

REPLACEMENT EXPLANATORY STATEMENT

This Explanatory Statement replaces the Explanatory Statement registered on 17 December 2021 for the Financial Framework (Supplementary Powers) Amendment (Home Affairs Measures No. 4) Regulations 2021 [F2021L01824] to provide further clarity on the intended meaning of ‘large employer’ and the non-exhaustive list of initiatives to help refugees and humanitarian entrants relating to the Economic Pathways to Refugee Integration program.

Issued by the Authority of the Minister for Finance

Financial Framework (Supplementary Powers) Act 1997

*Financial Framework (Supplementary Powers) Amendment
(Home Affairs Measures No. 4) 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 (Home Affairs Measures No. 4) 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 Home Affairs.

Funding is provided for:

- the Community Refugee Integration and Settlement Pilot, which aims to test whether Australia can achieve strong integration outcomes through a community-supported settlement model that provides a dedicated settlement pathway for refugees and humanitarian entrants (\$8.6 million over four years from 2021-22);
- the Economic Pathways to Refugee Integration program, which aims to increase refugee and humanitarian entrant employment outcomes by providing funding for initiatives that are supported by evidence or have demonstrated success in lifting the

rate of refugee and humanitarian entrant employment (\$24.6 million over three years from 2021-22);

- the Assisted Passage Program to help fund health screening and other pre-departure costs for refugee and humanitarian entrants under the offshore Humanitarian Program (\$132.7 million over four years from 2021-22, with no new funding approved for the program); and
- the National Cybercrime Capability Fund to enhance Australia's cybercrime law enforcement capabilities (initial administered funding of \$30.9 million over three 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 Home Affairs.

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 (Home Affairs Measures No. 4) Regulations 2021*

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Home Affairs Measures No. 4) 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 – 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 of Home Affairs (the department).

New **table item 513** establishes legislative authority for government spending on the Community Refugee Integration and Settlement Pilot (CRISP).

The objective of the CRISP is to test whether Australia can achieve strong integration outcomes through a community-supported settlement model that provides a dedicated settlement pathway for refugees and humanitarian entrants to Australia. International experience highlights that this pathway has superior economic and social settlement outcomes for some cohorts.

The CRISP is a dedicated settlement pathway for a modest cohort of refugees and humanitarian entrants. At or after the grant of a Humanitarian visa, these refugees and humanitarian entrants will be matched with a community supporter group that will provide wraparound settlement and integration support. This support will replace (for a small CRISP cohort only) services provided by the Humanitarian Settlement Program (HSP). The HSP will continue to deliver settlement services to all other eligible refugees and humanitarian entrants.

The CRISP will commence in 2021-22 and terminate on 30 June 2025. A total of 1,500 refugees and/or humanitarian entrants are intended to participate in the CRISP with places to be steadily increased each year. As international travel restrictions are expected to remain in place until at least the start of the 2022-23 program year, the CRISP allocation for 2021-22 has been calibrated to account for fewer humanitarian entrants being able to travel to Australia (as at 30 April 2021, 328 humanitarian visa holders had arrived in Australia in the 2020-21 program year), as well as the time required to implement the CRISP before its operationalisation in the second half of 2021-22.

The refugee category includes the United Nations High Commissioner for Refugees referred or self-referred refugees and those who are most in need of resettlement. The CRISP allocation is determined separately and does not impact decisions on the overall annual size and composition of the refugee category of the Humanitarian Program; only the settlement approach will differ.

Refugees and humanitarian entrants who are granted a Humanitarian visa will be identified for participation in the CRISP and will be matched with a community supporter group. Priority will be given to supporters in regional areas (outside of Sydney, Melbourne and Brisbane in line with the definition used for the broader Humanitarian Program), to support the achievement of the Government's commitment to resettle 50 per cent of refugees and humanitarian entrants in regional areas.

Community supporter groups will share costs with the Government, with refugees retaining full access to income support and other government programs and services on the same basis as other humanitarian entrants (excluding the HSP only). Supporters will be responsible for providing a range of practical and in-kind settlement and integration support.

The wraparound settlement and integration supports provided by the community supporter groups may include (and are not limited to):

- referral to government programs and services to improve English language proficiency and secure work and training opportunities;
- provision of adequate food, clothing and housing to aid participants' settlement into the community;
- access to health care services such as medical professionals and torture and trauma services where appropriate; and
- access to education, including appropriate schooling for children.

The department will seek to procure a provider through a limited tender to administer the CRISP. The successful organisation will be provided funding over the course of the CRISP to build demand for and awareness of the CRISP, and train, vet and monitor supporter groups across the Australian community.

The procurement process will be conducted in accordance with applicable legislative requirements under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), the *Commonwealth Procurement Rules* (CPRs) and the department's Accountable Authority Instructions. Final spending decisions are expected to be made by the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (the responsible Minister), the accountable authority of the department, or a delegate responsible for the management of the CRISP who has the appropriate skills and experience.

The department will procure the following services through a single procurement:

- co-designing the monitoring and compliance, and vetting frameworks;
- recruitment of sponsorship groups;
- vetting of applications from organisations;
- vetting of settlement locations for required service delivery;
- working with the department to match refugees with vetted supporter groups;
- supporter group training;
- supporting groups to develop detailed integration plans; and
- monitoring and compliance activities in line with the department-agreed framework.

The department will:

- manage all contracts for the above services;
- work with the provider to match refugees and vetted supporter groups; and
- co-design the monitoring and compliance, and vetting frameworks.

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

Merits review of decisions made in connection with the procurement would not be considered appropriate because these decisions relate to the provision of one-off funding to a certain service provider, over other service providers. The Administrative Review Council (ARC) has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.16 to 4.19 of the guide, *What decisions should be subject to merit review?* (ARC guide)).

The introduction of the CRISP will address the key findings of the 2020 Review of the Community Support Program (the CSP Review), conducted by the Commonwealth Coordinator-General for Migrant Services. The CSP Review honoured the 2017 Government commitment which was re-affirmed through the response to the independent *Review into Integration, Employment and Settlement Outcomes for Refugees and Humanitarian Entrants* (the Shergold Review). The Shergold Review report and the Government's response are available at <https://www.homeaffairs.gov.au/reports-and-publications/reviews-and-inquiries/inquiries/review-integration-employment-settlement-outcomes-refugees-humanitarian-entrants>.

The responsible Minister received the formal report of the CSP Review on 3 May 2021. A large number of community stakeholders have lobbied for a reformed and expanded Australian community sponsorship scheme and have a strong expectation that the Government would act on the findings of the CSP Review. A full list of those consulted can be found in the Findings of the Review of the Community Support Program document published on the departmental website (<https://www.homeaffairs.gov.au/reports-and-pubs/files/csp-review-findings.pdf>). The department will consider the information obtained during consultations on the design of the CRISP.

Funding for the CRISP of \$8.6 million for a period of four years commencing in 2021-22 is expected to be included in the 2021-22 Mid-Year Economic and Fiscal Outlook and the Portfolio Additional Estimates Statements for the Home Affairs Portfolio. Funding will come from Program 2.3: Refugee, Humanitarian, Settlement and Migrant Services, which is part of Outcome 2.

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 aliens power (section 51(xix)); and
- the immigration and emigration power (section 51(xxvii)).

Aliens power

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

The CRISP will involve the provision of funding to a provider to conduct a pilot which establishes a dedicated settlement pathway for refugees and humanitarian entrants.

Immigration and emigration power

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

The CRISP will involve the provision of funding for initiatives designed to assist refugees and humanitarian entrants who have migrated to Australia to build their lives, integrate and settle into the Australian community.

New **table item 514** establishes legislative authority for government spending on the Economic Pathways to Refugee Integration (EPRI) program.

The objective of the EPRI program is to increase employment outcomes for refugees and humanitarian entrants. This will be achieved through the provision of funding for initiatives that are supported by evidence or have demonstrated success in lifting the rate of refugee and humanitarian entrant employment.

Grant funding of \$21.3 million will be provided for initiatives with a particular focus on assisting refugees and humanitarian entrants, for example, to:

- simultaneously build up their English language abilities and vocational skills in areas of workforce shortage;
- establish their own businesses;
- relocate to areas where there is a workforce shortage in regional Australia; or
- directly access a role with a large employer.

A “large employer” under the EPRI program will be a business employing 200 or more people, consistent with the Australian Bureau of Statistics’ definition of “large employer”.

The EPRI program will focus on specific cohorts of refugees and humanitarian entrants who will benefit most from assistance (for example, those with low English language proficiency and low skill levels). It will direct funding to regions of Australia with high refugee and humanitarian entrant job seeker numbers, such as in Sydney South West. The initiatives listed above are examples of assistance that can be made available to help refugees and humanitarian entrants, they are not exhaustive.

Evidence gathered through the Department of Social Services' Try, Test and Learn Fund, as well as other domestic and international evidence, indicates that the EPRI program will:

- contribute to the Government's economic recovery agenda;
- lift the refugee and humanitarian entrant employment rate;
- increase the fiscal contribution of this cohort;
- reduce this cohort's welfare dependency and long-term unemployment; and
- address broader workforce and skills shortages.

Project-specific key performance indicators (KPIs) and robust monitoring and reporting will ensure that the EPRI program is administered in a way that is closely tied to outcomes. Proportions of funding will be linked to the successful delivery of outcomes to incentivise successful projects. KPIs will be tailored to projects and industries to maximise their ability to drive impact. Examples of KPIs which may be developed include:

- the number of refugees who are assessed as speaking English at less than a functional level achieve a vocational education and training certificate related to an area of workforce or skills shortage;
- the percentage of refugees who are in employment 26 weeks after they participate in a project; and
- the number of refugees with low skill levels who are provided with a minimum of 12 weeks of Australian work experience in an area of workforce or skills shortage.

The department will commission a rolling evaluation of the EPRI program to inform future outcomes-based refugee and humanitarian entrant economic participation funding models.

The department will deliver the EPRI program through a suite of grant processes. Grants will be administered in accordance with the Commonwealth resource management framework, including the PGPA Act and the *Commonwealth Grants Rules and Guidelines 2017* (CGRGs). A combination of ad hoc, closed non-competitive, restricted competitive and open competitive selection processes will be used, with a proportion of funding linked to the successful delivery of outcomes.

Social enterprises with experience in supporting refugee and humanitarian entrants achieve employment outcomes and other social impact organisations such as Certified B Corporations will be eligible and encouraged to apply for the EPRI program. Other organisations with demonstrated experience in achieving employment outcomes for refugees may be eligible for some grant rounds.

Information about grant opportunities, including grant opportunity guidelines, will be developed and made available on the GrantConnect website (www.grants.gov.au). Grants will be administered by the Community Grants Hub, part of the Department of Social Services. Final spending decisions are expected to be made by the responsible Minister, the accountable authority of the department, or a delegate responsible for the management of the EPRI program who have the appropriate skills and experience.

Merits review of funding decisions made in connection with the program would not be considered appropriate as they are decisions relating to the allocation of a finite resource, from which all potential claims for a share of the resource cannot be met. In addition, any funding that has already been allocated would be affected if the original decision was overturned. The ARC has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.11 to 4.19 of the ARC guide).

The review and audit process undertaken by the Australian National Audit Office (ANAO) provides a mechanism to review Australian Government spending decisions and report any concerns to the Parliament. These requirements and mechanisms help to ensure the proper use of Commonwealth resources and appropriate transparency around decisions relating to making, varying or administering arrangements to spend relevant money.

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

The department has consulted internally and externally on the high-level design of the EPRI program. These consultations have included persons with academic and practical expertise across the social enterprise and refugee resettlement sector, other government departments with relevant experience in delivering similar programs, and community stakeholders.

The Commonwealth Coordinator-General for Migrant Services has ongoing consultations with refugees, humanitarian entrants, the settlement sector and the social enterprise sector, which have informed the overall design of the EPRI program. Stakeholders helped identify successful models for lifting refugee and humanitarian employment, the cohorts most in need of assistance, and the support needed, both by organisations such as social enterprises and the cohorts, to lift the refugee and humanitarian employment rate. The EPRI program was supported by both internal and external stakeholders.

Total funding for the EPRI program of \$24.6 million for a period of three years commencing in 2021-22 is expected to be included in the 2021-22 Mid-Year Economic and Fiscal Outlook and the Portfolio Additional Estimates Statements for the Home Affairs Portfolio. Funding will come from Program 2.3: Refugee, Humanitarian, Settlement and Migrant Services, which is part of Outcome 2.

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 aliens power (section 51(xix));
- the social welfare power (section 51(xxiiiA));
- the immigration and emigration power (section 51(xxvii));
- the external affairs power (section 51(xxix));
- the Commonwealth executive power and the express incidental power, including the nationhood aspect (sections 61 and 51(xxxix)); and
- the territories power (section 122).

Aliens power

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

The EPRI program will involve the provision of funding for initiatives designed to increase the employment rate of refugees and humanitarian entrants who will not hold Australian citizenship.

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 unemployment benefits.

The EPRI program will involve the provision of evidence-based services to persons who are unemployed, for the purpose of assisting lifting the employment rate amongst the eligible cohort. Services may include the provision of vocational training to the eligible cohort in order to assist with the attainment of qualifications.

Immigration and emigration power

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

The EPRI program will involve the provision of funding for initiatives designed to assist refugees and humanitarian entrants who have migrated to Australia to build their lives and integrate into the Australian community through improved employment outcomes.

External affairs power

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

Australia has obligations relating to the *Convention on the Elimination of All Forms of Discrimination against Women* [1983] ATS 9 (CEDAW), the *Convention relating to the Status of Refugees*, as amended by the 1967 Protocol [1973] ATS 37 (Refugee Convention), the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), the *Convention on the Elimination of All Forms of Racial Discrimination* [1975] ATS 40 (CERD), the International Labour Organization’s *Convention concerning Employment Policy* (ILO Convention 122), and the International Labour Organization’s *Convention concerning Vocational Guidance and Vocational Training in the Development of Human Resources* (ILO Convention 142).

CEDAW

Article 3 of the CEDAW provides that States Parties shall take all appropriate measures, in particular in economic fields (among others), ‘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 11(1) of the CEDAW provides that ‘States Parties shall take measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights’, including the right to work.

Refugee Convention

Article 17(1) of the Refugee Convention provides that Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment. Article 17(3) states that Contracting States shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals, and in particular of those refugees who have entered their territory pursuant to programs of labour recruitment or under immigration schemes.

ICESCR

Article 2 of the ICESCR provides that the States Parties shall take steps to adopt legislative measures to realise the rights within the ICESCR including, relevantly, the right to work under Article 6(1). Article 6(2) of the ICESCR obliges the States Parties to take steps to safeguard the right to work, including ‘technical and vocational guidance and training programmes, policies and techniques to achieve...full and productive employment.’

CERD

Article 2(1) of the CERD requires Australia to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races. Article 2(1)(e) of the CERD requires Australia to ‘encourage, where appropriate, integrationist multi-racial organisations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division’.

Article 5(e)(i) of the CERD requires Australia to ‘prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of...[t]he rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration’.

ILO Convention 122

Article 1(1) of the ILO Convention 122 obliges each Member to ‘declare and pursue...an active policy designed to promote full, productive and freely chosen employment.’

Article 1(2) specifies that this policy shall aim to ensure that (among other things) ‘there is work for all who are available for and seeking work’. Article 2 further requires Members to ‘decide on and keep under review...the measures to be adopted for attaining the objectives specified in Article 1’, and to ‘take such steps as may be needed...for the application of these measures’.

ILO Convention 142

Article 1(1) of the ILO Convention 142 obliges each Member to ‘adopt and develop comprehensive and co-ordinated policies and programmes of vocational guidance and vocational training, closely linked with employment’. Article 1(2) requires the policies and programs adopted for the purposes of Article 1(1) take due account of matters including ‘employment needs, opportunities and problems, both regional and national’.

Article 2 of the ILO Convention 142 obliges each Member to ‘establish and develop open, flexible and complementary systems of general, technical and vocational education, educational and vocational guidance and vocational training, whether these activities take place within the system of formal education or outside it’.

Article 3 of the ILO Convention 142 obliges each Member to ‘gradually extend its systems of vocational guidance...with a view to ensuring that comprehensive information and the broadest possible guidance are available to all’.

Article 4 of the ILO Convention 142 obliges each Member to ‘gradually extend, adapt and harmonise its vocational training systems to meet the needs for vocational training throughout life of both young persons and adults in all sectors of the economy and branches of economic activity and at all levels of skill and responsibility’.

The EPRI program involves expenditure to support refugees and humanitarian entrants become employed, including through the provision of vocational training and support. The EPRI program will also be designed to reduce barriers to employment faced by the eligible cohort arising due to discrimination against women or racial discrimination.

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 EPRI program involves the development, on a national scale, of policies and initiatives which benefit Australia’s refugee and humanitarian entrant cohort in raising the employment rate of that cohort.

Territories power

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

The EPRI program may involve the provision of services in territories.

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 524** establishes legislative authority for government spending on the Assisted Passage Program (the program).

Australia has a long tradition of resettling refugees and people in humanitarian need from around the world. As one of the world’s most generous contributors to international refugee resettlement efforts, Australia has successfully resettled more than 920,000 people under the Humanitarian Program since World War II, in response to changing global resettlement and humanitarian needs.

Assisted passage services are integral to the successful delivery and integrity of the Humanitarian Program. Supports are provided for vulnerable refugee and humanitarian entrants who would otherwise not be able to fund costs associated with their visa application process, travel to Australia, and other pre-departure processes for resettlement. As an ongoing program established in the 1990s, the program enables the Government to prioritise the resettlement of some of the most vulnerable and at risk refugees, ensuring that entry to Australia is managed under a planned and orderly process. This is consistent with the Government’s broader objectives to deter people smuggling and irregular entry to Australia.

Legislative authority for the program is currently provided under table item 417.013 in Schedule 1AA as an arrangement between the Commonwealth and the International Organisation for Migration (IOM) to meet upfront costs for:

- pre-departure medical health checks;
- medical and other escorts (for those with high needs); and
- travel to a final destination in Australia.

In recent years, costs under the program have increased due to a number of factors, including:

- IOM increasing contract costs in 2017 to reflect the actual costs being incurred for travel and medical services (costs have not been reviewed since the contract was signed in 2012); and
- changes to the composition of the Humanitarian Program in line with government priorities, particularly resettlement from the Americas where travel costs are significantly higher.

The agreement with IOM is due to expire by June 2022 and new table item 524 will provide an opportunity to consider a more flexible model to deliver the program, including the option for a service provider other than IOM. This will allow the department to assess the impacts of the COVID-19 pandemic on the Humanitarian Program, identify efficiencies and secure a new arrangement.

On 18 February 2021, the department approached the market through an open Request for Tender (RFT) process for the provision of a range of services to support the offshore Humanitarian Program, in particular:

- access to all medical services and medical escort services in overseas regions;
- travel and non-medical escort services for refugee visa holders and, if requested by the department, Special Humanitarian Program visa holders in overseas regions;
- general requirements;
- data deliverables; and
- additional services.

The scope of services and support under the program remains unchanged, however, depending on the outcome of the RFT, such services and support may be provided by a provider other than IOM (or in addition to IOM, as the case may be).

The department conducted the RFT in accordance with the PGPA Act, the CPRs and the department's Accountable Authority Instructions. The department received several submissions for the RFT which are currently being evaluated by an Evaluation Committee. The completed evaluation report will be reviewed and cleared by legal, probity and procurement specialists, as well as a Steering Committee. Negotiations with the preferred tenderer can commence once the evaluation report has been approved by the Deputy Secretary, Immigration and Settlement Services.

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

Each year, the responsible Minister decides the composition of the Humanitarian Program. Departmental staff at diplomatic posts located offshore process visa applications to deliver the program. Applicants are assessed against visa criteria for suitability for resettlement in Australia. Once suitability is established, departmental officers engage with the service provider and refer the client. The service provider is required to use department-approved Panel Doctors for medical services for a set of basic tests as prescribed in the Panel Provider Instructions and to arrange for transport to a final destination in Australia.

The new contract between the Commonwealth and the service provider(s) will depend on the outcome of the RFT process. However, it will include strengthened reporting and performance monitoring requirements which will bolster the department's ability to drive service provider efficiency and improve cost effectiveness, and more closely monitor and manage service provider performance.

Final spending decisions, including entering into a contract with the preferred service provider(s), will be made by the Deputy Secretary, a delegate of the Secretary of the department, who has responsibility for immigration and settlement services.

Procurement decisions made in connection with the RFT process are not considered suitable for independent merits review, as they are decisions relating to the allocation of a finite resource. In addition, any funding that has already been allocated would be affected if the original decision was overturned. The ARC has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.11 to 4.19 of the ARC guide).

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

The department has undertaken comprehensive consultation with a wide range of stakeholders as part of the procurement process to ensure the provision of services continues to meet the program objectives and deliverables. Internal stakeholders include the department's Commercial Law Branch and Procurement and Contracts Support Branch. External stakeholders include leading law firms such as Clayton Utz and MinterEllison who provide practical advice and assistance to the department to safeguard the procurement process.

In addition, each year the department undertakes extensive consultation on the Humanitarian Program, including:

- meetings held by the responsible Minister with peak refugee and humanitarian interest groups and community organisations; and
- publication of a discussion paper seeking public submissions on the composition and management of the Humanitarian Program.

Funding of \$132.7 million over four years from 2021-22 for this item will come from Program 2.3: Refugee, Humanitarian Settlement and Migrant Services, which is part of Outcome 2. Details are set out in the *Portfolio Budget Statements 2021-22, Budget Related Paper No. 1.8, Home Affairs Portfolio* at page 41.

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 aliens power (section 51(xix));
- the immigration and emigration power (section 51(xxvii)); and
- the external affairs power (section 51(xxix)).

Aliens power

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

The program will fund the delivery of services and provision of assistance to persons who have been approved for entry to Australia under the refugee component of the offshore Humanitarian Program.

Immigration and emigration power

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

The program will fund the delivery of services and provision of assistance to immigrants to Australia.

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 places, persons, matters or things outside the geographical limits of Australia. The program will be directed towards places, activities and persons located outside Australia (that is, the delivery of services and provision of assistance to persons who have been approved for entry to Australia under the refugee component of the offshore Humanitarian Program).

New **table item 525** establishes legislative authority for government spending on the National Cybercrime Capability Fund (the Capability Fund) to support Commonwealth, state and territory agencies to improve Australia’s cybercrime law enforcement capabilities. The Capability Fund will be administered by the department, with input from the Australian Transnational, Serious and Organised Crime Committee (ATSOCC).

The ATSOCC was established to drive implementation of the *National Strategy to Fight Transnational, Serious and Organised Crime*. ATSOCC membership comprises senior officials from each Australian policing agency, New Zealand Police and representatives from other relevant government agencies. The department is also a member and provides secretariat support, working closely with other ATSOCC members to shape strategic direction and delivery of ATSOCC’s work program.

The Capability Fund will provide a significant edge to national law enforcement’s ability to target the most serious cybercrime impacting Australia. The Government has committed \$30.9 million in administered funding over three years from 2021-22 to the Capability Fund, which will uplift national law enforcement cybercrime fighting capability through targeted and impactful investment in a range of activities such as specialised skills enhancement, better intelligence sharing across governments, and enhanced victim-centric approaches.

The Capability Fund forms part of the Government’s \$124.9 million investment to bolster law enforcement capabilities to investigate and prosecute cyber criminals, as outlined in *Australia’s Cyber Security Strategy 2020* (<https://www.homeaffairs.gov.au/cyber-security-subsite/files/cyber-security-strategy-2020.pdf>).

The Capability Fund has been broadly modelled on the Australia New Zealand Counter Terrorism Committee (ANZCTC) Special Fund, which was established to enhance the security of Australia and New Zealand through measures such as effective intelligence sharing processes and coordinating effective nationwide counterterrorism capabilities. The ANZCTC includes representatives from each Commonwealth state and territory, with the Commonwealth responsible for expenditure from the ANZCTC Special Fund.

The key principles of the Capability Fund are that:

- it is designed to uplift national law enforcement cybercrime capability, including by leveraging (rather than duplicating) capability across jurisdictions;
- it will not be used to subsidise existing activities, that is, to meet expenses or to fund projects or services that are, or have been, already met from existing Commonwealth and/or state and territory budgets; and
- as a national initiative, jurisdictions will jointly determine prioritisation of proposed capabilities through a bidding process, working together to share the burden to ensure there is requisite capability to combat cybercrime nationally.

The Capability Fund will be delivered through a suite of procurement and grant processes, in accordance with applicable legislative requirements under the PGPA Act, the CPRs and the CGRGs.

The Capability Fund will be administered by the department, with guidance and recommendations on priority activities provided by the ATSOCC. The Australian Federal Police (AFP) and state and territory law enforcement agencies will be invited to submit applications for funding from the Capability Fund, via their relevant ATSOCC member. The ATSOCC will prioritise applications for funding, consistent with the Capability Fund guidelines and provide recommendations to the department for approval.

Final decisions will be made by the First Assistant Secretary, Law Enforcement Policy Division, who currently provides senior executive level oversight of the Capability Fund and holds the appropriate level of authority to approve expenditure of funds.

Should the AFP be successful in having a project recommended by ATSOCC and approved by the financial delegate, the department will enter into a Memorandum of Understanding (MOU) with the AFP for the duration of the project. The MOU will include a detailed budget, milestones and reporting requirements.

Should a state or territory law enforcement agency be successful in having a project recommended by ATSOCC and approved by the financial delegate, the Commonwealth will enter into an intergovernmental agreement or other appropriate agreement with the receiving agency. The receiving agency will be required to conduct relevant procurement, as needed, and expend the funding within the relevant financial framework of their jurisdiction.

Funding decisions made by the delegate will be final and not subject to independent merits review. Jurisdictions who fail to have their projects approved for funding from the Capability Fund may resubmit their application with new information or supporting documentation as part of the next submission process for further consideration by ATSOCC and the delegate.

Administrative accountability for the Capability Fund will be achieved by ensuring that:

- the process of allocating funds is fair;
- the criteria for funding are made clear; and
- decisions are made objectively.

As decisions on allocations from the Capability Fund relate to allocation of finite resources between competing applicants, and follow a process agreed by all applicant jurisdictions, the decisions will not be open to merits review. In addition, an allocation that has already been made to another party would be affected by overturning the original decision. The ARC has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.11 to 4.19 of the ARC guide).

The review and audit process undertaken by the ANAO also provides a mechanism to review government spending decisions and report any concerns to the Parliament.

The department consulted with a range of stakeholders, including ATSOCC and states and territories on the development of the Capability Fund. The Cyber Wave capability baselining project, sponsored by ATSOCC and undertaken by the department and the Australian Signals Directorate, provides a valuable evidence base to inform the development of the Capability Fund. Engagement on the Cyber Wave indicated that state and territory law enforcement agencies would welcome national initiatives that support and harmonise efforts to tackle cybercrime across Australia. Noting that the Capability Fund is specific to law enforcement capability relating to cybercrime, the department did not consider public consultation was necessary.

Administered funding of \$30.9 million for the Capability Fund was included in the 2020-21 Budget under the measure ‘Australia’s Cyber Security Strategy 2020’ for a period of three years commencing in 2021-22. Details are set out in *Budget 2020-21, Budget Measures, Budget Paper No. 2 2020-21* at pages 32 and 59 to 60.

Funding for this item will come from Program 1.8: Cyber Security (now Program 1.3: Cyber Security), which is part of Outcome 1. Details are set out in the *Portfolio Budget Statements 2020-21, Budget Related Paper No. 1.8, Home Affairs Portfolio* at page 32.

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 external affairs power (section 51(xxix));
- the power to grant financial assistance to the states (section 96); 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 Capability Fund will enhance national law enforcement capability to combat cybercrimes including those perpetrated on computers, telephones or other internet enabled devices. It may enhance law enforcement capability with regard to technical computer skills required to investigate or gather evidence of cybercrimes.

External affairs power

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

Australia has obligations relating to the *Convention on Cybercrime*. Article 14(1) of the Convention requires each Party to ‘adopt such legislative and other measures as necessary to establish the powers and procedures...for the purpose of specific criminal investigations or proceedings’. Article 14(2) requires each Party to apply the powers and procedures referred to in Article 14(1) to the criminal offences established in accordance with Articles 2 through 11 of the Convention; other criminal offences committed by means of a computer system; and the collection of evidence in electronic form of a criminal offence. The criminal offences specified in Articles 2 through 11 of the Convention include illegal access; illegal interception; data interference; system interference; misuse of devices; computer-related forgery; offences related to child pornography; and offences related to infringements of copyright and related rights.

The Capability Fund may enable greater information sharing across Australian jurisdictions in relation to cybercrime that could strengthen procedures in relation to criminal investigations or proceedings, in line with Article 14 of the *Convention on Cybercrime*.

Power to grant financial assistance to the states

Section 96 of the Constitution empowers the Parliament to ‘grant financial assistance to any State on such terms and conditions as the Parliament thinks fit’.

Through the Capability Fund, the Commonwealth will provide financial assistance to state law enforcement agencies for agreed activities to enhance national cybercrime fighting capability.

Territories power

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

Through the Capability Fund, the Commonwealth will provide financial assistance to territory law enforcement agencies for agreed activities to enhance national cybercrime fighting capability. The Capability Fund may also fund activities such as national legislative reviews to identify amendments that harmonise cybercrime related legislation across jurisdictions, including in territories.

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 (Home Affairs Measures No. 4) 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 (Home Affairs Measures No. 4) 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 Home Affairs (the department).

This disallowable legislative instrument adds four table items to Part 4 of Schedule 1AB:

- table item 513 ‘Community Refugee Integration and Settlement Pilot’;
- table item 514 ‘Economic Pathways to Refugee Integration’;
- table item 524 ‘Assisted Passage Program’; and
- table item 525 ‘National Cybercrime Capability Fund’.

Table item 513 – Community Refugee Integration and Settlement Pilot

New table item 513 establishes legislative authority for government spending on the Community Refugee Integration and Settlement Pilot (CRISP).

The objective of the CRISP is to test whether Australia can achieve strong integration outcomes through a community-supported settlement model that provides a dedicated settlement pathway for refugees and humanitarian entrants to Australia. International experience highlights that this pathway has superior economic and social settlement outcomes for some cohorts.

The CRISP is a dedicated settlement pathway for a modest cohort of 1,500 refugees and humanitarian entrants. At or after the grant of a Humanitarian visa, these refugees and humanitarian entrants will be matched with a community supporter group that will provide wraparound settlement and integration support. This support will replace (for this small

CRISP cohort only) services provided by the Humanitarian Settlement Program (HSP). The HSP will continue to deliver settlement services to all other eligible refugees and humanitarian entrants.

Priority will be given to supporters in regional areas (outside of Sydney, Melbourne and Brisbane in line with the definition used for the broader Humanitarian Program) to support the achievement of the Government's commitment to resettle 50 per cent of refugees and humanitarian entrants in regional areas. Community supporter groups will share costs with the Government, with refugees retaining full access to income support and other government programs and services on the same basis as other humanitarian entrants (excluding the HSP only). Supporters will be responsible for providing a range of practical and in-kind settlement and integration supports.

Human rights implications

Table item 513 engages the following rights:

- the right to work – Article 6 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), read with Article 2;
- the right to social security – Article 9 of the ICESCR;
- the right to an adequate standard of living and the highest attainable standard of physical and mental health – Articles 11 and 12 of the ICESCR;
- the right to education – Article 13 of the ICESCR; and
- the right to non-discrimination and equality – Article 5 of the *International Convention on the Elimination of All Forms of Racial Discrimination* (CERD), read with Article 2.

Article 2 of the ICESCR requires the States Parties to take steps to progressively achieve the full realisation of the rights recognised in the ICESCR by all appropriate means.

Right to work

Article 6 of the ICESCR states:

1. *The States Parties to the present Covenant recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.*
2. *The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedom to the individual.*

Table item 513 will support participants to achieve steady economic, social and cultural development through the provision of wraparound support by community groups as well as access to government programs and services. Support provided by community groups will aid participants to secure work and training opportunities.

Right to social security

Article 9 of the ICESCR states:

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

As a settlement and integration program, the CRISP supports participants' rights to social security through the wraparound support provided by community groups and reinforced by access to government programs and services. Some of these services are specific to refugees and humanitarian entrants and their unique circumstances.

Right to an adequate standard of living

Article 11 of the ICESCR states:

1. *The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.*

Table item 513 supports participants' rights to an adequate standard of living for themselves and their family through the wraparound support provided by community groups and reinforced by access to government programs and services, some specific to refugees and humanitarian entrants and their unique circumstances. Community groups will provide adequate food, clothing and housing as part of their provision of wraparound support. Aid from community groups to help participants find work, access training, and utilise their existing skills will allow participants to continually improve their living conditions.

Right to the highest attainable standard of physical and mental health

Article 12 of the ICESCR states:

1. *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.*

Table item 513 supports participants' rights to the highest attainable standard of physical and mental health through the wraparound support provided by community groups and reinforced by access to government programs and services, some specific to refugees and humanitarian entrants and their unique circumstances. This support includes access to health care services such as medical professionals and torture and trauma services where appropriate.

Right to education

Article 13 of the ICESCR states:

1. *The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding,*

tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

Table item 513 supports participants' rights to education through the wraparound support provided by community groups and reinforced by access to government programs and services, some specific to refugees and humanitarian entrants and their unique circumstances. Community groups will ensure access to education for participants as part of their provision of wraparound support.

Right to non-discrimination and equality

Article 2 of the CERD states:

1. *States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its form and promoting understanding among all races ...*
2. *States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.*

Article 5 of the CERD states:

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- ...
- (e) *Economic, social and cultural rights, in particular:*
- (i) *The rights to work ...;*
 - ...
 - (iii) *The right to housing;*
 - (iv) *The right to public health, medical care, social security and social services;*
 - (v) *The right to education and training.*

Table item 513 will ensure the adequate development and protection of participants from various ethnic, cultural and social backgrounds through the wraparound support, as detailed above, provided by community groups and reinforced by access to government programs and services, some specific to refugees and humanitarian entrants and their unique circumstances.

Conclusion

Table item 513 is compatible with human rights because it promotes the protection of human rights.

Table item 514 – Economic Pathways to Refugee Integration

New table item 514 establishes legislative authority for government spending on the Economic Pathways to Refugee Integration (EPRI) program.

The objective of the EPRI program is to increase employment outcomes for refugees and humanitarian entrants. This will be achieved through the provision of funding for initiatives that are supported by evidence or have demonstrated success in lifting the rate of refugee and humanitarian entrant employment.

Grant funding of \$21.3 million will be provided for initiatives with a particular focus on assisting refugees and humanitarian entrants to:

- simultaneously build up their English language abilities and vocational skills in areas of workforce shortage;
- establish their own businesses;
- relocate to areas where there is workforce shortage in regional Australia; or
- directly access a role with a large employer.

The EPRI program will focus on specific cohorts of refugees and humanitarian entrants who will benefit most from assistance (for example, those with low English language proficiency and low skill levels). It will direct funding to regions of Australia with high refugee and humanitarian entrant job seeker numbers, such as in Sydney South West.

Project-specific key performance indicators (KPIs) and robust monitoring and reporting will ensure the EPRI program is administered in way that is closely tied to outcomes. Proportions of funding will be linked to the successful delivery of outcomes, to incentivise successful projects. KPIs will be tailored to projects and industries to maximise their ability to drive impact. The department will commission a rolling evaluation of the EPRI program to inform future outcomes-based refugee and humanitarian entrant economic participation funding models.

Human rights implications

Table item 514 engages the following rights:

- the right to work and to favourable conditions of work – Articles 6 and 7 of the ICESCR, read with Article 2;
- the right to education – Article 13 of the ICESCR;
- the right to non-discrimination and equality – Article 5 of the CERD, read with Article 2; and
- the right to equality for women in the political, social, economic and cultural fields; in the field of education and in the field of employment – Articles 3, 10 and 11 of the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW).

Right to work and to favourable conditions of work

Article 2 of the ICESCR requires the States Parties to take steps to progressively achieve the full realisation of the rights recognised in the ICESCR by all appropriate means.

Article 6(1) of the ICESCR states:

The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

The EPRI program will provide a range of organisations with funding to support the economic inclusion of refugees and humanitarian entrants, allowing these cohorts a greater opportunity to gain a living that they freely choose.

Article 6(2) of the ICESCR states:

The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedom to the individual.

Table item 514 supports these rights as the EPRI program will provide a range of guidance, training, and direct intervention to aid participants to achieve steady economic development. Greater support for refugees and humanitarian entrants with low English language proficiency and low skills will boost employment outcomes, and improve the long-term social outcomes of these cohorts.

Article 7 of the ICESCR states:

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work.

The EPRI program will provide grants with a focus on social enterprises, namely businesses which have a defined social purpose and who invest their profits back into their purpose to the point that the social benefit outweighs the private benefit. Social purposes include addressing refugee and humanitarian entrant unemployment. By supporting these and other businesses who meet the requirements and the *Commonwealth Grants Rules and Guidelines 2017* (CGRGs), the EPRI program will support refugees and humanitarian entrants in obtaining just and favourable work conditions.

Right to education

Article 13 of the ICESCR states:

The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

The EPRI program will support refugees and humanitarian entrants to attain education by potentially funding, where appropriate and in line with the CGRGs, programs that deliver education, training, and/or skills recognition.

Right to non-discrimination and equality

Article 2(1) of the CERD states:

States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races.

By supporting refugees and humanitarian entrants into employment, the EPRI program will increase the social and economic capital of these cohorts who largely represent minority groups within Australia. This additional capital will support, within society, the elimination of racial discrimination.

Article 5(e)(i) and (v) of the CERD states:

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

...

(e) Economic, social and cultural rights, in particular:

(i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;

...

(v) The right to education and training.

The provision of pathways to employment through the EPRI program will allow refugees and humanitarian entrants greater choice in employment, in gaining more secure work, and in acquiring education and training. This will support their rights to work, free choice of employment, just and favourable conditions, equal pay, just and favourable remuneration, education, and training.

Right to equality for women

Article 3 of the CEDAW states:

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 10 of the CEDAW states:

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.

Article 11 of the CEDAW states:

States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights.

The EPRI program, where appropriate and in line with the CGRGs, may fund employment and/or education programs targeted at helping refugee and humanitarian entrant women to gain employment, career pathways, and to start their own business.

Conclusion

Table item 514 is compatible with human rights because it promotes the protection of human rights.

Table item 524 – Assisted Passage Program

New table item 524 establishes legislative authority for government spending on the Assisted Passage Program (the program).

Australia has a long tradition of resettling refugees and people in humanitarian need from around the world. As one of the world's most generous contributors to international refugee resettlement efforts, Australia has successfully resettled more than 920,000 people under the Humanitarian Program since World War II, in response to changing global resettlement and humanitarian needs.

Assisted passage services are integral to the successful delivery and integrity of the Humanitarian Program. Supports are provided for vulnerable refugee and humanitarian entrants who would otherwise not be able to fund costs associated with their visa application process, travel to Australia and other pre-departure processes for resettlement. As an ongoing program established in the 1990s, the program enables the Government to prioritise the resettlement of some of the most vulnerable and at risk refugees, ensuring that entry to Australia is managed under a planned and orderly process. This is consistent with the Government's broader objectives to deter people smuggling and irregular entry to Australia.

Legislative authority for the program is currently provided under table item 417.013 in Schedule 1AA as an arrangement between the Commonwealth and the International Organisation for Migration (IOM) to meet upfront costs for:

- pre-departure medical health checks;
- medical and other escorts (for those with high needs); and
- travel to a final destination in Australia.

The agreement with IOM is due to expire by June 2022 and new table item 524 will provide an opportunity to consider a more flexible model to deliver the program, including the option for a service provider other than IOM. This will allow the department to assess the impacts of COVID-19 on the Humanitarian Program, identify efficiencies and secure a new arrangement.

Human rights implications

Table item 524 does not engage any of the applicable rights or freedoms.

Conclusion

Table item 524 is compatible with human rights as it does not raise any human rights issues.

Table item 525 – National Cybercrime Capability Fund

New table item 525 establishes legislative authority for government spending on the National Cybercrime Capability Fund (the Capability Fund), which will be administered by the department, with input from the Australian Transnational, Serious and Organised Crime Committee (ATSOCC).

The Capability Fund will provide a significant edge to national law enforcement capability to target the most serious cybercrime impacting Australia. The Government has committed \$30.9 million over three years from 2021-22 to the Capability Fund, which will uplift national law enforcement cybercrime fighting capability through targeted and impactful investment in a range of activities such as specialised skills enhancement, better intelligence sharing across governments, and enhanced victim-centric approaches.

The Capability Fund forms part of the Government's \$124.9 million investment to bolster law enforcement capabilities to investigate and prosecute cyber criminals, as outlined in *Australia's Cyber Security Strategy 2020*.

Payments will be made to Commonwealth, state or territory agencies to contribute toward activities that are intended to bolster their capability to investigate and prosecute cyber criminals, and may include but are not limited to:

- training to enhance cybercrime investigative skills;
- measures to support the sharing of cybercrime intelligence between the Commonwealth and states and territories, such as funding security clearances to access secure networks; and
- pilot projects for improved support for victims of cybercrime.

Human rights implications

Table item 525 does not engage any of the applicable rights or freedoms.

Conclusion

Table item 525 is compatible with human rights because it promotes the protection of human rights.

**Senator the Hon Simon Birmingham
Minister for Finance**