

REPLACEMENT EXPLANATORY STATEMENT

This Explanatory Statement replaces the Explanatory Statement registered on 11 December 2020 for the *Financial Framework (Supplementary Powers) Amendment (Home Affairs Measures No. 6) Regulations 2020* [F2020L01589] to provide information about eligibility criteria for the *National Action Plan to Combat Modern Slavery 2020-25* grant program.

Issued by the Authority of the Minister for Finance

Financial Framework (Supplementary Powers) Act 1997

*Financial Framework (Supplementary Powers) Amendment
(Home Affairs Measures No. 6) 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 (Home Affairs Measures No. 6) Regulations 2020* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending to support the implementation of Australia's *National Action Plan to Combat Modern Slavery 2020-25* (the National Action Plan). The Department of Home Affairs has responsibility for the National Action Plan.

The National Action Plan will provide the strategic framework for the Government's response to modern slavery over the next five years. The Plan's objective is to actively prevent and combat all forms of modern slavery, wherever it occurs, including by supporting, protecting and empowering victims and survivors.

Funding of \$10.6 million over five years from 2020-21 will support the following five key measures under the National Action Plan:

- equip Australian businesses to manage supply chain risks;

- deliver multi-year grant funding for projects to combat modern slavery;
- develop and deliver training to domestic and foreign government officials to identify and deter modern slavery;
- increase direct government engagement with modern slavery victims, vulnerable individuals and community groups; and
- establish data collection, monitoring and review mechanisms to support research and evidence-based policy decisions.

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. 6) 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. 6) 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 activity that will be administered by the Department of Home Affairs (the department).

New **table item 447** establishes legislative authority for government spending to support the implementation of Australia's *National Action Plan to Combat Modern Slavery 2020-25* (the National Action Plan), which will provide the strategic framework for the Government's response to modern slavery over the next five years. The National Action Plan is expected to be released in December 2020.

The Australian Border Force (the ABF), part of the department, has developed the National Action Plan as the whole-of-government lead on modern slavery issues, supported by the Interdepartmental Committee on Human Trafficking and Slavery (IDC). The IDC comprises 11 Commonwealth entities that provide oversight of Australia's response to modern slavery:

- the Attorney-General's Department;
- the Australian Criminal Intelligence Commission;
- the Australian Federal Police (AFP);
- the Australian Institute of Criminology (AIC);
- the Office of the Director of Public Prosecutions (CDPP);
- the Department of Education, Skills and Employment;

- the Department of Foreign Affairs and Trade;
- the Department of Home Affairs;
- the Department of Social Services;
- the Department of the Prime Minister and Cabinet; and
- the Fair Work Ombudsman and Registered Organisations Commission Entity.

The ABF also undertook extensive community and government consultation to develop the National Action Plan, including:

- a public consultation paper released in December 2019 that received 47 written submissions. These submissions were published on the departmental website at <https://www.homeaffairs.gov.au/reports-and-publications/submissions-and-discussion-papers/combat-modern-slavery-2020-25>; and
- 27 targeted consultation workshops between March and June 2020 with 44 civil society organisations, international organisations, businesses, academics and unions. This included consultation with members of the National Roundtable on Human Trafficking and Slavery.

Key themes that emerged from the consultation process demonstrated a need for:

- increased education, awareness and training for frontline officials and the broader Australian community to identify and refer cases of modern slavery in Australia;
- engagement with survivors to ensure delivery of government initiatives is informed by those with lived experiences of modern slavery;
- increased partnerships with countries in the region to enhance the regional and international responses to modern slavery;
- a focus on research and data to provide an understanding of the extent of modern slavery in Australia and a baseline to measure the success of initiatives; and
- increased collaboration between the Australian Government, states and territories, the business sector, and civil society groups.

Feedback from the consultation process informed development of the National Action Plan.

The National Action Plan's objective is to actively prevent and combat all forms of modern slavery, wherever it occurs, including by supporting, protecting and empowering victims and survivors. This objective will be guided by five national strategic priorities: prevent; disrupt, investigate and prosecute; support and protect; partner; and research.

The National Action Plan will also articulate specific action items linked to each strategic priority. These action items will support the following key outcomes, which will also be set out in the National Action Plan:

- vulnerable communities and individuals in Australia and in global supply chains are safer and protected from modern slavery crimes;
- justice responses are effective and perpetrators are held to account;
- the rights of victims and survivors, particularly women and girls, are protected and promoted;
- victims, survivors and their families and communities are supported;
- victims and survivors are empowered to rebuild their lives;
- Australia is an international and regional leader driving collaborative responses to modern slavery, including human trafficking; and

- Australia makes a significant contribution to the understanding of the drivers of modern slavery and effective responses to these crimes.

Funding of \$10.6 million over five years from 2020-21 will support the following five key measures under the National Action Plan:

- equip Australian businesses to manage supply chain risks;
- deliver multi-year grant funding for projects to combat modern slavery;
- develop and deliver training to domestic and foreign government officials to identify and deter modern slavery;
- increase direct government engagement with modern slavery victims, vulnerable individuals and community groups; and
- establish data collection, monitoring and review mechanisms to support research and evidence-based policy decisions.

The National Action Plan assigns responsibility for implementing each action item to specific Commonwealth entities (members of the IDC). The ABF will have overarching oversight of implementation of the National Action Plan.

Equip Australian businesses to manage supply chain risks

This measure aims to strengthen implementation of the *Modern Slavery Act 2018* (the Act) by supporting Australian businesses to better identify modern slavery risks in their global supply chains and operations, and therefore increase business compliance with the legislation.

This measure will expand the functions of the ABF's Modern Slavery Business Engagement Unit to:

- deliver business and industry engagement activities that build supply chain resilience, raise awareness of modern slavery risks, and improve supply chain transparency to combat modern slavery;
- develop and deliver new and targeted training to business and industry to strengthen their capacity to comply with the Act;
- undertake the legislated three-year review of the Act;
- maintain and enhance the online register for Modern Slavery Statements (established under the Act); and
- develop and deliver new modern slavery training to government officials to address modern slavery risks in government procurements and investments.

Grant funding to combat modern slavery

This measure will facilitate multi-year grant funding for civil society, business and industry groups, and academics to deliver projects that combat modern slavery in Australia. Multi-year funding will support the Government's priorities to detect and deter modern slavery, provide support and protection to victims, and build business capacity to combat modern slavery in global supply chains. Funding for research will support evidence-based policy and effective government response to emerging modern slavery trends.

Training to domestic and foreign government officials to identify and deter modern slavery

This measure will develop and deliver training for domestic and foreign government officials to combat modern slavery. Training to domestic government officials will include officials in state and territory governments and aims to support effective identification and referral of modern slavery cases. Training will also be developed and delivered for foreign government officials in the Indo-Pacific region, to support development and implementation of effective legal and policy frameworks to combat modern slavery, and will support Australia's role as co-chair with Indonesia of the *Bali Process Working Group on Trafficking in Persons* (TIPWG). Training for foreign government officials is important to address offshore threats to Australia.

Where external service providers are required to implement this measure, funding may be allocated through open and limited 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).

Government engagement with modern slavery victims, vulnerable individuals and community groups

This measure will support government engagement with modern slavery victims, vulnerable individuals and community groups. Raising awareness of modern slavery in the community is key to supporting the Government's efforts to identify and refer victims, and provide appropriate support and protection.

Funding under this measure will:

- develop and maintain online public information and resources on modern slavery, translated into community languages;
- develop, translate and distribute additional resources for victims, multicultural groups and the community to strengthen understanding of modern slavery and support appropriate referrals;
- partner with a broad range of victims of modern slavery to support effective policy and law enforcement responses; and
- establish multi-sector networks in each state and territory that bring together community members, business, civil society and government representatives to bolster law enforcement capability and resources dedicated to detect and deter modern slavery.

Where external service providers are required to implement this measure, funding may be allocated through open and limited 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 CPRs.

Data collection, monitoring and review mechanisms to support research and evidence-based policy decisions

This measure aims to address gaps in existing data collection processes on: the extent of modern slavery in Australia; emerging modern slavery trends; changing criminal methodologies; and the longer-term impacts of COVID-19 on modern slavery.

Funding will be provided to the AIC to:

- establish new data collection processes on emerging trends and criminal methodologies to strengthen criminal justice responses to modern slavery;
- collect and analyse monitoring and evaluation data; and
- deliver mid-term and final reports on the outcomes of the National Action Plan.

The ABF and AIC will ensure data collection processes under the National Action Plan comply with the *Privacy Act 1988*.

Expenditure on the National Action Plan may be undertaken in the form of grants or procurements. Where grants are used as the appropriate financial arrangement, these processes will be managed in accordance with the *Commonwealth Grants Rules and Guidelines 2017* (CGRGs) and the approved grant opportunity guidelines.

The grant program will provide multi-year grants for civil society, business and academia to deliver projects that combat modern slavery in Australia, increase the capacity of businesses to respond to modern slavery in global supply chains, and undertake modern slavery research to inform evidence-based policy. The program will comprise two multi-year grant opportunities:

- Round One will provide funding over a two-year period (2021-22 to 2022-23); and
- Round Two will provide funding over a three-year period (2022-23 to 2024-25).

Round One is a targeted competitive grant selection process. The ABF considers that this is an appropriate type of selection process considering the nature of the grant is specifically dependent on the limited field of specialist and reputable not-for-profit, non-government and private sector organisations, and academia operating in the anti-slavery space.

Eligible organisations and academics will receive an invitation to apply through GrantConnect and are listed in the *National Security and Criminal Justice Program: National Action Plan to Combat Modern Slavery 2020-25 Grant Program – Round One Grant Opportunity Guidelines*. These organisations represent a breadth of approaches and perspectives on combating modern slavery in Australia. The ABF has a detailed understanding of their subject matter expertise and capacity to deliver specialist services, programs and research in the anti-slavery sector. Many of these organisations also have a strong record of leadership and collaboration with the Government, including through the National Roundtable on Human Trafficking and Slavery and the Modern Slavery Expert Advisory Group. No further organisations will be invited to apply.

Applications from consortia are acceptable, as long as they have a lead applicant who is solely accountable to the Commonwealth for the delivery of grant activities and is an eligible organisation as per the list in the Round One grant opportunity guidelines. Eligible organisations can form a consortia with ineligible organisations.

An organisation is not eligible to apply for this grant opportunity if it has not received an invitation to apply through GrantConnect and it is not listed as an eligible organisation in the Round One grant opportunity guidelines.

An organisation is also not eligible to apply for this grant opportunity if it is listed as an institution that has not joined, or signified intent to join, the National Redress Scheme for

people who have experienced institutional child sexual abuse. This list of institutions can be found on the National Redress Scheme website at www.nationalredress.gov.au.

Eligibility criteria are set out in the Round One grant opportunity guidelines which are available on the GrantConnect (refer GO4703 at www.grants.gov.au) and the Community Grants Hub (www.communitygrants.gov.au) websites.

At the completion of the targeted competitive grant process in Round One, the ABF will review and assess the process and eligibility criteria to inform the design of Round Two. Eligibility criteria for Round Two will be similarly outlined in grant opportunity guidelines specific to that grant opportunity and will be published on GrantConnect.

The grants will be administered through the Department of Social Services (DSS) Community Grants Hub under a partnership agreement between the department and DSS. Information relating to grants, including grant opportunity guidelines, will be published on GrantConnect (www.grants.gov.au). Information on decisions in relation to grants will also be published on GrantConnect.

The Community Grants Hub will review grant applications for compliance with eligibility criteria. Eligible grant applications will be provided to an assessment panel who will evaluate applications and make recommendations to the Assistant Minister for Customs, Community Safety and Multicultural Affairs as the decision maker.

Funding for services to develop modern slavery information resources, training and awareness raising materials will be allocated through open and limited tender processes, including drawing on existing panel arrangements. Where these processes are used, they will be administered in accordance with the PGPA Act and the CPRs.

The final decision maker for procurement expenditure will be a departmental official, who is the delegate of the Secretary of the department. 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.

Grant and procurement funding decisions made under the National Action Plan are not considered appropriate for independent merits review because:

- they involve 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 paragraphs 4.11 to 4.19 of the guide, *What decisions should be subject to merit review?*).

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 Constitution.

Administrative accountability for funding decisions made under the National Action Plan 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.

Funding of \$10.6 million was included in the 2020-21 Budget under the measure ‘National Action Plan to Combat Modern Slavery 2020-25’ for a period of five years commencing in 2020-21. Details are set out in *Budget 2020-21, Budget Measures, Budget Paper No. 2 2020-21* at page 110.

Funding for this item 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 2020-21, Budget Related Paper No. 1.8, 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 external affairs power (section 51(xxix)); and
- the executive power (section 61).

Communications power

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

Under the National Action Plan, the Government will fund development and delivery of materials that raise awareness of modern slavery, which will be distributed on an online platform. The Government will also fund awareness campaigns to educate the public and target particular communities on modern slavery, which will be distributed using telecommunication services such as the internet and television.

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 under:

- the *Convention on the Elimination of All Forms of Discrimination Against Women* [1983] ATS 9 (CEDAW);
- the *Convention on the Rights of the Child* [1991] ATS 4 (CRC);
- the *International Convention to Suppress the Slave Trade and Slavery* [1927] ATS 11;
- the *International Covenant on Civil and Political Rights* [1980] ATS 23 (ICCPR);
- the International Labour Organization’s (ILO) *Convention concerning Forced or Compulsory Labour* [1933] ATS 21 (Forced Labour Convention);
- the *Optional Protocol to the Convention on the Rights of the Child* on the sale of children, child prostitution and child pornography [2007] ATS 9 (Optional Protocol to the CRC);

- the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime* [2005] ATS 27 (Trafficking Protocol); and
- the *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery* [1958] ATS 3.

Article 6 of the CEDAW requires States Parties to take measures to suppress the exploitation of prostitution of women and trafficking in women.

Articles 32, 34, 35 and 36 of the CRC, which recognise the right of the child to protection from economic exploitation, hazardous or harmful work, sexual exploitation and abuse and other exploitation prejudicial to the child's welfare, and require States Parties to take measures to prevent the abduction of, sale of or trafficking of children for any purpose whatsoever. Article 4 of the CRC requires States Parties to undertake all appropriate legislative, administrative and other measures to implement the CRC rights.

Article 2 of the *International Convention to Suppress the Slave Trade and Slavery* [1927] ATS 11 requires the Parties to undertake the necessary steps to 'prevent and suppress the slave trade', and 'to bring about, progressively and as soon as possible, the complete abolition of slavery in all its forms'.

Article 8(1) of the ICCPR provides that no one shall be held in slavery, and that slavery and the slave-trade in all their forms shall be prohibited. Article 8(2) provides that no one shall be held in servitude. Article 8(3) provides that no one shall be required to perform forced or compulsory labour. Article 2(2) requires States Parties to take the necessary steps to adopt such legislative or other measures as may be necessary to give effect to the ICCPR rights.

Article 1(1) of the Forced Labour Convention requires Members of the ILO to suppress the use of forced or compulsory labour in all its forms within the shortest possible period.

Article 9(1) of the Optional Protocol to the CRC requires States Parties to adopt, strengthen and implement laws, administrative measures, social policies and programs to prevent the offences of offering, delivering or accepting of a child for sexual exploitation, the transfer of a child's organs, forced child labour or child prostitution.

Article 9(1) of the Trafficking Protocol requires States Parties to establish comprehensive policies, programs and other measures to prevent and combat trafficking in persons and to protect victims of trafficking from re-victimisation. Articles 9(2) and (3) further require States Parties to endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons, including cooperation with non-governmental organisations and other elements of civil society.

Article 1 of the *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery* [1958] ATS 3 requires States Parties to take all practicable and necessary measures to bring about progressively and as soon as possible the abolition or abandonment of debt bondage, serfdom, forced marriage or the exploitation of children.

The National Action Plan will implement a range of measures that support the Government's treaty obligations. This includes measures that will prevent and deter modern slavery in all its forms, and provide support and protection to victims. These measures are:

- equip Australian businesses to manage supply chain risks;
 - This measure will include developing and maintaining the online Modern Slavery Statements Register, delivering training to businesses in Australia, and delivering training to address the risks in government procurements and investments. This measure will support Australia to combat modern slavery crimes by promoting compliance with, and implementation of, the *Modern Slavery Act 2018*.
- deliver multi-year grant funding for projects to combat modern slavery;
 - This measure will provide funding to non-government organisations to deliver modern slavery projects that work to combat modern slavery crimes in Australia. Funding will also be provided to partner with organisations, businesses and industry peak bodies to develop the supply chain resilience of Australian businesses. Funding will also be provided to support crime prevention research on modern slavery in Australia. This measure will promote prevention and deterrence of modern slavery crimes, promote effective implementation of the Criminal Code offences and support Australia's commitment to combat modern slavery.
- develop and deliver training to domestic and foreign government officials to identify and deter modern slavery;
 - This measure will include development of training that promotes identification, deterrence and investigation of modern slavery crimes, including how to respond to new and emerging trends. This will also include direct engagement with government officials in Indo-Pacific countries. These initiatives aim to deter the range of modern slavery offences outlined in the Criminal Code, equip officials with skills to investigate and respond to modern slavery crimes, and strengthen domestic and international partnerships.
- increase government engagement with modern slavery victims, vulnerable groups, state and territory representatives, and the broader Australian community; and
 - This measure will include developing new online resources in community languages and accessible referral pathways, engaging victims to ensure government policies are informed by their lived experience and delivering national awareness raising campaigns. These initiatives will promote awareness of modern slavery crimes and strengthen Australia's prevention efforts.
- establish data collection, monitoring and review mechanisms to support research and evidence-based policy decisions.
 - This measure will focus on using data and research to understand emerging trends and support strong law enforcement outcomes. This will promote an effective response to modern slavery that responds to changing trends.

The external affairs power also supports legislation with respect to matters or things outside the geographical limits of Australia.

Under the National Action Plan, the Government will provide funding to deliver capacity building activities with officials in partner governments in the Indo-Pacific region.

Executive power

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 form part of the ordinary and well-recognised functions of government; and
- the execution and maintenance of the Constitution, and the laws of the Commonwealth.

Under the National Action Plan, the Government will fund initiatives that support implementation of the *Modern Slavery Act 2018*, such as delivering training to businesses and industry and developing and maintaining the Modern Slavery Statements Register.

The Government will also fund delivery of targeted training to government and frontline officials on identifying and referring modern slavery cases and responding to new modern slavery trends, and supporting implementation of the human trafficking, slavery, and slavery-like offences in Divisions 270 and 271 of the Criminal Code. Funding to support engagement with victims of modern slavery, as well as engagement with states and territory governments, will also raise awareness of, and improve deterrence and persecution of, Commonwealth offences.

Under the National Action Plan, the Government will also fund grant programs that support evidenced-based policy, as well as commissioning the AIC to establish data collection processes, conduct research into emerging trends, and monitor the outcomes of the National Action Plan. This will be used for monitoring the implementation of Commonwealth policy and reviewing its effectiveness.

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. 6) 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*.

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- establish data collection, monitoring and review mechanisms to support research and evidence-based policy decisions.

Human rights implications

This disallowable legislative instrument engages the following rights:

- the right to freedom from slavery and forced labour – Article 8 of the *International Covenant on Civil and Political Rights* (ICCPR);
- the right to freedom from torture and other cruel, inhuman or degrading treatment or punishment – Article 7 of the ICCPR and Articles 2, 13, 14, and 16 of the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT);
- the right to freedom of movement – Articles 12 and 13 of the ICCPR;
- the right to privacy – Article 17 of the ICCPR;
- the rights of persons, including women, children and persons with disabilities, to protection from exploitation, violence and abuse, covering:
 - the right of the child to protection from exploitation, hazardous or harmful work, sexual exploitation and abuse and other exploitation prejudicial to the child’s welfare – Articles 19, 32, 34, 35 and 36 of the *Convention on the Rights of the Child* (CRC), read with Article 4 of the CRC;
 - the right to protection from exploitation, violence and abuse – Article 16(1) of the *Convention on the Rights of Persons with Disabilities* (CRPD); and
 - the obligation on States Parties to take measures to suppress all forms of traffic in women and exploitation of prostitution of women – Article 6 of the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW);
- the right to work and rights at work – Articles 6 and 7 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR); and
- the right to health – Article 12(1) of the ICESCR.

Right to freedom from slavery and forced labour

Article 8(1) of the ICCPR provides that no one shall be held in slavery, and that slavery and the slave-trade in all their forms shall be prohibited. Article 8(2) provides that no one shall be held in servitude. Article 8(3) provides that no one shall be required to perform forced or compulsory labour.

By strengthening Australia’s response to modern slavery, the National Action Plan engages and protects the right to freedom from slavery in all its forms through a range of initiatives to prevent and deter human trafficking, slavery, and slavery-like practices. This includes measures which take action to combat modern slavery through increased engagement with businesses; training domestic and foreign government officials to identify and deter modern slavery; increased education of and engagement with victims of modern slavery and forced labour, vulnerable groups, state and territory representatives and the broader Australian community; and data collection, monitoring and review mechanisms to support research and evidence-based policy decisions.

Right to freedom from torture and other cruel, inhuman or degrading treatment or punishment

Article 7 of the ICCPR provides that no one shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Article 2 of the CAT provides that States Parties shall take effective measures to prevent acts of torture in any territory under their jurisdiction. Articles 13 and 14 of the CAT provide for remedies for persons subjected to torture and Article 16 of the CAT provides that States Parties shall take effective measures to prevent acts of cruel, inhuman or degrading treatment or punishment in any territory under their jurisdiction.

Combatting modern slavery protects the right to freedom from torture and other cruel, inhuman or degrading treatment or punishment. Modern slavery is fundamentally concerned with exploitation. It robs people of their dignity and their liberty. Exploitative practices can lead to serious physical and psychological harm, and even death.

By strengthening Australia's response to modern slavery, the National Action Plan engages and protects the right to freedom from torture and other cruel, inhuman or degrading treatment or punishment.

Right to freedom of movement

Articles 12 and 13 of the ICCPR provide that a person must be able to move freely and choose a place of residence within a country without restrictions. They further specify that States Parties have a duty to ensure that a person's freedom of movement is not unduly restricted by others, including private persons and companies.

Modern slavery can severely limit a person's right to freedom of movement. Exploitative practices can restrict a person's freedom of movement in numerous ways, including through debt bondage, physical restraint and other methods of control and coercion.

The National Action Plan engages and promotes the right to freedom of movement by strengthening Australia's response to modern slavery. Combatting modern slavery ensures that persons are not subjected to restraints on their freedom of movement caused by modern slavery conditions.

Right to privacy

Article 17(1) of the ICCPR states that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. The United Nations Human Rights Committee has interpreted the right to privacy as comprising freedom from unwarranted and unreasonable intrusions into activities that society recognises as falling within the sphere of individual autonomy. The right to privacy may be limited where the limitation is lawful and not arbitrary and where it is reasonable, necessary and proportionate to achieving a legitimate objective.

Measures under the National Action Plan to establish data collection are to support investigations in modern slavery crimes, and support research and evidence-based policy decisions. To the extent that personal information is collected for these purposes, these measures may engage the right to privacy. Any limitation on the right to privacy is necessary to allow investigation into these crimes and for victims of modern slavery to be referred to appropriate support services, and data is used only for required purposes. The use of this data is in compliance with the *Privacy Act 1988*. These measures are reasonable and proportionate to the aims of investigating modern slavery and forced labour crimes and providing support services to victims.

Any personal information used more broadly to inform evidence-based policy is de-identified to protect personal privacy, and is used to inform an understanding of the profile of people who experience modern slavery, which helps the Government provide an appropriately tailored response to these crimes. The de-identification of personal information in these measures protects the right to privacy.

To the extent that these measures engage the right to privacy, they are reasonable, necessary and proportionate, and are for the legitimate objective of investigating modern slavery crimes, or providing support services to victims of modern slavery crimes.

Rights of persons, including women, children and persons with disabilities, to protection from exploitation, violence and abuse

Article 4 of the CRC requires States Parties to undertake all appropriate legislative, administrative and other measures to implement the rights recognised under the CRC. Article 19(1) provides that States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse. Article 32 provides that children shall be protected from economic exploitation and from performing hazardous work, or work that is harmful to their health, or physical, mental, spiritual, moral or social development. Article 34 provides that States Parties shall protect the child from all forms of sexual exploitation and sexual abuse. Article 35 provides that States Parties shall take all appropriate measures to prevent the abduction of, sale of or traffic in children for any purpose or in any form. Article 36 provides that States Parties shall protect the child against all other forms of exploitation prejudicial to any aspect of the child's welfare.

The right to protection from exploitation, violence and abuse is also articulated in Article 16(1) of the CRPD, which specifies that States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.

Article 6 of the CEDAW provides that States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

Modern slavery is fundamentally concerned with exploitation. Australia's Commonwealth legislation criminalises the exploitation of individuals, including through offences criminalising trafficking in persons, slavery, servitude, forced labour, debt bondage and forced marriage. Offences involving the exploitation of children are particularly serious and carry maximum penalties of up to 25 years' imprisonment.

The nature and extent of modern slavery means that there is high risk that Australian businesses' operations and supply chains may be affected by modern slavery and therefore impinge upon the right to protection from exploitation, violence and abuse.

The National Action Plan engages and promotes the right to protection from exploitation, violence and abuse by strengthening Australia's response to modern slavery. Children and persons with disabilities are uniquely vulnerable to modern slavery crimes, including trafficking in persons, slavery and slavery-like practices. Measures under the National Action Plan that strengthen Australia's response to these crimes will help to protect persons from being exploited and exposed to violence and abuse through modern slavery. Measures under the National Action Plan will support businesses and the community to identify, deter and combat modern slavery.

Right to work and the rights at work

Article 6 of the ICESCR provides that States Parties will recognise the right to work, which includes the right of everyone to the opportunity to gain their living by work which is freely chosen or accepted, and will take appropriate steps to safeguard this right. Article 7 of the ICESCR further specifies the right of everyone to the enjoyment of just and favourable conditions of work, including to rest, leisure and reasonable limitation of working hours.

Modern slavery severely curtails a person's right to work and their rights at work by robbing a person of the freedom to freely choose and accept work, and in many cases, severely curtailing the conditions of work, including regarding rest, leisure and reasonable limitations on working hours.

The National Action Plan engages and promotes the right to work and rights at work by strengthening Australia's approach to combating modern slavery in businesses' operations and supply chains, strengthening the ability to identify and deter modern slavery, increasing engagement with victims, vulnerable groups and the community more broadly, and improving data collection, monitoring and review mechanisms to support research and evidence-based policy decisions.

Right to health

Article 12(1) of the ICESCR requires States Parties to recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The United Nations Committee on Economic, Social and Cultural Rights has stated that the right to health includes the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture. The right to health also includes the right to a system of health protection for people to enjoy the highest attainable level of health.

Modern slavery can severely limit a person's right to health. Persons that experience modern slavery are commonly subject to physical or psychological abuse and hazardous working conditions, and the experience of modern slavery can have ongoing implications for a person's mental and physical wellbeing.

The National Action Plan engages and promotes the right to health by combatting modern slavery. Measures under the National Action Plan that strengthen Australia's response to modern slavery help ensure that persons are protected from the physical and psychological abuse and hazardous working conditions endemic in modern slavery and slavery-like conditions.

Conclusion

This disallowable legislative instrument is compatible with human rights as it promotes the protection of human rights and to the extent that it limits human rights, those limitations are reasonable, necessary and proportionate in achieving a legitimate objective.

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