

REPLACEMENT EXPLANATORY STATEMENT

This Explanatory Statement replaces the Explanatory Statement registered on 20 August 2021 for the *Financial Framework (Supplementary Powers) Amendment (Health Measures No. 4) Regulations 2021* [F2021L01146] to provide further information about decision making in relation to the Adult Mental Health Centres and Telephone Referral Service.

Issued by the Authority of the Minister for Finance

Financial Framework (Supplementary Powers) Act 1997

*Financial Framework (Supplementary Powers) Amendment
(Health Measures No. 4) 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. 4) Regulations 2021* (the Regulations) amend table item 413 in Part 4 of Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on the Adult Mental Health Centres and Telephone Referral Service (the initiative). The initiative is administered by the Department of Health.

The amendments to table item 413 seek to address recommendations of the Productivity Commission's inquiry report into *Mental Health*, which was submitted to the Government on 30 June 2020. The relevant recommendations concern prioritising evidence-based mental health assessment and referral processes, expanded community-based mental health care, providing alternatives to emergency departments, and care continuity and coordination.

As part of the 2021-22 Budget, the Government agreed to establish a network of Head to Health adult mental health centres and satellites to provide accessible, coordinated,

multidisciplinary care. This includes a central intake and assessment service to triage and refer people to the most appropriate services.

In particular, this initiative supports the establishment of eight new adult mental health centres and 24 satellites embedded within existing primary care settings, and provides ongoing funding for the trial of eight adult mental health centres announced in the 2019-20 Budget. The Government will also work with state and territory governments to establish additional centres and satellites.

The initiative will also establish a centralised intake and assessment phone service staffed by mental health professionals to provide clinical assessment of mental health needs and promote consistent triage that enables people to access the most appropriate services to meet their needs.

Adult mental health centres and satellites will be promoted through a digital marketing campaign to facilitate access to the mental health services by assessment over the phone, support brand recognition of the initiative and normalise help seeking behaviour.

Funding of \$487.2 million over four years from 2021-22 will be available for the initiative.

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. 4) Regulations 2021*

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Health Measures No. 4) 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 – Part 4 of Schedule 1AB (table item 413, column headed “Program”)

Item 1 amends table item 413 in Part 4 of Schedule 1AB by inserting “and Telephone Referral Service” after “Centres” in the column headed “Program”. This amendment reflects an expanded scope of the Adult Mental Health Centres and Telephone Referral Service (the initiative), which was agreed by the Government as part of the 2021-22 Budget. The initiative is administered by the Department of Health (the department).

Item 2 – Part 4 of Schedule 1AB (table item 413, column headed “Objective(s)”)

Item 2 amends table item 413 by replacing the program objective in the column headed “Objective(s)” to reflect an expanded scope of the initiative.

As part of the 2021-22 Budget, the Government agreed to establish a network of Head to Health adult mental health centres and satellites to provide accessible, coordinated, multidisciplinary care. This includes a central intake and assessment service to triage and refer people to the most appropriate services.

Table item 413, as amended, establishes legislative authority for government spending on the expanded initiative, which was previously a trial of eight adult mental health centres announced in the 2019-20 Budget. One centre was established in each state and territory, designed to provide a welcoming, low stigma, ‘no wrong door’ entry point for adults to access

mental health information, services and supports. The centres were intended to complement, not replace or duplicate, mental health services already provided in the community.

Primary Health Networks (PHNs) were responsible for establishing the centres in each state and territory, except in South Australia where SA Health was responsible for the centre. A technical advisory group was established to develop a model of service and principles for the adult mental health centres trial. The department conducted public consultation on the trial across Australia between 1 July 2020 and 29 July 2020. Feedback was sought from interested consumers, carers, health professionals and organisations to ensure the service model is fit-for-purpose and meets the aims of establishing the adult mental health centres.

A total of 247 submissions were received in response to the public consultation. The department reviewed and analysed all the feedback received in the national public consultation, and updated the service model in line with this feedback. The responses and updated service model were considered by the Adult Mental Health Centres Technical Advisory Group, and endorsed as final. The final service model is available at <https://consultations.health.gov.au/mental-health-services/adult-mental-health-centres/>.

The initiative seeks to address recommendations of the Productivity Commission's inquiry report into *Mental Health*, which was submitted to the Government on 30 June 2020, particularly recommendations 10.4, 12.4, 13.1 and 15.4. These recommendations concern prioritising evidence-based mental health assessment and referral processes, expanded community-based mental health care, providing alternatives to emergency departments, and care continuity and coordination. The Productivity Commission's report is available at <https://www.pc.gov.au/inquiries/completed/mental-health/report>.

Operating under a 'no wrong door' approach, the objective of the centres, branded as Head to Health, is to address the 'missing middle' service gap encountered by several hundred thousand people. The 'missing middle' refers to a shortfall in the availability of services for people with mental illness who need more support than can be delivered through the MBS-rebated individual sessions with psychologists, but not severe enough to reach the threshold for access to state or territory funded specialised mental health services.

The initiative supports the establishment of eight new adult mental health centres and 24 satellites embedded within existing primary care settings, and provides ongoing funding for the trial of eight adult mental health centres announced in the 2019-20 Budget. The Government will also work with state and territory governments to establish additional centres and satellites. Together the centres and satellites will build a network of community-based adult mental health services delivered by multidisciplinary care teams. The initiative assumes a phased implementation of the full network of centres and satellites, to be established through grant funding provided to PHNs.

The multidisciplinary care teams will consist of psychiatrists, general practitioners, psychologists, alcohol and other drugs specialists, mental health nurses, social workers, occupational therapists, mental health workers and lived experience workers. The service will be able to respond to a range of mental health needs and levels of severity, for adults of any age including older adults. Some centres will be established with expertise focussed on providing care for particular vulnerable groups, such as LGBTIQ+ or Aboriginal and Torres Strait Islander mental health, based on identified areas of need.

Centres will provide the following services:

- immediate, short and medium-term mental health support to adults presenting in crisis and/or with a moderate to severe mental illness;
- services offered over extended operating hours to provide safe spaces to present for people in crisis as an alternative to emergency departments;
- the option for outreach and liaison with other providers as needed;
- care coordination with other services, including those provided by jurisdictions, and capacity to provide some psychosocial support for people with more complex needs; and
- support for families and carers supporting people with a mental illness.

To expand the geographic reach of the centres, smaller flexible multidisciplinary teams will be embedded into existing primary care clinics to similarly provide immediate, short and medium term episodes of care through Head to Health satellite clinics. All services provided within centres and satellites will be free of charge.

Access to services will be through a centralised intake process, either in person or via phone, with assessment conducted by a mental health professional to match people with the services they need. A centralised phone service will be established from 2021-22.

Adult mental health centres and satellites will be promoted through a digital marketing campaign to facilitate access to the mental health services by assessment over the phone, support brand recognition of the initiative and normalise help seeking behaviour.

Funding for the ongoing operation of existing adult mental health centres will be provided to seven PHNs through a non-competitive grant process or an extension to the existing grant agreements. These PHNs are the Northern Queensland PHN, Nepean Blue Mountains PHN, Australian Capital Territory PHN, Western Victoria PHN, Tasmania PHN, Northern Territory PHN, and North Perth PHN.

Funding for new centres and satellites will be provided to select PHNs through a new closed non-competitive grant process. Funding for the centralised intake and assessment phone service will be provided through a separate grant process.

The Minister for Health and Aged Care intends to be the decision maker in respect of the awarding of grants under the initiative. Following the Minister's decision to award any grants, departmental officials will be responsible for executing the grant agreements. The power for officials of the department to enter into the grant agreements on behalf of the Commonwealth has been delegated by the Secretary of the department under the department's financial delegation arrangements. In exercising their power to enter into the grant agreements, the relevant officials will have appropriate skills, qualifications and experience to exercise those powers.

All grants will be administered in accordance with the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and the *Commonwealth Grants Rules and Guidelines 2017*. Grants will be administered by the department. Information about the grants, including grant opportunity guidelines and grants awarded, will be made available on GrantConnect (www.grants.gov.au).

The department will also procure services to deliver the digital marketing campaign, including services for media placement and concept testing with target audiences, in accordance with applicable legislative requirements under the PGPA Act, the *Commonwealth Procurement Rules* (CPRs) and the department's Accountable Authority Instructions. A range of procurement methods may be used such as open and limited tenders or procurements under existing arrangements. The selection of which procurement method to use will depend on the service. Final spending decisions will be made by the Secretary of the department or an appropriate delegate.

Procurement decisions will be made in accordance with the Commonwealth resource management framework, including the PGPA Act and the CPRs. The department will provide an opportunity for suppliers and tenderers to make complaints if they wish, and to receive feedback. These complaints and inquiries can be made at any time during the procurement process and will be handled in accordance with probity requirements. Information about the tender and the resultant contracts will be made available on AusTender (www.tenders.gov.au) once the contracts are signed. Procurement decisions will be based on value for money, including capability and capacity to deliver, and price and risk considerations.

Decisions made in connection to grant funding for PHNs are not considered suitable for independent merits review, as they are decisions relating to the allocation of a finite resource, from which all potential claims for a share of the resource cannot be met. There is insufficient funding available for a centre to be established in each PHN region, and as such, all potential claims for a share of the resource cannot be met.

In addition, any funding that has already been allocated, including the funding allocated to the seven PHNs to operate centres as part of the trial, would be affected if the original decision was overturned. 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?*).

The design of the adult mental health centres service model was informed by a technical advisory group of expert mental health clinicians, service providers, PHNs and people with a lived experience of mental illness.

The department conducted both public and targeted consultation in July 2020 on the principles and service model for the trial of the eight centres announced in the 2019-20 Budget. PHNs also conduct local consultation with relevant community stakeholders as part of the commissioning process. This ensures the centres are culturally sensitive and integrate seamlessly with existing mental health services in the local regions in which they are established.

Funding of \$487.2 million for the initiative was included in the 2021-22 Budget under the measure 'Mental Health' for a period of four years from 2021-22. Details are set out in *Budget 2021-22, Budget Measures, Budget Paper No. 2 2021-22* at pages 117 to 120.

Funding for this item will come from Program 1.2: Mental Health, which is part of Outcome 1. Details are set out in the *Portfolio Budget Statements 2021-22, Budget Related Paper No. 1.7, Health Portfolio* at page 63.

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 social welfare power (section 51(xxiiiA));
- the external affairs power (section 51(xxix)); and
- the territories power (section 122).

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 initiative includes an intake and assessment telephone service which would involve the assessment and referral of people experiencing mental health symptoms or presenting in times of crisis.

Additionally, the initiative includes a digital advertising campaign to promote the services offered by the mental health centres, satellites and the intake and assessment telephone service.

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 medical and dental services (but not as to authorise any form of civil conscription).

The centres and satellites would offer assessment, information provision, immediate support and short-to-medium term treatments for people experiencing mental health symptoms. Additionally, the proposed intake and assessment telephone service would involve the assessment and referral of people experiencing mental health symptoms.

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.

Article 25 of the *Convention on the Rights of Persons with Disabilities* (CRPD) requires States Parties to recognise that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability, and provides that States Parties ‘shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive’.

Article 1 of the CRPD provides that the purpose of the Convention is to ‘promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities’. It further provides that persons with disabilities include those with long-term physical or mental impairments which may hinder their full and effective participation in society on an equal basis with others.

Article 4 of the CRPD requires States Parties undertake to ‘ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability’, and sets out the steps to be undertaken to this end.

Under the initiative, some of the persons experiencing mental health symptoms and presenting in times of crisis to whom the assessment and support is provided may have long-term mental impairments.

Article 2(1) of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) requires each State Party 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, including particularly the adoption of legislative measures’.

Article 12(1) of the ICESCR requires the States Parties to recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Article 12(2) outlines the steps necessary to be taken by the States Parties to achieve full realisation of this right, including steps necessary for ‘prevention, treatment and control of epidemic, endemic, occupational and other diseases’ and ‘creation of conditions which would assure to all medical service and medical attention in the event of sickness’.

The adult mental health centres and satellites would offer assessment, information provision, immediate support and short-to-medium term treatments for people experiencing mental health symptoms.

The initiative would also include an intake and assessment telephone service offering assessment, information provision, immediate support and a referral to short-to-medium term treatment options for people experiencing mental health symptoms.

Territories power

Section 122 of the Constitution empowers the Parliament to ‘make laws for the government of any territory’.

Some of the centres and satellites will be located in the territories.

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. 4) 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*.

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As part of the 2021-22 Budget, the Government agreed to establish a network of Head to Health adult mental health centres and satellites to provide accessible, coordinated, multidisciplinary care. This includes a central intake and assessment service to triage and refer people to the most appropriate services.

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Adult mental health centres and satellites will be promoted through a digital marketing campaign to facilitate access to the mental health services by assessment over the phone, support brand recognition of the initiative and normalise help seeking behaviour.

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.

Article 2(1) of the ICESCR requires each State Party 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, including particularly the adoption of legislative measures’.

Article 12(1) of the ICESCR requires the States Parties to recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Article 12(2) outlines the steps necessary to be taken by the States Parties to achieve full realisation of this right, including steps necessary for ‘prevention, treatment and control of epidemic, endemic, occupational and other diseases’ and ‘creation of conditions which would assure to all medical service and medical attention in the event of sickness’.

Article 4 of the CRPD requires States Parties undertake to ‘ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability’, and sets out the steps to be undertaken to this end.

Article 25 of the CRPD requires States Parties to recognise that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability, and provides that States Parties ‘shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive’. This extends to the ability to access health services as close as possible to people’s own communities, including in rural areas.

This disallowable legislative instrument will promote the right to the highest standard of mental health attainable by providing a highly visible and accessible entry point to appropriate services and support for adults seeking help in times of crisis, or as needed, through a variety of mental health related professionals with no prior appointment or cost required.

The initiative, in providing immediate, short and medium-term mental health support, addresses the shortfall in the availability of services for people with mental illness who need more support than can be delivered through the MBS-rebated individual sessions with psychologists, but whose illness is not severe enough to reach the threshold for access to state or territory funded specialised mental health services, known as the ‘missing middle’.

The initiative improves access to community-based mental health services for adults delivered by multidisciplinary care teams and benefits adults in need of mental health support, their families and carers. Furthermore, some centres will be established with expertise focussed on providing care for particular vulnerable groups, such as LGBTIQ+ or

Aboriginal and Torres Strait Islander mental health, based on identified areas of need. This ensures the service is culturally and gender-sensitive, and able to respond to a range of mental health needs and levels of severity, for adults of any age and background.

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**