

## **EXPLANATORY STATEMENT**

### **Issued by the Authority of the Minister for Finance**

#### *Financial Framework (Supplementary Powers) Act 1997*

#### *Financial Framework (Supplementary Powers) Amendment (Social Services Measures No. 2) Regulations 2018*

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 FF(SP) Act applies to 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 that Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to that 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 purpose of the *Financial Framework (Supplementary Powers) Amendment (Social Services Measures No. 2) Regulations 2018* (the Regulations) is to amend Schedule 1AB to the Principal Regulations to establish legislative authority for the Government to fund non-government organisations and corporate entities to trial innovative technologies which aim to reduce violence against women and increase perpetrator accountability (technology trials).

Technology trials were established under the \$100 million Women's Safety Package, which was announced by the Prime Minister, the Hon Malcolm Turnbull MP, and the then Minister for Women, Senator the Hon Michaelia Cash, in September 2015 and included in the 2015-16 Mid-Year Economic and Fiscal Outlook. Funding of \$12 million over five years from 2015-16 was provided as part of the Package for the Government to undertake technology trials in collaboration with states and territories, with a requirement for states and territories to match Commonwealth funding.

From 1 July 2018, non-government organisations and corporate entities, including in partnership with states and territories, will be able to seek government funding to undertake technology trials through a procurement or grant process. Funding of \$2.1 million over two years from 2018-19 will be available for new technology trials. While not a requirement, the funding recipients will be encouraged to match government funding. The technology trials with states and territories, which have been approved to date, will continue.

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 Department of Social Services.

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 (Social Services Measures No. 2) Regulations 2018***

**Section 1 – Name**

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Social Services Measures No. 2) Regulations 2018*.

**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**

**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 expansion of trials of innovative technologies which aim to reduce violence against women and increase perpetrator accountability (technology trials). The program will be administered by the Department of Social Services (DSS).

New **table item 272** establishes legislative authority for the Government to fund non-government organisations (NGOs) and corporate entities, including in partnership with the states and territories, to trial innovative technologies which aim to reduce violence against women and increase perpetrator accountability (technology trials).

In September 2015, the Prime Minister, the Hon Malcolm Turnbull MP, and the then Minister for Women, Senator the Hon Michaelia Cash, announced the \$100 million Women's Safety Package (the Package) which takes action against family violence. The Package was included in the 2015-16 Mid-Year Economic and Fiscal Outlook, under the measure 'Women's Safety Package'. Details are in *Appendix A: Policy decisions taken since the 2015-16 Budget of the Mid-Year Economic and Fiscal Outlook 2015-16* at page 218.

As part of the Package, the Government has provided grants to the states and territories to jointly fund trials of innovative technologies, or new uses of existing technologies, to protect women at high risk of violence from current or former partners and technologies which hold perpetrators to account. The aim of the initiative is to enable governments to more quickly identify and implement technological initiatives that improve women's safety.

Under the current program, technology trials are developed in collaboration with the states and territories and are supported by a Project Agreement signed by all parties (with Project Schedules for each state and territory), consistent with the *Intergovernmental Agreement on Federal Financial Relations (2011)*. Funding is matched by the state and territory governments as agreed between both parties.

From 1 July 2018, the program will be expanded to allow the Government to directly fund NGOs, including the corporate sector, to implement trials of innovative technologies designed to keep women safe from violence or improve perpetrator accountability. Although organisations funded through the measure will be encouraged to match funding provided by the Government, it will not be required.

While the program is to be expanded to enable direct funding to NGOs, state and territory governments will continue to be able to seek funding opportunities where they partner with NGOs.

Technologies funded by these trials may include: the development of applications for mobile devices, websites, toolkits and other new or innovative digital and technological solutions identified by NGOs operating in the family and domestic violence sector or by the Information and Communications Technology (ICT) sector.

To date, 12 trials have been approved across South Australia, Tasmania, Queensland, Victoria, New South Wales and the Northern Territory. Funding will continue to be paid to the states and territories that have signed Project Schedules with the Commonwealth under the existing arrangements. Under the expanded program, from 1 July 2018, state and territory governments will have opportunities to seek funding through the trials in partnership with corporate and non-government entities.

Funding of \$2.1 million over two years from 2018-19 will be available for new technology trials.

Funding for this measure will come from Program 2.1: Families and Communities, which is part of Outcome 2. Details of Program 2.1 are set out in the *Portfolio Budget Statements 2017-18, Budget Related Paper No. 1.15A, Social Services Portfolio* at page 64.

The decision-maker for funding for the technology trials is the Minister for Social Services, the Hon Dan Tehan MP, or a nominated departmental delegate. All spending decisions will be undertaken in accordance with relevant legislation and policies, including the *Public Governance, Performance and Accountability Act 2013*.

Expenditure decisions will occur following either a grants process conducted in accordance with the *Commonwealth Grants Rules and Guidelines 2017* or a procurement process conducted in accordance with the *Commonwealth Procurement Rules 2018*. Both methods will be utilised as appropriate. The entities and sub-contracted third parties, if applicable, will be funded in accordance with the terms and conditions provided in the grant agreement or contract (whichever is relevant in the specific case). Funded entities will be responsible for delivering the primary components of the measure.

Where grant selection processes are used to award funding for the technology trials, these will utilise the standard grant model of DSS, including the use of selection processes such as open, restricted competitive, direct and expression of interest selection processes. Information on grant availability and processes, including eligibility criteria and the application process, will be published on the DSS website at [www.dss.gov.au/grants](http://www.dss.gov.au/grants) and the Community Grants Hub at [www.communitygrants.gov.au](http://www.communitygrants.gov.au). The outcomes of all funding rounds are published in the Department's Grants Report on the Department's website at [www.dss.gov.au/grants/grants-funding](http://www.dss.gov.au/grants/grants-funding) no later than 14 days after grant agreements take effect.

Where procurement processes are undertaken by DSS to provide funding for the technology trials, these will be conducted in accordance with the *Commonwealth Procurement Rules 2018*. This may include use of open or limited tenders, existing standing offers or direct sourcing. Information will be made available through either the Digital Marketplace at [www.marketplace.service.gov.au](http://www.marketplace.service.gov.au) or Austender at [www.tenders.gov.au](http://www.tenders.gov.au). Information on the outcome of procurement processes will be published on those websites.

Decisions made in respect of the outcomes would not be subject to independent review, irrespective of the process used. The expenditure of funds will be based on selection processes involving a limited pool of funds for allocation. The remaking of a decision under merits review may affect funding provided to other successful applicants and cause delays in finalising funding decisions for other providers delivering time-limited projects under the measure. This would affect the timely delivery of the trials and delay the implementation of technology designed to improve the safety of women affected by domestic and family violence.

While there will be no formal merits review process for funding decisions under the Technology Trials program, decisions and processes in relation to grants and procurement will be made in accordance with probity requirements and will be subject to the Commonwealth's resource management framework, including the *Public Governance, Performance and Accountability Act 2013*, the *Commonwealth Grants Rules and Guidelines 2017* and the *Commonwealth Procurement Rules 2018*. Applicants will be notified in writing of the outcomes of their applications and unsuccessful applicants will be offered feedback on their applications. Persons affected by spending decisions would also have recourse to the Commonwealth Ombudsman, where appropriate.

Applicants may request information relating to the decisions about the grants and procurement processes through the official complaints processes of DSS at <https://www.dss.gov.au/contact/feedback-compliments-complaints-and-enquiries>. When an applicant requests information relating to the outcome of their application, DSS will assess why the decision was made and provide a formal response.

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 telecommunications power (section 51(v));
- the external affairs power (section 51(xxix));
- the grants to States power (section 96); and
- the territories power (section 122).

### *Telecommunications power*

Under section 51(v) of the Constitution, the Commonwealth has power to legislate with respect to ‘postal, telegraphic, telephonic and other like services’. This program may involve the development of measures which will operate on, or rely on, electronic communications services such as the internet, for example, mobile phone applications.

For example, projects funded under the “Trialling Innovative Technology” measure could include trials similar to the Victorian trial of an online Family Violence Intervention Order application form.

### *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 treaties to which Australia is a party. Australia has obligations relating to the protection of women under a number of international agreements, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Specifically:

- pursuant to Article 2(b) of the CEDAW, Australia agreed with the other States Parties to the convention to adopt legislative and other measures prohibiting all discrimination against women;
- Article 5(a) of the CEDAW requires Australia to take all appropriate measures to modify the social and cultural patterns of conduct of both men and women with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women; and
- Article 16 of the CEDAW requires Australia to take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations.

This program involves trialling technology directed at improving women’s safety, which may include panic buttons, GPS tracking technology for domestic violence perpetrators and specific mobile phone applications.

### *Grants to States power*

Section 96 of the Constitution empowers the Commonwealth to make grants to the States and supports laws made to that effect. This program may involve measures funded jointly by the Commonwealth and the States and the provision of grants to the States to develop and implement trials.

### *Territories power*

Section 122 of the Constitution empowers the Parliament to make laws for the government of territories. This program may involve spending for the purposes of undertaking technology trials in the Northern Territory and the Australian Capital Territory and the making of payments to the territories to develop and implement trials.

## **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 (Social Services Measures No. 2) Regulations 2018***

These Regulations are 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 FF(SP) Act applies to 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 Regulations amend Schedule 1AB to the FF(SP) Regulations to establish legislative authority for the Government to fund non-government organisations and corporate entities to trial innovative technologies which aim to reduce violence against women and increase perpetrator accountability (technology trials).

Technology trials were established under the \$100 million Women's Safety Package, which was announced by the Prime Minister, the Hon Malcolm Turnbull MP, and the then Minister for Women, Senator the Hon Michaelia Cash, in September 2015 and included in the 2015-16 Mid-Year Economic and Fiscal Outlook. Funding of \$12 million over five years from 2015-16 was provided as part of the Package to undertake technology trials in collaboration with states and territories, with a requirement for states and territories to match Commonwealth funding.

From 1 July 2018, non-government organisations and corporate entities, including in partnership with states and territories, will be able to seek government funding to undertake technology trials through a procurement or grant process. Funding of \$2.1 million over two years from 2018-19 will be available for new technology trials. While not a requirement, the funding recipients will be encouraged to match government funding. The technology trials with states and territories, which have been approved to date, will continue.

The Minister for Social Services has responsibility for this matter which will be administered by the Department of Social Services.

### **Human rights implications**

The Regulations do not engage any of the applicable rights or freedoms.

**Conclusion**

These Regulations are compatible with human rights as they do not raise any human rights issues.

**Senator the Hon Mathias Cormann  
Minister for Finance**