**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. 7) Regulations 2021*

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. 7) Regulations 2021* (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 and Sport Integrity Australia.

Funding is provided for:

* expansion of the Drug and Alcohol Program to support capital works for infrastructure, including upgrading existing infrastructure, to provide treatment and support services for drug and alcohol misuse (total program funding of $870 million over four years from 2021-22, with no new funding provided for the expansion of the program); and
* Australia’s contributions to the Oceania Regional Anti‑Doping Organisation, the United Nations Educational, Scientific and Cultural Organization Fund for the Elimination of Doping in Sport and the World Anti‑Doping Agency to fulfil Australia’s international anti-doping commitments ($1.8 million over two years from 2021-22).

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 and Sport Integrity Australia.

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. 7) Regulations 2021***

**Section 1 – Name**

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Health Measures No. 7) Regulations 2021*.

**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 – Part 4 of Schedule 1AB (table item 179, column headed “Objective(s)”, paragraph (i))**

Item 1 amends table item 179 in Part 4 of Schedule 1AB by expanding the scope of the program objective in column headed “Objective(s)” to include paragraph (j) “supporting capital works for infrastructure (including upgrading existing infrastructure) to provide treatment and support services for drug and alcohol misuse”.

Table item 179 establishes legislative authority for government spending on the Drug and Alcohol Program (the program), which aims to reduce the impact of substance misuse on individuals, families, carers and their communities through the provision of a range of activities aimed at prevention, treatment, and education. This includes treating health conditions arising from misuse of alcohol and other drugs; supporting families, individuals, carers and their communities affected by their misuse; as well as the development of data to support evidence-based treatment, national policy development and service delivery. The program is administered by the Department of Health (the department).

The program was established in 2016 and replaced two flexible funds (‘Substance Misuse Service Delivery Grants Fund’ and ‘Substance Misuse Prevention and Service Improvement Grants Fund’) and one program (‘Non-Government Organisation Treatment Grants Program’). The Government has provided more than $1.2 billion to the program from various sources, including reallocation from flexible funds and funding from a range of prior Budget measures. This includes investment of more than $960 million into alcohol and other drug treatment services.

The program provides direct funding to a range of residential and non-residential treatment services across Australia, enables alcohol and other drug treatment services to better integrate with broader health services, and supports professional development and information sharing across the sector. It is available for all members of the Australian community who are having problems with substance misuse. A number of services are specifically targeted at harder to reach demographics including young people, mothers with babies, Indigenous people, people from culturally and linguistically diverse backgrounds, as well as from the criminal justice system.

A significant portion of this funding is provided to Primary Health Networks (PHNs) to commission services based on the needs of the local region, with the majority of the remaining funding provided to residential rehabilitation and withdrawal services directly by the department. Through their role in commissioning mental health services and guiding primary health care delivery, PHNs have great insights into the local alcohol and other drug treatment needs of their regions. Based on information in their local needs assessments that inform planning and commissioning processes, PHNs commission services across the full treatment spectrum, from screening and assessment to more intensive counselling and rehabilitation episodes of care.

Many existing treatment facilities are old and require repairs or replacement, and some areas of the country do not currently have any access to face-to-face treatment services. The amended table item 179 will authorise the provision of funding for capital works projects to support the construction of new alcohol and other drug treatment facilities and refurbishment of existing facilities. This will provide the Commonwealth with the flexibility to maximise its investment under the program, and respond more effectively to areas of high treatment need by supporting the construction or refurbishment of alcohol and other drug treatment facilities as required.

A small proportion of total funding under the program will be used for capital works. This will primarily comprise funding for:

* the construction of new residential rehabilitation facilities in the four Cashless Debit Card Trial sites: Ceduna (South Australia), East Kimberley and Kalgoorlie (Western Australia), and Bundaberg-Hervey Bay (Queensland), if deemed appropriate through the consultation process to inform the funding. This would be a maximum of $50 million over four years from 2021-22, however the department anticipates the majority of this funding will go towards supporting existing services; and
* ad-hoc proposals for construction and refurbishment projects such as the construction of new residential rehabilitation facilities and modifications to existing facilities to improve functionality and liveability as required. This would form a small (estimated at under $2 million per annum) proportion of the total program funding, and would only fund capital works projects by exception.

The department delivers the program, including the capital works component, through a suite of grant and procurement processes. Where funding is delivered through a grant process, this will be provided through open, competitive funding rounds, targeted grants and unsolicited proposals and conducted in line with the *Commonwealth Grants Rules and Guidelines 2017* (CGRGs). Selection and assessment processes are conducted by the Alcohol, Tobacco and Other Drugs Branch of the department, with grant funding agreements developed and managed by the Community Grants Hub within the Department of Social Services. Grant opportunity guidelines for new grant activities will be developed and published on GrantConnect.

Where funding is delivered through a procurement process, this will be provided through a targeted tender and conducted in accordance with the *Commonwealth Procurement Rules* (CPRs). Procurement services relate to research and data projects required to inform drug and alcohol policy development.

The Minister for Health and Aged Care is responsible for the program and can delegate powers under the *Financial Framework (Supplementary Powers) Act 1997* and the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) to departmental officials as required. Under such an existing delegation, the decision maker for funding under the program is the Assistant Secretary, Alcohol, Tobacco and Other Drugs Branch. Funding awarded is reported on the GrantConnect and AusTender websites.

Funding decisions made in connection with capital works under 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 to service providers for construction of capital works facilities under the program would be affected if the original decision was overturned. This would also result in consequent delays to the delivery of health outcomes under the program. The Administrative Review Council (ARC) has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.11 to 4.19 of the guide, *What decisions should be subject to merit review?*).

The re-making 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 funding to service providers.

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 avenue of redress (compensation or injunction) for dissatisfied providers or potential providers, depending on the circumstances.

The department will undertake extensive consultations to inform any capital works expenditure under the program. This includes consulting with key stakeholders in the alcohol and other drug treatment and related sectors to clarify the treatment service needs of relevant communities. Stakeholders include peak organisations, sector experts and people with lived experience. Consultation will also include state and local government agencies.

To inform potential capital works projects for additional alcohol and other drug treatment services in Cashless Debit Card Trial sites, the department is engaging an external consultant to engage the above stakeholders for each site. This consultation process will provide the department with recommendations on the optimal service mix required to fill treatment gaps at each site, including whether any capital works are required to build new or refurbish existing treatment facilities.

Total funding for the program of more than $870 million over four years from 2021-22 comes from Program 1.5: Preventive Health and Chronic Disease Support, which is part of Outcome 1. Details are set out in the *Portfolio Budget Statements 2021-22, Budget Related Paper No. 1.7, Health Portfolio* at page 64. The program is ongoing, with no new funding provided for the expansion of the program to include capital works for infrastructure.

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 sickness and hospital benefits and medical and dental services aspects of the social welfare power (section 51(xxiiiA)); and
* the treaties implementation aspect of the external affairs power (section 51(xxix)).

*Social welfare power*

The social welfare power in section 51(xxiiiA) of the Constitution empowers the Parliament to make laws with respect to the provision of certain social welfare benefits including sickness and hospital benefits and medical and dental services (but not as to authorise any form of civil conscription).

The program involves funding to support the construction of treatment facilities for the treatment of a medically recognised health condition (for example, drug or alcohol addiction), or other medical condition, or the assessment of a person’s medical condition with a view to providing medical treatment.

*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.

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

Australia is a party to the ICESCR. The 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 Covenant by all appropriate means (Article 2(1)).

Article 12(1) of the ICESCR requires the States Parties to recognise the right of everyone to enjoy the highest attainable standard of physical and mental health.

Article 12(2)(c) of the ICESCR requires the States Parties to take steps necessary for ‘the prevention, treatment and control of epidemic, endemic, occupational and other diseases’. In its guidelines, the Committee on Economic, Social and Cultural Rights instructs States, with express reference to Article 12(2)(c), to provide information on measures taken:

‘…. To prevent the abuse of alcohol and tobacco, and the use of illicit drugs and other harmful substances, in particular among children and adolescents … and [to] support their families.’

The program will involve funding to support the construction of treatment facilities to enable the provision of drug and alcohol treatment under the drug and alcohol program helping to facilitate the right to enjoyment of both physical and mental health.

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

Item 2 adds a new table item to Part 4 of Schedule 1AB to establish legislative authority for government spending on an activity administered by Sport Integrity Australia.

New **table item 508** establishes (and renews) legislative authority for the Government to provide funding contributions to the Oceania Regional Anti‑Doping Organisation (ORADO), the United Nations Educational, Scientific and Cultural Organization (UNESCO) Fund for the Elimination of Doping in Sport (the Voluntary Fund) and the World Anti‑Doping Agency (WADA) to fulfil Australia’s international anti-doping commitments.

Australia is a signatory to the UNESCO *International Convention against Doping in Sport* [2007] ATS 10 (the Convention). Annually, Australia makes a mandatory contribution to fund WADA under the Convention and additional voluntary contributions to the Voluntary Fund and ORADO.

Australia’s contributions have historically been managed and paid by the department as arrangements other than grants or procurements. On 1 July 2020, the responsibility for the contributions transferred to Sport Integrity Australia.

*ORADO*

Historically, Australia has provided financial contributions to ORADO. The funds are provided to WADA, which then provides the funds to ORADO. ORADO advocates, promotes and coordinates the fight against doping in sport in all its forms in the Pacific. ORADO works at a national level to ensure all Pacific nations implement national anti‑doping programs compliant with the World Anti-Doping Code (Code). At a regional level, it coordinates an effective prevention, deterrence and detection doping control program among countries, and promotes a culture where all stakeholders fully support the doping-free sport movement.

Decisions on funding to ORADO are made by the CEO of Sport Integrity Australia at a level determined by the CEO to support ORADO in conducting its anti-doping activities in the Pacific region. Sport Integrity Australia receives a proposal from ORADO on an annual basis outlining a business case for their funding requirements. The CEO, supported by internal subject matter experts, reviews the proposal with a particular focus on the needs of ORADO and the strategic alignment with Sport Integrity Australia’s objectives. The CEO may also draw on input from other external sources where they can provide information relevant to the consideration (for example, the Department of Foreign Affairs and Trade).

ORADO is recognised by WADA as the only regional anti-doping organisation for the Oceania region. As such, ORADO is the only organisation appropriate for this particular payment and no decision is required on the recipient. Funding will be provided to WADA (for ORADO) as closed, non-competitive grants and administered in accordance with the Commonwealth resource management framework, including the PGPA Act and the CGRGs.

*Voluntary Fund*

Australia, as a State Party to the Convention, has contributed to the Voluntary Fund on an annual basis since its establishment in 2008. Most recently, Australia contributed approximately $50,000 in March 2021.

The Convention formally requires States Parties to work with UNESCO to implement anti‑doping rules, develop educational strategies to raise awareness of doping in sport, and support anti-doping research. One way this is achieved is through an annual contribution to the Voluntary Fund, which assists States Parties to the Convention to develop and implement effective anti-doping programs. Providing practical and technical support, the Voluntary Fund has three priorities:

* education projects focusing on youth and sport organisations;
* policy advice; and
* mentoring and capacity building.

Since 2008, the Voluntary Fund has provided financial assistance to 218 national and regional projects globally, which translates to an investment of more than US $4.2 million across 108 countries.

Only States Parties to the Convention can submit applications to receive funding from the Voluntary Fund and must abide by the following requirements:

* requests must be made by the National Commission for UNESCO or a designated government channel, such as a Ministry in charge of sport;
* each State Party may only submit one funding request each biennium;
* applications for a national project may not exceed US$ 35,000, and applications for regional funding (for example, a project for the entire Pacific region) should not exceed US$ 95,000;
* the Voluntary Fund will not cover the entire cost of the project, the applicant must make some form of contribution, either financial or non-financial; and
* States Parties applying to the Voluntary Fund must submit national reports as required under Article 31 of the Convention.

The Voluntary Fund’s approval committee, which assesses applications received, includes six States Party representatives who are elected every two years by the Conference of Parties based on equitable geographic distribution, and a representative of WADA.

Decisions on contributions to the Voluntary Fund are made by the CEO of Sport Integrity Australia. Since 2018, pursuant to Resolution 6CP/10, States Parties have been invited to make their contribution at the level of at least one per cent of their contribution to UNESCO’s regular budget. Australia traditionally abides by this request. UNESCO is the only organisation that can receive this payment and therefore no decision on the recipient is required.

Funding will be provided to the Voluntary Fund as closed, non-competitive grants and administered in accordance with the Commonwealth resource management framework, including the PGPA Act and the CGRGs.

*WADA*

As a signatory to the Convention, Australia is required to support WADA in its mission against doping in sport, which includes the payment of Australia’s contribution to WADA’s annual core budget. The Convention also establishes the principle of equal funding of WADA by public authorities and the Olympic movement. Payments are required to be made before 31 December in each year for the following year. Australia has paid an annual contribution to WADA since its establishment in 1999. Australia faces consequences should it not pay its annual contribution, including ineligibility to sit on the WADA Foundation Board and/or the Executive Committee.

The current continental split of public authorities’ funding to WADA is based on the 2001 *Cape Town Declaration of Anti-Doping in Sport.* Oceania has agreed to contribute 2.54 per cent of the public authority budget to WADA, of which Australia pays 75 per cent and New Zealand the remaining 25 per cent. The WADA Foundation Board (on which Australia’s Minister for Sport, Senator the Hon Richard Colbeck, sits as a member) sets and agrees WADA’s annual budget. No additional decision on the level or recipient of the funding is required by Australia.

Payments to WADA for the purposes of complying with Australia’s obligations under an international treaty are not considered to be grants (paragraph 2.6(n) of the CGRGs refers). Funding commitments to WADA will be administered in accordance with the Commonwealth resource management framework, including the PGPA Act.

Funding decisions made in connection with Australia’s international anti-doping commitments are not considered appropriate for independent merits review as such decisions are automatic or mandatory in nature. The ARC has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 3.8 to 3.11 of the guide, *What decisions should be subject to merit review?*).

Australia’s annual contribution to WADA is mandatory under the Convention. If Australia does not make its annual contribution, it can face consequences such as ineligibility to sit on the WADA Foundation Board and/or the Executive Committee.

When Australia contributes to UNESCO’s anti-doping initiatives or supports regional anti‑doping activities in the Pacific, the Voluntary Fund and ORADO are the only organisations that can receive the funding. Independent merits review is not considered appropriate as it could only result in the same outcome.

No consultation was undertaken as the payments are either mandatory under Australia’s international obligations under the Convention, or minor and business-as-usual payments are made on a voluntary basis to support international anti-doping capacity building.

Funding of $0.85 million ($0.1 million to ORADO, $0.04 million to the Voluntary Fund, and $0.71 million to WADA) is available to meet Australia’s international anti-doping commitments in 2021-22, with funding of $0.92 million for 2022-23.

The above funding is part of $3.4 million that was included in the 2021-22 Budget under the measure ‘Implementing Sport 2030 — high performance, wellbeing and integrity’ for a period of two years from 2021-22. Details are set out in *Budget 2021-22, Budget Measures, Budget Paper No. 2 2021-22* at pages 113 to 114.

Funding for this item will come from Program 1.1: Sport Integrity, which is part of Outcome 1 for Sport Integrity Australia. Details are set out in the *Portfolio Budget Statements 2021-22, Budget Related Paper No. 1.7, Health Portfolio* at page 430.

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)); and
* the Pacific relations power (section 51(xxx)).

*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 with respect to matters or things outside the geographical limits of Australia. The external affairs power also supports legislation with respect to matters concerning Australia’s relations with other nations.

Under this measure, Australia meets its international anti-doping commitments through contributions to the Voluntary Fund, as well as by providing ongoing funding to WADA and ORADO which are international bodies.

The external affairs power also supports legislation implementing Australia’s international obligations under treaties to which it is a party. Australia has obligations under Articles 14 and 15 of the Convention.

Article 5 of the Convention requires that States Parties, in abiding by the obligations in the Convention, undertake to adopt appropriate measures, which may include legislation, regulation, policies or administrative practices.

Article 14 of the Convention requires States Parties to ‘support the important mission of WADA in the international fight against doping.’

Australia provides contributions to the Voluntary Fund to assist States Parties to the Convention to develop and implement anti-doping projects, as well as with achievement of the Voluntary Fund’s three priorities: education projects focusing on youth and sport organisations, policy advice, and mentoring and capacity building. Additionally, Australia’s funding to WADA is ultimately provided to ORADO, which advocates, promotes and coordinates the fight against doping in sport in the Pacific region.

Article 15 of the Convention requires States Parties to ‘support the principle of equal funding of the World Anti-Doping Agency’s approved annual core budget by public authorities and the Olympic Movement’. Australia’s annual contribution to WADA ensures it continues to meet its obligations under Article 15 of the Convention. Should Australia fail to meet its international obligations under Article 15, WADA may impose consequences on Australia including exclusion from participation on the WADA Foundation Board and the Executive Committee.

*Pacific relations power*

Section 51(xxx) of the Constitution empowers the Parliament to make laws with respect to ‘the relations of the Commonwealth with the islands of the Pacific’.

This measure will involve funding to ORADO, which conducts anti-doping activities in the Pacific region. Specifically, ORADO advocates, promotes and coordinates the fight against doping in sport in all its forms in the Pacific. ORADO works at a national level to ensure all Pacific nations implement Code compliant national anti-doping programs. At a regional level, it coordinates an effective prevention, deterrence and detection doping control program among countries; and promotes a culture where all stakeholders fully support the doping-free sport movement.

**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. 7) Regulations 2021***

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 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.7) Regulations 2021* 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 disallowable legislative instrument makes the following amendments to Part 4 of Schedule 1AB:

* amends table item 179 ‘Drug and Alcohol Program’; and
* adds table item 508 ‘Safeguarding the Integrity of Australian Sport—Australia’s international anti‑doping commitments’.

*Table item 179 – Drug and Alcohol Program*

This disallowable legislative instrument amends table item 179 in Part 4 of Schedule 1AB, which establishes legislative authority for government spending on the Drug and Alcohol Program (the program). The program aims to reduce the impact of substance misuse on individuals, families, carers and their communities through the provision of a range of activities aimed at prevention, treatment, and education. The amended table item 179 expands the scope of the program to provide funding for capital works for infrastructure (including upgrading existing infrastructure) to provide treatment and support services for drug and alcohol misuse.

The program provides direct funding to a range of residential and non-residential treatment services across Australia, enables alcohol and other drug treatment services to better integrate with broader health services, and supports professional development and information sharing across the sector. It is available for all members of the Australian community who are having problems with substance misuse. A number of services are specifically targeted at harder to reach demographics including young people, mothers with babies, Indigenous people, people from culturally and linguistically diverse backgrounds, as well as from the criminal justice system.

Many existing treatment facilities are old and require repairs or replacement, and some areas of the country do not currently have any access to face-to-face treatment services. The amended table item 179 will authorise the provision of funding for capital works projects to support the construction of new alcohol and other drug treatment facilities and refurbishment of existing facilities. This will provide the Commonwealth with the flexibility to maximise its investment under the program, and respond more effectively to areas of high treatment need by supporting the construction or refurbishment of alcohol and other drug treatment facilities as required.

**Human rights implications**

The amended table item 179 engages the following rights:

* the right of the child to the enjoyment of the highest attainable standard of health – Article 24 of the *Convention on the Rights of the Child* (CRC), read with Article 4; and
* the right of everyone to the enjoyment of the highest attainable standard of physical and mental health – Article 12 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), read with Article 2.

*Right of the child to the enjoyment of the highest attainable standard of health*

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

Article 24 of the CRC specifies that States Parties should ‘recognise the right of the child to the enjoyment of the highest attainable standard of health…’ Article 24(2) requires States Parties to pursue full implementation of this right and sets out steps to be undertaken to this end, including (a) to diminish child and infant mortality, (c) to combat disease and malnutrition and (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 nutrition.

Funding will be provided to support the development of new, and support existing, facilities to support families that have been adversely affected by alcohol and other drugs. Funding will improve access and availability for families and parents requiring treatment and support for their alcohol and other drug use by enabling additional treatment capacity across Australia. Providing additional support for individuals, parents and families will help them to acquire skills to maintain the appropriate health of children and raise safe families, and in doing so, combat disease and malnutrition in children. The provision of effective drug and alcohol treatment also reduces the risk of mothers misusing alcohol and other drugs in pregnancy, which is a risk factor for stillbirth, low birth weight and infant mortality. Accordingly, this will promote children’s access to the right to health, including to diminish child and infant mortality.

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

Article 2 of the ICESCR provides that each State Party undertakes to take steps to the maximum of its available resources with a view to achieving progressively the full realisation of the rights recognised in the Covenant, by all appropriate means.

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 12(2)(a) requires the States Parties to take steps to realise the right to health including those necessary for ‘the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child.’

Provision of effective drug and alcohol treatment provides people with the opportunity to enjoy the highest attainable standard of physical and mental health and to contribute to a productive society, economy and community. It also reduces the risk of mothers misusing alcohol and other drugs in pregnancy, which is a risk factor for stillbirth, low birth weight and infant mortality.

Funding will be provided to capital works projects to support the development of new and existing facilities to support communities adversely affected by misuse of alcohol and other drugs. Funding will improve access and availability of treatment, therefore promoting the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

**Conclusion**

The amended table item 179 is compatible with human rights because it promotes the protection of human rights.

*Table item 508 – Safeguarding the Integrity of Australian Sport – Australia’s international anti‑doping commitments*

Table item 508 establishes (and renews) legislative authority for the Government to provide funding contributions to the Oceania Regional Anti‑Doping Organisation (ORADO), the United Nations Educational, Scientific and Cultural Organization (UNESCO) Fund for the Elimination of Doping in Sport (the Voluntary Fund) and the World Anti‑Doping Agency (WADA) to fulfil Australia’s international anti-doping commitments.

Australia is a signatory to the UNESCO *International Convention against Doping in Sport* [2007] ATS 10 (the Convention). Annually, Australia makes a mandatory contribution to fund WADA under the Convention and additional voluntary contributions to the Voluntary Fund and ORADO. On 1 July 2020, the responsibility for making the contributions transferred from the Department of Health to Sport Integrity Australia.

Historically, Australia has provided financial contributions to ORADO. The funds are provided to WADA, which then provides the funds to ORADO. ORADO advocates, promotes and coordinates the fight against doping in sport in all its forms in the Pacific.

The Convention formally requires States Parties to work with UNESCO to implement anti‑doping rules, develop educational strategies to raise awareness of doping in sport, and support anti-doping research. One way this is achieved is through an annual contribution to the Voluntary Fund, which assists States Parties to the Convention to develop and implement effective anti-doping programs. Australia, as a State Party to the Convention, has contributed to the Voluntary Fund on an annual basis since its establishment in 2008.

As a signatory to the Convention, Australia is required to contribute to support WADA in its mission against doping in sport, which includes the payment of Australia’s contribution to WADA’s core annual budget. Australia has paid an annual contribution to WADA since its establishment in 1999. Australia faces consequences should it not pay its annual contribution, including ineligibility to sit on the WADA Foundation Board and/or the Executive Committee.

**Human rights implications**

Table item 508 engages the following right:

* the right of everyone to the enjoyment of the highest attainable standard of physical and mental health – Article 12 of the ICESCR, read with Article 2.

Article 2 provides that each State Party undertakes to take steps to the maximum of its available resources with a view to achieving progressively the full realisation of the rights recognised in the Covenant, by all appropriate means.

Article 12 recognises the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

Table item 508 will promote the right to health by enabling athletes to access the highest attainable standard of physical and mental health. Anti-doping arrangements protect both competition integrity and athlete health and wellbeing. The World Anti-Doping Code, which Australia recognises through Article 4 of the Convention, includes the protection of athlete health in its fundamental rationale. Doping in sport harms athlete health and wellbeing by exposing athletes to potentially harmful substances including those that may not be approved for human use.

**Conclusion**

Table item 508 is compatible with human rights because it promotes the protection of human rights.

**Senator the Hon Simon Birmingham**

**Minister for Finance**