

## **REPLACEMENT EXPLANATORY STATEMENT**

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

**This Explanatory Statement replaces the Explanatory Statement registered on 1 November 2021 for the *Financial Framework (Supplementary Powers) Amendment (Social Services Measures No. 4) Regulations 2021* [F2021L01498] to provide further information about delegation of administrative powers and functions in relation to several programs included in the instrument.**

*Financial Framework (Supplementary Powers) Act 1997*

*Financial Framework (Supplementary Powers) Amendment  
(Social Services 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 (Social Services Measures No. 4) Regulations 2021* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on certain activities administered by the Department of Social Services.

Funding is provided for:

- the Care and Support Workforce National Campaign (the campaign), which is a communications campaign to increase public awareness of the employment opportunities available in the care and support sector, including in aged care, disability support and veterans' care (\$13.3 million in 2021-22 for the campaign and \$9.8 million over two years from 2021-22 for the campaign extension);
- cashless welfare support services provided to participants of the Cashless Debit Card program (\$47.5 million over four years from 2021-22); and

- the national early childhood program for children with disability or developmental concerns, which provides a range of disability specific information, linkages, workshops and community supports for young children aged 0 to 8 years with emerging developmental concerns or disability outside the National Disability Insurance Scheme (\$17.9 million over four years from 2021-22).

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 Social Services and 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 (Social Services Measures No. 4) Regulations 2021***

**Section 1 – Name**

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Social Services 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 – In the appropriate position in Part 4 of Schedule 1AB (table)**

This item adds three new table items to Part 4 of Schedule 1AB to establish legislative authority for government spending on certain activities administered by the Department of Social Services (the department).

New **table item 509** establishes legislative authority for government spending on the Care and Support Workforce National Campaign (the campaign), which is a communications campaign to increase public awareness of the employment opportunities available in the care and support sector.

On 15 August 2021, the campaign (*A Life Changing Life*) was launched by the Minister for the National Disability Insurance Scheme, Senator the Hon Linda Reynolds CSC, the Minister for Health and Aged Care, the Hon Greg Hunt MP, the Minister for Senior Australians and Aged Care Services, Senator the Hon Richard Colbeck, and the Minister for Veterans' Affairs, the Hon Andrew Gee MP. The first phase of the campaign will run for 12 months. The media release is available at <https://ministers.dss.gov.au/media-releases/7441>.

The campaign's primary objectives are to:

- raise awareness of the care and support sector (aged care, disability support and veterans' care), including the wide range of roles and settings, the value of the work, and the types of people the sector needs;
- raise awareness of the diverse pathways into sector jobs and careers;

- raise awareness of the support that new recruits need from employers; and
- encourage target audiences to take action (for example, visit the website for more information, share campaign messages, and access employer resources).

To achieve this, the department is conducting a targeted campaign to lift public perception of the care and support sector, highlight the benefits of working in the sector, and promote and showcase diverse opportunities across the sector. The campaign emphasises the values and attributes required for care and support roles, and is informed by behavioural insights and developmental research. The campaign targets different audiences, by sector, state, and area (metropolitan, regional and remote), as well as Indigenous and cultural and linguistically diverse communities.

The target audiences for the campaign are:

- tertiary students, high school students considering their post-high school options, and university and TAFE students currently studying allied health, nursing, psychology, sports medicine, social work and the creative arts (music, dance and visual arts);
- searchers (people in their late teens and 20s who are currently working in casual or ‘filler’ jobs, including hospitality and retail, and people who are looking for work);
- transitioners (people who are looking for a change in employment – they may be in professional careers or long-term lower skills jobs, recent migrants to Australia, people who are looking to enter the paid workforce after time caring for family (informal carers), or people with disability); and
- employers, including service providers in the disability support, aged care and veterans’ care sectors.

The campaign seeks to effectively reach all target audiences through above-the-line advertising, below-the-line public relations and stakeholder, intermediary and community engagement activities. Expenditure on the campaign will be directed to encouraging job seekers to consider employment opportunities with aged care, disability support and veterans’ care sector employers. This may include listing of positions that are currently available and links to job search services. The campaign will provide information on entry requirements, training and development opportunities, and pathways into the work, jobs and careers. Employer resources will be produced to assist with attracting, supporting and retaining staff.

Additional funding to extend the campaign beyond its initial 12 months, which was included in the 2021-22 Budget, will contribute to implementing recommendation 76.5 of the Final Report of the *Royal Commission into Aged Care Quality and Safety*. This recommendation calls on the Aged Care Workforce Industry Council (ACWIC) Limited to lead, by 1 July 2022, a national multimedia campaign aimed at raising awareness of career paths and opportunities in aged care. It is anticipated that similar recommendations may result from the *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* and the *Royal Commission into Defence and Veteran Suicide*.

ACWIC is implementing a small scale industry-led campaign to change attitudes to employment in aged care. The Government will deliver a multimedia campaign at a national level for the benefit of the whole care and support workforce. There will be an extended burst of campaign activity in the second half of 2022, following the evaluation of the 2021 campaign burst. The responsibility for the campaign extension was initially allocated to the Department of Health but was subsequently transferred to the department.

The department procured a number of communication suppliers to deliver the campaign, in accordance with applicable requirements under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), the *Commonwealth Procurement Rules* (CPRs), the *Australian Government Guidelines on Information and Advertising Campaigns by non-corporate Commonwealth Entities* and the department's Accountable Authority Instructions.

Universal McCann, the Australian Government's master media agency under the Central Advertising System (CAS), will undertake the media buy. Hall and Partners will conduct benchmarking, tracking and evaluation research services under a Deed of Standing Offer with the Commonwealth. External service providers may be engaged through the Government Communications Campaign Panel (GCCP) to deliver creative services and below-the-line public relations activities.

Final procurement and spending decisions for the campaign were made by a delegate of the Secretary of the department. Future procurement and spending decisions for the campaign extension will be made by the Secretary of the department or an appropriate delegate.

It is necessary and appropriate to delegate decision making for the campaign. The objective of the campaign is to lift public perception of the care and support sector, highlight the benefits of working in the sector, and promote and showcase opportunities across the sector. It will be conducted via a number of targeted bursts of activity, with each burst including developmental research into different audiences, creative services, media outreach, stakeholder communications and below-the-line public relations activities.

Each of these bursts requires routine funding decisions to procure consultancy services to assist in conducting these activities. As such, given the volume and targeted nature of these spending decisions, it is appropriate that these are delegated to a Senior Executive Service (SES) employee who is familiar with the campaign and its complexities, and to avoid unreasonable administrative burdens on the Secretary of the department and the Minister for Families and Social Services for routine spending decisions, which could result in an inefficient implementation of the campaign.

The power to make procurement and other spending decisions in relation to the campaign will be delegated to SES Band 1 employees and above, although the power to make, vary or administer an arrangement will be exercised in particular cases depending on the complexity of the decision, the amount of spending involved and any other relevant matter. It is intended that the responsible Deputy Secretary of the department will make the key procurement and spending decisions that materially impact outcomes of the campaign, for example benchmarking, tracking and evaluation research services for each of the campaign bursts. For less complex decisions that involve less significant amounts of expenditure (for example, in relation to travel expenditure), the relevant Branch Manager or Group Manager may be the decision maker.

There are a variety of safeguards and limitations that apply to the exercise of these delegated powers. The delegates who exercise the power to make, vary or administer an arrangement in relation to the campaign will have a sophisticated understanding of the campaign objectives and obligations under relevant legislation with respect to procurement and spending decisions. They will also have relevant experience for identifying key risks and sensitivities, including for unsuccessful and partly successful applicants. The delegates will be supported

by departmental officers who manage stakeholder engagement, research, analysis and subsequent policy development for the campaign. Those officers will have the skills and knowledge needed to provide effective advice to the SES officer about funding decisions.

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

The re-making of a procurement decision after entry into a contractual arrangement with a successful provider is legally complex, impractical, and could result in delays to delivery of the campaign which involves a significant public interest element. The *Government Procurement (Judicial Review) Act 2018* enables suppliers to challenge some procurement processes for alleged breaches of certain procurement rules. This legislation might provide an additional avenue of redress (compensation or injunction) for dissatisfied providers or potential providers, depending on the circumstances.

Procurement decisions made in connection with the campaign must be consistent with the Government's campaign advertising framework. This framework requires all campaign advertising to be placed through the CAS using the master media agency, Universal McCann; campaigns to be evaluated by Hall and Partners using the whole-of-government campaign evaluation framework; and communication suppliers to be engaged through the GCCP, a mandatory whole-of-government panel of communication suppliers. A decision to use a communication supplier is therefore procedural in nature and the review of such a decision would not result in a different outcome. The ARC has recognised that it is justifiable to exclude such decisions as they are automatic or mandatory in nature and there is nothing on which a merits review can operate (see paragraphs 3.8 to 3.12 of the guide, *What decisions should be subject to merit review?*).

The Department of Health, the Department of Veterans' Affairs, the National Disability Insurance Agency, the NDIS Quality and Safeguards Commission, the Department of Education, Skills and Employment, the Aged Care Quality and Safety Commission, and the Department of Finance have been consulted during campaign development. The department will continue to consult with these government entities during delivery of the campaign.

To inform development of the campaign, the department commissioned *Whereto* consultancy to conduct developmental research. The research was conducted in September 2020 to explore the disability support, aged care and veterans' care workforce, focusing on the key barriers and motivators, attitudes and behaviour of potential target audiences of the campaign. *Whereto* also conducted market research to inform development of campaign creative materials. Several rounds of research were conducted from January to March 2021 with similar target audiences for the developmental research.

Research participants included current or past workers, service providers, people with disability including the National Disability Insurance Scheme participants and their families and carers, job seekers, career changers and influencers of job seekers such as parents, career

advisers and employment service providers. Industry, Aboriginal and Torres Strait Islander, and culturally and linguistically diverse stakeholders were also involved in the research.

Funding for the campaign of \$13.3 million in 2021-22 was included in the 2020-21 Budget under the measure ‘Australia’s Care and Support Workforce Package’. Details are set out in *Budget 2020-21, Budget Measures, Budget Paper No. 2 2020-21* at page 150.

Additional funding of \$9.8 million for the campaign extension 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 the campaign comes from Program 3.2: National Disability Insurance Scheme and Program 3.3: Program Support for Outcome 3, which are part of Outcome 3. Details are set out in the *Portfolio Budget Statements 2020-21, Budget Related Paper No. 1.12, Social Services Portfolio* at pages 27 and 77.

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 unemployment benefits or benefits to students aspects of the social welfare power (section 51(xxiiiA)); and
- the external affairs power (section 51(xxix)).

#### 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 campaign will be delivered via a range of communication channels that may include television, radio, print (for example, newspapers, magazines), digital (for example, social media, online videos, Google search, electronic direct mail) and a website. Hard copy media such as information pamphlets may be delivered by postal services.

#### 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 unemployment benefits.

Expenditure on the campaign will also connect people, including unemployed and underemployed job seekers, to job prospects. This may include a listing of jobs that are currently available (for example, links to job ads from aged care service providers) and links to job search services (for example, jobactive, SEEK).

#### 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 under the International Labour Organization's *Convention concerning Employment Policy* [1970] ATS 17 (ILO Convention 122).

Article 1(1) of the ILO Convention 122 obliges each Member to 'declare and pursue ... an active policy designed to promote full, productive and freely chosen employment'.

Article 1(2) of the ILO Convention 122 requires the policies and programs for the purposes of Article 1(1) take due account of matters including 'employment needs, opportunities and problems, both regional and national'.

Article 2 further requires Members to 'decide on and keep under review ... the measures to be adopted for attaining the objectives specified in Article 1', and to 'take such steps as may be needed ... for the application of these measures'.

Australia also has obligations under the International Labour Organization's *Convention concerning Vocational Guidance and Vocational Training in the Development of Human Resources* [1986] ATS 2 (ILO Convention 142).

Article 1(1) of the ILO Convention 142 obliges each Member to 'adopt and develop comprehensive and co-ordinated policies and programmes of vocational guidance and vocational training, closely linked with employment'. Article 1(2) requires the policies and programs adopted for the purposes of Article 1(1) take due account of matters including 'employment needs, opportunities and problems, both regional and national'.

Article 2 of the ILO Convention 142 obliges each Member to 'establish and develop open, flexible and complementary systems of general, technical and vocational education, educational and vocational guidance and vocational training, whether these activities take place within the system of formal education or outside it'.

Article 3 of the ILO Convention 142 obliges representatives of employers and workers to be consulted on employment policies to account for 'their experience and views and securing their full co-operation' in supporting such policies.

Article 4 of the ILO Convention 142 obliges each Member to 'gradually extend, adapt and harmonise its vocational training systems to meet the needs for vocational training throughout life of both young persons and adults in all sectors of the economy and branches of economic activity and at all levels of skill and responsibility'.

Expenditure on the campaign will be directed to encouraging job seekers to consider employment opportunities with aged care, disability support and veterans' care sector employers. This may include a listing of positions that are currently available and links to job search services. The campaign will provide information on entry requirements, training and development opportunities, and pathways into the work, jobs and careers. Employer resources will be produced to assist with attracting, supporting and retaining staff.

New **table item 510** establishes legislative authority for government spending on cashless welfare support services (the program), which support individuals, families and communities in places where high levels of welfare dependence co-exist with high levels of social harm.

The support services will be provided to participants of the Cashless Welfare Program (commonly known as the Cashless Debit Card program).

The Cashless Debit Card (CDC) commenced on 1 February 2016 with the objective of ensuring that welfare payments are spent in responsible and meaningful ways, to reduce high levels of social harm. The expected outcomes for the CDC program are to reduce community harm, increase the level of employment and improve child health outcomes through responsible management of welfare recipients' spending. This can be achieved by issuing eligible recipients with a Visa debit card whereby 80 per cent of recipients' social security payments and 100 per cent of lump sum payments made by Centrelink are deposited into the debit card instead of depositing welfare payments directly into recipients' bank account. The CDC looks and operates like a regular bank card, however it cannot be used to buy alcohol or gambling products, some gift cards or to withdraw cash. Further information on the CDC and how it operates is available at <https://www.dss.gov.au/families-and-children/programmes-services/welfare-conditionality/cashless-debit-card-overview>.

The CDC currently operates in the regional areas of East Kimberley and Goldfields in Western Australia, Ceduna in South Australia, Bundaberg and Hervey Bay and the Cape York in Queensland, and the Northern Territory (NT). The Government has allocated funds in each region where the trials are taking place to boost complementary services.

The Government has worked collaboratively with local leaders and existing service providers to identify critical issues and support needs in the community. Funding has been provided to deliver support services including drug and alcohol rehabilitation, mental health services, additional family support services, targeted youth activities and financial counselling services. More specifically, support to CDC participants will include:

- access to services to address family violence and substance abuse including drug and alcohol and rehabilitation;
- job readiness programs, training, education and employment-related services and support;
- mental health services via providing training assessments for people with mental illness and treatment, rehabilitation and case management services;
- support services to families with children aged 18 years and under to promote safety and wellbeing of those children;
- targeted youth activities, mentoring programs, community engagement and participation;
- financial capability building services, financial counselling and digital literacy; and
- community level infrastructure and digital connectivity.

The program will focus on two initiatives: the Jobs Fund and Job Ready initiative; and the NT and Cape York CDC Support Services.

The Jobs Fund and Job Ready initiative seek to strengthen local support services and connect CDC participants and other members of the community to employment, or pathways to employment, in the CDC sites of Goldfields, East Kimberley, Ceduna and Bundaberg and Hervey Bay. Types of activities to be funded include:

- *pathways to employment* – projects that build the employable skills of participants on the CDC. This may include supporting participants with job readiness programs focused on developing skills in job searching, interviewing, resume writing, keeping a job, as well as pre-vocational training opportunities to ensure participants have the

work skills to capitalise on employment opportunities that exist within the community;

- *addressing barriers to employment* – services that build resilience and self-reliance leading to reduced barriers to employment for CDC participants;
- *basic financial literacy* – support to CDC participants with basic financial readiness and money management skills including household budgeting, filing taxes and paying bills; and
- *capacity building for employers* – projects that build the capacity of workplaces to engage and retain CDC participants into real and sustainable employment, as well as address barriers to recruitment and retention.

The NT and Cape York CDC Support Services will seek to strengthen local support services to assist income management participants transition onto the CDC and provide pathways to self-reliance and empowerment through community-driven solutions to support economic participation. Types of activities to be funded include:

- *local community capacity building* – upskilling local organisations to leverage existing local services to deliver CDC services and train the trainer models to support communities and participants;
- *individual capacity building and skill development* – supporting CDC participants to interact with government services, financial institutions and retailers, including through online functionality;
- *basic financial literacy* – supporting CDC participants with basic financial readiness and money management skills including household budgeting, filing taxes and paying bills; and
- *minor capability support* – enabling effective use of the CDC and uplifting digital capability to support the transition to the CDC.

Funding will also be provided for activities which have a focus on:

- services that prevent domestic and family violence and support victims of such violence;
- services that provide treatment, rehabilitation, case management services and training assessments for people with mental illness (for example, a CDC participant may require drug and alcohol rehabilitation services to assist them become job ready); and
- services that support families so as to ensure the safety and wellbeing of children (for example, a CDC participant may access a service that provides training to strengthen the digital safety of the CDC participant and their family).

The department did not cap funding for these activities and the projects will be funded over two financial years with the possibility of extending it for a further two years. The program will run from 1 July 2021 to 30 June 2025.

The program will be delivered through a suite of procurements and competitive grant rounds. The department will procure some services to deliver the Jobs Fund and Job Ready initiative and the NT and Cape York Support Services, in accordance with applicable legislative requirements under the PGPA Act, the CPRs and the department's Accountable Authority Instructions. These services relate to the implementation and delivery of four Job Support Hubs in the CDC region of Goldfields.

The procurement method that will be used is a limited tender process and the Secretary of the department or an appropriate delegate will make the final spending decisions. The department will manage all procurement contracts to deliver the Jobs Fund and Job Ready initiative. The procurement decisions will be reported on AusTender ([www.tenders.gov.au](http://www.tenders.gov.au)).

Where funding is delivered through a grant process, it will be administered in accordance with the Commonwealth resource management framework, including the PGPA Act and the *Commonwealth Grant Rules and Guidelines 2017* (CGRGs). Funding will be provided through open competitive and one off, ad-hoc grants to external organisations.

Eligible funding recipients will be required to nominate projects they intend to spend the grant money on in a work schedule, which will need to be approved before funding is provided. Approval will be based on whether the work schedule complies with the requirements set out in the grant agreement and the grant opportunity guidelines. The department will set up a selection advisory panel that will provide strategic oversight, advice and recommendations to a delegate of the Secretary of the department under the *Financial Framework (Supplementary Powers) Act 1997* (the FF(SP) Act), who will be responsible for approving the grant expenditure.

Information about the grants including grant opportunity guidelines and any other relevant documentation will be made available on the GrantConnect website ([www.grants.gov.au](http://www.grants.gov.au)). The Community Grants Hub, part of the department, will administer the grants. Grants awarded will be published on GrantConnect within 21 days of a grant agreement taking effect.

It is necessary and appropriate to delegate decision making in relation to cashless welfare support services. The item facilitates the funding of specific wraparound services to provide additional support to participants of the CDC program, including services that prevent domestic and family violence and support victims of such violence, provide assistance to unemployed persons, and assist children to prepare them for employment, as well as infrastructure which facilitates participants accessing the internet. These services also support Australia's obligations under various conventions, as well as one of the Closing the Gap target areas on equal digital inclusion for Aboriginal and Torres Strait Islander people by 2026.

Due to the provision of funding encompassing both open competitive and ad hoc grant opportunities, the process for selecting funding recipients is likely to generate significant numbers of grant applications and will require analysis of large amounts of detailed information. This function could not be performed by a single person as it is resource intensive, involving formal grant processes and multiple exercises of the power over a period of time (to 30 June 2024). These factors make it reasonable for the accountable authority of the department (the Secretary) to delegate powers in relation to the program.

The Secretary has delegated the power to departmental officials to make arrangements on behalf of the Commonwealth under section 32D of the FF(SP) Act. It is intended that grant decisions will be made by an official who holds, or is acting in, a position that is equivalent to a classification of SES Band 1 or above. Officials who will exercise the accountable authority's power to enter into grant agreements will have appropriate skills, qualifications and experience. It is intended that these persons will occupy SES positions with responsibility

for the administration of cashless welfare arrangements. Instruments of delegation made under section 32D of the FF(SP) Act routinely impose financial limits on delegates.

Funding decisions made in connection with cashless welfare support services 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 resources cannot be met. In addition, any funding that has already been allocated would be affected if the original decision was overturned. The ARC has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.11 to 4.19 of the guide, *What decisions should be subject to merit review?*).

The department has been in consultation with stakeholders from the CDC regions on the implementation of this program since the 2021-22 Budget was announced in May 2021. Consultation will be ongoing until the conclusion of the program.

The department has undertaken consultation within the Goldfields region. Following this consultation, options were developed to support an immediate provision of funding for CDC-related support services in Goldfields. The department then undertook consultation in the Goldfields region in late June 2021 to discuss the Jobs Fund and Job Ready initiative and proposed approach with key stakeholders to deliver a Job Support Hub. The outcome of the consultations was that the four local shires within the Goldfields region supported the activity and have now signed their contracts to deliver a Job Support Hub in their location.

Due to the COVID-19 pandemic, the department is complying with the Australian Government's public health recommendations to reduce travel. The department will consult with remaining CDC sites on the expenditure and rollout of programs via virtual conferencing.

Funding of up to \$30 million over four years from 2021-22 for the Jobs Fund and Job Ready initiative was included in the 2021-22 Budget under the measure 'Cashless Debit Card – Jobs Fund and Income Management extension'. Details are set out in the *Budget 2021-22, Budget Measures, Budget Paper No. 2 2021-22* at pages 179 to 180.

Total funding for this item of \$47.5 million over four years from 2021-22 will come from Program 2.1: Families and Communities, which is part of Outcome 2. Details are set out in the *Portfolio Budget Statements 2021-22, Budget Related Paper No. 1.12, Social Services Portfolio* at pages 18, 19, 25, 27 and 74.

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 maternity allowances, widows' pensions, child endowment, unemployment, pharmaceutical, sickness or hospital benefits, medical or dental services, benefits to students or family allowances aspects of the social welfare power (section 51(xxiiiA)); and
- the external affairs power (section 51(xxix)).

### 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 community level infrastructure and digital connectivity component of the program will assist to build cell towers and satellites to provide CDC participants with the ability to access the internet.

### 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 ‘maternity allowances, widows’ pensions, child endowment, unemployment, pharmaceutical, sickness and hospital benefits, medical and dental services (but not so as to authorise any form of civil conscription), benefits to students and family allowances’.

The financial capability building services and financial counselling component of the program will assist CDC participants to be financially literate, which will assist them to manage their social security payments.

### 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.

### *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*

Australia has obligations under the CEDAW [1983] ATS 9. In particular:

- Article 2 requires States Parties to ‘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’;
- Article 3 provides that States Parties ‘shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, 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 5(a) provides that States Parties shall take all appropriate measures ‘to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women’; and
- Article 16 provides that States Parties ‘shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations’.

The family violence services component of the program is aimed at reducing violence against women, which will assist in eliminating discrimination against women, noting that domestic and family violence affects disproportionately the ability of women to enjoy their rights and freedoms on a basis of equality with men.

*Convention on the Rights of the Child (CRC)*

Australia has obligations under the CRC [1991] ATS 4. In particular:

- Article 4 provides that States Parties ‘shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation’;
- Article 6(2) provides that States Parties ‘shall ensure to the maximum extent possible the survival and development of the child’;
- Article 18(2) provides that States Parties ‘shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children’; and
- Article 19(1) provides that States Parties ‘shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child’. Article 19(2) states that such measures should ‘include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child...’.

The family violence services component of the program is aimed at rehabilitating children victims of family violence and reducing family violence against children, which will help protect children from all forms of violence. The family support services component of the program is aimed at providing support to families to protect the safety and wellbeing of children aged under 18 years.

*International Covenant on Economic, Social and Cultural Rights (ICESCR)*

Australia has obligations under the ICESCR [1976] ATS 5. In particular:

- Article 6(1) states that States Parties ‘recognize 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 will take appropriate steps to safeguard this right’. Article 6(2) states that the steps taken to achieve full realisation of this right ‘shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual’; and
- Article 12(1) requires States Parties to ‘recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health’. Article 12(2)(c) states that steps necessary to achieve full realisation of this right include those necessary for the ‘prevention, treatment and control of epidemic, endemic, occupational and other diseases’.

The substance abuse rehabilitation component of the program is aimed at preventing, reducing and directly treating drug and alcohol abuse, which will help improve individuals’ physical and mental health.

The job readiness programs, training, education, employment and employment-related services component of the program will implement part of a policy designed to promote full and productive employment by assisting CDC participants to improve their skills and prospects of obtaining employment.

The mental health support services component of the program is aimed at providing training assessment and treatment, rehabilitation and case management services, which help improve individuals' physical and mental health.

The component of the program involving targeted youth activities, mentoring programs, and community engagement and participation, is focussed on assisting young people to gain employment so that they may engage in full and productive employment.

### *ILO Convention 122*

Australia has obligations under the ILO Convention 122. In particular:

- Article 1 states that '[w]ith a view to stimulating economic growth and development, raising levels of living, meeting manpower requirements and overcoming unemployment and underemployment, each Member shall declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment'; and
- Article 2 states that each Member 'shall, by such methods and to such extent as may be appropriate under national conditions – (a) decide on and keep under review within the framework of a coordinated economic and social policy, the measures to be adopted for attaining the objectives specified in Article 1; (b) take such steps as may be needed including when appropriate the establishment of programmes, for the application of these measures'.

The job readiness programs, training, education, employment and employment-related services component of the program will assist CDC participants who are either unemployed or underemployed to improve their skills and prospects of obtaining employment.

### *ILO Convention 142*

Australia has obligations under the ILO Convention 142. In particular:

- Article 1 provides that each Member 'shall adopt and develop comprehensive and co-ordinated policies and programmes of vocational guidance and vocational training, closely linked with employment, in particular through public employment services';
- Article 2 provides that each Member 'shall establish and develop open, flexible and complementary systems of general, technical and vocational education, educational and vocational guidance and vocational training, whether these activities take place within the system of formal education or outside it';
- Article 3 provides that each Member 'shall gradually extend its 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, including appropriate programmes for all handicapped and disabled persons'; and
- Article 4 provides that each Member 'shall gradually extend, adapt and harmonise its vocational training systems to meet the needs for vocational training throughout life

of both young persons and adults in all sectors of the economy and branches of economic activity and at all levels of skill and responsibility’.

The job readiness programs, training, education, employment and employment-related services component of the program will form a comprehensive and coordinated policy and program of vocational guidance and training aimed at assisting CDC participants, including those with disability, to improve their skills and prospects of obtaining employment.

The component of the program involving targeted youth activities, mentoring programs, and community engagement and participation, is focussed on assisting young people to gain employment so that they may engage in full and productive employment.

New **table item 511** establishes legislative authority for government spending on the national early childhood program for children with disability or developmental concerns (the early childhood program).

The early childhood program seeks to deliver a range of disability specific information, linkages, workshops and community supports for young children with emerging developmental concerns or disability outside the National Disability Insurance Scheme (NDIS). The program will provide early supports and strengthen linkages and connections to mainstream supports outside the NDIS.

The program is designed for children aged 0 to 8 years, and will be available to children without a diagnosis to help support children and their parents and carers in the early stages of identification of disability or developmental concerns. The program will also target specific cohorts, including Aboriginal and Torres Strait Islander children, as well as better use of digital technologies.

The early childhood program will align with *Australia’s Disability Strategy* (the Strategy). The Strategy is Australia’s national disability policy framework, which sets out a plan for continuing to improve the lives of people with disability in Australia over the next ten years. The Strategy builds on its predecessor (*National Disability Strategy 2010–2020*) and has been developed by the Australian, state, territory and local governments through more than two years of engagement with people with disability, their families and carers.

The early childhood program is also aligned with the ‘supporting communities’ element of the Government’s Economic and Fiscal Strategy. It aims to support safe and cohesive communities by securing the delivery of social services and investing in communities to:

- enable parents and carers to access information about their child’s development and early capacity building supports;
- help prepare children with disability or developmental concerns for school and other learning environments; and
- develop the skills and confidence of parents and carers to support their child’s learning and development and connect with services.

For over ten years, the Australian Government has delivered supports for over 90,000 children with disability and developmental delay and their families as part of the Helping Children with Autism (HCWA) program and Better Start for Children with Disability (Better Start) program with most elements of these programs now having ceased. The early childhood program will build on the Government’s investments in the HCWA and Better

Start programs, by funding a range of disability specific information, workshops and supported playgroups.

The program also complements other continuing components of the HCWA and Better Start programs such as the HCWA Positive Partnerships Program (for school aged children) administered through the Department of Education, Skills and Employment and the HCWA and Better Start Medicare Benefits Schedule items administered through the Department of Health.

The program implementation requires a co-design process with key stakeholders on the final program design, development of new program guidelines and clear outcomes aligned with the Strategy. The program will be subject to review after two years of operation to monitor outcomes and identify service need. The review will be guided by the Strategy's Outcomes Framework as early support for young children with disability is a key focus area identified through the Strategy consultations for targeted action.

Funding will be awarded to providers following one or more grant processes. The number and nature of the grants awarded will be informed by the outcomes of the program's co-design process. The grants will be administered in accordance with the Commonwealth resource management framework, including the PGPA Act and the CGRGs.

Information about the grants, including grant opportunity guidelines where applicable, will be made available on the GrantConnect website ([www.grants.gov.au](http://www.grants.gov.au)), and the grants will be administered by the Community Grants Hub. The Minister for Families and Social Services or the Secretary of the department will be responsible for approving Commonwealth funding for the program in accordance with the FF(SP) Act, unless this power is delegated further.

It is necessary and appropriate to delegate decision making in relation to the early childhood program, which will rely on a number of grant opportunity rounds and possible procurements to deliver its outcomes. Each procurement or grant round requires a number of routine funding decisions for its establishment, such as approval to commit money, approval of approach to market, agreement of opening and closing application dates, approval of grant opportunity guidelines, and approval of grant outcomes and grant expenditure. Any changes or amendments will require additional funding decisions. While not all funding decisions involved with administering the program will be delegated, the department considers it would be unreasonable and impractical to rely on a single decision maker, being the Minister or the Secretary, to make all routine funding decisions involved with administering the program.

A number of funding decisions on individual projects will be delegated to appropriate officers of the department who are familiar with those projects. Where urgent amendments to grant agreements or further funding is required, it may also be necessary for this power to be delegated so that such changes can be swiftly progressed to allow the project to best achieve its objective. It is necessary and appropriate for funding decisions to be delegated to ensure the efficient implementation of the program, including by preventing service gaps.

As there will be multiple grant rounds and procurements during the life of the program, the decision maker may be different depending on the complexity of the decision, the funding amount, and the overall process that will be undertaken. Where appropriate, some funding decisions for the program will be delegated to an SES employee, such as the appropriate Deputy Secretary or the Policy Branch Manager. The SES employee will have a specialised

understanding of the obligations under relevant legislation, the CGRGs and the CPRs, as well as the objectives of the program. The departmental officers who manage stakeholder engagement, risks and sensitivities, research, analysis and subsequent policy development related to the program will support the responsible SES officer in decision making. Those officers will also have the requisite skills and knowledge to be able to provide appropriate advice to the SES officer on funding decisions.

In addition to a variety of safeguards and limitations that apply to the exercise of these delegated powers such as duties of accountable authorities under the PGPA Act and directions that may be issued under section 32D of the FF(SP) Act, the program area will consult with the Grants Services Office and the Legal Services Group to ensure proposed actions are within the appropriate financial delegations, and to establish the required level of approval within the department.

Merits review of decisions made in connection with the grants is not considered appropriate because these decisions relate to the provision of one-off grants to selected providers, over other providers. The ARC has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.16 to 4.19 of the guide, *What decisions should be subject to merit review?*).

Through the early childhood program, organisations will be determined to be appropriate providers to apply for one-off grants after a due diligence process. This process will involve the verification of claims under the organisation's project proposal, consideration of the suitability of other providers, and development of assessment methodology. This process will verify that the selected provider is the most suitable organisation to undertake the project, whilst ensuring that the processes of allocating funds are fair, the criteria for funding are made clear and funding decisions are made objectively.

Further, the right to review under section 75(v) of the Constitution and review under section 39B of the *Judiciary Act 1903* may be available. Persons affected by spending decisions would also have recourse to the Commonwealth Ombudsman where appropriate.

The department has consulted with stakeholders, particularly from the early childhood intervention and disability sector, to inform future directions for the services delivered by information and capacity building supports under the HCWA and Better Start programs. Through this consultation process, the department found that information, capacity building and community-based supports, such as those delivered by these program components, are valued early supports, achieve good outcomes, are value for money, and are still required to support children, their parents and carers.

The department has committed to a targeted co-design process to develop the final program design and the program guidelines. Co-design and consultation are currently underway with relevant stakeholders, including parents and carers of children with disability or developmental concerns, peak bodies, researchers and other Australian Government agencies. The co-design process is scheduled to occur in mid to late October 2021.

Funding of \$17.9 million was included in the 2021-22 Budget under the measure '*A National Early Childhood Program for Children with Disability or Developmental Concerns*' for a period of four years commencing in 2021-22. Details are set out in the *Budget 2021-22, Budget Measures, Budget Paper No. 2 2021-22* at page 178.

Funding for the item will come from Program 3.1: Disability and Carers, which is part of Outcome 3. Details are set out in the *Portfolio Budget Statements 2021-22, Budget Related Paper No. 1.12, Social Services Portfolio* at pages 26 and 96.

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)); and
- the sickness benefits aspect of 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.

#### *Convention on the Rights of Persons with Disabilities (CRPD)*

Australia has obligations under the CRPD [2008] ATS 12. In particular:

- Article 7(1) requires States Parties to take all necessary measures to ensure the full enjoyment of children with disabilities of all human rights and fundamental freedoms on an equal basis with other children; and
- Article 24 relates to States Parties recognising the right of persons with disabilities to education and ensuring an inclusive education system on an equal basis with others.

The early childhood program has the best interests of the child as its primary consideration. The program implements Articles 7(1) and 24 of the CRPD as it will support young children with disability or developmental concerns reach their full potential, and also promote full inclusion and participation in the community. The program will further aid in preparing children with disability or developmental concerns for school and other learning environments, and support the right of persons with disabilities to inclusive education.

#### *CRC*

Australia has obligations under the CRC [1991] ATS 4. In particular:

- Article 18(2) states that States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children;
- Article 23(2) recognises the right of the disabled child to special care and requires States Parties to extend appropriate assistance to children with disabilities and those responsible for their care to ensure the child has access to services and opportunities in a manner conducive to the child’s achieving the fullest possible social integration and individual development; and
- Article 27 requires States Parties to provide assistance to parents and carers to secure the right of a child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.

The early childhood program implements Articles 18(2), 23(2) and 27 of the CRC by preparing children with disability or developmental concerns for school and other learning

environments. The program also provides assistance to parents and carers through improving access to information, workshops and community supports, and developing the skills of parents and carers to support their child's learning and development and for the child to achieve the fullest possible social integration and individual development.

Communications power

Section 51(v) of the Constitution empowers the Parliament to make laws with respect to 'postal, telegraphic, telephonic and other like services'.

Aspects of the early childhood program will be delivered online, such as the use of digital technology to provide information to parents.

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 'the provision of sickness... benefits'.

The early childhood program will help children with disability and help parents and carers to support children with disability.

## **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 (Social Services 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*.

The *Financial Framework (Supplementary Powers) Amendment (Social Services Measures No. 4) Regulations 2021* amend Schedule 1AB to the FF(SP) Regulations to establish legislative authority for government spending on certain activities administered by the Department of Social Services (the department).

This disallowable legislative instrument adds the following table items to Part 4 of Schedule 1AB:

- table item 509 ‘Care and Support Workforce National Campaign’;
- table item 510 ‘Cashless welfare support services’; and
- table item 511 ‘National early childhood program for children with disability or developmental concerns’.

#### **Table item 509 – Care and Support Workforce National Campaign**

Table item 509 establishes legislative authority for government spending on the Care and Support Workforce National Campaign (the campaign), which is a communications campaign to increase public awareness of the employment opportunities available in the care and support sector, including in aged care, disability support and veterans’ care.

The campaign’s primary objectives are to:

- raise awareness of the care and support sector (aged care, disability support and veterans’ care), including the wide range of roles and settings, the value of the work, and the types of people the sector needs;
- raise awareness of the diverse pathways into sector jobs and careers;
- raise awareness of the support that new recruits need from employers; and

- encourage target audiences to take action (for example, visit the website for more information, share campaign messages, and access employer resources).

To achieve this, the department is conducting a targeted campaign to lift public perception of the care and support sector, highlight the benefits of working in the sector, and promote and showcase diverse opportunities across the sector. The campaign emphasises the values and attributes required for care and support roles and is informed by behavioural insights and developmental research. The campaign targets different audiences, by sector, state, and area (metropolitan, regional and remote), as well as Indigenous and cultural and linguistically diverse communities.

Additional funding to extend the campaign beyond its initial 12 months, which was included in the 2021-22 Budget, will contribute to implementing recommendation 76.5 of the Final Report of the *Royal Commission into Aged Care Quality and Safety*. It is anticipated that similar recommendations may result from the *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* and the *Royal Commission into Defence and Veteran Suicide*.

### **Human rights implications**

Table item 509 engages the following right:

- the right to health – Article 12 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), read with Article 2.

#### *Right to health*

Article 12 of the ICESCR recognises the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. This Article requires the States Parties create conditions which would assure to all medical service and medical attention in the event of sickness.

Article 2 of the ICESCR provides that each State Party undertakes to take steps to the maximum of its available resources with a view to achieving progressively the full realisation of the rights recognised in the Covenant, by all appropriate means.

Table item 509 promotes the right to health by improving access to high quality disability, veterans' and aged care services, which are administered by a skilled and qualified workforce.

The care and support workforce is central to the quality of aged care in Australia. As at 30 June 2020, 16 per cent of Australia's population was aged 65 years and over (4.1 million people). This is estimated to grow to 18 per cent of the population (5.4 million people) by 2030. To meet the increased demand for aged care services by people 65 years and over, the aged care workforce will need to increase significantly. Attracting and retaining skilled and professional workers will be crucial to meeting the needs of senior Australians and ensuring quality care is delivered.

As of 30 June 2021, 460,000 National Disability Insurance Scheme (NDIS) participants received support from over 9,100 active NDIS providers. By 2024, around 500,000 participants will be supported by the NDIS when it reaches full maturity, with an additional

83,000 workers needed to support them. Around 57,000 aged care workers will be required in the same timeframe.

## **Conclusion**

Table item 509 is compatible with human rights as it promotes the protection of human rights.

### Table item 510 – Cashless welfare support services

Table item 510 establishes legislative authority for government spending on cashless welfare support services, which support individuals, families and communities in places where high levels of welfare dependence co-exist with high levels of social harm. The support services will be provided to participants of the Cashless Welfare Program (commonly known as the Cashless Debit Card program).

The objective of the program is to ensure that welfare payments are spent in responsible and meaningful ways, to reduce high levels of social harm. Support to Cashless Debit Card (CDC) participants will include:

- access to services to address family violence and substance abuse including drug and alcohol and rehabilitation;
- job readiness programs, training, education and employment-related services and support;
- mental health services via providing training assessments for people with mental illness and treatment, rehabilitation and case management services;
- support services to families with children aged 18 years and under to promote safety and wellbeing of those children;
- targeted youth activities, mentoring programs, community engagement and participation;
- financial capability building services, financial counselling and digital literacy; and
- community level infrastructure and digital connectivity.

The program will focus on two initiatives: the Jobs Fund and Job Ready initiative; and the Northern Territory (NT) and Cape York CDC Support Services.

The Jobs Fund and Job Ready initiative seek to strengthen local support services and connect CDC participants and other members of the community to employment, or pathways to employment, in the CDC sites of Goldfields, East Kimberley, Ceduna and Bundaberg and Hervey Bay.

The NT and Cape York CDC Support Services will seek to strengthen local support services to assist income management participants transition onto the CDC and provide pathways to self-reliance and empowerment through community-driven solutions to support economic participation.

## **Human rights implications**

Table item 510 engages the following right:

- the right to work – Articles 6, 7, 11 and 12 of the ICESCR, read with Article 2; Article 1 of the International Labour Organization’s *Convention concerning*

*Employment Policy* (ILO Convention 122); and Articles 1 to 4 of the International Labour Organization's *Convention concerning Vocational Guidance and Vocational Training in the Development of Human Resources* (ILO Convention 142).

### *Right to work*

Article 2 of the ICESCR requires that each State Party to the Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the Covenant by all appropriate means, including particularly the adoption of legislative measures.

Article 6 of the ICESCR provides that the States Parties 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 will take appropriate steps to safeguard this right.

The steps to be taken by a State Party to achieve the full realisation of this right shall include technical and vocational guidance and training programs, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedom to the individual.

Article 7 of the ICESCR provides that the States Parties recognise the right of everyone to the enjoyment of just and favourable conditions of work, which ensure, in particular:

- (a) remuneration which provides all workers, as a minimum, with:
  - (i) fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
  - (ii) a decent living for themselves and their families in accordance with the provisions of the Covenant;
- (b) safe and healthy working conditions;
- (c) equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

Article 11 of the ICESCR provides that the States Parties recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realisation of this right, recognising the essential importance of international co-operation based on free consent.

Article 12 of the ICESCR provides that the States Parties recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

Article 1 of the ILO Convention 122 provides that 'each Member shall declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment'.

Articles 1 to 4 of the ILO Convention 142 relate to the adoption and development of comprehensive and coordinated policies and programs of vocational guidance and training, including providing broadest possible information and guidance, which are closely linked with employment for all people.

Table item 510 will promote the right to work by strengthening and broadening CDC participants' skill sets and capability to enable them to become job ready. This will be achieved by providing job readiness programs, training, education and employment services and support to CDC participants who are either unemployed or underemployed. Additionally, there will be targeted youth activities and mentoring programs focused on assisting young people to gain employment.

Table item 510 promotes CDC participants' access to full, productive and freely chosen employment by assisting to remove barriers to employment.

## **Conclusion**

Table item 510 is compatible with human rights because it promotes the protection of human rights.

### Table item 511 – National early childhood program for children with disability or developmental concerns

Table item 511 establishes legislative authority for government spending on the national early childhood program for children with disability or developmental concerns (the early childhood program).

The early childhood program seeks to deliver a range of disability specific information, linkages, workshops and community supports for young children with emerging developmental concerns or disability outside the National Disability Insurance Scheme (NDIS). The program is designed for children aged 0 to 8 years, and will be available to children without a diagnosis to help support children and their parents and carers in the early stages of identification of disability or developmental concerns. The program will also target specific cohorts, including Aboriginal and Torres Strait Islander children, as well as better use of digital technologies.

The early childhood program will align with *Australia's Disability Strategy* (the Strategy). The Strategy is Australia's national disability policy framework, which sets out a plan for continuing to improve the lives of people with disability in Australia over the next ten years. The Strategy builds on its predecessor (*National Disability Strategy 2010–2020*) and has been developed by the Australian, state, territory and local governments through more than two years of engagement with people with disability, their families and carers.

The early childhood program is also aligned with the 'supporting communities' element of the Government's Economic and Fiscal Strategy. It aims to support safe and cohesive communities by securing the delivery of social services and investing in communities to:

- enable parents and carers to access information about their child's development and early capacity building supports;
- help prepare children with disability or developmental concerns for school and other learning environments; and

- develop the skills and confidence of parents and carers to support their child's learning and development and connect with services.

### **Human rights implications**

Table item 511 engages the following rights:

- the rights of the child – Articles 18(2), 23(2) and 27 of the *Convention on the Rights of the Child* (CRC), read with Article 4; and
- the rights of people with disability – Articles 7(1) and 24 of the *Convention on the Rights of Persons with Disabilities* (CRPD), read with Article 4.

#### *Rights of the child*

Article 4 of the CRC requires States Parties to undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the CRC.

Article 18(2) of the CRC states that States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

Article 23(2) of the CRC recognises the right of the disabled child to special care and requires States Parties to extend appropriate assistance to children with disabilities and those responsible for their care to ensure the child has access to services and opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development.

Article 27 of the CRC requires States Parties to provide assistance to parents and carers to secure the right of a child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

Table item 511 promotes the rights of the child by preparing children with disability or developmental concerns for school and other learning environments. Table item 511 also provides assistance to parents and carers through improving access to information, workshops and community supports, and developing the skills of parents and carers to support their child's learning and development and for the child to achieve the fullest possible social integration and individual development.

#### *Rights of people with disability*

Article 4 of the CRPD requires States Parties to undertake to ensure and promote the full realisation of all human rights for those with a disability without discrimination.

Article 7(1) of the CRPD requires States Parties to take all necessary measures to ensure the full enjoyment of children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.

Article 24 of the CRPD relates to States Parties recognising the right of persons with disabilities to education and ensuring an inclusive education system on an equal basis with others.

Table item 511 has the best interests of the child as its primary consideration. The early childhood program will support young children with disability or developmental concerns reach their full potential and will promote full inclusion and participation in the community. The measure will also aid in preparing children with disability or developmental concerns for school and other learning environments, and supports the right of persons with disabilities to inclusive education.

### **Conclusion**

Table item 511 is compatible with human rights because it promotes the protection of human rights.

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