

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. 4) Regulations 2023*

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 (Home Affairs Measures No. 4) Regulations 2023* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on supplementary settlement support for non-citizens resettled in third countries under bilateral resettlement arrangements to be administered by the Department of Home Affairs (the department).

The program aims to support the settlement of transitory persons (non-citizens) in a foreign country, where settlement occurs pursuant to a bilateral resettlement arrangement between Australia and a foreign country. Australia currently maintains third country resettlement arrangements with the United States (US) and New Zealand.

In line with Government policy, transitory persons do not have a settlement pathway in Australia and the department is working to resolve the current regional processing (transitory persons) caseload in Nauru and temporarily in Australia. Third country resettlement arrangements are critical to the ongoing success of Australia's regional processing policy and resolution of the current regional processing caseload.

Third country resettlement under current resettlement arrangements with the US and New Zealand continues to be the primary driver of population outflow. The department is working to bolster transitory persons' engagement with available third country migration options, promote resettlement opportunities and overcome barriers to engagement. Supplementary settlement support focuses on promoting meaningful engagement and accelerating effective resettlement outcomes.

Funding will be drawn from overall administered funding from Outcome 2 for Program 2.4 UMA Offshore Management of \$592.1 million in 2022-23 and across forward estimates.

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 registration on the Federal Register of Legislation.

Consultation

In accordance with section 17 of the *Legislation Act 2003*, consultation has been undertaken 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. 4) Regulations 2023*

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Home Affairs Measures No. 4) Regulations 2023*.

Section 2 – Commencement

This section provides that the Regulations commence on the day after registration 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 administered by the Department of Home Affairs (the department).

New **table item 610** establishes legislative authority for government spending on supplementary settlement support for transitory persons (non-citizens) resettled in third countries under bilateral resettlement arrangements.

In line with Government policy, transitory persons do not have a settlement pathway in Australia and the department is working to resolve the current regional processing (transitory persons) caseload in Nauru and temporarily in Australia through third country migration options. Third country resettlement under current resettlement arrangements with the United States (US) and New Zealand continues to be the primary driver of population outflow to meet the Government's objective.

However, available resettlement places have not yet been fully realised. To bolster engagement in available third country migration options, transitory persons will have access to supplementary settlement support. This supplementary support aims to promote meaningful engagement with third country migration options, help transitory persons become

settlement ready and assist individuals to accelerate their settlement outcomes in their resettlement country.

The department currently funds a US resettlement agency to provide a program of support to transitory persons resettled in the US under the resettlement arrangement. Support does not replace existing US settlement supports, but offers needs-based supplementary support to assist transitory persons achieve their settlement goals more quickly.

Support includes:

- upward mobility support – improving employment prospects by resolving barriers or obstacles, including health, training, licensing and education;
- legal – support to apply for a green card or family reunion; and
- emergency assistance – short-term support to meet essential living expenses.

The US resettlement agencies report the program is invaluable in helping people adjust to life in the US and providing them with additional assistance to thrive.

The department intends to continue funding support for transitory persons settled in the US, and also implement a similar program of support for transitory persons resettled under the New Zealand resettlement arrangement.

Recognising that individuals have different needs and positive resettlement outcomes may look different for each individual, supplementary settlement support is tailored to individual needs, and comprises:

- support to connect and remain engaged in third country resettlement options, including settlement ready support;
- departure support; and
- enhanced case management and upward mobility support, including linking to health and mental health services, education opportunities, vocational training, and migration services (e.g. family reunification).

Funding arrangements for the delivery of supplementary settlement support are procurements and have been, and will continue to be, conducted in accordance with applicable legislative requirements under the *Commonwealth Procurement Rules* and the Accountable Authority Instructions of the department, including any AusTender reporting requirements.

Funding arrangements are executed by a delegate of the Secretary of the department. The delegate would be an SES Band 2, in compliance with existing financial delegation, including the *Public Governance, Performance and Accountability Act 2013*.

Funding decisions made in connection with the procurement are not considered appropriate for merits review as they relate to policy decisions of a high political content affecting Australia's relations with other countries. Given the high political consequence of this funding decision, as well as the impact this funding decision will have on Australia's relationship with other countries, including but not limited to the Governments of the US and New Zealand, it is appropriate that the decision is not subject to merits review. The Administrative Review Council has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.22 to 4.30 of the guide, *What decisions should be subject to merit review?*).

Extensive consultation has occurred with the US and New Zealand Governments and refugee sector representatives regarding supplementary settlement support to transitory persons resettling in their respective countries under separate bilateral resettlement arrangements. Individuals affected by the program have not been directly consulted.

Funding for this item forms part of the overall administered funding for the UMA Offshore Management program of \$592.1 million in 2022-23. Forward funding will come from Program 2.4: UMA Offshore Management, which is part of Outcome 2. Details are set out in the *Budget October 2022-23, Portfolio Budget Statements 2022-23, Budget Related Paper No. 1.10, Home Affairs Portfolio* at page 39.

Program 2.4 provides for all regional processing costs, including ongoing regional processing operations in Nauru and third country resettlement, of which the supplementary settlement support is a component.

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

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

Aliens power

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

Supplementary settlement support will help transitory persons, who are aliens, to resettle in a third country.

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 with respect to matters or things outside the geographical limits of Australia and matters concerning Australia’s relations.

Supplementary settlement support will be delivered to transitory persons (non-citizens) resettled in third countries under bilateral resettlement arrangements. The funding will help bolster third country resettlement engagement and outcomes and assist transitory persons achieve their settlement goals more quickly.

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. 4) Regulations 2023

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 (Home Affairs Measures No. 4) Regulations 2023* amend Schedule 1AB to the FF(SP) Regulations to establish legislative authority for government spending on the Third country settlement support program (the program), which aims to support the settlement of non-citizens in a foreign country, where settlement occurs pursuant to an arrangement between Australia and a foreign country. The program will be administered by the Department of Home Affairs (the department).

In line with the Government policy that transitory persons do not have a settlement pathway in Australia, the department is working to resolve the current regional processing (transitory persons) caseload in Nauru and temporarily in Australia through third country migration options. Third country resettlement under current resettlement arrangements with the United States and New Zealand is the primary driver of population outflow to meet the Government's objective.

However, available resettlement places have not yet been fully realised. To bolster engagement in available third country migration options, transitory persons will have access to supplementary settlement support. This supplementary support aims to promote meaningful engagement with third country migration options, help transitory persons prepare for resettlement and assist individuals to accelerate their settlement outcomes in their resettlement country.

Recognising that individuals have different needs and positive resettlement outcomes may look different for each individual, supplementary settlement support is tailored to individual needs, and comprises:

- support to connect and remain engaged in third country resettlement options, including settlement ready support;
- departure support; and
- enhanced case management and upward mobility support, including linking to health and mental health services, education opportunities, vocational training, and migration services (e.g. family reunification).

Human rights implications

This disallowable legislative instrument does not engage any of the applicable human rights or freedoms.

This disallowable legislative instrument does not engage the applicable human rights and freedoms in relation to transitory persons in a regional processing country or persons resettling in a third country under bilateral resettlement arrangements, as they are outside Australia's territory. Australia has accepted that there may be exceptional circumstances in which the rights and freedoms set out under the *International Covenant on Civil and Political Rights* and *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* may apply to persons beyond the territory of a State Party, and the extent of the obligations that may be engaged where it is operating extra-territorially will be informed by the degree of control exercised by the State. Australia does not exercise the degree of control necessary in a regional processing country to enliven Australia's international obligations.

Conclusion

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

**Senator the Hon Katy Gallagher
Minister for Finance**