

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance

Financial Framework (Supplementary Powers) Act 1997

Financial Framework (Supplementary Powers) Amendment (Attorney-General's Portfolio Measures No. 1) Regulations 2025

The *Financial Framework (Supplementary Powers) Act 1997* (the FFSP Act) confers on the Commonwealth, in certain circumstances, powers to make arrangements under which money can be spent; or to make grants of financial assistance; and to form, or otherwise be involved in, companies. The arrangements, grants, programs and companies (or classes of arrangements or grants in relation to which the powers are conferred) are specified in the *Financial Framework (Supplementary Powers) Regulations 1997* (the Principal Regulations). The powers in the FFSP Act to make, vary or administer arrangements or grants may be exercised on behalf of the Commonwealth by Ministers and the accountable authorities of non-corporate Commonwealth entities, as defined under section 12 of the *Public Governance, Performance and Accountability Act 2013*.

The Principal Regulations are exempt from sunset under section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (item 28A). If the Principal Regulations were subject to the sunset regime under the *Legislation Act 2003*, this would generate uncertainty about the continuing operation of existing contracts and funding agreements between the Commonwealth and third parties (particularly those extending beyond 10 years), as well as the Commonwealth's legislative authority to continue making, varying or administering arrangements, grants and programs.

Additionally, the Principal Regulations authorise a number of activities that form part of intergovernmental schemes. It would not be appropriate for the Commonwealth to unilaterally sunset an instrument that provides authority for Commonwealth funding for activities that are underpinned by an intergovernmental arrangement. To ensure that the Principal Regulations continue to reflect government priorities and remain up to date, the Principal Regulations are subject to periodic review to identify and repeal items that are redundant or no longer required.

Section 32B of the FFSP Act authorises the Commonwealth to make, vary and administer arrangements and grants specified in the Principal Regulations. Section 32B also authorises the Commonwealth to make, vary and administer arrangements for the purposes of programs specified in the Principal Regulations. Section 32D of the FFSP Act confers powers of delegation on Ministers and the accountable authorities of non-corporate Commonwealth entities, including subsection 32B(1) of the FFSP Act. Schedule 1AA and Schedule 1AB to the Principal Regulations specify the arrangements, grants and programs.

Section 65 of the FFSP Act provides that the Governor-General may make regulations prescribing matters required or permitted by the FFSP Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the FFSP Act.

The *Financial Framework (Supplementary Powers) Amendment (Attorney-General's Portfolio Measures No. 1) Regulations 2025* (the Regulations) amend Schedule 1AB to the Principal Regulations in relation to activities to be administered by the Attorney-General's Department.

Funding is provided for:

- an amendment to the Justice Services – Community Legal Services Program (CLSP) to expand the funding scope for the Insurance Law Service (ILS). The ILS is a practical and accessible online resource to support individuals to understand their financial legal rights and to assist them to resolve their disputes with insurers (\$67.7 million over five years from 2025-26);
- the Case Management and Mediation Services – Elder Abuse Program to enable a broader range of services such as family mediation and financial counselling to be delivered to focus on addressing underlying family relationship issues (\$8.1 million over four years from 2026-27, which is part of the CLSP); and
- the Supporting victims and survivors of child sexual abuse and supporting children displaying harmful sexual behaviours program to enhance and expand child-centric, trauma-informed supports for children and young people (\$12.8 million over five years from 2024-25).

Details of the Regulations are set out at Attachment A. A Statement of Compatibility with Human Rights is at Attachment B.

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

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

Consultation

In accordance with section 17 of the *Legislation Act 2003*, consultation has taken place with the Attorney-General's Department.

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

Details of the *Financial Framework (Supplementary Powers) Amendment (Attorney-General's Portfolio Measures No. 1) Regulations 2025*

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Attorney-General's Portfolio Measures No. 1) Regulations 2025*.

Section 2 – Commencement

This section provides that the Regulations commence on the day after registration on the Federal Register of Legislation.

Section 3 – Authority

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

Section 4 – Schedules

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

Schedule 1 – Amendments

Financial Framework (Supplementary Powers) Regulations 1997

The items in Schedule 1 amend Schedule 1AB to the Principal Regulations to provide legislative authority for government spending on activities to be administered by the Attorney-General's Department (the department).

Amended table item 87 – Justice Services – Community Legal Services Program

Item 1 – Part 4 of Schedule 1AB (table item 87, column headed “Objective(s)”, subparagraph (a)(ii))

Table item 87 in Part 4 of Schedule 1AB establishes legislative authority for government spending on the Justice Services – Community Legal Services Program (CLSP).

Item 1 amends table item 87 by omitting “Aboriginal and Torres Strait Islander people” and substituting ‘Indigenous Australians’ in subparagraph (a)(ii) in the column headed “Objective(s)”. This is a technical amendment reflecting the preferred reference to Indigenous Australians.

Item 2 – Part 4 of Schedule 1AB (table item 87, column headed “Objective(s)”, after paragraph (d) (first occurring))

Item 2 amends table item 87 by inserting “(da) provide legal assistance services to individuals in relation to disputes with insurers, other than disputes in relation to State insurance (within the meaning of paragraph 51(xiv) of the Constitution); or” in the column headed “Objective(s)” after the first occurring paragraph (d). The amendment expands the CLSP’s funding objective to include additional services for the Insurance Law Services.

Item 3 – Part 4 of Schedule 1AB (table item 87, column headed “Objective(s)”, paragraph (e) (first occurring))

Item 3 amends table item 87 by omitting “or (d)” and substituting “, (d) or (da)” in the column headed “Objective(s)” in the first occurring paragraph (e). This is a consequential amendment to the amendment prescribed by item 2 above to reflect that legal assistance services provided to individuals for disputes with insurers will also be subject to potential evaluations and improvements.

Item 4 – Part 4 of Schedule 1AB (table item 87, column headed “Objective(s)”)

Item 4 amends table item 87 by omitting the word “also” in the column headed “Objective(s)”. The effect of this technical amendment to the operational provisions is to align table item 87 with the current approach to referring to constitutional heads of power in table items in Schedule 1AB.

The CLSP, established in its current form in 2013, is a nationally focussed discretionary grants program administered by the department. The CLSP contributes to the department’s Outcome 1 — A just and secure society through the maintenance and improvement of Australia’s law, justice, security and integrity frameworks and supports the department’s Strategic Priority 4 — Maintain an efficient and effective civil Commonwealth justice system that meets the needs of all Australians.

The purpose of the CLSP is to contribute to achieving a national legal assistance sector that is integrated, efficient and effective, and is focused on improving access to justice and improving outcomes for vulnerable people facing disadvantage by ensuring their access to legal representation and associated services.

The CLSP aims to support the provision of legal assistance to the community by funding national legal assistance service delivery and activities that will complement the delivery of community legal services by the states and territories under the *National Access to Justice Partnership 2025-30* (NAJP). The NAJP is a five-year National Agreement between the Australian Government and all states and territories that provides Australian Government funding for legal assistance services. Further information on the NAJP is available at <https://www.ag.gov.au/legal-system/legal-assistance-services/national-access-justice-partnership-2025-30>.

A new CLSP grant opportunity will run over five years from 2025-26 and provide \$67.7 million grant funding to 14 invited providers, including:

- First Nations Advocates Against Family Violence Limited;
- National Association of Community Legal Centres;
- National Aboriginal and Torres Strait Islander Legal Services represented by Aboriginal Legal Service (NSW/ACT) Limited;
- National Association of Women's Legal Services Australia Limited;
- LawRight;
- Justice Connect;
- JusticeNet SA Incorporated;
- Legal Aid Commission of WA;
- Financial Rights Legal Centre;
- Arts Law Centre of Australia;
- National Children's and Youth Law Centre;
- Australian Pro Bono Centre;
- Legal Services Commission of SA; and
- Legal Aid Commission of NSW.

The new CLSP grant opportunity will include services under the Insurance Law Service (ILS). The Financial Rights Legal Centre's national ILS is funded under the CLSP to provide services to people who have issues with their income protection, car insurance and home and contents policies. The ILS is the only free national specialist legal advice service for insurance law issues, with clients from across Australia accessing it via telephone, email and internet communications. Grant funding for this service will be made available to the Financial Rights Legal Centre Incorporated (FRLC) as part of the CLSP grant opportunity. Current funding arrangements for the FRLC to support the ILS remain in place until 30 June 2025.

Since 2014, the ILS has received funding from various non-recurrent sources, including Community Benefit Payments from the Australian Securities and Investments Commission and a Fire Service Levy contribution from the Victorian Government. This includes funding for:

- the development of an interactive website feature - Motor Vehicle Accident Problem Solver, a research project with Monash University looking at the extent to which consumers understand and rationally apply legally required insurance disclosure documents;
- a pilot of an Aboriginal specific advice line, including the part-time employment of a designated indigenous worker to promote the service;
- the writing and publication of a policy report '*Guilty until proven innocent: Insurance investigations in Australia*' and requisite follow up; and
- various other policy projects such as involvement in the development of the Life Insurance Code of practice.

The ILS was previously funded through CLSP direct grant agreements with the Commonwealth of \$0.3 million over two years from 2015-16, then \$0.5 million over three years from 2017-18.

Funding amount and arrangements, merits review and consultation

Additional funding of \$31.0 million for the CLSP was included in the 2024-25 Mid-Year Economic and Fiscal Outlook under the measure 'National Access to Justice Partnership' for a period of five years commencing in 2025-26. Details are set out in the *Mid-Year Economic and Fiscal Outlook 2024-25, Appendix A: Policy decisions taken since the 2024-25 Budget* at page 216.

Funding for the item, including for the ILS, will come from Program 1.4 Justice Services, which is part of Outcome 1. Details will be set out in the 2024-25 Portfolio Additional Estimates Statements for the Attorney-General's Department portfolio.

The department will deliver the CLSP grant opportunity to organisations through a closed non-competitive grant selection process. The grant will be administered in accordance with the Commonwealth resource management framework, including the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule) and the *Commonwealth Grants Rules and Principles 2024* (CGRPs).

Consistent with the CGRPs, the department has developed grant opportunity guidelines and will have regard to the nine key principles in administering the grant.

Information about the grant and successful grantees will be made available on the GrantConnect website (www.grants.gov.au), and the grant will be administered by the Community Grants Hub, which is part of the Department of Social Services. The delegate of the Secretary of the department under the *Financial Framework (Supplementary Powers) Act 1997* (FFSP Act) will be responsible for approving Commonwealth funding provided.

The delegate, Deputy Secretary, Justice and Communities Group, will have appropriate skills, qualification, and experience, with a strong understanding of the objectives of the CLSP. The department's *Public Governance, Performance and Accountability Financial Delegation 2024 (No. 2)* (or any subsequent updates) will determine the appropriate delegate for the financial commitment or payment to be made.

The department will undertake the grants selection process, where an assessment panel will make recommendations to the decision maker. The Community Grants Hub will undertake the ongoing management of the grant agreements.

Independent merits review is not considered suitable for decisions made in connection with the CLSP as these decisions relate to an allocation of finite resources, from which all potential claims of the resource may not be met. Allowing independent merits review would only promote competition among community groups. No effective remedy could be provided, as a successful application for review by one service provider would require a reduction in funding to other service providers; and there would be delays in channelling funds into service provisions. It would also mean that an allocation that has already been made to another party would be affected by overturning the original decision.

Additionally, funding for the CLSP is based on budgetary decisions of a policy nature, rather than decisions immediately affecting any particular person's interests. Decisions of this nature are subject to parliamentary scrutiny, and the Minister who makes them will be held politically accountable for any consequences. Decisions by government to allocate funding to programs such as the CLSP are therefore not suitable for review. The Administrative Review Council (ARC) has recognised that it is justifiable to exclude merits review in relation to decisions based on finite resources and budgetary decisions of a policy nature (see paragraphs 4.11 to 4.19 of the guide: *What decisions should be subject to merit review?* (ARC guide)).

The review and audit process undertaken by the Australian National Audit Office (ANAO) also 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 sought input from relevant government and non-government stakeholders on the design and delivery of the CLSP grant opportunity, and where reasonable, have considered the needs and interests of these stakeholders to ensure shared understanding of expectations and better achievement of policy outcomes. Feedback from consultations was generally supportive.

The department meets regularly with existing CLSP providers, including the ILS, which are supportive of the CLSP but note rising costs and funding constraints. This was considered in the design of the new CLSP grant round.

The department has engaged with a number of Commonwealth Government entities on the grant round including the Department of Finance, the Department of the Prime Minister and Cabinet, the Department of Social Services and the National Indigenous Australians Agency.

Item 5 – Part 4 of Schedule 1AB (table item 87, column headed “Objective(s)”, paragraph (e) (second occurring))

Item 5 amends table item 87 by repealing the second occurring paragraph (e) and substituting “(e) with respect to Indigenous Australians and particular groups of Indigenous Australians; or (ea) with respect to insurance, other than State insurance (within the meaning of paragraph 51(xiv) of the Constitution); or” in the column headed “Objective(s)”. The amendment reflects that spending activities under the CLSP are also supported by the insurance power as there are activities which provide legal support related to insurance and insurance laws to achieve the objectives of the CLSP.

Constitutional considerations

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 census and statistics power (section 51(xi));
- the insurance power (section 51(xiv));
- the race power (section 51(xxvi));
- the executive power and the express incidental power (section 51(xxxix) and section 61); 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’.

Services funded under the CLSP, such as the amica online family law dispute resolution tool and Youth Law Australia’s online chat service, are delivered exclusively through the internet.

Census and statistics power

Section 51(xi) of the Constitution empowers the Parliament to make laws with respect to ‘Census and statistics’.

Services funded under the CLSP involve the collection of information for statistical purposes.

Insurance power

Section 51(xiv) of the Constitution empowers the Parliament to make laws with respect to ‘Insurance, other than State insurance extending beyond the limits of the State concerned’.

The ILS is funded under the CLSP to provide legal support related to insurance and insurance laws.

Race power

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

Certain services to be funded under the CLSP, such as Artists in the Black, the National Aboriginal and Torres Strait Islander Legal Service and First Nations Advocates against Family Violence, provide support and services specifically to Indigenous Australians.

Executive power and express incidental power

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. The executive power in section 61 of the Constitution supports activities that form part of the ordinary and well-recognised functions of government.

Certain services funded under the CLSP, such as the Australian Pro-Bono Centre, Self-Representation services and the Insurance Law Service, provide legal services to persons in relation to matters within federal jurisdiction.

Certain services to be funded under the CLSP, such as peak bodies Women's Legal Services Australia and Community Legal Centres Australia, are funded to inform the public or stakeholders about Commonwealth laws and government programs, and to engage with the Commonwealth as stakeholders to inform government decisions and future policy development.

Territories power

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

Certain services funded under the CLSP involve activities being undertaken in the Territories.

Item 6 – In the appropriate position in Part 4 of Schedule 1AB (table)

Item 6 adds two new table items to Part 4 of Schedule 1AB.

Table item 702 – Case Management and Mediation Services – Elder Abuse Program

New **table item 702** establishes legislative authority for government spending on the Case Management and Mediation Services – Elder Abuse Program (the CMMS).

The new five-year NAJP agreement between Commonwealth and state and territory governments will transition funding for six Commonwealth legal assistance programs into the NAJP to reduce funding fragmentation and streamline reporting. The five-year NAJP agreement (<https://federalfinancialrelations.gov.au/agreements/national-access-justice-partnership>) will take effect on 1 July 2025.

Under the NAJP, state and territory governments will receive and be responsible for administering elder abuse funding for Specialist Elder Abuse Units (SEAU) and elder abuse Health Justice Partnerships (HJPs). These services will focus on addressing underlying family relationship issues through the CMMS and have been one of the three successful service models that formed the Specialist Elder Abuse Service Trials administered by the Government from 2018-19. Existing support for elder abuse trials has been provided since 2018-19 to 11 organisations to deliver 12 specialist elder abuse services across three service types: the CMMS, HJPs and SEAU, in urban, regional and rural locations across Australia.

Funding under the NAJP is limited to specific types of legal assistance service providers (Aboriginal and Torres Strait Islander Legal Services, Community Legal Centres, Family Violence Prevention and Legal Services, Legal Aid Commissions and Women's Legal Services) so administering elder abuse CMMS funding through the CLSP rather than the NAJP from 1 July 2026 would enable a broader range of services such as family mediation and financial counselling to continue to be selected for funding.

The provision of the CMMS will transition to the CLSP from 1 July 2026. Relationships Australia providers in the Northern Territory, Queensland, Western Australia and the Australian Capital Territory, as existing service providers, will be able to make an application for future funding opportunities under the CMMS. Pending further evaluation of the existing CMMS services anticipated to be undertaken in 2025-26, the grant opportunity may be opened to other service providers.

The CMMS will involve some provision of legal information, advice and assistance and some services that are non-legal in nature, which can include administrative services, psychological counselling services, financial support services, non-legal advocacy and mediation between family members that is not court related. These services aim to address clients' needs in ways that recognise that legal and/or social needs can be effectively addressed and resolved via alternate services, such as mediation and financial counselling.

Funding amount and arrangements, merits review and consultation

Funding for the CMMS, which forms part of the broader \$3.9 billion package for the NAJP, was included in the 2024-25 Mid-Year Economic and Fiscal Outlook under the measure 'National Access to Justice Partnership' for a period of five years commencing in 2025-26. Details are set out in the *Mid-Year Economic and Fiscal Outlook 2024-25, Appendix A: Policy decisions taken since the 2024-25 Budget* at page 216.

Funding of \$8.1 million over four years from 2026-27 for the item will come from Program 1.4: Justice Services, which is part of Outcome 1. Details will be included in the 2024-25 Portfolio Additional Estimates Statement for the Attorney-General's Department portfolio.

Funding will be provided to organisations through a grant selection process. The type of grant process will be determined at the next grant opportunity round in 2026. The grant will be administered in accordance with the Commonwealth resource management framework, including the PGPA Act, the PGPA Rule and the CGRPs.

Consistent with the CGRPs, the department will develop grant opportunity guidelines and will have regard to the nine key principles in administering the grant. The department will engage the Community Grants Hub to administer the grant opportunity.

Information about the grant and successful grantees will be made available on the GrantConnect website (www.grants.gov.au). The Attorney-General, the Secretary of the department or their delegate will be responsible for approving Commonwealth funding provided under the PGPA Act and the FFSP Act.

The delegate, Deputy Secretary, Justice and Communities Group, will have appropriate skills, qualifications, and experience, with a strong understanding of the objectives of the CMMS.

The department's *Public Governance, Performance and Accountability Financial Delegation 2024 (No. 2)* (or any subsequent updates) will determine the appropriate delegate for the financial commitment or payment to be made.

Independent merits review is not considered suitable for decisions made in connection with the CMMS as these decisions relate to an allocation of finite resources, from which all potential claims of the resource may not be met. Allowing independent merits review would only promote competition among community groups. No effective remedy could be provided, as a successful application for review by one service provider would require a reduction in funding to other service providers; and there would be delays in channelling funds into service provisions. It would also mean that an allocation that has already been made to another party would be affected by overturning the original decision.

Additionally, funding for the CMMS is based on budgetary decisions of a policy nature, rather than decisions immediately affecting any particular person's interests. Decisions of this nature are subject to parliamentary scrutiny, and the Minister who makes them will be held politically accountable for any consequences. Decisions by government to allocate funding to programs such as the CMMS are therefore not suitable for review. 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 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.

State and territory governments were consulted during development of the new NAJP, including the future administration of Australian Government funding for the CMMS and new peak bodies through the CLSP.

Existing CMMS have been informed about the program changes which will take place from 1 July 2026. Feedback from consultations will be incorporated into the design of the CMMS grant opportunity.

Constitutional considerations

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

External affairs power

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

Australia has obligations relevant to elder abuse under the *International Covenant on Civil and Political Rights* (ICCPR). In particular:

- Article 2 requires that each State Party ‘undertakes to take the necessary steps ... to adopt such laws or other measures as may be necessary to give effect to the rights’ recognised in the Covenant.
- Article 7 provides that ‘no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment’.
- Article 17(1) provides that no one ‘shall be subjected to arbitrary or unlawful interference’ with his or her ‘privacy, family, home or correspondence’.
- Article 26 provides that all persons are ‘equal before the law and are entitled without any discrimination to the equal protection of the law’. Further, ‘the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination’ on a range of grounds, including race, sex or ‘other status’ such as age.

By enabling people who are experiencing elder abuse to access specialist services, including legal services, the CMMS will assist in preventing the physical or severe psychological abuse of older people. These services will also assist older people who are at risk of or experiencing arbitrary or unlawful use or disclosure of their personal information, such as family members or others having inappropriate access to financial, health or social welfare records which they use to exploit an older person. Furthermore, by providing a service focussed on promoting the rights and freedoms of older people, the CMMS aims to address discrimination and other barriers older people may face in accessing specialist services and will assist the realisation of their rights.

Australia has obligations under the *Convention on the Rights of Persons with Disabilities* (CRPD) relevant to older persons with disabilities and older persons who develop age-related disabilities. In particular:

- Article 4 of the CRPD provides that States Parties undertake to ‘adopt all appropriate legislative, administrative and other measures for the implementation of the rights’ recognised in the Convention.
- Article 8(1)(b) provides that States Parties ‘undertake to adopt immediate, effective and appropriate measures’ to ‘combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life’.
- Article 16(1) of the CRPD requires States Parties to take all appropriate measures to ‘protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse’. In addition, States Parties are required to ‘take all appropriate measures to prevent all forms of exploitation, violence and abuse’ including by ensuring appropriate forms of ‘age-sensitive assistance and support for persons with disabilities’ (Article 16(2)), and to ‘take all appropriate measures’ to promote the ‘recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse’ taking into account ‘age-specific needs’ (Article 16(4)).

Research has established that older people with poorer health or a disability are more likely to experience elder abuse. The CMMS will work with older people – including those with poorer health or a disability – and other necessary parties to identify the root causes of conflict and harmful behaviours, and options to promote the safety of the older person. This will include providing information and support to combat stereotypes of ageing and underlying prejudices. Further, CMMS will provide age-sensitive assistance and support and work collaboratively with older people to promote their recovery, rehabilitation and connection to social, health, justice and other support systems.

Table item 703 – Supporting victims and survivors of child sexual abuse and supporting children displaying harmful sexual behaviours

New **table item 703** establishes legislative authority for government spending for the Supporting victims and survivors of child sexual abuse and supporting children displaying harmful sexual behaviours program (the program).

The program was announced as part of the \$80.0 million commitment to enhance and expand child-centric, trauma-informed supports for children and young people. The program is part of the Australian Government’s response to the *Report of the Rapid Review of Prevention Approaches* (the Review) (www.pmc.gov.au/resources/unlocking-the-prevention-potential). Particularly relevant is Recommendation 5 which includes efforts to support children and young people who have experienced violence, including developing tailored and developmentally appropriate, as well as youth-specific and informed, service responses for child sexual abuse. The program also addresses the Review’s note that there are further opportunities for prioritisation of responses to child sexual abuse, including harmful sexual behaviours displayed by children and young people.

The program contributes to objectives under the *National Strategy to Prevent and Respond to Child Sexual Abuse 2021-2030* (National Strategy) to support and empower victims and survivors of child sexual abuse and respond early to children and young people when harmful sexual behaviours first appear to prevent behaviours from recurring or escalating (www.childsafety.gov.au/resources/national-strategy-prevent-and-respond-child-sexual-abuse-2021-2030).

The program also aligns with Action 8 of the *First Action Plan 2023-2027* of the *National Plan to End Violence against Women and Children 2022–2032* (the National Plan). The National Plan’s Outcomes Framework 2023-2032 specifies a key long-term outcome that ‘Children and young people are safe in all settings and are effectively supported by systems and services’ (Outcome 5).

It also aligns with the Government’s efforts under *Safe and Supported: the National Framework for Protecting Australia’s Children 2021-2031* and the *Early Years Strategy*, and responds to findings of the Australian Child Maltreatment Study.

Further detail about the program was announced on 27 October 2024 in a joint media release by the Attorney-General, the Hon Mark Dreyfus KC MP, and the Minister for Social Services, the Hon Amanda Rishworth MP: ‘More support for communities to address child sexual abuse’, which can be found here: ministers.ag.gov.au/media-centre/more-support-communities-address-child-sexual-abuse-27-10-2024.

The department will deliver an open competitive (restricted by eligibility) grant opportunity (2025-26 to 2027-28) to enable specialist and community support services, to enhance and expand critical social, therapeutic, legal and other support services provided to victims and survivors of child sexual abuse and children and young people at risk of, or displaying, harmful sexual behaviours. Examples of such supports might include:

- Wrap around case management: Ensuring that victims and survivors and children and young people who have displayed harmful sexual behaviour receive comprehensive, continuous support throughout their engagement. This may include personalised care coordination, assistance with navigating social services and ongoing emotional and practical support.
- Therapeutic support: This may include access to trauma-informed therapy, counselling and other mental health services designed to help victims and survivors, and children and young people displaying harmful sexual behaviour.

The program will provide timely, safe and effective support to victims and survivors of child sexual abuse seeking help and provide evidence-based, therapeutic services to prevent early harmful sexual behaviours from escalating and reoccurring. The program focuses on direct services aimed at early intervention, healing and recovery to stop the intergenerational cycle of violence.

The program will enhance existing services by ensuring alignment with the ‘Minimum Practice Standards: Specialist and Community Support Services Responding to Child Sexual Abuse’ (www.childsafety.gov.au/resources/minimum-practice-standards-specialist-and-community-support-services-responding-child-sexual-abuse), and the forthcoming National Clinical and Therapeutic Framework for responding to children and young people who have displayed harmful sexual behaviour (Therapeutic Framework).

Funding is anticipated to be used by service providers to expand service capacity and improve service capability.

Funding amount and arrangements, merits review and consultation

Funding of \$12.8 million for the program was included in the 2024-25 Mid-Year Economic and Fiscal Outlook under the measure ‘Ending Gender-Based Violence – National Cabinet’ for a period of five years commencing in 2024-25. Details are set out in the *Mid-Year Economic and Fiscal Outlook 2024-25, Appendix A: Policy decisions taken since the 2024-25 Budget* at pages 226 and 227.

Funding for this item will come from Program 1.4: Justice Services, which is part of Outcome 1. Details will be set out in the 2024-25 Portfolio Additional Estimates Statements for the Attorney-General’s Department portfolio.

Funding will be provided to specialist and community support services through an open competitive grant. Eligibility will be restricted to organisations already providing relevant services to victims and survivors of child sexual abuse and/or children and young people displaying harmful sexual behaviours.

The grant will be administered in accordance with the Commonwealth resource management framework, including the PGPA Act, the PGPA Rule, the CGRPs and the Accountable Authority’s Instructions.

Consistent with the CGRPs, the department is developing grant opportunity guidelines and will have regard to the nine key principles in administering the grant. The grant opportunity guidelines will be approved by the Attorney-General and will set out the application and assessment process, the governance arrangements (including roles and responsibilities) and who will approve the grants. Once approved, the grant opportunity guidelines will be published on GrantConnect (www.grants.gov.au) consistent with the CGRPs.

Grants will be approved and entered into in accordance with the grant opportunity guidelines. Information about the grant and successful grantees will be made available on the GrantConnect website (www.grants.gov.au), and the grant will be administered by the Community Grants Hub. The Community Grants Hub provides specialist support and expertise in guiding the grant process through the design, select and manage phase of the grant round. This will be complemented by subject matter experts within the Selection Advisory Panel who will review and assess applications. Further, the department has in-house grants specialists within the Grants Policy Unit that assist program managers and provide policy and procedural guidance.

It is anticipated that a Selection Advisory Panel will shortlist applicants prior to final decisions about Commonwealth expenditure. It is anticipated that the Secretary of the department or their Senior Executive Service under the FFSP Act and PGPA Act will be responsible for approving Commonwealth funding provided via the grant opportunity. The Secretary's delegations specify expenditure limits for each delegate, increasing in-line with the seniority of the office holder. When exercising their powers, delegates are required to exercise their duties ethically, in accordance with the duties imposed on all officials under the PGPA Act, the Australian Public Service Values, Employment Principles and Code of Conduct, and consistent with the Commonwealth resource management framework. The decision-maker will be required to have the appropriate skills, qualifications and experience to exercise their decision-making powers.

Merits review of decisions made in connection with the grant would not be considered appropriate because these decisions relate to the allocation of finite resources and an allocation that has already been made to another grantee 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 National Strategy was developed in partnership with state and territory governments and relevant Commonwealth agencies, and in consultation with non-government stakeholders. The program was informed by advice provided through this process, ongoing engagement with advisory groups, and more detailed research and consultation to inform a 2023 baseline analysis of specialist and community support services responding to child sexual abuse.

Constitutional considerations

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

External affairs power

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

Australia has obligations relating to the *Convention on the Rights of the Child* (CRC). In particular:

- Article 2, which provides that States Parties shall respect and ensure the rights set forth in the Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
- Article 4, which provides that States Parties shall undertake all appropriate measures, including legislative measures, for the implementation of the rights recognised by the Convention. With regard to economic, social and cultural rights, States Parties will undertake measures to the maximum extent of their available resources.
- Article 19, which provides that States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. Protective measures should include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described, and, as appropriate, for judicial involvement.
- Article 34, which provides that States Parties shall undertake all appropriate national, bilateral and multilateral measures to protect children from all forms of sexual exploitation and sexual abuse.
- Article 39, which provides that States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

The program aligns with these articles by expanding the provision of critical social, therapeutic, legal and other support services provided to victims and survivors of child sexual abuse and children at risk of, or engaging in, harmful sexual behaviour. The program will also enhance the quality of the services provided by promoting greater alignment with best practice, including the Minimum Practice Standards for specialist and community support services responding to child sexual abuse and forthcoming Therapeutic Framework.

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 (Attorney-General's Portfolio Measures No. 1) Regulations 2025

This disallowable legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

Section 32B of the *Financial Framework (Supplementary Powers) Act 1997* (the FFSP Act) authorises the Commonwealth to make, vary and administer arrangements and grants specified in the *Financial Framework (Supplementary Powers) Regulations 1997* (the Principal 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 Principal Regulations specify the arrangements, grants and programs. The powers in the FFSP Act to make, vary or administer arrangements or grants may be exercised on behalf of the Commonwealth by Ministers and the accountable authorities of non-corporate Commonwealth entities, as defined under section 12 of the *Public Governance, Performance and Accountability Act 2013*.

The *Financial Framework (Supplementary Powers) Amendment (Attorney-General's Portfolio Measures No. 1) Regulations 2025* amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on activities to be administered by the Attorney-General's Department.

This disallowable legislative instrument makes the following amendments to Part 4 of Schedule 1AB:

- amends table item 87 'Justice Services – Community Legal Services Program';
- adds table item 702 'Case Management and Mediation Services – Elder Abuse Program'; and
- adds table item 703 'Supporting victims and survivors of child sexual abuse and supporting children displaying harmful sexual behaviours'.

Amended table item 87 - Justice Services – Community Legal Services Program

The amended table item 87 establishes legislative authority for government spending on the Justice Services – Community Legal Services Program (CLSP). The amendment reflects the expended scope of the CLSP to include additional spending for the Insurance Law Service (ILS).

The CLSP, established in its current form in 2013, is an ongoing nationally focussed discretionary grants program. The purpose of the CLSP is to contribute to achieving a national legal assistance sector that is integrated, efficient and effective. The CLSP is focused on improving access to justice and improving outcomes for vulnerable people facing

disadvantage by ensuring their access to legal representation and associated services. Services to be funded under the CLSP, such as Artists in the Black, the National Aboriginal and Torres Strait Islander Legal Services and First Nations Advocates against Family Violence provide support and services to Indigenous Australians.

The ILS is a practical and accessible online resource to support individuals to understand their financial legal rights and to assist them to resolve their disputes with insurers. Grant funding over five years from 2025-26 will be made available under the CLSP to the Financial Rights Legal Centre Incorporated (FRLC). Current funding arrangements for the FRLC to support the ILS remain in place until 30 June 2025.

Funding for the ILS forms part of the \$67.7 million funding over five years from 2025-26 for the CLSP.

Human Rights Implications

The amended table item 87 engages the following rights:

- the right to a fair trial and fair hearings – Article 14 of the *International Covenant on Civil and Political Rights* (ICCPR), read with Article 2; and
- the right to be equal before the courts and tribunals – Article 14 of the ICCPR.

Article 2 of the ICCPR requires that each State Party ‘undertakes to take the necessary steps ... to adopt such legislative or other measures as may be necessary to give effect to the rights’ recognised in the Covenant.

Right to a fair trial and fair hearings

Article 14(1) of the ICCPR requires that ‘All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (order public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.’

The amended table item 87 will promote Article 14(1) by ensuring individuals have sufficient access to legal representation, even if they do not have the means to fund it themselves. The availability or absence of legal assistance often determines whether or not a person can access the relevant proceedings or participate in them in a meaningful way. Directly funding legal assistance services supports ‘equality of arms’ being met, which requires that all parties to a proceeding must have a reasonable opportunity of presenting their case under conditions that do not disadvantage them as against other parties to the proceedings. This ensures people who are subject to a proceeding maintain the right to a fair trial and fair hearings.

Right to be equal before the courts and tribunals

Article 14(3) of the ICCPR requires that ‘In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: [...]

- (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
- (c) To be tried without undue delay;
- (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it’.

The amended table item 87 will promote the entitlements outlined in 14(3) by supporting individuals to receive legal counsel and legal representation - even if they do not have sufficient means to pay for it - by providing legal assistance. Under Article 14, States are encouraged to provide legal aid to those who do not have sufficient means to pay for legal counsel or representation. Ensuring that there is funding to provide legal aid for individuals supports the right to be equal before courts and tribunals. The amended table item 87 also promotes the right to be tried without delay by reducing the risk that a lack of representation and means to acquire it will cause trials to be stayed indefinitely.

Further guidance on these rights can be found at <https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-scrutiny/public-sector-guidance-sheets/fair-trial-and-fair-hearing-rights>.

The amended table item 87 is compatible with human rights because it promotes the protection of human rights.

Table item 702 - Case Management and Mediation Services – Elder Abuse Program

Table item 702 establishes legislative authority for government spending on the Case Management and Mediation Services – Elder Abuse Program (the CMMS).

The new five-year agreement between Commonwealth and state and territory governments will transition funding for six Commonwealth legal assistance programs into the National Access to Justice Partnership (NAJP) to reduce funding fragmentation and streamline reporting. Under the NAJP, state and territory governments will receive and be responsible for administering elder abuse funding for Specialist Elder Abuse Units and elder abuse Health Justice Partnerships.

From 1 July 2026, the provision of the CMMS will be delivered under the CLSP, which will enable a broader range of services such as family mediation and financial counselling to continue to be selected for funding.

These services will focus on addressing underlying family relationship issues through the CMMS and have been one of the three successful service models that formed the Specialist Elder Abuse Service Trials administered by the Government from 2018-19.

The CMMS will involve some provision of legal information, advice and assistance and some services that are non-legal in nature, which could include administrative services, psychological counselling services, financial support services, non-legal advocacy and mediation between family members that is not court related. These services aim to address clients' needs in ways that recognise that legal and/or social needs can be effectively addressed and resolved via alternate services, such as mediation and financial counselling.

Funding for the CMMS of approximately \$8.1 million over four years from 2026-27 will be available from the CLSP.

Human Rights Implications

Table item 702 engages the following rights:

- the right to protection from exploitation, violence and abuse contained, among other places – Article 16 of the *Convention on the Rights of Persons with Disabilities* CRPD, read with Article 4; and
- the rights of equality and non-discrimination contained, among other places – Articles 16 and 26 of the ICCPR, read with Article 2.

Right to protection from exploitation, violence and abuse

Article 4 of the CRPD provides that States Parties undertake to 'adopt all appropriate legislative, administrative and other measures for the implementation of the rights' recognised in the Convention.

Article 16(1) of the CRPD, as one expression of this right, provides: 'States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.'

Table item 702 will promote the right to protection from exploitation, violence and abuse for older people in Australia.

Australia's first *National Elder Abuse Prevalence Study* (2021) found that approximately one in six older Australians had experienced some form of abuse in the previous 12 months. This study identified that an older person having a disability was associated with a higher likelihood of experiencing elder abuse, along with other factors such as social isolation and poorer physical health.

In general, the most commonly recognised forms of elder abuse experienced in Australia are physical abuse, psychological or emotional abuse, financial abuse, sexual abuse, and neglect. The amendment will support older people (not limited to older people who have a disability) who may be at risk of or experiencing abuse and mistreatment to have access to specialised case management and mediation services. The services will work with older people and other necessary parties to identify root causes of conflict and harmful behaviours, and options to promote the safety of the older person.

The services to be enabled by this amendment will provide age-sensitive assistance and support and work collaboratively with older people to promote their safety, rehabilitation and connection to social, health, justice and other support systems.

Rights of equality and non-discrimination

Article 2 of the ICCPR requires that each State Party ‘undertakes to take the necessary steps ... to adopt such legislative or other measures as may be necessary to give effect to the rights’ recognised in the Covenant.

Article 16 of the ICCPR provides that ‘Everyone shall have the right to recognition everywhere as a person before the law’.

Article 26 of the ICCPR, as one expression of this right, provides that: ‘All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.’

Ageism – prejudicial or discriminatory attitudes to older people – can be an underlying cause or contributing factor to the abuse of older people.

Table item 702 will promote the rights of equality and non-discrimination by supporting older people who may be at risk of or experiencing abuse to have access to specialised case management and mediation services, and to empower them to take practical steps to realise the full range of their rights and to counter ageist, discriminatory or other harmful behaviours they may be encountering.

Table item 702 is compatible with human rights because it engages and promotes the protection of human rights.

Table item 703 – Supporting victims and survivors of child sexual abuse and supporting children displaying harmful sexual behaviours

Table item 703 establishes legislative authority for government spending for the Supporting victims and survivors of child sexual abuse and supporting children displaying harmful sexual behaviours program (the program).

The program was announced as part of the \$80.0 million commitment to enhance and expand child-centric, trauma-informed supports for children and young people. Its purpose is to increase service capacity to deliver best-practice, trauma-informed, culturally safe and evidence-based services to victims and survivors of child sexual abuse and children and young people displaying harmful sexual behaviours.

The program will enable specialist and community support services to enhance and expand critical social, therapeutic, legal and other support services provided to victims and survivors of child sexual abuse and children and young people at risk of, or displaying, harmful sexual behaviours. Examples of such supports might include:

- Wrap around case management: Ensuring that victims and survivors and children and young people who have displayed harmful sexual behaviour receive comprehensive, continuous support throughout their engagement. This may include personalised care coordination, assistance with navigating social services and ongoing emotional and practical support.
- Therapeutic support: This may include access to trauma-informed therapy, counselling and other mental health services designed to help victims and survivors, and children and young people displaying harmful sexual behaviour.

Funding of \$12.8 million over four years from 2024-25 is available for the program.

Human Rights Implications

Table item 703 engages the following rights:

- the rights of the child to serve in their best interests – Articles 19, 34 and 36 of the *Convention on the Rights of the Child* (CRC), read with Article 4, and Article 10 of the ICCPR, read with Article 2; and
- the right to health and wellbeing – Article 12 of the ICESCR, read with Article 2.

Rights of the child to serve in their best interests

Article 4 of the CRC requires that each State Party undertake all appropriate measures for the implementation of the rights recognised in the CRC, to the maximum extent of their available resources. Article 2 of the ICCPR requires that each State Party respects and gives effect to the rights in the ICCPR for all relevant individuals without distinction.

Table item 703 positively engages with the rights of the child to serve in their best interests, and the fundamental rights and freedoms protected by the CRC and ICCPR. Rights engaged include:

- The right of the child to be protected from all forms of physical and mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse (Article 19 of the CRC).
- The right of every child to be protected from all forms of sexual exploitation and sexual abuse (Article 34 of the CRC).
- The right of the child to be protected against all other forms of exploitation prejudicial to any aspects of the child's welfare (Article 36 of the CRC).
- The right of every person deprived of liberty to be treated with humanity and with respect for the inherent dignity of the human person (Article 10 of the ICCPR).

Table item 703 will promote these rights by expanding the provision of critical social, therapeutic, legal and other support services provided to victims and survivors of child sexual abuse and children at risk of, or engaging in, harmful sexual behaviour.

Right to health and wellbeing

Article 2 of the ICESCR requires that each State Party undertake steps to the maximum of its available resources to achieving the full realisation of the rights recognised by the ICESCR, without discrimination of any kind.

In addition, table item 703 positively engages with the right to health and wellbeing, including the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (Article 12 of the ICESCR).

Table item 703 will also enhance the quality of services provided by promoting greater alignment with best practice, including the *Minimum Practice Standards: Specialist and Community Support Services Responding to Child Sexual Abuse* and a forthcoming National Clinical and Therapeutic Framework for responding to children and young people who have displayed harmful sexual behaviour.

Table item 703 is compatible with human rights because it engages and promotes the protection of human rights.

Conclusion

This disallowable legislative instrument is compatible with human rights because it promotes the protection of human rights.

Senator the Hon Katy Gallagher
Minister for Finance