**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. 5) 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 sunsetting under section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (item 28A). If the Principal Regulations were subject to the sunsetting 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 (Health and Aged Care Measures No. 5) Regulations 2023* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on certain activities to be administered by the Department of Health and Aged Care.

Funding is provided for:

* a grant to Royal Children’s Hospital Good Friday Appeal to support the Royal Children’s Hospital with its implementation of the *Melbourne Children’s Campus Mental Health Strategy* ($6.0 million over three years from 2023-24);
* the Aged Care Work Value Case – historical leave provisions to implement the outcome of the Fair Work Commission’s decision on the Aged Care Work Value Case by assisting aged care and veterans’ care service providers to meet the costs of historical leave provisions for aged care and veterans’ care service workers ($133.2 million in 2023‐24); and
* the Aged Care Worker COVID-19 Leave Payments to reimburse eligible aged care services (including home care services) providers that have paid workers who lost working hours due to COVID-19 and have no personal leave ($13.4 million in
2023‐24).

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 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.

**Attachment A**

**Details of the *Financial Framework (Supplementary Powers) Amendment
(Health and Aged Care Measures No. 5) 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. 5) 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 one 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 75** establishes legislative authority for the Government to provide a grant to the Royal Children’s Hospital Good Friday Appeal to support the Royal Children’s Hospital with its implementation of the *Melbourne Children’s Campus Mental Health Strategy* (the Strategy).

The Royal Children’s Hospital (RCH) Good Friday Appeal has been in operation for 91 years and is a key charity fundraiser for the Melbourne RCH, with funds supporting projects in four key areas: equipment and technology; research; education and training for staff development; and patient and family centred care program. The charity has raised over $421.0 million to date to support the Melbourne RCH, primarily through its annual telethon held each Good Friday. Government has previously provided funding to the Melbourne RCH, but not via the RCH Good Friday Appeal.

The Strategy is a five-year initiative from 2021 to 2025 which sets out to implement a high quality, evidence-based approach to mental health care, literacy and research, securing better pathways for supportive, trauma informed healthcare for children and their families. Funding for years 1 and 2 for this activity was not provided via the Commonwealth, with year 2 completed in May 2023. The activities to be funded form part of the next stage of the Strategy: years 3 – 5.

Funding of $6.0 million over three years from 2023-24 will be used to:

* develop a model of care to better detect and respond to parent and sibling mental health and wellbeing concerns to support the whole family and the child receiving care;
* implement carer and staff mental health literacy education and resources;
* conduct and scale a Measurement Based Care pilot to inform a campus approach to using mental health outcomes to improve/individualise care;
* develop new clinical practice guidelines for common mental health concerns that can be shared with the Victorian community; and
* develop and implement a mental health education and training framework based on workforce competencies and scope of practice across the campus.

The intended outcomes of the Strategy include:

* reduced traumatic impacts of procedural care on children, families and staff including resources for de-escalation of behaviours of concern;
* clinically relevant research planned, translated, and communicated across the campus to inform better, evidence-based mental health care;
* creation of a trauma informed organisational culture to support wellbeing and retention of campus staff, trauma informed care and partnerships;
* creation of a coherent strategy of priority research in mental health and wellbeing; and
* sustained and systematic engagement of people with lived experience in mental health care and recovery in service review, planning and improvement with ongoing investment in the Campus Lived Experience Advisor Network.

Funding for the Strategywill be provided to the RCH through a closed, non-competitive grant process. The grant will be administered in accordance with applicable legislative requirements under the *Public Governance, Performance* *and Accountability Act 2013* (PGPA Act)and the *Commonwealth Grants Rules and Guidelines 2017* (CGRGs).

Consistent with the requirements under the PGPA Act, the CGRGs and the *Financial Framework (Supplementary Powers) Act 1997*, a delegate of the Secretary of the department (Senior Executive Officer Band 1 officer) with relevant knowledge and skills will make the final decision and approve funding.

The grant guidelines, assessment criteria and information about the grant decision will be available at www.health.gov.au and GrantConnect (www.grants.gov.au). Funding will be administered through the Commonwealth Grants Hub, noting the grant agreement will be managed by the department.

Funding decisions made in relation to the grant to the RCH Good Friday Appeal will not be subject to independent merits review because the expenditure is time-limited, is being provided as a one-off, ad-hoc grant and the activity represents a locally-designed service offering. 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?* (ACR guide)).

To reconsider this decision under merits review would substantially impact RCH Good Friday Appeal to support implementation of the Strategy and would impede the policy intent of responding to the increasing demand and complexity of care required for vulnerable groups of young people.

The review and audit process undertaken by the Australian National Audit Office (ANAO) 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.

Prior to government involvement, RCH had already implemented years 1 and 2 of the Strategy, beginning 2021-22. Noting that the Commonwealth funded program is beginning in years 3 to 5 of the Strategy, consultation of persons likely to be affected by the program was carried out by RCH in the initial stages of developing the initiative.

The department will continue to consult and engage with RCH to ensure the program is implemented in accordance with the Government’s objective.

Funding of $6.0 million for the program was included in the 2023-24 Budget under the measure ‘Good Friday Appeal – Royal Children’s Hospital Melbourne’ for a period of three years commencing in 2023-24. Details are set out in *Budget 2023-24*, *Budget Measures, Budget Paper No.2* at page 132.

Funding for this item will come 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 53.

Noting that it is not a comprehensive statement of relevant constitutional considerations, the purpose 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 a party.

*Convention on the Rights of the Child*

Australia is a party to the *Convention on the Rights of the Child* [1991] ATS4 (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 Articles 24(1) and (2) to pursue the full implementation of ‘the right of the child to the enjoyment of the highest attainable standard of health’, including by ‘develop[ing] preventive health care’ and ‘guidance for parents’.

The grant will provide funding for activities that directly involve the delivery of mental health care to children who are patients at the RCH and activities that ensure others
(i.e. parents, carers, healthcare workers) are adequately informed about and supported in the provision of mental health care to children.

*International Covenant on Economic, Social and Cultural Rights*

Australia is a party to the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). Parties to the ICESCR are required to take steps with a view to achieving progressively the full realisation of the rights recognised in the Convention by all appropriate means (Article 2(1)).

The steps to be taken by States Parties to achieve the full realisation of the right to the enjoyment of the highest attainable standard of physical and mental health (as required by Article 12(1)) are specified in Article 12(2) and include:

* steps necessary for ‘the prevention, treatment and control of epidemic, endemic, occupational, and other diseases’ (Article 12(2)(c)); and
* steps necessary for ‘the creation of conditions which would assure to all medical service and medical attention in the event of sickness’ (Article 2(2)(d)).

The grant will provide funding for activities that ensure others (i.e. parents, carers, healthcare workers) are adequately informed about and supported in the provision of mental health care to children.

**Item 2 – In the appropriate position in Part 4 of Schedule 1AB (table)**

This item adds two 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.

New **table item 637** establishes legislative authority for government spending on the Aged Care Work Value Case—historical leave provisions (the initiative).

The Government is investing $11.3 billion to fund the outcome of the Fair Work Commission’s (FWC) decision in the Aged Care Work Value Case. In February 2023, the FWC made a decision of a 15 per cent increase to the award wages for many aged care workers effective 1 July 2023. The award wage increase is expected to benefit around 250,000 registered nurses, enrolled nurses, assistants in nursing, personal care workers, head chefs and cooks, recreational activities officers (lifestyle workers) and home care workers.

The $11.3 billion wage increase for aged care workers was announced by the Treasurer, the Hon Jim Chalmers MP and the Minister for Aged Care, the Hon Anika Wells MP on 4 May 2023 (https://www.health.gov.au/ministers/the-hon-anika-wells-mp/media/minister-for-aged-care-and-sport-doorstop-4-may-2023).

In recognition that the value of leave balances of aged care providers that was accrued prior to 1 July 2023 will become 15 per cent more expensive for providers to pay out when the rise takes effect, the initiative will provide funding to support eligible providers by paying historical leave liability amounts to aged care and veterans’ care service workers.

Under the initiative, providers will be invited to submit an application in response to the publication of the grant opportunity guidelines and will be required to demonstrate leave liability balances from before the 15 per cent wage increase took place, and after. The grant for aged care providers is expected to open in late 2023 and be open for four months. Providers will only be able to submit one application for leave liabilities across all programs. As the wage increase took effect from the first full pay period on or after 30 June 2023, it is expected that evidence submitted to demonstrate the increase in liabilities will reflect the effective date of the wage increase. For providers that submit a Quarterly Financial Report (QFR), the department will use information collected as part of this reporting to validate provider claims for funding. For providers that do not submit a QFR, there will be additional information provision requirements as part of the grant application.

The Department of Veterans’ Affairs (DVA) will also revise funding administration to allow payments to be made in a shorter timeframe for DVA-only providers. DVA-only providers are those that do not offer mainstream aged care services and therefore would not be captured by the grant process being led by the department. DVA will require providers to submit data to substantiate claims for funding, such as payroll data for employees covered by the relevant awards, to ensure clarity for providers as to the intended use of the funding, and to be consistent with the methodology to be applied for mainstream aged care programs. It is anticipated that payments for DVA-only providers would be able to be paid within a shorter timeframe than if otherwise administered by the grant process.

The value of the grants will be determined on a case-by-case basis as each provider’s
in-scope historical leave entitlements will vary. Eligibility for funding will be determined by the impact of the FWC’s decision on the provider’s leave entitlements and liability balance. The department has consulted with select providers on the approach to calculate wage costs and apportion leave provisions.

Funding for the initiativewill be provided through a non-competitive targeted grant process and administered in accordance with applicable legislative requirements under the PGPA Actand the CGRGs.

Aged care providers will be invited to apply under grant opportunity guidelines managed by the department. For DVA-only providers i.e. Veterans’ Home Care and Community Nursing providers that do not deliver services under mainstream aged care programs, they will be invited to directly apply to DVA for the historical leave liabilities funding for those workers in scope of the FWC’s decision to increase award wages for many aged care workers by 15 per cent. DVA will assess the applications and administer the funds in accordance with the PGPA Act. Detailed information on the application process will be communicated to this group of providers by DVA to ensure consistency with the methodology being applied for mainstream aged care providers under the grant process.

Information about the grant will be made available on the GrantConnect website (www.grants.gov.au), and the grants will be administered by the Community Grants Hub, which is part of the Department of Social Services. The department’s Accountable Authority (Secretary) under the PGPA Act and the *Public Governance, Performance and Accountability Rule 2014* will exercise these powers by delegating responsibility to departmental officials for approving Commonwealth funding provided to successful aged care providers. The Secretary of the department will also exercise these powers by delegating responsibility to departmental officials for approving Commonwealth funding provided to successful DVA-only Veterans’ Home Care and Community Nursing providers.

Funding decisions made in connection with the initiative are not considered suitable for independent merits review as such decisions are automatic or mandatory in nature. The decision to make a payment by a departmental official will be very limited and procedural (for example, confirming the identity of claimants and verifying the financial reporting to support the historical leave liabilities claim). The ACR has acknowledged 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 select aged care providers with representation from all aged care programs. These consultations have included workshops that were held at the end of June 2023, and involved multiple groups across three sessions. The workshops sought to inform the design of the FWC historical leave liability grant application process and focused questions of providers on how and where providers report financial information on leave liabilities. The workshops aimed to assist the department’s understanding of how service providers currently record this information and to explore ways to gain greater efficiency in the grant application process.

The department also hosted a presentation on 3 July 2023 with Chief Financial Officers of residential aged care providers that provided an overview of the approach and allowed providers to ask questions on implementation. These consultations, in addition to
officer-level engagement between the department and DVA and central agencies, have informed the implementation design of the grant.

Funding of $97.7 million for the initiative was included in the 2023-24 Budget under the measure ‘Funding Pay Increases for Aged Care Workers’ for a period of one year commencing in 2023-24. Details are set out in *Budget 2023-24, Budget Measures, Budget Paper No. 2 2023-24* at page 131.

Additional funding of $35.5 million for the program will be included in the 2023-24
Mid-Year Economic and Fiscal Outlook and the Portfolio Additional Estimates Statements for the Health and Aged Care Portfolio. Funding for this item will come from Program 3.3: Aged Care Quality, which is part of Outcome 3.

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

* the defence power (section 51(vi));
* the social welfare power (section 51(xxiiiA));
* the race power (section 51(xxvi));
* the power to grant financial assistance to States (section 96); and
* the territories power (section 122).

*Defence power*

Section 51(vi) of the Constitution empowers the Parliament to make laws with respect to ‘the naval and military defence’ of the Commonwealth and States, and ‘the control of the forces to execute and maintain the laws of the Commonwealth’.

The spending activity may provide additional financial assistance through existing funding mechanisms to providers of subsidised aged care services servicing older Australian veterans.

*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 including sickness benefits.

The spending activity may provide additional financial assistance through existing funding mechanisms to providers of subsidised aged care services servicing people who are sick.

*Race power*

Section 51(xxvi) of the Constitution empowers the Parliament to make laws with respect to ‘the people of any race for whom it is deemed necessary to make special laws’.

The spending activity may provide additional financial assistance through existing funding mechanisms to First Nations Program providers of subsidised aged care services servicing First Nations peoples.

*Power to grant financial assistance to States*

Section 96 of the Constitution empowers the Parliament to ‘grant financial assistance to any State on such terms and conditions as the Parliament thinks fit’.

The spending activity may provide additional financial assistance through existing funding mechanisms to states who provide subsidised aged care services.

*Territories power*

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

The spending activity may provide additional financial assistance through existing funding mechanisms to territories who provide subsidised aged care services.

New **table item 638** establishes legislative authority for government spending on the Aged Care Worker COVID-19 Leave Payments program (the program) to reimburse aged care providers for the cost of leave entitlements for casual staff and those who have no other access to leave payments where staff cannot attend work due to being COVID-19 positive.

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 (HRSPP) which provided workers in high-risk with a payment if they cannot work because they have tested positive for COVID-19. The HRSPP ceased on 31 March 2023.

The program recognises the ongoing vulnerability of older people and the inherent risks in providing care in residential aged care and home care settings. The objectives of the program are to:

* reduce the possible exposure to, and likely impacts of, COVID-19 on older people in residential aged care and home care settings;
* encourage aged care workers to act in line with accepted public health practices by not attending work if infected by COVID-19; and
* ensure workers are supported in making this decision by encouraging employers to continue to support employees taking sick leave in relation to absences because of COVID-19, even where paid sick leave would not normally be available.

The intended outcomes of the program are to:

* retain an experienced and secure aged care workforce for residential and home care by supporting aged-care workers in government funded residential aged care homes and home care package services; and
* ensure directly employed casual staff, or directly employed permanent staff of eligible aged care providers who have insufficient sick leave, and risk losing income from not being able to attend work and not being able to conduct their work from home, will be able to remain in the industry and support some of Australia’s most vulnerable citizens during COVID-19 outbreaks.

Funding of $13.4 million in 2023-24 will be available to eligible aged care providers, including for residential and home care providers. For home care providers, reimbursement will be limited to sick leave payments made to those workers providing close personal care. The following workers are eligible for the COVID-19 Leave Payments:

* residential aged care workers:
* clinical and personal care workers, allied health workers, food services and cleaning services; and
* home care workers delivering home care under an approved home care package:
* clinical support and personal care (showering, dressing etc).

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 HRSPP and the earlier Pandemic Leave Disaster 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), and the grant will be administered by the Community Grants Hub. A delegate of the Secretary of the department (Senior Executive Officer Band 1 officer) with relevant knowledge and skills, under the *Financial Framework (Supplementary Powers)* *Act 1997* will be responsible for approving Commonwealth funding provided to the program.

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 the departmental official will be very limited and procedural, for example, confirming the identity of claimant’s organisation as an approved Aged Care provider and that they have declared that they have sighted and kept all relevant information for audit purposes. In addition, any funding that has already been allocated would be affected if the original decision was overturned. The remaking of a grant decision after entry into a contractual arrangement with a successful provider is legally complex, impractical, and could result in delays to providing services. 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).

Consultation was undertaken with the Department of Social Services to align the aged care leave payment grants policy and processes with the Disability Worker COVID-19 Leave Grant.

Funding of $13.4 million for the program was included in the 2023-24 Budget under the measure ‘COVID-19 Aged Care Response’ 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 page 126.

Funding for this item will come from Program 3.3: Aged Care Quality, which is part of Outcome 3: Ageing and Aged Care. Details are set out in the *Portfolio Budget Statements 2023-24, Budget Related Paper No. 1.9, Health and Aged Care* *Portfolio* at page 97.

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, including sickness and hospital benefits.

Funding will be provided to aged care and home care providers to be used to provide financial support to employees who are unable to work due to COVID-19 sickness.

**Attachment B**

**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. 5) 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 (Health and Aged Care Measures No. 5) Regulations 2023* amend Schedule 1AB to the FFSP Regulations to establish legislative authority for government spending on certain activities administered by the Department of Health and Aged Care.

This disallowable legislative instrument adds the following table item to Part 3 of
Schedule 1AB:

* table item 75 ‘Grant to Royal Children’s Hospital Good Friday Appeal’;

and also adds the following table items to Part 4 of Schedule 1AB:

* table item 637 ‘Aged Care Work Value Case—historical leave provisions’; and
* table item 638 ‘Aged Care Worker COVID-19 Leave Payments’.

*Table item 75 – Grant to Royal Children’s Hospital Good Friday Appeal*

Table item 75 establishes legislative authority for the Government to provide a grant to the Royal Children’s Hospital Good Friday Appeal to support the Royal Children’s Hospital with its implementation of the *Melbourne Children’s Campus Mental Health Strategy* (the Strategy).

The Strategy sets out to implement a high quality, evidence-based approach to mental health care, literacy and research, securing better pathways for supportive, trauma informed healthcare for children and their families. The activities to be funded form part of the next stage of the Strategy, years 3 – 5 of the Strategy’s 5-year project.

The Good Friday Appeal is a charity that raises money to enable The Royal Children’s Hospital in Melbourne to provide world class care for children. Funding of $6.0 million over three years from 2023-24 will be used to:

* develop a model of care to better detect and respond to parent and sibling mental health and wellbeing concerns to support the whole family and the child receiving care;
* implement carer and staff mental health literacy education and resources;
* conduct and scale a Measurement Based Care pilot to inform a campus approach to using mental health outcomes to improve/individualise care;
* develop new clinical practice guidelines for common mental health concerns that can be shared with the Victorian community; and
* develop and implement a mental health education and training framework based on workforce competencies and scope of practice across the campus.

**Human rights implications**

Table item 75 engages the following rights:

* the right of the child to be treated in a manner consistent with the evolving capacities of the child, appropriate direction, and guidance – Articles 3 and 5 of the *Convention on the Rights of the Child* (CRC), read with Article 4; and
* the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health – Article 24 of the CRC, Article 12 of *the International Covenant on Economic, Social and Cultural Rights* (ICESCR), read with Article 2 and Article 25 of the *Convention on the Rights of Persons with Disabilities* (CRPD), read with Article 4.

*Right of the child* *to be treated in a manner consistent with the evolving capacities of the child, appropriate direction, and guidance*

Article 3(1) of the CRC states that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Article 4(1) of the CRC refers to States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5(2) of the CRC outlines that States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Consistent with this right, the Good Friday Appeal will develop a model of care to better detect and respond to parent and sibling mental health and wellbeing concerns to support the whole family and the child receiving care.

*Right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health*

Article 24(2) of the CRC states that States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

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

Article 12(3) of the ICESCR refers to the States Parties to the present Covenant recognising the right to the highest attainable standard of physical and mental health.

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 25 of the CRPD outlines that States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation. In particular, States Parties shall:

1. provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes;
2. provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons;
3. provide these health services as close as possible to people's own communities, including in rural areas;
4. require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care;
5. prohibit discrimination against persons with disabilities in the provision of health insurance, and life insurance where such insurance is permitted by national law, which shall be provided in a fair and reasonable manner;
6. prevent discriminatory denial of health care or health services or food and fluids on the basis of disability.

Consistent with this right, the Good Friday Appeal will conduct and scale a Measurement Based Care pilot to inform a campus approach to using mental health outcomes to improve and individualise healthcare for children. They will also develop new clinical practice guidelines for common mental health concerns for children and families to ensure they receive a high standard of health care suitable to their needs and access appropriate health care services.

**Conclusion**

Table item 75 is compatible with human rights because it promotes the protection of human rights.

*Table item 637 – Aged Care Work Value Case – historical leave provisions*

Table item 637 establishes legislative authority legislative authority for government spending on the Aged Care Work Value Case – historical leave provisions (the initiative).

In February 2023, the FWC made a decision of a 15 per cent increase to the award wages for many aged care workers effective 1 July 2023. The award wage increase is expected to benefit around 250,000 registered nurses, enrolled nurses, assistants in nursing, personal care workers, head chefs and cooks, recreational activities officers (lifestyle workers) and home care workers.

In recognition that the value of leave balances of aged care providers that was accrued prior to 1 July 2023 will become 15 per cent more expensive for providers to pay out when the rise takes effect, the initiative will provide funding support to eligible providers by paying historical leave liability amounts to aged care and veterans’ care service workers.

Funding of $133.2 million in 2023-24 will be provided as one-off payments to eligible providers who can demonstrate leave liability balances from before the 15 per cent wage increase took place, and after. The value of the payments will be determined on a case-by-case basis as each providers’ in-scope historical leave entitlements will vary. Eligibility for funding will be determined by the impact of the FWC’s decision on the provider’s leave entitlements and liability balance.

**Human rights implications**

Table item 637 does not engage any of the applicable human rights or freedoms.

**Conclusion**

Table item 637 is compatible with human rights as it does not raise any human rights issues.

*Table item 638 – Aged Care Worker COVID-19 Leave Payments*

Table item 638 establishes legislative authority legislative authority for government spending on the Aged Care Worker COVID-19 Leave Payments program (the program) to reimburse aged care providers for the cost of leave entitlements for casual staff and those who have no other access to leave payments where staff cannot attend work due to being COVID-19 positive.

The program contributes to the Government’s *National COVID-19 Health Management Plan for 2023* and will replace the High-Risk Settings Pandemic Payment which ceased on 31 March 2023. It recognises the ongoing vulnerability of older people and the inherent risks in providing care in residential aged care and home care settings.

Funding of $13.4 million in 2023-24 will be available to eligible aged care providers, including for residential and home care providers. The following workers are eligible for a COVID-19 leave payment:

* residential aged care workers:
* clinical and personal care workers, allied health workers, food services and cleaning services; and
* home care workers delivering home care under an approved home care package:
* clinical support and personal care (showering, dressing etc).

Payments will be made at 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 funding will not cover payments for 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 638 does not engage any of the applicable human rights or freedoms.

**Conclusion**

Table item 638 is compatible with human rights as it does not raise any human rights issues.

**Senator the Hon Katy Gallagher**

**Minister for Finance**