

## **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 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 (Home Affairs Measures No. 2) Regulations 2022* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for the Government to provide a grant to Fortem Australia Limited (Fortem) to deliver a national program to provide psychological support, wellbeing activities and training in mental health literacy for first responders involved in natural disaster settings and their families. The National Emergency Management Agency (within the Department of Home Affairs portfolio) has policy responsibility for the grant.

Fortem is a registered charity organisation established in 2019 to fill a need for first responders and their families by providing free mental health and wellbeing support to current-serving professional and volunteer first responders and their families.

Natural disasters like the Black Summer bushfires in 2019-20, floods, storms and cyclones have all had a cumulative effect on first responder mental health. Research, conducted by Beyond Blue shows that first responders are more vulnerable to developing Post Traumatic Stress Disorder (PTSD) after a natural disaster than the general population.

The Government will provide ad-hoc grant funding of up to \$2.5 million (with the initial grant of no more than \$2.0 million) in 2022-23 to enable Fortem to expand its program providing regional outreach, along with telehealth and virtual access. This will ensure first responders within Australia are supported and are able to adequately plan for, respond to, and recover from natural disaster settings in the future.

The grant's purpose complements the trauma-informed care for the frontlines initiative under the Australian Government's National Mental Health and Suicide Prevention Plan and the Improving Mental Health Outcomes and Reducing Suicide across the Emergency Services Sector grant in 2020.

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 National Emergency Management Agency and 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. 2) Regulations 2022***

**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 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 3 of Schedule 1AB (table)**

This item adds a new table item to Part 3 of Schedule 1AB to establish legislative authority for government spending on an activity administered by the National Emergency Management Agency (NEMA), within the Department of Home Affairs portfolio.

New **table item 57** establishes legislative authority for the Government to provide a grant to Fortem Australia Limited (Fortem) to deliver a national program providing psychological support, wellbeing activities and training in mental health literacy for first responders involved in natural disaster settings and their families.

Fortem is a registered charity organisation established in 2019 to provide specialised wellbeing and mental fitness support to first responders and their families, free of charge. First responders include both career and volunteer workers in Police, Fire and Rescue, Ambulance, State Emergency Services, volunteer Rural Fire Services, volunteer Rescue Associations, 24-hour Emergency Call and Dispatch Services, Marine Search and Rescue and Forestry Fire Services. Fortem operates with a family-first approach to create healthier, more resilient families.

Natural disasters like the Black Summer bushfires in 2019-20, floods, storms and cyclones have all had a cumulative effect on first responder mental health. Research shows that first responders are more vulnerable to developing Post Traumatic Stress Disorder (PTSD) after a natural disaster than the general population.

Fortem previously received grant funding of \$5.5 million for the provision of mental health services to law enforcement and national security personnel and emergency services workers who responded to the Black Summer Bushfires and their families/kinship groups via separate grants.

Having demonstrated its ability to effectively deliver these programs, Fortem will receive grant funding of up to \$2.5 million (with the initial grant of no more than \$2.0 million) to expand its current program, to ensure first responders and their families within Australia are supported and are able to adequately plan for, respond to, and recover from natural disaster settings in the future. It is expected that the grant funding would enable Fortem to expand its operation to deliver services across 12 locations in total, along with telehealth and virtual access.

More importantly, the funding would support Fortem to engage relevant qualified individuals employed by Fortem to provide the following services:

- psychological support, which includes counselling services delivered face-to-face or via telehealth;
- wellbeing activities, which include activities such as yoga, family days and social connectivity classes; and
- mental health literacy training, which includes resource library, training programs through a partnership with LivingWorks – a suicide intervention training company that trains community helpers of all kinds to work in this intervention context.

The grant's purpose complements the trauma-informed care for the frontlines initiative under the Australian Government's National Mental Health and Suicide Prevention Plan and the Improving Mental Health Outcomes and Reducing Suicide across the Emergency Services Sector grant in 2020.

NEMA will deliver the grant to Fortem through a one-off ad hoc grant process in accordance with the Commonwealth resource management framework, including the *Public Governance, Performance and Accountability Act 2013* and the *Commonwealth Grants Rules and Guidelines 2017* (CGRGs).

The grant will be administered by the Business Grants Hub, part of the Department of Industry, Science and Resources, and grant guidelines will be developed in collaboration with the Business Grants Hub. The grant guidelines will outline the objectives and outcomes of the government funding and the deliverables, including eligibility and selections processes. Information on the grant will be made publicly available on GrantConnect ([www.grants.gov.au](http://www.grants.gov.au)).

The Minister for Emergency Management will make the final decisions in all matters, including the approval of the grant, the funding amount to be awarded and the terms and conditions of the grant.

Funding decisions made under the grant are not suitable for independent merits review as they relate to an allocation of finite resources and the provision of one-off payment to certain service providers, over other service providers. The grant is for a specific purpose and Fortem has been directly selected as it has demonstrated its ability to effectively deliver these services, evidencing successful outcomes through their required reporting. 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 4.16 of the guide, *What decisions should be subject to merit review?*).

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

In administering this grants program, administrative accountability 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.

NEMA has undertaken consultation with relevant Government entities, including the Department of Home Affairs and the Department of Health who administered similar grants programs supporting mental health and illness. NEMA has also considered Beyond Blue's report *Answering the Call*, which shows first responders are more vulnerable to developing PTSD. Employees with more than 10 years' experience were six times more likely to experience symptoms of PTSD than the general population.

NEMA have consulted with Fortem on an ongoing basis to ensure services continue to be delivered effectively for their previous program and in-line with grant requirements.

The current funding of \$2.0 million in 2022-23 will be included in the 2022-23 Budget and Portfolio Budget Statement for the Home Affairs portfolio (National Emergency Management Agency). Funding for this item will come from Program 1.6: Emergency Management, which is part of Outcome 1.

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

- the external affairs power (section 51(xxix));
- the communications power (section 51(v));
- the social welfare power (section 51(xxiiiA)); and
- the express incidental power and the executive power (sections 51(xxxix) and 61), including the nationhood aspect.

#### 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 international obligations under treaties to which it is a party.

Australia is a party to the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). Under the ICESCR, Australia is under an obligation under article 2 to 'take steps... to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized', including 'the right recognised in article 12 of 'everyone to the enjoyment of the highest attainable standard of physical and mental health'.

The Government is providing funding for support services that are specifically directed towards improving the health of people with PTSD and other mental health issues and ensuring that they receive appropriate and adequate health services treatment. The funding will help first responders and their families to build and/or improve their resilience by ensuring that there are accessible and appropriate medical services and support services, which are focused on prevention and/or treatment of mental health issues.

#### Communications power

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

The Government is providing funding for support services that are specifically directed towards improving the mental health of first responders and their families, and ensuring that they receive appropriate and adequate health services. Some of these services will be provided via telehealth, telephone and websites to ensure access for all eligible participants.

#### Social welfare power

The social welfare power in section 51(xxiiiA) of the Constitution empowers the Parliament to make laws with respect to the provision of certain social welfare benefits, in particular with respect to medical services and sickness benefits.

The Government is providing funding for psychological support, mental health literacy and wellbeing programs for first responders and their families. The funding is aimed at alleviating the stress and likelihood of illnesses in the emergency services sector and their families, and manage their level of mental health over time.

#### Express incidental power and the 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. 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.

With respect to the support services for mental health issues, given the increasing frequency and intensity of natural disasters of national scale and significance, a national response is required to support the mental health needs of first responders and their families. This will ensure first responders within Australia are supported and therefore able to adequately plan for, respond to, and recover from natural disaster settings in the future.

## **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 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*.

The *Financial Framework (Supplementary Powers) Amendment (Home Affairs Measures No. 2) Regulations 2022* amend Schedule 1AB to the FF(SP) Regulations to establish legislative authority for the Government to provide a grant to Fortem Australia Limited (Fortem) to deliver a national program to provide psychological support, wellbeing activities and training in mental health literacy for first responders involved in natural disaster settings and their families. The National Emergency Management Agency (within the Department of Home Affairs portfolio) has policy responsibility for the grant.

Fortem is a registered charity organisation established in 2019 to provide specialised wellbeing and mental fitness support to first responders and their families, free of charge. First responders include both career and volunteer workers in Police, Fire and Rescue, Ambulance, State Emergency Services, volunteer Rural Fire Services, volunteer Rescue Associations, 24-hour Emergency Call and Dispatch Services, Marine Search and Rescue and Forestry Fire Services.

Recent natural disasters like the Black Summer bushfires in 2019-20, floods, storms and cyclones have all had a cumulative effect on first responder mental health. Research conducted by Beyond Blue shows that first responders are more vulnerable to developing PTSD after a natural disaster than the general population.

Grant funding of \$2.0 million in 2022-23 will be provided to support Fortem deliver on the following services:

- psychological support, which includes counselling services delivered face-to-face or via telehealth;
- wellbeing activities, which includes activities such as yoga, family days and social connectivity classes; and

- mental health literacy training, which includes resource library, training programs through a partnership with LivingWorks – a suicide intervention training company that trains community helpers of all kinds to work in this intervention context.

The grant's purpose complements the trauma-informed care for the frontlines initiative under the Australian Government's National Mental Health and Suicide Prevention Plan and the Improving Mental Health Outcomes and Reducing Suicide across the Emergency Services Sector grant in 2020.

### **Human rights implications**

This disallowable legislative instrument engages the following right:

- the right of everyone to the enjoyment of the highest attainable standard of physical and mental health – Article 12 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), read with Article 2.

#### *Right of everyone to the enjoyment of the highest attainable standard of physical and mental health*

Article 2(1) of the ICESCR provides that each State Party to the ICESCR undertakes to take steps to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in that Covenant by all appropriate means, including particularly the adoption of legislative measures.

Articles 12(1) and (2) of the ICESCR provide that:

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
  - (a) the provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
  - (b) the improvement of all aspects of environmental and industrial hygiene;
  - (c) the prevention, treatment and control of epidemic, endemic, occupational and other diseases;
  - (d) the creation of conditions which would assure to all medical service and medical attention in the event of sickness.

This disallowable legislative instrument promotes the right to the highest attainable standard of mental health for first responders in natural disaster settings. Beyond Blue published research in 2018 (Answering the call national survey, National Mental Health and Wellbeing Study of Police and Emergency Services – Final report) which shows that first responders are more vulnerable to developing PTSD after a natural disaster than the general population. The link between the complexity of Australia's mental health services system and the stigma attached to admitting to and reporting mental health conditions has led to high rates of mental health issues and suicide within the emergency services workforce.

Fortem provides mental health and wellbeing support to current-serving professional and volunteer first responders and their families, free of charge, including wellbeing activities, clinical support and mental health literacy training. This funding will enable Fortem Australia



to expand its program to service 12 locations, providing regional outreach to nearby areas, along with telehealth and virtual access.

Investing in mental health services, by enabling Fortem to expand its program, will ensure first responders within Australia are supported and are able to adequately plan for, respond to, and recover from natural disaster settings in the future.

This disallowable legislative instrument supports the right to health to the extent that it is directed towards improving the health of first responders by ensuring that they receive appropriate and adequate health services treatment by, for example, connecting those in need of clinical services.

This disallowable legislative instrument seeks to fund services that improve mental health literacy amongst first responders and to motivate first responders to connect, talk about and seek help for mental health distress and suicidality.

### **Conclusion**

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

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