

## **EXPLANATORY STATEMENT**

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

*Financial Framework (Supplementary Powers) Act 1997*

*Financial Framework (Supplementary Powers) Amendment  
(Health and Aged Care Measures No. 4) 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 (Health and Aged Care Measures No. 4) Regulations 2023* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for the Government to provide a grant to The Embrace Collective Ltd to deliver the Embrace Kids Australia Program (the program). The grant will be administered by the Department of Health and Aged Care.

The program is a national initiative led by 2023 Australian of the Year, Taryn Brumfitt and international body image expert Dr Zali Yager. The program is aimed at promoting healthy body image ideas to children in schools, sport centres, homes, and peer environments. The program aims to improve the health and wellbeing of young people and help prevent the onset of eating disorders and other mental health concerns.

Funding of \$6.2 million in 2023-24 will deliver on the program's objective to reach over one million children under the age of 18 across the country through a number of activities. These activities will include providing resources and materials for schools, educators, parents and sporting clubs and conducting public and professional awareness campaigns to promote healthy body image ideas.

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 been undertaken with the Department of Health and Aged Care.

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

**Details of the *Financial Framework (Supplementary Powers) Amendment (Health and Aged Care Measures No. 4) Regulations 2023***

**Section 1 – Name**

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Health and Aged Care Measures No. 4) 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 3 of Schedule 1AB (table)**

This item adds a new table item to Part 3 of Schedule 1AB to establish legislative authority for government spending on an activity to be administered by the Department of Health and Aged Care (the department).

New **table item 73** establishes legislative authority for the Government to provide a grant to The Embrace Collective Ltd (Embrace Collective) to deliver the Embrace Kids Australia Program (the program) to promote healthy body image ideas to children under 18 years of age.

Body image is a serious issue for Australians, especially for children, and the problem is getting worse. The number of young Australians reporting body image distress has risen by 33 per cent since 2009, with 77 per cent self-reporting body image distress. Australia's young minds are exposed to harmful body image messages through social media, advertising, their peers and the influence of adults in their lives. These harmful messages are highly pervasive and if left unchecked, exposure can lead to poor body image. This can contribute to the development of eating disorders, depression, anxiety, low self-esteem, and increased suicidal intentions and ideation.

The grant to Embrace Collective will deliver on the Government's 2023-24 Budget commitment of improving the mental health and wellbeing of all Australians. This commitment has a focus on investing in early intervention and prevention activities, improving the long-term mental health and wellbeing of children and young Australians.

The commitment was outlined by the Prime Minister, the Hon Anthony Albanese MP, the Assistant Minister to the Prime Minister, the Hon Patrick Gorman MP, the Minister for Health and Aged Care, the Hon Mark Butler MP and the Assistant Minister for Mental Health and Suicide Prevention, the Hon Emma McBride MP in a media release on 20 June 2023 (<https://www.pm.gov.au/media/62-million-address-children-body-image-distress>).

The Embrace Collective, previously Body Confident Collective, was established on 13 May 2020. Its purpose is to engage in research translation to disseminate evidence-based resources that aim to improve body image and prevent the development of eating disorders. Co-Executive Directors, 2023 Australian of the Year, Taryn Brumfitt and body image expert, Dr Zali Yager have over 30 years' combined experience managing and collaborating on large-scale projects. Dr Yager has written more than 50 published papers on the promotion of positive body image and prevention of eating disorders, is an adjunct Associate Professor at Victoria University, and is considered a global leader in the field. Taryn Brumfitt is the founder and Director of Body Image Movement and has reached more than 200 million people around the world with her resources.

The program delivered by Embrace Collective is a national initiative with a multi-pronged educational approach, which provides support to build and maintain positive body image amongst Australian children, young people and their families and to prevent the onset of eating disorders and other mental health concerns. The program will be delivered until December 2024 and aims to reach one million children under the age of 18 during this period. It is envisioned that changes in schools, sports, homes and communities will create positive environments which will support the health and wellbeing of next generation Australians.

Funding of \$6.2 million in 2023-24 will facilitate the delivery of the program's objectives by funding the following activities:

- delivery of resource packs and training educators to promote positive body image in developmentally appropriate ways in the early years settings;
- providing teaching materials and lesson plans for primary and secondary schools, delivered at scale through an online portal;
- providing physical and digital education and promotional resource packs to sporting clubs and organisations to increase awareness and create positive body image communities;
- delivering school leadership events and leading projects that empower students to lead the change to reduce appearance pressure and triggers for eating disorders and mental health challenges on social media and among peers;
- supporting community champions with physical and digital packs and community licences for the Embrace Kids films and run small 'Activate' events in regional communities to raise awareness and create positive body image communities;
- assembling a Youth Advisory Group, Advisory Network, academic advisors, and ambassadors to engage these lived experience advisors to provide feedback on the program, policies, and campaigns, to ensure all needs are met;
- educating parents to build the foundation of positive body image among children and adolescents in the home environment; and

- delivering public and professional awareness campaigns, communicated through traditional and social media channels.

The Embrace Collective will also undertake an independent evaluation of the program as part of this funding. The evaluation will consider the effectiveness of the program in achieving its aims and objectives. It will determine the impact of program materials on the knowledge, attitudes and confidence of those supporting children, such as parents, educators and sporting clubs and organisations, to develop and maintain body positive communities.

The grant will be provided through a closed non-competitive grants process. The Embrace Collective was determined to be an appropriate organisation to deliver this program as it has the organisational systems, structures, staff, and governance procedures in place, along with the professional expertise of Ms Brumfitt and Dr Yager, to be able to carry out the proposed work to a high standard. The Embrace Collective must apply for the grant opportunity via GrantConnect and enter into a grant agreement with the Commonwealth to receive funding for the program. All funding will be provided by 30 June 2024. The program activity will commence on execution of the grant and will be delivered until December 2024.

Various requirements apply to the funding, including that:

- grant money can only be used on eligible grant activities. Not all expenditure of the grant activity may be eligible for grant funding. The decision maker will make the final decision on what is eligible expenditure and may give additional guidance on eligible expenditure if required; and
- progress reports must be provided on a six-monthly basis.

The grant will be administered in accordance with the Commonwealth resource management framework, including the *Public Governance, Performance and Accountability Act 2013*, the *Public Governance, Performance and Accountability Rule 2014*, the *Commonwealth Grants Rules and Guidelines 2017* and departmental grant requirements and processes.

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

A delegate of the Secretary of the department, a Senior Executive Officer Band 1, will be responsible for approving Commonwealth funding provided to the Embrace Collective under the *Financial Framework (Supplementary Powers) Act 1997*. The delegate will have relevant knowledge and skills to support the decision making process.

Independent merits review of decisions made in connection with the grant would not be considered appropriate because the decisions relate to the provision of a one-off grant to a specific service provider, over other service providers. The Administrative Review Council 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?*).

The review and audit process undertaken by the Australian National Audit Office also provides a mechanism to review Australian Government spending decisions and report any concerns to the Parliament. These requirements and mechanisms help to ensure the proper use of Commonwealth resources and appropriate transparency around decisions relating to making, varying or administering arrangements to spend relevant money.

Further, 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.

The department has consulted with the Embrace Collective on the program design and intended delivery. These discussions were positive with Embrace Collective implementing feedback. The activities were strengthened by including an evaluation, generating improved value for money with particular activities and incorporating existing Australian Government initiatives into the program activities to generate effectiveness.

Funding of \$6.2 million for the grant was included in the 2023-24 Budget under the measure 'Mental Health' for a period of one year commencing in 2023-24. Details are set out in *Budget 2023-24, Budget Measures, Budget Paper No.2* at pages 139-140.

Funding for this item comes from Program 1.2: Mental Health, which is part of Outcome 1. Details are set out in the *Portfolio Budget Statements 2023-24, Budget Related Paper No. 1.9, Health and Aged Care Portfolio* at page 30.

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

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

#### 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 seeks to conduct a communications campaign using online delivery systems to help children, young people, families, educators, and sporting organisations build a positive body image culture.

#### 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 is a party to the *Convention on the Rights of the Child* (CRC). Under article 4, Australia is under an obligation as a party to the CRC to 'undertake all appropriate legislative, administrative, and other measures for the implementation of rights recognized' in the CRC. This includes the right under article 24(2) to pursue the full implementation of 'the rights of the child to the enjoyment of the highest attainable standard of health', including by 'develop[ing] preventive health care' and 'guidance for parents'.

Expenditure under this item will ensure that the program has the resources required to launch a series of coordinated initiatives to help children, young people, families, educators, and sporting organisations build a positive body image culture to improve the health and wellbeing of young people and help prevent the onset of eating disorders and other mental health concerns.

## **Statement of Compatibility with Human Rights**

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

### ***Financial Framework (Supplementary Powers) Amendment (Health and Aged Care Measures No. 4) 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*.

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## **Human rights implications**

This disallowable legislative instrument engages the following human right:

- the right of the child to the enjoyment of the highest attainable standard of health – Article 24 of the *Convention on the Rights of the Child (CRC)*, read with Article 4 and Article 12 of the *International Covenant on Economic Social and Cultural Rights (ICESCR)*, read with Article 2.

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

Article 4 of the CRC requires each State Party to undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the CRC.

Article 24(2) of the CRC refers to each State Party providing a non-exhaustive list of ‘steps’ to be taken to achieve the full realisation of the rights of the child.

Article 2(1) of the ICESCR refers to each State Party to the Covenant undertaking all necessary steps to achieve the full realisation of the rights recognised in the Covenant.

Article 12 of the ICESCR refers to the States Parties to the Covenant recognising the right to the highest attainable standard of physical and mental health.

Funding for the program promotes the human right to health through the prevention of poor mental health outcomes (caused by body shaming and social pressures around appearance) for children.

## **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**