

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance

Financial Framework (Supplementary Powers) Act 1997

*Financial Framework (Supplementary Powers) Amendment
(Social Services 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 powers in the FF(SP) Act to make, vary or administer arrangements or grants may be exercised on behalf of the Commonwealth by 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 (Social Services Measures No. 3) Regulations 2020* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on the Reconnect Program (Reconnect). The Department of Social Services has responsibility for the program.

Reconnect is a longstanding initiative established in 1998 by the former Prime Minister, the Hon John Howard OM AC, following the findings by the Prime Ministerial Youth Homeless Taskforce, which oversaw the Youth Homelessness Pilot Programme.

Reconnect's objective is to provide community based early intervention and prevention services for young people aged 12 to 18 years (or 12 to 21 years in the case of newly arrived youth) who are homeless or at risk of homelessness, and their families.

Reconnect aims to break the cycle of homelessness by assisting young people to stabilise their living situation and improve their level of engagement with family, work, education, training and their local community. Reconnect also provides counselling, group work, mediation and practical support to the whole family.

Details of the Regulations are set out at [Attachment A](#). A Statement of Compatibility with Human Rights 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 Social Services.

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 (Social Services Measures No. 3) Regulations 2020*

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Social Services 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

Financial Framework (Supplementary Powers) Regulations 1997

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 administered by the Department of Social Services (the department).

New **table item 426** establishes (and renews) legislative authority for government spending on the Reconnect Program (Reconnect) to assist young people who are homeless or at risk of being homeless to stabilise and improve their housing situation and achieve family reconciliation (wherever practicable). Reconnect also assists these young people to improve their level of engagement with education, training and employment.

Reconnect is a longstanding initiative established in 1998 by the former Prime Minister, the Hon John Howard OM AC, following the findings by the Prime Ministerial Youth Homeless Taskforce (the Taskforce), which oversaw the Youth Homelessness Pilot Programme.

The Youth Homelessness Pilot Programme signalled the Government's intention to increase the service emphasis on early intervention strategies before the first key transition, which is a permanent break from home and family, is reached. This assisted family reconciliation through early intervention. The Taskforce funded 26 pilot projects at a cost of \$8 million over two years. There was an extensive evaluation that reported encouraging results from the pilot projects and this led to the Commonwealth establishing Reconnect.

Reconnect provides funding for community based early intervention and prevention services to assist young Australians aged 12 to 18 years (or 12 to 21 years if they are newly arrived in Australia, including non-citizens if they arrived in Australia within the last five years) who are homeless or at risk of homelessness, and their families.

Reconnect aims to break the cycle of homelessness by assisting young people to stabilise their living situation and improve their level of engagement with family, work, education, training and their local community. Reconnect also provides counselling, group work, mediation and practical support to the whole family. Further information about Reconnect can be found on the departmental website at <https://www.dss.gov.au/families-and-children-programs-services/reconnect>.

Reconnect supports the department in meeting its objective under Outcome 2: Families and Communities, which aims to strengthen relationships, improve wellbeing of children and young people, reduce the cost of family breakdown, strengthen family and community functioning and facilitate the settlement of migrants and humanitarian entrants in the community. The extended eligibility for non-citizens is in recognition of the difficulty migrants and humanitarian entrants often have when settling in Australia, and will enable them to access relevant services under Reconnect for a longer period.

Reconnect also complements the Government's commitment to improved housing outcomes for Australians who are homeless or at risk of homelessness under the *National Housing and Homelessness Agreement*, which commenced on 1 July 2018.

The program is delivered by Reconnect service providers from 71 organisations operating across 103 service areas. Reconnect service providers use a range of interventions and strategies with young people and their families, including: assessment and goal setting; case management; referral; advocacy; counselling (individual and family); mediation; group work; outreach; practical support; brokerage; therapies (individual and family); and collaboration with other services (specialists, community stakeholders and networks).

Eligible service providers were invited to apply for a Reconnect grant opportunity based on their experience of representing and achieving strong results for young people across Australia who are homeless or at risk of homelessness and their families, including Indigenous or newly arrived youth.

Eligible service providers had specialist expertise in, and knowledge of, youth homelessness and the unique issues facing communities where there are high numbers of youth at risk of homelessness across Australia.

Eligible providers are known to have extensive networks and influence within the specialised service sector. This is an important factor as the success of Reconnect relies on the ability of these providers to engage with and influence the existing Commonwealth, state and territory services. The current grant agreements are for the period from 1 July 2018 to 30 June 2021.

Reconnect service providers are required to deliver on the following program objectives:

- prevent homelessness by intervening early with families and young people to stabilise and improve their housing situation and improve their level of engagement with family, work, education, training, employment and their local community;

- facilitate interventions such as counselling, mediation, group work and practical support in culturally and contextually appropriate manner;
- establish and develop partnerships with the local school community to identify at-risk youth. This can include working with school social workers to develop transition plans for youth who are transferring, or preparing to transfer, from primary to secondary school; and
- work towards family reconciliation, wherever practicable, between homeless young people, or those at risk of homelessness and their family.

Reconnect service providers are expected to work collaboratively with schools and a range of core services to increase the early intervention capacity of the service system and make sure all clients presenting or being referred to Reconnect either receive assistance or are directed to more appropriate services.

Reconnect service providers are expected to ensure their services are known in their local area. This may include expanding their outreach component, with the aim of early identification of those at risk of homelessness.

Reconnect service providers can accept referrals from any source. They should maintain effective linkages with appropriate agencies in their local community to assist with making appropriate and effective referrals. Participants may be self-referred or referred from a range of sources including schools, education and training organisations, family and caregivers, friends, non-government community agencies, Centrelink (part of Services Australia), juvenile justice agencies, police or legal units, child protection agencies, youth refuge, youth housing or accommodation services or medical and/or mental health services.

Reconnect services are mainly delivered face-to-face; however, can also be delivered via telephone as necessary. Clients may be referred to the service or may just present at a service for assistance. There is no set duration for services delivered under Reconnect; however, a typical early intervention engagement with a Reconnect service would be expected to average three to four months in length. Some Reconnect service providers offer midstream services, where the caseload will often require more complex support for clients who need case management over six months.

Program funding is delivered through a restricted non-competitive grant process, which was undertaken in 2017 in accordance with the *Commonwealth Grants Rules and Guidelines 2017* and the grant opportunity guidelines published on the GrantConnect and the Community Grants Hub websites. The grant process is administered by the Community Grants Hub, which is part of the department. The current grant agreement with 71 Reconnect service providers may be extended for a further two years if performance objectives are met.

The Minister for Families and Social Services (the Minister) will be responsible for the final decision on extension of funding. The Minister's delegate will be the final decision maker on the grant expenditure and distribution of funding, in accordance with the *Public Governance, Performance and Accountability Act 2013* and the *Financial Framework (Supplementary Powers) Act 1997*.

Funding decisions made in connection with Reconnect are not considered appropriate for independent merits review on the basis that it involves the allocation of a finite resource, and

the remaking of a decision under merits review would affect the timely provision of grant funding and delivery of the program.

This would undermine the grant process and negatively impact the security of future funding for successful applicants. A decision in relation to the funding amount will also be influenced by the number of applicants funded. As such, there is only a finite amount of resources available and an allocation that has been made to another party would be affected by a review 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 paragraphs 4.11 to 4.14 of the guide, *What decisions should be subject to merit review?*).

Applicants have the option of recourse via the department's complaints management system (www.dss.gov.au/contact/feedback-compliments-complaints-and-enquiries/complaints-page). Applicants also have recourse to the Commonwealth Ombudsman if they are not satisfied with the response (www.ombudsman.gov.au).

The guaranteed right of review under section 75(v) of the Constitution, and review under section 39B of the *Judiciary Act 1903*, would still be available. The applicant will be notified in writing of the outcome of their application.

The department has conducted extensive consultations with key stakeholders during the development and implementation of the program. This includes but is not limited to discussion with Reconnect service providers to ensure a common approach was undertaken to any reforms of the program; state government officials and related services to explore ways to strengthen the early intervention and prevention aspects of the program; and small group discussions with young people who accessed a Reconnect service for feedback on the services provided. The department will continue to consult with these stakeholders to ensure the successful delivery of the program.

Funding of \$71million over three years from 2020-21 comes from Component 2 (Families and Children) under Program 2.1: Families and Communities, which is part of Outcome 2. Details are set out in the *Portfolio Additional Estimates Statements 2019-20, Social Services Portfolio*, page 64. Reconnect is an ongoing program.

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 aliens power (section 51(xix)); and
- the external affairs power (section 51(xxix)).

Aliens power

Section 51(xix) of the Constitution empowers the Parliament to make laws with respect to 'naturalization and aliens'.

Reconnect aims to break the cycle of homelessness by providing counselling, group work, mediation and practical support to the whole family. This includes expenditure on services for newly arrived youth within the last five years to Australia aged 12 to 21 years who are non-citizens.

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 international treaties to which it is a party.

Australia has obligations relating to the *Convention on the Rights of the Child* (the CRC) [1991] ATS 4 and the *International Covenant on Economic, Social and Cultural Rights* (the ICESCR) [1976] ATS 5:

- Article 4 of the CRC requires States Parties to ‘take all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation’;
- Article 27 of the CRC requires States Parties to ‘recognize the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development’. Additionally, States Parties are required to act ‘in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particular with regard to nutrition, clothing and housing’;
- Article 2 of the ICESCR requires States Parties to take steps to ‘achieving progressively the full realization of the rights recognized in the Covenant by all appropriate means, including particularly the adoption of legislative measures’, and to undertake to guarantee that the rights will be exercised ‘without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’; and
- Article 11 of the ICESCR requires States Parties to ‘recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions’, and commits States Parties, among other things, to ‘take appropriate steps to ensure the realization of this right’.

Reconnect is directed to supporting both the child and its parents by encouraging the maintenance of parental relations with the child. Funding of the program also helps young people to avoid homelessness by encouraging them to maintain their family and parental relationship.

Reconnect aims to break the cycle of homelessness by providing counselling, group work, mediation and practical support to the whole family. Services refer clients where applicable, or can purchase other services to meet individual needs of clients, such as specialised mental health services.

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 (Social Services 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 powers in the FF(SP) Act to make, vary or administer arrangements or grants may be exercised on behalf of the Commonwealth by 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 (Social Services Measures No. 3) Regulations 2020* amend Schedule 1AB to the FF(SP) Regulations to establish (and renew) legislative authority for government spending on the Reconnect Program (Reconnect) administered by the Department of Social Services.

Reconnect's objective is to provide community based early intervention and prevention services for young people aged 12 to 18 years (or 12 to 21 years in the case of newly arrived youth) who are homeless or at risk of homelessness, and their families.

The program is directed to supporting both the child and its parents by encouraging the maintenance of parental relations with the child. Funding for the program also helps young people to avoid homelessness by encouraging them to maintain their family and parental relationship.

Reconnect aims to break the cycle of homelessness by providing counselling, group work, mediation and practical support to the whole family. Services refer clients where applicable, or can purchase other services to meet individual needs of clients, such as specialised mental health services.

Human rights implications

This disallowable legislative instrument engages the following rights:

- the right for children to have an adequate standard of living to meet their physical and mental needs – Articles 4 and 27 of the *Convention on the Rights of the Child* [1991] ATS 4 (the CRC); and

- the right of everyone to an adequate standard of living, adequate food, clothing and housing, and to the continuous improvement of living conditions – Articles 2 and 11 of the *International Covenant on Economic, Social and Cultural Rights* [1976] ATS 5 (the ICESCR).

CRC

Article 4 provides:

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 27 provides:

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.
4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Reconnect engages with Articles 4 and 27 of the CRC by assisting young people at risk of homelessness with maintaining their parental relationships.

ICESCR

Article 2 provides:

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.
2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

Article 11 provides:

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.
2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:
 - (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;
 - (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Reconnect engages with Articles 2 and 11 of the ICESCR by assisting young people at risk of homelessness with maintaining their parental relationships.

Conclusion

This disallowable legislative instrument is compatible with human rights because it promotes the protection of human rights through recognising the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development and relates to the right of everyone to an adequate standard of living, adequate food, clothing and housing, and to the continuous improvement of living conditions.

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