

## REPLACEMENT EXPLANATORY STATEMENT

**This Explanatory Statement replaces the Explanatory Statement registered on 28 June 2021 for the *Financial Framework (Supplementary Powers) Amendment (Health Measures No. 3) Regulations 2021* [F2021L00864] to provide information about delegation of administrative powers and functions under the Home Care Workforce Support Program.**

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

*Financial Framework (Supplementary Powers) Act 1997*

*Financial Framework (Supplementary Powers) Amendment  
(Health Measures No. 3) Regulations 2021*

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

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

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

The *Financial Framework (Supplementary Powers) Amendment (Health Measures No. 3) Regulations 2021* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on the Home Care Workforce Support Program (the program), which will support the aged care workforce, with a focus on home care.

The program will provide support to attract, train and retain an additional 13,000 future aged care workers, and increase the skills of the aged care workforce. Grant funding will be provided to organisations or consortia for activities to support the growth of the home care workforce by assisting home care service providers to attract, train and retain new personal care workers in their local area, in each state and territory. These activities could include screening candidates to determine suitability for work in the home care sector, supporting students to complete work placements in the aged care sector, developing peer support networks for new personal care workers, and supporting existing workers to build supervisory skills.

On 1 March 2021, the Prime Minister, the Hon Scott Morrison MP, the Minister for Health and Aged Care, the Hon Greg Hunt MP, and the Minister for Senior Australians and Aged Care Services and the Minister for Sport, Senator the Hon Richard Colbeck, jointly announced \$91.8 million for a period of two years from 2021-22 for the program, as part of the \$452.2 million immediate response to the Final Report from the Royal Commission into Aged Care Quality and Safety. Funding for the program was included in the 2021-22 Budget.

The Department of Health has responsibility for the program.

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 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. 3) Regulations 2021***

**Section 1 – Name**

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Health Measures No. 3) Regulations 2021*.

**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**

***Financial Framework (Supplementary Powers) Regulations 1997***

**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 activity that will be administered by the Department of Health (the department).

New **table item 481** establishes legislative authority for government spending on the Home Care Workforce Support Program (the program), which will support the aged care workforce, with a focus on home care.

The Government supports older people with complex care needs to live independently in their own homes by subsidising in-home aged care services and services to help people stay connected to their community through Home Care Packages. The demand for these Home Care Packages is high. While the Government continues to increase the number of Home Care Packages to meet the high demand, the workforce to deliver the care and services must also increase.

On 1 March 2021, the Prime Minister, the Hon Scott Morrison MP, the Minister for Health and Aged Care, the Hon Greg Hunt MP, the Minister for Senior Australians and Aged Care Services and the Minister for Sport, Senator the Hon Richard Colbeck, jointly announced \$91.8 million from 2021-22 to 2022-23 for the program to support growing a passionate and skilled aged care workforce. The program was announced as part of the \$452.2 million package to address immediate priorities in the aged care sector in response to the Final

Report from the Royal Commission into Aged Care Quality and Safety. The media release is available at [www.pm.gov.au/media/respect-care-and-dignity-aged-care-royal-commission-452-million-immediate-response-government](http://www.pm.gov.au/media/respect-care-and-dignity-aged-care-royal-commission-452-million-immediate-response-government).

The program will provide support to attract, train and retain an additional 13,000 future home care workers, and increase the skills of the aged care workforce. Grant funding will be provided to organisations or consortia to undertake activities to support the growth of the home care workforce and assist home care service providers to attract, train and retain new personal care workers in their local area, in each state and territory. These activities could include screening candidates to determine suitability for work in the home care sector, supporting students to complete work placements in the aged care sector, developing peer support networks for new personal care workers, and supporting existing workers to build supervisory skills.

While the program focuses on home care, some workers in residential care providers in regional and remote areas where there are identified workforce shortages would also be eligible for the program.

The program will leverage existing Commonwealth and state run employment and training programs and services to connect suitable jobseekers with home care providers and identified employment opportunities. These could include jobactive, Australian Apprenticeships, Youth Jobs PaTH, JobTrainer, Local Jobs Program and Launch into Work administered by the Department of Education, Skills and Employment.

The program will support home care providers to work with key stakeholders such as employment services providers or registered training organisations to develop their workforce. Grant activities could include screening candidates for suitability, organising career days or jobs fairs, providing mentoring support for new entrants or students, developing soft skills to increase the likelihood of participants completing training and entering the workforce, brokering work placements for students and upskilling the existing workforce to supervise new entrants to the aged and home care workforce.

The program will provide grant funding to engage organisations or consortia of home care service providers, registered training organisations, recruitment agencies or employment services, peak/industry bodies, group training organisations, consultancy/business advice firms, Community Development Program providers, Aboriginal Community Controlled Health Organisations and online care brokerage platforms, which allow consumers to procure carers online, to deliver a range of supports to new and existing workers, across all states and territories.

Funding will be allocated through an open competitive grant process in accordance with the *Public Governance, Performance and Accountability Act 2013*, the *Commonwealth Grants Rules and Guidelines 2017* and relevant financial delegations.

A single grant funding round will be run from July 2021. In order to provide applicants sufficient time to prepare and establish complex governance arrangements, a forecast opportunity will be undertaken before the grant opportunity is opened.

Grants will have a nationwide coverage and be awarded by region (to each state and territory and two for regional and remote areas). Applicants will need to be either an individual

organisation, or a consortium made up of at least two of a range of organisations including home care service providers, recruitment agencies, employment services providers, registered training organisations and peak bodies.

Grants will be administered by the Community Grants Hub, part of the Department of Social Services. The grant opportunity guidelines, assessment criteria and successful grant outcomes will be available on GrantConnect at [www.grants.gov.au](http://www.grants.gov.au).

At the time the explanatory statement for the Regulations was prepared in June 2021, it was envisaged that the Minister for Senior Australians and Aged Care Services, Senator the Hon Richard Colbeck, might wish to delegate his power to approve grants under the program but it was subsequently decided that the Minister will exercise the powers personally. Senator Colbeck will, therefore, be the person who decides which grants will be approved for funding under the program. As the Minister responsible for Senior Australians and Aged Care Services, Senator Colbeck has appropriate skills, qualifications and experience to exercise the powers or functions.

The Regulations do not delegate any power to make funding decisions. Rather, the instrument provides the basis for establishing legislative authority for government spending on the program. The actual power to make funding decisions and enter into grants for the purposes of the program listed in the instrument (the Home Care Workforce Support Program) resides in section 32B of the *Financial Framework (Supplementary Powers) Act 1997* (the FF(SP) Act). That section provides the Commonwealth with the power, in certain circumstances, to make, vary or administer arrangements or grants of financial assistance for the purposes of a program specified in the regulations. The power in section 32B of the FF(SP) Act may be exercised on behalf of the Commonwealth by a Minister or an accountable authority of a non-corporate Commonwealth entity (such as the Secretary of the department). Under section 32D of the FF(SP) Act, the Minister or the Secretary of the department may delegate their section 32B power to an official of any non-corporate Commonwealth entity. As the Minister will be approving the grants, there is no need for any delegations to be exercised in respect of the approval of the grants (or any safeguards or limitations to apply in respect of the exercise of any powers by any delegates).

Minister Colbeck is intending to be the decision maker in respect of the awarding of grants under the program. Following the Minister's decision to award any grants, departmental officials (from either the Department of Health or the Department of Social Services) will be responsible for executing the grant agreement. The power for officials of the Department of Health (or the Department of Social Services) to enter into the grant agreements on behalf of the Commonwealth has been delegated by the Secretary of the Department of Health under the department's financial delegation arrangements. In exercising their power to enter into the grant agreements, the relevant officials will not be making any decisions to award grants under the program.

Funding decisions made in connection with the program are not considered suitable for independent review, as they are decisions relating to the allocation of a finite resource from which all potential claims for a share of the resource cannot be met. There will only be limited eligible organisations or consortia in each state or territory and two for rural and remote areas across Australia. Overturning an original decision to allocate funds to an applicant would impact existing funding arrangements with other parties. The Administrative Review Council has recognised that it is justifiable to exclude merits review in relation to

decisions of this nature (see paragraphs 4.11 to 4.19 of the guide, *What decisions should be subject to merit review?*).

In developing the program, industry consultations were undertaken with a range of stakeholders to ensure the grant opportunity was appropriately targeted. Participants in these consultations included representatives from the following organisations:

- Aged & Community Services Australia;
- Aged Care Workforce Industry Council (which included provider and workforce representatives);
- Aged Care Workforce Remote Accord;
- Council of the Ageing;
- Human Services Skills Organisation;
- Independent Tertiary Education Council Australia;
- Jobs Australia;
- Leading Age Services Australia (including provider representatives);
- National Aboriginal Community Controlled Health Organisation;
- National Employment Services Association;
- Older Persons Advocacy Network; and
- TAFE Directors Australia.

Industry participants were provided with targeted questions about the grant opportunity, and their responses were used to develop the grant opportunity guidelines and assessment plan for the grant opportunity. The participants were supportive of the program.

Funding of \$91.8 million was included in the 2021-22 Budget under the measure ‘Aged Care – Government response to the Royal Commission into Aged Care Quality and Safety – workforce’ for a period of two years commencing in 2021-22. Details are set out in *Budget 2021-22, Budget Measures, Budget Paper No. 2 2021-22* at pages 103 to 104.

Funding for this item will come from Program 3.3: Aged Care Quality, which is part of Outcome 3. Details are set out in the *Portfolio Budget Statements 2021-22, Budget Related Paper No. 1.7, Health Portfolio* at page 102.

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 treaty implementation aspect of 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 Australia’s international obligations under treaties to which it is a party.

Australia has obligations relating to the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), the International Labour Organization’s *Convention concerning Employment Policy* (ILO Convention 122) and the *Convention concerning Vocational Guidance and Vocational Training in the Development of Human Resources* (ILO Convention 142).

Article 6(1) of the ICESCR requires the States Parties to recognise the ‘right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts,’ and to ‘take appropriate steps to safeguard this right.’ Article 6(2) requires the States Parties to take steps to achieve the full realisation of the right described in Article 6(1), including through ‘technical and vocational guidance and training programmes, policies and techniques to achieve...full and productive employment...’

Article 2(1) of the ICESCR requires the States Parties to undertake to ‘take steps...to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the [ICESCR] by all appropriate means, including particularly the adoption of legislative measures.’

Article 1(1) of the ILO Convention 122 requires Members to ‘declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment’, with a view to stimulating economic growth and development, raising levels of living, meeting manpower requirements and overcoming unemployment and underemployment. Article 2 of the ILO Convention 122 requires Members to ‘decide on and keep under review...the measures to be adopted for attaining the objectives specified in Article 1’ and ‘take such steps as may be needed, including where appropriate the establishment of programmes, for the application of these measures’, by such methods and to such extent as may be appropriate under national conditions.

Article 1(1) of the ILO Convention 142 requires Members to adopt and develop comprehensive and co-ordinated policies and programs of vocational guidance and vocational training, closely linked with employment, in particular through public employment services, which take due account of the matters listed in Article 1(2). Those matters include ‘employment needs, opportunities and problems, both regional and national’ (Article 1(2)(a)). Article 2 requires Members to ‘establish and develop open, flexible and complementary systems of general, technical and vocational education, educational and vocational guidance and vocational training’ within and outside the system of formal education. Article 3 requires Members to ‘gradually extend systems of vocational guidance, including continuing employment information, with a view to ensuring that comprehensive information and the broadest possible guidance are available to all children, young persons and adults’. Article 4 requires Members to ‘gradually extend, adapt and harmonise’ vocational training systems ‘to meet the needs for vocational training throughout the life of young persons and adults in all sectors of the economy, branches of economic activity, and at all levels of skill and responsibility.’

The program will be established to attract and retain new workers into the aged care sector. The program will provide funding for organisations or consortia to assist home care service providers to recruit personal care workers and to work with providers to ensure personal care workers receive training to obtain relevant qualifications. The program will also involve funding for activities related to recruitment of personal care workers.

### *Social welfare power*

The social welfare power in section 51(xxiiiA) of the Constitution empowers the Parliament to make laws with respect to the provision of certain social welfare benefits, including unemployment benefits and benefits to students.

The program may include funding to support workers to participate in training courses, and may include expenditure for support services to persons who are unemployed or substantially underemployed.

## **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. 3) Regulations 2021***

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

#### **Overview of the legislative instrument**

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

The *Financial Framework (Supplementary Powers) Amendment (Health Measures No. 3) Regulations 2021* amend Schedule 1AB to the FF(SP) Regulations to establish legislative authority for government spending on the Home Care Workforce Support Program (the program), which will support the aged care workforce, with a focus on home care.

The program will provide support to attract, train and retain an additional 13,000 future home care workers, and increase the skills of the aged care workforce. Grant funding will be provided to organisations or consortia for activities to support the growth of the home care workforce by assisting home care providers to attract, train and retain new personal care workers in their local area, in each state and territory. These activities could include screening candidates to determine suitability for work in the home care sector, supporting students to complete work placements in the aged care sector, developing peer support networks for new personal care workers, and supporting existing workers to build supervisory skills.

The Department of Health has responsibility for the program.

#### **Human rights implications**

This disallowable legislative instrument engages the following rights:

- the right of everyone to the enjoyment of the highest attainable standard of physical and mental health – Article 12 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), read with Article 2; and
- the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability – Article 25 of the *Convention on the Rights of Persons with Disabilities* (CRPD), read with Article 4.

Pursuant to Article 2(1) of the ICESCR, each State Party to the ICESCR is required to ‘take steps... to the maximum of its available resources, with a view to achieving progressively the full realization of the rights’ recognised in the ICESCR by all appropriate means.

Article 12(1) of the ICESCR recognises the ‘right of everyone to the enjoyment of the highest attainable standard of physical and mental health’. Article 12(2)(a) requires the States Parties to take steps to realise the right to health including those necessary for ‘the creation of conditions which would assure to all medical service and medical attention in the event of sickness’.

Article 4 of the CRPD imposes a general obligation on States Parties to implement rights set out in the CRPD.

Article 25 of the CRPD specifies that States Parties should ‘recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability...’ This extends to the ability to access health services as close as possible to people’s own communities, including in rural areas.

The program will promote Article 12 of the ICESCR, by allowing Australians to age at home and access the highest attainable standard of physical and mental health. This will be achieved by promoting access to high quality aged care services, particularly in home care settings, administered by a skilled and qualified workforce. This includes promoting access for culturally and linguistically diverse Australians, as well as those living in regional and remote communities.

The 2015 Australian Bureau of Statistics Survey of Disability, Ageing and Carers reported that more than half of all Australians over the age of 65 were found to be living with some form of disability. The same study found that number increased to roughly 80 per cent for those over the age of 85. In relation to Article 25 of the CRPD, the program will allow more people with disabilities to access home care services in their own communities, including in rural areas, decreasing disadvantage.

## **Conclusion**

This disallowable legislative instrument is compatible with human rights because it promotes the protection of human rights.

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