

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. 3) Regulations 2024

The *Financial Framework (Supplementary Powers) Act 1997* (the FFSP 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 FFSP 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 sunset under section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (item 28A). If the Principal Regulations were subject to the sunset 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 FFSP 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 FFSP Act confers powers of delegation on Ministers and the accountable authorities of non-corporate Commonwealth entities, including subsection 32B(1) of the FFSP Act. Schedule 1AA and Schedule 1AB to the Principal Regulations specify the arrangements, grants and programs.

Section 65 of the FFSP 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. 3) Regulations 2024* (the Regulations) amend Schedules 1AA and 1AB to the Principal Regulations in relation to activities administered by the Department of Home Affairs.

The Regulations repeal table items 417.022, 417.030 and 417.031 in Part 4 of Schedule 1AA which are superseded by a new item for the Return and Reintegration Assistance Program. Legislative authority for spending activities under the repealed items will be supported by a new table item 675.

The Regulations insert two new table items in Schedule 1AB to establish legislative authority for government spending for the following programs:

- Return and Reintegration Assistance Program, to extend return and reintegration assistance to all non-citizens, rather than only to unauthorised maritime arrivals and eligible bridging visa holders (\$31.1 million over three years from 2024-25); and
- Post removal support, to support the settlement and integration of non-citizens in a foreign country where settlement occurs pursuant to an arrangement between Australia and a foreign country (funding for this item forms part of the overall administered funding of \$254.8 million over two years from 2023-24).

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 Department of Home Affairs.

A regulatory impact analysis 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. 3) Regulations 2024*

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Home Affairs Measures No. 3) Regulations 2024*.

Section 2 – Commencement

This section provides that the Regulations commence on the day after registration 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

The Regulations amend Schedules 1AA and 1AB to the Principal Regulations in relation to activities administered by the Department of Home Affairs (the department).

Item 1 – Part 4 of Schedule 1AA (table items 417.022, 417.030 and 417.031)

Item 1 repeals table items 417.022, 417.030 and 417.031 in Part 4 of Schedule 1AA as these items are superseded by the new table item for the Return and Reintegration Assistance Program, item 675 in Part 4 of Schedule 1AB, inserted by Item 2 below.

These table items are appropriate for repeal as legislative authority for any spending activities will be supported by new table item 675 and are redundant.

This is a minor technical amendment which does not affect existing programs.

Item 2 – In the appropriate position in Part 4 of Schedule 1AB (table)

This item adds two new table items to Part 4 of Schedule 1AB to establish legislative authority for government spending on activities to be administered by the department.

Table item 675 – Return and Reintegration Assistance Program

New **table item 675** establishes legislative authority for government spending on the Return and Reintegration Assistance Program (RRAP).

Since 2010, the Australian Government has afforded certain non-citizens (unauthorised maritime arrivals (UMAs) and eligible bridging visa holders only) assistance to depart Australia voluntarily to their country of origin or another country to which they have right of entry. This assistance is administered through the RRAP, which is a demand-driven program facilitated by contracted service providers, and assists eligible non-citizens by providing travel support (such as airfares, accommodation and assistance to obtain travel documents), and reintegration assistance (including cash or in-kind assistance on return to home country). The RRAP is a valuable status resolution tool in supporting voluntary departure outcomes.

The Government is committed to resolving the status of non-citizens who have exhausted avenues to remain in Australia. The Government has approved the expansion of RRAP eligibility to all non-citizens, beyond only UMAs and eligible bridging visa holders. To ensure program accountability and transparency, each case will be considered on its merits, with access to all services not guaranteed solely on the basis of eligibility. For example, non-citizens with financial means to support their own return may not receive assistance through the RRAP. This initiative aligns with the Government's agenda of a robust migration program, supported by effective immigration compliance that maximises status resolution outcomes.

The department forecasts that an expanded RRAP scope will achieve increased departure outcomes, especially when paired with increased immigration compliance activity, with flow-on effects reducing the status resolution population, and avoiding Status Resolution Support Services program and immigration detention costs.

Funding amount and arrangements, merits review and consultation

Return and reintegration assistance delivered through the RRAP is one element of the Department of Home Affairs' administered baseline funding for *Program 3.5 – Onshore Compliance and Detention*. Administered budget for Program 3.5 is detailed in the *Home Affairs Portfolio Additional Estimates Statements 2023-24* at page 50.

The projected cost of the return and reintegration assistance under expanded settings delivered through the RRAP over three years from 2024-25 is \$31.1 million (comprises existing baseline funding and additional costs for the expanded scope) and will be met from Program 3.5 over forward estimates.

The broadened RRAP scope will be implemented within existing RRAP contracts with immediate effect. The Department of Home Affairs is concurrently undertaking an open tender procurement for new RRAP services, with new contracts commencing in early 2025. The approach to market is progressing in accordance with applicable legislative requirements under the *Commonwealth Procurement Rules* and the Accountable Authority Instructions of the department, including any AusTender reporting requirements. Resultant contracts with service providers from the competitive procurement process, and any variation to existing contracts with the current service providers, will be executed by a Senior Executive Service

Band 2 delegate of the Secretary of the department under the *Financial Framework (Supplementary Powers) Act 1997* and successful tenderer/s will be published on AusTender.

Decisions regarding provision of RRAP services, and associated program expenditure, to eligible and approved non-citizens and their dependents (if applicable), will be made by an officer of the Department with the appropriate level of financial delegation, in accordance with the *Financial Framework (Supplementary Powers) Act 1997*, *Public Governance, Performance and Accountability Act 2013* and Accountable Authority Instructions. Contract managers, in collaboration with Status Resolution Officers, are responsible for approval of RRAP cases, with oversight by relevant SES. Overall program funding approval is exercised by the responsible SES Band 2.

Program delivery decisions regarding access to RRAP services and the extent of services received are administrative decisions reached by a Commonwealth official, and, as such, are subject to independent merits review through the Administrative Appeals Tribunal.

Procurement decisions made in connection with the program are not considered suitable for independent merits review, as they are decisions relating to the allocation of a finite resource, from which all potential claims for a share of the resource cannot be met. In addition, any funding that has already been allocated would be affected if the original decision was overturned. The Administrative Review Council (ARC) has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.11 to 4.19 of the guide, *What decisions should be subject to merit review?* (ARC guide)).

The remaking of a procurement decision after entry into a contractual arrangement with a successful provider is legally complex, impractical, and could result in delays to providing services to platform users. The *Government Procurement (Judicial Review) Act 2018* may enable suppliers to challenge some procurement processes for alleged breaches of certain procurement rules. This legislation might provide an additional avenue of redress (compensation or injunction) for dissatisfied providers or potential providers, depending on the circumstances.

Consultation on the expanded RRAP eligibility scope occurred across Government, notably with the Department of the Prime Minister and Cabinet, as part of the policy approval process. Consultation did not occur with civil society or affected individuals, as the RRAP program changes were beneficial and only expand accessibility of the program. Consultation has occurred with existing RRAP service providers who indicated the expanded scope would directly and positively support departure outcomes.

Constitutional considerations

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

- the aliens power (section 51(xix))
- the external affairs power (section 51(xxix))
- the immigration and emigration power (section 51 (xxvii)).

Aliens power

Section 51(xix) of the Constitution empowers the Parliament to make laws with respect to ‘naturalization and aliens’. Return and reintegration assistance promotes status resolution outcomes and enables non-citizens to return home voluntarily, with dignity and assistance to reintegrate meaningfully.

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 with respect to matters or things outside the geographical limits of Australia. The funding will support the return and reintegration of non-citizens from Australia or a regional processing country to their country of origin or another country to which they have right of entry.

Immigration and emigration power

Section 51(xxvii) of the Constitution empowers the Parliament to make laws with respect to ‘immigration and emigration’. The funding provides non-citizens who have sought to immigrate to Australia with assistance to return voluntarily to their country of origin or a country to which they have right of entry.

Table item 676 – Post removal support

New **table item 676** establishes legislative authority for government spending to support the removal or return of unlawful non-citizens, or other non-citizens who have exhausted all avenues to remain in Australia, to their country of origin, or a third country, when exceptional arrangements are required to ensure that removal or return is safe and dignified.

The new table item will permit the department to make payments to foreign governments or third parties for the provision of support, where it would be lawful to do so, and such payment is required to support integration following a non-citizen’s removal or return. Funding will be provided for tailored support to assist the integration of unlawful non-citizens, or other non-citizens who have exhausted all avenues to remain in Australia. Entering into arrangements with relevant foreign entities will be managed by the department.

The provision of this support is an important and necessary tool to support the ongoing integrity of Australia’s migration system, and for the ongoing cooperation of international partners with Australia’s removal and returns efforts.

The goal of the program is to facilitate the timely return or removal of complex cases of unlawful non-citizens, or a non-citizen who has exhausted all avenues to remain in Australia by providing appropriate integration in line with Government commitments.

The addition of this table item supports the Commonwealth’s obligation to remove an unlawful non-citizen, or a non-citizen who has exhausted all avenues to remain in Australia and where there may be concerns that existing removal/returns programs do not offer adequate support.

The arrangement will provide removal and return support for complex removal or return cases where exceptional circumstances exist. It is likely that a limited cohort will fall within these circumstances. A range of factors may be considered such as:

- complex health or care issues;
- integration requirements;
- the availability of integration mechanisms in country of removal or return; and
- individual capability.

The department will engage with foreign governments on removal or returns cases that are within scope, including where extraordinary settlement and integration support may be applicable. The department will determine the eligibility of a non-citizen and what types of supports may be required including:

- economic assistance to facilitate the integration of persons removed or returned such as accommodation and employment assistance;
- medical assistance for complex health needs such as medical treatment or rehabilitation services; and
- provision of in-kind support or other appropriate “settlement-like” support costs following removal.

Suitability assessments of the preferred support entity (government or third-party provider) will be undertaken in consultation with the Department of Foreign Affairs and Trade.

Recipients of funds will either be foreign governments (of the recipient country for the person being removed) or service providers and/or non-government organisations (NGOs).

Recipients of funds will be selected in collaboration with the Department of Foreign Affairs and Trade depending on the needs of the individual and the options available or provided in the foreign country.

Delivery of the support will be achieved through:

- government to government engagement to ascertain barriers impeding return or removal;
- assessment of avenues to remove identified barriers to enable removal or return of unlawful non-citizens, or other non-citizens who have exhausted all avenues to remain in Australia, including risk and viability assessments; and
- establishment of arrangements with the entity or foreign government including selection of an appropriate payment mechanism.

Payments will occur according to the agreed payment plan and schedule. For example, partial payments may be required to facilitate and prepare for removal while further payments may need to be made during the integration and settlement process. Where an NGO or service provider has been engaged, payments will be linked to regular reporting obligations, and evaluation and monitoring mechanisms.

Funding amount and arrangements, merits review and consultation

Funding will be met from within the existing funding envelope for 2024-25 agreed in the 2023-24 Mid-Year Economic and Fiscal Outlook process. The funding amount for this program is not for publication due to commercial and bilateral sensitivities in negotiating arrangements between foreign government and third-party providers. It is the intent of the

Government to inform the Parliament of the funding amount expected once the program's operating model is fully developed.

Funding for this item forms part of the overall administered funding of \$254.8 million over two years from 2023-24 under the measure '*Community Safety Measures in Response to the High Court's Decision in NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs & Anor*'. Details are set out in the *Mid-Year Economic and Fiscal Outlook 2023-24: Appendix A*: pages 270-271.

Funding for this item will come from Program 3.5: Onshore Compliance and Detention, which is part of Outcome 3. Details are set out in the Budget 2023-24, *Portfolio Additional Estimates Statements 2023-24*, Home Affairs Portfolio on page 21.

The department will manage administration of the payments. Funding arrangements with a receiving country or a third-party provider will explicitly reference the purpose of the arrangement, define respective roles and apportion all liability to the receiving entity. Funding arrangements will identify clear milestones and reporting obligations.

Payment arrangements could be made through a procurement, grant or direct procurement depending on whether the arrangement is with a foreign country or a third-party provider. Payment arrangements will be drafted to limit the risk associated with the receiving country. Factors such as country specific circumstances, legal and governance requirements, and the most appropriate delivery mechanism for the needs of the returnee will be taken into consideration.

Funding arrangements requiring procurement for the delivery of supplementary settlement support will be conducted in accordance with applicable legislative requirements under the *Commonwealth Procurement Rules* and the Accountable Authority Instructions of the department, including any AusTender reporting requirements. As funding will be provided with the objective of supporting the settlement of non-citizens in a foreign country, most funding arrangements are likely to be exempt from Commonwealth Procurement Rules.

Funding arrangements will be executed by a delegate of the Secretary of the department. The delegate will be a Senior Executive Service (SES) Band 2, in compliance with existing financial delegations, including the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). In addition, the SES Band 2 is authorised to approve commitments of relevant money for goods and services under the PGPA Act and *Financial Framework (Supplementary Powers) Act 1997*.

Funding decisions made in connection with the arrangement are not considered suitable for merits review as they are decisions of a high political content affecting Australia's relations with other countries. Given the high political consequence of this funding decision, the impact this funding decision will have on Australia's relationship with other countries and the limited options for reversing payment for overseas settlement (see paragraphs 4.22 to 4.30, and paragraphs 4.49 to 4.51 of the ARC guide) it is appropriate that the decision is not subject to merits review.

Additionally, funding decisions made in connection with the program are not considered suitable for independent merits review, as they are decisions relating to the allocation of a finite resource, from which all potential claims for a share of the resource cannot be met. Any

funding that has already been allocated would be affected if the original decision was overturned. The ARC has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.11 to 4.19 of the ARC guide). The ARC has recognised that it is justifiable to exclude merits review in relation to decisions of this nature.

The department has consulted the Attorney-General's Department, the Australian Human Rights Commission, the Commonwealth Ombudsman, the Department of Finance, the Department of Foreign Affairs and Trade, and the Department of the Prime Minister & Cabinet regarding the proposed amendment. Parties provided feedback on the design and consideration of the program, including meeting legal obligations and accountability requirements.

Given that any payments made under this regulation will be very specific to the individual circumstances of each person removed or returned and that arrangements will vary on a case-by-case basis, public consultation was not considered appropriate.

Constitutional considerations

Noting that it is not a comprehensive statement of relevant constitutional considerations, the objective of the item references the external affairs power in section 51(xxix) of the Constitution.

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 with respect to matters or things outside the geographical limits of Australia.

The table item is designed to facilitate payments to fund programs designed to assist with integration of non-citizens being removed or returning from Australia to their country of origin, or a third country. These payments will be made in territories that are external to Australia.

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. 3) Regulations 2024

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 FFSP Act) authorises the Commonwealth to make, vary and administer arrangements and grants specified in the *Financial Framework (Supplementary Powers) Regulations 1997* (the Principal 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 Principal Regulations specify the arrangements, grants and programs. The powers in the FFSP 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. 3) Regulations 2024* amend Schedules 1AA and 1AB to the Principal Regulations in relation to activities administered by the Department of Home Affairs (the department).

In particular, this disallowable legislative instrument makes the following amendments to the Principal Regulations:

- repeals table items 417.022, 417.030 and 417.031 in Schedule 1AA;
- adds table item 675 ‘Return and Reintegration Assistance Program’; and
- adds table item 676 ‘Post removal support’ (both to Part 4 of Schedule 1AB).

Item 1 – Schedule 1AA

Repeal of table items 417.022, 417.030 and 417.031 in Schedule 1AA

The repealed table items 417.022, 417.030 and 417.031 in Schedule 1AA are superseded by the proposed new item for the Return and Reintegration Assistance Program, and are appropriate for repeal as legislative authority for spending activities under the arrangement will be supported by a new table item 675. The amendment is technical and does not affect current policy settings.

Human rights implications

The repeal of these table items does not engage any of the applicable human rights or freedoms.

Item 2: Part 4 of Schedule 1AB

Table item 675 – Return and Reintegration Assistance Program

Table item 675 establishes legislative authority to extend government spending to provide return and reintegration assistance to all non-citizens, not only to unauthorised maritime arrivals (UMAs) and eligible bridging visa holders.

Return and reintegration assistance is delivered through the Return and Reintegration Assistance Program (RRAP) and includes:

- return assistance to facilitate the departure process for eligible non-citizens and includes returns counselling, the purchasing of air tickets, assistance to obtain travel documents, accommodation assistance, small cash allowances during transit and reception assistance in the country of return; and
- reintegration assistance to assist returnees to rebuild their lives in the return country to reduce the risk of further irregular migration and can be taken as cash and/or as in-kind assistance (in the return country).

The RRAP is voluntary, and individuals are not obliged or coerced to participate. The RRAP applies to individuals, couples and family units seeking assistance to return home voluntarily.

The Government has approved the expansion of return and reintegration assistance eligibility to all non-citizens. This has the potential to reduce the number of individuals who would become subject to compliance action and immigration detention pending removal, by offering assistance to return voluntarily from the community, immigration detention or prison at the earliest opportunity.

The new table item in Schedule 1AB provides explicit authority for Government expenditure on return and reintegration assistance to all non-citizens seeking to return home voluntarily or to another country to which they have right of entry.

This support is available to non-citizens who have exhausted all avenues to remain in Australia or who need to depart, and require assistance in doing so.

Human Rights Implications

New table item 675 engages the following right:

- The right to non-discrimination and equality before the law (Article 26 of the *International Covenant on Civil and Political Rights* (ICCPR), read with Article 2).

Article 2 of the ICCPR requires each State Party to the ICCPR to take the necessary steps to adopt such laws or other measures as may be necessary to give effect to the rights recognised in the ICCPR.

Article 26 of the ICCPR provides that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law and the law shall prohibit and discrimination.

Table item 675 confirms the regulatory authorisation of spending to provide return and reintegration assistance to all non-citizens and their dependents to depart Australia voluntarily, without being restricted to UMAs and eligible bridging visa holders.

This will ensure that return and reintegration assistance is available to all non-citizens who require assistance. The provision therefore assists in promoting the right to non-discrimination and equality before the law by expanding access to the RRAP and removing restrictions based on migration status.

This item is compatible with human rights because it promotes the protection of human rights.

Table item 676 – Post removal support

Table item 676 establishes legislative authority for government spending on post-removal support arrangements, which support the settlement and integration of non-citizens in a foreign country, where settlement occurs pursuant to an arrangement between Australia and that foreign country. The post-removal support payments are made to foreign governments or third parties for the provision of support where such support is required to ensure a non-citizen's removal or return, and are administered by the department.

In line with Government policy regarding persons who have been found to have no lawful basis to remain in Australia and are expected to depart, the department is working to facilitate returns and removals to countries of origin, nationality former habitual residence or a third country under bilateral resettlement arrangements.

The provision of post-removal support arrangements will be determined on a case-by-case basis. These arrangements will provide tailored support for the successful reintegration of persons removed or returned, over the short-to-medium term, to ensure a smooth transition and integration in the home country or place of former residence or third country.

Recognising that individuals have different needs and positive settlement and integration outcomes may look different for each person, supplementary support is tailored to individual needs, and comprises:

- support to connect and remain engaged in return country settlement options, including settlement ready support; and
- enhanced case management and upward mobility support, including linking to health and mental health services, education opportunities, vocational training, and migration services (e.g. family unification).

This table item in Schedule 1AB will provide explicit authority for Government expenditure on post removal support for the benefit of any non-citizens who are returned to another country to which they have right of entry.

Human rights implications

This item does not engage any of the applicable human rights or freedoms in relation to non-citizens who have returned to their country of origin, nationality or former habitual residence, or who are in foreign countries under bilateral resettlement arrangements, as they are outside Australia's territory. Australia has accepted that there may be exceptional circumstances in which the rights and freedoms may apply to persons beyond the territory of a State Party, and the extent of the obligations that may be engaged where it is operating extra-territorially will be informed by the degree of control exercised by the State. Australia does not exercise the degree of control necessary in a foreign country such that this measure enlivens Australia's international obligations.

This item is compatible with human rights as it does not raise any human rights issues.

Conclusion

This disallowable legislative instrument is compatible with human rights because, to the extent that rights are engaged, it promotes the protection of human rights.

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