

## **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. 5) 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. 5) 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 amendments to table item 492 relate to:

- removal of references to the duration of a state or territory public health order restricting the movement of persons;
- clarification that the payments are subject to eligible persons having no available pandemic-related paid leave entitlements to cover the period of the restrictions;
- removal of references to declarations about the amount of liquid assets;
- clarification that the payments are subject to eligible persons not receiving pandemic payments from a state or territory during the period of the restrictions;
- clarification that where a state or territory has agreed to reimburse the Commonwealth for the payments, such payments are made to persons who live or work in a location in that state or territory other than a Commonwealth hotspot area; and
- extension of the payment to persons who are directly affected by the restrictions imposed by a state or territory public health order, where that state or territory has agreed to reimburse the Commonwealth for the payments.

The Regulations reflect changes made by the Australian Government to the way the payment will be delivered to individuals affected by state or territory lockdowns. These changes, which were announced by the Prime Minister, the Hon Scott Morrison MP, and the Treasurer, the Hon Josh Frydenberg MP, on 15 July 2021, will ensure a greater number of vulnerable Australians will be able to access financial support during a state or territory lockdown.

For lockdown periods of less than seven days, where the relevant state or territory has agreed to provide significant economic support, the payment will be able to be claimed seven days after the commencement of the lockdown. The payment will be made in arrears once a claim is lodged with Services Australia. For lockdowns of seven days or more, the eligibility dates have not changed.

The Regulations also make technical amendments to table item 492 such as inserting headings for the three objectives of the item.

Precise eligibility criteria for the payment and the process for making claims will be published on the Services Australia website ([www.servicesaustralia.gov.au](http://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](http://www.grants.gov.au)). The National Recovery and Resilience Agency has policy responsibility for the payment. 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, Services Australia, the Department of the Prime Minister and Cabinet, the Department of the Treasury and the Department of Social Services. Consultation has also occurred between the Australian Government and the New South Wales and Victorian Governments.

The Regulations broaden the group of individuals who will be able to apply for the payment. As a benefit paid to individuals, it imposes no regulatory burden on businesses, therefore broader consultation was not required in this instance.

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. 5) 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. 5) 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 (table item 492, column headed “Objective(s)”)**

Item 1 inserts heading ‘Certain persons residing or employed in a COVID-19 hotspot unable to earn usual income’ for the first objective of table item 492, which indicates a cohort of eligible persons to whom this objective applies.

**Item 2 – Part 4 of Schedule 1AB (table item 492, column headed “Objective(s)”, subparagraph (c)(i) (first occurring))**

Item 2 omits reference ‘of more than 7 days’ in subparagraph (c)(i) (first occurring) in column headed “Objective(s)” (the first objective) of table item 492. This was a reference to the duration of a state or territory public health order restricting the movement of persons (also known as a lockdown) in a location determined by the Commonwealth Chief Medical Officer to be a COVID-19 hotspot for the purposes of Commonwealth support. Key eligibility dates, including recognised periods of restricted movement, lockdown or hotspot, and opening and closing dates for claims will continue to be published on the Services Australia website.

**Item 3 – Part 4 of Schedule 1AB (table item 492, column headed “Objective(s)”, paragraph (e) (first occurring))**

Item 3 repeals paragraph (e) (first occurring) in column headed “Objective(s)” (the first objective) of table item 492. This paragraph specified that the payments are provided to persons who have, or had, no available leave entitlements to cover the period of the restrictions, other than annual leave. The replacement paragraph (e) clarifies that the payments are provided to persons who have, or had, no available pandemic-related paid leave entitlements to cover the period of the restrictions. This means that eligible persons do not need to take annual leave, long service leave or other leave before they can get the payment.

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

Item 4 repeals paragraph (fa) in column headed “Objective(s)” (the first objective) of table item 492. This paragraph dealt with the requirement for eligible persons to declare whether during the first 14 days of the period of the restrictions they have, or had, liquid assets of less than \$10,000 or of \$10,000 or more. The liquid assets test no longer applies to the payment.

**Item 5 – Part 4 of Schedule 1AB (table item 492, column headed “Objective(s)”, at the end of paragraph (g) (first occurring))**

Item 5 adds a reference to pandemic payments from a state or territory at the end of paragraph (g) (first occurring) in column headed “Objective(s)” (the first objective) of table item 492. This clarifies one of the existing criteria that persons are not eligible for the payment if they are getting a state or territory pandemic payment during the period of the restrictions.

**Item 6 – Part 4 of Schedule 1AB (table item 492, column headed “Objective(s)”)”)**

Item 6 inserts heading ‘Certain persons previously in a COVID-19 hotspot unable to earn usual income’ for the second objective of table item 492, which indicates a cohort of eligible persons to whom this objective applies.

**Item 7 – Part 4 of Schedule 1AB (table item 492, column headed “Objective(s)”, subparagraph (c)(i) (second occurring))**

Item 7 omits reference ‘for a period of more than 7 days’ in subparagraph (c)(i) (second occurring) in column headed “Objective(s)” (the second objective) of table item 492. This was a reference to the duration of a state or territory public health order restricting the movement of persons in a location determined by the Commonwealth Chief Medical Officer to be a COVID-19 hotspot for the purposes of Commonwealth support. Key eligibility dates, including recognised periods of restricted movement, lockdown or hotspot, and opening and closing dates for claims will continue to be published on the Services Australia website.

**Item 8 – Part 4 of Schedule 1AB (table item 492, column headed “Objective(s)”, paragraph (d) (second occurring))**

Item 8 omits reference ‘of more than 7 days’ in paragraph (d) (second occurring) in column headed “Objective(s)” (the second objective) of table item 492. This was a reference to the

duration of a state or territory public health order (the second public health order) restricting the movement of persons where such persons were previously present in a Commonwealth hotspot area.

**Item 9 – Part 4 of Schedule 1AB (table item 492, column headed “Objective(s)”, paragraph (g) (second occurring))**

Item 9 repeals paragraph (g) (second occurring) in column headed “Objective(s)” (the second objective) of table item 492. This paragraph specified that the payments are provided to persons who have, or had, no available leave entitlements to cover the period of the restrictions (the second public health order), other than annual leave. The replacement paragraph (g) clarifies that the payments are provided to persons who have, or had no available pandemic-related paid leave entitlements to cover the period of the restrictions (the second public health order). This means that eligible persons do not need to take annual leave, long service leave or other leave before they can get the payment.

**Item 10 – Part 4 of Schedule 1AB (table item 492, column headed “Objective(s)”, paragraph (ha))**

Item 10 repeals paragraph (ha) in column headed “Objective(s)” (the second objective) of table item 492. This paragraph dealt with the requirement for eligible persons to declare whether during the first 14 days of the period of the restrictions they have, or had, liquid assets of less than \$10,000 or of \$10,000 or more. The liquid assets test no longer applies to the payment.

**Item 11 – Part 4 of Schedule 1AB (table item 492, column headed “Objective(s)”, at the end of paragraph (i))**

Item 11 adds a reference to pandemic payments from a state or territory at the end of paragraph (i) in column headed “Objective(s)” (the second objective) of table item 492. This clarifies one of the existing criteria that persons are not eligible for the payment if they are getting a state or territory pandemic payment during the period of the restrictions (the second public health order).

**Item 12 – Part 4 of Schedule 1AB (table item 492, column headed “Objective(s)”) )**

Item 12 inserts heading ‘Certain persons residing or employed in State or Territory but outside COVID-19 hotspot unable to earn usual income’ for the third objective of table item 492, which indicates a cohort of eligible persons to whom this objective applies.

**Item 13 – Part 4 of Schedule 1AB (table item 492, column headed “Objective(s)”, subparagraph (c)(i) (third occurring))**

Item 13 omits reference ‘(the *hotspot public health order*)’ in subparagraph (c)(i) (third occurring) in column headed “Objective(s)” (the third objective) of table item 492. This reference is made redundant as a result of amendments in Item 14 described below.

**Item 14 – Part 4 of Schedule 1AB (table item 492, column headed “Objective(s)”, paragraphs (d) to (g) (third occurring))**

Item 14 repeals paragraphs (d) to (g) (third occurring) in column headed “Objective(s)” (the third objective) of table item 492 and replaces them with paragraphs (ca) to (g). The third objective of table item 492 applies to eligible persons who live or work in a state or territory, in which there is, or was, a Commonwealth hotspot area and which agrees to reimburse the Commonwealth for the payments (the relevant jurisdiction).

New paragraph (ca) clarifies that the payments under the third objective of table item 492 are made to eligible persons who live or work, or lived or worked, in a location in the relevant jurisdiction other than a Commonwealth hotspot area.

The replacement paragraph (d) extends the eligibility for the payment to persons in the relevant jurisdiction who are or were unable to earn their usual income as a direct or indirect result of the restrictions imposed by a state or territory public health order. This may cover the circumstances where persons are prevented from working because of the restrictions imposed by a state or territory public health order, or where persons are not prevented from working but experience a downturn in trade and/or a reduction in working hours because of the effect of a state or territory public health order on the activities of other persons.

The replacement paragraph (e) clarifies that the payments are provided to persons in the relevant jurisdiction who have, or had, no available pandemic-related paid leave entitlements to cover the period for which the payment is provided. This means that eligible persons do not need to take annual leave, long service leave or other leave before they can get the payment.

The replacement paragraph (f) provides for eligible persons in the relevant jurisdiction to make a declaration in relation to where they live or work, or lived or worked, during the period of the restrictions in order to meet the criterion set out in new paragraph (ca). The replacement paragraph (d) applies to declarations made when the payment was available to persons who were not prevented from being able to work in their usual employment and also to declarations which will be made when the payment is extended to persons who are prevented from being able to work in their usual employment as a result of a state or territory public health order. The intent is to preserve the Commonwealth’s ability to vary and administer grants and arrangements which were entered into on the basis of declarations made prior to the commencement of the current amendments.

The replacement paragraph (g) aligns the content of declarations to be made by eligible persons in the relevant jurisdiction to the extended eligibility for the payment as set out in the replacement paragraph (d).

## **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. 5) 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. 5) 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 amendments to table item 492 relate to:

- removal of references to the duration of a state or territory public health order restricting the movement of persons;
- clarification that the payments are subject to eligible persons having no available pandemic-related paid leave entitlements to cover the period of the restrictions;
- removal of references to declarations about the amount of liquid assets;
- clarification that the payments are subject to eligible persons not receiving pandemic payments from a state or territory during the period of the restrictions;
- clarification that where a state or territory has agreed to reimburse the Commonwealth for the payments, such payments are made to persons who live or work in a location in that state or territory other than a Commonwealth hotspot area; and
- extension of the payment to persons who are directly affected by the restrictions imposed by a state or territory public health order, where that state or territory has agreed to reimburse the Commonwealth for the payments.

The Regulations reflect changes made by the Australian Government to the way the payment will be delivered to individuals affected by state or territory lockdowns. These changes, which were announced by the Prime Minister, the Hon Scott Morrison MP, and the Treasurer, the Hon Josh Frydenberg MP, on 15 July 2021, will ensure a greater number of vulnerable Australians will be able to access financial support during a state or territory lockdown.

For lockdown periods of less than seven days, where the relevant state or territory has agreed to provide significant economic support, the payment will be able to be claimed seven days after the commencement of the lockdown. The payment will be made in arrears once a claim is lodged with Services Australia. For lockdowns of seven days or more, the eligibility dates have not changed.

The Regulations also make technical amendments to table item 492 such as inserting headings for the three objectives of the item.

Precise eligibility criteria for the payment and the process for making claims will be published on the Services Australia website ([www.servicesaustralia.gov.au](http://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](http://www.grants.gov.au)). The National Recovery and Resilience Agency has policy responsibility for the payment. Individual payments are administered by Services Australia.

### **Human rights implications**

This disallowable legislative instrument engages the following rights:

- the right to health in Article 12 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), read with Article 2; and
- the right to an adequate standard of living in Article 11 of the ICESCR.

#### Right to health

Article 2 of the ICESCR requires the States Parties to take steps to progressively achieve the full realisation of the rights recognised in the ICESCR by all appropriate means.

Article 12 of the ICESCR states, in part:

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: [...]
  - (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; [...].

This disallowable legislative instrument broadens the group of individuals who are able to apply for the payment. This promotes public health by ensuring that economic pressure is not a reason for persons to break state or territory public health orders and risk spreading COVID-19 to others.

#### Right to an adequate standard of living

Article 11(1) of the ICESCR states:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. [...]



Similarly, this disallowable legislative instrument promotes the right to an adequate standard of living as it broadens the group of individuals who are able to apply for the payment. This will ensure a greater number of vulnerable Australians are able to access financial support during a state or territory lockdown.

### **Conclusion**

This disallowable legislative instrument is compatible with human rights because it promotes the rights to health and to an adequate standard of living.

**Senator the Hon Simon Birmingham  
Minister for Finance**