

## **EXPLANATORY STATEMENT**

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

*Financial Framework (Supplementary Powers) Act 1997*

*Financial Framework (Supplementary Powers) Amendment  
(Attorney-General's Portfolio 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 (Attorney-General's Portfolio Measures No. 2) 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 Attorney-General's Department.

Funding is provided for:

- grants to the Australian Red Cross Society to raise awareness of, and disseminate information about, international humanitarian law including delivering presentations to key stakeholders, issuing and contributing to publications and submissions to government, participating in conferences and events, and monitoring and maintaining the correct use of the Red Cross emblem (\$2.1 million over five years from 2019-24, no new funding is provided); and
- support for victims of identity crime and misuse initiative to fund identity crime and cybercrime support service providers to deliver specialised support to victims of identity crime over the internet or telephone or via another telecommunications service (\$21.2 million over five years from 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 Attorney-General's Department.

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 (Attorney-General's Portfolio Measures No. 2) Regulations 2023***

**Section 1 – Name**

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Attorney-General's Portfolio 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* (the Principal Regulations) 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 administered by the Attorney-General's Department (the department).

New **table item 77** establishes and updates legislative authority for the Government to provide grants to the Australian Red Cross Society (ARCS).

The ARCS was established in 1914, as the Australian branch of the British Red Cross Society, and subsequently incorporated as the Australian Red Cross Society by Royal Charter in 1941. The ARCS provides a range of services of an exclusively humanitarian nature. This includes emergency management and disaster preparedness; international aid; migration support; community services for First Nations peoples, youth, families, the elderly and persons with disability; and blood donation. The ARCS also provides training and advocacy on international humanitarian law (IHL) and supports the Australian Government to implement its IHL obligations.

Australia is required under each of the Geneva Conventions (the Conventions) and their Additional Protocols (the Protocols) to disseminate IHL, based on the Conventions and Protocols as widely as possible. The Conventions give a clear mandate to the International Committee of the Red Cross and to the National Societies of the Red Cross and Red Crescent to prevent and alleviate suffering worldwide. Today, the Red Cross and Red Crescent Movement is represented in virtually every country in the world, ensuring a global humanitarian network. The ARCS has an exclusively humanitarian mission to protect the lives and dignity of victims of armed conflict and other situations of violence is to provide them with assistance.

Consistent with Australia's obligation under the Conventions and Protocols, successive governments (since at least 1991) have funded IHL activities of the ARCS through various closed non-competitive grant agreements. The department most recently entered into a grant arrangement to fund these activities in 2019. Funding of \$2.1 million over five years from 2019-20 was provided through the Grants to Australian Organisations Program (GAOP). On 20 December 2022, the Attorney-General approved additional supplementation funding of \$24,200 over two years from 2022-23 to meet the costs associated with minimum wage rises and other pressures within the community sector.

Legislative authority for the GAOP was provided under table item 402.003 in Part 4 of Schedule 1AA to the Principal Regulations. New table item 77 in Part 3 of Schedule 1AB to the Principal Regulations will update legislative authority for spending to the ARCS.

The ARCS promotes IHL in academic circles and professional sectors (such as the legal, humanitarian and medical sectors), delivers training to the public service and defence forces, participates in relevant conferences and events, and disseminates information about the law of armed conflict and principle of humanity to the broader Australian community.

In 2022-23, the ARCS delivered 64 discrete projects, with examples including:

- delivering the annual 'Fundamentals of IHL' training course in Canberra for approximately 50 policy and legal officers from the department, the Department of Foreign Affairs and Trade (DFAT), the Department of Defence (Defence), and other government entities;
- providing IHL input into the *Parliamentary Inquiry into the rights of Women and Children*, DFAT's *New International Development Policy Review*, the Department of the Treasury's *2023-24 Pre-Budget Submission*; and providing submissions to DFAT's *Review of Australia's Autonomous Sanctions Framework*;
- developing the '*IHL for Business*' Massive Open Online Course in collaboration with the Royal Melbourne Institute of Technology;
- publishing the '*Guide on corporate war crimes and other liabilities*';
- supporting the Australian Government's engagement to the tenth Review Conference of the Parties to the Treaty on the Non-Proliferation of nuclear weapons, and Convention on Certain Conventional Weapons Group of Government Experts on Lethal Autonomous Weapon Systems;
- supporting the Nusa Bhakti Ausindo exercise between the Australian Defence Force and the Indonesian military; and
- publishing the Afghanistan Summary Report webinar series.

The ARCS also supports the Australian Government to monitor and maintain correct use of the Red Cross emblem by providing information about the proper use of the emblem to business and the public, collecting reports of emblem misuse, and where necessary taking remedial action, such as providing education or referring instances of misuse to Defence for consideration in accordance with section 15 of the *Geneva Conventions Act 1957*. In 2022-23, the ARCS addressed 84 reported instances of emblem misuse.

The department provides funding to the ARCS as a non-competitive grant under Stream Two of the GAOP – grants relating to the application of humanitarian legal issues. Funding was assessed through the 2016-19 Grants to Australian Organisations Program Grant Guidelines.

Variations to a grant may be approved in accordance with delegations existing within the department at the time of any variation request. The Attorney-General has delegated Senior Executive Service (SES) in the department in areas with policy responsibility to sign grant agreements and variations in relation to that entity, in consultation with the departmental Grant Policy Unit.

The grant is administered in accordance with the Commonwealth resource management framework, including the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), the *Commonwealth Grants Rules and Guidelines 2017* (CGRGs) and the GAOP grant guidelines.

Information about the grant is available on the GrantConnect website ([www.grants.gov.au](http://www.grants.gov.au)), and the grant is administered by the Community Grants Hub, which is part of the Department of Social Services. The delegate, under the *Financial Framework (Supplementary Powers) Act 1997* is responsible for approving Commonwealth funding provided to the ARCS for IHL dissemination activities.

Funding decisions made in connection with the grant are not considered suitable for independent merits review, as they will be decisions by government to allocate funding to programs or initiatives as a whole, and therefore budgetary decisions of a policy nature, rather than decisions immediately affecting any particular person's interests.

Further, funding decisions for the grant will relate to the allocation of a finite resource, from which all potential claims for a share of the resource cannot be met. Any funding that has already been allocated would be affected if the original decision was overturned. The Administrative Review Council (ARC) has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.11 to 4.19 of the guide, *What decisions should be subject to merit review?* (ARC guide)).

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.

The current grants funding to the ARCS is from an existing agreement and support the ARCS in delivering international humanitarian law dissemination activities. As the objective of the grant remains unchanged, the department considers it is unnecessary to seek further consultation. Any future decisions to approve grant expenditure under item 77 will be made in consultation with relevant stakeholders, including the ARCS and relevant government entities.

Funding of \$2.1 million over five years from 2019-20 comes from Program 1.4: Justice Services – Payments of grants to Australian organisations, which is part of Outcome 1. Details are set out in the *Portfolio Budget Statements 2023-24, Budget Related Paper No. 1.2, Attorney-General's Portfolio* at page 21. The grant to the ARCS is an ongoing grant which is renewed on a five-year basis. The department has commenced discussions to renew this grant for the next five years from 2024-25. The quantum of any future grant has yet to be decided, however will be comparable with existing funding commitments and will be managed in accordance with the CGRGs.

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 obligations under international treaties to which it is a party.

#### *Geneva Convention (I) for the Amelioration of the condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention)*

Australia has international obligations under Article 47 of the First Geneva Convention to disseminate the text of the Convention as widely as possible in Australia and, in particular, to include the study of the text of the Convention in Australia's programs of military and, if possible, civil instruction, so that the principles of the Convention become known to the entire population, in particular to the armed fighting forces, the medical personnel and the chaplains.

#### *Geneva Convention (II) for the Amelioration of the condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Geneva Convention)*

Australia has international obligations under Article 48 of the Second Geneva Convention to disseminate the text of the present Convention as widely as possible in Australia and, in particular, to include the study of the text of the Convention in Australia's programs of military and, if possible, civil instruction, so that the principles of the Convention may become known to the entire population, in particular to the armed fighting forces, the medical personnel and the chaplains.

*Geneva Convention (III) relative to the treatment of Prisoners of War (Third Geneva Convention)*

Australia has international obligations under Article 127 of the Third Geneva Convention to disseminate the text of the Convention as widely as possible in Australia, and, in particular, to include the study of the text of the Convention in Australia's programs of military and, if possible, civil instruction, so that the principles of the Convention may become known to all their armed forces and to the entire population.

*Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*

Australia has international obligations under Article 144 of the Fourth Geneva Convention to disseminate the text of the Convention as widely as possible in Australia and, in particular, to include the study of the text of the Convention in Australia's programs of military and, if possible, civil instruction, so that the principles of the Convention may become known to the entire population.

*Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*

Australia has international obligations under Article 83 of Protocol I, to disseminate the Geneva Conventions and Protocol I as widely as possible in Australia and, in particular, to include the study of the Geneva Conventions and Protocol I in Australia's programs of military instruction and to encourage the study of the Geneva Conventions and Protocol I by the civilian population, so that those instruments may become known to the armed forces and to the civilian population.

*Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III)*

Australia has international obligations under Article 7 of Protocol III, to disseminate Protocol III as widely as possible in Australia and, in particular, to include the study of the Protocol in Australia's programs of military instruction and to encourage the study of the Protocol by the civilian population, so that it may become known to the armed forces and to the civilian population.

Grant funding provided to the ARCS is directed at ensuring that the Geneva Conventions and their Additional Protocols, as listed above, are disseminated as widely as possible through the ARCS's international humanitarian law dissemination activities.

**Item 2 – 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.

New **table item 644** establishes legislative authority for government spending on the Support for victims of identity crime and misuse program (the program). The program aims to provide funding to identity crime and cybercrime support service providers to deliver specialised

support to victims of identity crime over the internet or telephone or via another telecommunications service.

The program responds to the *2023-2030 Australian Cyber Security Strategy*, announced in the 2023-24 Mid-Year Economic and Fiscal Outlook, which includes additional funding of \$21.2 million for services to support victims of identity crime.

All Australians are potential victims of identity crime. A study by the Australian Institute of Criminology found that identity crime cost Australia more than \$3.6 billion in 2019 and affected more than 20 per cent of Australians ([https://www.aic.gov.au/sites/default/files/2021-12/sb37\\_identity\\_crime\\_and\\_misuse\\_in\\_australia\\_results\\_2021\\_survey.pdf](https://www.aic.gov.au/sites/default/files/2021-12/sb37_identity_crime_and_misuse_in_australia_results_2021_survey.pdf)). In this environment, support services to victims of identity crime are an important requirement for the foreseeable future.

The Government previously provided funding of \$6.1 million over four years from 2020-21 to the National Identity Crime and Cybercrime Support Service (NICCSS) program to support victims of identity crime. The NICCSS was in response to the *Australia's Cyber Security Strategy 2020* and was administered by the Department of Home Affairs (Home Affairs). Legislative authority for the NICCSS was provided through table item 445 in Part 4 of Schedule 1AB to the Principal Regulations.

The NICCSS has assisted more than 25,000 individuals per year or 0.1 per cent of the Australian population. The need for support for victims of identity crime is growing. Historical trends have shown that case management services have grown at an average of 26 per cent per year since 2020-21, and trends to date indicate this demand will continue to grow, fuelled to a large extent by large scale data breaches.

Legislative authority under new table item 644 will broaden the program scope of services to support victims of identity crime. Additional funding will be provided to the Identity Care Australia and New Zealand Ltd (IDCARE), the current service provider to deliver specialist services until 30 June 2024. Services beyond 30 June 2024 will be delivered by a specialist service provider, which will be selected after a competitive approach to the open market.

IDCARE provides specialist identity and cyber support services to reduce harm from the compromise and misuse of victims' identity information. It is currently contracted to provide these specialist support services until January 2025. IDCARE has been providing services under the NICCSS since January 2021 and has met all contractual obligations. To ensure continuity of service for victims of identity crime, it is appropriate to continue to fund IDCARE while a competitive procurement of a specialist service provider from 1 July 2024 is conducted.

Additional funding of \$21.2 million over five years from 2023-24 is provided to the program to enable the continuation of services for a further four years beyond June 2024, including funding for case management services via phone and online services, to allow victims of identity crime to obtain specialised support. This support reduces the social and economic impact of identity crime and cybercrime in Australia by ensuring victims have the specialist support they need to recover. It will help individuals to better protect themselves and other Australians from future identity-related harm by:

- identifying and guiding individuals on key steps in recovering identity;
- advising how to mitigate damage that has already occurred;



- reviewing and where necessary advising on how to replace identity credentials; and
- educating individuals on danger signs that their compromised identity is continuing to be misused.

The program will expand eligibility for support services to all Australians who are victims of identity crime where:

- a Commonwealth credential has been compromised;
- a Commonwealth agency has referred the person;
- the incident involves compromise of a Commonwealth system; and
- identity compromise has resulted in fraud against a Commonwealth agency.

The program does not limit the proposed services to individuals and business who have had their identities stolen or misused online.

The department will procure services to deliver the program in accordance with applicable legislative requirements under the PGPA Act, the *Commonwealth Procurement Rules* (CPRs) and the department's Accountable Authority Instructions. The procurement method for services for years beyond the current contract is a competitive approach to the open market. The successful respondent will be determined in accordance with the CPRs by an evaluation team of subject matter and technical experts, as appropriate.

A contract variation to the existing contract with IDCARE will be required to provide the additional funding to ensure continuity of service provision until 30 June 2024.

Final spending decisions will be made by the Secretary of the department or an appropriate delegate depending on the value of the procurement. For contracts less than \$10.0 million, the relevant delegate is the Deputy Secretary of the National Security and Criminal Justice Group (SES Band 3).

Contractual obligations will require the service provider to participate in audit and compliance activities to ensure that services:

- are delivered to contractual quality requirements;
- represent value for money; and
- provide value to Australian victims.

Procurement decisions will be made in accordance with the PGPA Act and the CPRs. The department will provide an opportunity for suppliers and tenderers to make complaints if they wish, and to receive feedback. These complaints and inquiries can be made at any time during the procurement process, and will be handled in accordance with probity requirements. Information about the tender and the resultant contracts will be made available on AusTender ([www.tenders.gov.au](http://www.tenders.gov.au)) once the contracts are signed. Procurement decisions will be based on value for money, including capability and capacity to deliver, price, and risk considerations.

The department will also:

- manage all contracts for the above services;
- facilitate dissemination of reporting to relevant Government agencies;
- administer Program delivery, quality, compliance, and audit activities; and
- report on performance of the program.

Procurement decisions made in connection with the program are not considered suitable for independent merits review, as they are decisions relating to the allocation of a finite resource, from which all potential claims for a share of the resource cannot be met. In addition, any funding that has already been allocated would be affected if the original decision was overturned. The ARC 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 ARC guide).

The remaking of a procurement decision after entry into a contractual arrangement with a successful provider is legally complex, impractical, and could result in delays to providing services to platform users. The *Government Procurement (Judicial Review) Act 2018* enables suppliers to challenge some procurement processes for alleged breaches of certain procurement rules. This legislation might provide an additional avenue of redress (compensation or injunction) for dissatisfied providers or potential providers, depending on the circumstances.

The *2020 Cyber Security Strategy* (the Strategy) was informed by extensive community consultation and expert advice from the Government's Industry Advisory Panel. Over 200 written submissions were received in response to a public discussion paper and more than 1,400 people nationwide were engaged in face-to-face consultations, including workshops, roundtables and bilateral meetings. Further information is available at <https://www.homeaffairs.gov.au/about-us/our-portfolios/cyber-security/strategy>.

The Minister for Cyber Security appointed an Expert Advisory Board to advise on the development of the Strategy. The Expert Advisory Board released a discussion paper seeking public views on how government can achieve its vision under the Strategy. The public consultation period for the discussion paper was open from 27 February 2023 to 15 April 2023. Home Affairs received over 330 submissions in response to the discussion paper.

In addition to the discussion paper, Home Affairs hosted over 50 consultation events, including stakeholder roundtables, and spoke to approximately 200 businesses, community groups and individuals regarding the Strategy. Additional support, including an expansion to the program scope was a result of the consultation. The Australian Government's decision to continue these services is informed by the experience of the existing service provider (IDCARE) and the expected demand on services into the future.

Funding of \$21.2 million over five years from 2023-24 for the program is included in the 2023-24 Mid-Year Economic and Fiscal Outlook and the Portfolio Additional Estimates Statements for the Attorney-General's portfolio. Funding will come from Program 1.6: Justice Services, which is part of Outcome 1.

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 in (section 51(v));
- the social welfare power in (section 51(xxiiiA)); 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'.

The program will fund identity crime and cybercrime support service providers to provide specialised supports to victims of identity crime over the internet, over the telephone, or via another telecommunications service.

### Social welfare power

Section 51(xxiiiA) of the Constitution empowers the Parliament to make laws with respect to the provision of certain social welfare benefits include 'provision of maternity allowances, widows' pensions, child endowment, unemployment, pharmaceutical, sickness and hospital benefits, medical and dental services (but not so as to authorize any form of civil conscription), benefits to students and family allowances'.

The program will fund identity crime and cybercrime support service providers to provide specialised supports to victims of identity crime to recover from identity crimes and scams in relation to Commonwealth social welfare programs.

### Territories power

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

The program will fund activities which are carried out 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 (Attorney-General's Portfolio 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 (Attorney-General's Portfolio Measures No. 2) Regulations 2023* (the Regulations) amend Schedule 1AB to the FFSP Regulations to establish legislative authority for government spending on certain activities to be administered by the Attorney-General's Department.

This disallowable legislative instrument makes the following amendment to Part 3 of Schedule 1AB:

- adds table item 77 'Grants to the Australian Red Cross Society';

and the following amendment to Part 4 of Schedule 1AB:

- adds table item 644 'Support for victims of identity crime and misuse'.

#### **Table item 77 – Grants to the Australian Red Cross Society**

Table item 77 establishes and updates legislative authority for the Government to provide grants to the Australian Red Cross Society (ARCS).

Australia is required under each of the Geneva Conventions and their Additional Protocols to disseminate international humanitarian law, based on the Conventions and Protocols as widely as possible. Consistent with this obligation, successive governments (since at least 1991) have funded the international humanitarian law activities of the ARCS through various closed non-competitive grant agreements.

The ARCS promotes international humanitarian law in academic circles and professional sectors (such as the legal, humanitarian and medical sectors), delivers training to the public service and defence forces, participates in relevant conferences and events and disseminates information about the law of armed conflict and principle of humanity to the broader Australian community.

Grants funding of \$2.1 million over five years from 2019-20 is currently allocated to the ARCS.

### **Human rights implications**

Table item 77 does not engage any of the applicable human rights or freedoms.

### **Conclusion**

Table item 77 is compatible with human rights as it does not raise any human rights issues.

### **Table item 644 – Support for victims of identity crime and misuse**

Table item 644 establishes legislative authority for government spending on the Support for victims of identity crime and misuse program (the program). The program aims to provide funding to identity crime and cybercrime support service providers to deliver specialised supports to victims of identity crime over the internet or telephone or via another telecommunications service.

Funding of \$21.2 million over five years from 2023-24 will be provided for case management services via phone and online services, to allow victims of identity crime to obtain specialised support. This support reduces the social and economic impact of identity crime and cybercrime in Australia by ensuring victims have the specialist support they need to recover. It will help individuals better protect themselves and other Australians from future identity-related harm by:

- identifying and guiding individuals on key steps in recovering their identity;
- providing advice on how to mitigate damage that has already occurred;
- reviewing, and where necessary advise, individuals on how to replace identity credentials; and
- educating individuals on danger signs that the compromised identity is continuing to be misused.

### **Human rights implications**

Table item 644 engages the following right:

- the right to the protection of the law against interference or attacks – Article 17 of the *International Covenant on Civil and Political Rights* (ICCPR), read with Article 2, Article 22 of the *Convention on the Rights of Persons with Disabilities* (CRPD), read with Article 4 and Article 16 of the *Convention on the Rights of the Child* (CRC), read with Article 4.

*Right to the protection of the law against interference or attacks*

Article 2 of the ICCPR requires States Parties to ensure that individuals are not subject to discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 17 of the ICCPR prohibits arbitrary or unlawful interference with a person's privacy, family, home or correspondence and unlawful attacks on a person's honour or reputation. It also provides that everyone has the right to the protection of the law against such interference or attacks.

The right to privacy articulated in Article 17 may be subject to permissible limitations that are authorised by law, are not arbitrary, pursue a legitimate objective, are necessary to achieve that objective, and are a proportionate means of achieving it. In order for an interference with the right to privacy not to be arbitrary, the interference must be for a reason consistent with the provisions, aims and objectives of the ICCPR and be reasonable in the particular circumstances. The United Nations Human Rights Committee has interpreted 'reasonableness' in this context to mean that 'any interference with privacy must be proportional to the end sought and be necessary in the circumstances of any given case'.

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 4(a) provides that States Parties undertake to adopt 'all appropriate legislative, administrative and other measures' to implement rights recognized in the Convention.

Article 22 of the CRPD provides that no person with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence or other types of communication or to unlawful attacks on their honour and reputation. Persons with disabilities have the right to the protection of the law against such interference or attacks.

Article 4 of the CRC provides that States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the Convention.

Article 16 of the CRC provides that no child shall be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence, nor to unlawful attacks on their honour and reputation.

Table item 644 engages with these articles by providing relevant support and assistance to victims of identity-related crime to help them recover from such crime and help prevent future harm. Support services provide relevant knowledge, tools and methods to help victims deal with the consequences of identity crime and assist them with prevention measures to prevent future harm. This assistance therefore directly supports the prevention, investigation and prosecution of crimes outlined in the Commonwealth Criminal Code, such as the identity fraud offence under section 372.1.

The program will provide for comprehensive reporting services to assist Government agencies in the detection, prevention, and investigation of identity-related fraud in connection with the Australian Government programs. This support assists with the development of new privacy protections and aids the development of strategies to predict and prevent identity-related crime, as well as the development of new programs to mitigate the consequences of such attacks.

While victims will need to provide their personal information to service providers in order to receive these support services, access to these services is voluntary, and any information provided will be handled in accordance with the *Privacy Act 1988*. The service provider will be required to affirm its commitment to the laws and regulations of Australia in relation to Privacy, including the Australian Privacy Principles. The service provider will be required to outline publicly (for example, on its website) what information it collects, why it collects it and how it collects this information.

The funding promotes equality by providing specialist support services which allow for a broader range of persons to receive support. The service provider will be able to utilise the Government's Free Interpreting Service to assist communication with non-English speaking people who hold a Medicare card. It will also be able to utilise national relay services in Australia to provide services to deaf, hearing impaired, speech impaired, and standard phone users.

### **Conclusion**

Table item 644 is compatible with human rights because it promotes the protection of human rights.

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