

## **EXPLANATORY STATEMENT**

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

*Financial Framework (Supplementary Powers) Act 1997*

*Financial Framework (Supplementary Powers) Amendment  
(Health Measures No. 1) Regulations 2022*

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*.

The Principal Regulations are exempt from sunset under section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (item 28A). If the Principal Regulations were subject to the sunset regime under the *Legislation Act 2003*, this would generate uncertainty about the continuing operation of existing contracts and funding agreements between the Commonwealth and third parties (particularly those extending beyond 10 years), as well as the Commonwealth's legislative authority to continue making, varying or administering arrangements, grants and programs.

Additionally, the Principal Regulations authorise a number of activities that form part of intergovernmental schemes. It would not be appropriate for the Commonwealth to unilaterally sunset an instrument that provides authority for Commonwealth funding for activities that are underpinned by an intergovernmental arrangement. To ensure that the Principal Regulations continue to reflect government priorities and remain up to date, the Principal Regulations are subject to periodic review to identify and repeal items that are redundant or no longer required.

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. Section 32D of the FF(SP) Act confers powers of delegation on Ministers and the accountable authorities of non-corporate Commonwealth entities, including subsection 32B(1) of the Act. Schedule 1AA and Schedule 1AB to the Principal Regulations specify the arrangements, grants and programs.

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.

The *Financial Framework (Supplementary Powers) Amendment (Health Measures No. 1) Regulations 2022* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on the NRL All Stars – State of Mind Program (the program) to support the National Rugby League (NRL) to deliver a range of mental health initiatives directed towards Indigenous youth. The program is administered by the Department of Health.

The program aims to improve mental, social and emotional wellbeing, targeting Aboriginal and Torres Strait Islander males within the rugby league community through increasing awareness of issues that impact mental health, improving mental health literacy and reducing the mental health stigma. The program also aims to start positive conversations around wellbeing within networks and communities, and enabling connections across communities regarding mental health.

The program aligns with priority reforms detailed in the Government's *National Mental Health and Suicide Prevention Plan* (Pillar 4: Supporting Vulnerable Australians) and the *National Agreement on Closing the Gap*. Established in 2019, the program is considered a celebration of Indigenous excellence on and off the field, consisting of several activities which educate and support participants to reduce stigma and increase mental health literacy.

The NRL, formed in 1998, is the pre-eminent rugby league club competition in Australia and New Zealand. The NRL, through its Reconciliation Action Plan, is committed to greater promotion and opportunities for Aboriginal and Torres Strait Islander peoples within the game. It holds a unique position to reach at risk groups – men, youth, boys and Aboriginal and Torres Strait Islander peoples – within the rugby league community. The NRL has both a national and regional reach, which provides an important platform to deliver mental health awareness and education activities and connect with communities.

Funding of \$720,000 over three years from 2021-22 will be available for the program.

Details of the Regulations are set out at [Attachment A](#). A Statement of Compatibility with Human Rights is at [Attachment B](#).

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

## **Consultation**

In accordance with section 17 of the *Legislation Act 2003*, consultation has taken place with the Department of Health.

A regulation impact statement is not required as the Regulations only apply to non-corporate Commonwealth entities and do not adversely affect the private sector.

**Details of the *Financial Framework (Supplementary Powers) Amendment (Health Measures No. 1) Regulations 2022***

**Section 1 – Name**

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Health Measures No. 1) Regulations 2022*.

**Section 2 – Commencement**

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

**Section 3 – Authority**

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

**Section 4 – Schedules**

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

**Schedule 1 – Amendments**

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

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

This item adds a new table item to Part 4 of Schedule 1AB to establish legislative authority for government spending on an activity administered by the Department of Health (the department).

New **table item 537** establishes legislative authority for government spending on the NRL All Stars—State of Mind Program (the program) to support the National Rugby League (NRL) to deliver a range of mental health initiatives directed towards Indigenous youth.

The program has been running since 2019 and is considered a celebration of Indigenous excellence on and off the field, consisting of several activities which educate and support participants to reduce stigma and increase mental health literacy. The program was developed through partnerships with organisations such as headspace, Kids Helpline, the Black Dog Institute and Lifeline.

The NRL, formed in 1998, is the pre-eminent rugby league club competition in Australia and New Zealand. The NRL, through its Reconciliation Action Plan, is committed to greater promotion and opportunities for Aboriginal and Torres Strait Islander peoples within the game. It holds a unique position to reach at risk groups – men, youth, boys and Aboriginal and Torres Strait Islander peoples – within the rugby league community. The NRL has both a national and regional reach, which provides an important platform to deliver mental health awareness and education activities and connect with communities.

The NRL received funding for the All Stars Program in 2018 under the Indigenous Australians Health Programme Guidelines of \$220,000 over three years from 2018-19 to supported the promotion of mental health awareness for rugby league participants and supporters. This included the delivery of mental health and resilience workshops, promotional material for attendees and participants, and broader mental health and resilience messaging.

The Government has also previously funded the NRL for the program or similar activities under a different program name. This included:

- \$50,000 in 2017-18 to support activities outside the current program, related to the promotion of mental health awareness activities; and
- \$300,000 in 2018 to support the NRL for the 2018 Festival of Indigenous Rugby League.

The program aims to improve mental, social and emotional wellbeing, targeting Aboriginal and Torres Strait Islander men and boys. It looks to do this through increasing awareness of issues that impact mental health, improving mental health literacy, reducing the mental health stigma, starting positive conversations around wellbeing with networks and communities, and enabling connections across communities regarding mental health. The program also has a wide geographical reach, including providing targeted support for those living in rural and remote regions in Australia.

The program directly supports the Australian Government's commitment to reducing the devastating and disproportionate impact of mental ill-health and suicide on Aboriginal and Torres Strait Islander people and communities. It aligns with priority reforms detailed in the Government's *National Mental Health and Suicide Prevention Plan* (Pillar 4: Supporting Vulnerable Australians) and the *National Agreement on Closing the Gap* (Target 14: Achieve significant and sustained reduction in Aboriginal and Torres Strait Islander suicides toward zero).

The program delivers on several core activities focusing on mental health initiatives. Where possible, former Aboriginal and Torres Strait Islander NRL players will deliver the following activities, which will be rolled out across Australia:

- State of Mind 'Get in the GAAME' workshops will be delivered to grassroots teams (with a high level of Indigenous players/participants);
- State of Mind Grassroots education sessions will be delivered to grassroots rugby league clubs across Australia with high numbers of Indigenous players/participants. Clubs will complete a mental health action plan, with the aim of embedding a positive mental health and wellbeing culture both at the club and within the local community;
- 'League Stars Inspire Health and Wellbeing' sessions will be delivered in primary schools and junior clubs;
- during the NRL All Stars week, State of Mind mental health and resilience workshops will be delivered to all four All Stars teams including team staff, as well as Youth Summit participants;
- 'State of Mind All Stars' advocates will be selected from the All Stars teams to use their voice to amplify State of Mind messages to indigenous communities;
- a range of social and online marketing initiatives relating to mental health will be provided, including a marketing campaign promoting the NRL's 'What's your State of Mind' mental wellbeing campaign; and

- the production and dissemination of a video campaign featuring TV advertisements and interviews with participants and player advocates to promote the program and highlight key messages.

Funding will be provided to the NRL to deliver the program, as a non-competitive grant. The grant will be administered in accordance with the Commonwealth resource management framework, including the *Public Governance, Performance and Accountability Act 2013* and the *Commonwealth Grants Rules and Guidelines 2017*.

Grant opportunity guidelines will be developed and information about the grant will be made available on the GrantConnect website ([www.grants.gov.au](http://www.grants.gov.au)). The grants will be administered by the Community Grants Hub, which is part of the Department of Social Services.

The First Assistant Secretary, Mental Health Division will be responsible for approving Commonwealth funding provided to the NRL taking into account the recommendations of the assessment committee and the availability of grant funds for the purposes of the grant opportunity.

Funding decisions made in connection with the program 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, these decisions relate to the provision of a one-off grant to a certain service provider over other service providers and 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?*).

These grant activities are a continuation of the activity funded by the department through the Indigenous Australians Health Program. The NRL has demonstrated its ability to facilitate the program activity through previous funding arrangements. The NRL was determined to be an appropriate organisation to pursue a one-off, ad hoc grant as the NRL holds a unique position to reach at risk groups within the rugby league community. Its profile and network throughout NRL clubs and network of high-profile players provides opportunity for community engagement with the target audience. There are no other organisations that have the profile required to undertake the grant activities and therefore, a review of such a decision is unlikely to result in a different outcome.

Consultation occurred within the department between the Mental Health Division (MHD) and the Indigenous Health Division (IHD), who managed the previous agreement with the NRL, to assess the outcomes of the agreement. As part of the management of the previous agreement, the MHD and IHD are also in regular contact with the NRL. Once a new proposal seeking an extension of the program was received, it was decided that future consideration of the program's funding and extension request would sit with the MHD. At this crossover point of responsibility, both IHD and MHD internally consulted on the program's history and effectiveness and decided that a program extension should be presented to the Minister for review. Engagement with the NRL was initiated when it submitted a proposal for the program. Engagement with the NRL will be ongoing between both the MHD and IHD.

Funding of \$720,000 over three years from 2021-22 for this item will come from Program 1.2: Mental Health, which is part of Outcome 1. Details are included in the *Department of Health Portfolio Budget Statements 2021-22, Budget Related Paper No. 1.7* at page 57.

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 race power (section 51(xxvi));
- the external affairs power (section 51(xxix)); and
- the territories power (section 122).

#### Communications power

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

The grant will fund media and awareness raising campaigns that are delivered over the internet and television.

#### Race 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’.

The grant will fund a range of initiatives which are designed to improve the mental health, resilience and wellbeing of Aboriginal and Torres Strait Islander youth and communities.

#### 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 international obligations relating to the ‘right to health’ under the *International Covenant on Economic, Social and Cultural Rights* [1976] ATS 5 (ICESCR). In particular, Article 2 of the ICESCR relevantly requires States Parties to ‘take steps... to the maximum of its available resources, with a view to achieving progressively the full realization’ of the rights set out in the ICESCR. Article 12(1) then recognises the ‘right of everyone to the enjoyment of the highest attainable standard of physical and mental health’ and Article 12(2) provides a non-exhaustive list of ‘steps’ to be taken by States Parties to achieve the full realisation of the right to health.

The grant will fund activities which promote and improve mental health and wellbeing, consistent with the right to health.

#### Territories power

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

The grant will fund activities which are carried out in 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 (Health Measures No. 1) Regulations 2022***

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

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

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

The *Financial Framework (Supplementary Powers) Amendment (Health Measures No. 1) Regulations 2022* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on the NRL All Stars – State of Mind Program (the program) to support the National Rugby League (NRL) to deliver a range of mental health initiatives directed towards Indigenous youth. The program is administered by the Department of Health.

The program aims to improve mental, social and emotional wellbeing, targeting Aboriginal and Torres Strait Islander males within the rugby league community through increasing awareness of issues that impact mental health, improving mental health literacy and reducing the mental health stigma. The program also aims to start positive conversations around wellbeing within networks and communities, and enabling connections across communities regarding mental health.

The program aligns with priority reforms detailed in the Government's *National Mental Health and Suicide Prevention Plan* (Pillar 4: Supporting Vulnerable Australians) and the *National Agreement on Closing the Gap*. Established in 2019, the program is considered a celebration of Indigenous excellence on and off the field, consisting of several activities which educate and support participants to reduce stigma and increase mental health literacy.

Grants funding of \$720,000 over three years from 2021-22 will be provided to support the program to deliver on several core activities focusing on mental health initiatives, including:

- League Stars Inspire: aimed at children aged nine to twelve, and provides age appropriate education on positive health and respectful relationships;

- Get in the GAAME workshops: aimed at young people aged 13-17, and provides education and mentorship to lead healthy lifestyles, build resilience and build a positive mindset, and
- State of Mind Grassroots workshops: designed to support club volunteers, administrators, and senior players aged 18 and over to build internal leadership and assist clubs in developing mental health action plans.

### **Human rights implications**

This disallowable legislative instrument engages the following rights:

- the right of the child to the enjoyment of the highest attainable standard of health – Article 24 of the *Convention on the Rights of the Child (CRC)*, read with Article 4;
- the right of the child to have access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health – Articles 17 and 29 of the CRC; and
- the right of everyone to the enjoyment of the highest attainable standard of physical and mental health – Article 12 of the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, read with Article 2.

#### *Right of the child to the enjoyment of the highest attainable standard of health*

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

Article 24 of the CRC specifies that States Parties should ‘recognise the right of the child to the enjoyment of the highest attainable standard of health...’ Article 24(2) requires States Parties to pursue full implementation of this right and sets out steps to be undertaken to this end including (a) to diminish child and infant mortality, (c) to combat disease and malnutrition and (e) to ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition.

Funding will be provided to support children and families in schools and sporting communities through workshops aimed at increasing mental health literacy, reducing mental health stigma, encouraging positive social and emotional wellbeing and help seeking behaviour. The workshops are particularly focused on Aboriginal and Torres Strait Islander men and boys in sporting communities.

#### *Right of the child to have access to information and material from a diversity of national and international sources*

Article 17 of the CRC specifies that States Parties recognise the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of



article 29; (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

Funding will be provided for the production and dissemination of a video campaign featuring TV advertisements and interviews with participants and player advocates to promote the Program and highlight key messages. The video campaign will particularly focus on Aboriginal and Torres Strait Islander men and boys in sporting communities.

*Right of everyone to the enjoyment of the highest attainable standard of physical and mental health*

Article 2(1) of the ICESCR requires that each State Party to the ICESCR 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 that Covenant by all appropriate means, including particularly the adoption of legislative measures.

Article 12(1) of the ICESCR recognises the ‘right of everyone to the enjoyment of the highest attainable standard of physical and mental health’. Article 12(2)(a) requires the States Parties to take steps to realise the right to health including those necessary for ‘the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child.’

Funding will be provided to support physical and mental health through workshops aimed at education and support for participants to reduce stigma and increase mental health literacy, particularly with Aboriginal and Torres Strait Islander men and boys in sporting communities.

**Conclusion**

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

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