

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. 1) Regulations 2024*

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 (Health and Aged Care Measures No. 1) Regulations 2024* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on the Women and Girls in Sport – Play Our Way program (the program). The program will be administered by the Department of Health and Aged Care.

On 19 August 2023, the Government announced a \$200.0 million program to promote equitable access for women and girls to participate in sport, which highlights the Government’s commitment to gender equality.

The program will fund activities to build more suitable facilities, and support grassroots initiatives to address discrimination and inequality experienced by women and girls in relation to accessing and participating in sport and physical activity.

The priorities of the program will be aligned to the key themes that will be focal points of the National Sport Plan, and the Government’s commitment under National Preventive Health Strategy to increase physical activity.

Details of the Regulations are set out at [Attachment A](#). A Statement of Compatibility with Human Rights is at [Attachment B](#).

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence on the day after registration on the Federal Register of Legislation.

Consultation

In accordance with section 17 of the *Legislation Act 2003*, consultation has been undertaken with the Department of Health and Aged Care.

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

Details of the *Financial Framework (Supplementary Powers) Amendment (Health and Aged Care Measures No. 1) Regulations 2024*

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. 1) Regulations 2024*.

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 a 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 Health and Aged Care (the department).

New **table item 649** establishes legislative authority for government spending on the Women and Girls in Sport – Play Our Way program (the program).

On 19 August 2023, the Government announced funding of \$200.0 million over four years from 2023-24 for a program to promote equitable access, build more suitable facilities, and support grassroots initiatives to engage women and girls in sport and physical activity throughout their lives. The media release is at <https://www.health.gov.au/ministers/the-hon-anika-wells-mp/media/securing-a-sporting-legacy-for-women-and-girls>.

The objectives of the program are to:

- build and upgrade sport and physical activity facilities to better meet the needs of women and girls by prioritising equitable and enduring access and use of these facilities for the purpose of women and girls' participation in sport and physical activity. For example, construction of new changerooms at a facility for sport and

physical activity improve access, safety and use by women and girls to allow equitable access to the use of the facility;

- foster positive experiences for women and girls through quality sport and physical activity participation initiatives, and equipment, that are modern, inclusive, welcoming, safe, and tailored to the needs of women and girls, including those experiencing intersectional disadvantage. For example, a local club may establish a program over three years for women's basketball for culturally diverse communities;
- provide enduring programs and initiatives that address barriers for women and girls to participate in sport and physical activity, and build a culture of equality, respect, and inclusion in sport and physical activity. For example, a club may establish a program over two years to promote increased women and girls' engagement in various sport roles including coaching and officiating; and
- address discrimination and inequality that women and girls encounter and provide opportunities to participate in, contribute to, and remain involved in, all aspects of sport and physical activity for life. For example, a club may construct a new and/or modified showers and toilets, to make them more inclusive, safe, and accessible, and provide equitable and enduring opportunities for women and girls to train and compete.

The priorities of the program are aligned to the key themes under the *Sport 2023 - National Sport Plan* (the Plan) (<https://www.sportau.gov.au/nationalsportplan>), including building a more active Australia, personal development, strengthen our communities and social connectedness. The program's priorities also align to the draft principles and priorities (such as participations; diversity, equity, and inclusion; safety; and leadership) proposed for the new Plan as well as the Government's commitment under the *National Preventive Health Strategy* to increase physical activity. Additionally, the program highlights the Government's commitment to gender equality.

Funding will be provided via two streams. Stream 1: Facilities, will provide grants between \$50,000 and \$2,000,000, and Stream 2: Participation and Equipment, will provide grant funding between \$50,000 and \$1,000,000. The organisations eligible for the grants must be one of the following entity types:

- Indigenous Corporation (registered under the Corporations (Aboriginal and Torres Strait Islander) Act 2006);
- Company;
- Local Government;
- Cooperative;
- Incorporated Association; and/or
- Unincorporated Association.

Funding for the program will be provided through an open-competitive grant and will be administered in accordance with the *Public Governance, Performance and Accountability Act 2013* and the *Commonwealth Grants Rules and Guidelines 2017* (CGRGs).

The program will be administered by the department which will work closely with the Community Grants Hub (part of the Department of Social Services) in delivering the Establish and Manage phases of the grant program. The Community Grants Hub role during the Establish phase includes execution of the grant agreement with approved applicants. The Manage phase includes standard contract management, liaison with grantees, and milestone

reporting and potential variations. Information about the grant including the grant opportunity guidelines will be made available on the GrantConnect website (help.grants.gov.au).

The Secretary of the department will be responsible for approving funding provided for the program. Decisions will be informed by an assessment committee made up by staff within the Office for Sport Division of the department and may include personnel from other internal and external areas of the department, as appropriate. External experts and advisors may also inform the assessment process, including the program's Expert Advisory Panel (the panel).

The Panel had four members, supported by a Chair and Secretariat from the Office for Sport. The members bring with them a wide range of lived experience as women navigating community sport through to professional sport to inform the design the program to ensure it produces the most needed projects in the most needed areas.

Any expert/advisor, who is not a Commonwealth official, will be required/expected to perform their duties in accordance with the CGRGs. The establishment of a Panel for this purpose is consistent with the Government's broader commitment to transparency and accountability in the design and implementation of grants.

General feedback relating to this grant opportunity will be published on the department's website within 30 days of the outcome being finalised.

Independent merits review of decisions made in connection with the program would not be considered appropriate because the decisions relate to an allocation of finite resources from which all potential claims for a share of the funding cannot be met. Overturning any original decision will affect any party who have been allocated the funding. 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 4.15 of the guide, *What decisions should be subject to merit review?* (ARC guide)).

Additionally, some grants will be provided as one-off grants to specific service providers and community groups. The program is for local governments, community organisations, the not-for-profit sector and sporting organisations to seek funding for localised solutions and improvements. The ARC considers that decisions to provide one-off payments to certain service providers, over other service providers, should also be excluded from merits review. This is because:

- review would only promote competition among community groups;
- no effective remedy could be provided, as a successful application for review by one service provider would require a reduction in funding to other service providers; and
- there would be delays in channelling funds into service provision.

The ARC considers that decisions in relation to one-off payments should also be excluded from independent merits review as there would be delays in channelling funds into service provision (see paragraphs 4.16 to 4.17 of the ARC guide).

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

Program design was undertaken in consultation with the Expert Advisory Panel announced by the Prime Minister, Commonwealth Agency Working Group (CAWG), independent probity advisor and Streamlined Grants Branch, within the department. Advice was also sought from state and territory government agencies. The CAWG included the:

- Office for Women within the Department of the Prime Minister and Cabinet;
- National Indigenous Australians Agency;
- Department of Infrastructure, Transport, Regional Development, Communications and the Arts; and
- Australian Sports Commission.

The outcome of these consultations provided valuable insights for program design particularly given activities relate closely to their core business. These insights allowed for the development of the grant guidelines to be fit for purpose and target the correct audience.

Funding of \$200.0 million for the program was included in the 2023-24 Mid-Year Economic and Fiscal Outlook under the measure ‘Play Our Way’ for a period of four years commencing in 2023-24. Details are set out in the *Mid-Year Economic and Fiscal Outlook 2023-24, Appendix A: Policy decisions taken since 2023-24 Budget* at page 266.

Funding for this item will come from Program 4.1: Play Our Way, which is part of Outcome 4. Details will be included in the Portfolio Additional Estimates Statements for the Health and Aged Care Portfolio.

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

External affairs power

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

Funding under the grants program would give effect to Australia’s obligations under the *Convention on the Elimination of all Forms of Discrimination against Women* [1983] ATS 9 (CEDAW).

Article 3 of the CEDAW obliges each State Party to take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, 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 10 of the CEDAW obliges each State Party to take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and including in particular to ensure, on a basis of equality of men and women, women have the same opportunities to participate actively in sports and physical education.

Article 13 of the CEDAW obliges each State Party to take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, including the right to participate in recreational activities, sports and all aspects of cultural life.

Expenditure under this program promotes the participation of women and girls in sport, thereby enabling women and girls to have the same opportunities as men in relation to access and participation in sports and physical activity.

Funding under the grants program would also give effect to Australia's obligations under the *Convention on the Rights of the Child* [1991] ATS 4 (CRC).

A general obligation is imposed on parties to the CRC under Article 4 to implement the rights set out in the CRC through appropriate legislative or administrative measures.

Article 6 of the CRC obliges each State Party to recognise that every child has the inherent right to life, and to ensure to the maximum extent possible the survival and development of the child.

Article 18 of the CRC obliges each State Party, in recognising the common responsibility of both parents (or legal guardians) as having the primary responsibility for the upbringing and development of the child, to: render appropriate assistance to parents (or legal guardians) in the performance of their child-rearing responsibilities; ensure the development of institutions, facilities and services for the care of children; and, take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 31 of the CRC obliges each State Party to recognise the right of the child to leisure, to engage in play and recreational activities appropriate to the age of the child and to participate in cultural life. Further, this article obliges each party to respect and encourage the provision of appropriate and equal opportunities for the child relating to cultural, recreational and leisure activity.

Expenditure under this program promotes the opportunity for girls' access and participation in sports, thereby facilitating their right to recreational, cultural and leisure activity as well as their development including their legal parents' ability to support such development.

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. 1) Regulations 2024

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. 1) Regulations 2024* (the Regulations) amend Schedule 1AB to the FFSP Regulations to establish legislative authority for government spending on the Women and Girls in Sport – Play Our Way program (the program). The program will be administered by the Department of Health and Aged Care.

Funding of \$200.0 million over four years from 2023-24 will deliver the following program objectives:

- build and upgrade sport and physical activity facilities to better meet the needs of women and girls and prioritise equitable and enduring access and use of these facilities for the purposes of women and girls' participation in sport and physical activity;
- foster positive experiences for women and girls through quality sport and physical activity participation initiatives, and equipment, that are modern, inclusive, welcoming, safe, and tailored to the needs of women and girls, including those experiencing intersectional disadvantage;
- provide enduring programs and initiatives that address barriers for women and girls to participate in sport and physical activity and build a culture of equality, respect and inclusion in sport and physical activity; and
- address discrimination and inequality that women and girls encounter and provide opportunities to participate in, contribute to, and remain involved in, all aspects of sport and physical activity for life.

Human rights implications

This disallowable legislative instrument engages the following human rights:

- the rights of women not to be discriminated against based on gender – Articles 10 and 13 of the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), read with Article 3; and
- the rights of the child – Articles 6, 18 and 31 of the *Convention on the Rights of the Child* (CRC), read with Article 4.

Rights of women not to be discriminated against based on gender

Article 3 of the CEDAW obliges each State Party to take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, 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 10 of the CEDAW obliges each State Party to take all appropriate measures to eliminate discrimination against women to ensure to them equal rights with men in the field of education and including in particular to ensure, on a basis of equality of men and women, women have the same opportunities to participate actively in sports and physical education.

Article 13 of the CEDAW obliges each State Party to take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, including the right to participate in recreational activities, sports and all aspects of cultural life.

This disallowable legislative instrument will promote the participation of women and girls in sport, thereby enabling women and girls to have the same opportunities as men in relation to access and participation in sports and physical activity. The program will promote equal access, build more suitable facilities, and support grassroots initiatives to get women and girls to engage, stay, and participate in sport throughout their lives. The program is consistent with guaranteeing women the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Rights of the child

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

Article 6 of the CRC obliges each State Party to recognise that every child has the inherent right to life, and to ensure to the maximum extent possible the survival and development of the child.

Article 18 of the CRC obliges each State Party, in recognising the common responsibility of both parents (or legal guardians) as having the primary responsibility for the upbringing and development of the child, to: render appropriate assistance to parents (or legal guardians) in the performance of their child-rearing responsibilities; ensure the development of institutions, facilities and services for the care of children; and, take all appropriate measures to ensure

that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 31 of the CRC obliges each State Party to recognise the right of the child to leisure, to engage in play and recreational activities appropriate to the age of the child and to participate in cultural life. Further, this article obliges each party to respect and encourage the provision of appropriate and equal opportunities for the child relating to cultural, recreational and leisure activities.

The disallowable legislative instrument will promote the opportunity for girls' access and participation in sports, thereby facilitating their right to recreational, cultural and leisure activity as well as their development including their legal parents' ability to support such development. The program will promote the right of children by promoting equal access, building more suitable facilities, and supporting grassroots initiatives to get girls to engage, stay, and participate in sport. The program will create new opportunities for families and communities to come together to building safer, modern environments for girls to play sport. It will assist in the development of girls. The program is consistent with provisioning appropriate and equal opportunities for girls relating to cultural, recreational and leisure activity.

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**