

## **REPLACEMENT EXPLANATORY STATEMENT**

**This Explanatory Statement replaces the Explanatory Statement registered on 18 May 2017 for the *Financial Framework (Supplementary Powers) Amendment (Health Measures No. 2) Regulations 2017* [F2017L00544] to correct the constitutional powers referenced in table item 217.**

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

*Financial Framework (Supplementary Powers) Act 1997*

*Financial Framework (Supplementary Powers) Amendment  
(Health Measures No. 2) Regulations 2017*

The *Financial Framework (Supplementary Powers) Act 1997* (the FF(SP) Act) confers on the Commonwealth, in certain circumstances, powers to make arrangements under which money can be spent; or to make grants of financial assistance; and to form, or otherwise be involved in, companies. The arrangements, grants, programs and companies (or classes of arrangements or grants in relation to which the powers are conferred) are specified in the *Financial Framework (Supplementary Powers) Regulations 1997* (the Principal Regulations). The FF(SP) Act applies to Ministers and the accountable authorities of non-corporate Commonwealth entities, as defined under section 12 of the *Public Governance, Performance and Accountability Act 2013*.

Section 65 of the FF(SP) Act provides that the Governor-General may make regulations prescribing matters required or permitted by that Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to that Act.

Section 32B of the FF(SP) Act authorises the Commonwealth to make, vary and administer arrangements and grants specified in the Principal Regulations. Section 32B also authorises the Commonwealth to make, vary and administer arrangements for the purposes of programs specified in the Principal Regulations. Schedule 1AA and Schedule 1AB to the Principal Regulations specify the arrangements, grants and programs.

The Regulations amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on a number of initiatives administered by the Department of Health.

Funding will be provided for:

- the Mental Health in Multicultural Australia program to improve accessibility and the quality of mental health services for people from culturally and linguistically diverse backgrounds;
- the Quality Use of Pathology Program to improve health outcomes from the quality use of pathology in health care;
- the Youth Cancer Services Program to improve cancer treatment services, support and the coordination of care for adolescents and young adults aged 15 to 25 years with cancer;
- the Health Workforce Program to strengthen the capacity of the health workforce to deliver high quality care and improve health outcomes of people living in rural, regional and remote locations;

- the Australian College of Mental Health Nurses to develop a new mental health nursing workforce model that is responsive to the mental health needs of the Australian community;
- a grant to Surf Life Saving Australia for: the delivery of preventative safety measures at local beaches; technology updates; expanded volunteer training; skills development for existing supervisors, trainers and assessors; and expanded recruitment and recognition of supervisors, trainers and assessors; and
- tobacco control initiatives and activities to reduce the prevalence of smoking and the associated health (including preventable deaths and disabilities), social and economic costs, and inequalities that it causes.

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 Health.

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 (Health Measures No. 2) Regulations 2017***

**Section 1 – Name**

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Health Measures No. 2) Regulations 2017*.

**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 Schedules to the Regulations.

**Schedule 1 – Amendments**

**Item 1 – In the appropriate position in Part 3 of Schedule 1AB (table)**

This item adds two new table items to Part 3 of Schedule 1AB to establish legislative authority for government spending on certain activities administered by the Department of Health.

New **table item 17** establishes legislative authority for government spending on the Mental Health in Multicultural Australia (MHiMA) program.

The MHiMA program aims to strengthen the capacity of individuals, communities and health service providers to address the mental health needs of Australia's culturally and linguistically diverse (CALD) population, including immigrants and refugees, in a culturally inclusive and responsive manner.

This phase of the MHiMA program is part of the Government's response of 26 November 2015 to *Contributing Lives, Thriving Communities – Review of Mental Health Programmes and Services* which is available at <http://www.health.gov.au/internet/main/publishing.nsf/Content/mental-review-response>.

The Australian Government has funded a national transcultural mental health program since 1995. The MHiMA program has been funded by the Government since 2011.

Mental Health Australia has been the most recent service provider for the MHiMA program. In September 2015, the Department of Health funded Mental Health Australia to manage the program and prepare advice to the Government on future program directions. Funding arrangements with Mental Health Australia finished on 31 December 2016.

The Department of Health will engage a lead organisation to further develop and implement the Framework for Mental Health in Multicultural Australia (the Framework) and undertake other activities to support the adaptation of the Framework. The Framework has been designed for the Australian mental health services. It supports mental health service providers to respond to the changing population demographics in their local catchment areas and improve the quality and accessibility of their services.

The Framework has been developed under the MHiMA program and contributes to the accessibility of mental health services for CALD consumers by assisting service providers to determine how culturally responsive they are, develop a continuous improvement plan and track progress over a period of time.

The target groups for the MHiMA program are mainstream mental health services, the mental health workforce, and Australia's CALD population, including immigrants and refugees. The key outcome areas for CALD consumers and carers include improved mental health care and greater participation and decision-making in the type of care offered by service providers. The key outcome areas for mental health service providers include support through implementation of the Framework to respond to the needs of CALD communities.

The core responsibility of the lead organisation will be the adaptation of the Framework to make it suitable for Primary Health Networks and the organisations they commission to deliver mental health services. This will include working with individual organisations as they implement the Framework, providing support to ensure mental health services are accessible to the CALD community, and providing expert advice on cultural competency. Other activities of the lead organisation will include: sector and community development to improve CALD communities' understanding of mental health; enhancement of the Mental Health in Multicultural Australia website; mental health promotion; suicide prevention; development of resources for the sector; and data collection and reporting.

A new lead organisation for the MHiMA program will be selected through a targeted competitive grant opportunity. Mainstream mental health organisations with a background in working with CALD communities will be invited to apply. Funding will be offered for a three-year period commencing in 2017-18. The updated MHiMA Program Guidelines will outline the funding purpose, objectives and outcomes, the approach to market selection process and assessment criteria. The guidelines will be made available to the organisations that are invited to apply and will also be available at <http://www.health.gov.au/internet/main/publishing.nsf/Content/Listing+of+Tenders+and+Grants-1>.

An assessment committee of officials from the Department of Health will assess the applications and make a recommendation to the decision-maker. The assessment committee may seek input from external advisers, including individuals from a CALD background with a lived experience of mental illness, to inform the assessment process.

The decision-maker is the delegate of the Secretary of the Department of Health, who will make a determination on the awarding of funding grants and the terms and conditions on which funding is provided. Decisions will be made in accordance with the relevant legislation, including the *Commonwealth Grants Rules and Guidelines* and the *Public Governance, Performance and Accountability Act 2013*, and in particular whether it is an efficient, effective and ethical use of Commonwealth resources.

Information on the successful applicant will be posted on the Department's website 14 days after approval, as required by the *Commonwealth Grants Rules and Guidelines*, at <http://www.health.gov.au/internet/main/publishing.nsf/Content/pfps-grantsreporting>.

The MHiMA program is not considered suitable for independent merits review because it will involve the allocation of a finite resource to fund one organisation to provide national support and services. Consistent with the Government's approach of engaging mainstream organisations to deliver its mental health reforms, only national mental health organisations with a record of specifically working with CALD communities will be invited to apply.

The Department's Grant and Procurement Complaints Procedures which are available at <http://www.health.gov.au/internet/main/publishing.nsf/content/pfps-complaintsprocedures> apply to complaints that arise in relation to grant and procurement processes.

Complaints are able to be lodged by contacting the relevant departmental contact officer within six months of the outcome of a process. Complaints are acknowledged within ten days of lodging. The departmental contact officer and their supervisor will try to resolve the matter and advise the decision within a reasonable timeframe.

If a complainant is not satisfied with the Department's decision then they can apply for independent internal departmental review of the complaint. People are also able to seek review from the Commonwealth Ombudsman or judicial review.

Funding of \$3.9 million was included in the 2015-16 Mid-Year Economic and Fiscal Outlook under the measure 'Mental Health – streamlining' for a period of three years commencing in 2017-18. Details are set out in the *Mid-Year Economic and Fiscal Outlook 2015-16*, Appendix A: Policy decisions taken since the 2015-16 Budget at page 175.

Funding for this item comes from Program 2.1: Mental Health, which is part of Outcome 2. Details are set out in the *Portfolio Budget Statements 2016-17, Budget Related Paper No. 1.10, Health Portfolio* at page 56.

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

- the external affairs power (section 51(xxix));
- the communications power (section 51(v));
- the aliens power (section 51(xix));
- the immigration power (section 51(xxvii)); and
- the Commonwealth executive power (section 61).

### *External affairs power*

Section 51(xxix) of the Constitution empowers the Parliament to make laws with respect to ‘external affairs’. The external affairs power supports legislation implementing treaties to which Australia is a party. Australia has obligations regarding the right to health under Articles 2 and 12 of the International Covenant on Economic, Social and Cultural Rights. In particular, these Articles require States Parties to take steps necessary for ‘the prevention, treatment and control of epidemic, endemic, occupational and other diseases’ and to take steps necessary for ‘the creation of conditions which would assure to all medical service and medical attention in the event of sickness’.

Under the program, funding will be provided for activities that improve the accessibility and quality of mental health services for Australia’s culturally and linguistically diverse population. Activities will include workforce initiatives that respond to changing demographics.

### *Communications power*

Under section 51(v) of the Constitution, the Commonwealth has power to legislate with respect to ‘postal, telegraphic, telephonic and other like services’.

Under the program, the Department will fund enhancements of the MHiMA website.

### *Naturalization and aliens power*

Section 51(xix) of the Constitution supports laws with respect to ‘naturalization and aliens’.

Under this program, the Department will fund activities directed to improving the mental health of non-citizens.

### *Immigration power*

Section 51(xxvii) supports laws with respect to ‘immigration and emigration’.

Under this program, the Department will fund activities that are directed to improving the mental health of migrant communities.

### *Commonwealth executive power*

The program also involves funding activities that are taken in the exercise of the executive power of the Commonwealth, which is supported by the executive power in section 61 of the Constitution.

Some of the activities that are funded will generate information that will be used to further enhance the accessibility of mental health services for Australia’s culturally and linguistically diverse population, including immigrant and refugee populations.

New **table item 18** establishes legislative authority for the Government to provide a grant to Surf Life Saving Australia.

The grant will support Surf Life Saving Australia to undertake activities in Australia which reduce the incidence of water-related injury and death; enhance the safety of water environments; improve the behaviour of people in, on and around water; and address priority areas and goals for water safety articulated in the Australian Water Safety Strategy. The Strategy was developed by the Australian Water Safety Council in 2008 and is supported by the Government.

Water-based sport and recreation activities are an important part of Australian society and culture but are associated with hundreds of drowning deaths each year and many more near-drowning incidents. The Government is committed to improving opportunities for community participation in sport and recreation in safe environments, and addressing the incidence of drowning through effective prevention and intervention. The Government has a long-standing history of providing support to water safety organisations in Australia.

As part of a 2016 federal election commitment, the Government will provide grant funding of \$10 million to Surf Life Saving Australia over four years commencing in 2016-17. Activities that will be funded include up-skilling existing volunteer supervisors, trainers and assessors; updating Surf Life Saving Australia's technology to enhance training and reduce red tape; expanding the scope of volunteer training at clubs around the country, including induction and ongoing training for both members and volunteer training managers; and expanding recruitment and recognition of supervisors, trainers and assessors at clubs around the country.

Funding of \$10 million was included in the 2016-17 Mid-Year Economic and Fiscal Outlook under the measure 'Support Australia's Surf Life Savers' for a period of four years commencing in 2016-17. Details are set out in the *Mid-Year Economic and Fiscal Outlook 2016-17*, Appendix A: Policy decisions taken since the 2016 PEFO at page 176.

On 27 June 2016, the then Minister for Vocational Education and Skills, Senator the Hon Scott Ryan, announced funding for Surf Life Saving Australia as part of 'The Coalition's Policy to Support Australia's Surf Life Savers' which is available at <https://www.liberal.org.au/coalitions-policy-support-australias-surf-life-savers>.

The Department of Health will use a closed non-competitive process to award the grant. The applicant will be invited to submit an application for the grant, which will be assessed against the eligibility and assessment criteria in the grant guidelines. The grant guidelines will outline the objectives and outcomes of the grant, the deliverables and specific performance indicators.

Following assessment of the application, advice will be provided to the funding Approver on the merits of the application. The Approver for this grant is the delegate of the Secretary of the Department of Health, who will make a determination on the awarding of grant funding and the terms and conditions on which funding is provided. The decision will be made in accordance with the relevant legislation, including the *Commonwealth Grants Rules and Guidelines* and the *Public Governance, Performance and Accountability Act 2013*, and in particular whether it is an efficient, effective and ethical use of Commonwealth resources.

The Approver's decision is final in all matters, including:

- the approval of the grant;
- the grant funding amount to be awarded; and
- the terms and conditions of the grant.

The grant guidelines, assessment criteria and information about the Approver's decisions will be available at [www.health.gov.au/internet/main/publishing.nsf/Content/pfps-grantsreporting](http://www.health.gov.au/internet/main/publishing.nsf/Content/pfps-grantsreporting).

The provision of grant funding to Surf Life Saving Australia to deliver initiatives to improve water safety within the community and to tackle the incidence of drowning in identified high risk areas, is not considered suitable for independent merits review because it is targeted, non-competitive and for a specific purpose. Surf Life Saving Australia is the only national provider with a capacity to meet government requirements, and is highly experienced in facilitating programs and initiatives aimed at educating the community about water safety risks and providing effective water safety interventions.

Funding for this item will come from Program 3.1: Support Australia's Surf Life Savers, which is part of Outcome 3. Details are set out in the *Portfolio Additional Estimates Statements 2016-17, Health Portfolio* at page 44.

Noting that it is not a comprehensive statement of relevant constitutional considerations, the objective of the item references the Commonwealth executive power and the express incidental power (sections 61 and 51(xxxix)) of the Constitution.

The Australian Government is committed to improving opportunities for community participation in sport and recreation in safe environments. The Australian Government continues a long-standing history of providing support to water safety organisations in Australia.

Water-based sport and recreation activities are an important part of Australian society and culture but are associated with hundreds of drowning deaths each year and many more near-drowning incidents. The Australian Government is committed to addressing the incidence of drowning through effective prevention and intervention.

The executive power in section 61 of the Constitution, together with section 51(xxix), supports activities that the Commonwealth can carry out for the benefit of the nation.

Under the program, the Department funds Surf Life Saving Australia being a body that provides surf life saving services on a national basis.



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

This item adds four new table items to Part 4 of Schedule 1AB to establish legislative authority for government spending on certain activities administered by the Department of Health.

New **table item 216** establishes legislative authority for government spending on the Quality Use of Pathology Program (the Program).

The Program aims to improve health outcomes from the quality use of pathology in health care through the pursuit of better practice amongst requesters/referrers and providers of pathology services and the development of knowledgeable and engaged consumers. Under the Program, grants are provided for innovative approaches that improve the provision of quality pathology services and promote informed consumer choice and needs, in particular initiatives designed to improve the delivery, management and/or consumption of Medicare-rebated pathology services.

The Program, which was established in 1999, targets entities within the pathology sector, including professional colleges or organisations; relevant interested parties such as academics, clinical institutions and consumer groups that have capabilities to undertake projects that will lead to an improvement in the provision of pathology services.

Under the Program, grant funding is provided to a range of entities through an approach to market, with the next approach expected to be advertised in mid-2017. The Program Guidelines will outline the program objectives and key themes for projects that will be considered for funding, eligibility criteria, assessment criteria and the assessment process. Unsolicited proposals will also be considered. Applications and unsolicited proposals will be assessed using the Program Guidelines. The project initiatives must be from eligible entities and must meet the Program Guidelines and assessment criteria in order to be recommended for funding support.

Grant recipients are funded to undertake their projects with the view of meeting the specified project objectives within the funding period and to provide a report on the project outcomes for publication. The project outcomes vary and may include outcomes such as the development of an electronic ordering system for a hospital, the development of quality assurance programs for molecular genetic testing that can be used by the pathology sector, or the development of systems that facilitate the interoperability of pathology reports with electronic health records.

Funding proposals must contribute to the continued innovation and improvement of the quality of pathology services which would lead to improved patient health outcomes. There may be a range of pathology quality initiatives submitted that could result in short-term or long-term, multi-year grant funding agreements.

The decision-maker for grant expenditure is the delegate of the Minister for Health, who will make a determination on the awarding of grant funding and the terms and conditions on which funding is provided. Decisions will be made in accordance with the relevant legislation, including the *Commonwealth Grants Rules and Guidelines* and the *Public Governance, Performance and Accountability Act 2013*, and in particular, whether it is an efficient, effective and ethical use of Commonwealth resources.

Details of the approach to market and the Program Guidelines will be available on the AusTender website at [www.tenders.gov.au](http://www.tenders.gov.au) and the Department's website at [www.health.gov.au/qupp](http://www.health.gov.au/qupp). Successful grant recipients will be published on the Department's website.

The Program is not considered suitable for independent merits review given the limited allocation of funding and the nature of the Program that requires technical expertise and capabilities to undertake the pathology quality projects.

The Department's Grant and Procurement Complaints Procedures available at <http://www.health.gov.au/internet/main/publishing.nsf/Content/pfps-complaintsprocedures> apply to complaints that arise in relation to grant and procurement processes.

Complaints are able to be lodged by contacting the relevant departmental contact officer within six months of the outcome of a process. Complaints are acknowledged within ten days of lodging. The departmental contact officer and their supervisor will try to resolve the matter and advise the decision within a reasonable timeframe.

If a complainant is not satisfied with the Department's decision then they can apply for an independent internal departmental review of the complaint. People are also able to seek review from the Commonwealth Ombudsman or judicial review.

Funding for this item comes from Program 4.1: Medical Benefits, which is part of Outcome 4. Details are set out in the *Portfolio Budget Statements 2016-17, Budget Related Paper No. 1.10, Health Portfolio* at page 87. Funding of up to \$8 million over 4 years commencing from 2016-17 has been allocated to support the Quality Use of Pathology program that is part of the Pathology Reform Implementation Program.

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

- the external affairs power (section 51(xxix)); and
- the social welfare power (section 51(xxiiiA)).

#### *External affairs power*

Section 51(xxix) of the Constitution empowers the Parliament to make laws with respect to 'external affairs'. The external affairs power supports legislation implementing treaties to which Australia is a party. Australia has obligations regarding the right to health under Articles 2 and 12 of the International Covenant on Economic, Social and Cultural Rights. In particular, these Articles require State Parties to take steps necessary for 'the prevention, treatment and control of epidemic, endemic, occupational and other diseases' and to take steps necessary for 'the creation of conditions which would assure to all medical service and medical attention in the event of sickness'.

For example, under the Program, funding will be provided to promote evidence based practices in requesting and reporting of pathology services. Improved pathology services will assist in the better diagnosis and treatment of disease.

### *Social welfare power*

Section 51(xxiiiA) of the Constitution empowers the Parliament to make laws with respect to the provision of various social welfare benefits and services, including medical services.

Under the program, funding will be provided to support innovative initiatives that contribute to improving the quality of medical (pathology) services provided to Australian consumers.

New **table item 217** establishes legislative authority for government spending on the Youth Cancer Services (YCS) program.

The YCS program aims to improve cancer treatment services, support and the coordination of care for adolescents and young adults aged 15 to 25 years with cancer. The program was established in 2013, with five specialist cancer treatment hubs located in hospitals across the nation (New South Wales/Australian Capital Territory, Victoria/Tasmania, South Australia/Northern Territory, Western Australia, and Queensland).

CanTeen, the national non-government support organisation for young people living with cancer, has been funded by the Government since 2013-14 to deliver the YCS program. CanTeen will use grant funding to support the five hubs by providing administrative and management support as well as funding for key roles within each of the five hubs. The hubs will be managed by the lead organisation for each hub.

CanTeen will also use funding for other activities under the YCS program such as: increasing network development to ensure collaboration and consistency across the five hubs; increasing access of adolescents and young adults with cancer to support services and clinical trials; building capacity in cancer clinicians and other health professionals to treat cancer in adolescents and young adults; implementing a national minimum data set, and implementing national and local strategies to assist the YCS hubs such as best practice policies to provide quality youth cancer services.

The YCS program will be managed by CanTeen in conjunction with lead organisations and the health services that they partner with to form the five hubs in hospitals across Australia to deliver services nationally to adolescents and young adults with cancer and their families. CanTeen will enter into individual agreements with each of the lead organisations and provide funding to them to employ a multidisciplinary team. Funding for CanTeen to deliver the next phase of funding for the YCS program is expected to commence in 2017-18 and continue for three years to ensure a seamless continuation of services for adolescents and young adults with cancer.

The delegate of the Secretary of the Department of Health will be responsible for spending decisions under the YCS program. The decisions will be made in accordance with applicable legislative requirements under the *Public Governance, Performance and Accountability Act 2013* and the *Commonwealth Grants Rules and Guidelines*. CanTeen will be responsible for the delivery of the program and will negotiate with the existing lead organisations on the level of funding to be provided to each of them and will enter into agreements with each of the lead organisations.

After finalisation of the funding agreement, CanTeen will be reported as a grant recipient together with the funding amount for the YCS program at <http://www.health.gov.au/internet/main/publishing.nsf/Content/GSD-healthgrants-senateorder14-MinchinMotion>.

The decision to fund CanTeen to continue its management of the YCS program is not considered suitable for independent merits review because CanTeen is the only organisation with the experience and capacity to deliver the YCS program in Australia. The Government has invested in the capital infrastructure to establish the specialist cancer treatment hubs for the YCS program through CanTeen. These hubs are vital in the delivery of the program to meet the Government's objective.

Re-consideration of this decision under merits review would substantially delay implementation of the program in an environment where there are no alternative providers with similar capacity to deliver the program nationally.

Funding of \$18.2 million was included in the 2013-14 Budget under the measure 'World Leading Cancer Care – Youth Cancer Networks – additional funding' for a period of four years commencing in 2013-14. Details are set out in *Budget 2013-14, Budget Measures, Budget Paper No. 2 2013-14* at page 192.

Funding of \$14.5 million has been allocated over three years commencing 2017-18 for CanTeen to continue to deliver the YCS program.

Funding for the YCS program comes from Program 2.4: Preventive Health and Chronic Disease Support, which is part of Outcome 2. Details are set out in the *Portfolio Budget Statements 2016-17, Budget Related Paper No. 1.10, Health Portfolio* at page 56.

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

- the external affairs power, particularly the treaty implementation aspect (section 51(xxix));
- the social welfare power (section 51(xxiiiA));
- the statistics power (section 51(xi)); and
- the Commonwealth executive power and the express incidental power (sections 61 and 51(xxxix)).

#### *External affairs power*

Section 51(xxix) of the Constitution empowers the Parliament to make laws with respect to 'external affairs'. The external affairs power supports legislation implementing treaties to which Australia is a party. Australia has obligations regarding the right to health under Articles 2 and 12 of the International Covenant on Economic, Social and Cultural Rights. In particular, these Articles require State Parties to take steps necessary for 'the prevention, treatment and control of epidemic, endemic, occupational and other diseases' and to take steps necessary for 'the creation of conditions which would assure to all medical service and medical attention in the event of sickness'.

For example, under the program, funding will be provided to facilitate young people's access to clinical trials to improve the quality of services provided to young people living with cancer.

*Social welfare power*

Section 51(xxiiiA) of the Constitution empowers the Parliament to make laws with respect to the provision of various social welfare benefits and services, including medical services.

Under the program, funding will be provided for activities that engage health professionals to provide medical services to young people who have cancer.

*Census and statistics power*

Section 51(xi) of the Constitution empowers the Parliament to make laws with respect to 'census and statistics'.

Under the program, the Department will fund the implementation of a national minimum data set to ensure adolescents' and young adults' cancer data is collected in a nationally consistent and coordinated manner.

*Commonwealth executive power and express incidental power*

The Commonwealth executive power in section 61, together with section 51(xxxix), supports activities that the Commonwealth can carry out for the benefit of the nation.

The program will support a national approach to improve cancer treatment services for adolescents and young adults with cancer.

The program will provide a clear national mechanism for providing adolescents and young adults with cancer access to clinical trials across the nation. The clinical trials are of national importance as they will build the capacity of medical research for the nation.

The program will establish a national minimum dataset on adolescents and young people with cancer. The program will facilitate the collection of nationally consistent and coordinated data.

New **table item 218** establishes legislative authority for government spending on the Health Workforce Program.

The Health Workforce Program aims to strengthen the capacity of the health workforce to deliver high quality care and improve health outcomes of people living in rural, regional and remote locations by:

- facilitating the appropriate supply of health professionals, including general practitioners, nurses and allied health professionals;
- fostering the capability and qualification of health professionals;
- supporting students and health professionals who are Aboriginal persons, Torres Strait Islanders or those born outside of Australia; and
- addressing health workforce shortages in regional, rural and remote Australia.

This is an existing Program, which involves grant and procurement activities, as well as activities delivered on behalf of the Department of Health by third-party providers. Funding is provided through funding agreements with grant recipients, contracts with suppliers, and memoranda of understanding, such as a Memorandum of Understanding with the Department of Human Services.

Most program activities are available nationally, managed by the Department of Health, through direct/targeted and open/competitive grant processes. Depending on the activity, the process will vary depending on what is considered to be most appropriate and in line with the *Commonwealth Grants Rules and Guidelines*. The Department reserves the right to seek targeted applications to meet the aim, objectives and priorities for an activity where appropriate.

Activities under the Health Workforce Program can be grouped into four subprograms:

1. Training the Health Workforce;
2. Supporting the Aboriginal and Torres Strait Islander Workforce;
3. Recruitment, Retention and Support of Health Professionals Working in Regional, Rural and Remote Australia; and
4. Outreach Health Activities.

### 1. Training the Health Workforce

This subprogram is designed to ensure a capable and qualified workforce through training, incentives, scholarships and support activities. It includes general practice training activities, medical and clinical training activities, scholarships and rural training and support activities. Each activity operates under the broad Health Workforce Program guidelines, in addition to individual program guidelines and funding arrangements.

The subprogram aims to assist medical practitioners and other health professionals to achieve registered or accredited status as required by their respective professions. It also aims to assist with continuing professional development.

For example, the Professional Development and Vocational Training component includes the Australian General Practice Training (AGPT) program. The AGPT is a national program managed by nine training organisations across Australia that were appointed following an open competitive approach to market. Another example from the Clinical/Medical Training and Internships component is the Specialist Training Program, which is currently administered by the specialist medical colleges selected through closed non-competitive funding rounds.

#### *General Practice Training (Professional Development and Vocational Training)*

This category of activities contributes to the Program's objectives of ensuring a capable and qualified workforce by increasing the supply of appropriately qualified general practitioners. It provides general practice training in urban, regional and rural locations; vocational training towards Fellowships of the relevant colleges; and education and training to support learning towards gaining general medical registration and/or specialist (general practitioner) registration.

### *Clinical/Medical Training and Internships*

This category of activities includes training for health professionals, for the entire training continuum, with a focus on professional entry students undertaking health courses in higher education institutions. It provides clinical training opportunities beyond traditional teaching settings, inter-professional learning activities, support for clinical supervision in some settings, and support for innovative simulation projects.

Activities also include medical specialist training initiatives and junior doctor training initiatives such as the Commonwealth Medical Internships Program and Rural Junior Doctor Training Innovation Fund. These activities contribute to the Program's objectives of ensuring a capable and qualified workforce by providing opportunities for eligible medical graduates, specialist trainees and non-specialist medical staff to undertake training in a range of health care settings.

### *Scholarships*

This category of activities provides scholarships for Aboriginal and Torres Strait Islander people and others undertaking courses to allow them to enter, remain in or upskill in relevant health workforces. It also provides scholarships to health students and/or professionals undertaking further education (scholarships may include return-of-service obligations) and reimburses students for costs associated with regional, rural and remote clinical placements.

Types of entities that may be funded under this category of activities include:

- specialist colleges;
- incorporated bodies;
- private hospitals and other private health care providers;
- universities; and
- individual health professionals.

## 2. Supporting the Aboriginal and Torres Strait Islander Health Workforce

This subprogram seeks to increase the capacity of the Aboriginal and Torres Strait Islander health and aged care workforce and the broader health and aged care workforce to provide culturally appropriate care to Aboriginal and Torres Strait Islander peoples. The aims are to:

- improve retention rates of Aboriginal and Torres Strait Islander health and aged care professionals;
- increase the number of non-Indigenous health care providers delivering culturally appropriate care to address the health and aged care needs of Aboriginal and Torres Strait Islander peoples;
- increase the number of Aboriginal and Torres Strait Islander students studying for qualifications in health and aged care; and
- improve completion rates for Aboriginal and Torres Strait Islander health and aged care students.

Funding may be provided to Aboriginal and Torres Strait Islander health professional organisations and other incorporated bodies as well as individuals who identify as Aboriginal or Torres Strait Islanders.

The majority of activities within this subprogram are located in Aboriginal and Torres Strait Islander communities – for example, programs specific to the Northern Territory or communities in Western Australia. Other activities, such as the Aboriginal and Torres Strait Islander specific training opportunities under the AGPT, are delivered nationally through regional training organisations.

### 3. Recruitment, Retention and Support of Health Professionals Working in Regional, Rural and Remote Australia

This subprogram seeks to encourage health professionals to work in regional, rural and remote Australia so that rural communities have better access to health care.

Activities within this subprogram involve separate selection processes. For example, the Dental Relocation and Incentive Support Scheme provides grants through funding rounds that require applicants to satisfy specific eligibility criteria. The General Practice Rural Incentives Program, which is managed by the Department of Human Services, and the Practice Nurse Incentive Program are demand-driven, entitlement activities. Funding is provided to applicants that satisfy stated eligibility criteria, subject to revision, suspension or abolition of the entitlement. Administration of the second stream of the General Practice Rural Incentives Program was awarded to Rural Workforce Agencies in 2010 through a targeted process.

#### *Rural Training and Support*

This category of activities comprises three elements:

- the Rural Health Multidisciplinary Training Program;
- training support for rural health clubs; and
- the John Flynn Placement Program.

The activities contribute to the Program's objectives of addressing health workforce shortages in rural, regional and remote Australia by training, retaining and supporting health professionals studying and working in rural, regional and remote Australia.

#### *Incentives*

This category of activities provides incentives to medical, nursing, allied health and dental professionals to work in, relocate to and remain in areas where they are most needed to deliver appropriate primary health care services. The aim is to encourage Aboriginal and Torres Strait Islander health professionals to move to, and remain in, rural, regional or remote locations; increase the number of appropriately qualified doctors, nurses, allied health and dental professionals working in regional and rural Australia; and expand and enhance the role of nurses, Aboriginal health workers and allied health professionals working in urban and rural general practices.

#### *Workforce Support*

This category of activities seeks to address health workforce shortages, including aged care workforce shortages and uneven supply in rural, regional and remote Australia. Support is provided for health practitioners to relocate and remain in rural, regional and remote



Australia, including funding to assist with continuing professional development, support to achieve vocational recognition, locum support, and the promotion of rural health careers.

Types of entities that may be funded under this category of activities include:

- specialist colleges;
- incorporated bodies;
- private hospitals and other private health care providers;
- universities; and
- individual health professionals.

#### 4. Outreach Health Activities

This subprogram includes two elements:

- the Rural Health Outreach Fund; and
- the Primary Aeromedical Evacuations and Support Services.

The Rural Health Outreach Fund contributes to the Program's objectives of addressing health workforce shortages in rural, regional and remote Australia and improving health outcomes of people living in regional, rural, and remote locations by supporting the delivery of outreach health activities.

The Primary Aeromedical Evacuations and Support Services provide access to primary aeromedical evacuations and other primary health services in rural and remote areas beyond the normal medical infrastructure in areas of market failure.

Funding for the Health Workforce Program of \$5.2 billion over four years from 2016-17 comes from Program 2.3: Health Workforce, which is part of Outcome 2. Details are set out in the *Portfolio Budget Statements 2016-17, Budget Related Paper No. 1.10, Health Portfolio* at page 56.

The Department of Health uses various selection processes to award funding under the Health Workforce Program. These include:

- open competitive grant funding rounds;
- targeted or restricted competitive grant funding rounds;
- non-competitive open grant processes;
- demand-driven grant processes;
- closed non-competitive grant processes;
- one-off grants; and
- procurement processes.

These processes are administered according to the *Commonwealth Procurement Rules* or the *Commonwealth Grants Rules and Guidelines*, as applicable.

Selection criteria relevant to each activity, and upon which spending decisions will be made, are provided to all potential tenderers/applicants for each activity. Selection criteria and guidelines for individual processes are published as appropriate on the Department's website at [www.health.gov.au/internet/main/publishing.nsf/Content/work-prog](http://www.health.gov.au/internet/main/publishing.nsf/Content/work-prog).

All spending decisions for activities under the Health Workforce Program are made according to the *Commonwealth Procurement Rules*, the *Commonwealth Grants Rules and Guidelines* and the Health Workforce Program Guidelines which are available at [www.health.gov.au/internet/main/publishing.nsf/Content/budget2011-flexfund-workforce18.htm](http://www.health.gov.au/internet/main/publishing.nsf/Content/budget2011-flexfund-workforce18.htm).

Spending decisions are made by either the Minister for Health or his/her departmental delegates.

The Department reports information on individual grants and procurements at <http://www.health.gov.au/internet/main/publishing.nsf/Content/health-contracts-index.htm> and <http://www.health.gov.au/internet/main/publishing.nsf/Content/pfps-grantsreporting>.

Activities under the Health Workforce Program, which include grants or procurements, are subject to merits review arrangements. Requests for merits review and re-consideration are considered within the context of a finite level of funding.

The Department's Grants and Procurement Complaints Procedures apply to complaints, including requests for merits review that arise in relation to grant and procurement processes. The Complaints Procedures are available at <http://www.health.gov.au/internet/main/publishing.nsf/Content/pfps-complaintsprocedures>.

Complaints, including requests for merits review, are able to be lodged by contacting the relevant departmental contact officer within six months of the outcome of a process. Complaints are acknowledged within ten days of being lodged. The departmental contact officer and their supervisor will try to resolve the matter and advise the decision within a reasonable timeframe.

If a complainant is not satisfied with the Department's decision, they can apply for an independent internal departmental review of the complaint. People are also able to seek review from the Commonwealth Ombudsman or judicial review.

No further merits review is provided given these available avenues for review.

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

- the communications power (section 51(v));
- the naturalization and aliens power (section 51(xix));
- the social welfare power (section 51(xxiiiA));
- the races power (section 51(xxvi));
- the external affairs power (section 51(xxix));
- the territories power (section 122);
- the grants to states power (section 96); and
- the Commonwealth executive power and the express incidental power (sections 61 and 51(xxxix)).

*Communications power*

Under section 51(v) of the Constitution, the Commonwealth has power to legislate with respect to ‘postal, telegraphic, telephonic and other like services’.

Under the Program, the Department will fund the delivery of internet-based communications to health practitioners and students to encourage them to relocate to rural and remote areas.

*Naturalization and aliens power*

Section 51(xix) of the Constitution supports laws with respect to ‘naturalization and aliens’.

Under the Program, the Department will fund the recruitment, training and support of foreign health professionals.

*Social welfare power*

Section 51(xxiiiA) of the Constitution empowers the Parliament to make laws with respect to the provision of various social welfare benefits and services.

Under the Program, the Department will fund activities aimed at improving health outcomes for all Australians, with a particular focus for individuals living in regional, rural and remote areas by encouraging health professionals to work in these areas and by providing services to individuals living in areas of market failure such as through the Royal Flying Doctor Service and outreach activities.

*Races power*

Section 51(xxvi) of the Constitution empowers the Parliament to make laws with respect to ‘the people of any race for whom it is deemed necessary to make special laws’.

The race power supports laws for the benefit of Aboriginal and Torres Strait Islander Australians. Under the Program, activities will be funded that increase the capacity of the Aboriginal and Torres Strait Islander health and aged care workforce, and the capacity of the broader health and aged care workforce, to provide culturally safe care to Aboriginal and Torres Strait Islander people.

*External affairs power*

Section 51(xxix) of the Constitution empowers the Parliament to make laws with respect to ‘external affairs’. The external affairs power supports legislation implementing treaties to which Australia is a party. Australia has obligations regarding the right to health under Articles 2 and 12 of the International Covenant on Economic, Social and Cultural Rights. In particular, these Articles require State Parties to take steps necessary for ‘the prevention, treatment and control of epidemic, endemic, occupational and other diseases’ and to take steps necessary for ‘the creation of conditions which would assure to all medical service and medical attention in the event of sickness’.

Under the Program, the Department will fund training and education activities that improve the capacity, quality and distribution of the health workforce to meet the health needs of Australians.

*Territories power*

The provision of funding for activities in or in relation to a Territory is supported by the territories power in s 122 of the Constitution.

Under the Program, the Department may provide funding to Territories for the recruitment, retention and support of health professionals to work in regional, rural and remote areas.

*Power to grant financial assistance to the States*

Section 96 of the Constitution enables the Parliament to grant financial assistance to the States.

Under the Program, the Department may provide funding to the States for the recruitment, retention and support of health professionals to work in regional, rural and remote areas.

*Commonwealth executive power and express incidental power*

The Program involves funding activities that are taken in the exercise of the executive power of the Commonwealth. This funding is supported by the executive power in section 61 of the Constitution and the express incidental power in section 51(xxxix). For example, the Program funds activities that involve exchanging information about the health workforce between the Commonwealth and stakeholders.

New **table item 219** establishes legislative authority for government spending on a new mental health care workforce model to be developed by the Australian College of Mental Health Nurses (ACMHN).

A range of strategies is required to address not only the predicted shortfall for mental health nurses but also the mental health literacy of all nurses in all settings.

Improved mental health literacy, clinical skills and capability in mental health nurses and nurses in general practice will aim to be achieved through:

- an education program to improve mental health knowledge and skills in the primary health care nurse workforce; and
- a program to facilitate the transition of skilled specialist mental health nurses between acute, community and primary health care settings to enable flexibility in the primary health care workforce.

An education program is the first deliverable of the workforce model to strengthen the mental health literacy and clinical skills of the primary health care nurse workforce.

The second deliverable will be implemented in stages. In the first stage, the ACMHN will develop a program framework to identify education needs, mentoring, supervisory arrangements, and organisational support for mental health nurses. In the second stage, the

ACMHN will trial the program in selected Primary Health Networks (PHNs) in urban, regional and rural/remote areas. The final stage will involve an evaluation of the program.

The development of a more sustainable and flexible nursing workforce is needed to respond to a changing primary health care environment. Professional learning activities will be based on a 'stepped care' approach to ensure the delivery of services to the community at the appropriate level of care, with the delivery of mental health care services to be co-ordinated within the PHNs and local health areas. A 'stepped care' approach means ensuring an appropriate level of care is delivered in line with the severity of the mental illness being experienced by the client.

Funding of \$1.5 million was included in the 2016-17 Mid-Year Economic and Fiscal Outlook under the measure 'Strengthening Mental Health Care in Australia' for a period of two years commencing in 2016-17. Details are set out in the *Mid-Year Economic and Fiscal Outlook 2016-17*, Appendix A: Policy decisions taken since the 2016 PEFO at page 175.

Funding to the ACMHN to develop a new workforce model is part of the Coalition's election commitment 'Strengthen Mental Health Care in Australia' released on 26 June 2016 which is available at [www.liberal.org.au/coalitions-policy-strengthen-mental-health-care-australia](http://www.liberal.org.au/coalitions-policy-strengthen-mental-health-care-australia).

The new mental health care workforce model will be delivered through a grant funding agreement with the ACMHN. The *Commonwealth Grants Rules and Guidelines* will apply. Information on the grant will be publicly reported at [www.health.gov.au/internet/main/publishing.nsf/Content/GSD-healthgrants-senateorder14-MinchinMotion](http://www.health.gov.au/internet/main/publishing.nsf/Content/GSD-healthgrants-senateorder14-MinchinMotion). Funding decisions will be approved by the delegate of the Secretary of the Department of Health.

The ACMHN will be responsible for the delivery of the primary components of the program and may engage sub-contractors to deliver education modules.

The provision of funds to the ACMHN to develop a new workforce model is not considered suitable for independent merits review because it is of a short-term, time-limited and one-off nature of a small scale. The direct source arrangement is considered appropriate based on the ACMHN being the only peak body organisation for mental health nursing with the appropriate capability to deliver this program.

Funding for this item will come from Program 2.3: Health Workforce, which is part of Outcome 2. Details are set out in the *Portfolio Additional Estimates Statements 2016-17, Health Portfolio* at page 17.

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

Section 51(xxix) of the Constitution empowers the Parliament to make laws with respect to 'external affairs'. The external affairs power supports legislation implementing treaties to which Australia is a party. Australia has obligations regarding the right to health under Articles 2 and 12 of the International Covenant on Economic, Social and Cultural Rights. In particular, these Articles require State Parties to take steps necessary for 'the prevention, treatment and control of epidemic, endemic, occupational and other diseases' and to take

steps necessary for ‘the creation of conditions which would assure to all medical service and medical attention in the event of sickness’.

Under the program, the Department will fund activities that support skills development of nurses in mental health and facilitate the movement of mental health nurses across health service delivery settings to meet areas of need.

### **Item 3 – In the appropriate position in Part 4 of Schedule 1AB (table)**

This item adds a new table item to Part 4 of Schedule 1AB to establish legislative authority for government spending on an activity that is administered by the Department of Health.

New **table item 227** establishes legislative authority for government spending on the tobacco control initiatives and activities to reduce the prevalence of smoking and the associated health (including preventable deaths and disabilities), social and economic costs, and inequalities that it causes.

The program entitled ‘Investment in Preventive Health – Drug Strategy (Tobacco Harm Minimisation) was first established in 1998 to meet the commitments of the then Government in its response to a December 1995 report of the Senate Community Affairs References Committee. The report ‘The Tobacco Industry and the Costs of Tobacco-Related Illness’ is available at

[www.apf.gov.au/~media/wopapub/senate/committee/clac\\_ctte/completed\\_inquiries/pre1996/tobacco/report/report\\_pdf.ashx](http://www.apf.gov.au/~media/wopapub/senate/committee/clac_ctte/completed_inquiries/pre1996/tobacco/report/report_pdf.ashx).

The program provides funding for tobacco control initiatives and activities that support the Government’s tobacco control and cessation priorities, policy development and implementation in relation to current and emerging tobacco control issues. The tobacco control initiatives and activities also intend to positively impact the health of the Australian community, including smokers in particular and non-smokers.

Program initiatives and activities fall within the following categories:

- undertaking research, policy development, evaluation, administration, coordination, capacity and capability building, and implementation relating to current and planned government tobacco control priorities. This category includes, for example, work relating to new and emerging tobacco products and other products resembling tobacco products and/or devices associated with tobacco products, including under the *National Tobacco Strategy 2012-2018* (and its future iterations) and the *National Drug Strategy 2010-2015* (and its future iterations) which are available at [www.nationaldrugstrategy.gov.au/internet/drugstrategy/publishing.nsf/Content/home](http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/publishing.nsf/Content/home);
- development (including data development), evaluation, monitoring and review activities in relation to the *National Tobacco Strategy 2012-2018* (and its future iterations). This category includes, for example, the commissioning of a ‘mid-point review’ of the *National Tobacco Strategy 2012-2018*, which assessed national progress on the implementation of key priority areas in the Strategy, and will include the commissioning of an ‘end-point review’ of the Strategy covering the period 2012-2018;
- researching, developing, implementing and evaluating graphic health warning images on tobacco products;

- meeting Australia's ongoing national and international funding obligations, such as providing 'voluntary assessed contributions' and 'extra budgetary contributions' to support work mandated by the World Health Organization's Conference of the Parties established under Part VIII of the *Framework Convention on Tobacco Control*;
- undertaking research, policy development, evaluation, coordination and implementation relating to Australia's obligations as a Party to the World Health Organization's *Framework Convention on Tobacco Control*;
- building capacity and capability with states and territories, government and non-government organisations, and educational facilities to promote and facilitate tobacco control and cessation. This category includes, for example, the provision of funding to the Cancer Council Victoria from 2017 to 2020 to develop and maintain the publication *Tobacco in Australia: Facts and Issues*, which provides a comprehensive resource detailing national and international developments in tobacco research, legislative development, policy development and implementation. This category also includes the provision of funding to non-government organisations such as the McCabe Centre for Law and Cancer in 2017 and 2018 to support its functions as a World Health Organization knowledge hub; and
- collaboration and cooperation, including through the sponsorship of international and national conferences and meetings related to tobacco control. This category includes, for example, the provision of funding to sponsor Oceania Tobacco Control Conferences in 2017 and beyond.

The program operates through the provision of funding to a range of entities, such as state and territory governments (including entities owned or controlled by state and territory governments), state and territory Cancer Councils, non-government organisations, tertiary education institutions, and the World Health Organization's Conference of the Parties. These entities are responsible for undertaking work associated with the initiatives and activities outlined in the categories above.

Various processes are used to provide funding to a range of entities to allow them to undertake initiatives and activities which support the Government's tobacco control priorities. Direct, open and competitive sourcing processes are expected to be used with respect to the provision of funding for some initiatives and activities.

Two specific projects of national significance have been funded jointly by the Australian Government and states and territories under cost-shared arrangements. These include work associated with a 'mid-point review' of the *National Tobacco Strategy 2012-2018*, which assessed national progress on the implementation of key priority areas in the Strategy, and work associated with the development of options to minimise the risks associated with the use and marketing of electronic cigarettes. It is expected that similar cost-shared arrangements may be used to support the provision of funding for future tobacco control initiatives and activities of national significance.

The recipients of program funding are responsible for delivering the relevant components of each activity or initiative efficiently and effectively and reporting to the Department of Health. This enables the Department to comply with legislative reporting obligations under the *Commonwealth Grants Rules and Guidelines*.

Recipients are required to provide the Department of Health with reports for an activity containing information in relation to expenditure and deliverables produced, and in

accordance with the timeframes and terms specified in the grant agreements. Specific reporting requirements form part of grant recipients' agreements with the Department.

The future provision of funding to relevant entities will be approved by the Minister for Health or departmental delegates of the Minister for Health, who will make a determination on the awarding of grant funding and the terms and conditions on which funding is provided.

The decisions will be made in accordance with the relevant legislation, including the *Commonwealth Grants Rules and Guidelines* and the *Public Governance, Performance and Accountability Act 2013*, and in particular whether it is an efficient, effective, ethical and economical use of Commonwealth resources. All procurement decisions will be made in accordance with the *Commonwealth Procurement Rules*.

There are no scheduled funding rounds at this time. Program guidelines and eligibility/selection criteria relevant to the initiatives and activities upon which spending decisions will be made will be provided to all potential tenderers/applicants for future funding rounds and will be made publicly available in due course. Grant decisions will be published at [www.health.gov.au/internet/main/publishing.nsf/Content/GSD-healthgrants-senateorder14-MinchinMotion](http://www.health.gov.au/internet/main/publishing.nsf/Content/GSD-healthgrants-senateorder14-MinchinMotion).

The provision of funding under the program is not considered suitable for merits review because funding has generally been provided to entities, which have been targeted according to their experience and expertise in tobacco control matters. Such entities have generally been funded under long-term arrangements, such as state and territory Cancer Councils. Additionally, the provision of funding to these specific entities is non-competitive, and for specific purposes.

Other entities, such as the World Health Organization's Conference of the Parties, have been funded in order to meet Australia's international funding obligations under the Framework Convention on Tobacco Control. Merits review is not appropriate for these funding activities.

Any funding, which has been, or will be, provided through direct sourcing or grants will be targeted, non-competitive, time-limited and for a specific purpose. Any funding which has been, or will be, provided through open and competitive sourcing will be targeted, time-limited and for specific purposes. Therefore, merits review will not be applicable to these processes.

The tobacco control initiatives and activities are part of Program 2.4: Preventive Health and Chronic Disease Support, which is part of Outcome 2. Funding for Program 2.4 of \$1.6 billion over four years from 2016-17 has been included in the 2016-17 Budget. Details are set out in the *Portfolio Budget Statements 2016-17, Budget Related Paper No. 1.10, Health Portfolio* at page 56.

Funding of \$45 million for social marketing to discourage tobacco use, complementing the plain packaging initiative, was included in the 2012-13 Mid-Year Economic and Fiscal Outlook under the measure 'Preventive Health – investing in preventative health initiatives' for a period of four years commencing in 2012-13. Details are set out in the *Mid-Year Economic and Fiscal Outlook 2012-13, Appendix A: Policy decisions taken since the 2012-13 Budget* at page 236. This is an ongoing measure.



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

Section 51(xxix) of the Constitution empowers the Parliament to make laws with respect to ‘external affairs’. The external affairs power supports legislation implementing treaties to which Australia is a party. Australia has obligations regarding tobacco control and prevention under the World Health Organization’s Framework Convention on Tobacco Control. Article 5, for example, requires a State Party to ‘develop, implement, periodically update and review comprehensive multisectoral national tobacco control strategies, plans and programmes in accordance with this convention and the protocols to which it is a Party’. Article 5 also requires a Party to ‘establish or reinforce and finance a national coordinating mechanism or focal points for tobacco control’ and ‘adopt and implement effective legislative, executive administrative and/or other measures and cooperate, as appropriate, with other Parties in developing appropriate policies for preventing and reducing tobacco consumption, nicotine addiction and exposure to tobacco smoke’.

Under the program, funding will be provided for activities such as development (including data development), evaluation, monitoring and review in relation to the *National Tobacco Strategy 2012-18* and its future iterations.

## **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 (Health Measures No. 2) Regulations 2017***

These Regulations are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Legislative Instrument**

Section 32B of the *Financial Framework (Supplementary Powers) Act 1997* (the FF(SP) Act) authorises the Commonwealth to make, vary and administer arrangements and grants specified in the *Financial Framework (Supplementary Powers) Regulations 1997* (the FF(SP) Regulations) and to make, vary and administer arrangements and grants for the purposes of programs specified in the Regulations. Schedule 1AA and Schedule 1AB to the FF(SP) Regulations specify the arrangements, grants and programs. The FF(SP) Act applies to Ministers and the accountable authorities of non-corporate Commonwealth entities, as defined under section 12 of the *Public Governance, Performance and Accountability Act 2013*.

The Regulations amend Schedule 1AB to the FF(SP) Regulations to establish legislative authority for government spending on a number of initiatives administered by the Department of Health.

Funding will be provided for:

- the Mental Health in Multicultural Australia program to improve accessibility and the quality of mental health services for people from culturally and linguistically diverse backgrounds;
- the Quality Use of Pathology Program to improve health outcomes from the quality use of pathology in health care;
- the Youth Cancer Services Program to improve cancer treatment services, support and the coordination of care for adolescents and young adults aged 15 to 25 years with cancer;
- the Health Workforce Program to strengthen the capacity of the health workforce to deliver high quality care and improve health outcomes of people living in rural, regional and remote locations;
- the Australian College of Mental Health Nurses to develop a new mental health nursing workforce model that is responsive to the mental health needs of the Australian community;
- a grant to Surf Life Saving Australia for: the delivery of preventative safety measures at local beaches; technology updates; expanded volunteer training; skills development for existing supervisors, trainers and assessors; and expanded recruitment and recognition of supervisors, trainers and assessors; and
- tobacco control initiatives and activities to reduce the prevalence of smoking and the associated health (including preventable deaths and disabilities), social and economic costs, and inequalities that it causes.

The Minister for Health has portfolio responsibility for these matters.

**Human rights implications**

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

**Conclusion**

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

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