

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance

Financial Framework (Supplementary Powers) Act 1997

*Financial Framework (Supplementary Powers) Amendment
(Foreign Affairs and Trade 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 sunseting under section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (item 28A). If the Principal Regulations were subject to the sunseting 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 (Foreign Affairs and Trade Measures No. 1) Regulations 2022* (the Regulations) amend Schedule 1AB to the Principal

Regulations to establish legislative authority for government spending on certain activities administered by the Department of Foreign Affairs and Trade.

Funding is provided for:

- the development and implementation of an Australian Agriculture Visa program, which will contribute to a long-term, reliable workforce for Australian primary industries (\$87.2 million over four years from 2021-22, and \$23.4 million per year ongoing from 2025-26);
- the Pacific Australia Labour Mobility scheme, which supports a mobility program to provide workers from Pacific island countries and Timor-Leste with the opportunity to take up temporary seasonal and non-seasonal work opportunities in Australia (\$47.1 million over four years from 2021-22); and
- continued support to, or for the benefit of, the Republic of Palau following its graduation from the Organisation for Economic Cooperation and Development list of Official Development Assistance recipients on 1 January 2022 (\$12.0 million over three years from 2022-23).

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 Foreign Affairs and Trade.

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 (Foreign Affairs and Trade Measures No. 1) Regulations 2022*

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Foreign Affairs and Trade 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 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 Foreign Affairs and Trade (the department).

New **table item 541** establishes legislative authority for government spending on the development and implementation of an Australian Agriculture Visa (AAV) program.

On 23 August 2021, the Government announced the establishment of the AAV program. The AAV program delivers on the Government's commitment to put in place a broad ranging visa to support the growth of Australia's agricultural industries. It is a long-term contribution to Australia's labour supply intended to support Australia's agricultural and primary industry sectors as they strive to reach \$100 billion in value by 2030. It is a stream of the Temporary Work (International Relations) subclass 403 visa, and will be available to employees across a range of agricultural sectors and skills levels.

The AAV program will support the recruitment of employees across a range of agriculture sectors, including horticulture, dairy, wool, grains, fisheries (including aquaculture) and forestry, including support services and primary processing. It targets skilled, semi-skilled and low-skilled employees within specified occupations across these

sectors. Employees must have the experience and/or qualifications to commence work at the skill level and occupation for which they are recruited (where relevant).

The AAV program includes two cohorts of employees recognising different industry requirements. In time, eligible employers will be able to recruit employees under the AAV for longer-term work and for short-term, seasonal work. Employees in the seasonal cohort will be able to work in Australia for up to nine months in every 12 months. Seasonal employees will be able to apply for a visa for up to 4-years to undertake seasonal work every year, without having to apply for a new visa every year. Employees who hold this visa will still be required to return home between seasons. Employers will need to offer minimum hours of work to this cohort. Visa holders in the long-term cohort will be able to work for between one and four years. Employers will need to offer full-time work to this cohort.

The AAV program supplements the Pacific Australia Labour Mobility (PALM) scheme, which remains the primary scheme for meeting agricultural workforce shortages. The AAV program offers a sustainable longer-term contribution to agricultural workforce shortages by supporting a structural shift in our agricultural workforce away from reliance on Working Holiday Makers to a dedicated and more reliable workforce providing employers more confidence. There are already a range of migration programs that play an important role in addressing agriculture workforce shortages, including the PALM scheme. The AAV complements, rather than displaces, the broader suite of temporary migration programs already available to industry (for example, Horticulture, Dairy, Meat, Fishing and Pork Industry Labour Agreements).

The AAV program is a sponsored visa program, operating with approved employers and robust worker protections. The program will provide flexibility for workers to move between approved employers without compromising workforce standards and undermining worker protections.

On 30 September 2021, the regulatory framework for the AAV program came into effect. The *Migration Regulations* were amended, the *Migration Amendment (Australian Agriculture Workers) Regulations 2021*, to include the Australian Agriculture Worker Stream in the Subclass 403 (Temporary Work (International Relations)) visa. A phased approach to establishing the program has been agreed with industry. The Department of Foreign Affairs and Trade (DFAT) is working with employers to establish a small initial cohort to test systems and processes before the program's expansion throughout 2022 when we expect a steady increase in workers. Commencement of operation of the AAV program depends on negotiations with potential partner countries. Discussions are underway with a small number of countries in Southeast Asia.

The AAV program is managed by the DFAT leveraging its experience with the successful PALM scheme. The Department of Home Affairs is responsible for processing all visa sponsorship and AAV applications, as well as providing operational support with the Australian Border Force to ensure ongoing visa integrity. The Department of Agriculture, Water and the Environment is responsible for ensuring that the needs of relevant primary industry sectors are being met. The Fair Work Ombudsman is responsible for ensuring employee protection and upholding workers' rights.

Participating employers will need to be approved by DFAT through a series of checks including financial solvency, immigration and fair work history. Once approved, they will

then need to enter into a Deed of Agreement with DFAT detailing their responsibilities. DFAT will monitor employer compliance with this Deed. Employees under the Agriculture Visa program are protected by the same workplace rights and laws as Australian employees, regardless of their citizenship or visa status.

Funding will be managed by the department and may involve engagement of external providers, in accordance with the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and *Commonwealth Procurement Rules* (CPRs) to deliver selected activities.

Activities proposed to be undertaken by an onshore provider (in Australia) include program management, operational, logistical, compliance and assurance activities. Activities proposed to be undertaken by an offshore provider (in participating countries) include program assurance, support and oversight of recruitment process in participating countries and provision of practical information and advice to prospective AAV workers.

A delegate of the Secretary of the department under the *Financial Framework (Supplementary Powers) Act 1997* will be responsible for approving Commonwealth funding provided. The delegate for expenditure under the program will be DFAT's Assistant Secretary (SES Band 1) Agriculture Visa Branch who, as a senior officer with responsibility for all aspects of the implementation and operation of the AgVisa program, has the appropriate skills, qualifications and experience to perform this function. This is commensurate with the delegation associated with expenditure under other programs within DFAT.

No activities are expected to be delivered through grant funding.

Information about the AAV program is available on the department website (<https://www.dfat.gov.au/people-people/international-labour-mobility/australian-agriculture-visa>). The department will provide opportunity for suppliers and tenderers to make complaints if they wish, and to receive feedback. These complaints can be made any time during the procurement process and will be handled in accordance with probity requirements.

Information about the tender and the resultant contracts will be made available on AusTender (www.tenders.gov.au) once the contracts are signed. Procurement decisions will be based on value for money, including capability and capacity to deliver, and price and risk considerations.

Engagement of any external providers will be in accordance with the CPRs. The department has a guideline for complaints handling in procurement, including the conduct of the process or its outcome, which is available on the department's website. The *Government Procurement (Judicial Review) Act 2018* also enables suppliers to challenge some procurement processes for alleged breaches of certain procurement rules. This legislation might provide an additional avenue of redress for dissatisfied providers or potential providers, depending on the circumstances.

Some decisions in relation to the AAV program may be eligible for review. A decision to refuse a person's application for approval as a temporary activities sponsor is reviewable under paragraph 4.02(4)(a) of the *Migration Regulations 1994*. If a decision is made to refuse an AAV applicant, the decision may be reviewable under either subsection 338(2) or

subsection 338(5) of the *Migration Act 1958*. An eligible applicant is entitled to apply to the Administrative Appeals Tribunal to seek merits review of the decisions.

Decisions made by the department regarding endorsement of employers to participate in the AAV program will not be subject to an independent merits review process. To be eligible to participate in the AAV program, applicants must meet eligibility criteria. Applicants who have had their applications rejected will receive feedback and may re-apply and submit a new application with current and accurate supporting documentation. The exclusion of independent merits review is justified because the decision is of such a kind that no appropriate remedy may be conferred by a reviewing body, consistent with paragraphs 4.49 – 4.51 of the Administrative Review Council’s (ARC) publication, *What decisions should be subject to merits review?* (ARC guide).

Further, the costs of independent merits review cannot be justified, consistent with paragraphs 4.56 – 4.57 of the ARC guide. This is because allocating finite program resources (both funds and personnel) to provide and maintain a system of merits review on the department delegate’s decision on the suitability of an applicant to participate in the program, would be an inappropriate allocation of the resources, where no appropriate remedy is available for the merits review body for this decision. A system of merits review would detract from the ability to fund other aspects of the program, such as ensuring compliance with workplace laws and could also result in delay to primary decisions on applications.

Even though the decision on the suitability of an applicant to be an approved employer is inappropriate for merits review, the department will make reasonable efforts to ensure administrative accountability by making the decision-making process fair and transparent and ensuring applicants receive feedback on their applications. The department will make the eligibility criteria clear and informative; and ensure that the decisions will be well documented and defensible, and made with reference to the eligibility criteria.

The AAV program has been co-designed across Commonwealth Government agencies with industry, including the National Farmers Federation, AusVeg, Australian Fresh Produce Alliance, Australian Meat Industry Council and the Approved Employers Association. Targeted consultations with other primary industry bodies and employers, and other stakeholders, such as relevant unions and civil society have also been conducted to understand broader views and feedback on the visa design and implementation. Stakeholders were strongly supportive of strengthening worker protection and the AAV program design has been informed by stakeholder views on achieving this. Industry stakeholders were supportive of the AAV program parameters and noted that these should support employer needs alongside program integrity and worker protection. Other stakeholder views have been incorporated as appropriate.

Funding of \$87.2 million for the program was included in the 2021-22 Mid-Year Economic and Fiscal Outlook under the measure ‘Australian Agriculture Visa’ for a period of four years commencing in 2021-22 (and \$23.4 million per year ongoing from 2025-26). Details are set out in the *Mid-Year Economic and Fiscal Outlook 2021-22, Appendix A: Policy decision taken since the 2021-22 Budget* at page 231.

Funding for this item will come from Program 1.1: Foreign Affairs and Trade Operations - Administered, which is part of Outcome 1. Details are set out in the *Portfolio Additional Estimates Statements 2021-22, Foreign Affairs and Trade* at pages 24 and 27.

Noting that it is not a comprehensive statement of relevant constitutional considerations, the objective of this item references the following powers of the Constitution:

- the aliens power (section 51(xix)),
- the immigration and emigration power (section 51(xxvii)),
- the external affairs power (section 51(xxix)), and
- executive power (section 61).

Aliens power

Section 51(xix) of the Constitution empowers the Parliament to make laws with respect to ‘naturalization and aliens’.

Funding will be provided under the AAV program for activities and projects to assist with the development and implementation of visa programs which are, or will be, available to aliens and immigrants.

Immigration and emigration power

Section 51(xxvii) of the Constitution empowers the Parliament to make laws with respect to ‘immigration and emigration’.

Funding will be provided under the AAV program for activities and projects to assist with the development and implementation of visa programs which are, or will be, available to aliens and immigrants.

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 and matters concerning Australia’s relations with other nations.

Funding will be provided under the AAV program for activities and projects to assist with the development and implementation of visa programs which are relevant to Australia’s agricultural trade relationship with foreign states and potential foreign workers.

Executive power

The executive power in section 61 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 of the courts by the Constitution. The executive power in section 61 of the Constitution extends to a range of matters, including:

- activities that form part of the ordinary and well-recognised functions of government
- the execution and maintenance of Commonwealth laws.

The proposed expenditure will support the administration of the AAV program (including the process by which employers become Temporary Activity Sponsors under the *Migration Act 1958* and *Migration Regulations 1994*).

New **table item 542** establishes legislative authority for government spending on the Pacific Australia Labour Mobility (PALM) scheme, which supports a mobility program to provide workers from Pacific island countries and Timor-Leste with the opportunity to take up temporary seasonal and non-seasonal work opportunities in Australia.

The PALM scheme will contribute strongly to Australia's rural and regional economy, the economic development of the Pacific and Timor-Leste and provide workers with opportunities to gain valuable skills and income to send back to their communities. The scheme is a central pillar of the Pacific Step-up.

On 23 November 2021, the Minister for Foreign Affairs, Senator the Hon Marise Payne and the Minister for International Development and the Pacific, Senator the Hon Zed Seselja, jointly announced the PALM scheme (<https://www.foreignminister.gov.au/minister/marise-payne/media-release/streamlining-and-strengthening-pacific-labour-new-era>), including reforms and the consolidation of the two existing PALM initiatives - the Seasonal Worker Programme (SWP) and Pacific Labour Scheme (PLS)- under the single, improved PALM scheme to commence in April 2022 and to be managed by the Department of Foreign Affairs and Trade (the department).

The PLS, managed by the department, provides for citizens of certain Pacific Island countries and Timor-Leste to take up non-seasonal low and semi-skilled work opportunities in rural and regional Australia for up to three years. The SWP, managed by the Department of Education, Skills and Employment is a program enabling Australian employers in certain industries to employ workers from participating Pacific Island countries and Timor-Leste when they are unable to find enough workers to meet seasonal demands. The consolidation of the PLS and SWP into a single PALM will simplify administration and reduces duplication. Stakeholders will no longer need to engage with two different departments, systems and processes, with the consolidated program to be managed by the department with the support of the department's provider, the Pacific Labour Facility.

The PALM scheme will help to fill labour gaps in rural and regional Australia by offering employers access to a pool of reliable, productive workers. Through the PALM scheme, eligible businesses can recruit workers for seasonal jobs for up to nine months or for longer-term roles up to four years in unskilled, lower-skilled and semi-skilled positions. Employers are required to demonstrate they cannot fill job vacancies with Australian workers through labour market testing. Employers participating in the scheme must be endorsed by the Department of Home Affairs (Home Affairs) as Temporary Activities Sponsors (TAS) and approved by the department. The department's approval includes assessment of the employer's financial viability. The Fair Work Ombudsmen (FWO) also conducts an assessment on the applicant's history of compliance with workplace legislation. Labour hire companies are eligible to apply to the join the scheme and must be members of good standing with the Recruitment and Consulting Services Association for a minimum of five years.

Under the PALM scheme, workers are protected by the same workplace rights and laws as Australian workers, and additional provisions will be in place to support the welfare and wellbeing of workers while they live and work in Australia. Workers must be at least 21

years of age. They will have the ability to transfer between employers subject to program requirements and at the discretion of the department. Worker skills levels will be assessed by relevant Australian assessing authorities or registered training organisation as having skills (qualifications or experience) equivalent to the Australian standard. The PALM scheme will support cohorts of workers to obtain formal vocational qualifications.

The countries participating in the scheme are: Fiji, Kiribati, Nauru, Papua New Guinea, Samoa, Solomon Islands, Timor-Leste, Tonga, Tuvalu and Vanuatu.

The PALM scheme will be implemented through a hybrid model. The department will oversee the scheme with a contracted provider managing day-to-day administration and playing a key role in program assurance to ensure worker protections are maintained. This is consistent with the historical administration of the PLS and has been assessed as the best value for money approach to deliver the program. This arrangement will allow measures to support worker welfare already in the SWP and PLS to be rolled into the PALM scheme.

Home Affairs will process all visa applications and TAS applications. The Australian Border Force (ABF) and the FWO will support delivery of the scheme by ensuring program integrity and worker welfare is protected.

The key components of the PALM scheme are as follows:

- demand driven – uncapped worker and employer numbers;
- flexible visa conditions with up to four years, multi-stay, multi-entry, short- and long-term work contracts;
- unlimited sector coverage with rural and regional application for all sectors and no post code restrictions for agriculture;
- labour market testing to give Australians the first opportunity for jobs valid for up to one year and support for skills training for workers; and
- application of relevant Australian workplace laws.

Funding will be provided to a contracted provider through an amendment to the procurement contract administered by the department. The funding will be administered in accordance with the Commonwealth resource management framework, including the PGPA Act and the CPRs.

A delegate of the Secretary of the department under the *Financial Framework (Supplementary Powers) Act 1997* will be responsible for approving Commonwealth funding provided. The delegate is the Deputy Secretary, Office of the Pacific who has the relevant in-depth working knowledge and experience of Pacific labour policy and programmes to ensure the procurement contract will be carried out appropriately and in line with the Commonwealth resource management framework including PGPA Act and the CPRs. Delegation in this case is set at the level of Deputy Secretary (SES Band 3) due to the value of the contract, as required by the PGPA Act and DFAT's financial delegations.

The exclusion of independent merits review of the department delegate's decision on whether an applicant is suitable to become a PALM scheme approved employer is justified because the decision is of such a kind that no appropriate remedy may be conferred by a reviewing body. The beneficial effects of a merits review for this decision are negligible, where the result of having an application rejected is that the applicant is provided reasons for the unsuccessful application, which includes feedback on how their application could be

amended to fulfil the eligibility criteria. The applicant is then able to apply a second time within the 12 month period.

In addition, it is likely that the purported detrimental effect of a negative decision would be spent by the time the merits review process was concluded. As applicants are permitted to apply twice within 12 months, the detrimental effect to an unsuccessful applicant would most likely be that they would be excluded from applying a third time within the 12 month period. It is noted that they would still receive feedback on a second unsuccessful application. The average processing time of an application is about eight weeks after all required documentation is submitted. It may take an additional amount of time for the applicant to collate any further financial and required documentation for their subsequent application after an initial rejection. Therefore, by the time an applicant is notified of a second unsuccessful decision, they would likely be well into the 12 month period, such that by the time a review body undertook and concluded the merits review process, the 12 month period would likely be exceeded, and the purported detrimental effect of the decision already spent. As such, it would appear that this type of decision is one where no appropriate remedy may be conferred by a reviewing body, consistent with paragraphs 4.49 – 4.51 of the ARC guide.

Further, given that there is no appropriate remedy and the effect of the decision is likely to be spent by the time of review, the decision has such a limited impact that the costs of review cannot be justified. The budget allocated to the PALM scheme is a finite resource. The PALM scheme is a complex and multifaceted program, which involves many stakeholders, including potentially vulnerable workers, and is projected to run over many years. Allocating program resources to provide and maintain a system of merits review on the department delegate's decision regarding the suitability of an applicant to be an approved employer would be an inappropriate allocation of the resources. It would detract from the ability to fund other aspects of the program, such as ensuring approved employer compliance with workplace laws, particularly in circumstances where unsuccessful applicants are given reasons and permitted to apply twice within 12 months. Merits review in these circumstances would be resource intensive (both financial and in terms of personnel) and could also result in delay to primary decisions on applications. Therefore, the costs of review cannot be justified, consistent with paragraphs 4.56 – 4.57 of the ARC guide.

Even though the decision on the suitability of an applicant to be an approved employer is inappropriate for merits review, the department has made reasonable efforts to ensure administrative accountability by making the decision-making process fair and transparent. For example, the department has made the eligibility criteria clear and informative; and is ensuring that the decisions will be well documented and defensible, and made with reference to the eligibility criteria and based on recommendations from the Pacific Labour Facility.

The Government undertook extensive consultations with stakeholders across Australia and the Pacific in June and July 2021 on the development of the PALM scheme. Consultations included engagement with peak industry bodies, employers from a range of sectors employing temporary Pacific migrants and unions. Meetings were held with Pacific and Timor-Leste workers, as well as Pacific and Timor-Leste governments including through their representatives in Australia and the agencies responsible for labour mobility in their government. Other Australian Federal, State and Territory Governments were also engaged in the consultation process.

In 2021 an inter-departmental committee was established at the SES Band 2 committee to guide the development of the PALM scheme with a focus on high-level, strategic issues related to Pacific labour mobility including the role of Pacific labour in Australian labour markets and economic integration with the Pacific and Timor-Leste.

The department is also leading an interdepartmental SES Band 1 Integrity committee covering all program integrity issues and reporting to the Band 2 committee. A new Program Advisory group has also been established, with members drawn from peak industry bodies, community sector organisations, unions and other key partners in Pacific labour mobility. In addition, industry based sub-committees have been established. Thematic working groups would also be established as required, to identify solutions to emerging issues and progress ideas for improving the program.

The department engagement with Pacific and Timor-Leste governments will continue and be upgraded to include annual bilateral dialogues. The Pacific Heads of Mission Roundtable, established by the department in 2020, will continue.

Funding of \$47.1 million for the program was included in the 2021-22 Mid-Year Economic and Fiscal Outlook under the measure ‘Pacific Labour Mobility Reforms’ for a period of four years commencing in 2021-22. Details are set out in the *Mid-Year Economic and Fiscal Outlook 2021-22, Appendix A: Policy Decisions taken since the 2021-22 Budget* at page 192.

Funding for this item will come from Program 1.2: Official Development Assistance - Administered, which is part of Outcome 1. Details are set out in the *Portfolio Additional Estimates Statements 2021-22, Foreign Affairs and Trade* at pages 24, 28 and 29.

Noting that it is not a comprehensive statement of relevant constitutional considerations, the objective of this item references the following powers of the Constitution:

- the aliens power (section 51(xix)),
- the immigration or emigration power (section 51(xxvii)),
- the external affairs power (section 51(xxix)).
- the Pacific relations power (section 51(xxx)).

Aliens power

Section 51(xix) of the Constitution empowers the Parliament to make laws with respect to ‘naturalization and aliens’.

The PALM Scheme supports the recruitment of foreign workers from Timor-Leste and the Pacific by eligible Australian employers.

Immigration and emigration power

Section 51(xxvii) of the Constitution empowers the Parliament to make laws with respect to ‘immigration and emigration’.

The PALM Scheme supports the recruitment of foreign workers from Timor-Leste and the Pacific by eligible Australian employers. Some of the foreign workers may become immigrants, noting that the PALM Scheme may provide a pathway to permanent residency in certain circumstances.

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.

The PALM Scheme supports the recruitment of foreign workers from participating countries, which are external to Australia, by eligible Australian employers.

Pacific relations power

Section 51(xxx) of the Constitution empowers the Parliament to make laws with respect to ‘the relations of the Commonwealth with the islands of the Pacific.’

The PALM Scheme supports the recruitment of foreign workers, from participating Pacific Island countries and Timor-Leste, by eligible Australian employers.

New **table item 543** establishes legislative authority for government spending to continue providing financial assistance to, or for the benefit of, the Republic of Palau (Palau).

Palau graduated from the Organisation for Economic Cooperation and Development (OECD) list of Official Development Assistance (ODA) recipients on 1 January 2022.

The funding for the benefit of Palau will ensure that Australia can continue to engage Palau in key regional activities being led by Australia in the Pacific, consistent with objectives under the Pacific Step-up: supporting the region’s prosperity, sovereignty, security and stability; and safeguarding Australia’s deep and long-standing connections as the region’s partner of choice.

Australia assistance to Palau will:

- enable Palau to continue to participate in Australian-funded regional initiatives in women’s empowerment (Pacific Women Lead), security (Cyber security program), oceans (Ocean Assistance in the Pacific), climate change (Australia Pacific Climate Partnership), infrastructure (Australian Infrastructure Financing Facility for the Pacific), private sector development (Pacific Private Sector Development Initiative Phase IV), and supporting regional recovery from the health and economic impacts of COVID-19 (Pacific Medicines Testing Program), and
- support a modest ongoing program of bilateral cooperation to support Palau’s development priorities, including Australia Awards scholarships to study in Australia or selected education institutions in the Pacific region; technical assistance in areas such as tax reform; disaster preparedness and response; strengthening people-to-people links through Australian alumni engagement and provision of Australian technical advice; and a small community grants scheme supporting grassroots programs implemented by local organisations to deliver small-scale development projects that raise Australia’s profile in Palau.

Continuing targeted, non-ODA support for Palau will further Australia’s objectives to support an open, inclusive and resilient Indo-Pacific region. It will demonstrate to Palau and other Pacific island countries that Australia is a reliable regional partner. It will also facilitate

Palau's continued engagement with Australian-funded regional activities that underscore the value to Palau of Pacific regional collaboration.

Bilateral cooperation will be in areas of mutual priority, using the proposed modest financial allocation to deliver outcomes with a high impact on Australia's relationship with Palau. This bilateral assistance will bolster Australia's reputation as a trusted bilateral partner, building on the momentum following the formal opening of the Australian Embassy in Koror by the Minister for Foreign Minister on 3 December 2021 (the Embassy commenced operations in December 2019). Others with missions in Koror – the United States of America, Japan and Taiwan – plan to continue their assistance to Palau after its graduation from ODA eligibility.

The Office of the Pacific (OTP) in the department, working closely with the Australian Embassy in Koror, Palau will implement the administered funding for Palau through support for regional partnership initiatives and a modest bilateral component. Priority areas for support will be agreed with Palau.

The department will engage multiple partners to implement activities benefiting Palau. Regional and bilateral program funding for Palau will be implemented through the department established frameworks for grants, procurements, project monitoring and evaluation, and in accordance with Commonwealth legislative and policy requirements for procurements and grants.

Both regional initiatives and bilateral cooperation components will involve delivery of grants. Grants will comply with the CGRGs, which articulate the government's requirements and expectations for non-corporate Commonwealth entities when undertaking grant activities. Grant guidelines related to these processes will be developed and approved by the Minister for Foreign Affairs or the Minister for International Development and the Pacific.

Regional initiatives will be administered through existing regional programs, under amendments to existing grant arrangements with regional Pacific bodies or new non-ODA administered grants, which will operate in parallel to cover Palau alone (to be decided on a case-by-case basis). Grant activities involving Palau under regional development programs will comply with the CGRGs through the running of a targeted, non-competitive grant process involving eligible regional organisations and initiatives. This approach is consistent with the regional program grant process in place for the Cook Islands.

Under the bilateral component there is a proposed community grants program. This will be designed and implemented to comply with the CGRGs through running small-scale, competitive community grants processes, consistent with the approach used in the Cook Islands.

To deliver on the objectives in bilateral and regional components of support, the department may also enter into other non-binding grant arrangements with the Government of Palau (for example, to provide grants in response to disaster or emergency needs, supporting the localisation of humanitarian responses) or with other non-Corporate Commonwealth entities (for example, to fund technical expertise from the Australian Tax Office to support tax reform activities). Delivery of these grants and activities will be subject to the department's aid management processes and grant guidelines, and related legislative requirements including the PGPA Act.

Where required in the bilateral or regional components, for example where activities in a regional program are delivered by a commercial implementing partner, the department will engage contractors to implement activities. For example, volunteers supporting Palau's health recovery will be delivered through the department implementing partner for the Australian Volunteers program, selected through an open tender process; and technical advisers that need to be sourced commercially will be recruited and managed through existing mechanisms, such as the Building Pacific Capacity program, also selected via an open tender. The CPRs articulate the government's requirements and expectations for non-corporate Commonwealth entities when undertaking procurement activities. All procurement activity involving the Palau funding will comply with the CPRs through alignment with the department's established procurement and contracting systems (BuyRight) that provide relevant thresholds and are linked to legislative requirements including publication on AusTender.

Final decisions in relation to funding for Palau non-ODA grants, non-binding grant arrangements or procurements will be made by delegates consistent with the department Secretary's Instrument of Financial Delegation, namely:

- Assistant Secretary Timor-Leste and Micronesia Branch, up to the value of \$25 million; or
- Head of Mission Koror or Director, North Pacific Section, up to the value of \$3 million; or
- Deputy Head of Mission Koror or North Pacific Section Desk Officers, with delegation up to their relevant level of delegation as per the Secretary's instrument.

The delegate's decisions will be final in all matters, including in respect of:

- the approval of funding; and
- the funding amount to be awarded.

Details of grants awarded, or variations to grants previously awarded, and procurement activities will be reported in accordance with the CGRGs and CPRs and other Commonwealth procurement connected policies, respectively.

Complaints received in relation to these grant and procurement processes will be handled in accordance with the complaints procedures as set out in the grant/procurement documentation issued by the department and on the department's website at www.dfat.gov.au. These procedures are consistent with the requirements of the CGRGs and the CPRs for the handling of complaints. Complaints in respect of procurement activities will also be handled by the department in accordance with the *Government Procurement (Judicial Review) Act 2018*.

Decisions made in connection with the Palau funding are not considered suitable for independent merits review. Such decisions relate to the allocation of a finite resource between competing applicants, as set out in the ARC guide (paragraphs 4.11 to 4.19 refer). Any merits review, which results in overturning a funding decision already made, would adversely affect another party that received funding through the same process.

Even though funding decisions are not considered appropriate for merits review, the department will emphasise administrative accountability in the decision-making process by ensuring that selection process is fair, transparent and merit based, and that the decisions are well documented, defensible and made with reference to the selection criteria.

The intended lines of effort for this funding, the method of delivery and expenditure have been consulted extensively within the department including with the Australian Embassy in Koror, Palau. DFAT (including through the Australian mission in Koror) consulted with the Government of Palau on Australia's plans to provide ongoing, non-ODA support following Palau's graduation from ODA, subject to Australia's budget processes; and has previously engaged with Government of Palau on development priorities. In these discussions Government of Palau welcomed Australia's potential support in ongoing areas of cooperation.

Funding of \$ 12.0 million for the program was included in the 2021-22 Mid-Year Economic and Fiscal Outlook under the measure 'Continued Assistance to Palau', for a period of three years commencing in 2022-23. Details are set out in the *Mid-Year Economic and Fiscal Outlook 2021-22, Appendix A: Policy decision taken since 2021-22 Budget* at page 233.

Funding for this item will come from Program 1.1: Foreign Affairs and Trade Operations – Administered, which is part of Outcome 1. Details are set out in the *Portfolio Additional Estimates Statements 2021-22, Foreign Affairs and Trade* at pages 24 and 27.

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)); and
- the Pacific Islands power (section 51(xxx)).

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, as well as matters concerning Australia's relations with other nations.

The program will involve providing financial assistance to, or for the benefit of, the Republic of Palau.

Pacific Islands power

The Pacific Islands power in section 51(xxx) confers on the Parliament the power to make laws with respect to 'the relations of the Commonwealth with the islands of the Pacific'.

The program will involve providing financial assistance to, or for the benefit of, the Republic of Palau.

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 (Foreign Affairs and Trade 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 (Foreign Affairs and Trade Measures No. 1) Regulations 2022* Part 4 of Schedule 1AB to the FF(SP) Regulations to establish legislative authority for government spending certain activities administered by the Department of Foreign Affairs and Trade (the department).

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

- table item 541 ‘Australian Agriculture Visa program’;
- table item 542 ‘Pacific Australia Labour Mobility Scheme’; and
- table item 543 ‘Support for the Republic of Palau’.

Table item 541 – Australian Agriculture Visa program

New **table item 541** establishes legislative authority for government spending to support the development and implementation of an Australian Agriculture Visa (AAV) program.

The AAV program will contribute to a long-term, reliable workforce to help fill critical agriculture workforce shortages, where Australians are unable to fill roles, and will contribute to ongoing growth of primary industries as they strive to reach \$100 billion in value by 2030, delivering economic benefit for Australia.

Through the AAV program the Government is committed to:

- a new, sustainable and scalable program, with robust integrity, governance measures and industry support, to meet agricultural workforce needs now and into the future;
- providing the framework for a safe workplace that is free of exploitation or harassment for all workers in the agriculture sector, including foreign workers; and

- a well-managed visa program that meets identified Australian labour market gaps, supplements and provides for continued growth of the Pacific Australia Labour Mobility (PALM) scheme, supplements existing temporary migration programs and delivers COVID-safe entry of workers to Australia.

The department will manage the AAV program, with the Department of Home Affairs having legislative responsibility for the AAV visa under *the Migration Act 1958*.

New table item 541 supports the development and implementation of a dedicated AAV program, which will provide Australia's agriculture sector a wider pool of workers, where Australian and Pacific labour is inadequate to meet labour needs, supporting the Government objective to fill skills shortages in the agriculture sector while maintaining the primacy of the PALM scheme for recruiting overseas workers.

Human rights implications

Table item 541 engages the following right:

- the right to work and rights at work – Article 7 of *the International Covenant on Economic, Social and Cultural Rights* (ICESCR), read with Article 2, and Articles 1 and 2 of the International Labour Organization's *Convention concerning Employment Policy* (ILO Convention 122).

Right to work and rights at work

The States Parties to the present Covenant recognize 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 present 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.

Table item 541, and the programs supporting it, also engages Articles 1 and 2 of the ILO Convention 122. Article 1 states that:

1. With 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.
2. The said policy shall aim at ensuring that
 - a) there is work for all who are available for and seeking work;
 - b) such work is as productive as possible;

- c) there is freedom of choice of employment and the fullest possible opportunity for each worker to qualify for, and to use his skills and endowments in, a job for which he is well suited, irrespective of race, colour, sex, religion, political opinion, national extraction or social origin.
- 3. The said policy shall take due account of the stage and level of economic development and the mutual relationships between employment objectives and other economic and social objectives, and shall be pursued by methods that are appropriate to national conditions and practices.

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 co-ordinated 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.

Table item 541 positively engages the right to work and rights at work of AAV visa holders, including initiatives, such as education, information dissemination, and inquiries and investigations, directed at addressing worker exploitation and ensuring compliance with relevant workplace standards.

Conclusion

Table item 541 is compatible with human rights because it promotes the protection of human rights.

Table item 542 – Pacific Australia Labour Mobility Scheme

New **table item 542** establishes legislative authority for government spending on the Pacific Australia Labour Mobility (PALM) scheme, which supports a mobility program to provide workers from Pacific island countries and Timor-Leste with the opportunity to take up temporary seasonal and non-seasonal work opportunities in Australia.

The PALM scheme reforms and consolidates the two existing Pacific labour mobility initiatives, the Seasonal Worker Program and the Pacific Labour Scheme, into a single program overseen by the department.

The PALM scheme will help to fill labour gaps in rural and regional Australia by offering approved eligible Australian employers access to a pool of unskilled, lower-skilled and semi-skilled workers to undertake seasonal jobs for up to nine months or for longer-term roles up to four years. The PALM scheme aims to foster economic development of Pacific island countries and Timor-Leste by providing workers with opportunities to gain valuable skills, including formal vocational qualifications for some cohorts, and income to send back to their communities

The PALM scheme will be implemented through a hybrid model, with a contracted provider, overseen by the department, managing the administration of the program and providing a key role in program assurance and pastoral care to workers. The Department of Home Affairs will

process all visa applications and Temporary Activity Sponsorship applications. The Australian Border Force and the Fair Work Ombudsman will support delivery of the scheme by ensuring program integrity and worker welfare is protected.

Human rights implications

Table item 542 engages the following rights:

- the right to work and rights at work – Article 7 of the ICESCR, read with Article 2;
- the right to health – Article 12 of the ICESCR;
- the right to education – Article 13 of the ICESCR; and
- the right of equality and non-discrimination – Article 26 of the *International Covenant on Civil and Political Rights* (ICCPR), read with Article 2.

Right to work and rights at work

Table item 542 engages Articles 2 and 7 of the ICESCR.

Article 2(1) of the ICESCR provides 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 7 of the ICESCR states that:

The States Parties to the present Covenant recognize 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 present 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.

Table item 542 positively affects the right to work and rights at work of PALM workers by ensuring that workers are protected by the same workplace rights and laws as Australian workers, with additional measures in place to support the welfare and wellbeing of workers while they live and work in Australia. The PALM scheme implements measures to combat worker exploitation by including program measures that allow workers to change sponsors where approved by the department. This will allow workers in situations of worker exploitation to obtain the department's approval to change sponsors without invalidating their visa. In addition, employers participating in the scheme are assessed by the FWO to consider their compliance with workplace legislation.

These measures will promote the application of relevant Australian workplace laws; allow a meaningful opportunity for workers to escape situations of exploitation without losing their visas; and aim to reduce the risks associated with low-skilled workers being tied to a single

sponsor for a four year period. Where a worker has been transferred away from a sponsor due to worker exploitation, the sponsor would be referred to the FWO, and the relevant agencies would seek to prevent that sponsor from continuing to participate in the program.

Right to health

Table item 542 interacts with the right to health of PALM workers, particularly through Article 12(1) of the ICESCR, which states:

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

The policy settings of the PALM scheme have been designed to positively interact with the Right to health, and ensure that workers have access to a range of health services while in Australia without being a threat/major cost to public health in Australia or a danger to the Australian community.

There are mandatory health requirements that the PALM worker will have to meet as part of the visa application process which generally means that the worker will need to verify that they are free from certain diseases or conditions that are a threat/major cost to public health in Australia or a danger to the Australian community. In addition, for the period of their stay in Australia, the PALM workers will need to maintain an adequate health insurance that provides an equivalent level of cover to Australia's Medicare system, which is organised for them by their approved employer.

Right to education

Table item 542 interacts with the right to education for PALM workers, particularly Articles 13(1) and 13(2) of the ICESCR.

Articles 13(1) of the ICESCR states that:

The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

Articles 13(2) of the ICESCR states that:

The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

...

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

...

Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;...

The PALM scheme will support PALM workers to obtain further training and education, including formal vocational qualifications, through initiatives, such as providing funding to PALM scheme employers to provide and facilitate certain approved accredited and non-accredited training for PALM workers, including employability and life skills, job skills and formal vocational qualifications.

The PALM scheme reinforces Australia's long-standing priority on education and training in its aid programs in the Pacific and Timor-Leste, recognising that further training and education can transform individual recipients, as well as the communities they return home to, as it builds their skill set, enhances career and economic prospects and promotes tolerance and understanding.

Right of equality and non-discrimination

Table item 542 engages the right of equality and non-discrimination, primarily Articles 2(1) and 26 of the ICCPR.

Article 2(1) of the ICCPR states that:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 26 of the ICCPR states that:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Participation in the PALM scheme, as established through table item 542, is limited by the department's policy to citizens of specific countries (starting with Fiji, Kiribati, Nauru, Papua New Guinea, Samoa, Solomon Islands, Timor-Leste, Tonga, Tuvalu and Vanuatu), and to people of a certain age (being over 21).

The restriction of the PALM scheme by country and age is a part of the Australian Government's legitimate objective of improving the economic resilience of the Pacific region by increasing opportunities for labour mobility to satisfy unmet demand in our labour market, investing in skills, and helping countries to capture growth potential in sectors such as tourism.

These restrictions will be included as a part of material promoting the PALM scheme. It is expected that neither of these restrictions limit the rights to equality and non-discrimination of individuals of other countries/ages, who are able to enter Australia through alternative programs.

In light of the above, to the extent that these amendments limit the right to equality and non-discrimination, that limitation is necessary, reasonable and proportionate to the aim of improving economic resilience in the Pacific region through providing employment

opportunities, creating incentives for education and skills development, increasing income levels and remittances and promoting economic stability.

Conclusion

Table item 542 is compatible with human rights because it promotes the protection of human rights.

Table item 543 Support for the Republic of Palau

New **table item 543** establishes legislative authority for government spending to continue providing financial assistance to, or for the benefit of, the Republic of Palau (Palau). Palau graduated from the Organisation for Economic Cooperation and Development (OECD) list of Official Development Assistance (ODA) recipients on 1 January 2022.

The funding for the benefit of Palau will ensure that Australia can continue to engage Palau in key regional activities being led by Australia in the Pacific, consistent with objectives under the Pacific Step-up: supporting the region's prosperity, sovereignty, security and stability; and safeguarding Australia's deep and long-standing connections as the region's partner of choice.

Funding of \$4.0 million per annum from 2022-23 will be provided on an ongoing basis to:

- enable Palau to continue to participate in Australian-funded regional initiatives in women's empowerment (Pacific Women Lead), security (Cyber security program), oceans (Ocean Assistance in the Pacific), climate change (Australia Pacific Climate Partnership), infrastructure (Australian Infrastructure Financing Facility for the Pacific), private sector development (Pacific Private Sector Development Initiative Phase IV), and supporting regional recovery from the health and economic impacts of COVID-19 (Pacific Medicines Testing Program), and
- support a modest ongoing program of bilateral cooperation to support Palau's development priorities, including Australia Awards scholarships to study in Australia or selected education institutions in the Pacific region; technical assistance in areas such as tax reform; disaster preparedness and response; strengthening people-to-people links through Australian alumni engagement and provision of Australian technical advice; and a small community grants scheme supporting grassroots programs implemented by local organisations to deliver small-scale development projects that raise Australia's profile in Palau.

Human rights implications

Table item 543 engages the following rights:

- the right to work and rights at work – Articles 6, 7 and 8 of the ICESCR, read with Article 2, and Article 27 of the *Convention on the Rights of Persons with Disabilities* (CRPD), read with Article 4;
- the right to equality and non-discrimination – Article 26 of the ICCPR, read with Article 2, Article 2 of the *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD), and Articles 5, 11 and 12 of the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), read with Article 2;

- the right to an adequate standard of living – Article 11 of the ICESCR and Article 28 of the CRPD; and
- the right to physical and mental health – Article 12 of the ICESCR and Article 25 of the CRPD.

Right to work and rights at work

Table item 543 engages Articles 2, 6, 7 and 8 of the ICESCR.

Article 2(1) of the ICESCR provides 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 6 of the ICESCR recognises the right to work and provides that the States Parties will take appropriate steps to achieve the realisation of the right to work, including through technical and vocational training.

Article 7 recognises the right of everyone to the enjoyment of just and favourable conditions of work.

Article 8 requires States Parties to undertake to ensure certain rights including the right to form trade unions

Table item 543 also interacts with Article 27(1) of the CRPD, under which States Parties undertake to safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment. Article 4 of the CRPD requires States Parties undertake to take steps to ensure and promote the full realisation of all human rights for those with a disability without discrimination.

Table item 543 positively affects the right to work and rights at work of workers in Palau through the continued engagement of both Palau's public and private sectors through the department's regional programs to provide access to markets and specialised technical knowledge relating to development, as well as provide the basis for sustainable economic growth through greater regional integration. It will also enable continued engagement with Palau government officials on the development of its governance arrangements through exposure to different types of governance models and through gaining a better understanding of the needs of its population, and in particular, those of its workers. This will positively affect the working conditions of Palau's workers, including those with disabilities, leading to improved workplace health and safety and an overall better quality of life.

Right to equality and non-discrimination

Table item 543 engages the right to equality and non-discrimination, primarily Articles 2(1) and 26 of the ICCPR.

Article 2(1) of the ICCPR states that each State Party undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 26 of the ICCPR states that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law.

Table item 543 also interacts with Article 2(1) of the ICERD, under which States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races.

Table item 543 also engages Articles 2, 5, 11(1) and 12(1) of the CEDAW.

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’.

Under Article 5 of the CEDAW, States Parties agree to take all appropriate measures to achieve 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 to ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children.

Under Article 11(1) of the CEDAW, States Parties agree to take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights.

Under Article 12(1) of the CEDAW, States Parties agree to take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

Table item 543 positively affects the right to equality and non-discrimination of individuals in Palau through the continued engagement of both the Palau public and private sectors through the department's regional programs to receive technical support and training to address gender inequality in political, economic and social life, as well as in national policies and governance processes. Table item 543 will also positively affect the right to equality and non-discrimination through the continued engagement of Palau to promote gender equality and implement national strategies to address violence against women.

Right to an adequate standard of living

Table item 543 engages the right to an adequate standard of living primarily through Article 11(1) of the ICESCR and Article 28(1) of the CRPD.

Under Article 11(1) of the ICESCR, States Parties recognize 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

Under Article 28(1) of the ICESCR, States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions,

Table item 543 positively affects the right to an adequate standard of living through the continued engagement of the Palau public and private sectors through the department's regional programs that will provide and promote strategies and measures to improve the living standards of Palau's population and to access climate change information that is relevant and informed and that will contribute to improving an individual's standard of living, including individuals with disabilities.

Right to physical and mental health

Table item 543 engages the right to physical and mental health primarily through Article 12(1) of the ICESCR and Article 25 of the CRPD.

Article 12(1) of the ICESCR states the States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

Article 25 of the CRPD states that States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability.

Table item 543 positively affects the right to physical and mental health through the continued engagement of the Palau Government to develop and introduce strategies and measures that will increase the standard of health care in Palau and to be able to respond to new and emerging health crises including pandemics.

Conclusion

Table item 543 is compatible with human rights because it promotes the protection of human rights.

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