

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. 3) 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. 3) Regulations 2024* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for Government spending on activities administered by the Department of Health and Aged Care (the department).

Funding is provided for the:

- Aged Care Transition to Practice Program to support nurses who are new to the aged care sector by providing training and mentoring and to support the Government's commitments to 24/7 Registered Nurse responsibility and care minutes targets, and the vision for a reformed aged care sector (\$10.3 million over three years from 2024-25); and
- Aged Care Skills Development Program to enhance the competency levels of direct care staff, including nurses, personal care workers, allied health workers, informal carers and volunteers already working in, and new to, aged care to ensure they have the skills required to deliver quality care in aged care facilities and in-home settings (\$2.0 million over three years from 2024-25).

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.

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. 3) 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. 3) 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 two new table items to Part 4 of Schedule 1AB to establish legislative authority for government spending on activities administered by the Department of Health and Aged Care (the department).

Table item 669 – Aged Care Transition to Practice Program

New **table item 669** establishes legislative authority for Government spending on the Aged Care Transition to Practice Program (the program) to support nurses who are new to the aged care sector by providing training and mentoring support.

The program assists with attracting and retaining nurses in the aged care sector, supporting the delivery of quality aged care services, and supporting the Government's commitments to 24/7 Registered Nurse responsibility and care minutes targets, and vision for a reformed aged care sector.

The program outcomes include:

- providing a supportive environment for nurses new to the aged care sector;
- building upon the clinical skills nurses develop during their studies with capabilities specifically required for the aged care sector;
- increasing the attractiveness of aged care nursing through mentorship and building career pathways; and
- enhancing provider capability to attract, develop and retain new nurses to the aged care sector.

Nurses who take part in the program receive specialist training in aged care and gerontological nursing. The program is available to aged care nurses who are:

- newly graduated registered nurses;
- newly graduated enrolled nurses; and
- experienced nurses who have recently transitioned to the aged care sector.

One or more external service providers will be engaged through an open tender procurement method to deliver the program. The external service providers are expected to develop and implement a program which provides:

- specialist gerontological nursing training to each participant;
- a senior nurse mentor for each participant; and
- additional supports to First Nations participants and mentors.

The external service providers will be offered a contract for services which specify the funding amount provided based on the number of participants to be put through the program. The external service providers are required to report quarterly on progress towards meeting their target numbers. They are also required to report quarterly on data relating to participant commencement and completion numbers.

The beneficiaries of the program are nurses new to the aged care sector, aged care providers and older people. Nurses benefit from the program as they receive free training and mentoring from a senior nurse. Aged care providers benefit from having their nurses in the program as these nurses will be provided with additional specialist training and mentoring. The program will help providers to attract nurses to their workplace, and will help retain the nurses. Older people benefit from the program as there are more highly trained nurses working in the sector.

Funding amount and arrangements, merits review and consultation

Funding of \$10.3 million for the program was included in the 2024-25 Budget under the measure 'Improving Aged Care Support' for a period of three years commencing in 2024-25. Details are set out in the *Budget 2024-25, Budget Paper No. 2, Budget Measures*, at page 112.

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 2024-25 Budget Related Paper No. 1.9 Health and Aged Care Portfolio* at page 92.

The department will procure a number of organisations to develop and implement the Aged Care Transition to Practice Program, in accordance with applicable legislative requirements under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), the

Commonwealth Procurement Rules (CPRs) and the department's Accountable Authority Instructions. An open procurement will be undertaken to select the organisations to deliver the program.

The Request for Tender and information about the procurement will be available on the AusTender website at www.tenders.gov.au. The department will administer the selection process and manage the contracts for the services. Final spending decisions will be made by the accountable authority's delegate. The delegate will be the Senior Executive Service Band 1, Workforce Branch, Market and Workforce Division, Department of Health and Aged Care.

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 the AusTender website (www.tenders.gov.au) once the contracts are signed. Procurement decisions will be based on value for money, including capability and capacity to deliver, and price and risk considerations.

Procurement decisions made in relation to the Aged Care Transition to Practice 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 Administrative Review Council has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.11 to 4.19 of the guide, *What decisions should be subject to merit review?*).

The 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 department is consulting with the Aged Care Workforce Committee to help inform the statement of requirements in the request for tender. This advisory committee is made up of 20 key aged care workforce organisations/stakeholders, including aged care providers, unions, older person peak bodies, consumer representatives, First Nations representation, culturally and linguistically diverse bodies and academia. Public consultation will not be undertaken as it is not considered necessary. A probity advisor will be engaged to assist with the open procurement process.

Constitutional considerations

Noting that it is not a comprehensive statement of relevant constitutional considerations, the objective of the item references the external affairs power in 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. Australia has international obligations under the International Covenant on Economic, Social and Cultural Rights. Articles 2 and 12 require Australia to take steps necessary to create conditions that would assure medical service and medical attention in the event of sickness.

This program aims to support the retention of new and early career nurses in the aged care sector and increase their skills by providing training, education and professional development opportunities. The increased size and capability of the nursing workforce in the aged care sector will assist in ensuring that there is adequate medical service and medical attention available to older Australians who are sick.

Table item 670 – Aged Care Skills Development Program

New **table item 670** establishes legislative authority for Government spending on the Aged Care Skills Development Program (the program) to enhance the competency levels of direct-care staff including nurses, personal care workers, allied health workers, informal carers and volunteers already working in, and new to, aged care to ensure they have the skills required to deliver quality care in aged care facilities and in-home settings.

The short online modules are available free of charge to aged care workers, volunteers, caregivers supporting loved ones and anyone with an interest in improving care for older people.

The modules cover a range of topics, including dementia care, palliative and end of life care, trauma-informed care and cross-cultural awareness. Each module takes an average of 10 minutes to complete and contains an engaging video, a short quiz, a downloadable infographic and links to further resources and learning opportunities.

The training is voluntary for aged care workers to undertake and is not considered to be formal accredited training. The provider is required to report quarterly on progress towards achieving their deliverables and is required to report monthly on the data associated with the program, including how many people have enrolled and completed each individual module.

The beneficiaries of the program are direct care workers, volunteers, aged care providers and older people. Direct care workers and volunteers benefit from the program as they receive free training. Aged care providers benefit from having their workers better skilled and informed about key aged care topics. Older people benefit from the program as there are more skilled and informed workers and volunteers working in the sector.

Funding amount and arrangements, merits review and consultation

Funding of \$2.0 million for the program was included in the 2024-25 Budget under the measure 'Improving Aged Care Support' for a period of three years commencing in 2024-25. Details are set out in the *Budget 2024-25, Budget Paper No. 2, Budget Measures*, at page 112.

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 2024-25 Budget Related Paper No. 1.9 Health and Aged Care Portfolio* at page 92.

The University of Tasmania (the university) has developed a suite of modules called the Equip Aged Care Learning Packages, and currently hosts these modules on their Learning Management System. The university will be approached via a limited tender based on section 10.3(e) of the Commonwealth Procurement Rules, and will be asked to submit a quote to continue to host the modules and to update the existing modules and develop additional modules. If the quote is considered value for money, the university will be offered a contract for services which will specify the funding amount to be provided based on the number of modules to be developed and the target number of people who are expected to complete the training.

The department will manage the contract for the services. Final spending decisions will be made by the accountable authority's delegate. The delegate will be the Senior Executive Service Band 1, Workforce Branch, Market and Workforce Division, Department of Health and Aged Care.

Information about the contract will be made available on AusTender (www.tenders.gov.au) once the contract is signed. Procurement decisions will be based on value for money, including capability and capacity to deliver, and price and risk considerations.

Procurement decisions made in relation to 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 Administrative Review Council has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.11 to 4.19 of the guide, *What decisions should be subject to merit review?*).

The 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.

Public consultation was not undertaken as it is not considered necessary. In consultation with the department, the university will be required to consult broadly on each module it develops. For each new module, a separate Expert Advisory Group will be established which will contain persons with expertise on the particular subject. In addition, each module is checked by a First Nations person or persons to ensure it is culturally appropriate. The university will also be required to consult with the relevant Expert Advisory Group if it makes amendments or updates to a particular module. The department must be satisfied that appropriate consultation has occurred before it will approve the release of each module.

Constitutional considerations

Noting that it is not a comprehensive statement of relevant constitutional considerations, this item relies on the power to make laws with respect to ‘postal, telegraphic, telephonic, and other like services’ in section 51(v) of the Constitution.

Section 51(v) of the Constitution empowers the Parliament to make laws with respect to ‘postal, telegraphic, telephonic and other like services’. The education and training supported by the program will be provided using the internet, which is a like service.

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. 3) 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. 3) Regulations 2024* (the Regulations) amend Schedule 1AB to the FFSP Regulations to establish legislative authority for Government spending on activities administered by the Department of Health and Aged Care.

This disallowable legislative instrument inserts the following table items in Part 4 of Schedule 1AB:

- table item 669 ‘Aged Care Transition to Practice Program’; and
- table item 670 ‘Aged Care Skills Development Program’.

New table item 669 – Aged Care Transition to Practice Program

New **table item 669** establishes legislative authority for Government spending on the Aged Care Transition to Practice Program (the program) to support nurses who are new to the aged care sector by providing training and mentoring support.

The program assists with attracting and retaining nurses in the aged care sector, supporting the delivery of quality aged care services, and supporting the Government’s commitments to 24/7 Registered Nurse and Care Minutes, and the vision for a reformed aged care sector.

The intended outcomes of the program are to:

- provide a supportive environment for nurses new to the aged care sector;
- build upon the clinical skills nurses develop during their studies with capabilities specifically required for the aged care sector;

- increase the attractiveness of aged care nursing through mentorship and building career pathways; and
- enhance provider capability to attract, develop and retain new nurses to the aged care sector.

Funding of \$10.3 million over three years from 2024-25 is available for the program.

Human rights implications

Table item 669 engages the following right:

- the right of everyone to the enjoyment of the highest attainable standard of physical and mental health under Article 12 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), read with Article 2.

Right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Article 2 of the ICESCR requires each State Party to take steps to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights in the ICESCR by all appropriate means, including particularly the adoption of legislative measures.

Article 12(1) of the ICESCR recognises the ‘right of everyone to the enjoyment of the highest attainable standard of physical and mental health’. The steps to be taken by State Parties to achieve full realisation of the right to health 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
- the creation of conditions which would assure to all medical service and medical attention in the event of sickness (Article 12(2)(d)).

This program aims to support the retention of new and early career nurses in the aged care sector and increase their skills by providing training, education and professional development opportunities. The increased size and capability of the nursing workforce in the aged care sector will assist in ensuring that there is adequate medical service and medical attention available to older Australians who are sick.

This table item is compatible with human rights because it maintains existing arrangements and promotes the protection of human rights for Australians accessing aged care services.

New table item 670 – Aged Care Skills Development Program

The objective of the program is to enhance the competency levels of direct care staff (nurses, personal care workers and allied health workers) already working in, and new to, aged care to ensure they have the skills required to deliver quality care in aged care facilities and in-home settings. The training can also support skills development for informal carers and volunteers.

The proposed short, online modules will be available free of charge to aged care workers, volunteers, caregivers supporting loved ones and anyone with an interest in improving care

for older people. The program is intended to commence in 2024-25 and will end on 30 June 2027.

The modules would cover a range of topics, including dementia care, palliative and end of life care, trauma-informed care and cross-cultural awareness. Each module will take an average of 10 minutes to complete and contain an engaging video, a short quiz, a downloadable infographic and links to further resources and learning opportunities.

The training will be voluntary for aged care workers to undertake and is not considered to be formal accredited training.

Human rights implications

Table item 670 engages the following right:

- the right of everyone to the enjoyment of the highest attainable standard of physical and mental health under Article 12 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), read with article 2.

Right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Article 2 requires each State Party to take steps to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights in the ICESCR by all appropriate means, including particularly the adoption of legislative measures.

Article 12(1) of the ICESCR recognises the ‘right of everyone to the enjoyment of the highest attainable standard of physical and mental health’. The steps to be taken by State Parties to achieve full realisation of the right to health 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
- the creation of conditions which would assure to all medical service and medical attention in the event of sickness (Article 12(2)(d)).

The program aims to develop and deliver online educational and training materials about matters relevant to aged care including dementia care, trauma informed care, and palliative care.

This table item is compatible with human rights.

Conclusion

This disallowable legislative instrument is compatible with human rights as it promotes the protection of human rights for Australians accessing aged care services.

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