**EXPLANATORY STATEMENT**

**Issued by the Authority of the Minister for Finance and the Public Service**

*Financial Framework (Supplementary Powers) Act 1997*

*Financial Framework (Supplementary Powers) Amendment*

*(Jobs and Small Business Measures No. 1) Regulations 2019*

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

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

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

The *Financial Framework (Supplementary Powers) Amendment (Environment and Energy Measures No. 1) Regulations 2019* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on the Career Revive initiative for regional women (Career Revive) that will support women to continue their careers after caring‑related breaks. The Department of Jobs and Small Business has administrative responsibility for the spending activity.

Career Revive will fund the development of programs by up to 30 medium to large rural and regional employers to support, attract and retain women returning to work after caring‑related breaks. Funding will also be provided for the development of publicly available online resources designed to guide regional employers generally in setting up similar initiatives within their organisations.

This initiative is part of the Women’s Economic Security Package that was announced by the Minister for Women, the Hon Kelly O’Dwyer MP, on 20 November 2018.

Funding of $1.5 million over three years from 2019-20 for the Career Revive initiative was included in the 2018‑19 Mid‑Year Economic and Fiscal Outlook.

Details of the Regulations are set out at Attachment A. A Statement of Compatibility with Human Rights is at Attachment B.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003.* The Regulations commence on the day after the instrument is registered on the Federal Register of Legislation.

**Consultation**

In accordance with section 17 of the *Legislation Act 2003*, consultation has taken place with the Department of Jobs and Small Business.

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 (Jobs and Small Business Measures No. 1) Regulations 2019***

**Section 1 – Name**

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Jobs and Small Business Measures No. 1) Regulations 2019*.

**Section 2 – Commencement**

This section provides that the Regulations commence on the day after the instrument is registered on the Federal Register of Legislation.

**Section 3 – Authority**

This section provides that the Regulations are made under the *Financial Framework (Supplementary Powers) Act 1997*.

**Section 4 – Schedules**

This section provides that the *Financial Framework (Supplementary Powers) Regulations 1997* are amended as set out in the Schedule to the Regulations.

**Schedule 1 – Amendments**

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

This item adds a new table item to Part 4 of Schedule 1AB to establish legislative authority for government spending on an initiative that will be administered by the Department of Jobs and Small Business (the department).

New **table item 329** establishes legislative authority for government spending on the Career Revive initiative for regional women (Career Revive) to support women to continue their careers after caring-related breaks.

Government expenditure on this initiative is intended to support regional employers to develop programs, or action plans, that will support, attract and retain women returning to work after caring-related breaks to transition back into the workforce through training, mentoring and work experience (‘supported returner programs’).

Career Revive is a pilot program and part of a broader range of measures forming the Women’s Economic Security Package that is aimed at increasing women’s workforce participation, supporting women’s economic independence and improving women’s earning potential. The Minister for Women, the Hon Kelly O’Dwyer MP, launched the Women’s Economic Security Statement 2018 on 20 November 2018.

Career Revive will involve three major activities:

* specialist assistance to participating rural and regional employers
* developing publicly available online resources to assist regional employers generally
* awareness-raising of the pilot program and promotion of the online resources.

The department will procure one or more business improvement consultants to provide specialist assistance to up to 30 medium to large rural and regional employers who participate in the pilot to develop supported returner programs. The consultants will review the employers’ business structures to identify any barriers preventing them from attracting and retaining women returning to the workforce, such as inflexible work arrangements. One or more consultants will work with each employer to develop a tailored action plan to address identified barriers and set up a supported returner program. The design of each program will vary depending on the size of the employer, the industry it operates in and the employer’s readiness to employ and support women returning to the workforce. Employer action plans and returner programs are expected to include fixed term paid placements, making changes to organisational practices such as designing flexible work arrangements, training, mentoring and tailoring recruitment practices.

The business improvement consultants procured by the department will also develop publicly available online resources designed to guide regional employers in setting up similar initiatives within their organisations. This will include the development of a best practice guide or toolkit for employers and case studies for promotional purposes.

While no financial support will be provided by the Government to the participating employers to address the identified barriers or implement their supported returner programs, the employers will benefit from the expert advice provided by the consultants at no cost to them. Through participation in the initiative, employers will gain a competitive advantage through an increased ability to attract and retain skilled women from a wider talent pool.

The department will engage and enter into a contract with a peak business organisation to raise awareness of the initiative and broker connections with regional employers who may be interested in participating in the pilot. It is expected that this organisation will have connections with a variety of industries throughout regional Australia. The peak organisation will also have a role in promoting the online resources and other materials through its employer networks.

As a pilot program, this initiative will provide an evidence base to boost the medium-term policy approach required to support women’s workforce participation in regional areas. An independent evaluator will evaluate the program. The evaluation will be used to build the evidence base for future policy responses to increase women’s workforce participation, particularly in regional areas. Expansion of Career Revive beyond its initial pilot will depend on the pilot’s success, as well as its applicability to other areas and industries outside Australia’s major cities.

Funding of $1.5 million for Career Revive was included in the 2018‑19 Mid-Year Economic and Fiscal Outlook as part of the Women’s Economic Security Package, for a period of three years commencing in July 2019. Details are set out in the *Mid‑Year Economic and Fiscal Outlook 2018-19*, Appendix A: Jobs and Small Business Portfolio at pages 215 and 216. Funding will come from Program 1.1: Employment Services, which is part of Outcome 1. Details are set out in the *Portfolio Additional Estimates Statements 2018-19, Jobs and Small Business*.

The delivery of Career Revive will involve three procurement processes to be administered by the department.

A peak business organisation will be procured through a limited tender process. Only a small number of organisations are recognised as nationally representative peak organisations. Due to this limited market, and consistent with the Commonwealth Procurement Rules (paragraph 10.3 d. iii), a limited tender is appropriate. This procurement is expected to commence in the first half of 2019 with contracts to be in place after 1 July 2019. Information on this process, including outcomes, will be published on AusTender ([www.tenders.gov.au](http://www.tenders.gov.au)). Final procurement decisions will be made by an Senior Executive Service (SES) officer in the department, who will be a delegate of the Secretary.

One or more business improvement consultants with expertise in regional business development, organisational change and women’s recruitment will be procured through an existing panel arrangement. This procurement is expected to commence in the first half of 2019 with contracts to be in place after 1 July 2019. Final procurement decisions will be made by an SES officer in the department, who will be a delegate of the Secretary. Information relevant to this procurement will be reported on AusTender, in accordance with the Commonwealth Procurement Rules.

An independent evaluator will be procured through the Research and Evaluation Panel, managed by the department. This procurement is expected to commence in late 2019 with contracts to be in place in early 2020. Final procurement decisions will be made by an SES officer in the department, who will be a delegate of the Secretary. Information relevant to this procurement will be reported in accordance with the Commonwealth Procurement Rules.

All procurement decisions will be made in accordance with the Commonwealth’s resource management framework, including the *Public Governance, Performance and Accountability Act 2013* and the Commonwealth Procurement Rules. The department will provide suppliers and tenderers with an opportunity to make inquiries and complaints should they wish to do so, and will provide feedback to unsuccessful applicants should they wish to receive it. Inquiries or complaints can be made at any time during the procurement processes, and will be handled in accordance with the probity processes for each procurement.

Procurement decisions, once made, will be final and not subject to merits review. Remaking a procurement decision after entry into contractual arrangements with a successful proponent is legally complex, impractical, and would result in delays in the commencement of Career Revive.

As the various procurement activities will be conducted through panels or a limited tender process, they will not be subject to the *Government Procurement (Judicial Review) Act 2018*, should that Act have commenced at the time.

An expression of interest process will be managed by the contracted peak organisation and the department to select the employers to participate in Career Revive. The department will also seek advice from other Commonwealth agencies with experience or interest in supporting returner programs in rural regional businesses. To ensure fairness and accountability and that the pilot has the greatest opportunity to succeed, final decisions on the selection of participants will be made by the department based on:

* the employer’s capacity and willingness to work with a consultant on changes needed to make its business attractive to women returning to the workforce
* the employer’s willingness to consider implementing a returner program in its business
* the employer’s willingness to be featured in case studies and exemplars of best practice
* having a reasonable distribution of rural and regionally-based businesses across states.

In the event an issue arises for an employer as part of the selection process or during the pilot and the issue is raised with the department, the department will handle the matter by acknowledging receipt of the request and contacting the employer with a view to resolving any issues as soon as practicable. The department will review the issue and work with the employer (and where relevant, the consultant) to address it where needed. The relevant area of the department will investigate and undertake an independent review of the case. The department will respond to the employer regarding the outcome of the request.

An employer who is not chosen to participate in the program can raise the matter with the Commonwealth Ombudsman.

Decisions about which employers will participate in the pilot will not be subject to external merits review. These decisions relate to the allocation of a finite resource (being the capped number of employers the consultants will be engaged to work with) between competing applicants (being those employers that submit an expression of interest).

Merits review may affect the existing selection of other employers given the limited number of employers that can take part in the program.

The availability of online resources designed for rural and regional employers to guide them to set up similar initiatives in their organisations is expected to reduce any impact on any unsuccessful employer’s interests.

Once an employer establishes a supported returner program it will be the employer’s responsibility to advertise available positions accordingly in their communities. This may include a range of advertising mechanisms to recruit women for these positions. Participation in a supported returner program will be open to all eligible women in the community, whether or not they are currently participating in employment services. It is expected that the supported returner program will be employer-funded, paid employment which may last between three and six months.

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))
		- the communications power (section 51(v)).

*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 Australia’s international obligations under treaties to which it is a party.

Career Revive, by supporting regional employers to attract and retain women returning to work after a caring-related break and by supporting women in regional areas get back into employment, gives effect to Australia’s obligations under the Convention on the Elimination of All Forms of Discrimination against Women [1983] ATS 9 (CEDAW), particularly Articles 1, 2, 3, 11 and 14. It also gives effect to Articles 1 and 2 of the International Labour Organization’s Convention concerning Employment Policy (ILO Convention 122) and Articles 2 and 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Article 1 of the CEDAW defines ‘discrimination against women’ to mean ‘any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women … on a basis of equality of men and women, of human rights and fundamental freedoms’.

Women in rural and regional areas have a lower workforce participation rate than men. Career Revive seeks to address discrepancies that exist in workforce participation and returning to work after a caring-related break.

Article 2 of the CEDAW provides that the States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake to take measures to eliminate discrimination against women, including measures to eliminate discrimination against women ‘by any person, organization or enterprise’ (Article 2, paragraph (e)).

Article 3 of the CEDAW provides that States Parties ‘shall take in all fields, in particular in the social, economic and cultural fields, all appropriate measures … to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men’.

Article 11(1) provides that the States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure rights including:

* the rights to the same employment opportunities (Article 11(1), paragraph (b))
* the right to free choice of profession and employment and the right to receive vocational training and retraining (Article 11(1), paragraph (c)).

Career Revive is aimed at addressing difficulties faced by women who wish to return to work after a caring-related break and increasing women’s workforce participation.

Career Revive will assist participating employers by providing assistance and tools to enable those employers to identify and remove barriers in their businesses that impact women returning to work after a caring-related break. Career Revive will also deliver an employer toolkit that will provide best practice, practical resources and learnings that will be available to all employers.

Article 14(1) provides that States Parties shall take into account the particular problems faced by rural women, ‘and shall take all appropriate measures to ensure the application [of the CEDAW provisions] to women in rural areas’, and Article 14(2) provides that States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas, including by ensuring such women the right ‘[t]o obtain all types of training and education’ and ‘[t]o organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self-employment’.

Support provided to Career Revive participating employers in rural and regional locations will include identifying and addressing the particular problems faced by the employer in attracting and retaining rural women in returning to employment.

Article 1 of the ILO Convention 122 relevantly requires Member States to pursue an active policy designed to promote full, productive and freely chosen employment, irrespective of sex.

Article 2 of the ILO Convention 122 requires Member States to take such steps as may be needed, including when appropriate the establishment of programs, to attain the objectives specified in Article 1 of the ILO Convention 122.

The supported returner programs and online employer resources will promote full, productive and freely chosen employment by promoting practices that support women’s return to the workforce after a caring-related break.

Article 2 of the ICESCR relevantly states that the States Parties undertake steps to achieve progressively the full realisation of the rights recognised in the ICESCR without discrimination as to sex.

Article 6 of the ICESCR requires States Parties to recognise the right to work, and to achieve the full realisation of this right through technical and vocational guidance and training programs.

Women are less likely to be in the workforce than men, spend longer outside the workforce and work part-time at more than twice the rate of men. Career Revive will increase opportunities for women’s workforce participation by funding the development of supported returner programs which include training, mentoring and work experience.

*Communications power*

Section 51(v) of the Constitution empowers the Parliament to make laws with respect to ‘postal, telegraphic, telephonic and other like services. The employers’ resources (including the toolkit) will be available online to all businesses.

**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 (Jobs and Small Business******Measures No. 1) Regulations 2019***

This disallowable legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011.*

**Overview of the Legislative Instrument**

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

The *Financial Framework (Supplementary Powers) Amendment (Jobs and Small Business Measures No. 1) Regulations 2019* amend Schedule 1AB to the FF(SP) Regulations to add new table item 329 to Part 4 of that schedule to establish legislative authority for government spending on the Career Revive initiative for regional women (Career Revive). This initiative will support women to continue their careers after caring‑related breaks.

Career Revive will support the development of programs by up to 30 medium to large rural and regional employers that are designed to support, attract and retain women returning to work after caring-related breaks. Funding will also be provided for the development of publicly available online resources designed to guide regional employers generally in setting up similar initiatives within their organisations.

**Human rights implications**

This legislative instrument engages the following human rights:

* the right to an adequate standard of living − Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and Article 14 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
* the right to work − Article 6 of the ICESCR and Article 11 of the CEDAW
* the right to equality and non-discrimination − Article 2 of the ICESCR and Article 2 of the CEDAW.

*Right to an adequate standard of living*

Article 11 of the ICESCR recognises the right of everyone to an adequate standard of living and to the continuous improvement of living conditions.

Article 14 of the CEDAW also recognises the role of rural women in the economic survival of their families.

Career Revive promotes the right to an adequate standard of living by increasing women’s workforce participation by encouraging, and providing assistance to, regional employers to employ women returning to work.

Career Revive will also provide an evidence base to boost the medium-term policy approach required to support women’s workforce participation in regional areas.

*Right to work*

Article 6 of the ICESCR and Article 11 of the CEDAW recognise the right to work. The Career Revive initiative encourages regional employers to support, attract and retain women returning to work after caring-related breaks. This process encourages women to transition back to the workforce and engage with their right to work.

The Career Revive initiative has been designed to create a strong incentive for regional employers to participate by gaining expert advice provided by the consultant at no cost. Through participation in the initiative, employers will gain a competitive advantage through an increased ability to attract and retain skilled women from a wider talent pool. Career Revive will support participant employers by providing assistance and tools to enable those employers to identify and remove barriers in their businesses that impact women returning to work after a caring-related break. Career Revive will also deliver an employer toolkit that will provide best practice, practical resources and learnings that will be available to all employers.

The Career Revive initiative will support regional employers to develop an action plan, tailored to each particular employer, to enable the development of a supported returner program, that is, a program designed to support, attract and retain women returning to work after caring-related breaks. Supported returner programs will address identified barriers to women returning to work, for example, through training, mentoring and work experience.

The supported returner programs and online employer resources will therefore promote full, productive and freely chosen employment by promoting practices that support women’s return to the workforce after a caring-related break.

*Right to equality and non-discrimination*

Article 2 of the ICESCR recognises the right to equality and non-discrimination on, among other grounds, sex.

Article 1 of the CEDAW defines ‘discrimination against women’ to mean ‘any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women … on a basis of equality of men and women, of human rights and fundamental freedoms’.

Article 2 of the CEDAW requires the pursuit of the elimination of discrimination against women.

Women in rural and regional areas have a lower workforce participation rate than men. ABS Labour Force Data shows that labour force participation for people 15 years and over who live outside capital cities is lower for women (57.5 per cent) than for men (67 per cent) (See: ABS, Labour Force, Australia, Detailed – Electronic Delivery, October 2018, cat. no. 6291.0.55.001, three-month average of original data, persons aged 15 years and over). Career Revive seeks to work with employers to address discrepancies that exist in women’s workforce participation when returning to work after a caring-related break.

Career Revive is aimed at addressing difficulties faced by women who wish to return to work after a caring-related break and increasing women’s workforce participation by providing assistance to prospective employers.

Career Revive furthers the right to equality and non-discrimination for women re-entering the workforce after caring-related breaks. While this positive discrimination in favour of women may result in discrimination against men seeking the same job opportunities, it is permissible as a means of addressing the disparity between gender employment figures within regional areas.

Career Revive was announced as part of the Women’s Economic Security Package. The objective of this initiative is to protect the rights of women returning to work. This legislative instrument will provide legislative authority for the initiative.

**Conclusion**

This legislative instrument is compatible with human rights because it generally advances human rights. To the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

**Senator the Hon Mathias Cormann**

**Minister for Finance and the Public Service**