

REPLACEMENT EXPLANATORY STATEMENT

This Explanatory Statement replaces the Explanatory Statement registered on 1 November 2021 for the *Financial Framework (Supplementary Powers) Amendment (Prime Minister and Cabinet Measures No. 8) Regulations 2021* [F2021L01499] to provide further information about delegation of administrative powers and functions in relation to the Commonwealth initiatives addressing child sexual abuse, such as those under the *National Strategy to Prevent and Respond to Child Sexual Abuse*.

Issued by the Authority of the Minister for Finance

Financial Framework (Supplementary Powers) Act 1997

*Financial Framework (Supplementary Powers) Amendment
(Prime Minister and Cabinet Measures No. 8) 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 (Prime Minister and Cabinet Measures No. 8) Regulations 2021* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for Commonwealth spending on initiatives addressing child sexual abuse (the program), such as those under the *National Strategy to Prevent and Respond to Child Sexual Abuse* (the National Strategy). The National Office for Child Safety within the Department of the Prime Minister and Cabinet has overall policy responsibility for the National Strategy, with program initiatives to be delivered by various Commonwealth entities and state and territory partners.

The National Strategy, the first of its kind in Australia, is a 10-year, whole-of-nation framework to establish a coordinated and consistent approach to preventing and better responding to child sexual abuse in Australia. It was a key recommendation of the *Royal Commission into Institutional Responses to Child Sexual Abuse*. The National Strategy will

complement and align with other national policy frameworks, such as the current and future National Plans to Reduce Violence against Women and their Children, and Closing the Gap.

The National Strategy will be driven by two initial four-year action plans (2021-2024), likely followed by two sets of three-year action plans (2025-2027 and 2028-2030 respectively). The *First National Action Plan* will focus on initiatives to be jointly delivered by the Australian Government and state and territory governments. The *First Commonwealth Action Plan* will focus on initiatives to be delivered by the Australian Government.

Commonwealth funding of \$146 million over four years from 2021-22 for initiatives contributing to the *First Commonwealth Action Plan* was included in the 2021-22 Budget and jointly announced by the Prime Minister, the Hon Scott Morrison MP, and the Assistant Minister to the Prime Minister and Cabinet, the Hon Ben Morton MP, on 11 May 2021.

Further funding for initiatives under the auspices of the National Strategy, including its *First National Action Plan* and *First Commonwealth Action Plan*, is expected to be announced in October 2021.

The **new table item 507** in Part 4 of Schedule 1AB to the Principal Regulations will establish legislative authority for Commonwealth expenditure on those program initiatives that require such legislative authority. Other initiatives may not require legislative authority or may be supported by the enabling legislation of relevant Commonwealth entities.

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 the Prime Minister and Cabinet, the National Indigenous Australians Agency, the Attorney-General's Department and the Department of Home Affairs.

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 (Prime Minister and Cabinet Measures No. 8) Regulations 2021*

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Prime Minister and Cabinet Measures No. 8) Regulations 2021*.

Section 2 – Commencement

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

Section 3 – Authority

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

Section 4 – Schedules

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

Schedule 1 – Amendments

Financial Framework (Supplementary Powers) Regulations 1997

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

This item adds a new table item to Part 4 of Schedule 1AB to establish legislative authority for government spending on activities that will be administered by the Department of the Prime Minister and Cabinet (PM&C), the National Indigenous Australians Agency (NIAA), the Attorney-General's Department (AGD) and the Department of Home Affairs (Home Affairs).

New **table item 507** establishes legislative authority for Commonwealth spending on initiatives addressing child sexual abuse (the program), such as those under the *National Strategy to Prevent and Respond to Child Sexual Abuse* (the National Strategy). The National Office for Child Safety (the National Office) within PM&C has overall policy responsibility for the National Strategy, with program initiatives to be delivered by various Commonwealth entities and state and territory partners. The National Office has led the development of the National Strategy and worked closely with Commonwealth, state and territory officials and hundreds of community stakeholders to develop the National Strategy.

The National Strategy, the first of its kind in Australia, is a 10-year, whole-of-nation framework to establish a coordinated and consistent approach to preventing and better responding to child sexual abuse in Australia. It was recommended by the *Royal Commission into Institutional Responses to Child Sexual Abuse* (Royal Commission). It will establish a nationally coordinated approach to preventing and better responding to child sexual abuse in

all settings, including within families, by other people known and unknown to the child, in organisations and online.

The National Strategy will also implement a number of other Royal Commission recommendations, including many aimed either partly or wholly at the Australian Government and to which the Australian Government has already agreed. It will support and complement relevant existing and forthcoming Commonwealth and state and territory reforms, including the *National Agreement on Closing the Gap* and the successor to the *National Plan to Reduce Violence against Women and their Children 2010-2022*.

In October 2020, during a speech to the Parliament marking the second anniversary of the *National Apology to Victims and Survivors of Institutional Child Sexual Abuse* (the National Apology), the Prime Minister committed to delivering the National Strategy in 2021. In line with this commitment, the National Strategy and the *First Commonwealth Action Plan* are expected to be launched in October 2021. This timing would align the launch with the third anniversary of the National Apology (22 October 2021) and coincide with the National Children's Week (23-31 October 2021).

The National Strategy includes an embedded *First National Action Plan (2021-2024)*, which focuses on measures that respond to Royal Commission recommendations requiring national leadership and a coordinated national response. Measures in the *First National Action Plan* will be delivered in partnership between the Commonwealth and state and territory governments. It is anticipated the *First National Action Plan* will be followed by two three-year national action plans (2025-2027 and 2028-2030 respectively).

The Australian Government has an important role to play in preventing and responding to child sexual abuse. The rate of online child sexual abuse offending is increasing and, with it, the Australian Government's responsibility to respond. That is why the Australian Government will develop its own action plans to supplement national action plans under the National Strategy. Commonwealth action plans will focus primarily on the Australian Government's priorities and responsibilities, for example concerning online child sexual abuse. The *First Commonwealth Action Plan* will — similar to the *First National Action Plan* — have a four-year lifespan (2021-2024). Commonwealth entities will deliver the *First Commonwealth Action Plan*. Funding for initiatives under these action plans will cover the 2021-22 to 2024-25 financial years.

State and territory governments have chosen not to develop jurisdiction-specific action plans for the National Strategy at this time. All state and territory governments have existing programs of reform to implement Royal Commission recommendations, as well as policies and reporting mechanisms that outline all actions jurisdictions are taking to prevent child sexual abuse.

New table item 507 will provide legislative authority to support Commonwealth expenditure on the following program initiatives which fall under the auspices of the National Strategy.

Expand the role of the National Office to deliver the National Strategy (PM&C)

The National Office was established as part of the Australian Government's response to the Royal Commission to provide national leadership and deliver national policies and strategies to enhance children's safety with a focus on child sexual abuse. According to the Australian

Bureau of Statistics, at least one in 10 adult women (10.7 per cent or 1 million women) and approximately one in 20 adult men (4.6 per cent or 412,000) have experienced child sexual abuse in Australia.

Funding under this initiative will allow the National Office to:

- enhance national arrangements for sharing child safety and wellbeing information across sectors and jurisdictions;
- establish an ongoing national annual reporting framework for non-government organisations to report on their progress to create and maintain child safe cultures beyond the initial five years recommended by the Royal Commission and expand the range of institutions targeted to report;
- establish a Child Safety Engagement Unit to deliver targeted advice and information to stakeholders on child safety measures and how to prevent and respond to child abuse, to help communities and organisations across Australia better understand their obligations and how to take action to keep children safe; and
- support strategic communication of the National Strategy and its outcomes, through promoting and distributing the National Strategy, and engaging with the community, including key individuals and working groups that will oversee and guide implementation, to ensure the National Strategy is implemented consistently and effectively across Australia.

Funding may be allocated through grant or procurement arrangements in accordance with the *Commonwealth Grants Rules and Guidelines 2017* (CGRGs) or the *Commonwealth Procurement Rules* (CPRs), respectively.

Build child safe cultures through awareness raising and education campaigns (PM&C)

This initiative will provide funding for the delivery of a national awareness raising campaign relating to child sexual abuse and safety. The campaign will be modelled off the *Stop it at the Start* campaign, which effectively raises awareness on domestic violence. This initiative will be delivered through a wide range of media, including targeted communications for diverse audiences. Delivery of the campaign will involve developmental research, creative concept testing, media buy (including television, social media, online and out-of-home advertising such as public posters), and evaluation. The campaign will be developed in accordance with the *Australian Government Guidelines on Information and Advertising Campaigns by non-corporate Commonwealth entities*.

Improve support services for victims and survivors of child sexual abuse (PM&C, NIAA)

This initiative will improve and expand support for victims and survivors of child sexual abuse by providing accessible, high-quality, trauma-informed and culturally safe support services. Activities under this initiative will include:

- delivering a national referral mechanism to support victims and survivors of child sexual abuse to access services;
- designing, developing and piloting a trauma and healing-informed and culturally appropriate resource for frontline health workers to deliver culturally safe early intervention and improved access to specialist services for Indigenous victims and survivors of child sexual abuse; and

- funding development of an Indigenous-led, place-based, co-design process to develop Aboriginal and Torres Strait Islander healing approaches as part of the specialist support service system for victims and survivors of child sexual abuse.

Funding may be allocated through grant or procurement arrangements in accordance with the CGRGs or the CPRs, respectively.

Establish a national support service for non-offending family members of child sexual abuse offenders (PM&C)

This initiative will establish a national support service for non-offending family members of child sexual abuse perpetrators (similar to 1800RESPECT and ReachOut), who are a hidden victim cohort. The service will comprise:

- a 24/7 national hotline;
- the development of a new website to provide functions such as an online chat;
- an online peer support forum including facilitated online peer support gatherings; and
- training and resources for law enforcement.

The service will work closely with the Australian Centre to Counter Child Exploitation led by the Australian Federal Police (AFP), Joint Anti-Child Exploitation Teams in each jurisdiction, and the Australian Border Force (part of Home Affairs).

Funding may be allocated through grant or procurement arrangements in accordance with the CGRGs or the CPRs, respectively.

Enhance national approaches to supporting children with harmful sexual behaviours (PM&C)

This initiative will build a national capability for responding to children with harmful sexual behaviours. It will enable governments to:

- broaden community awareness through developing standards and benchmarks for professional qualifications, clinical supervision, clinical practice, staff retention, culturally safe practice and systems and provision of specialist practice resources; and
- support increased specialist services for children with harmful sexual behaviours by:
 - funding the Northern Territory (NT) Government to engage a specialist workforce with expertise in responding to children with harmful sexual behaviours; and
 - providing enhanced and targeted support on policy and service delivery frameworks to jurisdictions where responses to children with harmful sexual behaviours are the most underdeveloped.

Prevent first-time and recurring child sexual abuse offending (PM&C)

This initiative will scope and deliver a prevention program that intervenes before a child sexual abuse offence occurs. Similar programs running in countries such as the UK (Stop it Now!) and New Zealand (Safe to Talk) comprise helplines, online chats and online materials to help manage people who have sexual thoughts or behaviours towards children (including looking at online child sexual abuse materials). The program will be scoped in consultation with states, territories, the community sector and international counterparts before funding a non-government service provider for national program delivery.

The initiative will also fund a scoping study and subsequent pilot service for a program to reduce the risk of child sexual abuse reoffending. The service will include, but not be limited to, a model for post-custodial community reintegration of convicted sex offenders. The service will be modelled on the Circles of Support and Accountability (CoSA) program. CoSA programs involve a ‘circle’ of trained volunteers guided by professionals to help promote offenders’ accountability and manage their readjustment to life in the community after serving a custodial sentence. The Government will fund a research body to undertake the scoping study, identify a non-government service to run the pilot, and fund an appropriate body (potentially a Commonwealth entity) to conduct the evaluation.

Funding may be allocated through grant or procurement arrangements in accordance with the CGRGs or the CPRs, respectively.

Enhance and expand legal assistance services for victims and survivors of child sexual abuse (AGD)

This initiative will help children at risk of harm and victims and survivors of child sexual abuse access and pursue justice, by boosting the capacity of Commonwealth-funded legal assistance services. It will establish a specialist national online chat service to deliver trauma informed legal information, advice and referrals to children and youth experiencing, or at risk of experiencing, harm, including sexual abuse.

This initiative will also expand services provided by a national specialist trauma informed legal service to include victims and survivors of child sexual abuse outside the institutional context (for example, within the family home).

Funding may be allocated through grant or procurement arrangements in accordance with the CGRGs or the CPRs, respectively.

Strengthen regional policy, legislative and operational responses to counter child sexual abuse (Home Affairs)

This initiative will strengthen law and justice frameworks in the Indo-Pacific region and South-East Asia through a capacity building program with regional partner countries. Capacity building programs typically involve provision of technical assistance to support practical improvements to legal and policy frameworks and delivery of in-country workshops and events to support the effective implementation of those frameworks.

Funding may be allocated through grant or procurement arrangements in accordance with the CGRGs or the CPRs, respectively.

Funding decisions under the program may be made by Ministers responsible for specific initiatives, accountable authorities of relevant Commonwealth entities or their delegates under the *Financial Framework (Supplementary Powers) Act 1997* (the FF(SP) Act). Government spending will be undertaken in accordance with applicable resource management frameworks, including the *Public Governance, Performance and Accountability Act 2013*.

Funding decisions for the National Strategy initiatives led by PM&C will be delegated to no lower than the Head of the National Office (SES Band 1). The financial delegations in PM&C and other entities recognise that officials holding certain positions, such as SES staff, have a proper understanding of their obligations under relevant delegations. The delegations operate to allow delegates in PM&C and other entities, who are most familiar with the project or policy concern at hand, to make relevant funding decisions.

Implementation of initiatives under the National Strategy may require a number of routine funding decisions, in addition to specialised knowledge. Where urgent amendments to funding agreements or further funding is required, it is also necessary for this power to be delegated so that such changes can be swiftly progressed to ensure the initiative achieves its desired outcome. In PM&C, the Head of the National Office as the SES officer responsible for the National Strategy funding package and overall policy implementation, is a senior public servant with the appropriate experience to make these decisions.

There are a variety of safeguards and limitations that apply to the exercise of the delegated powers and functions. Section 32D of the FF(SP) Act provides for the delegation of powers by a Minister to an official of any non-corporate Commonwealth entity and requires them to comply with any directions of the Minister concerned.

The financial delegations in PM&C and other entities leading the implementation of the National Strategy initiatives direct that, when exercising delegated powers and functions, delegates and authorised officials are to observe the relevant provisions of the applicable legislation, government policy, the Accountable Authority Instructions, other internal instructions, and any other instructions or conditions stated within the delegations. Financial delegations may include limitations to the scope of the delegations based on risk as well as the relevant directions applicable to delegates exercising those delegations. All powers and functions will be responsibly discharged by ensuring that appropriate policies, procedures, guidelines and internal controls are in place. Advice will be sought from internal corporate and governance areas to ensure decisions made by the delegates are compliant with relevant safeguards and best-practice expenditure processes.

Funding decisions for the National Strategy initiatives led by NIAA will be delegated to the Branch Manager of the Families and Safety Branch (SES Band 1). The delegate's decision making function will also take into account the Commonwealth's commitments under the *National Agreement on Closing the Gap* to ensure genuine partnership, co-design, engagement and consultation also underpin funding decisions. The NIAA has also established an Enterprise Delivery Support Unit to support implementation of NIAA's new budget measures, including in relation to risk management, executive oversight of key decisions and directions, and financial oversight.

The overarching approval of grants under the AGD-led initiative required the Secretary's approval as the accountable authority for the department. Subsequent spending approvals involving routine funding decisions under the agreements, or variations to the agreements, can be delegated to appropriate financial delegates. The financial delegations recognise that senior executive positions are appropriately qualified senior public servants with experience in grant administration and legal policy and program delivery. They are assisted by the business area which has specific experience and extensive knowledge of the initiative.

Funding decisions for the National Strategy initiative led by Home Affairs will be delegated to the Assistant Secretary (SES Band 1) responsible for delivering the initiative.

Funding decisions made in connection with the program (such as those in relation to grants or procurements) 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 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 National Strategy was developed in partnership with state and territory governments and relevant Commonwealth entities, and in consultation with non-government stakeholders. State and territory governments and relevant Commonwealth entities were consulted on initial National Strategy development over 2018 and 2019, and were provided opportunities to review and provide input on the draft National Strategy from November 2020 to May 2021.

Non-government stakeholders have supported and shaped National Strategy development since 2018. This includes via:

- six development workshops, a written submission process, and individual consultations with hundreds of stakeholders including Aboriginal and Torres Strait Islander peoples, victims and survivors, advocates, academics, child safety experts, and clinical practitioners;
- consultation meetings with key groups and forums, including Australian Children’s Commissioners and Guardians, Victims of Crime Commissioners, the National Forum for Protecting Australia’s Children, and the Child Safe Sectors Leadership Group; and
- facilitated workshops with Aboriginal and Torres Strait Islander peoples, victims and survivors and their advocates, and people with disability to finalise the National Strategy and understand how these groups want to work in partnership with governments to design and implement National Strategy measures.

Funding of \$146 million for initiatives contributing to the *First Commonwealth Action Plan* was included in the 2021-22 Budget under the measure ‘National Strategy to Prevent and Respond to Child Sexual Abuse’ over a period of four years commencing in 2021-22. Details are set out *Budget 2021-22, Budget Measures, Budget Paper No. 2* at pages 174 to 175.

This funding was jointly announced by the Prime Minister, the Hon Scott Morrison MP, and the Assistant Minister to the Prime Minister and Cabinet, the Hon Ben Morton MP, on 11 May 2021. Media release is available at <https://www.pm.gov.au/media/new-national-strategy-prevent-child-sexual-abuse>.

Funding for the item will come from:

- Program 1.1: Prime Minister and Cabinet, which is part of Outcome 1 for PM&C. Details are set out in the *Portfolio Budget Statements 2021-22, Budget Related Paper No. 1.11, Prime Minister and Cabinet Portfolio* at pages 26 and 29;
- Program 1.3: Safety and Wellbeing and Program 1.7: Program Support, which are part of Outcome 1 for NIAA. Details are set out in the *Portfolio Budget Statements*

2021-22, *Budget Related Paper No. 1.11, Prime Minister and Cabinet Portfolio* at pages 218, 225 to 227;

- Program 1.1: Attorney-General’s Department Operating Expenses – Legal Services and Families, which is part of Outcome 1 for AGD. Details are set out in the *Portfolio Budget Statements 2021-22, Budget Related Paper No. 1.2, Attorney-General’s Portfolio* at pages 21 and 25; and
- Program 1.3: Cyber Security, which is part of Outcome 1 for Home Affairs. Details are set out in the *Portfolio Budget Statements 2021-22, Budget Related Paper No. 1.8, Home Affairs Portfolio* at pages 22 and 30.

Further funding for initiatives under the auspices of the National Strategy, including its *First National Action Plan* and *First Commonwealth Action Plan*, is expected to be announced in October 2021. Funding details are expected to be set out in the 2021-22 Mid-Year Economic and Fiscal Outlook and 2021-22 Portfolio Additional Estimates Statements.

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 race power (section 51(xxvi));
- the treaty implementation and geographic externality aspects of the external affairs power (section 51(xxix));
- the express incidental power and the executive power (sections 51(xxxix) and 61), including the nationhood aspect;
- the executive power (section 61);
- the power to grant financial assistance to states (section 96); 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’.

Spending under the National Strategy may involve spending on campaigns to be delivered through a wide range of media, which may include television, social media, and online.

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

Spending under the National Strategy may include specialised medical services.

Races power

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

Spending under the National Strategy may include initiatives that may benefit persons from Aboriginal and Torres Strait Islander backgrounds.

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 with respect to matters or things outside the geographical limits of Australia.

Spending under the National Strategy may include measures to strengthen international responses to child sexual abuse.

The external affairs power supports legislation implementing Australia’s international obligations under treaties to which it is a party.

Australia has obligations relating to the *Convention on the Rights of the Child* (CRC). In particular:

- Article 4 which provides that States Parties will undertake all appropriate measures, including legislative measures, for the implementation of the rights recognised by the Convention. With regard to economic, social and cultural rights, States Parties will undertake measures to the maximum extent of their available resources;
- Article 19 which provides that States Parties must 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;
 - Protective measures should include effective procedures for the establishment of social programs to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described, and, as appropriate, for judicial involvement.
- Article 25 which recognises the right of a child who has been placed by competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of treatment relevant to that placement;
- Article 27 which recognises the right of every child to a standard of living adequate for their physical, mental, spiritual, moral and social development;
 - Article 27 also provides that States Parties will take appropriate measures to assist parents and others responsible for the child to secure conditions of living necessary for the child’s development. In cases of need, States Parties will provide material assistance and support programs.
- Article 34, which provides that States Parties will undertake all appropriate national, bilateral and multilateral measures to protect children from all forms of sexual exploitation and sexual abuse; and
- Article 39, which provides that States Parties will take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of any form of neglect, exploitation, or abuse, torture or any other form of cruel, inhuman or degrading treatment or punishment, or armed conflicts.

Australia also has obligations under the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). In particular:

- Article 12 which recognises the right to the enjoyment of the highest attainable standard of physical and mental health.
 - Article 12 provides that the States Parties will undertake steps to achieve the full realisation of this right including those necessary for the ‘healthy development of the child’ and ‘the creation of conditions which would assure to all medical service and medical attention in the event of sickness’.

Spending under the National Strategy will contribute to the protection of the rights and further the healthy development of children and young people in Australia. The National Strategy will positively impact all Australians through improved responses to child abuse and the prevention of future harm to children. Spending under the National Strategy may include measures to: raise awareness of child sexual abuse and safety, build child safe cultures, improve and expand support for victims and survivors of child sexual abuse and their families, provide specialised medical and health services, prevent child sexual abuse, and strengthen international responses to child sexual abuse.

Executive power and express incidental power, including the nationhood aspect

The express incidental power in section 51(xxxix) of the Constitution empowers the Parliament to make laws with respect to matters incidental to the execution of any power vested in the Parliament, the executive or the courts by the Constitution. Section 61 of the Constitution supports activities that are peculiarly adapted to the government of a nation and cannot be carried out for the benefit of the nation otherwise than by the Commonwealth. The executive power in section 61 of the Constitution also supports activities that form part of the ordinary and well-recognised functions of government.

Spending under the National Strategy will establish a whole-of-nation framework for a coordinated and consistent approach to preventing and better responding to child sexual abuse. This National Strategy will include expanding the national leadership role of the National Office for Child Safety and the establishment of the national clinical reference group to provide expert advice on policy initiatives and reforms associated with children with harmful sexual behaviours.

Power to grant financial assistance to states

Section 96 of the Constitution empowers the Parliament to ‘grant financial assistance to any State on such terms and conditions as the Parliament thinks fit’.

Section 96 grants may be made under the National Strategy.

Territories power

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

Under the National Strategy, there may be funding in relation to a Territory.

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 (Prime Minister and Cabinet Measures No. 8) 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 (Prime Minister and Cabinet Measures No. 8) Regulations 2021* (the Regulations) amend Schedule 1AB to the FF(SP) Regulations to establish legislative authority for Commonwealth spending on initiatives addressing child sexual abuse (the program), such as those under the *National Strategy to Prevent and Respond to Child Sexual Abuse* (the National Strategy). The National Office for Child Safety within the Department of the Prime Minister and Cabinet has overall policy responsibility for the National Strategy, with program initiatives to be delivered by various Commonwealth entities and state and territory partners.

The National Strategy, the first of its kind in Australia, is a 10-year, whole-of-nation framework to establish a coordinated and consistent approach to preventing and better responding to child sexual abuse in Australia. It was a key recommendation of the *Royal Commission into Institutional Responses to Child Sexual Abuse*. The National Strategy will complement and align with other national policy frameworks, such as the current and future National Plans to Reduce Violence against Women and their Children, and Closing the Gap.

The National Strategy will be driven by two initial four-year action plans (2021-2024), likely followed by two sets of three-year action plans (2025-2027 and 2028-2030 respectively). The *First National Action Plan* will focus on initiatives to be jointly delivered by the Australian Government and state and territory governments. The *First Commonwealth Action Plan* will focus on initiatives to be delivered by the Australian Government.

Human rights implications

The human rights and freedoms engaged by this disallowable legislative instrument fall under the following conventions to which Australia is a party:

- *Convention on the Rights of the Child (CRC)*;
- *International Covenant on Civil and Political Rights (ICCPR)*;
- *International Covenant on Economic, Social and Cultural Rights (ICESCR)*; and
- *Convention on the Rights of Persons with Disabilities (CRPD)*.

The measures contained in this disallowable legislative instrument positively engage with the principles underpinning, and the fundamental rights and freedoms protected by the CRC, particularly:

- the best interests of the child as a primary consideration, including within institutions and services with responsibilities for the care or protection of children (Article 3);
- the right of the child to be protected from all forms of physical and mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse (Article 19);
- the right of every child to be protected from all forms of sexual exploitation and sexual abuse (Article 34);
- the right of the child to be protected against all other forms of exploitation prejudicial to any aspects of the child's welfare (Article 36); and
- the right of every child not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment (Article 37).

The measures contained in this disallowable legislative instrument will also further strengthen Australia's response to the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography, to which it is a party.

The measures contained in this disallowable legislative instrument also promote the rights enshrined by the ICCPR, most substantially:

- the right of every child, without any discrimination, to such measures of protection as are required by his status as a minor (Article 24); and
- the right of a person from a minority group to enjoy his or her own culture, practise his or her own religion, or to use his or her own language (Article 27).

Some measures in this disallowable legislative instrument provide for specific funding for Aboriginal and Torres Strait Islander children and communities, and encompass positive obligations to best uphold human rights. This differentiation based on race and culture is reasonable and serves to achieve legitimate purposes under the ICCPR.

The measures contained in this disallowable legislative instrument also promote the rights enshrined by the ICESCR, most substantially:

- the right of children and young people to have special measures of protection taken on their behalf (Article 10); and
- the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (Article 12).

Finally, the measures contained in this disallowable legislative instrument promote the rights enshrined by the CRPD, most substantially:

- the right to effective legislative, administrative, judicial or other measures, on an equal basis with others, to prevent being subjected to torture or cruel, inhuman or degrading treatment or punishment (Article 15); and
- the right to respect for his or her physical and mental integrity on an equal basis with others (Article 17).

More broadly, measures under the National Strategy, including those contained in this disallowable legislative instrument, will be implemented with respect and recognition of the particular needs of vulnerable cohorts such as people with disability and LGBTQIA+ people. Differentiation of people based on these factors serves to recognise the specific needs of these groups and ensure they can enjoy human rights on the same basis as all others. These positive measures enable the Australian Government to fulfil its obligations under core human rights treaties.

Conclusion

This disallowable legislative instrument is compatible with human rights because it promotes the rights of children and young people, and to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

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