

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance

Financial Framework (Supplementary Powers) Act 1997

*Financial Framework (Supplementary Powers) Amendment
(Treasury 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 (Treasury Measures No. 3) Regulations 2020* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for the Government to provide a one-off, ad hoc grant of \$250,000 in 2020-21 to support the development and online delivery of a portal and resources to facilitate access to information about motor vehicle service and repair. The Department of the Treasury has responsibility for this spending activity.

The access to this information will assist:

- motor vehicle repairers to service and repair motor vehicles; and
- registered training organisations to carry out training in the service and repair of motor vehicles.

Funding will be provided for the development of online resources to enable access to motor vehicle service and repair information, including associated organisational costs.

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 the Treasury.

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 (Treasury Measures No. 3) Regulations 2020*

Section 1 – Name

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

New **table item 449** establishes legislative authority for the Government to provide a one-off, ad hoc grant of \$250,000 in 2020-21 to an industry organisation to develop and deliver the Motor Vehicle Service and Repair Information Sharing – Online Resources initiative (the initiative).

The initiative will assist the motor vehicle industry to facilitate the sharing of motor vehicle service and repair information with all repairers and registered training organisations (RTOs) that deliver motor vehicle training in Australia.

This will help foster competition in the motor vehicle repair market and help to provide a level playing field for all repairers by making it easier for them to access the information they need to do their job. Providing all repairers with information they need will additionally assist consumers to have their vehicles repaired by the repairer of their choice, helping to reduce costs and delays.

The need to assist repairers to access motor vehicle service and repair information was identified in the *New Car Retailing Industry* market study by the Australian Competition and

Consumer Commission, which was released in December 2017 (available at <https://www.accc.gov.au/publications/new-car-retailing-industry-market-study-final-report>). The market study found repairers experience difficulty accessing service and repair information, creating barriers to competition and impacting consumers' choice of repairer. It also found voluntary arrangements to facilitate the sharing of service and repair information by manufacturers were ineffective.

Provision of online resources will help repairers and RTOs practically with accessing the information they need to do their job safely.

A one-off grant will be provided to an industry organisation to support the development and delivery of online resources to facilitate access to motor vehicle service and repair information, and organisational costs associated with the development of these online resources. This will include the establishment of an online portal to facilitate access to service and repair information. The industry organisation will be responsible for determining the technical aspects of the online resources to achieve the objectives of the grant in close consultation with industry stakeholders and government. The industry organisation will be responsible for ongoing maintenance of the online resources.

The Government's decision to provide industry with a one-off grant for the initiative was informed by consultation with industry stakeholders, including the following factors:

- the initial set-up costs for development of a secure website/online portal to facilitate the sharing of information with appropriate users;
- demonstrated commitment by key industry stakeholders towards improving access to this information; and
- commitment from industry representatives to establish an industry-led organisation, which industry expects to be otherwise self-funded.

The department will administer the grant in accordance with the requirements of the *Public Governance, Performance and Accountability Act 2013* and the *Commonwealth Grants Rules and Guidelines 2017* (CGRGs), including developing grant opportunity guidelines. As this is a one-off grant, the grant opportunity guidelines will not be published. Grant funding will be administered by the department and grant details will be provided on GrantConnect at www.grants.gov.au within 21 days of the day of effect as required by the CGRGs.

The Deputy Secretary of the Markets Group, a delegate of the Secretary of the department, will make the final decision to approve the grant. The Principal Adviser in the Market Conduct Division, which has policy responsibility for the initiative, will be responsible for ensuring the overall efficient and effective administration of the grant opportunity. This includes but is not limited to entering into a grant agreement on behalf of the Commonwealth and authorising payments of grant funds by the Commonwealth once spending decisions are made.

The funding decision made in connection with this one-off, ad hoc grant will not be subject to an independent merits review. This is because the decision relates to the 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 paragraphs 4.11 to 4.19 of the guide, *What decisions should be subject to merit review?*).

Consultation on improving access to service and repair information was undertaken with industry representatives including: the Motor Trades Association of Australia, the Federal Chamber of Automotive Industries, the Australian Automotive Dealer Association, the Australian Automobile Association and the Australian Automotive Aftermarket Association. The department also consulted with affected stakeholders in the industry, including representatives of motor vehicle training organisations, independent repairers and manufacturers. Consultation has also taken place with relevant government stakeholders, including the Australian Government Solicitor and the Department of the Prime Minister and Cabinet.

Funding of \$250,000 in 2020-21 will be included in the 2020-21 Mid-Year Economic and Fiscal Outlook and the 2020-21 Portfolio Additional Estimates Statements for the Treasury Portfolio, following announcement of the initiative by the Minister for Housing and Assistant Treasurer on 30 October 2020. Funding for the item will come from Program 1.3: Support for Markets and Business, which is part of Outcome 1.

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'. Under this initiative, funding will be provided so that information that will assist vehicle repairers to service and repair motor vehicles can be published on the internet.

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 (Treasury 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 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 (Treasury Measures No. 3) Regulations 2020* (the Regulations) amend Schedule 1AB to the FF(SP) Regulations to establish legislative authority for the Government to provide a one-off, ad hoc grant of \$250,000 in 2020-21 to an industry organisation to develop and deliver online resources to facilitate the sharing of motor vehicle service and repair information.

The access to this information will assist:

- motor vehicle repairers to service and repair motor vehicles; and
- registered training organisations (RTOs) to carry out training in the service and repair of motor vehicles.

Funding will be provided for the development and online delivery of a portal and resources to facilitate access to information about motor vehicle service and repair, including associated organisational costs.

The Department of the Treasury has responsibility for the initiative.

Human rights implications

This disallowable legislative instrument engages:

- the right to privacy – Article 17 of the *International Covenant on Civil and Political Rights* (ICCPR), read with Article 2 of the ICCPR.

Australia has obligations under the ICCPR to promote universal respect for, and observance of, human rights and freedoms. Under Article 2 of the ICCPR, each State Party to the ICCPR ‘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’.

Article 17 of the ICCPR contains the right to protection from arbitrary or unlawful interference with privacy. The United Nations Human Rights Committee has not defined ‘privacy’ but it is generally understood to comprise of a freedom from unwanted and unreasonable intrusions into activities that society recognises as falling within the sphere of individual autonomy. The collection and sharing of information (public or otherwise) may be considered to engage and offend the right to privacy.

The right in Article 17 may be subject to permissible limitations, where these limitations are authorised by law and are not arbitrary. In order for an interference with the right to privacy to be permissible, the interference must be authorised by law, be for a reason consistent with the ICCPR and be reasonable in the particular circumstances. The United Nations Human Rights Committee has interpreted the requirement of ‘reasonableness’ to imply that any interference with privacy must be proportional to the end sought and be necessary in the circumstances of any given case.

While the sharing of motor vehicle service and repair information as part of the initiative will not share or distribute private information about individuals, it is likely that repairers and RTOs will need to provide information about themselves in order to gain access to certain service and repair information to ensure it is used appropriately. The collection of this information may engage the right to privacy.

Conclusion

This disallowable legislative instrument is compatible with human rights because to the extent that it may limit the right to privacy, this limitation is reasonable, proportionate and necessary to achieve the legitimate objective of ensuring that persons who access service and repair information use it appropriately. This is consistent with Article 17 of the ICCPR as any limitations of that right are authorised by law and are not arbitrary.

**Senator the Hon Simon Birmingham
Minister for Finance**