

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance

Financial Framework (Supplementary Powers) Act 1997

Financial Framework (Supplementary Powers) Amendment (Health Measures No. 4) Regulations 2020

The *Financial Framework (Supplementary Powers) Act 1997* (the FF(SP) 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 FF(SP) 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*.

Section 65 of the FF(SP) 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.

Section 32B of the FF(SP) 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. Schedule 1AA and Schedule 1AB to the Principal Regulations specify the arrangements, grants and programs.

The *Financial Framework (Supplementary Powers) Amendment (Health Measures No. 4) Regulations 2020* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on certain activities administered by the Department of Health.

Funding is provided for:

- a grant to the Trustee for Raise Foundation to develop and deliver a best-practice early intervention mentoring program aimed at preventing mental illness and reducing suicidal ideation in Year 8 students at public secondary schools in Australia (\$3 million in 2020-21);
- the Residential Aged Care Viability Program, which provides financial assistance to eligible residential aged care providers to ensure an adequate level of continued care for aged care residents (\$104.5 million over three years from 2019-20); and
- the Sport and Recreation Program, which supports activities relating to Australia hosting major international sporting events; promotes participation by all Australians in sport and recreation activities (for example, by providing funding for infrastructure or other resources); and fosters excellence in Australia's high performance (representative) athletes (for example, by investing in research, equipment and infrastructure) (\$408.8 million over four years from 2019-20).

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 the instrument is registered on the Federal Register of Legislation.

Consultation

In accordance with section 17 of the *Legislation Act 2003*, consultation has taken place with the Department of Health.

A regulation impact statement 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 Measures No. 4) Regulations 2020*

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Health Measures No. 4) Regulations 2020*.

Section 2 – Commencement

This section provides that the Regulations commence on the day after the instrument is registered on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the Regulations are made under the *Financial Framework (Supplementary Powers) Act 1997*.

Section 4 – Schedules

This section provides that the *Financial Framework (Supplementary Powers) Regulations 1997* are amended as set out in the Schedule to the Regulations.

Schedule 1 – Amendments

Financial Framework (Supplementary Powers) Regulations 1997

Item 1 – In the appropriate position in Part 3 of Schedule 1AB (table)

This item adds a new table item to Part 3 of Schedule 1AB to establish legislative authority for government spending on a certain activity that will be administered by the Department of Health (the department).

New **table item 45** establishes legislative authority for the Government to provide a grant to the Trustee for Raise Foundation (Raise Foundation) to develop and deliver a best-practice early intervention mentoring program aimed at preventing mental illness and reducing suicidal ideation in Year 8 students at public secondary schools in Australia.

It is conservatively estimated that there are 65,000 suicide attempts in Australia each year. In 2018, suicide was the leading cause of death of people aged 15 to 44 years and accounted for 3,046 lives lost. Suicide made up 40.3 per cent of all deaths among young people aged 15 to 19 years and 37.2 per cent of all deaths among young people aged 20 to 24 years.

While mental illness is not always a contributing factor, mental ill health significantly increases the risk of suicide. Approximately 560,000 children and adolescents are estimated to have mental illness and one in four young Australians aged 16 to 24 years experiences mental illness in any given year. Three quarters of all mental illnesses first manifest in people when they are under the age of 25 years.

The Government is committed to developing a more effective mental health system that supports the mental health and wellbeing of all Australians, including children and young people. Supporting young people to build resilience and help-seeking skills and increase mental health awareness and understanding, are essential components of the Government's strategy to prevent suicides and help improve the mental health and wellbeing of young people.

In July 2019, the Prime Minister announced that the Government is working towards zero suicides and appointed Ms Christine Morgan as the first National Suicide Prevention Adviser reporting directly to the Prime Minister.

On 30 January 2020, the Minister for Health, the Hon Greg Hunt MP, announced a \$64 million package of suicide prevention and mental health initiatives over five years from 2019-20 in response to early advice from the National Suicide Prevention Adviser. This announcement included a range of initiatives focusing on supporting some of the most vulnerable and at-risk groups, including young Australians. Details of the announcement are available at <https://www.greghunt.com.au/suicide-prevention-and-mental-health-package-signals-once-in-a-generation-reforms/>.

Under the Youth Mental Health and Suicide Prevention component of the Government's suicide prevention and mental health package, funding will be provided to a range of organisations to deliver programs and services aimed at preventing suicide and mental illness in young people aged 12 to 25 years by supporting good mental health and wellbeing. Among other initiatives, the Government will provide a one-off grant to Raise Foundation to promote the mental health and wellbeing of young Australian students by building resilience, self-belief and hope, which is important during times of hardship and uncertainty. Given Australia's recent natural disasters, and now the COVID-19 pandemic, it is more important than ever to deliver strong messages of self-belief and hope to young people, building their mental strength to overcome adversity.

The aims of the grant to Raise Foundation are improved mental health and wellbeing outcomes for young people, improved recovery from the recent natural disasters (bushfires and drought) and improved resilience to the current COVID-19 pandemic. These outcomes will help to protect young people against future mental health problems and reduce their risk of suicide.

Grant funding of \$3 million in 2020-21 will support Raise Foundation to develop and deliver their industry-leading early intervention and prevention mentoring program for Year 8 students in public secondary schools across Australia, prioritising those most at risk of disengagement and poor wellbeing.

Raise Foundation will deliver their mentoring program in up to 260 schools across two calendar years (or one financial year 2020-21), with 15 young people in each school program. Young people participating in the program will receive best-practice mentoring support by trained mentors who are supervised by degree qualified counsellors. The beneficiaries of Raise Foundation funding will be Year 8 students at public secondary schools across Australia.

The department will use a closed non-competitive selection process to award grant funding to Raise Foundation, in accordance with the requirements under the *Public Governance*,

Performance and Accountability Act 2013 and the Commonwealth Grants Rules and Guidelines 2017.

The department will develop grant opportunity guidelines, which will outline the objectives and outcomes of the government funding and the deliverables. A proposal from Raise Foundation will be assessed against the eligibility and assessment criteria in the grant opportunity guidelines. Grant administration and payments to Raise Foundation will be managed by the Community Grants Hub, which is part of the Department of Social Services.

A delegate of the Minister for Health will make the final decision to approve funding, subject to Raise Foundation's proposal representing an efficient, effective, ethical and economical use of Commonwealth resources, and any specific requirements needing to be imposed as a condition of funding.

The decision of the Minister's delegate is final in all matters, including:

- the assessment of the proposal;
- the grant funding amount to be awarded; and
- the terms and conditions of the grant.

The grant opportunity guidelines, assessment criteria and information about the grant decision will be available on GrantConnect (www.grants.gov.au).

The decision to provide funds to Raise Foundation is not considered suitable for independent merits review because the expenditure is one-off, time-limited and non-competitive. The Administrative Review Council has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.16 to 4.19 of the guide, *What decisions should be subject to merit review?*).

The direct source arrangement is considered appropriate because the funding will support existing programs and events. Raise Foundation has been delivering industry-leading, face-to-face, one-on-one mentoring programs for struggling young people in Australian secondary schools since 2008.

The department undertook detailed consultation with Raise Foundation, which has submitted to the department a detailed proposal outlining the details of their industry-leading early intervention and prevention mentoring program for Year 8 students and a detailed breakdown and description of proposed activities and budget.

Funding for Raise Foundation of \$3 million in 2020-21 was included in the July Economic and Fiscal Update under the measure 'COVID-19 Response Package – prioritising mental health and preventive health'. Details are set out in the *Economic and Fiscal Update July 2020*, Appendix A: Policy decisions taken since the 2019-20 MYEFO at page 136.

Funding will come from Program 2.1: Mental Health, which is part of Outcome 2. Details will be set out in the 2020-21 Portfolio Budget Statements for the Health Portfolio.

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.

Australia is a party to the *Convention on the Rights of the Child* (CRC). Article 4 imposes a general obligation on States Parties to implement, through appropriate legislative or administrative measures, the rights set out in the CRC. In particular, Article 24(1) relevantly provides:

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

In pursuing full implementation of this right, Article 24(2) requires States Parties to take appropriate measures:

- (a) to diminish infant and child mortality;
- (b) to ensure the provision of necessary medical assistance and health care to all children...;
- ...
- (e) to ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health...; and
- (f) to develop preventive health care, guidance for parents and family planning education and services.

This initiative will fund Raise Foundation to deliver a best-practice early intervention and prevention mentoring program for Year 8 students at public secondary schools across Australia to improve their mental health and wellbeing.

Australia is also a party to the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). Parties to the ICESCR are required to take steps with a view to achieving progressively the full realisation of the rights recognised in the ICESCR by all appropriate means (Article 2(1)). This includes the 'right of everyone to the enjoyment of the highest attainable standard of physical and mental health' (Article 12(1)).

The steps to be taken by States Parties to achieve the full realisation of the right to health are specified in Article 12(2) and include steps necessary for:

- (c) the prevention, treatment and control of epidemic, endemic, occupational and other diseases; and
- (d) the creation of conditions which would assure to all medical service and medical attention in the event of sickness.

This initiative will fund Raise Foundation to deliver a best-practice early intervention and prevention monitoring program for Year 8 students at public secondary schools across Australia which is aimed at reducing suicide rates in young people with mental illness. Services will be focused on ensuring young people can seek necessary support in times of need to prevent suicide attempts.

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

This item adds two new table items to Part 4 of Schedule 1AB to establish legislative authority for government spending on certain activities administered by the department.

New **table item 428** establishes legislative authority for government spending on the Residential Aged Care Viability Program (the Program). This table item will provide additional legislative authority for government spending on the Program, while initial spending on the Program was authorised under the *Aged Care Act 1997*.

The Program provides grant funding to eligible residential aged care providers to assist in ensuring the continuity of an adequate level of care for aged care residents and improving the viability of the sector, including assistance with managing the risks to the continuity of care for aged care residents as a result of the COVID-19 pandemic and the 2019-20 bushfires.

The Program is designed to assist residential aged care providers who are experiencing significant financial challenges and have limited access to other forms of funding. The objective of the Program is to ensure older Australians have access to an adequate level of residential aged care.

The Program includes grant activities as well as targeted prudential monitoring of the residential aged care sector which is undertaken by the department in consultation with experts from relevant disciplines, such as insolvency experts. New table item 428 provides legislative authority for government spending on the grant component of the Program only.

The Program is an important part of the Government's ongoing commitment to ensuring older Australians have access to care in residential aged care facilities. The Program recognises that a provider's ability to care for residents is significantly affected by the financial position when there is no or limited access to other sources of financial support.

Grant funding will initially be available until 30 June 2021 or until funds are exhausted. The Program has a national reach, with funding aiming to be distributed among all states and territories, as well as capital cities, rural, regional and remote locations. Funding priority is given to providers that can demonstrate that their financial position has been significantly affected by the 2019-20 bushfires and/or the COVID-19 pandemic, and where the provider is unable to access any other forms of support.

Government financial assistance aims to ensure an adequate level of continued care for aged care residents, including payments to support a residential aged care provider:

- in relation to the impact of COVID-19 on the aged care sector;
- to develop and undertake business improvement activities for sustaining the provision of residential aged care services;
- with the sale of a residential aged care facility to facilitate the provision of care for aged care residents by another residential aged care provider;
- to ensure the continuity of care for aged care residents upon the closure of a residential aged care facility.

Under the Program, grant funding may be provided:

- to help with essential operating costs or the implementation of particular business strategies, such as those identified through the Business Advisory Service or by an independent adviser, to improve the ability of the provider to deliver ongoing viable and sustainable residential aged care services in their local area;
- to facilitate the sale process with some financial support provided to incentivise a change of ownership to a new provider that will increase the likelihood of providing viable and sustainable aged care services in areas where service failure would be of higher risk to the delivery and/or continuity of care to residents; and
- for short-term financial support (of up to three months generally) in certain circumstances to support the provider to successfully transition residents to new residential homes of their choice.

The Business Advisory Service is a government initiative, which was announced in February 2019 as part of the Government's \$662 million aged care package to support older Australians. The initiative enables residential and home aged care providers to apply for free independent business advisory services, while targeting providers at risk from financial stress such as providers operating in rural and remote locations and smaller providers.

The objectives of the initiative are to:

- enable service providers to review current business operations and advise strategies to support their operations;
- assist service providers to remain viable and accountable for their service costs and prices; and
- enable service providers to share learning and strengthen business capability.

Specifically, the Business Advisory Service provides:

- an analysis of the financial results of the organisation;
- benchmarking the organisation's results against others in the industry using established industry standards such as the StewartBrown survey benchmark data;
- a review of the operations, strategy and governance arrangements of the organisation; and
- an action plan to implement opportunities identified for improvement.

The department engaged PricewaterhouseCoopers to deliver the Business Advisory Service and work with aged care providers that are experiencing financial stress and are concerned about their viability.

Under the Program, funding will be made available through targeted non-competitive and closed non-competitive grant opportunities administered by the Community Grants Hub, part of the Department of Social Services. Grants will be awarded in accordance with applicable legislative requirements under the *Public Governance, Performance and Accountability Act 2013* and the *Commonwealth Grants Rules and Guidelines 2017*. The grant selection process will include:

- an assessment of applications and financial information by the department and, where required, independent technical experts;
- an assessment by an assessment committee that will recommend applications for funding to the decision maker based on value with relevant money; and

- funding decisions which may be made by the Minister for Aged Care and Senior Australians, Senator the Hon Richard Colbeck (the Minister), or a delegate of the Secretary of the department (the decision maker).

The decision maker will consider whether the proposal represents an efficient, effective, ethical and economical use of Commonwealth resources, and whether any specific requirements need to be imposed as a condition of funding.

The decision of the Minister or a delegate of the Secretary of the department is final in all matters, including:

- the approval of the grant;
- the grant funding amount to be awarded; and
- the terms and conditions of the grant.

Grant Opportunity Guidelines will be available to potential applicants for all opportunities and successful grants will be published on GrantConnect (www.grants.gov.au).

Decisions made in connection with the Program will not be subject to independent merits review; and there is no appeal mechanism for decisions to approve or not approve a grant. However, if an applicant is unsuccessful, they may ask for feedback within one month of being advised of the outcome. Both successful and unsuccessful applicants can apply more than once in respect of a particular residential aged care facility. This recognises that a facility's financial situation can rapidly change.

It is justifiable to exclude a merits review in relation to funding decisions under the Program as such decisions relate to the allocation of a finite resource from which all potential claims for a share of the resource cannot be met. In addition, any payments that have already been made to a residential aged care provider 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 4.14 of the guide, *What decisions should be subject to merit review?*).

The department consults regularly with peak bodies representing the aged care sector and works closely with experts through a range of committees and forums including the Aged Care Financing Authority (ACFA).

The Program was designed taking into account general concerns about financial pressures in the sector published by the ACFA and StewartBrown. Reports have shown that a significant number of residential aged care providers have been facing viability challenges over a number of years, with many facilities operating at a loss (42 per cent in 2018-19 rising to around 56 per cent by December 2019).

The feedback from consultations with residential aged care providers that were undertaken by the ACFA suggest that the financial pressure that residential care providers experienced in 2017-18 and 2018-19 (discounting for the Government's one-off increase in funding through the Aged Care Funding Instrument in 2018-19) continued in 2019-20. Nearly all residential aged care providers who were consulted said that their financial results had deteriorated in 2019-20. This was confirmed in the StewartBrown Aged Care Financial Performance Surveys undertaken in 2019-20.

ACFA has also acknowledged that some rationalisation in the industry is needed, and while poorly performing providers should exit, disruptive and disorderly closure of services needs to be avoided which is consistent with the design and intent of the grant opportunities.

The Department of the Prime Minister and Cabinet, the Department of the Treasury and the Department of Finance were also consulted in the development of the Program.

Funding for the Program of \$104.5 million over three years from 2019-20 was included in the July Economic and Fiscal Update under the measures ‘Ageing and Aged Care’ and ‘COVID-19 Response Package – ageing and aged care’. Details are set out in the *Economic and Fiscal Update July 2020*, Appendix A: Policy decisions taken since the 2019-20 MYEFO at pages 130 and 132, respectively.

Funding will come from Program 6.3: Aged Care Quality, which is part of Outcome 6. Details will be set out in the 2020-21 Portfolio Budget Statements for the Health Portfolio.

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 external affairs power (section 51(xxix));
- the sickness benefits aspect of the social welfare power (section 51(xxiiiA)), including its incidental aspect;
- the Commonwealth executive power and the express incidental power (sections 51(xxxix) and 61), including the nationhood aspect; and
- the territories power (section 122).

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.

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

The steps to be taken by States Parties to achieve the full realisation of the right to the enjoyment of the highest attainable standard of physical and mental health are specified in Article 12(2) and include steps necessary for ‘the creation of conditions which would assure to all medical service and attention in the event of sickness’(Article 12(2)(d)).

The Program is directly targeted at the availability of medical services to sick people, by ensuring there is continued adequate care for aged care residents. Funding will be provided to assist aged care providers to remain operational, and assist those providers that are facing imminent closure to continue to fund essential activities.

Social welfare power, including its incidental aspect

The social welfare power in section 51(xxiiiA) of the Constitution empowers the Parliament to make laws with respect to the provision of certain social welfare benefits including sickness benefits.

The Program is directly targeted at the availability of medical services to sick people, by ensuring there is continued adequate care for aged care residents.

Executive power and express incidental power, including the nationhood aspect

The express incidental power in section 51(xxxix) of the Constitution empowers the Parliament to make laws with respect to matters incidental to the execution of any power vested in the Parliament, the executive or the courts by the Constitution. Section 61 of the Constitution supports activities that are peculiarly adapted to the government of a nation and cannot be carried out for the benefit of the nation otherwise than by the Commonwealth.

The Program may be targeted at assisting aged care providers dealing with the consequences of natural disasters and emergencies, such as the COVID-19 pandemic or the 2019-20 bushfires.

Territories power

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

The Program may be targeted at assisting aged care providers in territories.

New **table item 429** establishes legislative authority for the activities administered by the department under Program 3.1: Sport and Recreation Program, which is part of Outcome 3 of the department (the Sport and Recreation Program). This table item provides consolidated legislative authority for government spending on the majority of these activities, which are currently relying on multiple items in the *Financial Framework (Supplementary Powers) Regulations 1997*.

The objective of Program 3.1: Sport and Recreation is to support an increase in participation in sport and recreation activities by all Australians, foster excellence in Australia’s high-performance athletes and protect the integrity of Australian sport. This program also aims to further Australia’s national interests through sport, support the Australian sport sector, showcase Australia as a premier host of major international sporting events and improve water and snow safety. Details of the program delivery and performance criteria are set out in the *Portfolio Budget Statements 2019-20, Budget Related Paper No. 1.9, Health Portfolio* at pages 79 to 81.

There are a number of Commonwealth entities that contribute to Program 3.1: Sport and Recreation, including Sport Integrity Australia, the Australian Sports Commission (also known as Sport Australia), the Department of Foreign Affairs and Trade, and the Department of the Treasury. However, new table item 429 provides legislative authority for government spending only on those program activities administered by the department (except where

other legislation, including other items in the *Financial Framework (Supplementary Powers) Regulations 1997*, may provide authority for government spending on such activities).

The Sport and Recreation Program is designed to:

- increase participation in sport and recreation activities by all Australians in order to improve physical and mental health and prevent disease;
- increase participation in sport and recreation activities in order to increase social cohesion and eliminate racial, cultural or ethnic discrimination within the community;
- increase participation in sport and recreation amongst particular groups in society, including Indigenous Australians, children, women, non-citizens, immigrants and people with disabilities;
- support the delivery of major sporting events in Australia to increase socio-economic benefits to the Australian community; and
- foster excellence in Australia's high performance or elite (representative) athletes to promote sport and physical activity, and provide inspiration for all Australians to increase their sport and physical activity levels.

Program activities are delivered under a sports policy framework established by the Government's first national sports plan *Sport 2030* and sports diplomacy strategy *Sports Diplomacy 2030*. *Sport 2030* is the Government's strategic vision for sport and physical activity in Australia to create a healthier, more prosperous Australia known for its integrity and sporting prowess. *Sport 2030* was released in 2018 and is available at www.sportaus.gov.au/nationalsportplan.

Sports Diplomacy 2030 is the Government's strategy to bring *Sport 2030* to an international stage, leverage the nation's sporting expertise to enhance Australia's influence and reputation, and to advance Australia's national interests. *Sports Diplomacy 2019* was announced in 2019 and is available at www.dfat.gov.au/people-to-people/sport/Pages/sports-diplomacy-2030.

Under the Sport and Recreation Program, funding is provided to support activities across three broad streams:

- major international sporting events;
- increasing participation in sport and recreation activities; and
- achieving excellence in Australia's representative athletes.

Major international sporting events

The objective of the major international sporting events stream is to showcase Australia as a premier host of international sporting events through the bidding for and staging of major international sporting events in Australia. This stream includes a range of activities to support the bidding for and hosting of major sporting events in Australia. The department may fund third parties, such as national sporting organisations or established bid committees, to undertake activities to inform a decision by that third party as to whether or not to nominate to host an event or to inform a decision by the Government to support the nomination for the event, for example by funding economic and social impact analyses.

This stream also includes funding third parties to develop a compelling and high quality bids or hosting proposals for major international sporting events. These activities may include bid

staff employment, including engagement of technical consultants; marketing and communications; printing and translation of bid documentation; and bid advocacy activities.

In addition, this stream may provide funding to third parties to plan for and deliver major international sporting events in Australia to the high standards expected by international sporting governing bodies, including activities across the following areas:

- venue and other infrastructure development;
- support arrangements such as the security, medical, insurance and legal aspects;
- staffing costs;
- team/athlete operations including travel and accommodation;
- ceremonies and supporting events;
- research and knowledge sharing;
- broadcasting and media;
- ticketing and hospitality;
- transport; and
- marketing and promotion.

Funding recipients under this stream may include national sporting organisations; national sporting organisations for people with a disability; major event organisers, including events targeting women's sport and para-sports.

Examples of activities under this stream include:

- nomination activities to host events such as the Rugby World Cup 2027 bid, the Netball World Cup 2027 bid and the 2032 Olympic and Paralympic Games candidature;
- the Regional Events Fund which was established to support the staging of international sporting events in regional Australia; and
- event delivery activities for events such as the FIFA Women's World Cup 2023.

Increasing participation in sport and recreation activities

The key objective of this stream is to increase participation by all Australians in sport and recreation activities in order to improve physical and mental health and prevent disease. It includes a particular focus on increasing participation in sport and recreation among targeted community groups, including Indigenous Australians, children, women, non-citizens, immigrants and people with disabilities. This stream also aims to use sport as a vehicle to increase social cohesion and eliminate racial, cultural or ethnic discrimination within the Australian community.

Under this stream of the Sport and Recreation Program, the department funds third parties including national sporting organisations, state sporting organisations, community sporting organisations, other community groups and local councils to deliver a wide range of activities, including:

- sport and physical activity projects, including but not limited to coaching clinics to teach sports skills and techniques; participation in local sports competitions; and instruction in exercise and physical activity classes delivered by qualified instructors;
- recruitment and engagement of specialists including qualified instructors and language translators and interpreters to deliver sport and physical activity projects;
- research and data collection to support identification of opportunities to increase sport and physical activity levels;

- procurement of equipment, digital technology and business capability to support sport and physical activity;
- construction of or upgrades to community sporting infrastructure and facilities, including those specific to the development of functional and inclusive female change rooms and amenities; and
- educational resources and promotional activities to promote sport and physical activity.

While this stream is targeted at all Australians from childhood through to older age, there is also a particular focus on women and girls; newly arrived migrants and refugees; people with a physical or mental disability; and Aboriginal and Torres Strait Islander peoples.

Examples of activities funded through this stream include:

- Driving Social Inclusion through Sport and Physical Activity program, which is an initiative to help migrant groups, people with physical and intellectual disabilities and Aboriginal and Torres Strait Islander peoples to participate in sport and physical activity;
- Community Development Grants (Sport) Program, which is a sports stream of the Community Development Grants Program to fund improvements to local community sport infrastructure;
- Community Sport Infrastructure – Female Facilities and Water Safety Stream program, which is a grants program to construct and upgrade female change rooms and amenities to improve opportunities for females to play sport and be physically active, and to construct and upgrade community swimming facilities to make them safer for all groups in the community; and
- Netball Australia's NetSetGo program, which provides netball training sessions to children aged five to 10 years to teach them basic netball skills.

Achieving excellence in Australia's representative athletes

The objectives of this stream are to foster and support the achievement of excellence in Australia's high performance or elite (representative) athletes, including through improving Australia's ability to identify and develop high performance and elite athletes, including para-athletes, to compete internationally. This stream also aims to enable and empower sports to achieve sustained sporting success on domestic and international sporting stages, and promote gender equality in professional sport by supporting female athletes and women in leadership in sport.

These objectives are consistent with those of the Australian Sports Commission, which is also funded through Program 3.1: Sport and Recreation Program. It is ultimately a decision of the Government to determine whether activities to foster and support the achievement of excellence in Australia's representative athletes are funded through the department or the Australian Sports Commission.

High performance sporting activities are managed by national sporting organisations, state sporting organisations, or, if event related, event organisers. Under this stream of the Sport and Recreation Program, the department funds these third parties to deliver a wide range of activities, including:

- infrastructure development and upgrades such as:
 - competition environments;

- elite training facilities;
- strength and conditioning areas;
- aquatic training zones;
- medical and sports science facilities; and
- administrative offices.
- training programs for national and other representative athletes;
- programs to identify and nurture future Australian sporting representatives;
- research and equipment to enhance athlete development and performance;
- digital technology and projects to promote optimal training methods, strategies and protocols for athlete development and performance;
- training and education programs for non-playing roles such as coaches, referees/umpires and sport administrators;
- programs to identify and develop sport governance and administration expertise, particularly for women; and
- recruitment and engagement of coaches, officials and administrators to optimise athlete development and performance.

This stream targets Australia's high performance and elite athletes (including future Australian sporting representatives); women and girls; para-athletes and athletes with a disability; and sports administrators and officials.

Examples of activities under this stream include:

- establishing high performance facilities for the Australian Matildas (soccer) and Diamonds (netball);
- the Regional Events Fund to provide opportunities for Australian athletes to compete at an international level in Australia through bringing international sporting events to regional Australia;
- infrastructure upgrades to support Australia's Olympic and Paralympic athletes; and
- streamlining state-specific high performance para-sport initiatives to deliver an integrated para-pathway system and improve Australia's capability in finding best para-athletes to compete on the world stage.

Government funding under the Sport and Recreation Program is provided primarily through grants, while some expenditure also occurs through procurements.

Grants

As the Sport and Recreation Program is a longstanding government program, a number of grant processes are already underway, for example for the Driving Social Inclusion through Sport and Physical Activity program.

When conducting a grant process, the department considers the proportionality of scale, nature, funding amount, complexity and risks involved in the funding round, as set out in the *Commonwealth Grants Rules and Guidelines 2017* (the CGRGs). The department considers this proportionality to inform the choice of the application and selection process, the type of grant agreement to be used, and the reporting and acquittal requirements, in accordance with applicable legislative requirements under the *Public Governance, Performance and Accountability Act 2013* (the PGPA Act) and the CGRGs.

The department undertakes a mixture of selection processes for grant opportunities depending on the urgency, market and expertise availability, and services required to achieve the objectives of specific program activities. Grant opportunities may involve open competitive, targeted or restricted competitive, closed non-competitive, and one-off selection processes.

Grant applications are assessed against the eligibility and assessment criteria in the grant opportunity guidelines, which outline the objectives and outcomes of the Commonwealth expenditure and the grant deliverables.

The decision maker for each grant opportunity may vary depending on the profile and value of the grant opportunity. Where the department invites grant applications, the decision maker may be the Minister for Youth and Sport (the Minister) or the Secretary of the department (or their respective delegate). The department will make recommendations to the decision maker on the suitability of grant applications, and the Minister or the Secretary (or their respective delegate) will make a final decision on the grant funding recipients and amounts, and any associated terms and conditions.

The selection process for grant opportunities under the Sport and Recreation Program is administered by the department, while the grants are delivered and administered by the Community Grants Hub, which is part of the Department of Social Services. Information on grant opportunities, including grant opportunity guidelines, and grants awarded is published on GrantConnect (www.grants.gov.au).

Procurements

Where an activity funded through the Sport and Recreation Program is identified as the acquisition of goods and services by the department for its own use or on behalf of another entity or third party, a procurement process is undertaken, consistent with the *Commonwealth Procurement Rules* and the PGPA Act. The relevant decision maker is the Secretary of the department or the Secretary's delegate where applicable. Procurement activities and outcomes are published on AusTender (www.tenders.gov.au), consistent with the requirements under the *Commonwealth Procurement Rules*.

Some funding decisions made in connection with activities under the Sport and Recreation Program may be suitable for independent merits review, while other decisions may be unsuitable because they relate to the allocation of a finite resource between competing applicants. 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?*).

For example, funding decisions under the Driving Social Inclusion through Sport and Physical Activity program, the Community Development Grants (Sport) Program, and the Community Sport Infrastructure – Female Facilities and Water Safety Stream program are unsuitable for merits review, as the department anticipates that there will be more applicants than can be accommodated by the available total funding. In line with the Administrative Review Council's guide, there is no effective remedy that could be provided, as a successful application for review by one applicant would require a reduction in funding to other applicants; and there would be delays in channelling funds under the program.

In addition, further activities under the Sport and Recreation Program that are unsuitable for merits review include those associated with the bidding for and delivery of major international sporting events, whereby the national sporting organisation is the only eligible organisation able to bid for and host the event in Australia. The Administrative Review Council has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 3.1 to 3.2 of the guide, *What decisions should be subject to merit review?*).

International Sports Federations, as the owners of their respective international major sporting events, will only permit hosting bids to be submitted by the national peak body of a country (for example, Netball Australia is the only organisation able to bid to host the 2027 Netball World Cup in Australia). Further, should Netball Australia's bid be successful, it is the only organisation permitted by the International Netball Federation to host the event. This specific set of unique circumstances means that merits review cannot operate in respect of it.

The department engages in ongoing consultation with the key program stakeholders. For example, the development of *Sport 2030*, the overarching policy framework for the delivery of activities under the Sport and Recreation Program, was informed by a comprehensive consultation process with the Australian sport sector. Forums were held in each capital city, public submissions were made, and an online public perceptions survey was conducted. In total, 14 forums involving 500 people were held. These included nine sport sector forums, mostly held in conjunction with the state and territory departments of sport and recreation, three national sporting organisation forums, a preventive health forum, and a sport leaders forum. A total of 433 submissions were received from sports clubs, national sporting organisations, state sporting organisations, community groups and members of the public.

For each activity funded under the Sport and Recreation Program, the department engaged with a specific peak sporting body responsible for that sport, and consulted on the implementation and outcomes to be achieved by funding the delivery of specific activities. All key stakeholders, who were consulted, support the funding objectives and engage with the department in the development of strategies to spend the money, including:

- Rugby Australia;
- Netball Australia;
- Cricket Australia;
- T20 World Cup 2020 Australia Local Organising Committee;
- Australian Olympic Committee;
- Paralympics Australia;
- Football Federation Australia;
- Sport Inclusion Australia;
- Coalition of Major Professional and Participation Sports (COMPPS);
- Tennis Australia;
- Commonwealth Games Australia; and
- state and territory governments.

Total funding for all activities under Program 3.1: Sport and Recreation, which is part of Outcome 3, is \$408.8 million over four years from 2019-20. Details are set out in the *Portfolio Additional Estimates Statements 2019-20, Health Portfolio* at page 50.

New table item 429 provides legislative authority for government spending only on those activities under Program 3.1 that are administered by the department (except where other legislation, including other items in the *Financial Framework (Supplementary Powers) Regulations 1997*, may provide authority for government spending on such activities).

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

- the communications power (section 51(v));
- the aliens power (section 51(xix));
- the races power (section 51(xxvi));
- the immigration power (section 51(xxvii));
- the external affairs power (section 51(xxix));
- the express incidental power and the executive power (sections 51(xxxix) and 61), including the nationhood aspect; 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 Sport and Recreation Program will deliver activities that are conducted through the internet, telephone or broadcast media, for example, publishing information and analysis about existing sport and physical infrastructure over the internet and promoting an event by broadcast media.

Aliens power

Section 51(xix) of the Constitution empowers the Parliament to make laws with respect to ‘naturalization and aliens’.

The Sport and Recreation Program will provide benefits to persons born outside Australia, whose parents were not Australians, and who were not naturalised as an Australian to encourage participation in sport.

Races power

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

The Sport and Recreation Program provides measures that are specifically directed at Indigenous Australians or persons of other particular races, for example, it seeks to increase the participation of Indigenous Australians in sport and physical activity.

Immigration power

Section 51(xxvii) empowers the Parliament to make laws with respect to ‘immigration and emigration’.

The Sport and Recreation Program will provide benefits for new migrants to encourage participation in sport.

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.

Australia is a party to the *Convention on the Elimination of All Forms of Discrimination against Women* [1983] ATS 9. Article 2 provides that States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women. Article 3 requires 'States Parties 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 provides that 'States Parties shall 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 in particular to ensure, on a basis of equality of men and women...the same opportunities to participate actively in sports and physical education' (Article 10(g)). Article 13 requires States Parties to 'take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on the basis of equality of men and women, the same rights, in particular...to participate in recreational activities, sports and all aspects of cultural life'.

The Sport and Recreation Program promotes participation by women in sport and recreation activities in order to increase social cohesion and eliminate discrimination against women within the community.

Australia is a party to the *Convention on the Rights of Persons with Disabilities* [2008] ATS 12. Article 4 provides that States Parties undertake 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 30 provides that States Parties recognise the right of persons with disabilities to take part on an equal basis with others in cultural life, recreation, leisure and sport.

The Sport and Recreation Program will provide funding for Paralympic sport and to support para-athletes. It will support hosting inclusive sporting events (involving modified, adapted and disability sports) in order to increase participation in sport among persons with disabilities.

Australia is a party to the *Convention on the Rights of the Child* (1991) ATS 4 (CRC). Article 3 refers to the best interests of the child as a primary consideration. It states that States Parties 'shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision'. Article 4 imposes a general obligation on States Parties to implement, through appropriate legislative or administrative measures, the rights set out in the CRC. Article 6 requires States Parties to recognise that every child has the inherent right to life and should ensure to the maximum extent possible the survival and development of the

child. Article 18 requires States Parties to use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child and shall ensure the development of institutions, facilities and services for the care of children. In particular, Article 24 recognises the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. Article 24(2) requires States Parties to pursue full implementation of this right by taking appropriate measures, such as:

- (a) Diminish infant and child mortality; ... and
- (e) Ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents.

Article 28 recognises the right of the child to education including general and vocational education. Article 29 recognises that the education of the child shall be directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential. Article 31 also provides that 'States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts' and that 'States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity'.

The Sport and Recreation Program will provide funding to encourage children to participate in sport in order to improve physical and mental health, prevent disease and increase social cohesion.

Australia is a party to the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). Article 12(1) of the ICESCR recognises the '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 realization' of this right 'by all appropriate means, including particularly the adoption of legislative measures'.

The steps to be taken by States 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)).

Article 15 also provides that States Parties recognise the right of everyone to take part in cultural life, to enjoy the benefits of scientific progress and its applications, and to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

The Sport and Recreation Program will provide funding to support activities that promote the benefits of an active lifestyle in order to improve physical and mental health, prevent disease and increase social cohesion.

Express incidental power and the executive power, including the nationhood aspect

The express incidental power in section 51(xxxix) of the Constitution empowers the Parliament to make laws with respect to matters incidental to the execution of any power vested in the Parliament, the executive or the courts by the Constitution. Section 61 of the Constitution supports activities that are peculiarly adapted to the government of a nation and cannot be carried out for the benefit of the nation otherwise than by the Commonwealth. It also supports activities within the ordinary and well-recognised functions of government.

The Sport and Recreation Program will co-ordinate whole-of-government support for major sporting events including, for example, providing support for the International Cricket Council T20 World Cup Local Organising Committee in hosting the T20 World Cup in 2020 and the 2023 FIFA Women's World Cup tournament. The program will promote the benefits of an active lifestyle and data will be collected and analysed to inform future policies.

Territories power

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

The Sport and Recreation Program may be directed specifically at increasing participation in sport and recreation 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 (Health Measures No. 4) Regulations 2020

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 FF(SP) Act) authorises the Commonwealth to make, vary and administer arrangements and grants specified in the *Financial Framework (Supplementary Powers) Regulations 1997* (the FF(SP) Regulations) and to make, vary and administer arrangements and grants for the purposes of programs specified in the FF(SP) Regulations. Schedule 1AA and Schedule 1AB to the FF(SP) Regulations specify the arrangements, grants and programs. The powers in the FF(SP) 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 Measures No. 4) Regulations 2020* amend Schedule 1AB to the FF(SP) Regulations to establish legislative authority for government spending on certain activities administered by the Department of Health (the department).

This instrument adds:

- table item 45 to Part 3 of Schedule 1AB for a grant to the Trustee for Raise Foundation (Raise Foundation);
- table item 428 to Part 4 of Schedule 1AB for the Residential Aged Care Viability Program; and
- table item 429 to Part 4 of Schedule 1AB for the Sport and Recreation Program.

Table item 45 – Grant to the Trustee for Raise Foundation

Table item 45 establishes legislative authority for the Government to provide a grant to Raise Foundation to develop and deliver a best-practice early intervention mentoring program aimed at preventing mental illness and reducing suicidal ideation in Year 8 students at public secondary schools in Australia.

Human rights implications

Table item 45 engages the human rights under:

- Articles 4 and 24(2) of the *Convention on the Rights of the Child*; and
- Articles 12(1) and 12(2)(c) and 12(2)(d) of the *International Covenant on Economic, Social and Cultural Rights*.

Convention on the Rights of the Child (CRC)

Table item 45 engages Articles 4 and 24(2) of the CRC. Article 4 imposes a general obligation on States Parties to implement, through appropriate legislative or administrative measures, the rights set out in the CRC. It provides that:

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

Article 24(1) relevantly provides:

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

Article 24(2) requires States Parties to take appropriate measures:

- (a) to diminish infant and child mortality;
- (b) to ensure the provision of necessary medical assistance and health care to all children...;
- ...
- (f) to ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health...; and
- (g) to develop preventive health care, guidance for parents and family planning education and services.

Funding for Raise Foundation will deliver an early intervention and prevention mentoring program for young people under the age of 18 years (Year 8 students). The initiative will help young people to build their resilience and help-seeking skills; mental health awareness and understanding; and engagement with mental health support services; and ultimately help to prevent mental illness and reduce suicide rates.

International Covenant on Economic, Social and Cultural Rights (ICESCR)

Table item 45 engages Articles 12(1), 12(2)(c) and 12(2)(d) of the ICESCR. Pursuant to Article 12(1) of the ICESCR, Australia is under an obligation to take steps with a view to achieving progressively the full realisation of the rights recognised in the ICESCR. Article 12(1) provides that:

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

Article 12(2) further provides a non-exhaustive list of steps to be taken by Australia to achieve the full realisation of the right to health, including:

- (c) the prevention, treatment and control of epidemic, endemic, occupational and other diseases; and
- (d) the creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Funding for Raise Foundation will deliver an early intervention and prevention monitoring program aimed at preventing mental illness and reducing suicide rates in young people.

Conclusion

Table item 45 is compatible with human rights as it promotes the protection of human rights and contributes to the prevention of suicide and mental illness in young Australians.

Table item 428 – Residential Aged Care Viability Program

Table item 428 establishes legislative authority for government spending on the Residential Aged Care Viability Program (the Program).

The Program provides grant funding to eligible residential aged care providers to assist in ensuring the continuity of an adequate level of care for aged care residents and improving the viability of the sector, including assistance with managing the risks to the continuity of care for aged care residents as a result of the COVID-19 pandemic and the 2019-20 bushfires. The Program is designed to assist residential aged care providers who are experiencing significant financial challenges and have limited access to other forms of funding.

Human rights implications

Table item 428 engages Article 12 of the *International Covenant on Economic, Social and Cultural Rights* which encompasses the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and in particular 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 is designed to achieve a stronger and more viable residential aged care sector. This funding will assist to maintain access to medical services for older Australians who require residential aged care facilities.

Conclusion

Table item 428 is compatible with human rights because it maintains existing arrangements and promotes the protection of human rights.

Table item 429 – Sport and Recreation Program

Table item 429 establishes legislative authority for government spending on the activities administered by the department under Program 3.1: Sport and Recreation Program, which is part of Outcome 3 of the department (the Sport and Recreation Program).

The Sport and Recreation Program is designed to:

- increase participation in sport and recreation activities by all Australians in order to improve physical and mental health and prevent disease;
- increase participation in sport and recreation activities in order to increase social cohesion and eliminate racial, cultural or ethnic discrimination within the community;

- increase participation in sport and recreation amongst particular groups in society, including Indigenous Australians, children, women, non-citizens, immigrants and people with disabilities;
- support the delivery of major sporting events in Australia to increase socio-economic benefits to the Australian community; and
- foster excellence in Australia's high performance or elite (representative) athletes to promote sport and physical activity, and provide inspiration for all Australians to increase their sport and physical activity levels.

Under the Sport and Recreation Program, funding is provided to support activities across three broad streams:

- major international sporting events;
- increasing participation in sport and recreation activities; and
- achieving excellence in Australia's representative athletes.

Major international sporting events

The objective of the major international sporting events stream is to showcase Australia as a premier host of international sporting events through the bidding for and staging of major international sporting events in Australia. This stream includes a range of activities to support the bidding for and hosting of major sporting events in Australia. The department may fund third parties, such as national sporting organisations or established bid committees, to undertake activities to inform a decision by that third party as to whether or not to nominate to host an event or to inform a decision by the Government to support the nomination for the event, for example by funding economic and social impact analyses.

This stream also includes funding third parties to develop a compelling and high quality bids or hosting proposals for major international sporting events. In addition, this stream may provide funding to third parties to plan for and deliver major international sporting events in Australia to the high standards expected by international sporting governing bodies.

Increasing participation in sport and recreation activities

The key objective of this stream is to increase participation by all Australians in sport and recreation activities in order to improve physical and mental health and prevent disease. It includes a particular focus on increasing participation in sport and recreation among targeted community groups, including Indigenous Australians, children, women, non-citizens, immigrants and people with disabilities. This stream also aims to use sport as a vehicle to increase social cohesion and eliminate racial, cultural or ethnic discrimination within the Australian community.

Under this stream of the Sport and Recreation Program, the department funds third parties including national sporting organisations, state sporting organisations, community sporting organisations, other community groups and local councils to deliver a wide range of activities, including sport and physical activity projects; procurement of equipment, digital technology and business capability to support sport and physical activity; construction of or upgrades to community sporting infrastructure and facilities; and educational resources and promotional activities to promote sport and physical activity.

Achieving excellence in Australia's representative athletes

The objectives of this stream are to foster and support the achievement of excellence in Australia's high performance or elite (representative) athletes, including through improving Australia's ability to identify and develop high performance and elite athletes, including para-athletes, to compete internationally. This stream also aims to enable and empower sports to achieve sustained sporting success on domestic and international sporting stages, and promote gender equality in professional sport by supporting female athletes and women in leadership in sport.

High performance sporting activities are managed by national sporting organisations, state sporting organisations, or, if event related, event organisers. Under this stream of the Sport and Recreation Program, the department funds these third parties to deliver a wide range of activities, including infrastructure development and upgrades; training programs for national and other representative athletes; programs to identify and nurture future Australian sporting representatives; and programs to identify and develop sport governance and administration expertise, particularly for women.

Government funding under the Sport and Recreation Program is provided primarily through grants, while some expenditure also occurs through procurements.

Human rights implications

Table item 429 engages the following human rights:

- the right to enjoy and benefit from culture – Articles 2, 12 and 15 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR);
- the right of persons with disabilities to participate on an equal basis in cultural life, recreation, leisure and sport – Articles 4 and 30 of the *Convention on the Rights of Persons with Disabilities* (CRPD);
- the right of women to the exercise and enjoyment of human rights and fundamental freedoms, in particular in the political, social, economic and cultural fields – Articles 2, 3, 10 and 13 of the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW); and
- the right of every child to engage freely in cultural life and the arts, as well as playing and recreational activities appropriate to his or her age – Articles 4, 6, 18, 24 and 31 of the *Convention on the Rights of the Child* (CRC).

Table item 429 is not only compatible with these human rights and freedoms, but aims to further promote the protection of the rights identified.

Right to enjoy and benefit from culture

Article 2(2) of the ICESCR recognises, inter alia, the right to culture be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. According to the United Nations Committee on Economic, Social and Cultural Rights, the right to culture includes sports and games.

Article 12(1) recognises the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Sport and physical activity play an important role in both physical and mental wellbeing.

Article 15(1)(a) of the ICESCR recognises the right of everyone to take part in cultural life. According to the United Nations Committee on Economic, Social and Cultural Rights, the right to culture includes sports and games. This right encompasses access to culture, which includes the availability of mainstream sporting activities at all levels and sporting events hosted in Australia, in which everyone can participate.

Rights of persons with disabilities

Article 4 of the CRPD obliges sports 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. This right includes elimination of discrimination in the field of employment, which includes occupations in the sport and physical activity sector.

Article 30 of the CRPD recognises the right of persons with disabilities to participate on an equal basis with others in cultural life, recreation, leisure and sport. This right encompasses the encouragement and promotion of participation, to the fullest extent possible, of persons with disabilities in mainstream sporting activities at all levels. It also encompasses access to sport, which includes the availability of sporting events (including those specifically for persons with disabilities) hosted in Australia.

Rights of women

Article 3 of the CEDAW recognises the right of women to the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men, in particular in the political, social, economic and cultural fields. According to the United Nations Committee on Economic, Social and Cultural Rights, the right to culture includes sports and games.

Article 10 of the CEDAW recognises the right of women to the same opportunities to participate in education as men. This right encompasses the encouragement and promotion of participation, to the fullest extent possible, of women in sport and physical activity education at all levels.

Article 2 of the CEDAW condemns the discrimination of women in all its forms. Article 13 of the CEDAW requires States Parties to ‘take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on the basis of equality of men and women, the same rights, in particular...to participate in recreational activities, sports and all aspects of cultural life’.

Rights of the child

Article 4 of the CRC obliges states to undertake measures regarding economic, social and cultural rights of children to the maximum extent of their available resources. According to the United Nations Committee on Economic, Social and Cultural Rights, the right to culture includes sports and games.

Article 6(2) of the CRC recognises the right of children to survive and develop. This includes access to sport and physical activity and the physical and social benefits sports participation delivers.

Article 18(2) of the CRC obliges states to provide appropriate assistance to parents and legal guardians to support their child-rearing efforts. This includes access to sport and recreation initiatives to support the physical and mental development of children.

Article 24 of the CRC obliges states to ensure the rights of children to the highest attainable standard of health. This includes measures to combat disease and malnutrition, provide access to health education and develop preventive health care. Sport and physical activity have recognised physical and mental health benefits, and prevent an array of diseases.

Article 31(1) of the CRC recognises the right of every child to rest and leisure and to engage freely in cultural life and the arts, as well as playing and recreational activities appropriate to his or her age. This right encompasses the encouragement and promotion of participation, to the fullest extent possible, of children in mainstream sporting activities at all levels.

Conclusion

Table item 429 is compatible with human rights because it maintains existing arrangements and promotes the protection of human rights.

Senator the Hon Mathias Cormann
Minister for Finance