

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance

Financial Framework (Supplementary Powers) Act 1997

*Financial Framework (Supplementary Powers) Amendment
(Social Services Measures No. 2) Regulations 2023*

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 (Social Services Measures No. 2) Regulations 2023* (the Regulations) amend table item 50 in Part 4 of Schedule 1AB to the Principal Regulations to establish legislative authority for spending on two disability related services, the Complaints Resolution and Referral Service (CRRS) and the National Disability Abuse and Neglect Hotline (Hotline) within the scope of the Employment Assistance and Other Services (EAOS) program. The program is administered by the Department of Social Services.

The EAOS is an ongoing program which provides a variety of disability services to support employers to employ people with disabilities. The supports and services under the EAOS program will be expanded to include the CRRS and the Hotline.

The CRRS was established in 2002. It assists with the resolution of complaints from users of Australian Disability Enterprises (ADEs), disability advocacy services and Disability Employment Services (DES) providers funded by the Australian Government. The Hotline was established in 2001. It is a free and confidential service for reporting abuse and neglect of people with disability.

The CRRS and Hotline are currently funded through the National Disability Insurance Scheme Transitioning Commonwealth Programs and Continuity of Support budget, which ceases on 30 June 2023. Both these services are delivered as part of the JobAccess Gateway Services contract. This contract includes a range of other services funded through the EAOS program. As the Hotline and the CRRS sit within the JobAccess contract, funding for these services is being transferred to the EAOS program.

Funding of \$3.2 million over two years from 2023-24 for the CRRS and the Hotline will ensure these important services continue to operate while longer term arrangements are being determined.

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 registration on the Federal Register of Legislation.

Consultation

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

A Regulation Impact Statement is not required as the Regulations only apply to non-corporate Commonwealth entities and do not adversely affect the private sector.

Details of the *Financial Framework (Supplementary Powers) Amendment (Social Services Measures No. 2) Regulations 2023*

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Social Services Measures No. 2) Regulations 2023*.

Section 2 – Commencement

This section provides that the Regulations commence on the day after registration on the Federal Register of Legislation.

Section 3 – Authority

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

Section 4 – Schedules

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

Schedule 1 – Amendments

Financial Framework (Supplementary Powers) Regulations 1997

Item 1 – Part 4 of Schedule 1AB (cell at table item 50, column headed “Objective(s)”)

This item amends table item 50 in Part 4 of Schedule 1AB by repealing and substituting the full text of the cell. The amended table item 50 establishes legislative authority for government spending on two disability related services within the scope of the Employment Assistance and Other Services (EAOS) program, which is administered by the Department of Social Services (the department).

The amended table item 50 will expand the supports and services funded under the EAOS program to include the Complaints Resolution and Referral Service (CRRS) and National Disability Abuse and Neglect Hotline (Hotline).

The EAOS is an ongoing program which provides a variety of disability services to support employers to employ people with disabilities. The supports and services include:

- JobAccess information and advice service;
- Employment Assistance Fund;
- National Disability Recruitment Co-ordinator program;
- Workplace Modifications assessments;
- Supported Wage System assessments;
- Disability Employment Services Wage Subsidy Scheme;
- the RecruitAble pilot; and

- Communities of Practice delivered by National Disability Services.

The CRRS and Hotline are currently funded through the National Disability Insurance Scheme Transitioning Commonwealth Programs and Continuity of Support budget, which will cease on 30 June 2023. Both these services use the same phone number and are delivered as part of the JobAccess Gateway Services contract, which is primarily funded through the EAOS program.

The CRRS and the Hotline were established by the Commonwealth in 2002 and 2001 respectively:

- the CRRS assists with the resolution of complaints from users of Australian Disability Enterprises (ADEs), advocacy services and Disability Employment Services (DES) funded by the Australian Government; and
- the Hotline is a free, independent and confidential service for reporting abuse and neglect of people with disability.

WorkFocus delivers these services as part of their contract to deliver the JobAccess Gateway Service. In 2015-16, the JobAccess Gateway Service was established, bringing together a number of pre-existing disability services under one contract, to be a 'one stop shop' for people with disability. Apart from the CRRS and the Hotline, the other services delivered through the JobAccess contract are funded through the EAOS program. Funding for the CRRS and Hotline is being transitioned to the EAOS program to align with the services delivered under the JobAccess contract.

Funding of \$3.2 million over two years from 2023-24 for the CRRS and the Hotline will ensure these important services continue to operate while longer term arrangements are being determined.

CRRS

The CRRS provides an independent, fair, impartial and nationally accessible complaints resolution and referral service for people with disability who are service users of ADEs, disability advocacy services and DES providers funded under the *Disability Services Act 1986*. The CRRS was established to complement internal dispute mechanisms, by providing an independent complaints option with a focus on facilitating and encouraging a resolution of issues between the service user and service provider. Complaints may be made about service providers in relation to issues such as:

- not getting the right pay;
- unsafe or poor employment conditions;
- not being respected and valued at work;
- not receiving the training needed to find, keep, or do a new job;
- not getting a service or support that should be provided;
- not being allowed to make a complaint or ignoring a complaint;
- abuse and neglect; and
- being unfairly exited from a service.

The CRRS has different ways of resolving complaints, such as:

- CRRS-directed local resolution, which will assist the complainant and service providers to resolve the complaint together;

- investigation by contacting service providers about the complaint to find out what happened. The CRRS may make recommendations to address the complaint;
- self-directed local resolution, to assist the complainant by providing suggestions and confidence to contact the service directly to resolve the complaint; and
- advocacy-directed local resolution, where the CRRS gives an advocate or support person information, or finds a support person for the complainant, so that they have the support they need to raise the complaint directly with the service.

The Hotline

The Hotline is a free, independent and confidential service for reporting abuse and neglect of people with disability. Hotline staff help people to identify appropriate ways of addressing abuse and neglect of people with disability including by providing them with information and support or referring them to an appropriate complaint handling body. Anyone can contact the Hotline to report abuse and neglect including people with disability, family members, friends, carers, advocates, staff at services and health professionals.

The Hotline is not a complaints resolution service or an individual advocacy service, but it works with callers to find appropriate ways of dealing with reports of abuse or neglect through a process of referral, including providing information and support. WorkFocus, the provider of the Hotline (along with all other JobAccess services) records details of complaints/notifications received for the Hotline using its own electronic database. The record for each complaint includes the:

- identity and location of the complainant;
- time of the complaint;
- nature of the complaint;
- advice provided, including the resolution; and
- details of any referral made to other services or bodies.

WorkFocus provides a quarterly report with:

- the number, location and nature of complaints/notifications, referrals and resolution outcomes; and
- analysis of emerging trends in relation to the number, location and nature of complaints/notifications and their outcomes.

The CRRS and Hotline were a focus of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (DRC). The CRRS is a significant mechanism for users to complain about DES providers, ADEs and advocacy services. The Hotline is a central referral system for reporting abuse and neglect of people with disability more broadly. The department made commitments to the DRC that it would improve the awareness and access of both of these services.

The department delivers the programs in accordance with the Commonwealth resource management framework, including the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and the *Commonwealth Procurement Rules* (CPRs).

The CRRS and Hotline are currently delivered through a contract for the JobAccess Gateway Service. On 16 December 2015, a Request for Tender to deliver the JobAccess service was released. Information about the tender is available on AusTender (www.tenders.gov.au).

Following an evaluation process, WorkFocus was selected to deliver the JobAccess Service from 1 July 2016. The original contract was to 4 March 2018. In September 2017, this was varied to end 30 June 2018 to align with financial years. In accordance with extension options for three, one-year extensions in the original contract, the end date of the contract was to 30 June 2021.

In accordance with the PGPA Act and the CPRs, JobAccess Gateway Service contract variations were undertaken to bring the current contract end date to 30 June 2023.

The extension of the contract beyond 30 June 2023 is subject to a contract variation with the existing provider, WorkFocus. The Minister for Social Services will be responsible for final decisions about the Commonwealth expenditure in relation to the contract. The Minister has agreed to extend the contract for 12 months to 30 June 2024.

Funding decisions in relation to the CRRS and Hotline are not subject to independent merits review. Any variation in funding to the provider of the CRRS and Hotline would be to the detriment of the provider. These programs involve an allocation of a finite resource to WorkFocus. Review (and potential change) of decisions would impede timely and effective implementation of the program. The decision to provide such funding flows from a set of circumstances and leaves no room for merits review to operate.

The Administrative Review Council has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see items 4.11 to 4.14 of the guide, *What decisions should be subject to merit review?*).

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

As the CRRS and Hotline are long-standing disability programs, no other consultation has been undertaken. This proposal is largely about service continuity for people with disability that rely on the services.

Funding of \$3.2 million over two years from 2023-24 for the CRRS and Hotline will be included in the 2023-24 Budget and the Portfolio Budget Statements for the Social Services Portfolio. Funding will come from Program 3.1: Disability Mental Health and Carers, which is part of Outcome 3.

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

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

External affairs power

Section 51(xxix) of the Constitution empowers the Parliament to make laws with respect to 'external affairs'. The external affairs power supports legislation implementing Australia's international obligations under treaties to which it is a party.

Australia has the following obligations under the *Convention on the Rights of Persons with Disabilities* (CRPD).

Article 4 of the CRPD obliges state parties to ensure and promote the full realisation of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. This includes adopting appropriate legislative, administrative and other measures to implement the rights recognised in the Convention; taking all appropriate measures including legislation to modify or abolish existing laws that constitute discrimination against persons with disabilities; and to take into account the protection and promotion of the human rights of persons with disabilities in all policies and programs.

Article 16, read with Article 4, of the CRPD obliges state parties to take the following measures in relation to persons with disabilities. Article 16(1) obliges state parties to take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.

Article 16(2) obliges parties to take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, inter alia, appropriate forms of gender and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognise and report instances of exploitation, violence and abuse. State parties are to ensure that protection services are age, gender and disability sensitive.

Article 16(5) obliges state parties to put in place effective legislation and policies, including women and child-focused legislation and policies to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.

The CRRS and Hotline promote the prevention of exploitation, violence and abuse of persons with disability by enabling cases of these issues to be reported to the department and appropriate management to be put in place and action taken.

Article 27 of the CRPD obliges state parties to safeguard and promote the realisation of the right to work, including for those who acquire a disability through the course of employment, by taking appropriate steps including through legislation.

Paragraph 27(1)(e) requires parties to promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment.

Paragraph 27(1)(h) requires parties to promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures.

The EAOS program advances Australia's obligations under Article 27(1)(e) and (h) as it promotes, supports and protects the employment of people with disability by assisting them to find and maintain employment in the private and public sectors. The CRRS and Hotline – both funded under the EAOS – further reflect Australia's international obligations to support

the employment of people with disability under Articles 16(1), 16(2) and 16(5) by providing a mechanism for the raising of complaints about service providers and for accessing support networks to report abuse and neglect in employment settings.

Communications power

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

This proposal includes funding a Hotline and complaints resolution and referral service which are delivered both by telephone and electronically.

Social welfare power

The social welfare power in section 51(xxiiiA) of the Constitution empowers the Parliament to make laws with respect to the provision of certain social welfare benefits such as unemployment benefits.

Services provided for under item 50 engage and promote the social welfare power, with respect to the provision of unemployment services for people with disabilities, and include services incidental to the provision of unemployment services for people with disabilities.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Financial Framework (Supplementary Powers) Amendment (Social Services Measures No. 1) Regulations 2023

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

Overview of the legislative instrument

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

The *Financial Framework (Supplementary Powers) Amendment (Social Services Measures No. 2) Regulations* amend table item 50 in Part 4 of Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on the Employment Assistance and Other Services (EAOS) program. The program is administered by the Department of Social Services.

The EAOS is an ongoing program which provides a variety of disability services to support employers to employ people with disabilities. The supports and services under the EAOS program will be expanded to include the Complaints Resolution and Referral Service (CRRS) and the National Disability Abuse and Neglect Hotline (Hotline).

The CRRS was established in 2002. It assists with the resolution of complaints from users of Australian Disability Enterprises (ADEs), disability advocacy services and Disability Employment Services (DES) providers funded by the Australian Government. The Hotline was established in 2001. It is a free and confidential service for reporting abuse and neglect of people with disability.

Funding of \$3.2 million over two years from 2023-24 for the CRRS and the Hotline will ensure these important services continue to operate.

Human rights implications

This disallowable legislative instrument engages the following human rights:

- the right to protection from situations of risk and humanitarian emergencies – Article 11 of the *Convention on the Rights of Persons with Disabilities* (CRPD), read with Article 4;
- the right to freedom from exploitation, violence and abuse – Article 16 of the CRPD;
- the right to freedom of expression and opinion, and access to information – Article 21 of the CRPD; and
- the right to work and employment – Article 27 of the CRPD.

Right to protection from situations of risk and humanitarian emergencies

Article 4 of the CRPD requires States Parties to ensure and promote the full realisation of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability.

The CRRS and Hotline promote this human right by:

- assisting the resolution of complaints with funded service providers; and
- providing an avenue to report abuse and neglect of people with a disability.

Article 11 of the CRPD requires States Parties to take all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk.

The CRRS and Hotline promote this human right by:

- facilitating the provision of information and referral to people with disability or their supports about matters going to their personal safety; and
- providing an avenue to complain about DES providers, ADEs or advocacy services.

Right to freedom from exploitation, violence and abuse

Article 16 of the CRPD requires States Parties to take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.

The CRRS and Hotline promote this human right by:

- facilitating the provision of information and referral to people with disability or their supports about matters going to their personal safety; and
- providing an avenue to complain about DES providers, ADEs or advocacy services.

Right to freedom of expression and opinion, and access to information

Article 21 of the CRPD requires States Parties to take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice.

The CRRS and Hotline promote this human right by:

- facilitating the provision of information and referral to people with disability or their supports about matters going to their personal safety;

- providing an avenue to complain about DES providers, ADEs or advocacy services; and
- providing access to information through the JobAccess website.

Right to work and employment

Article 21 of the CRPD requires States Parties to recognise the right of persons with disabilities to work on an equal basis with others.

The CRRS promotes this human right by enabling users of government funded employment services to raise complaints.

Conclusion

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

**Senator the Hon Katy Gallagher
Minister for Finance**