

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance

Financial Framework (Supplementary Powers) Act 1997

*Financial Framework (Supplementary Powers) Amendment
(Health Measures No. 1) Regulation 2016*

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

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

Section 32B of the FF(SP) Act authorises the Commonwealth to make, vary and administer arrangements and grants specified in the Principal Regulations. Section 32B also authorises the Commonwealth to make, vary and administer arrangements for the purposes of programs specified in the Principal Regulations. Schedule 1AA and Schedule 1AB to the Principal Regulations specify the arrangements, grants and programs.

Schedule 1 to the Regulation amends the Principal Regulations to establish legislative authority in Schedule 1AB for the Government to fund the Dementia and Aged Care Services Fund. The Fund is designed to better support activities that respond to existing and emerging challenges including dementia care, better support services targeting people from diverse backgrounds, and support special measures for Aboriginal and Torres Strait Islander people. The Fund was announced in the 2015-16 Budget, and will be administered by the Department of Health.

Details of the Regulation are set out at [Attachment A](#). A Statement of Compatibility with Human Rights is at [Attachment B](#).

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. The Regulation commences on the day after registration on the Federal Register of Legislative Instruments.

Consultation

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

A regulation impact statement is not required as the Regulation only applies to non-corporate Commonwealth entities and does not adversely affect the private sector.

Details of the *Financial Framework (Supplementary Powers) Amendment (Health Measures No. 1) Regulation 2016*

Section 1 – Name

This section provides that the title of the Regulation is the *Financial Framework (Supplementary Powers) Amendment (Health Measures No. 1) Regulation 2016*.

Section 2 – Commencement

This section provides that the Regulation commences on the day after it is registered on the Federal Register of Legislative Instruments.

Section 3 – Authority

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

Section 4 – Schedules

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

Schedule 1 – Amendments

Item 1 – Part 4 of Schedule 1AB (table)

This item adds a new table item to Part 4 of Schedule 1AB to establish legislative authority for government spending for an activity administered by the Department of Health.

New **table item 140** establishes legislative authority for the Government to provide funding for the Dementia and Aged Care Services Fund (the Fund). The Fund is a key element of the Ageing and Service Improvement Programme which is designed to strengthen the capacity of the aged care sector to deliver quality care and services. A number of activities and measures are already funded which support this objective.

As announced in the 2015-16 Budget, the Government redesigned the Aged Care Services Improvement and Healthy Ageing Grants Fund to support more appropriate care services for older people who are sick or living with medical conditions and people with dementia (measure *Dementia and Aged Care Services Funds, Budget Measures, Budget Paper No. 2 2015-16* at page 151).

Since 1 July 2015, the Fund has continued to provide \$365.8 million over four years for high quality and appropriate care services for older people who require sickness, hospital or medical services including people with dementia, people from diverse backgrounds and Aboriginal and Torres Strait Islander people.

The Fund is designed to better support activities that respond to existing and emerging challenges including dementia care, better support services targeting people from diverse backgrounds, and support special measures for Aboriginal and Torres Strait Islander people.

The Fund aims to support individual older people who are sick or living with medical conditions to access appropriate care provided through the Commonwealth-funded aged care system.

The Fund will cover:

- older people with dementia and people at risk of dementia;
- older people with diverse social and cultural care needs who are sick or experiencing or living with medical conditions;
- special measures targeted to Aboriginal and Torres Strait Islander people; and
- activities for the purposes of the Government informing itself about aged care.

A major component of the Fund will be to improve the national coordination, alignment and effectiveness of all dementia programs that are funded by the Department. For example, the Severe Behaviours Response Team, which will be financed by the Fund, provides assistance to aged care residents exhibiting severe behaviours as a result of dementia.

Grants will be made in accordance with the *Public Governance, Performance and Accountability Act 2013* and the *Commonwealth Grants Rules and Guidelines*. When undertaking a selection process, the Department of Health will consider the proportionality of scale, nature, funding amount, complexity and risks involved in the funding round as outlined in the *Commonwealth Grant Rules and Guidelines*. The Department will consider proportionality to inform the choice of the application and selection process, the type of grant agreement to be used and the reporting and acquittal requirements.

The program guidelines, program summary and selection criteria will be made publicly available prior to any grants process on the Department's website (www.health.gov.au). Funds will be made available through open funding rounds which generally fund time limited project-based activities. The Fund also may undertake programs through direct funding rounds. Unsolicited applications may be considered on a case by case basis. To be eligible for consideration for funding applicants must comply with the Dementia and Aged Care Services Funding Guidelines. The selection of funding recipients for the Fund will be fair, open and demonstrate the highest level of integrity. Applicants will be assessed against a set selection criteria in a consistent process in accordance with the *Commonwealth Grants Rules and Guidelines* and the *Commonwealth Procurement Rules*.

Access to funding will be available through a variety of means and at various times throughout the funding period. The Department proposes to undertake a mix of the following selection processes to achieve the objectives and priorities of the Dementia and Aged Care Services Fund:

- restricted competitive selection process;
- direct selection process;
- expression of interest process; and
- unsolicited proposals.

In assessing the extent to which the application represents value for money, the Department will consider:

- the relative merit of each application;
- the overall objective/s to be achieved in providing the funding;
- the relative cost of the proposal, or of elements of the proposal;
- the extent to which the applicant has demonstrated a capacity to fund the proposal taking into consideration all possible sources of finance, including debt finance;
- the extent to which the proposal meets an identified need, and the urgency of the need; and
- the geographic location of the proposal.

Details of grants, including the finalised selection process, will be made publicly available on the Department's website (www.health.gov.au) prior to a funding round, in accordance with the *Commonwealth Grants Rules and Guidelines* and the *Commonwealth Procurement Rules*.

The Minister for Health has overall responsibility for the Fund. Where the Department has invited applications for grants, the final decision about proposals for activities will be made by the departmental delegate, with the Minister for Health to be notified subsequent to that decision.

There is no formal merits review process in place for the Fund, which will fund mostly project-based activities through open, competitive grant rounds. Funding amounts available for each grant round would be capped, and organisations would be notified of the result of the assessment simultaneously. Due to these factors, overturning the original decision would adversely affect other organisation(s). Specific feedback, based on input provided by assessment teams, would be offered to unsuccessful organisations.

Payments under the Fund will come from Programme 11.6: Ageing and Service Improvement Programme. Funding details can be found in the *Portfolio Budget Statements (PBS) 2015-16, Budget Related Paper No.1.15A, Social Services Portfolio* at pages 133 to 135. As part of the machinery of government changes on 4 November 2015, responsibility for aged care matters was transferred from the Department of Social Services to the Department of Health. Outcome 11 was created to accommodate the transfer of aged care to the Department of Health. The 2016-17 Department of Health PBS will see aged care move to Outcome 6.

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 social welfare power (section 51(xxiiA));
- the races power (section 51(xxvi));
- the external affairs power (section 51(xxix));
- the communications power (section 51(v)); and
- the Commonwealth executive power (section 61).

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

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

Overview of the Legislative Instrument

Section 32B of the *Financial Framework (Supplementary Powers) Act 1997* (the FF(SP) Act) authorises the Commonwealth to make, vary and administer arrangements and grants specified in the *Financial Framework (Supplementary Powers) Regulations 1997* (the FF(SP) Regulations) and to make, vary and administer arrangements and grants for the purposes of programs specified in the Regulations. Schedule 1AA and Schedule 1AB to the FF(SP) Regulations specify the arrangements, grants and programs.

The FF(SP) Act applies to Ministers and the accountable authorities of non-corporate Commonwealth entities, as defined under section 12 of the *Public Governance, Performance and Accountability Act 2013*.

Schedule 1 to the Regulation adds a new item to Schedule 1AB to establish legislative authority for the Government to fund the Dementia and Aged Care Services Fund. The Fund is designed to better support activities that respond to existing and emerging challenges including dementia care, better support services targeting people from diverse backgrounds, and support special measures for Aboriginal and Torres Strait Islander people. The Fund was announced in the 2015-16 Budget, and will be administered by the Department of Health.

The Minister for Health has portfolio responsibility for this program.

Human rights implications

The Regulation does not engage any of the applicable rights or freedoms.

Conclusion

This Regulation is compatible with human rights as it does not raise any human rights issues.

**Senator the Hon Mathias Cormann
Minister for Finance**