

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance

Financial Framework (Supplementary Powers) Act 1997

*Financial Framework (Supplementary Powers) Amendment
(Home Affairs Measures No. 3) Regulations 2021*

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. 3) Regulations 2021* (the Regulations) amend table item 492 in Part 4 of Schedule 1AB to the Principal Regulations, which establishes legislative authority for government spending on the COVID-19 Disaster Payment. The payment will be a one-off and time-limited financial assistance to eligible persons who are, or were, unable to earn their usual income as a result of health restrictions (public health order) imposed by state or territory governments, where the Commonwealth Chief Medical Officer has determined the location to be a COVID-19 hotspot for the purposes of Commonwealth support.

The payment is intended to assist Australian citizens, Australian permanent residents and temporary visa holders who have the right to work in Australia, who have had their hours of work and income significantly affected by the restrictions. The payment will apply when restrictions have remained in place for longer than seven days and, other than annual leave, the individual does not, or did not, have available leave entitlements to cover the period of the restrictions. Individuals who are, or were, already receiving Commonwealth income support payments, payments of a similar nature, or pandemic leave disaster payments during the period of the restrictions will not be eligible for this payment.

The rate of payment will be set at \$500 per week for people who were engaged in paid employment of more than 20 hours per week, and \$325 per week for people who were engaged in paid employment of less than 20 hours per week. To be eligible, recipients must not have liquid assets of more than \$10,000 during the period of the restrictions.

The amendments to table item 492 remove the reference to the requirement to apply for assistance within six months after the start of the period of the restrictions, and clarify that assistance may be provided to eligible persons during or after the period of the restrictions. Precise details of the period during which applications for assistance can be made will be published on the Services Australia website (www.servicesaustralia.gov.au) and as part of the COVID-19 Disaster Payment Guidelines, which will be made available on the GrantConnect website (www.grants.gov.au).

The six-month time period to apply for the payment was included in error in table item 492. The payment is intended to provide immediate support to those who are, or were, unable to earn their usual income due to a state or territory public health order. The claim period will be included in the payment guidelines, rather than table item 492, to reflect that this is an administrative requirement, which is not part of the eligibility criteria for the payment.

The COVID-19 Disaster Payment is a national payment, with Victoria to be the first jurisdiction to receive Commonwealth support in the form of the payment, where the Greater Melbourne area has currently been determined by the Commonwealth Chief Medical Officer to be a COVID-19 hotspot for the purposes of Commonwealth support. The Commonwealth will enter into an individual agreement for the payment with the relevant state or territory, where similar circumstances arise in the future.

The Department of Home Affairs will have responsibility for the payment until 30 June 2021. From 1 July 2021, the responsibility for the payment will transfer to the National Recovery and Resilience Agency. Payments to eligible individuals will be administered by Services Australia. The Commonwealth will provide funding for these payments to individuals. This is on the basis that states and territories provide assistance to businesses.

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 immediately 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 and Services Australia.

A regulation impact statement is not required as the Regulations only apply to non-corporate Commonwealth entities and do not adversely affect the private sector.

Details of the *Financial Framework (Supplementary Powers) Amendment (Home Affairs Measures No. 3) Regulations 2021*

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Home Affairs Measures No. 3) Regulations 2021*.

Section 2 – Commencement

This section provides that the Regulations commence immediately 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

Items 1 to 9

Items 1 to 9 amend the objective of **table item 492** in Part 4 of Schedule 1AB, which establishes legislative authority for government spending on the COVID-19 Disaster Payment. Items 1 to 8 clarify that financial assistance may be provided to eligible persons during or after the period of the restrictions, by inserting references to past tense when describing eligibility criteria for assistance. Item 9 removes the reference to the requirement to apply for assistance within six months after the start of the period of the restrictions. Precise details of the period during which applications for assistance can be made will be published on the Services Australia website (www.servicessaustralia.gov.au) and as part of the COVID-19 Disaster Payment Guidelines, which will be made available on the GrantConnect website (www.grants.gov.au).

The six-month time period to apply for the payment was included in error in table item 492. The payment is intended to provide immediate support to those who are, or were, unable to earn their usual income due to a state or territory public health order. The claim period will be included in the payment guidelines, rather than table item 492, to reflect that this is an administrative requirement, which is not part of the eligibility criteria for the payment.

The COVID-19 Disaster Payment will be a one-off and time-limited financial assistance to eligible persons who are, or were, unable to earn their usual income as a result of health restrictions (public health order) imposed by state and territory governments, where the

Commonwealth Chief Medical Officer has determined the location to be a COVID-19 hotspot for the purposes of Commonwealth support.

The Department of Home Affairs (the department) will have responsibility for the payment until 30 June 2021. From 1 July 2021, the responsibility for the payment will transfer to the National Recovery and Resilience Agency. Payments to eligible individuals will be administered by Services Australia.

On 3 June 2021, the Prime Minister, the Hon Scott Morrison MP, the Treasurer, the Hon Josh Frydenberg MP, and the Minister for Agriculture, Drought and Emergency Management, the Hon David Littleproud MP, jointly announced the COVID-19 Disaster Payment. The media statement is available at www.pm.gov.au/media/temporary-australian-government-assistance-workers.

The payment is intended to assist certain persons who:

- are Australian citizens, Australian permanent residents or holders of a temporary visa who have the right to work in Australia; and
- are aged 17 years or over; and
- reside or are employed in a location in Australia that is, or resided or were employed in a location in Australia at a time that it was:
 - subject to a state or territory public health order restricting the movement of persons for a period of more than seven days; and
 - determined by the Commonwealth Chief Medical Officer to be a COVID-19 hotspot for the purposes of Commonwealth support; and
- are, or were, unable to earn their usual income because the restrictions imposed by the public health order prevent, or prevented, them from being able to work in their usual employment; and
- other than annual leave, have, or had, no available leave entitlements to cover the period of the restrictions; and
- declare that during the period of the restrictions they:
 - reside or are employed, or resided or were employed, in the hotspot area; and
 - have, or had, liquid assets of less than \$10,000; and
- during the period of the restrictions are, or were, not otherwise receiving:
 - Commonwealth income support payments or payments of a similar nature; or
 - pandemic leave disaster payments.

Further eligibility criteria may apply. For example, the payment will be made to eligible persons affected by the restrictions which remain in place for longer than seven days, that is, it will be payable only for the second and subsequent weeks of the restrictions. Precise eligibility criteria, including the period during which applications for the payment can be made, will be published on the Services Australia website (www.servicessaustralia.gov.au) and as part of the COVID-19 Disaster Payment Guidelines, which will be made available on the GrantConnect website (www.grants.gov.au).

For clarity, the reference to liquid assets is a general term and does not have the same meaning as defined in the *Social Security Act 1991*. It means that eligible recipients do not have readily available funds in cash or savings.

The COVID-19 Disaster Payment is a national payment, with Victoria to be the first jurisdiction to receive Commonwealth support in the form of the payment, where the Greater

Melbourne area has currently been determined by the Commonwealth Chief Medical Officer to be a COVID-19 hotspot for the purposes of Commonwealth support. The Commonwealth will enter into an individual agreement for the payment with the relevant state or territory, where similar circumstances arise in the future.

The rate of payment will be set at \$500 per week for people who were engaged in paid employment of more than 20 hours per week, and \$325 per week for people who were engaged in paid employment of less than 20 hours per week. The Commonwealth will provide funding for these payments to individuals. This is on the basis that states and territories provide assistance to businesses.

The payment is modelled on the existing pandemic leave disaster payment, which is made to eligible individuals who are, or were, unable to earn income because they are, or have been, required to remain in isolation as a quarantine measure, or are caring, or cared, for a person required to remain in isolation as a quarantine measure, as a result of COVID-19.

The payment will be administered by Services Australia as a demand driven (eligibility based) grant and paid directly to eligible persons. The program will commence on 8 June 2021. The Government does not propose to nominate an end date for the payment at this stage, given the ongoing uncertainty with COVID-19, in particular given outbreaks can occur at any stage.

Claimants will be required to complete and submit a claim via a myGov account. Claims will only be accepted by telephone in limited circumstances. A claim will be assessed by Services Australia against the eligibility criteria before making the payment and claimants will be notified by letter if their claim has been granted or rejected. If the assessment process identifies unintentional errors in an application, the claimant may be contacted to correct or explain the information. Where requested, a claimant may also need to provide evidence of meeting the eligibility criteria for the payment. There will be no written grant agreement for the payment, or associated eligible grant activities. Proof of expenditure of the grant will not be required.

Grants will be administered in accordance with the *Commonwealth Grants Rules and Guidelines 2017* and the *Public Governance, Performance and Accountability Act 2013*. Information about the grants program, including the guidelines, will be published on GrantConnect. Decisions about Commonwealth expenditure in connection with the payment will be made by a Services Australia delegate of the Secretary of the department. The aggregated information on the number of claims granted and the total expenditure will be published on GrantConnect. Individual claimants will not be identified.

Independent merits review is not considered suitable for decisions made in connection with the payment as such decisions are automatic or mandatory in nature. The discretion available to an official of Services Australia when making a decision will be very limited and the decision making process is procedural. For example, to be eligible for the payment a person must reside or be employed, or have resided or been employed, in a location in Australia at a time that it was subject to a state or territory public health order restricting the movement of persons for a period of more than seven days, and determined by the Commonwealth Chief Medical Officer to be a COVID-19 hotspot for the purposes of Commonwealth support.

Further, the payment is being administered in a beneficial way that promotes compliance with health objectives and ensures financial support is available. Declaration is the primary method of a person demonstrating they have met the eligibility criteria. For example, a person must make a declaration that during the period of the restrictions they reside or are employed, or resided or were employed, in the hotspot area, and they have, or had, liquid assets of less than \$10,000.

The Administrative Review Council has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 3.8 to 3.11 of the guide, *What decisions should be subject to merit review?*).

Decisions to reject a person's claim for the payment are subject to review processes within Services Australia at a claimant's request. If a person does not understand the reason(s) for a decision made by Services Australia, they can ask for an explanation of the decision. This explanation will be provided by a Subject Matter Expert (SME). The SME will investigate the decision, correct any identified errors, undertake any re-assessment and contact the customer to explain the decision. All customer consultations will be managed by Services Australia, which may seek input from the department at any point in this process prior to finalising the review. The internal review process in Services Australia provides a robust means of addressing errors that might occur in the decision making process. Given these are beneficial and not complex decisions, the internal review process conducted by Services Australia provides an effective means of efficiently arriving at the preferable decision.

The payment will be subject to the department's complaints process and oversight by the Commonwealth Ombudsman.

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

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

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

Consultation was undertaken between the Prime Minister and the Acting Premier of Victoria, as well as other state and territory premiers on 4 June 2021, in relation to the delivery of the payment in partnership with states and territories. It was agreed that the Commonwealth will provide all of the funding for this demand driven program. This is on the basis that states provide all assistance to businesses. Further information about the consultation is included in the media release at <https://www.pm.gov.au/media/national-cabinet-statement-040621>.

The department also consulted extensively with Services Australia, which has administrative responsibility for the delivery of the COVID-19 Disaster Payment and other government disaster related payments to the community.

There was a need to implement the payment quickly in order to ensure that Victorian workers get the financial support they need to stay at home during the current outbreak and lockdown

period. Furthermore, the payment, being a benefit paid to individuals, imposes no regulatory burden on businesses, therefore broader consultation was not required in this instance.

There is no effective cap on the expenditure as the payment is demand driven. However, any further funding is subject to the Government decision (and parliamentary scrutiny through the Budget process).

Noting that it is not a comprehensive statement of relevant constitutional considerations, the objective of the item references the following powers in the Constitution:

- express incidental power and the executive power (sections 51(xxxix) and 61), including the nationhood aspect.

Executive power and express incidental power, including the nationhood aspect

The express incidental power in section 51(xxxix) of the Constitution empowers the Parliament to make laws with respect to matters incidental to the execution of any power vested in the Parliament, the executive or the courts by the Constitution. Section 61 of the Constitution supports activities that are peculiarly adapted to the government of a nation and cannot be carried out for the benefit of the nation otherwise than by the Commonwealth.

COVID-19 is causing a widespread health emergency of national significance, with widespread impacts on sectors of the economy due to the need for lockdowns to contain the spread of COVID-19. The COVID-19 Disaster Payment will be available to certain eligible persons who are, or were, unable to earn their usual income as a result of state or territory public health orders restricting the movement of such persons, which are in effect for greater than seven days in response to outbreaks of COVID-19 in the community, and the Commonwealth Chief Medical Officer has determined the location to be a hotspot for the purposes of this payment.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Financial Framework (Supplementary Powers) Amendment (Home Affairs Measures No. 3) Regulations 2021

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*.

On 3 June 2021, the Prime Minister, the Hon Scott Morrison MP, the Treasurer, the Hon Josh Frydenberg MP, and the Minister for Agriculture, Drought and Emergency Management, the Hon David Littleproud MP, jointly announced the establishment of a temporary COVID-19 Disaster Payment in recognition that extended lockdown periods can have serious financial implications for workers. The payment aims to help lawful workers who are, or were, unable to work and earn their usual income, because they are, or were, subject to state or territory public health orders restricting the movement of persons, and the Commonwealth Chief Medical Officer has determined the area to be a COVID-19 hotspot for the purposes of Commonwealth support.

The *Financial Framework (Supplementary Powers) Amendment (Home Affairs Measures No. 3) Regulations 2021* amend table item 492 in Part 4 of Schedule 1AB to the FF(SP) Regulations to remove the reference to the requirement to apply for the COVID-19 Disaster Payment within six months after the start of the period of the restrictions, but clarify that assistance may be provided to eligible persons during or after the period of the restrictions. Precise details of the period during which applications for assistance can be made will be published on the Services Australia website (www.servicesaustralia.gov.au) and as part of the COVID-19 Disaster Payment Guidelines, which will be made available on the GrantConnect website (www.grants.gov.au).

Table item 492 establishes legislative authority for the Government to make the COVID-19 Disaster Payment to eligible individuals who are, or were, unable to earn their usual income because they are, or have been, unable to work as a result of state or territory public health orders in effect for greater than seven days in an area determined by the Commonwealth Chief Medical Officer to be a COVID-19 hotspot for the purposes of Commonwealth support.

Human rights implications

This disallowable legislative instrument does not engage any of the applicable rights or freedoms. It amends table item 492 to clarify that the COVID-19 Disaster Payment may be provided during or after the period of state or territory public health orders restricting movement and removes reference to the requirement to apply for the COVID-19 Disaster Payment within six months.

Conclusion

This disallowable legislative instrument is compatible with human rights because it does not raise any human rights issues.

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