

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. 3) Regulations 2021

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*.

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. 3) Regulations 2021* (the Regulations) amend table item 492 in Part 4 of Schedule 1AB to the Principal Regulations, which establishes legislative authority for government spending on the COVID-19 Disaster Payment (the payment). The payment is time-limited financial assistance to eligible persons who are, or were, unable to earn their usual income as a result of a state or territory public health order restricting the movement of persons for a period of more than seven days in a location in Australia determined by the Commonwealth Chief Medical Officer to be a COVID-19 hotspot for the purposes of Commonwealth support (the hotspot area).

The payment is also available to certain persons who are, or were, unable to earn their usual income as a result of being present in another location in Australia at a time that it was subject to a state or territory public health order (the second public health order) restricting the movement of persons for a period of more than seven days because they were previously present in the hotspot area.

The amendments to table item 492 remove the requirement to have liquid assets of less than \$10,000 for those recipients who are in their second week of eligibility for the payment. This requirement still applies to recipients in their first week of eligibility for the payment. This change will ensure a greater number of vulnerable Australians are able to access financial support during a state or territory lockdown.

Precise eligibility criteria will be published on the Services Australia website (www.servicesaustralia.gov.au). Eligibility criteria will also be updated in the COVID-19 Disaster Payment Guidelines, which will be made available on the GrantConnect website (www.grants.gov.au).

The Department of Home Affairs had responsibility for the payment until 30 June 2021. From 1 July 2021, the responsibility for the payment transferred to the National Recovery and Resilience Agency in the Prime Minister and Cabinet portfolio. Individual payments are administered by Services Australia.

From 1 July 2021 until 30 June 2022, the payment will be funded through an unlimited special appropriation established in the *COVID-19 Disaster Payment (Funding Arrangements) Act 2021*. This period reflects the time-limited nature of Commonwealth income support for the COVID-19 pandemic.

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 immediately 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 National Recovery and Resilience Agency.

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. 3) Regulations 2021*

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. 3) Regulations 2021*.

Section 2 – Commencement

This section provides that the Regulations commence immediately 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 – Part 4 of Schedule 1AB (paragraph (f) in table item 492 (first occurring), column headed “Objective(s)”)

Item 1 amends the first objective of **table item 492** in Part 4 of Schedule 1AB, which establishes legislative authority for government spending on the COVID-19 Disaster Payment (the payment) to eligible persons who are, or were, unable to earn their usual income as a result of a state or territory public health order restricting the movement of persons for a period of more than seven days in a location in Australia determined by the Commonwealth Chief Medical Officer to be a COVID-19 hotspot for the purposes of Commonwealth support (the hotspot area).

Item 1 replaces the requirement for eligible persons to declare that they have, or had, liquid assets of less than \$10,000 during the whole period of the restrictions, with the requirement to declare that during the first 14 days of the period of the restrictions they have, or had, liquid assets of less than \$10,000, or liquid assets of \$10,000 or more.

Item 2 – Part 4 of Schedule 1AB (paragraph (h) in table item 492, column headed “Objective(s)”)

Item 2 amends the second objective of table item 492 in Part 4 of Schedule 1AB, which establishes legislative authority for government spending on the payment to eligible persons who are, or were, unable to earn their usual income as a result of being present in another

location in Australia at a time that it was subject to a state or territory public health order (the second public health order) restricting the movement of persons for a period of more than seven days because they were previously present in the hotspot area.

Item 2 replaces the requirement for eligible persons to declare that they have, or had, liquid assets of less than \$10,000 during the whole period of the restrictions, with the requirement to declare that during the first 14 days of the period of the restrictions they have, or had, liquid assets of less than \$10,000, or liquid assets of \$10,000 or more.

For clarity, the reference to liquid assets is a general term and does not have the same meaning as defined in the *Social Security Act 1991*. It means that eligible recipients do not have readily available funds in cash or savings.

Precise eligibility criteria will be published on the Services Australia website (www.servicesaustralia.gov.au). Eligibility criteria will also be updated in the COVID-19 Disaster Payment Guidelines, which will be made available on the GrantConnect website (www.grants.gov.au).

The Department of Home Affairs had responsibility for the payment until 30 June 2021. From 1 July 2021, the responsibility for the payment transferred to the National Recovery and Resilience Agency in the Prime Minister and Cabinet portfolio. Individual payments are administered by Services Australia.

From 1 July 2021 until 30 June 2022, the payment will be funded through an unlimited special appropriation established in the *COVID-19 Disaster Payment (Funding Arrangements) Act 2021*. This period reflects the time-limited nature of Commonwealth income support for the COVID-19 pandemic.

The NRRA consulted with Services Australia, which has administrative responsibility for the delivery of the payment and other government disaster related payments to the community.

The removal of the liquid assets test for the recipients who are in their second week of eligibility for the payment, being a benefit paid to individuals, imposes no regulatory burden on businesses, therefore broader consultation was not required in this instance.

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

- express incidental power and the executive power (sections 51(xxxix) and 61), including the nationhood aspect.

Executive power and express incidental power, including the nationhood aspect

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.

COVID-19 is causing a widespread health emergency of national significance, with widespread impacts on sectors of the economy due to the need for lockdowns to contain the

spread of COVID-19. The payment is available to certain eligible persons who are, or were, unable to earn their usual income as a result of state or territory public health orders restricting the movement of such persons, which are in effect for greater than seven days in response to outbreaks of COVID-19 in the community, and the Commonwealth Chief Medical Officer has determined the location to be a hotspot for the purposes of this payment.

The payment is also available to certain eligible persons who are, or were, unable to earn their usual income as a result of being present in a location in Australia at a time that the location was subject to a state or territory public health order restricting the movement of persons for a period of more than seven days because those persons were identified as being previously present in a hotspot area.

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. 3) Regulations 2021

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 (Prime Minister and Cabinet Measures No. 3) Regulations 2021* (the Regulations) amend table item 492 in Part 4 of Schedule 1AB to the FF(SP) Regulations, which establishes legislative authority for government spending on the COVID-19 Disaster Payment (the payment). The payment is time-limited financial assistance to eligible persons who are, or were, unable to earn their usual income as a result of a state or territory public health order restricting the movement of persons for a period of more than seven days in a location in Australia determined by the Commonwealth Chief Medical Officer to be a COVID-19 hotspot for the purposes of Commonwealth support (the hotspot area).

The payment is also available to certain persons who are, or were, unable to earn their usual income as a result of being present in another location in Australia at a time that it was subject to a state or territory public health order (the second public health order) restricting the movement of persons for a period of more than seven days because they were previously present in the hotspot area.

The amendments to table item 492 remove the requirement to have liquid assets of less than \$10,000 for those recipients who are in their second week of eligibility for the payment. This requirement still applies to recipients in their first week of eligibility for the payment. This change will ensure a greater number of vulnerable Australians are able to access financial support during a state or territory lockdown.

Precise eligibility criteria will be published on the Services Australia website (www.servicesaustralia.gov.au). Eligibility criteria will also be updated in the COVID-19 Disaster Payment Guidelines, which will be made available on the GrantConnect website (www.grants.gov.au).

The Department of Home Affairs had responsibility for the payment until 30 June 2021. From 1 July 2021, the responsibility for the payment transferred to the National Recovery and Resilience Agency in the Prime Minister and Cabinet portfolio. Individual payments are administered by Services Australia.

Human rights implications

This disallowable legislative instrument does not engage any of the applicable rights or freedoms. It amends table item 492 to remove the requirement to have liquid assets of less than \$10,000 for those recipients who are in their second week of eligibility for the payment. This requirement still applies to recipients in their first week of eligibility for the payment.

Conclusion

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

Senator the Hon Simon Birmingham
Minister for Finance