

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance

Financial Framework (Supplementary Powers) Act 1997

*Financial Framework (Supplementary Powers) Amendment
(Prime Minister and Cabinet's Portfolio Measures No. 4) Regulations 2022*

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*.

The Principal Regulations are exempt from sunseting under section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (item 28A). If the Principal Regulations were subject to the sunseting regime under the *Legislation Act 2003*, this would generate uncertainty about the continuing operation of existing contracts and funding agreements between the Commonwealth and third parties (particularly those extending beyond 10 years), as well as the Commonwealth's legislative authority to continue making, varying or administering arrangements, grants and programs.

Additionally, the Principal Regulations authorise a number of activities that form part of intergovernmental schemes. It would not be appropriate for the Commonwealth to unilaterally sunset an instrument that provides authority for Commonwealth funding for activities that are underpinned by an intergovernmental arrangement. To ensure that the Principal Regulations continue to reflect government priorities and remain up to date, the Principal Regulations are subject to periodic review to identify and repeal items that are redundant or no longer required.

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. Section 32D of the FF(SP) Act confers powers of delegation on Ministers and the accountable authorities of non-corporate Commonwealth entities, including subsection 32B(1) of the Act. Schedule 1AA and Schedule 1AB to the Principal Regulations specify the arrangements, grants and programs.

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.

The *Financial Framework (Supplementary Powers) Amendment (Prime Minister and Cabinet's Portfolio Measures No. 4) Regulations 2022* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on the emergency income relief—2022 floods initiative (the initiative). The National Recovery and Resilience Agency (NRRRA) has policy responsibility for the initiative. Individual payments will be administered by Services Australia.

The initiative aims to provide additional income support to eligible individuals living or working in the most significantly impacted areas to give them some certainty as they start to rebuild their lives.

A payment of \$350 per week will be made available to individuals who have qualified (or will qualify) for the Disaster Recovery Allowance (DRA), or the New Zealand Disaster Recovery Allowance, for the flooding in New South Wales in February and March 2022 and resided or worked in the eligible areas, determined as most significantly impacted. These areas will be specified in the grant opportunity guidelines for the initiative.

Services Australia will administer the payments on behalf of the NRRRA. Eligible persons who have already received the DRA or NZDRA will not need to reapply—the additional payments will be automatically paid into the person's Australian bank account once they have qualified for the DRA or NZDRA.

Current funding of \$13.5 million in 2021-22 is available for this demand driven initiative and is uncapped to meet the needs of more families who reside or work in the eligible flood-affected areas.

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 National Recovery and Resilience Agency.

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.

Financial Framework (Supplementary Powers) Amendment (Prime Minister and Cabinet's Portfolio Measures No. 4) Regulations 2022

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Prime Minister and Cabinet's Portfolio Measures No. 4) Regulations 2022*.

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 the emergency income relief—2022 floods initiative (the initiative). The National Recovery and Resilience Agency (NRRA) has policy responsibility for the initiative. Individual payments will be administered by Services Australia.

New **table item 552** establishes legislative authority for the Government to provide payments to eligible persons who are in areas directly affected by the 2022 floods and who have been unable to earn their usual income as a result of the floods.

The initiative aims to provide additional income support to eligible individuals living or working in the most significantly impacted areas, to give them some income support as they start to rebuild their lives. The additional income support will be available to individuals who have qualified (or will qualify) for the Disaster Recovery Allowance (DRA), or the New Zealand Disaster Recovery Allowance (NZDRA), for the flooding in New South Wales in February and March 2022 and resided or worked in the eligible areas, determined as most significantly impacted. These areas will be specified in the grant opportunity guidelines for the initiative.

Currently, under the *Social Security Act*, the maximum rate of Disaster Recovery Allowance is limited to the maximum rate of JobSeeker Payment or Youth Allowance. Legislative

authority under table item 552 will enable eligible individuals to receive an additional payment of \$350 per week on top of the DRA or the NZDRA. The initiative is a time limited income support arrangement available for up to 13 weeks.

Effective from April 2022, the emergency income relief payment will be automatically available for those individuals who have or will claim and receive the DRA, and live or work in eligible areas, determined as most significantly impacted.

Services Australia will administer the payments on a fortnightly basis as per the DRA on behalf of the NRRA as demand-driven grants. Eligible persons who have already received the DRA will not need to reapply—the additional payments will be automatically paid into the person's Australian bank account once they have qualified for the DRA.

The initiative will be delivered in accordance with the *Commonwealth Grants Rules and Guidelines 2017* and the *Public Governance, Performance and Accountability Act 2013*.

Grant opportunity guidelines for the initiative will be developed and made available on the GrantConnect website (www.grants.gov.au). There will be no written grant agreement for the payment. Decisions about Commonwealth expenditure in connection with the emergency income relief payment will be made by a Services Australia delegate of the Coordinator-General of the NRRA. Aggregated information on the number of claims granted and the total expenditure will be published on GrantConnect. Individual claimants will not be identified.

As a payment legislated under the *Social Security Act*, DRA is subject to merits review through the Administrative Appeals Tribunal. As such, if a person appeals a decision and qualifies for the DRA, the person would also qualify for the emergency income relief payment if they reside in a significantly flood-affected area. Independent merits review is not considered suitable for decisions made in connection with the initiative as such decisions may be described as automatic or mandatory in nature – the payment is automatically made based on qualifying for the DRA which is subject to merits review. The decision making process is procedural. The Administrative Review Council has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraph 3.8 of the guide, *What decisions should be subject to merit review?*).

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.

The NRRA consulted with Services Australia, which has administrative responsibility for the delivery of the payment and other government disaster related payments to the community.

Funding of \$13.5 million in 2021-22 for the emergency income relief payment will be included in the 2022-23 Budget and the Portfolio Budget Statement of the Prime Minister and Cabinet portfolio. Funding for this item will come from Program 1.2: Australian Government Disaster and Emergency Financial Support, 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 following powers of the Constitution:

- the 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.

The initiative provides emergency income relief payment to eligible persons who are living or working in the most significantly impacted areas, affected by the 2022 floods. The additional income support will give them some certainty as they start to rebuild their lives.

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 (Prime Minister and Cabinet's Portfolio Measures No. 4) Regulations 2022

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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Current funding of \$13.5 million in 2021-22 is available for this demand driven initiative and is uncapped to meet the needs of more families who reside or work in eligible flood-affected areas.

Human rights implications

This disallowable legislative instrument engages the following right:

- the right to an adequate standard of living in Article 11 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).

Right to an adequate standard of living

Article 11(1) of the ICESCR states:

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 initiative assists in promoting the right to an adequate standard of living for those persons who are, or were, unable to work and earn their usual income because their place of employment was directly impacted by flooding.

Conclusion

This disallowable legislative instrument is compatible with human rights because it promotes the protection of human rights.

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