

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 Measures No. 2) Regulations 2019

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 the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the 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 *Financial Framework (Supplementary Powers) Amendment (Prime Minister and Cabinet Measures No. 2) Regulations 2019* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on an initiative aimed to prevent financial abuse and improve women's economic independence as part of the Fourth Action Plan of the *National Plan to Reduce Violence against Women and their Children 2010-2022* (Fourth Action Plan).

The Fourth Action Plan provides the framework for action by Commonwealth, state and territory governments to reduce violence against women and their children.

On 5 March 2019, the Government announced funding of \$328 million towards Commonwealth initiatives under the Fourth Action Plan to prevent and address violence against women and their children. This amount includes funding of \$2 million over three years for the Department of the Prime Minister and Cabinet to implement an initiative to prevent financial abuse before it starts.

Funding of \$2 million was included in the 2019-20 Budget for a period of three years commencing in 2019-20.

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 the Prime Minister and Cabinet.

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 (Prime Minister and Cabinet Measures No. 2) Regulations 2019*

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Prime Minister and Cabinet Measures No. 2) Regulations 2019*.

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)

Item 1 adds a new table item to Part 4 of Schedule 1AB to establish legislative authority for government spending.

New **table item 351** establishes legislative authority for government spending on an initiative aimed to prevent financial abuse and improve women's economic independence as part of the Fourth Action Plan of the *National Plan to Reduce Violence against Women and their Children 2010-2022* (Fourth Action Plan). The initiative will be administered by the Department of Prime Minister and Cabinet (the department).

The objective of the initiative is to prevent financial abuse before it starts. Financial abuse, also known as economic abuse, is a form of domestic and family violence. Financial abuse is characterised by economic control, economic exploitation, and employment sabotage. It can take the form of stopping access to money, forcing agreement to loans and debts, preventing a partner from working, or taking control of finances. Financial abuse often coincides with other forms of domestic violence: almost 90 per cent of women who have experienced another form of domestic and family violence have also experienced financial abuse (MacDonald, 2012). Financial abuse exacerbates the barriers to women leaving violent relationships.

The intended impacts of the initiative are to:

- prevent financial abuse before it occurs;
- increase community awareness about financial abuse;

- ensure that women at risk of experiencing financial abuse can access information and resources; and
- equip the corporate sector and frontline services to better identify and respond to financial abuse.

Consultations with key stakeholders as part of the development of the Fourth Action Plan found that there is a need for information about access to financial services so people experiencing violence know their options, and a need for financial services beyond government support which assist victims. Activities under the initiative will also complement existing Commonwealth programs, such as the *Stop It At The Start* campaign.

The initiative will be delivered through the following activities:

- Research and analysis of existing financial abuse prevention activities to identify the most effective prevention points, as well as a gap analysis of existing resources to avoid duplication.
- Collaboration with the corporate and community sectors to establish an Advisory Group of key organisations to discuss best practice for assisting victims of financial abuse, link up the corporate sector's existing activities with specialist services such as 1800RESPECT, and involve the Advisory Group in resource design.
- Design and launch of a web-training module for frontline financial services staff and a social media campaign targeting women at risk of financial abuse, to improve women's economic independence through the prevention of financial abuse.
- An independent evaluation of the outcomes of the initiative that will consider short-term measures of impact, such as downloads of the resource, and long-term impacts, such as changes in awareness and attitudes which could be measured in the next National Community Attitudes towards Violence against Women Survey (NCAS), anticipated to take place in 2021.

The initiative has a national scope. The department will work with other Commonwealth agencies, states and territories, and National Plan partners to deliver these activities. It will also work with financial services and other organisations (e.g. real estate, legal services, and debt collection) to tap into and embed their work to address financial abuse across the corporate sector.

The mechanism of the initiative will be through procuring a contractor, embedded in the department, to manage the activities under the initiative, undertake the first phase of research and analysis, and coordinate the stakeholder collaboration and Advisory Group. For the development of the social media campaign and web training module, the department will undertake a tender process to procure specialist communications and marketing services.

The target groups for this initiative are:

- Women and men – both genders can be positively impacted by learning about the importance of healthy financial relationships. Women at risk of financial abuse are a key sub-group.
- Specific groups of women will be targeted by the social media campaign and web training modules, such as women with disabilities, women from non-English speaking backgrounds, Aboriginal and Torres Strait Islander women, and LGBTI+ women.

- Financial services sector and other private sector actors – the development of knowledge and resources to empower the financial services and private sector to identify and mitigate financial abuse.
- Government and non-government organisations delivering services to victims of financial abuse.

To implement the initiative, the department will contract a project manager, to manage this initiative over three years. Commonwealth expenditure will be made via a procurement process for other activities related to market research and the development of the web modules and social media campaign.

Selection processes will be undertaken via an open tender procurement in accordance with the *Commonwealth Procurement Rules*.

The Office for Women within the department will be responsible for delivering the primary components of the activity.

Information about the activity will be available on the department website:

<https://www.pmc.gov.au>.

The Office for Women will be responsible for determining successful applicants prior to the final decisions about Commonwealth expenditure and information about those decisions will be available publicly on the AusTender website <https://www.tenders.gov.au>.

Decisions made in connection with the activity would be subject to review as per the Commonwealth Procurement Rules.

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

- the communications power (s 51(v))
- the external affairs power (s 51(xxix)), and
- the executive power (s 61).

Communications power

The communications power in s 51(v) of the Constitution supports laws relating to every aspect of the use and advantage a person may derive from a service to which s 51(v) applies (see *Jones v the Commonwealth (No 2)* (1965) 112 CLR 206). AGS consider that this extends to the development and broadcast of content over the internet. As the proposal includes community education initiatives about financial relationships and women's independence that will be delivered over the internet or other social media, the communications power would support this funding with a low degree of risk.

External affairs power

The external affairs power in s 51(xxix) of the Constitution supports legislation implementing a treaty to which Australia is a party where that legislation is reasonably capable of being considered appropriate and adapted to fulfilling the obligations and benefits of a treaty to which Australia is a party (see, eg, *Victoria v Commonwealth* (1996) 187 CLR 416, 487-88).

Australia is a party to the *Convention on the Elimination of All Forms of Discrimination against Women* [1983] ATS 9 (CEDAW).

The following articles of CEDAW are relevant to measures proposed in the preventing financial abuse proposal:

- Art 2(e) and (f), which require States parties to take appropriate measures to ‘eliminate discrimination against women by any person’ and to ‘modify ... existing ... customs and practices which constitute discrimination against women’.
- Art 5(a), which requires States parties to ‘take all appropriate measures [t]o modify the social and cultural patterns of conduct of 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’.
- Art 16, which requires States parties to ‘take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations’, in particular Art 16(h), which provides for ‘the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property’.

These articles are sufficiently specific to enliven the external affairs power (when read in conjunction with Art 1, which defines ‘discrimination against women’). These articles would support the measures described in the proposal directed at increasing and improving women’s financial autonomy and capacity to control their own finances, as those measures are intended to ultimately reduce incidences of violence against women.

In particular, measures directed at educating men and women about healthy financial relationships and improving women’s ability to be financially independent and secure, are measures directed at modifying relevant customs and practices for the purpose of Arts 2 and 5, and increasing the capacity for women to exercise spousal rights in relation to property (to the extent that this occurred in a spousal relationship) for the purpose of Art 16.

Accordingly, these articles of CEDAW would support all the measures proposed in the proposal on the basis that these measures are directed at preventing financial abuse and facilitating the economic independence of women.

It may be possible that the spending proposed in the proposal could also be supported as a measure to give effect to Australia’s obligations under the Convention on the Rights of the Child [1991] ATS 4 (CROC). However, measures could only be supported as a means of giving effect to CROC where those measures are specifically directed at preventing children—as opposed to women generally—from being victims of domestic violence. While it may be the case that many of the measures proposed could indirectly prevent children from being victims of domestic violence (for example, measures that assist mothers to be sufficiently financially independent to leave abusive relationships), AGS do not consider that the NPP is sufficiently directed towards assisting mothers (as opposed to women generally) to safely rely on the relevant articles of the CROC.

Executive power

The executive power of the Commonwealth in s 61 of the Constitution supports measures directed at informing the Commonwealth on any subject it chooses as part of the ordinary and well-recognised functions of government. The elements of the proposal that relate to identifying resources and initiatives currently available to address financial abuse of women for the purpose of informing future measures by the Commonwealth would be supported by the executive power with a low level of risk.

The executive power would also provide support for the measures directed at engaging with the corporate and private sectors to the extent that this engagement was for the purpose of informing these entities about Commonwealth policy and activities.

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 Measures No. 2) Regulations 2019.

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 FF(SP) 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 *Financial Framework (Supplementary Powers) Amendment (Prime Minister and Cabinet Measures No. 2) Regulations 2019* amend Schedule 1AB to the FF(SP) Regulations to add new table item 346 to establish legislative authority for government spending on an initiative aimed to prevent financial abuse and improve women's economic independence as part of the Fourth Action Plan of the *National Plan to Reduce Violence against Women and their Children 2010-2022* (Fourth Action Plan).

This item provides funding of \$2 million over three years for the Department of the Prime Minister and Cabinet to implement an initiative to prevent financial abuse before it starts.

It will seek to prevent financial abuse through a public campaign to educate women and men about healthy financial relationships prior to abuse occurring, and collaborating with the corporate and financial sectors, community sector, key government services and other stakeholders to deliver the initiative's activities.

It will be delivered through the following activities:

- Research and analysis of existing financial abuse prevention activities to identify the most effective prevention points, as well as a gap analysis of existing resources to avoid duplication.
- Collaboration with the corporate and community sectors to establish an Advisory Group of key organisations to: discuss best practice for assisting victims of financial abuse; link up the corporate sector's existing activities with specialist services such as 1800RESPECT; and involve the Advisory Group in resource design.

- Design and launch of a web training module for frontline financial services staff and a social media campaign targeting women at risk of financial abuse, to improve women's economic independence through the prevention of financial abuse. The web training modules will equip staff to identify financial abuse and encourage staff to provide women with information and resources to prevent financial abuse at key life events which involve financial management. The social media campaign will be informed by market research, generate greater community awareness about financial abuse and specifically help women identify their own circumstances and seek support. The market research will consider design for specific cohorts such as Aboriginal and Torres Strait Islander women, women with disability, women from culturally and linguistically diverse (CALD) backgrounds, and LGBTI+ women.
- An independent evaluation of the outcomes of the initiative that will consider short-term measures of impact, such as downloads of the resource, and long-term impacts, such as changes in awareness and attitudes which could be measured in the next National Community Attitudes towards Violence against Women Survey (NCAS), anticipated to take place in 2021.

It forms part of the Government's announced funding of \$328 million towards Commonwealth initiatives under the Fourth Action Plan of the National Plan to Reduce Violence against Women and their Children.

Human rights implications

The instrument engages the following human rights:

- the rights of women not to be discriminated against based on gender, especially Articles 2, 3, 5 and 16 of the *Convention on the Elimination of All Forms of Discrimination against Women* [1983] ATS 9 (CEDAW), and
- the rights to protection against exploitation, violence and abuse located in Articles 3, 4, 19, 34 and 36 of the Convention on the Rights of the Child [1991] ATS 4 (CROC), and Article 16 of the Convention on the Rights of Persons with Disabilities (CRPD).

Rights of women not to be discriminated against based on gender

The CEDAW provides that States Parties must ensure the effective protection of women against acts of discrimination and outlines key principles of equality in relation to women's political participation, health, education, employment, marriage, family relations and equality before the law.

In particular:

- Article 2 provides that States Parties agree to pursue the elimination of discrimination against women.
- Article 3 requires that States Parties agree to take appropriate measures to ensure women's full development and advancement, so that they can enjoy human rights and fundamental freedoms on the same basis as men.
- Article 5 requires States Parties to take appropriate measures to modify the social and cultural patterns of conduct of men and women, to eliminate prejudices based on the ideas of inferiority or superiority of either of the sexes.

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

The Committee on the Elimination of All Forms of Discrimination against Women (CEDAW Committee) formed under CEDAW has stated that gender-based violence, including family and 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.

This instrument promotes the elimination of discrimination against women by increasing and improving women's financial autonomy and capacity to control their own finances, which is intended to ultimately reduce instances of violence against women. This is because financial abuse often coincides with other forms of domestic violence, with almost 90 per cent of women who have experienced another form of domestic and family violence also experiencing financial abuse. Financial abuse also exacerbates the barriers to women leaving violent relationships, by leaving women with no access to finances if they would choose to leave.

Rights to protection against exploitation, violence and abuse

Article 19 of the CROC imposes an obligation on countries 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 social programs for their carers. The right to protection against exploitation, violence and abuse for all persons with disability is also found in Article 16 of the CRPD.

This instrument promotes the rights of children to protection against exploitation, violence and abuse to the extent that by preventing women – as children's carers – from experiencing domestic violence, it is also indirectly preventing children from experiencing violence. It seeks to assist women to be sufficiently financially independent so as to be able to leave abusive relationships and remove their children from violent situations.

It also identifies women with a disability as a target group. This initiative will consider the unique experiences of financial abuse faced by women with a disability and develop a social media campaign and web training module that can be adapted to specific cohorts.

Conclusion

This instrument is compatible with human rights because it promotes the elimination of discrimination against women and the right to protection against exploitation, violence and abuse.

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