

## **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. 3) 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. 3) Regulations 2023* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on certain activities administered by the Department of Social Services.

Funding is provided for the:

- Jindelara Cottage—Permanent Accommodation initiative to repurpose Jindelara cottage and increase residential accommodation for people with disability residing in Ulladulla and surrounding regions in New South Wales (\$0.6 million in 2023-24);
- Sustain myGov program to support the continued operation and maintenance of the myGov online platform, including extending the use of myGov to access Commonwealth, state and territory services (\$106.2 million in 2023-24); and
- Disability Worker COVID-19 Leave Payments to reimburse eligible disability providers that have paid workers who lost working hours due to COVID-19 and have no personal leave (\$14.1 million over two 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 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. 3) 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. 3) 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 – 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 to be administered by the Department of Social Services (the department).

New **table item 611** establishes legislative authority for government spending on the Jindelara Cottage—Permanent Accommodation initiative (the initiative) to repurpose and construct permanent accommodation at Jindelara Cottage for people with disabilities.

The initiative delivers on the Government’s election commitment to expand accommodation at Jindelara Cottage to increase the availability of appropriate, affordable housing and respite options for people living with disability in Ulladulla and surrounding regions in New South Wales (NSW).

Jindelara Cottage offers short-term respite accommodation for people with disability and their families and day programs to facilitate personal development to help people with disability live independently. Some of the day programs include learning to cook or hosting guests for dinner, managing household tasks, budgeting, social skills and more. The cottage is owned by the Lions - Ulladulla District Community Foundation Incorporated (LUDCF) and managed by Yumaro Limited.

The LUDCF was founded on 26 May 2013 and was registered with the Australian Charities and Not-for-profits Commission on 29 January 2014. LUDCF was granted Public Benevolent Institution status on 15 October 2014 and holds a charitable fund-raising licence from the NSW Government. The objectives of the LUDCF as recorded in their Constitution are to provide:

- material support to groups aiding people with disability;
- service to people with disability;
- support to groups providing assistance to disadvantaged communities, families and individuals;
- support to groups providing assistance to improve the quality of life for disadvantaged communities, families and individuals; and
- support to improve the quality of life for disadvantaged communities, families and individuals.

LUDCF received \$0.4 million for the initial build of the Jindelara Cottage from the Government via the National Stronger Regions Fund. The official opening of Jindelara Cottage was on 24 February 2018 and provides four respite accommodation places and accommodates two overnight carers.

Additional funding of \$0.6 million in 2023-24 is provided to expand accommodation at Jindelara Cottage, which forms part of the broader Plan for the National Disability Insurance Scheme (NDIS) package totalling \$437.4 million to support people with disability and their families.

The Government will part-fund the construction of four Specialist Disability Accommodation (SDA) units adjacent to the existing Jindelara Cottage, which will also be repurposed for permanent SDA accommodation. The LUDCF will match the Government funding with their own funding raised for capital expenditure of the project.

The expanded facility will provide additional respite accommodation and permanent accommodation for up to nine people with disability, as well as providing full-time employment for up to 13 staff and would benefit around 50 people in the local community who require respite accommodation for up to 14 days at a time.

The construction to expand Jindelara Cottage will consist of:

- three permanent specialist disability accommodation places in new buildings;
- four permanent specialist disability accommodation places by repurposing an existing building; and
- two places of short term/respite disability accommodation.

This will result in new SDA units comprising:

- Building one:
  - 2 x one bedroom units (creating two permanent accommodation places);
  - 1 x two bedroom unit (creating two respite accommodation places);
  - sleepover facilities for up to two carers; and
- Building two:
  - 1 x one bedroom unit (creating one permanent accommodation place).

Additionally, the repurposed existing Jindelara Cottage will consist of:

- four permanent SDA accommodation places; and
- sleeper facilities for up to two carers.

Construction of the expanded cottage is expected to commence in August 2023 and be completed by June 2024.

Funding for Jindelara Cottage will be delivered as a closed non-competitive ad-hoc grant to the LUDCF with a letter of invitation with acceptance submission required. This process is considered appropriate because the grant is dependent on the expansion of an existing service.

The Disability Accommodation Policy team within the department will develop the grant opportunity guidelines, which will be provided to the Minister for the National Disability Insurance Scheme (the Minister) for approval. The grant will be administered in accordance with the Commonwealth resource management framework, including the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and the *Commonwealth Grants Rules and Guidelines 2017* (CGRGs).

This grant will be administered by the Community Grants Hub within the department. Information about the grant will be made available on the GrantConnect website at ([www.grants.gov.au](http://www.grants.gov.au)).

The final decision maker for the grant will be a delegate of the Minister. The decision maker will be at least an SES Band 1 (Branch Manager) with appropriate skills and expertise in disability accommodation. Under the financial delegations, a Branch Manager can approve administered funds for this amount.

Funding decisions in relation to the grants are not suitable for independent merits review as these decisions will relate to the provision of a one-off grant to a certain service provider. The LUDCF is the appropriate grant recipient because it owns Jindelara Cottage and has overseen the establishment of the original premises with plans to expand from the time the initial build was commissioned. The Administrative Review Council (ARC) has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.16 to 4.19 of the guide, *What decisions should be subject to merit review?* (ARC guide)).

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

Consultation with external stakeholders was not considered necessary as the initiative followed an earlier funding application made by LUDCF in 2021 to support the expansion of Jindelara Cottage. The State Government of NSW has also committed funds for the project. There will be ongoing consultation with LUDCF until the expansion is completed.

Funding of \$0.6 million for the initiative was included in the October 2022-23 Budget under the measure 'Plan for the National Disability Insurance Scheme' for a period of one year commencing in 2022-23. Details are set out in the *Budget October 2022-23, Budget Measures, Budget Paper No. 2* at pages 184-185.

Funding for the item will come from Program 3.1: Disability and Carers, which is part of Outcome 3. Details are set out in the *Portfolio Budget Statements 2022-23, Budget Related Paper No. 1.12, Social Services Portfolio* at page 65.

Noting that it is not a comprehensive statement of relevant constitutional considerations, the objective of the item references the external affairs power (section 51(xxix)) of the Constitution.

#### 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 party.

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

Article 4 of the CRPD obliges 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. 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
- taking account of the protection and promotion of the human rights of persons with disabilities in all policies and programs.

Article 4(1)(a) obliges States Parties to undertake and promote the full realisation of all human rights and fundamental freedoms for all persons with disabilities by adopting all legislative, administrative and other measures to implement the rights recognised in the Convention.

Article 9(1)(a) obliges States Parties, in order to enable persons with disabilities to live independently and participate fully in all aspects of life, to take appropriate measures to ensure persons with disabilities access, on an equal basis, to the physical environment, transportation, information and communications including information and communications technologies and systems and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures apply to (amongst other things) housing.

Article 19(b) requires States Parties to take measures to ensure that persons with disabilities 'have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community and to prevent isolation or segregation from the community'.

Article 28(1) requires States Parties to recognise the rights of persons with disabilities to an adequate standard of living for themselves and their families, including adequate clothing and housing, and to the continuous improvement of living conditions and to take appropriate steps to safeguard and promote the realisation of this right without discrimination on the basis of disability.

Jindelara Cottage program provides short-term respite accommodation for people with disability and their families and day programs in order to facilitate personal development and help people with disability live independently.

New **table item 612** establishes legislative authority for government spending on the Sustain myGov program (the program) to support the continued operation and maintenance of the myGov online platform, including extending the use of myGov to access Commonwealth, state and territory services.

The myGov platform, managed by Services Australia is the Australian Government's largest and primary authenticated digital platform. The platform is instrumental in supporting Australians to access critical government services online through a central secure portal. Australians increasingly expect to access government services they need through their preferred and online channels.

myGov was released in May 2013 for five government services. This involved moving 1.3 million user accounts from the [australia.gov.au](http://australia.gov.au) website to myGov. By June 2016, myGov had over 9.5 million user accounts growing to 19.8 million user accounts in early 2021. By April 2023, myGov had over 25 million user accounts with access to 15 government services. The platform supports Australians to access critical government services such as lodging tax returns, claiming Medicare benefits, seeking unemployment assistance, veterans support services and a variety of other Commonwealth services.

Online claim lodgement through myGov means people know where to go to access support and will spend less time on the phone. It is a convenient and secure channel for customers, offering a complete end to end digital experience, resulting in timely access to government services and benefits.

During the 2022 Federal Election campaign, the Government committed to perform a user audit of myGov to examine the reliability and user experience of the platform. The myGov User Audit, conducted by an expert panel led by David Thodey AO, presented its findings and recommendations in December 2022. The *Critical National Infrastructure - myGov User Audit Report* (the report) available at [www.my.gov.au/en/audit](http://www.my.gov.au/en/audit) was released on 31 January 2023. The report emphasised myGov's role as the default, primary front door for accessing Australian Government services online. It discussed broadening the range of services accessible through myGov, including being a single touch point allowing people to access state and territory government services.

A range of opportunities to support state and territory government services through myGov are being explored and developed in collaboration with agencies across levels of government. Current proposals include:

- credentials in the myGov wallet;
- single sign on, which removes the need for users to create new usernames and passwords for each government service;
- listing services and activities in the Payments and Tasks tiles on the interface; and
- use of the myGov Inbox.

Continuing operation of myGov provides opportunity for common capabilities to be built once and used many times and adjusted to meet the needs of a range of service delivery challenges. This approach avoids additional costs across all levels of government through the

development of duplicated and bespoke solutions and delivers experiential benefits for Australians.

Services Australia proposes to continue to work with agencies across state and territory governments on opportunities to reuse and tailor available capabilities to enable better digital services for Australians and deliver efficiencies for governments. This includes opportunities to add new credentials to the myGov app wallet and the onboarding of further services into myGov. These and other opportunities being explored and developed in collaboration with agencies across state and territory governments will set out a roadmap for how the value of myGov can start to be incrementally unlocked for Australians, government and the economy.

Funding of \$103.9 million will support spending for:

- provision of telephony support for customers with general enquiries on using the myGov platform;
- operational business costs such as communication, governance, coordination and stakeholder management across the 15 government services with functions including fraud management, cyber security, digital experience and analytics, and managed service support;
- information and communications technology, cyber support and delivery teams to ensure myGov meets security and privacy standards as well as maintain a secure and stable platform;
- short message service messages issued to support the increasing number of customers using myGov, for example supporting inbox notifications and multifactor authentication in excess of 275 million messages per annum; and
- the Digital Experience Platform with the ongoing licensing and support costs.

The future enhancements to myGov will generally utilise internally built or procured products that are already in use by Services Australia. Should further procurements be required, these would be administered in accordance with the Commonwealth resource management framework, including the PGPA Act and the *Commonwealth Procurement Rules* (CPRs). Information about the procurements, including procurement outcomes, would be available on the departmental website and the relevant documents published on AusTender ([www.tenders.gov.au](http://www.tenders.gov.au)) in accordance with the CPRs.

The Chief Executive Officer (CEO) of Services Australia, who is the Accountable Authority of that agency, is responsible for determining how the expenditure is made with respect to platform development. The expenditure will be made in accordance with the agency's Accountable Authority Instructions made under section 20A of the PGPA Act. Final spending decisions will be made by the CEO or an appropriate delegate with relevant skills and expertise and the financial delegation to approve administered funds for the relevant amount.

Independent merits review would not be appropriate for this program because decisions made with respect to the procurement relate to the allocation of a finite resource from which all potential claims for a share of the resource cannot be met. A reallocation of funding that has already been made to another party would be affected by overturning the original decision. In addition, these decisions are budgetary decisions of a policy nature, rather than decisions immediately affecting any particular person's interests. The ARC has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.14 to 4.18 of the ARC guide).



Online platform access and associated work will be developed by a combination of staff engaged under the *Public Service Act 1999* and contractors, or in accordance with the PGPA Act and associated legislation and guidelines. These engagements are therefore subject to financial accountability safeguards.

Any procurement processes that are conducted will also be subject to financial accountability safeguards, as they would be undertaken in accordance with the requirements of the PGPA Act, the CPRs and the Agency's Accountable Authority Instructions. Complaints mechanisms will be available in respect of any procurement processes that is a 'covered procurement' as defined in the *Government Procurement (Judicial Review) Act 2018*.

For completeness, it is noted that existing merits review mechanisms available in respect of Commonwealth, state and territory benefits and services will not be affected by this program.

The Australian Government, through Services Australia, has been consulting with states and territories through the exploration of sharing digital credentials such as the New South Wales (NSW) digital drivers licence and the Medicare Card since February 2023. This consultation commenced with a design workshop that involved subject matter experts from Services Australia, the Digital Transformation Agency, Service NSW and the Queensland, Victorian and Western Australian governments. Consultation has explored sharing of digital credentials, establishing key principles and the required architecture to support an initial pilot.

There has also been significant and ongoing consultation within the Australian Government. Most particularly, Services Australia is consulting with the Department of Finance to explore the possibility of a pilot for the digital completion of statutory declarations in myGov, using a myGovID (digital identity), by the end of 2023.

Community consultation will be progressed through established forums, including the Civil Society Advisory Group and National Multicultural Advisory Group. These groups represent peak community and multicultural organisations across Australia. They provide advice on customer experience issues and opportunities for improvement and offer insight into third-party readiness for new collaborative proposals.

Funding of \$103.9 million for the program is included in the 2023-24 Budget under the measure 'Sustain myGov' for one year commencing in 2023-24. Details are set out in *Budget 2023-24, Budget Measures, Budget Paper No. 2* at page 205.

Funding for the item will come from Programs 1.1 (Strategy and Corporate Enabling), 1.2 (Customer Service Delivery) and 1.3 (Technology and Transformation), which is part of Outcome 1. Details are set out in the *Portfolio Budget Statements 2023-24, Budget Related paper no. 1.14 Social Services Portfolio* at page 191.

Noting that it is not a comprehensive statement of relevant constitutional considerations, the objective of the item references the communications power (section 51(v)) of the Constitution.

### Communications power

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

The program will involve Commonwealth expenditure for services to be delivered exclusively over the internet.

New **table item 613** establishes legislative authority for government spending on the Disability Worker COVID-19 Leave Payments program (the program).

The program aims to provide, as a sickness benefit, payments to individuals (through a reimbursement of payments made by the worker’s employer or sole traders) who provide close personal support to NDIS participants and who are unable to earn their usual income due to testing positive for the coronavirus known as COVID-19 and had insufficient or no available paid leave entitlements to cover the period of their inability to earn their usual income.

The program contributes to the Government’s *National COVID-19 Health Management Plan for 2023* (<https://www.health.gov.au/resources/publications/national-covid-19-health-management-plan-for-2023>), which outlines the Australian Government health supports to manage COVID-19 over the next 12 months.

The program will provide a replacement to the High-Risk Settings Pandemic Payment (HRSP) which provided workers in high-risk with a payment if they could not work because they had tested positive for COVID-19. The HRSP ceased on 31 March 2023.

The program recognises the significant risk of COVID-19 in disability settings and offers income to workers or their employer to mitigate the risk of COVID-19 transmission to the people with disability at the highest risk of severe COVID-19.

Funding of \$14.1 million between 1 April 2023 and 31 December 2023 will be available to support casual disability workers and permanent workers who do not have access to or have exhausted their personal leave entitlements, have tested positive to COVID-19 and cannot access any other funding support. Under the program, eligible disability providers, including sole traders who may be individual workers (but not employment agencies and workers given shifts through such agencies), will be able to apply for reimbursement of the payment of leave entitlements paid to casual staff and those who have no other access to leave, up to a defined cap, where staff have not attended work due to being COVID-19 positive (and are unable to work from home) and have been able to demonstrate they have lost hours of work as a result.

Payments will be a flat rate of \$450 per worker where the worker has lost at least eight hours but less than 20 hours of work, and \$750 per worker where the worker has lost more than 20 hours of work. The payments will not cover payments to individual workers where they seek paid leave due to a COVID-19 infection more than three times in a six-month period or twice within 28 days. Applicants will be asked to attest to this in their application, with an audit process identifying any possible fraudulent claims where identified. This level of payment is consistent with the HRSP and the earlier Pandemic Leave Disaster Payment.

The reimbursement will be available to registered and unregistered NDIS providers, including sole traders in three months blocks, expecting to commence early in the second half of 2023.

Payments will be made to eligible providers who provide the following classes of supports to NDIS participants:

- high intensity daily personal activities, involving the delivery of health related supports;
- community nursing care;
- daily personal activities; and
- assistance with Daily Life Tasks in a Group or Shared Living Arrangement.

Providers will be required to demonstrate they or their worker are/is engaged by an NDIS participant with a current service agreement in place, or already delivering supports to an NDIS participant with evidence or service bookings or equivalent; and have no other access to personal leave. Where a worker is employed casually by more than one disability provider, they will need to nominate their primary provider/employer to seek leave from who will then be able to seek reimbursement through this payment.

The program will be administered as a demand-driven grant in accordance with the Commonwealth resource management framework, including the PGPA Act and the CGRGs.

Information about the grant will be made available on the GrantConnect website ([www.grants.gov.au](http://www.grants.gov.au)), and the grant will be administered by the Community Grants Hub, within the department. The Executive Director, Portfolio COVID-19 Taskforce, who has expertise in the Commonwealth COVID-19 response, as a delegate of the Secretary of the department under the *Financial Framework (Supplementary Powers) Act 1997* will be responsible for approving Commonwealth funding provided to eligible providers.

Independent merits review is not considered suitable for decisions made in connection with the grant as such decisions are automatic or mandatory in nature. The decision to make a payment by a departmental official will be procedural (for example, confirming the eligibility of a provider and worker). The ARC has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 3.8 to 3.11 of the ARC guide).

The department has consulted with relevant Commonwealth entities in relation to the design and development of the grant payment, including the National Disability Insurance Agency, the NDIS Quality and Safeguards Commission and the Department of Health and Aged Care. Consultation will occur with the disability sector in development of grant processes. There will be ongoing engagement with the disability sectors to provide insights into the risks.

Funding of \$14.1 million for the program is included in the 2023-24 Budget under the measure 'Disability Workforce COVID-19 Leave Grant' for a period of two years commencing in 2022-23. Details are set out in *Budget 2023-24, Budget Measures, Budget Paper No. 2* at page 195.

Funding for the item will come from Program 3.2: National Disability Insurance Scheme, which is part of Outcome 3. Details are set out in the *Portfolio Budget Statements 2023-24, Budget Related paper 1.14 Social Services Portfolio* at page 64.

Noting that it is not a comprehensive statement of relevant constitutional considerations, the objective of the item references the social welfare power (section 51(xxiiiA)) of the Constitution.

*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 sickness benefits.

The program will provide benefits to disability workers who have lost work hours and income due to becoming sick with COVID-19. It will do so by providing a reimbursement to eligible disability providers, including sole traders (who may be individual workers).

## **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. 3) 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. 3) Regulations 2023* amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on certain activities administered by the Department of Social Services.

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

- table item 611 ‘Jindelara Cottage—Permanent Accommodation’;
- table item 612 ‘Sustain myGov’; and
- table item 613 ‘Disability Worker COVID-19 Leave Payments’.

#### **Table item 611 – Jindelara Cottage—Permanent Accommodation**

Table item 611 establishes legislative authority for government spending on the Jindelara Cottage—Permanent Accommodation initiative to repurpose and construct permanent accommodation at Jindelara Cottage for people with disabilities. Jindelara Cottage currently offers short-term respite accommodation for people with disability and their families and day programs to facilitate personal development to help people with disability live independently.

Funding of \$0.6 million in 2023-24 will be provided to the Lions - Ulladulla District Community Foundation Incorporated (LUDCF) to part fund the construction of four Specialist Disability Accommodation (SDA) units adjacent to the existing Jindelara Cottage, which will also be repurposed for permanent SDA accommodation. The LUDCF will match the Government funding with their own funding raised for capital expenditure of the project.

The expanded facility will provide additional respite accommodation and permanent accommodation for up to nine people with disability, as well as providing full-time employment for up to 13 staff and would benefit around 50 people in the local community who require respite accommodation for up to 14 days at a time.

The construction to expand Jindelara Cottage will consist of:

- three permanent specialist disability accommodation places in new buildings;
- four permanent specialist disability accommodation places by repurposing an existing building; and
- two places of short term/respite disability accommodation.

## **Human rights implications**

Table item 611 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; and
- the right to freedom of expression and opinion, and access to information – Article 21 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.

Table item 611 promotes this human right by:

- providing accessible housing to people with disability;
- providing living supports to people with disability via funded service providers; and
- promoting active participation of people with disability in a regional community.

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.

Table item 611 promotes this human right by providing both permanent and respite accommodation options for people with disability.

### *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.

Table item 611 promotes this human right by providing accommodation to people with a disability in situations where they might otherwise experience exploitation, violence or abuse in their existing accommodation.

*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.

Table item 611 promotes this human right by providing support to people with a disability through various services including (amongst other things) the provision of information.

**Conclusion**

Table item 611 is compatible with human rights because it promotes the protection of human rights.

*Table item 612 – Sustain myGov*

Table item 612 establishes legislative authority for government spending on the Sustain myGov program to support the continued operation and maintenance of the myGov online platform, including extending the use of myGov to access Commonwealth, state and territory services.

The myGov platform is critical to delivering several Australian Government services such as lodging taxation returns, claiming Medicare benefits, obtaining income support and engaging with veterans support services. myGov is a trusted platform that encourages collaboration between governments and other third parties while protecting personal privacy of individuals who access it through a secure central portal.

A range of opportunities to support state and territory government services through myGov are being explored and developed in collaboration with agencies across levels of government, and setting out a roadmap for how all jurisdictions can benefit from myGov. Current proposals include:

- credentials in the myGov wallet;
- single sign on, which removes the need for users to create new usernames and passwords for each government service;
- listing services and activities in the Payments and Tasks tiles on the interface; and
- use of myGov Inbox.

Funding of \$103.9 million in 2023-24 will be available to the Sustain myGov program.

**Human rights implications**

Table item 612 engages the following human rights:

- the right of people with disability – Article 9 of the CRPD read with Article 4; and
- the right to privacy – Article 17 of the *International Covenant on Civil and Political Rights* (ICCPR) read with Article 2.

### Right of people with disability

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.

Article 9 of the CRPD requires that States Parties take measures to enable people with disability access to facilities and services, including information and communications technologies and systems. These measures should include the elimination of obstacles and barriers to information, communications and other services.

By supporting the ongoing improvement of myGov, including the ability for state and territory governments to offer tailored digital services via the myGov platform, the Sustain myGov program will assist access to government services. People with disabilities, especially those with mobility impairments, may find it challenging to access government services through traditional on-site methods. With increased digital avenues to government, the Sustain myGov program will reduce barriers for peoples with disabilities to access information, benefits and services at times or locations convenient to them.

Table item 612 promotes the rights of persons with disability to access facilities and services.

### Right to privacy

Article 17 of the ICCPR provides that no-one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. The right to privacy encompasses respect for informational privacy, including the right to respect for private and confidential information, particularly the use and sharing of such information and the right to control dissemination of such information. Under Article 2 of the ICCPR, each State Party undertakes to respect and to ensure all individuals within its territory and subject to its jurisdiction the rights recognised in the ICCPR without distinction of any kind.

Table item 612 engages the right to privacy because myGov involves the collection, storage, use and disclosure of personal information about its users, with their consent or where authorised by law. myGov does not adversely affect this right because personal information is only collected, used, stored and disclosed in accordance with the user's authorisation or where authorised by law.

The myGov platform follows the 'privacy by design' approach and is consistent with guidance from the Office of the Australian Information Commissioner.

Services Australia has carefully considered its obligations under the *Privacy Act 1988* and enables individuals to personalise disclosure settings as well as providing privacy notices in accordance with Australian Privacy Principle 5.

The myGov design has been implemented in a manner that respects the right to privacy of individuals, by ensuring that any collection, use or disclosures of personal information are only undertaken with consent or where authorised by law. Services Australia will take all



reasonable steps to ensure that the collection and management of personal information in connection with myGov will comply with the Australian Privacy Principles.

## **Conclusion**

Table item 612 is compatible with human rights because it promotes the protection of human rights.

### Table item 613 – Disability Worker COVID-19 Leave Payments

Table item 613 establishes legislative authority for government spending on the Disability Worker COVID-19 Leave Payments program (the program).

The program contributes to the Government's *National COVID-19 Health Management Plan for 2023* and will provide a replacement to the High-Risk Settings Pandemic Payment which ceased on 31 March 2023. It recognises the significant risk of COVID-19 in disability settings and aims to mitigate the risk of COVID-19 transmission to people with disability at risk of severe COVID-19.

Funding of \$14.1 million between 1 April 2023 and 31 December 2023 will be available to support casual disability workers and permanent workers who do not have access to or have exhausted their personal leave entitlements, have tested positive to COVID-19 and cannot access any other funding support.

Payments will be a flat rate of \$450 per worker where the worker has lost at least eight hours but less than 20 hours of work, and \$750 per worker where the worker has lost more than 20 hours of work. The payments will not cover payments to individual workers where they seek paid leave more than three times in a six-month period or twice within 28 days.

## **Human rights implications**

Table item 613 engages the following human rights:

- the general principles on the full and effective participation and inclusion in society – Article 3 of the CRPD;
- the right to the enjoyment of just and favourable conditions of work – Article 7 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) read with Article 2;
- the right to social security – Article 9 of the ICESCR; and
- the right to health – Article 12 of the ICESCR.

### General principles on the full and effective participation and inclusion in society

Article 3 of the CRPD requires States Parties to ensure those with a disability have full and effective participation and inclusion in society.

The implementation of the program supports the full and effective participation and inclusion in society for people with disability. It does this through ensuring National Disability Insurance Scheme (NDIS) participants can access the supports they need safely. Table item 613 therefore promotes this human right.

*Right to the enjoyment of just and favourable conditions of work*

Article 2 of the ICESCR requires States Parties to take steps to progressively achieve the full realisation of the rights recognised in the ICESCR by all appropriate means.

Article 7 of the ICESCR requires States Parties to recognise that everyone is entitled to the enjoyment of just and favourable working conditions, and in particular, that individuals have safe and healthy working conditions, and they will receive rest and leisure.

Table item 613 promotes this right by enabling people to maintain continuity of employment in their chosen industry without having to seek alternative employment to obtain income during a time of illness. The grant program will achieve this by supporting casual and permanent workers who do not have access to, or have exhausted their sick leave entitlements, and cannot access any other funding support at a time that they test positive for COVID-19. This cohort of workers are particularly affected by this issue due to nature of their work, namely, the delivery of personal services to people who themselves are vulnerable to illness.

*Right to social security*

Article 9 of the ICESCR requires States Parties to recognise the right of everyone to social security.

Table item 613 promotes this human right by allowing eligible disability providers to apply for reimbursement of the payment of leave entitlements paid to casual staff or staff who had no other access to leave when diagnosed with COVID-19 and have been able to demonstrate they have lost hours of work as a result. The grant program provides a form of sickness benefit that is not available to all people affected by this issue.

*Right to health*

Article 12 of the ICESCR requires States Parties to recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. This includes the prevention, treatment and control of epidemic, endemic, occupational and other diseases.

Table item 613 promotes this human right by providing income for workers not otherwise able to access workplace-based leave entitlements, which in turn allows them to recover from their illness and to minimise the spread of COVID-19, including to a high-risk cohort.

**Conclusion**

Table item 613 is compatible with human rights because it promotes the protection of human rights.

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