

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. 2) Regulations 2024*

The *Financial Framework (Supplementary Powers) Act 1997* (the FFSP 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 FFSP 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 FFSP 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 FFSP Act confers powers of delegation on Ministers and the accountable authorities of non-corporate Commonwealth entities, including subsection 32B(1) of the FFSP Act. Schedule 1AA and Schedule 1AB to the Principal Regulations specify the arrangements, grants and programs.

Section 65 of the FFSP 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. 2) Regulations 2024* (the Regulations) amend Schedule 1AB to the Principal Regulations in relation to activities administered by the Department of Home Affairs.

The Regulations repeal table item 540 in Part 4 of Schedule 1AB relating to the Papua New Guinea Independent Management Arrangement. Table item 540 is appropriate for repeal as legislative authority for spending activities under the arrangement will be supported by a new table item 666.

The Regulations also insert two new table items to Schedule 1AB to establish legislative authority for government spending for the following programs:

- Assistance to Papua New Guinea (PNG) regarding the former Regional Resettlement Arrangement (RRA) caseload for the provision of financial support to, or for the benefit of, the PNG Government to resolve the former RRA caseload under its independent management, including funding for services already rendered by PNG to the caseload and costs associated with third country medical; and
- Domestic and Family Violence Support, which aims to provide support and assistance in relation to visa and immigration matters to temporary visa holders experiencing domestic and family violence in Australia.

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 taken place with the Department of Home Affairs.

A regulatory impact analysis 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. 2) Regulations 2024*

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Home Affairs Measures No. 2) Regulations 2024*.

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

The Regulations amend Schedule 1AB to the Principal Regulations in relation to activities administered by the Department of Home Affairs (the department).

Item 1 –Part 4 of Schedule 1AB (table item 540)

Item 1 repeals table item 540 in Part 4 of Schedule 1AB.

Table item 540 relates to the Papua New Guinea Independent Management Arrangement. Table item 540 is appropriate for repeal as legislative authority for spending activities under the arrangement will be supported by a new table item 666, below.

This is a minor technical amendment which does not affect existing spending.

Item 2 – In the appropriate position in Part 4 of Schedule 1AB (table)

Item 2 adds two new table items to Part 4 of Schedule 1AB to establish legislative authority for government spending on activities to be administered by the department.

Table item 666 – Assistance to Papua New Guinea regarding former Regional Resettlement Arrangement caseload

New **table item 666** establishes legislative authority for government spending on capacity building support and funding to Papua New Guinea (PNG) to independently manage and resolve the former Regional Resettlement Arrangement (RRA) caseload through migration outcomes.

Australia and PNG ended their regional processing association on 31 December 2021. Effective 1 January 2022, the PNG Government assumed full and independent responsibility for the management of the residual caseload in PNG, delivered through the PNG Immigration and Citizenship Services Authority.

On 16 December 2021, Australian and PNG officials entered into the *Funding Arrangement Supporting Papua New Guinea's Independent Management of the Residual Regional Processing Caseload* (the Independent Management Arrangement) to provide funding to, or for the benefit of, the PNG Government to support its full and independent management of the residual caseload in PNG.

The Independent Management Arrangement details PNG's intention to permit individuals in the residual caseload to settle permanently in PNG, providing a pathway to citizenship and deploying integration principles aiding settlement, including assistance accessing secure and sustainable accommodation, welfare and health services, and employment, education and training.

The Independent Funding Arrangement stipulates the ongoing and consistent application by PNG of its international law obligations with respect to the residual RRA caseload. Through the Independent Funding Arrangement, PNG reaffirms with Australia that it will not:

- a) *expel or return any person from the Residual Caseload to another country where his or her life or freedom would be threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion; or*
- b) *send any person from the Residual Caseload to another country where there is a real risk that the person will be subjected to torture, cruel, inhuman or degrading treatment or punishment, arbitrary deprivation of life or the imposition of the death penalty.*

The residual caseload comprises persons transferred to PNG prior to 1 January 2022 as unauthorised maritime arrivals in connection with PNG's previous designation as a regional processing country and who remain in PNG after 31 December 2021 on a permanent or temporary basis, and their family members.

Further capability support and funding will be provided to PNG to assist its continued independent management and resolution of the residual caseload through migration outcomes. PNG is establishing a sustainable settlement framework to support the residual caseload integrate into the PNG community, either permanently or temporarily pending other durable migration outcomes.

A new table item 666 will provide legislative authority for all elements of further support to PNG including:

- capacity building and funding support to PNG to resolve the former RRA caseload under its independent management;
- funding for services already rendered by PNG to the caseload; and
- funding for third country medical transfers.

Funding amount and arrangements, merits review and consultation

Funding of the Independent Management Arrangement forms part of the overall administered funding for Program 2.4: UMA Offshore Management of \$477.7 million in 2023-24, which is part of Outcome 2. Details are set out in the *Portfolio Additional Estimates Statements 2023-24, Home Affairs Portfolio* at page 39. Program 2.4 provides for the implementation of regional processing, and resettlement arrangements between Australia and partner countries, including the delivery of capacity and capability development to support humanitarian and settlement outcomes.

Funding support committed under the Independent Management Arrangement is confidentially negotiated and agreed with the government of PNG. Disclosure of the amount would breach the confidential nature of the arrangement and could compromise PNG's ability to manage the residual caseload independently, including the potential to cause significant damage to the Australia/Papua New Guinea bilateral relationship. The government will not publicly release financial information to ensure confidentiality is maintained.

Further support to PNG will be provided under a variation to the Independent Management Arrangement as a procurement, consistent with earlier arrangements and in accordance with applicable legislative requirements, including the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), the *Commonwealth Procurement Rules* (CPRs) and the Accountable Authority Instructions of the department.

The variation to the Independent Management Arrangement will be executed by a Senior Executive Service (SES) officer at Band 2 in the Character, Cancellation and Case Resolution Division with lead responsibility of the program and in compliance with existing financial delegations. Details of the Independent Management Arrangement are exempt from publication on AusTender.

Funding decisions made in connection with the procurement are not considered appropriate for independent merits review as they relate to policy decisions of a high political content affecting Australia's relations with other countries and form part of Australia's border protection response. 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 PNG Government, it is appropriate that the decision is not subject to merits review. The Administrative Review Council (ARC) 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?* (ARC guide)).

Extensive consultation occurred between PNG and Australian Government officials on the establishment of the Independent Management Arrangement. Variation to the arrangement will be similarly consulted ahead of execution.

Statement of relevant constitutional considerations

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

External affairs power

Section 51(xxix) of the Constitution empowers the Parliament to make laws with respect to ‘external affairs’. This includes the power to make laws with respect to matters or things outside the geographical limits of Australia, as well as matters concerning Australia’s relations with other nations.

The program provides funding to, or for the benefit of, PNG to assist its independent management and resolution of the residual caseload.

Aliens power

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

The capability support and funding will assist PNG to support persons who were transferred to PNG in connection with its role as a regional processing country prior to 31 December 2021, as well as their family members, achieve a durable migration outcome.

Pacific Islands power

Section 51(xxx) of the Constitution empowers the Parliament to make laws with respect to ‘the relations of the Commonwealth with the islands of the Pacific’.

The funding is intended to further Australia’s ties in the Pacific region.

Table item 667 – Specialised Domestic and Family Violence Visa Support Service

New **table item 667** establishes legislative authority for government spending on the Specialised Domestic and Family Violence Visa Support Service, which aims to provide support and assistance in relation to visa and immigration matters to temporary visa holders experiencing domestic and family violence (DFV) in Australia.

The Domestic and Family Violence Support (DFVS) section within the department provides support to temporary visa holders experiencing DFV to resolve visa related issues, and is a centralised point of contact for DFV support services to liaise and raise issues with the department.

Working with other areas of the department, DFVS staff are able to case manage and resolve complex cases, such as where a victim-survivor’s visa may be at risk of cancellation as a result of the cancellation of the DFV perpetrator’s visa.

The primary focus of the DFVS team is to support clients experiencing DFV to resolve their visa status within the migration law framework so that they do not feel compelled to remain in an abusive relationship due to concerns regarding their migration status. DFVS staff provide complex case management support and liaise across many areas of the department, including visa program management and delivery, to escalate case processing and to advocate regarding the client's particular vulnerabilities. They can provide tailored information on visa pathways that may be available to clients and, where needed, connect them to specialist support and legal services, particularly where migration advice is needed. DFVS also conducts engagement and outreach activities with community organisations, migrant and legal centres, DFV support services and advocacy groups to ensure wider awareness of the service, and gather feedback on visa-related issues impacting victim-survivors of DFV.

DFVS services are provided by public servants, employed by the department, who respond to referrals by providing information about possible options under the migration law framework to visa holders and their representatives, but do not give migration advice. DFVS receives referrals from support services working with victim-survivors, including DFV support organisations and legal assistance providers, as well as from other areas of the department and directly from victim-survivors. While the service supports temporary visa holders, officers will provide any victim-survivor who contacts DFVS, including those whose visa may have ceased, with information relevant to their circumstances, including contact details for a more appropriate service. DFVS may assist victim-survivors of any form of DFV, and generally does not conduct an eligibility assessment of whether DFV occurred before providing information.

The service commenced a pilot in July 2021, as part of a package of funding for women's safety, in recognition of the specific challenges faced by temporary visa holders who experience DFV, who may feel compelled to stay in a violent relationship out of fear for their visa status. DFVS has received and handled over 1,700 referrals since its establishment. The number of referrals received by the service has almost tripled since 2021-22 and is anticipated to continue growing. The increase in referrals reflects the need for a visa support service for temporary visa holders who experience DFV, as well as growing trust in the service from stakeholders. DFVS does not provide financial grants or other direct support either to visa holders, their representatives, or support organisations.

Further information on DFVS is available on the department's website (<https://immi.homeaffairs.gov.au/visas/domestic-family-violence-and-your-visa>).

The ongoing work of DFVS is in line with the government's commitments in the *National Plan to End Violence Against Women and Children 2022-2032*, which recognises the particular vulnerabilities faced by temporary visa holders experiencing DFV.

Funding amount and arrangements, merits review and consultation

Funding of \$6.1 million for the program was included in the 2024-25 Budget under the measure 'The Leaving Violence Program – financial support for victim-survivors of intimate partner violence' for a period of four years commencing in 2024-25. Details are set out in *Budget 2024-25, Budget Measures, Budget Paper No. 2* at page 176.

Funding for the item will come from Program 2.2: Visas, which is part of Outcome 2. Details are set out in the *Portfolio Budget Statements 2024-25, Budget Related Paper No. 1.10, Home Affairs Portfolio* at page 41.

Expenditure is solely on the employment of public servants in the department. The required staffing footprint is based on the current and anticipated number of referrals to the DFVS service. A delegate of the Secretary of the department will be responsible for approving spending for the service. Final spending decisions will be made by the relevant Assistant Secretary within the department, in line with the department's Accountable Authority Instructions. In addition, the Assistant Secretary is authorised to approve commitment of relevant money for goods and/or services under the PGPA Act and FFSP Act.

The department will train and manage in-house Visa Support Officers and manage liaison with other areas of the department.

DFVS is a support service provided by the department. It does not involve the making of administrative decisions. The only decisions made in connection with the program would be recruitment and promotion decisions, following standard Australian Public Service (APS) procedures. The Merit Protection Commissioner provides independent merits review of employment decisions for APS employees.

Stakeholders within the DFV victim support sector provided positive feedback on the pilot of the DFVS service. Stakeholders observed that the department's handling of DFV-related visa issues had significantly improved since the pilot commenced in July 2021.

Statement of relevant constitutional considerations

Noting that it is not a comprehensive statement of relevant constitutional considerations, the objective of the item references the aliens power (section 51(xix)) of the Constitution:

Aliens power

Section 51(xix) of the Constitution empowers the Parliament to make laws with respect to 'naturalization and aliens'. The DFVS helps temporary visa holders experiencing DFV to regularise their visa status under the migration law framework.

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. 2) Regulations 2024

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 FFSP Act) authorises the Commonwealth to make, vary and administer arrangements and grants specified in the *Financial Framework (Supplementary Powers) Regulations 1997* (the Principal 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 Principal Regulations specify the arrangements, grants and programs. The powers in the FFSP 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. 2) Regulations 2024* amend Schedule 1AB to the Principal Regulations in relation to activities administered by the Department of Home Affairs (the department).

This disallowable legislative instrument makes the following amendments to Part 4 of Schedule 1AB:

- repeals table item 540 ‘Papua New Guinea Independent Management Arrangement’;
- adds table item 666 ‘Assistance to Papua New Guinea regarding former Regional Resettlement Arrangement caseload’; and
- adds table item 667 ‘Specialised domestic and family violence visa support service’.

Repealed table item 540 – Papua New Guinea Independent Management Arrangement

The repealed table item 540 relates to the Papua New Guinea Independent Management Arrangement. Table item 540 is appropriate for repeal as legislative authority for spending activities under the arrangement will be supported by a new table item 666.

Human rights implications

The repeal of table item 540 does not engage any of the applicable human rights or freedoms.

The repeal of table item 540 is compatible with human rights as it does not raise any human rights issues.

Table item 666 – Assistance to Papua New Guinea regarding former Regional Resettlement Arrangement caseload

Table item 666 establishes legislative authority for government spending on a program which provides assistance to Papua New Guinea (PNG) regarding former Regional Resettlement Arrangement (RRA) caseload.

Australia ended regional processing arrangements in PNG on 31 December 2021. Effective 1 January 2022, full and independent management of the residual RRA caseload transitioned to the PNG Government. To support PNG's independent management of the residual RRA caseload, Australia and PNG entered into the *Funding Arrangement Supporting Papua New Guinea's Independent Management of the Residual Regional Processing Caseload*, which details PNG's intention to permit individuals in the residual caseload to settle permanently in PNG, providing a pathway to citizenship and deploying integration principles aiding settlement, including assistance accessing secure and sustainable accommodation, welfare and health services, and employment, education and training.

Further capacity building and funding support to PNG is agreed by the Australian Government to assist PNG to finally resolve the residual RRA caseload, including funding for services already rendered to the caseload and costs associated with third country medical transfers. Table item 666 will replace the repealed table item 540 to provide further capacity building and funding support to PNG.

Human Rights Implications

Table item 666 does not engage any of the applicable human rights or freedoms as Australia's human rights obligations are enlivened where Australia exercises jurisdiction. The PNG Government has always been responsible for the management of individuals under the RRA in PNG, including refugee status determination and non-refoulement obligations, as individuals involved were not in the territory of Australia or under Australia's effective control. Consequently, Australia's international human rights obligations are not engaged by this measure.

Table item 666 is compatible with human rights as it does not raise any human rights issues for Australia.

Table item 667 – Specialised domestic and family violence visa support service

Table item 667 establishes legislative authority for government spending on specialised domestic and family violence visa support service.

The Domestic and Family Violence Support (DFVS) section within the department provides support to temporary visa holders experiencing domestic and family violence (DFV) to resolve visa related issues, and is a centralised point of contact for DFV support services to liaise and raise issues with the department.

DFVS staff provide complex case management support and liaise across many areas of the department, including visa program management and delivery, to escalate case processing and to advocate regarding the client's particular vulnerabilities. They can provide tailored information on visa pathways that may be available to clients and, where needed, connect

them to specialist support and legal services, particularly where migration advice is needed. DFVS also conducts engagement and outreach activities with community organisations, migrant and legal centres, DFV support services and advocacy groups to ensure wider awareness of the service, and gather feedback on visa-related issues impacting victim-survivors of DFV.

Funding of \$6.1 million over four years from 2024-25 is provided to support the ongoing work of DFVS. The support service is in line with the Government's commitments in the *National Plan to End Violence Against Women and Children 2022-2032*, which recognised the particular vulnerabilities faced by temporary visa holders experiencing DFV.

Human Rights Implications

Table item 667 engages the following rights:

- the rights of women to non-discrimination in all matters relating to marriage and family relations – Article 16 of the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), read with Article 2; and
- the rights of a child to protection of their physical and mental wellbeing – Articles 3 and 19 of the *Convention on the Rights of the Child* (CRC), read with Article 4.

Rights of women to non-discrimination in all matters relating to marriage and family relations

The United Nations Committee on the CEDAW has stated that gender-based violence, including domestic violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men. The CEDAW provides that States Parties must ensure the effective protection of women against acts of discrimination.

Article 2 of the CEDAW provides that States Parties condemn discrimination against women in all its forms, and agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women.

Article 16 requires States Parties to 'take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations'.

Table item 667 promotes the obligation to pursue non-discrimination policies by combating domestic violence by providing further funding for the DFVS within the department. DFVS provides support to temporary visa holders with DFV related visa issues, and is a centralised point of contact for DFV support services to liaise and raise issues with the department. DFVS manage and resolve complex cases, such as where a victim-survivor's visa may be at risk of cancellation as a result of the cancellation of the DFV perpetrator's visa. While DFV services are not limited by gender, the large majority of clients referred to the DFVS service during the pilot have been women, and this is expected to continue. Support provided by the service can help mitigate migration-related domestic abuse, by assisting victim-survivors to regularise their visa status independent of the perpetrator, and may enable women to safely leave a violent relationship.

Rights of a child to protection of their physical and mental wellbeing

Article 4 of the CRC requires States Parties to ‘undertake all appropriate legislative, administrative, and other measures for the implementation of the rights in the CRC.’

Article 3 of the CRC requires States Parties to undertake to ensure the child such protection and care as is necessary for his or her wellbeing and, to this end, take all appropriate legislative and administrative measures.

Article 19 of the CRC imposes an obligation on States Parties to take measures to protect children from all forms of physical or mental violence, injury or abuse, and to prevent such violence occurring, including through activities for their carers.

Table item 667 promotes the obligation to take measures to implement the rights of children to be protected from violence and abuse, by ensuring that a visa holder who experiences DFV can access a departmental support service, through the continued funding of DFVS. This may assist survivor-victims of DFV to resolve any visa-related issues and enable them to safely leave a violent relationship, including where children are exposed to DFV. DFV disproportionately affects women, including women who care for minor children, and violence has direct and indirect impacts on the wellbeing and rights of children.

Table item 667 is compatible with human rights because it promotes the obligation to protect human rights.

Conclusion

This disallowable legislative instrument is compatible with human rights because it promotes the obligation to protect human rights.

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