package aims to improve the resilience of Australia's nationally significant telecommunications networks and support the economic and social recovery of bushfire-affected communities.

The package includes four complementary initiatives that will prevent, mitigate and manage telecommunications emergency outages:

- Mobile Network Hardening to support a range of activities to improve the resilience (i.e. harden) of regional and remote telecommunications infrastructure to outages during a disaster;
- Temporary Telecommunications Infrastructure Deployment to fund the purchase of temporary facilities to allow NBN Co Limited and other telecommunications carriers to improve network resilience before, during and after natural disasters;
- improved public communications to communities through a communications strategy and program to emphasise the importance of having a resilient communications plan in emergencies; and
- enhanced telecommunications for rural and country fire services depots and evacuation centres by deploying approximately 2,000 satellite services to provide telecommunications links where there may be outages in the wider area, plus batteries and solar panels at up to 100 critical sites.

The package was included in the Government's \$650 million bushfire recovery package announced by the Prime Minister on 11 May 2020, which forms part of the \$2 billion National Bushfire Recovery Fund and the Government's response to the 2019-20 bushfires.

Government funding for the package of up to \$37.1 million over two years from 2020-21 will be provided through an extension to the established Mobile Black Spot Program, new grants programs and procurement processes.

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 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. 5) 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. 5) 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 certain initiatives that will be administered by the Department of Infrastructure, Transport, Regional Development and Communications (the department).

New **table item 420** establishes legislative authority for government spending on the Telecommunications Emergency Resilience Package (the package).

The package was included in the Government's \$650 million bushfire recovery package announced by the Prime Minister on 11 May 2020, which forms part of the \$2 billion National Bushfire Recovery Fund and the Government's response to the 2019-20 bushfires. Details of the Prime Minister's announcement are available at www.pm.gov.au/media/boost-bushfire-recovery.

The package aims to improve telecommunications capacity and resilience during bushfires and other natural disasters. The package includes four complementary initiatives that will prevent, mitigate and manage telecommunications emergency outages: mobile network hardening; temporary telecommunications infrastructure deployment; improved public communications to communities; and enhanced telecommunications for the rural fire authorities and at evacuation centres.

The four initiatives will be delivered through three mechanisms: an extension to the established Mobile Black Spot Program (MBSP), new grants programs (competitive and non-competitive) and procurement processes. The purposes of initiatives are to:

- increase telecommunications resilience in regional and remote communities affected by recent bushfires and communities where there is a high risk of bushfires occurring in the future;
- safeguard local economies by mitigating risk of future harms arising from telecommunications outages in recently fire affected communities; and
- contribute to the economic and social recovery of affected communities by incentivising commercial telecommunications carriers to expand local teams and generate additional local employment opportunities (unskilled and skilled labour, and professional, scientific and technical services).

Mobile Network Hardening

The Mobile Network Hardening initiative will support a range of activities to prevent telecommunications outages by reducing the vulnerability (i.e. hardening) of regional and remote infrastructure critical to maintaining communications in an emergency. These improvements will be implemented in two stages, with total funding of \$18 million, including \$10 million drawn from the unused portion of the funding allocated to Round 5 of the MBSP.

Stage 1 will be an extension to the established MBSP, with the Government working with mobile network operators to upgrade battery backup power at sites funded through Rounds 1 and 2 of the program. Legislative authority for the MBSP is provided by table item 211 in Part 4 of Schedule 1AB to the *Financial Framework (Supplementary Powers) Regulations 1997*.

To date, the MBSP has awarded funding over five separate funding rounds to deliver 1,229 new mobile base stations across Australia. These base stations will provide new mobile coverage and increased competition to thousands of regional and remote communities.

At the time of funding mobile base stations under Rounds 1 and 2 of the MBSP, the industry standard was for between three and eight hours of backup power. Experience gained through the subsequent rounds of the MBSP and community input highlighted the benefits of extending the backup power at funded base stations. Since Round 3 of the MBSP all funded macro base stations have been provisioned with at least 12 hours of backup power.

Stage 1 of this initiative will upgrade backup power for Rounds 1 and 2 base stations to at least 12 hours of auxiliary backup power where feasible. The Commonwealth will fund these upgrades through agreements with existing MBSP funding recipients, with the upgrade works expected to begin in the second half of 2020.

Stage 2 of this initiative will focus on delivering upgrades at high priority, non-MBSP sites, including base stations, backhaul, feeder sites and exchanges. The department will seek information from state and territory governments to assist with identifying priority, disaster prone areas.

Funding for this stage will be awarded through a new competitive grants program, separate to the existing MBSP arrangements. The grants will be open to telecommunications network operators and infrastructure providers.

The upgrades funded under stage 2 will improve backup power and provide other infrastructure hardening measures such as improved backhaul transmission redundancy. Commonwealth funding will be available for up to 50 per cent of the capital costs of the upgrades with the remainder provided by the proponent. Stage 2 will commence after funding is awarded for stage 1.

Temporary Telecommunications Infrastructure Deployment

The Temporary Telecommunications Infrastructure Deployment initiative will fund the purchase of temporary facilities to allow NBN Co Limited (NBN Co) and other telecommunications carriers to improve network resilience before, during and after natural disasters. These facilities include cells on wheels, satellite-supported cells on wheels, mobile exchanges on wheels, NBN Road Muster trucks, portable satellite kits and other facilities. Carriers currently have an inventory of temporary facilities that can be deployed; however, the purchase of additional facilities will help improve response times.

Given the success of NBN Co's Road Muster trucks and portable satellite kits during the recent bushfires, \$1.7 million will be allocated to NBN Co through a targeted grants process to purchase an additional five Road Muster trucks and 12 satellite kits, with NBN Co meeting the ongoing operational and maintenance costs for these assets. This will enable NBN Co to pre-deploy these additional assets to key locations across Australia, improving its response time to areas affected by disasters.

The remaining funding will be allocated under a competitive grants process, with the carriers to own or operate the portable facilities but give commitments to the Government about their use during emergencies. The Commonwealth will work with NBN Co and carriers on co-contributions for the new equipment and responsibility for the operation, maintenance and replacement costs of the equipment purchased. Prospective grant bids must meet grant guidelines developed by the department in order to be eligible for consideration and assessment for grant funding.

The department will seek advice from technical experts in telecommunications and emergency services industries throughout the grants process. Grant guidelines will be developed in consultation with major stakeholders, including states and territories, and the telecommunications industry.

Improved public communications to communities about access to telecommunications in emergencies

While there is public information on how to prepare for and survive emergency situations, the available information on how bushfires impact telecommunications is more limited.

A \$2.1 million communications strategy and program will emphasise the importance of communities having a resilient communications plan in emergencies. It will improve community confidence and safety, and make transparent the roles of government and industry in relation to telecommunications.

This will include consultancy and contractor costs to design and implement a tailored awareness campaign, which aligns with related emergency notifications programs, including

those run by states and territories. The department (or its agents) will undertake research to inform the development of relevant messaging and strategies for effective dissemination of the public information. Consultants and contractors may also be engaged to develop public information materials and assist with the dissemination of materials, and these materials will be coordinated with the telecommunications industry and states and territories. Operational information supplied by telecommunications carriers and states and territories will also inform public information materials being developed.

Contractors and communications consultancies will be engaged consistent with the *Commonwealth Procurement Rules*, using tender processes and/or drawing on panel arrangements as appropriate.

Enhanced telecommunications for country and rural fire authorities and at evacuation centres

Telecommunications are critical to the operation of rural and country fire services. Some rural and country fire services depots already have access to telecommunications through a fixed line service, but this is vulnerable to failure during bushfires if there are power outages or the physical network is damaged.

NBN Co will be allocated \$7 million to deploy approximately 2,000 satellite services to rural and country fire services depots and evacuation centres to provide a backup connection at these locations. Additionally, NBN Co will deploy batteries and solar panels at up to 100 critical sites to provide power backup, effectively allowing these depots to operate for periods of time when mains power is unavailable.

The satellite connection will supply public access Wi-Fi for communities to use at rural and country fire services depots and evacuation centres. This access will enable evacuees to contact loved ones, stay abreast of developments, access government services and contact insurers.

This funding will cover the capital costs of installing the equipment. NBN Co will fund the ongoing operation and maintenance of the equipment for three years post-activation. Prior to the end of this period there will be a review of operating costs, with a view to these being potentially taken over by community or business sponsorship.

Depending on the specific initiative, the department will provide funding through targeted and competitive grants processes, against eligibility and merit criteria set by the department in grant guidelines 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).

Grant funding will be administered by the department, or a grants hub, consistent with the CGRGs. Grant recipients must enter into a legally binding funding agreement whereby they directly deliver the agreed activity within defined terms and conditions.

The Minister for Communications, Cyber Safety and the Arts (the Minister) will be the decision maker for all grant expenditure under the initiatives, with the exception of funding decisions related to the administration of Rounds 1 and 2 of the MBSP. The Minister for Regional Health, Regional Communications and Local Government will be responsible for funding decisions related to the MBSP elements of the Mobile Network Hardening initiative.

All relevant approvals are subject to the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). The decision makers will be supported by officers in the department and external technical expert assessors, who will assess applications on their merits against the assessment criteria and in accordance with the grant guidelines, and make recommendations on whether to approve a grant application. Funding decisions will be made objectively, and in accordance with the assessment process set out in the grant guidelines and applicable legislative requirements under the PGPA Act.

For the competitive grants processes, applications that meet all eligibility criteria will be ranked against the assessment criteria. Only applications that perform against the assessment criteria and meet the central ‘value for money’ criterion will be awarded funding.

The Ministers’ decisions are final in all matters, including the approval of grants, the grant funding amounts to be awarded, and the terms and conditions of grants.

Funding will not be approved if the program funding available across financial years will not accommodate the funding offer, and/or the application does not represent value for money.

If unsuccessful, organisations may reapply in any future funding rounds. Information on funding decisions will be publicly available on the departmental website at www.communications.gov.au.

The Secretary of the department (or delegate) will be the decision maker for allocation of funding under the improved public communication initiative. Procurement will be undertaken 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 PGPA Act and the *Commonwealth Procurement Rules*. 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 following decisions will not be subject to independent merits review:

- providing funding to mobile network operators for upgrading backup power at MBSP sites under stage 1 of the Mobile Network Hardening initiative;
- providing funding to NBN Co for the purchase of additional Road Muster trucks and portable satellite kits; and
- providing funding to NBN Co for the provision of backup power and satellite services at rural and country fire services depots and evacuation centres.

These decisions relate to provision of one-off payments to certain infrastructure providers over other infrastructure providers. Decisions to provide funding to the relevant infrastructure providers have been made because the funding would leverage existing public investment in infrastructure operated by those providers (i.e. the NBN and MBSP sites).

The Administrative Review Council has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see items 4.16 to 4.17 of the document *What decisions should be subject to merit review?*).

Decisions under other initiatives, namely stage 2 of the Mobile Network Hardening initiative and the Temporary Telecommunications Infrastructure Deployment initiative, will be made following competitive selection processes.

These decisions are not suitable for merits review because they involve the allocation of finite funding resources between competing applicants. A reviewed decision in relation to one grant would also affect decisions in relation to all others, particularly around timing and funding amounts, which could jeopardise recommended activities. 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?*).

Similarly, a decision by the department not to fund a project proposed by a consultancy under the improved communication of advice to communities initiative would not be suitable for merits review as finite resources are involved and reversing such a decision would mean that another project in the area could not be funded.

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 contractor or consultancy 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.

In order to address accountability issues related to the exclusion of merits review for the competitive initiatives, the assessment process will emphasise the administrative accountability for decisions to allocate funding. This includes ensuring that:

- the guidelines for the initiative are clear;
- the criteria for funding are made clear;
- the processes for allocating funds are fair; and
- decisions are made objectively and in accordance with applicable legislative requirements under the PGPA Act.

Independent merits review of decisions under any of the initiatives could introduce delays that would undermine a key purpose of the proposed funding, which is aimed at improving telecommunications resilience rapidly in time for the next and future bushfire seasons.

The Government has been consulting with states and territories, including emergency services organisations, since May 2020 on the implementation of each of the four initiatives under the package. Consultation will be ongoing until the conclusion of the initiatives. Further details about consultation in relation to each of the initiatives under the package are set out below.

Mobile Network Hardening

The objectives of Stage 1 of the Mobile Network Hardening initiative are tied to the established MBSP: Stage 1 funding will support upgrades to backup power at mobile base stations funded through Rounds 1 and 2 of the MBSP, and will be delivered through variations to existing funding agreements with the MBSP Rounds 1 and 2 funding recipients. Since May 2020, the department has consulted with the three MBSP Rounds 1 and 2 funding recipients (Optus, Telstra and TPG Telecom (formerly Vodafone)) on Stage 1, including through initial information gathering discussions and the opportunity to provide feedback on draft program guidelines.

Stage 2 of the Mobile Network Hardening initiative will consist of a competitive grants process to support improved resilience for mobile telecommunications infrastructure more broadly. Program guidelines for Stage 2 will be released following the allocation of Stage 1 funding, and will be informed by further consultation with industry and other stakeholders.

Temporary Telecommunications Infrastructure Deployment

The Temporary Telecommunications Infrastructure Deployment initiative will fund the purchase of temporary and portable facilities, such as NBN Road Muster trucks and other mobile telecommunications facilities. NBN Co has been consulted in relation to this initiative. Further, the department will seek advice and views from technical experts in the telecommunications and emergency services industries in assessing grant applications. The facilities are intended to ensure services remain available in disaster situations, and are beneficial in nature. Further, the facilities are temporary and portable, and are not intended to be stationed in any particular community.

Improved public communications to communities about access to telecommunications in emergencies

The research phase of the initiative relating to public communications is underway, with market research currently being undertaken by an external service provider engaged by the department. The market research is being undertaken with stakeholders, including telecommunications providers, rural and regional fire services, state and territory emergency services officials, and individuals including those from rural and remote communities and disaster affected areas.

Enhanced telecommunications for country and rural fire authorities and at evacuation centres

The department has consulted with states and territories, including emergency services, and with NBN Co. States and territories are best placed to identify appropriate sites for enhanced telecommunications services, as they are the ones who will be using these services and can

decide where they need them most. Therefore, consultation has been focused on state and territory officials to date.

The department will consult with other departments and targeted key external stakeholders such as telecommunications carriers, and local and state governments, consistent with the CGRGs, during the development of the grant guidelines for the initiatives. Relevant feedback from the consultation process will be used to refine the guidelines.

Funding for this package of \$37.1 million over two years from 2020-21 will be included in the 2020-21 Budget and the Portfolio Budget Statements 2020-21 for the Infrastructure, Transport, Regional Development and Communications Portfolio.

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

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 proposed initiatives deal with the resilience and availability of 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. 5) 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. 5) Regulations 2020* amend Schedule 1AB to the FF(SP) Regulations to establish legislative authority for government spending on certain initiatives that will be administered by the Department of Infrastructure, Transport, Regional Development and Communications.

New table item 420 establishes legislative authority for government spending on the Telecommunications Emergency Resilience Package (the package).

The package aims to improve the resilience of Australia's nationally significant telecommunications networks and support the economic and social recovery of bushfire affected communities.

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- improved public communication through a communications strategy and program to emphasise the importance of communities having a resilient communications plan in emergencies; and
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backup connection at these locations, plus batteries and solar panels at up to 100 critical sites.

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Government funding for the package of up to \$37.1 million over two years from 2020-21 will be provided through an extension to the established Mobile Black Spot Program, new grants programs and procurement processes.

Human rights implications

Article 19 of the *International Covenant on Civil and Political Rights* sets out the rights to freedom of opinion and expression. The right to freedom of expression includes the right to receive and impart information of all kinds through any medium, including the media and broadcasting.

This instrument promotes this right by supporting initiatives which aim to preserve access to internet and telephony-based communications in emergency situations in which such access may otherwise be rendered unavailable.

This instrument does not otherwise engage any of the applicable rights or freedoms.

Conclusion

This disallowable legislative instrument is compatible with human rights as it promotes the right to freedom of expression.

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