



Australian Government

Department of Health and Aged Care

Ministerial Submission – Standard

MS23-900246

Version (1)

Date sent to MO: 7 July 2023

To: Minister Wells

Subject: Legislative authority to authorise spending on Budget 2023 spending activities - Executive Council Meeting 17 August 2023

Critical date: 13 July 2023 – The letters to the Minister for Finance at Attachments A ^{s22} must be received by 13 July 2023 to meet the Department of Finance's deadline for the inclusion of new items in the *Financial Framework (Supplementary Powers) Regulations 1997* at the Executive Council meeting of 17 August 2023.

Recommendations:

- | | |
|--|--|
| <p>1. Agree to write to the Minister for Finance at <u>Attachments A</u> ^{s22} seeking legislative authority under Schedule 1AB of the <i>Financial Framework (Supplementary Powers) Regulations 1997</i> for Commonwealth spending on 2023 Budget spending measures.</p> | <p>1. <input checked="" type="checkbox"/> Agreed/Not agreed/Please discuss</p> |
| <p>2. Sign the letters to the Minister for Finance at <u>Attachments A</u> ^{s22}</p> | <p>2. <input checked="" type="checkbox"/> Signed/Not signed/Please discuss</p> |

Signature

Date: 14 / 07 / 2023

Comments:

Contact Officer:	Chris Johnston	A/g General Counsel, Legal Advice and Legislation Branch	Ph: (02) 6289 ^{s22} Mobile: ^{s22}
Clearance Officer:	Miriam Moore	Chief Counsel	Ph: (02) 6289 ^{s22} Mobile: ^{s22}

Synopsis: Legislative authority is required, in addition to an appropriation, to authorise Commonwealth spending before the Commonwealth can enter into contracts and commit public money.

- s42 [REDACTED]
- **Issue:** Schedule 1AB of the *Financial Framework (Supplementary Powers) Regulations 1997* (FF(SP) Regulations) needs to be amended to provide legislative authority for Commonwealth spending on the following 2023 Budget measures:

a. Smoking and Vaping Cessation including the Public Health Campaign
(Attachment A1)

s22 [REDACTED]

- s42 [REDACTED]

s42 [REDACTED]

s22 [REDACTED]

Issues:

1. Letters from you to the Minister for Finance requesting amendments to Schedule 1AB of the FF(SP) Regulations to provide legislative authority for these spending measures so the Commonwealth can commit public money on the measures are at **Attachments A** s22 [REDACTED] The letters provide a summary of the AGS advice, including the Schedule 1AB items, as well as extensive program details on the planned Commonwealth expenditure.

It is also usual practice that separate letters are provided for each request to the Minister for Finance to amend the FF(SP) Regulations.

2. The letters must be received by the Minister for Finance by 13 July 2023 to meet the Department of Finance's deadline for the inclusion of new items in the FF(SP) Regulations at the Executive Council meeting of 17 August 2023.

Background: As a result of the *Williams*' High Court cases (*Williams v Commonwealth* [2012] HCA 23 and *Williams v Commonwealth [No.2]* [2014] HCA 23), the Commonwealth must now only commit public money on activities for which:

- a) there is a linkage to a head of power in the Constitution;
- b) legislation authorising the funding exists (except where related to the ordinary and well-recognised functions of government); and
- c) an appropriation.

AGS assesses the constitutional risk and legislative authority of all spending proposals prior to Cabinet consideration, as prescribed in the Budget Process Operational Rules. Where there is no legislation authorising spending, AGS generally advises a new item be inserted into Schedule 1AB of the Regulations to provide legislative authority for the spending.

To amend Schedule 1AB of the Regulations to provide legislative authority for these spending measures, you are required to write to the Minister for Finance (**Attachments A** s22

The Department of Finance has developed a template document that has been completed to support the process for seeking legislative authority for these spending measures (**Attachments A1** s22). The completed templates are to be enclosed in the letters from you to the Minister for Finance. The templates will form the basis of drafting instructions to the Office of Parliamentary Counsel for the amendments to Schedule 1AB of the FF(SP) Regulations.

s42

Attachments:

A: Letter to the Finance Minister including:

A1: Smoking and Vaping Cessation and the Public Health Campaign

s22

Election Commitments / Budget Measures:

Funding of \$92.9 million for the Smoking and Vaping Cessation Program, comprising \$63.4 million for the *Public health information campaigns on vaping and tobacco control* and \$29.5 million for the *Smoking and vaping cessation activities* were included in the 2023-24 Budget under the measure '*Vaping Regulation Reform and Smoking Cessation Package*' for a period of four years commencing in 2023-24.

s22

Sensitivities: The Commonwealth cannot enter into arrangements involving the commitment of relevant money unless there is legislation, in addition to an appropriation, authorising spending, otherwise the spending risks being found to be unlawful.

Consultations: The Office of Constitutional Law within the Attorney-General's Department, the AGS, the Department of Finance, the department's Budget Branch, the department's s22, and the department's Population Health Division were consulted in the preparation of this submission.

Communication/Media Activities: Nil for the legislative changes. The department will advise if there are any announcements closer to the commitment of funds.

THIS DOCUMENT HAS BEEN RELEASED UNDER
THE FREEDOM OF INFORMATION ACT 1982 (Cth) BY
THE DEPARTMENT OF HEALTH AND AGED CARE

Minister	Minister Wells
PDR Number	MS23-900246
Subject	Legislative authority to authorise spending on Budget 2023 spending activities - Executive Council Meeting 17 August 2023
Critical Date	Thursday, 13 July 2023
Contact Officer	Chris Johnston Ph: (02) 6289 s22 Mobile: s22
Clearance Officer	Charles Wann (02) 6289 s22 s22
Division/Branch	Corporate Operations Legal & Assurance
Has Budget Branch been consulted if there are financial implications?	Not Applicable

Adviser/DLO comments:	Returned to Dept for: REDRAFT <input type="checkbox"/> NFA <input type="checkbox"/>
------------------------------	--

Quality Assurance Check (completed by line area)	s22 (02) 6289 s22
---	--------------------------



The Hon Anika Wells MP
Minister for Aged Care
Minister for Sport
Acting Minister for Health and Aged Care
Member for Lilley

Ref No: MS23-900246

Senator the Hon Katy Gallagher
Minister for Finance
Parliament House
CANBERRA ACT 2600
senator.katy.gallagher@aph.gov.au

Dear Minister

Request for a new Schedule 1AB item

I am writing to seek your agreement to insert a new item in Schedule 1AB to the Financial Framework (Supplementary Powers) Regulations 1997 (FF(SP) Regulations) to establish legislative authority for Government spending on the smoking and vaping cessation activities including the public health information campaigns. This Schedule 1AB amendment is proposed for consideration by the Governor-General at the Federal Executive Council meeting scheduled for 17 August 2023.

Summary of the proposed Commonwealth expenditure

The spending measure is to fund action to reduce smoking and vaping rates, particularly among young Australians, through stronger public health education and cessation supports. Tobacco use remains the leading cause of preventable death and disability in Australia, and vaping rates are rapidly increasing.

The spending measure aligns with announced tobacco and e-cigarette regulatory reforms, the National Tobacco Strategy 2023-2030 and the National Preventive Health Strategy 2021-2030, and will support the National Agreement on Closing the Gap. It also aligns with Australia's obligations under the World Health Organization Framework Convention on Tobacco Control, including in respect to preventing and reducing tobacco use and nicotine addiction.

The Public health information campaigns on vaping and tobacco controls measure (\$63.4 million over four years commencing in 2023-24) will drive and support tobacco and e-cigarette cessation attempts, denormalise smoking and vaping, increase support in the community for quitting, and reduce the likelihood of people substituting smoking for vaping (or vice versa).

The Smoking and Vaping Cessation Activities will increase and enhance smoking and vaping cessation supports (\$29.5 million over four years commencing in 2023-24) to assist people to quit smoking and vaping.

Activities will include: establishing an online national quitting support hub; redeveloping and modernising the existing My Quit Buddy mobile app to include vaping; increasing the capacity of state and territory Quitline and Quit services; and updating clinical guidance to support the health workforce.

The payment mechanism for the Quitline will be by Federal Financial Arrangement. All other items will be by procurement.

Policy authority

s34(3)

s34(2)

s34(3) s34(2)

s34(3) .

Funding information

Funding of \$92.9 million for the Smoking and Vaping Cessation Program, comprising \$63.4 million for the Public health information campaigns on vaping and tobacco control and \$29.5 million for the Smoking and vaping cessation activities were included in the 2023-24 Budget under the measure 'Vaping Regulation Reform and Smoking Cessation Package' for a period of four years commencing in 2023-24. Details are set out in Budget 2023-24, Budget Measures, Budget Paper No. 2 2023-24 at page 154.

Funding for this item will come from Program 1.5, which is part of Outcome 1. Details are set out in the Portfolio Budget Statements 2023-24, Budget Related Paper No. 1.9, Health and Aged Care Portfolio at page 36.

Summary of constitutional and legislative authority risks

Constitutional authority risk

s42

Legislative authority risk

s42

To assist the Department of Finance with drafting the proposed Schedule 1AB amendment and preparing explanatory materials, I have enclosed additional information about the Program.

Yours sincerely



Anika Wells

14 July 2023

Encl (1)

THIS DOCUMENT HAS BEEN RELEASED UNDER
THE FREEDOM OF INFORMATION ACT 1982 (CTH) BY
THE DEPARTMENT OF HEALTH AND AGED CARE

Attachment A1

Attachment to the letter to the Minister for Finance (additional information)

Description of the proposed new Commonwealth expenditure

Tobacco use remains the leading cause of preventable death and disability in Australia and use of e-cigarettes and nicotine vaping products (vapes) are rapidly increasing. Nicotine is highly addictive and poses serious health risks, and medical experts have serious concerns about the health effects of other harmful substances in vaping products. Whilst there is some evidence that vaping could provide a mechanism to support smoking cessation effort in some cases, there is strong and consistent evidence that young people who vape are three times as likely to take up smoking, compared to those who don't. In addition, e-cigarette use among young people is leading to nicotine addiction for a cohort that would otherwise have a low risk of tobacco use.

The Government is committed to reducing rates of tobacco, e-cigarettes and nicotine vaping product uses as outlined by Minister Butler at his National Press Club address on 2 May 2023 and through the *Vaping Regulation Reform and Smoking Cessation Package* announced in the 2023-24 Budget.

This commitment aligns with the goals, objectives and targets of the *National Tobacco Strategy 2023-2030*, which aims to improve the health of all Australians by reducing the prevalence of tobacco use and its associated, health, social, environmental and economic costs and the inequalities it causes.

The *National Tobacco Strategy 2023-2030* includes the following objectives:

- Prevent uptake of e-cigarettes by young people and those who have never smoked;
- Prevent and reduce nicotine addiction;
- Denormalise and limit the marketing and use of e-cigarettes;
- Encourage and assist as many people as possible who use tobacco and e-cigarettes to quit as soon as possible, and prevent relapse;
- Prevent and reduce tobacco use among:
 - groups at higher risk from tobacco use, and
 - other populations with a high prevalence of tobacco use; and
- Prevent and reduce the marketing and harms associated with use of novel and emerging products.

The *National Tobacco Strategy 2023-2030* includes targets to reduce daily smoking prevalence in Australia to below 10 per cent by 2025, and to 5 per cent or less by 2030. It also includes a number of actions to address e-cigarette use and vaping.

Further, Australia has obligations as a Party to the World Health Organization Framework Convention on Tobacco Control (the Convention), to prevent and reduce tobacco use and nicotine addiction.

The Government through the *Vaping Regulation Reform and Smoking Cessation Package* in the 2023-24 Budget is proposing stronger regulation and enforcement of all e-cigarettes, with and without nicotine. This package also includes spending on public health information campaigns and smoking and vaping cessation supports to prevent and reduce smoking and vaping rates.

This spending measure is aligned with the proposed tobacco and e-cigarette regulatory reforms, the *National Tobacco Strategy 2023-2030*, and the *National Preventive Health Strategy 2021-2030*, and will help support the National Agreement on Closing the Gap. It is also aligned with Australia's obligations under the Convention.

1. Public health information campaign

A national public health campaign is a key initiative of the *National Tobacco Strategy 2023-2030*. The campaign (\$63.4 million over 4 years, including departmental funding) seeks to:

- drive and support tobacco and e-cigarette quit attempts;
- denormalise smoking and vaping;
- increase support in the community for quitting; and
- reduce the likelihood of people substituting smoking for vaping (or vice versa) instead of quitting.

The public health information campaign will have two activities:

- A. A national targeted smoking and vaping public health campaign; and
- B. s47E(d) national youth vaping education campaign, s47E(d)

A. A national targeted smoking and vaping public health campaign

s47E(d) over four years from 2023-24 for the implementation of a national targeted smoking and vaping public health campaign to reduce smoking and vaping prevalence among priority and at-risk populations aged 18-40. The approach would include co-design and co-delivery for First Nations peoples, LGBTIQ+ people and people from culturally and linguistically diverse (CALD) backgrounds.

This public health information campaign will be implemented and delivered by the Department of Health and Aged Care in accordance with the whole of government arrangements for consumer education campaigns. Whilst the exact activities cannot be defined at this point, it is expected they would include:

- creative development of campaign materials – including formative and concept market testing research;
- advertising, media buys, and public relations activities;
- creative development of campaign materials for online/digital (video, display, mobile, social, search) and out of home, TV, radio; and images for use in other communications materials and websites, including targeted materials and/or resources for priority populations (First Nations People, CALD, LGBTIQ+); and
- benchmarking and evaluation research of the campaign.

B. A national youth vaping education campaign, s47E(d)

s47E(d) over four years from 2023-24 for the implementation of a youth vaping education national campaign to educate and support young people, parents, carers and the community about the harms of vaping. The campaign aims to stop young people vaping, through reducing uptake and supporting cessation.

s34(3)

s34(3)

(s34(2))

s34(3)

s34(2)

s34(3)

s34(3)

2. Smoking and Vaping Cessation activities

This component expands smoking and vaping cessation activities through specialised programs and health services to support Australians to quit smoking and vaping (\$29.5 million over 4 years, including departmental funding), and consists of five activities:

- Activity 1: National consumer digital cessation hub s47E(d)

This activity is for the development of an externally hosted national consumer digital cessation hub to provide equitable access to evidence-based smoking and vaping cessation information, resources and support, with opportunities for collaboration with states and territories and the public health sector.

An external service provider will be engaged through a closed tender process, given the specialised nature of cessation services. s47E(d) will be approached to deliver this activity, subject to procurement processes and successful value for money assessment.

- Activity 2: Redevelopment of the My Quit Buddy mobile application s47E(d)

This activity is to redevelop the existing My Quit Buddy mobile app to enable its expansion and provision of evidence-based cessation supports, including for vaping cessation. It also includes transition to an externally hosted platform run by cessation experts with maintenance costs of s47E(d) per annum, over 4 years.

An external service provider will be engaged through s47E(d) tender procurement process to deliver this activity.

- Activity 3: Funding to scale up State and Territory Quitlines s47E(d)

This activity is to increase the capacity of State and Territory Quitlines and other Quit services to support increased demand through additional workforce, training for Quitline counsellors, and enhanced use of technology to drive efficiencies and complement phone services.

The payment mechanism for this activity will be by the Federal Financial Arrangement, and is subject to negotiation with State and Territory governments.

- Activity 4: Updating evidence-based clinical guidance to ensure best practice vaping cessation is available to the health workforce s47E(d)

This activity will update clinical guidelines for health professionals s47E(d)

) to include a focus on people who need support to quit vaping.

Pending negotiation and agreement by the providers, the s47E(d) will be engaged through a closed tender process.

- Activity 5: Targeted workforce education strategy to equip and train health professionals s47E(d)

This activity is to develop a targeted workforce education strategy to equip and train health professionals in evidence-based practices to best support their patients to quit smoking and vaping.

An external service provider will be engaged through a closed tender process, given the specialised nature of this activity. It is likely that s47E(d) will be engaged.

Suggested text for a new Schedule 1AB item

s42

s42



Statement specifying the constitutional head of power

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

Statement of the relevance and operation of the constitutional head of power

External affairs power (s 51(xxix))

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.

World Health Organisation Framework Convention on Tobacco Control [2005] ATS 7

Australia has the following international obligations under Articles 5, 12 and 14 of the *World Health Organisation Framework Convention on Tobacco Control [2005] ATS 7* (the Convention).

Article 5 of the Convention obliges parties to develop, implement, periodically update and review comprehensive multisectoral national tobacco control strategies, plans and programmes in accordance with the Convention.

Article 12 of the Convention obliges parties to promote and strengthen public awareness of tobacco control issues, using all available communication tools, as appropriate.

Article 14 of the Convention obliges each party to develop and disseminate appropriate, comprehensive and integrated guidelines based on scientific evidence and best practices, taking into account national circumstances and priorities, and to take effective measures to promote cessation of tobacco use and adequate treatment for tobacco dependence. Expenditure under this item under the national public health campaign, especially to target at-risk population groups and young people, is a key initiative of the *National Tobacco Strategy 2023-2030* as well as expanding smoking and vaping cessation activities through specialised programs and health services to support Australians to quit smoking and vaping.

Decisions about Commonwealth expenditure

1. Public health information campaign

The public health information campaign will be delivered through two activities:

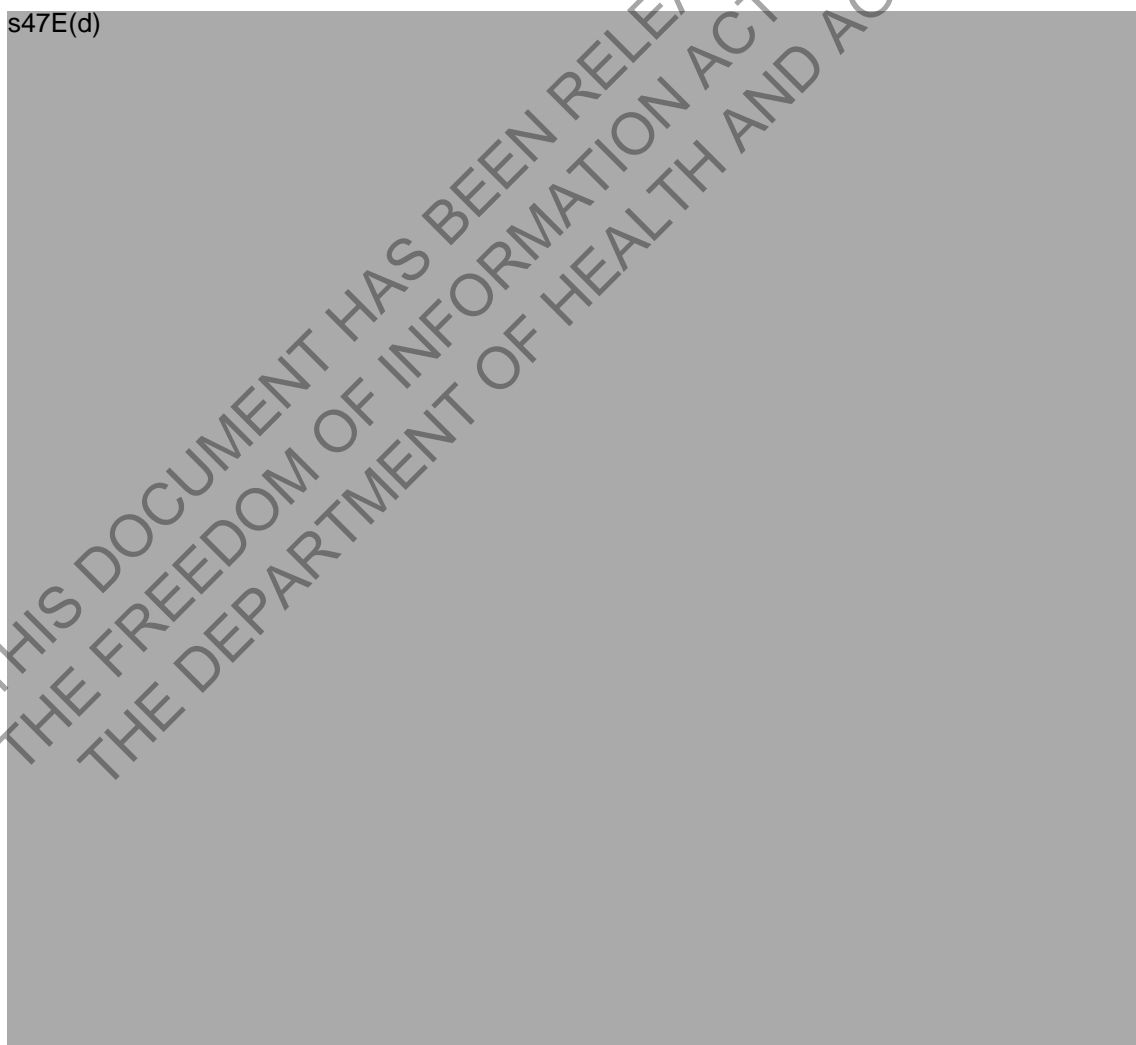
- A. A national targeted smoking and vaping public health campaign; and
- B. s47E(d) national youth vaping education campaign, s47E(d).

The campaigns would be delivered in line with the Australian Government campaign guidelines and the Department will procure services from various suppliers on the Government Communications Campaign Panel (the Panel), managed by the Department of Finance (Finance). Details are provided below:

A. A national targeted smoking and vaping public health campaign

The components of the campaign and the financial arrangements will be undertaken through whole of government contracts, including:

s47E(d)



THIS DOCUMENT HAS BEEN RELEASED UNDER
THE FREEDOM OF INFORMATION ACT 1982 (CTH) BY
THE DEPARTMENT OF HEALTH AND AGED CARE

The Department will lead the development of resources, legal advice (for campaign compliance purposes) and travel (staff to attend interstate concept testing and filming). The Department will also manage all contracts for the above components in line with the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).

s47E(d)



The Department will lead the development of resources, legal advice (for campaign compliance purposes) and travel (staff to attend interstate concept testing and filming). The Department will also manage all contracts for the above components in line with the PGPA Act.

2. Smoking and Vaping Cessation Activities

The Department will procure a number of services to deliver the five activities as outlined in the table below. The procurements will be undertaken in accordance with applicable

legislative requirements under the PGPA Act, the *Commonwealth Procurement Rules* (CPRs) and the Department's Accountable Authority Instructions. A range of procurement methods may be used such as open and limited tenders or procurements under existing arrangements. The selection of which procurement method to use will depend on the activity. Final spending decisions will be made by the Secretary of the Department or an appropriate delegate in line with the relevant Instrument of Delegation provisions in line with the PGPA Act and the *Financial Framework (Supplementary Powers) Act 1997*.

Activity		Proposed financial arrangement
1	National consumer digital cessation hub	Procurement – closed process s47E(d) will be approached to deliver this activity.
2	Redevelopment of My Quit Buddy mobile application	Procurement s47E(d) tender process s47E(d) tender process will be held to engage an external service provider to deliver this activity.
3	Funding to scale up State and Territory Quitline capacity	By Federal Financial Arrangement. The Department will lead negotiations with states and territories to ensure funds are targeted to improve equitable access to services and extended hours of operation to remedy disparities in areas of greatest need.
4	Updating evidence-based clinical guidance to ensure best practice	Procurement – closed process The Department will engage with the current owners of the relevant guidelines the s47E(d) to deliver this activity.
5	Targeted workforce education strategy to equip and train health professionals	Procurement – closed process s47E(d) will be approached to deliver this activity.

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.

The contracts undertaken through these measures will be administered in accordance with the Commonwealth Resource Management Framework, including the PGPA Act.

Availability of independent merits review

Procurement decisions made in connection with the package are not considered suitable for independent merits review, as they are decisions relating to the allocation of a finite resource, from which all potential claims for a share of the resource cannot be met. In addition, any funding that has already been allocated would be affected if the original decision was overturned. The Administrative Review Council has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.11 to 4.19 of the guide, *What decisions should be subject to merit review?*).

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

Consultation

Extensive consultation has occurred for tobacco and e-cigarette control, including to develop the *National Tobacco Strategy 2023-2030* and for e-cigarette regulatory reform via the Therapeutic Goods Administration (TGA). Public consultation for the Strategy occurred in 2018 and 2022. The TGA undertook public consultation from November 2022 to January 2023 on e-cigarette regulation. Proposed investment aligns with feedback received as part of these consultations.

In addition, two roundtable consultation events with tobacco and e-cigarette control experts were hosted by the Minister for Health and Aged Care Mark Butler in September 2022 and April 2023. These events also indicated broad support for the need for campaign activity and improved cessation supports in conjunction with regulatory reforms.

s34(3)

Further information on the nature of consultation that has occurred, or will occur, on the specific elements of the investment is outlined below:

1. Public health information campaign

In developing the policy proposal the Department consulted with s47E(d) as to process and costs.

The Government will lead collaborative action across all levels of government and the public health sector to optimise campaign delivery and avoid duplication of efforts. Support for collaborative campaign action aimed at youth has been expressed through the s47E(d)

2. Smoking and Vaping Cessation Activities

The Department will consult with the Digital Transformation Agency in relation to this activity.

- Activity 1: National consumer digital cessation hub

The Department consulted with Cancer Council Victoria on the functionality and activities of the online hub. Cancer Council Victoria's advice was also informed by members of the National Quitline Advisory Committee, of which Cancer Council Victoria is chair and the Department an observer.

- Activity 2: Redevelopment of My Quit Buddy mobile application

The Department consulted internally and with the current provider as to the possible updates required to the hub to bring in line with modern technology.

- Activity 3: Funding to scale up State and Territory Quitline capacity

The Department has engaged with the National Quitline Advisory Group to understand issues faced. Negotiations with States and Territories in respect to best use of funding will commence shortly.

- Activity 4: Updating evidence-based clinical guidance to ensure best practice vaping cessation is available to the health workforce

Consultations with s47E(d) in respect to this activity will commence shortly. The proposal is in line with recommendations of the National Quit Centre Advisory Committee.

- Activity 5: Targeted workforce education strategy to equip and train health professionals.

- The Department consulted with the National Quit Centre in the development of this measure.

Input to the statement of compatibility with human rights

Human rights implications

This package engages the following right:

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

International Covenant on Economic, Social and Cultural Rights

Article 2 of the ICESCR requires that each State Party to the Covenant undertakes to guarantee the rights recognised in the Covenant to be exercised without discrimination of any kind, including race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

This package engages the right to health in Article 12 of the ICESCR. The right to health includes, in Article 12(1)(c), the right to the prevention, treatment and control of diseases.

The new item to Schedule 1AB is compatible with human rights because it advances the protection of human rights and to the extent that it may also limit human rights, those limitations are reasonable and proportionate.

People who smoke and/or use vape products, including priority population groups, particularly young people, will be affected by these changes as they are the key audience for public health campaigns and cessation support services. Health workforce will also be impacted as the audience for targeted education and training. All Australians will benefit from the reduced burden on the health system as a result of reduced smoking and vaping prevalence.

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

The United Nations Committee on Economic, Social and Cultural Rights states that health is a 'fundamental human right indispensable for the exercise of other human rights' and that the right to health is not to be understood as the right to be healthy, but includes the right to a system of health protection which provides equal opportunity for people to enjoy the highest attainable level of health.

The items in this package take positive steps to promote the right to health by ensuring that a person who need supports to quit using tobacco or vaping products is able to access support and services required to assist them. It also informs people's knowledge about the harms caused by tobacco, nicotine and vaping products through the public health information campaign.

The prevalence of e-cigarette use is rapidly increasing, particularly among young people, leading to nicotine addiction for a cohort that would otherwise have a low risk of tobacco use.

In 2019, 2.5% of Australians aged 14+ reported e-cigarette use (daily, weekly, monthly, or <monthly). Findings from a Cancer Council Victoria report show that in 2022 in Australia, 7.7% of people aged 14+ currently used e-cigarettes. While the prevalence of exclusive smoking is trending down, the report found the prevalence of vaping and dual product use (both vaping and smoking) trended up. Vaping prevalence was highest in the 14 to 17, 18 to 24, and 25 to 34 years age groups.

All e-cigarette users are exposed to chemicals and toxins that have the potential to cause adverse health effects. Importantly, there is evidence that e-cigarettes are a gateway to smoking and vaping by young people.

Tobacco use remains the leading cause of preventable death and disability in Australia, and is responsible for approximately 21,000 deaths each year

Tobacco use causes more deaths than any other behavioural risk factor. Up to two-thirds of deaths in tobacco smokers can be attributed to smoking, and long-term smokers die an average of 10 years earlier than non-smokers. Exposure to second-hand smoke is also a cause of preventable death and disability in adults and children.

Tobacco use remains the biggest contributor to Australia's preventable health burden, contributing 8.6% of the total burden of disease in 2018 and 12% of the total preventable health burden for First Nations people. Tobacco use compounds health and social inequalities and is a major contributor to poorer health status in socioeconomically disadvantaged populations.

Reducing smoking prevalence and the associated disease burden will reduce pressure on the health system and increase productivity in the workforce.

The item in this package promote the right to health by aiming to contribute to efforts to reduce smoking and vaping rates and thereby reduce the significant health and economic effects of tobacco and e-cigarette usage.

Conclusion

The new item for Schedule 1AB is compatible with human rights because it promoted the protection of human rights; or to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.