

## **EXPLANATORY STATEMENT**

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

#### *Financial Framework (Supplementary Powers) Act 1997*

#### *Financial Framework (Supplementary Powers) Amendment (Employment and Workplace Relations Measures No. 2) Regulations 2023*

The *Financial Framework (Supplementary Powers) Act 1997* (the FFSP 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 FFSP 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 FFSP 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 FFSP 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 FFSP 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 (Employment and Workplace Relations Measures No. 2) Regulations 2023* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on the Advice, advocacy and support services for working women program (the program), which will be administered by the Department of Employment and Workplace Relations.

The program is part of the Australian Government's election commitment published in *Labor's Plan for a Better Future* to implement all 55 recommendations of the Australian Human Rights Commission's *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces Report*. In particular, the program is intended to implement recommendation 49 of that report, which recommends that Australian Governments should consider establishing or re-establishing working women's centres (WWCs) in jurisdictions where they do not currently exist.

Funding of \$32.0 million over four years from 2022-23 (and \$8.0 million per year ongoing) will be provided to fund WWCs in all states and territories to provide advice, information and advocacy to workers on gender-based issues, including sexual harassment. These services will be provided by a mix of existing WWCs and other service providers who will be required to provide the services under the 'WWCs' banner.

The program will also provide funding for a lead organisation to coordinate WWC services across Australia. The organisation will lead advocacy and industry initiatives to prevent sexual harassment, and lead research and analysis on, and contribute to policy debates about, systemic issues affecting working women. The lead organisation will also monitor consistency of the WWC services and support collaboration.

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 Employment and Workplace Relations.

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 (Employment and Workplace Relations Measures No. 2) Regulations 2023***

**Section 1 – Name**

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Employment and Workplace Relations 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 – In the appropriate position in Part 4 of Schedule 1AB (table)**

This item adds one new table item to Part 4 of Schedule 1AB to establish legislative authority for government spending on an activity to be administered by the Department of Employment and Workplace Relations (the department).

New **table item 636** establishes legislative authority for government spending on the Advice, advocacy and support services for working women program (the program).

The program is part of the Australian Government's election commitment published in *Labor's Plan for a Better Future* to implement all 55 recommendations of the Australian Human Rights Commission's *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces Report* (Respect@Work report). In particular, the program is intended to implement recommendation 49 of that report.

The Respect@Work report ([https://humanrights.gov.au/sites/default/files/document/publication/ahrc\\_respectwork\\_community\\_guide\\_2020.pdf](https://humanrights.gov.au/sites/default/files/document/publication/ahrc_respectwork_community_guide_2020.pdf)) found that the holistic approach to support, advocacy and advice that WWCs provide makes them a valuable source of assistance for victims of workplace sexual harassment. It considered that Australian

Governments should consider establishing or re-establishing WWC services in jurisdictions where they do not currently exist to fulfil this role.

WWCs are not-for-profit, community organisations that support women employees or women who wish to work, whatever their age, ethnicity or work status, by providing a free and confidential service on work related issues. There are currently WWCs in Queensland (Qld), Northern Territory (NT) and South Australia (SA). While these centres operate under the ‘WWCs’ banner, they are separate legal entities.

The WWC in the NT was established in 1994, SA was established as a mobile caravan in April 1979 and Qld has operated for over 20 years as Working Women Queensland (WWQ). Five years ago, WWQ became a service within a larger organisation, Basic Rights Queensland, which is a specialist community legal centre that also assists with social security, disability discrimination and mental health issues.

The Australian Government has provided funding of \$0.7 million in 2022-23 under existing agreements with the NT and Qld WWCs, and \$8.0 million in funding is anticipated to be provided in 2023-24 split between the jurisdictions. In addition to the funding received from the Commonwealth, WWCs have also received funding from state governments and donations. Further information about WWC funding can be found on the charities register hosted by the Australian Charities and Not-for-Profits Commission.

On 25 October 2022, the Minister for Employment and Workplace Relations, the Hon Tony Burke MP, announced funding for the program as part of the ‘Secure Jobs and Better Pay’ package (<https://www.tonyburke.com.au/media-releases/2022/secure-jobs-and-better-pay-in-the-budget>). The program will fund WWCs in all states and territories to provide advice, information and advocacy to workers on gender-based issues, including sexual harassment.

These services will be provided by the existing WWCs in the NT, Qld and SA. Other service providers will be funded to deliver new WWC services in: New South Wales, Victoria, Western Australia, Tasmania and the Australian Capital Territory. These service providers will be required to provide the services under the ‘WWCs’ banner.

The program will support women, including women from culturally and linguistically diverse communities, women in regional, rural and remote areas, Aboriginal and Torres Strait Islander women, women with disability, women under the age of 25, and women who are experiencing mental health concerns or family violence.

The program will fund the following activities:

- provision of information, education or legal advice to girls and women about their rights and obligations under workplace relations laws, including laws concerning anti-discrimination, sexual harassment, bullying, workplace health and safety, long service leave and superannuation;
- provision of information and advice to girls and women about the operation of any Commonwealth policy, program or law;
- provision of legal advice and representation to girls and women in connection with:
  - a. resolving a complaint about conduct that may be contrary to a law of a kind referred to above, or
  - b. a proceeding that involves issues about rights and obligations under laws of a kind referred to above;

- the promotion of an understanding and acceptance of, and compliance with, laws of a kind referred to above, including by providing information or training to employers and educational institutions;
- the promotion of gender equality in the workplace;
- the representation of the interests of girls and women in policy debates about the rights of workers for the purpose of informing the development of Commonwealth policy, or
- the coordination of and support for the delivery of activities delivered by persons that receive funding under the program, including by developing resources and undertaking research.

The program will also provide funding for a lead organisation to coordinate WWC services across Australia. The organisation will lead advocacy and industry initiatives to prevent sexual harassment, and lead research and analysis on, and contribute to policy debates about, systemic issues affecting working women. The lead organisation will also monitor consistency of the WWC services and support collaboration.

Program guidelines will promote equitable access to the program, and the intention is for service providers to work together to promote the program by suitable means. Existing WWCs currently provide information about accessing their services online. Information about the program may come from Commonwealth sources, directly from WWCs or workplaces.

Funding for the program will be distributed through direct Commonwealth grants to service providers for five years from 2023-24. As this is an ongoing funding measure, it is expected that further grant rounds will be run at the completion of the first 5-year grant period.

The existing WWCs in Qld, SA and the NT will be invited to apply through a closed non-competitive grant opportunity. An open competitive grant opportunity will be run to identify organisations to deliver WWC services in jurisdictions that do not currently have a WWC in operation. A further targeted competitive grant opportunity will be run to identify an organisation to lead the national body, which each individual WWC will also be required to engage.

Grant opportunity guidelines will be published on the GrantConnect website ([www.grants.gov.au](http://www.grants.gov.au)). Grants awarded will also be reported on GrantConnect.

Grant recipients will be selected by a departmental delegate at the SES Band 2 level, based on recommendations made by a departmental assessment panel. Once the grant agreements are in place, the grants administration process will transition to the Community Grants Hub within the Department of Social Services.

The grants will be administered in accordance with the Commonwealth resource management framework, including the *Public Governance, Performance and Accountability Act 2013* and the *Commonwealth Grants Rules and Guidelines 2017*.

Independent merits review of decisions made in connection with the grant program would not be considered appropriate because these decisions relate to the provision of a grant to a certain 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 4.11 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 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.

Stakeholder consultation occurred in two phases with key stakeholders who were identified as having expertise and interest in delivering services to women in relation to workplace issues. This included representatives from the existing WWCs, women's legal services, legal assistance peak bodies, unions, National Women's Alliances and state and territory government officials. Within government, the department consulted with the Attorney-General's Department and the federal Office for Women. The department also met with Ms Kate Jenkins, the then Sex Discrimination Commissioner who developed the Respect@Work report.

The first phase of consultation sought stakeholders' input and views regarding service delivery, governance, funding, and the department's guiding principles for implementing recommendation 49. The second phase of consultation sought stakeholder feedback on a proposed funding and governance model, which informed the development of the final model. Feedback from stakeholders was largely positive and generally supported direct funding to service providers through Commonwealth grants, the proposed funding distribution model, and a separately funded national body.

Funding of \$32.0 million was included in the October 2022-23 Budget under the measure 'Women's Safety – Respect@Work' for a period of four years commencing in 2022-23 (and \$8.0 million per year ongoing). Details are set out in *Budget October 2022-23, Budget Measures, Budget Paper No. 2* at page 55.

Funding for the item will come from Program 3.1: Workplace Support, which is part of Outcome 3. Details are set out in the *Portfolio Budget Statements 2022-23, Budget Related Paper No. 1.6, Employment and Workplace Relations Portfolio* at page 50.

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

- the communications power (section 51(v));
- the external affairs power (section 51(xxix));
- the express incidental power (section 51(xxxix));
- the executive power (section 61); and
- the territories power (section 122).

Communications power

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

In addition to providing in-person services, it is expected that the services which receive funding under the program will provide advice and support to women by telephone, email or the internet.

External affairs power

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

Australia has obligations relating to the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), and the International Labour Organization’s *Convention concerning Labour Administration: Role, Functions and Organisation* (ILO Convention 150).

Article 3 of the CEDAW provides that States Parties shall take all appropriate measures, in the economic field among others, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 11 of the CEDAW provides that States Parties shall take measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, including the right to work.

Article 2(1) of the ICESCR provides that States Parties shall take steps to realise the rights recognised in the ICESCR. Under Article 3 of the ICESCR, States Parties undertake to ensure the equal right of men and women to the enjoyment of all rights recognised by the ICESCR. Article 7 of the ICESCR provides that States Parties shall recognise the right of everyone to the enjoyment of just and favourable conditions of work, including specifically identified rights.

Article 6(2)(d) of the ILO Convention 150 requires ‘competent bodies within the system of labour administration’ to make technical advice available to employers and workers and their respective organisations on their request, taking into account international labour standards. Article 2 of the ILO Convention 150 allows Members to delegate their labour administration functions to non-government organisations.

The services that are funded under the program will help to ensure that girls and women who do not have legal representation have access to information, advocacy, support and advice on a broad range of work-related matters such as the amount they are entitled to be paid, unfair dismissal, discrimination and workplace sexual harassment. The program will help to realise the right of people to the enjoyment of just and favourable conditions of work.

Executive power and express incidental power

The express incidental power in section 51(xxxix) of the Constitution empowers the Parliament to make laws with respect to matters incidental to the execution of any power vested in the Parliament, the executive or the courts by the Constitution. The executive power in section 61 of the Constitution extends to a range of matters, including the ordinary services of government and the execution and maintenance of the Constitution and the laws of the Commonwealth.

The program will fund the provision of advice and other services relating to the operation of Commonwealth laws (such as the *Fair Work Act 2009* and the *Sex Discrimination Act 1984*), programs and policies. It is expected that service providers will represent the views of women in policy debates concerning the rights of workers, and in this way inform the Commonwealth.

Territories power

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

The program will fund the delivery of services to women who live or work in a Territory.



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

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

### ***Financial Framework (Supplementary Powers) Amendment (Employment and Workplace Relations Measures No. 2) 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 FFSP Act) authorises the Commonwealth to make, vary and administer arrangements and grants specified in the *Financial Framework (Supplementary Powers) Regulations 1997* (the FFSP 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 FFSP Regulations specify the arrangements, grants and programs. The powers in the FFSP 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 (Employment and Workplace Relations Measures No. 2) Regulations 2023* amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on the Advice, advocacy and support services for working women program (the program) which is administered by the Department of Employment and Workplace Relations.

This is an ongoing spending activity intended to implement all 55 recommendations of the Australian Human Rights Commission's *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces Report*. In particular, this measure is intended to implement recommendation 49 of that report, which recommends that Australian Governments should consider establishing or re-establishing working women's centres in jurisdictions where they do not currently exist.

Funding of \$32.0 million over four years from 2022-23 will be provided to support women, including women from culturally and linguistically diverse communities, women in regional, rural and remote areas, Aboriginal and Torres Strait Islander women, women with a disability, women under the age of 25, and women who are experiencing mental health concerns or family violence.

The program will also provide funding for a lead organisation to coordinate WWC services across Australia. The organisation will lead advocacy and industry initiatives to prevent sexual harassment, and lead research and analysis on, and contribute to policy debates about, systemic issues affecting working women. The lead organisation will also monitor consistency of the WWC services and support collaboration.

## Human rights implications

This disallowable legislative instrument engages the following rights:

- the right of women not to be discriminated against based on gender in the field of employment – Article 11 of the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), read with Article 3; and
- the right to work and rights at work – Articles 3 and 7 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), read with Article 2.

### Right of women not to be discriminated against based on gender in the field of employment

Article 3 of the CEDAW provides that States Parties shall take all appropriate measures, in the economic field among others, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 11 of the CEDAW provides that States Parties shall take measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, including the right to work.

This disallowable legislative instrument positively engages these articles by supporting organisations to:

- provide advice, information and advocacy to workers on gender-based issues, including sexual harassment;
- deliver education and advisory programs to empower girls and women with knowledge about their workplace rights, including their entitlements under the *Fair Work Act 2009* and other workplace laws;
- deliver or promote advocacy and dispute resolution services to help girls and women secure (and if necessary) enforce their rights at work;
- promote gender equality in the workplace;
- deliver training programs pertaining to the workplace rights of girls and women; and
- represent of the interests of girls and women in policy debates about the rights of workers for the purpose of informing the development of Commonwealth policy.

### Right to work and rights at work

Article 2(1) of the ICESCR provides that States Parties shall take steps to realise the rights recognised in the ICESCR.

Article 3 of the ICESCR provides that States Parties shall undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set out in the ICESCR. Article 7 of the ICESCR provides that States Parties shall recognise the right of everyone to the enjoyment of just and favourable conditions of work, including specifically identified rights.

By promoting gender equality, the disallowable legislative instrument promotes the general right to equal rights as contained in Article 3 of the ICESCR. By supporting organisations in promoting women's rights to just and favourable conditions of work, where entitlements and

protections are recognised and upheld, the disallowable legislative instrument also promotes rights in work as contained in Article 7 of the ICESCR.

### **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**