

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 2017*

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.

The Regulations amend Schedule 1AB to the Principal Regulations to establish legislative authority for the Government to fund the Protecting the Rights of Older Australians initiative. The commitment to better protect the rights of older Australians was announced during the 2016 federal election. The Attorney-General's Department has responsibility for this initiative.

Funding of \$15 million over three years from 2016-17 will be provided for:

- measures to enhance the knowledge base relating to the nature and prevalence of elder abuse;
- options for a national elder abuse hotline;
- pilot training programs to educate frontline staff; and
- a national awareness campaign to educate and change attitudes and values.

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

Details of the *Financial Framework (Supplementary Powers) Amendment (Attorney-General's Portfolio Measures No. 1) Regulations 2017*

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 2017*.

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* are amended as set out in the Schedules to the Regulations.

Schedule 1 – Amendments

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

This item adds a new item to Part 4 of Schedule 1AB to establish legislative authority for government spending on an initiative that will be administered by the Attorney-General's Department.

New **table item 213** establishes legislative authority for the Government to fund the Protecting the Rights of Older Australians initiative.

Funding of \$15 million for three years commencing in 2016-17 was included in the 2016-17 Mid-Year Economic and Fiscal Outlook under the measure 'Protecting the Rights of Older Australians'. Details are set out in the *Mid-Year Economic and Fiscal Outlook 2016-17*, Appendix A: Policy decisions taken since the 2016 PEFO at page 136.

On 15 June 2016, the Government announced 'The Coalition's Policy to Protect the Rights of Older Australians' which is available at <https://www.liberal.org.au/coalitions-policy-protect-rights-older-australians>.

The funding will be used for:

- measures to enhance the knowledge base relating to the nature and prevalence of elder abuse;
- developing options for a national elder abuse hotline;
- pilot training programs to educate frontline staff; and
- a national awareness campaign to educate and change attitudes and values.

Measures aimed at enhancing the knowledge base will relate to the nature and prevalence of elder abuse, risk factors, and the effectiveness of existing prevention, intervention and remediation measures and programs at all levels of government. Detailed scoping, including development of a suitable methodology and definitions, will begin in 2016-17, with national prevalence research and other research projects to be completed in 2016-17 and 2017-18. Research will take into account the Australian Law Reform Commission's (ALRC) 'Protecting the Rights of Older Australians from Abuse' inquiry (May 2017), the ALRC's 'Equality, Capacity and Disability in Commonwealth Laws' report (August 2014), and the Australian Human Rights Commission's 'Willing to Work' inquiry (May 2016).

A national elder abuse hotline will inform, support or assist people who have experienced, or are at risk of, elder abuse. Funding will be used to support the capability of existing related services at the federal, state and community levels. This will allow for the provision of a hotline service with national coverage beyond the three-year funding period.

Following mapping and assessment of existing training needs of key frontline personnel, pilot training programs will be developed to educate frontline staff in Australian Government agencies and contracted service providers. The training model developed by the pilot will be provided to relevant service providers for use by them beyond the three-year funding period.

A national information and awareness campaign will aim to educate and change attitudes and values, for example:

- recognising the rights of older persons;
- increasing awareness of the nature and prevalence of elder abuse;
- recognising that elder abuse is not a 'private, family matter'; and
- identifying available support and resources for those suffering from, or caring for those suffering from, elder abuse.

The awareness campaign will support cultural and attitudinal change achieved through training and the provision of information.

The Attorney-General's Department will oversee the policy and manage procurements and contracts to deliver research and other activities under the initiative. Procurement processes will vary depending on the activity. For example, the Department plans to utilise an existing supplier panel for research activities, where possible. This is a timely and low-risk procurement process which uses organisations with experience in providing services to government and demonstrated capacity, ethical standards and awareness of the sensitivities of working with vulnerable people. A range of procurement processes will be needed for the hotline, the pilot training program and awareness raising activities.

Appropriate processes will be determined with regard to the research outcomes, stakeholder engagement, identification of suitable existing government procurement panels, and the size of each procurement. As some activities or projects may require a number of services to be procured, the selection methods may include an open tender, limited tender, direct sourcing or use of existing panels. Information about departmental tenders and contracts is available at www.ag.gov.au/About/Tendersandcontracts/Pages/default.aspx.

In making procurement decisions, the Attorney-General's Department will act in accordance with the *Public Governance, Performance and Accountability Act 2013*, the *Commonwealth Procurement Rules*, the Secretary's Instructions and relevant departmental guidelines. Spending decisions will be made by delegates of the Secretary of the Attorney-General's Department.

Selection criteria for projects valued over \$80,000 will be made publicly available on the AusTender website at www.tenders.gov.au. All procurement related spending decisions over \$10,000 will also be reported on the AusTender website.

Spending decisions will not be subject to merits review arrangements as they relate to procurement activities to be conducted in accordance with the *Commonwealth Procurement Rules* and within finite resources and time. The Department will also ensure that decisions comply with natural justice and fair process principles. Participants or tenderers will be selected on the basis of technical expertise, capability and value for money. Departmental complaints mechanisms and remedies will apply. Information about how to make a complaint is available at www.ag.gov.au/About/Pages/Contactus.aspx.

Funding for this item will come from Program 1.1: Attorney-General's Department Operating Expenses – Civil Justice and Legal Services, which is part of Outcome 1. Details are set out in the *Portfolio Additional Estimates Statements 2016-17, Attorney-General's Portfolio* at page 15.

Noting that it is not a comprehensive statement of relevant constitutional considerations, the objective of the item references the following powers of the Constitution:

- the communications power (section 51(v));
- the external affairs power (section 51(xxix)); and
- the Commonwealth executive power (section 61).

With respect to the communications power, awareness campaigns, training and information services will reach users through online delivery and telephone services.

In relation to the treaty implementation aspects of the external affairs power, relevant treaty obligations are:

- Article 7 of the *International Covenant on Civil and Political Rights* (ICCPR) which prohibits torture or cruel, inhuman or degrading treatment or punishment (CIDTP). Article 7 of the ICCPR places an obligation on States Parties to take all necessary measures to prevent acts of torture or CIDTP. The program's activities to improve access to information and provide training are aimed at ensuring that the perpetration of such acts against vulnerable older persons does not occur. Options for, or delivery of, a hotline will also directly assist victims to access services or supports to address these forms of abuse.
- Article 17(1) of the ICCPR which prohibits arbitrary and unlawful interferences with privacy including family, home and correspondence. Article 17(1) places an obligation on States Parties to ensure that persons, including older persons, are not subjected to arbitrary or unlawful interference with their privacy, including through the arbitrary or unlawful use or disclosure of their personal information. Older persons are often the victims of the inappropriate accessing of financial, health or

social welfare records, whether by coercion or subterfuge. The program's activities contribute to raising awareness of elder abuse, including unlawful or arbitrary access to personal information, and assist in addressing the risk of such forms of abuse. Options for, or delivery of, a hotline will directly assist victims to access services or supports to address these forms of abuse.

- Article 16 of the *Convention on the Rights of Persons with Disabilities* (CRPD) which requires States Parties to take measures to protect persons with disabilities '... both within and outside the home, from all forms of exploitation, violence and abuse '....'. States Parties are required to ensure that 'protection services are age, gender and disability sensitive' (Article 16(2)) and that 'age-specific needs' are taken into account when assisting a person to recover from such treatment (Article 16(4)). Activities such as training, information sharing and raising awareness and changing attitudes will assist to prevent the perpetration of exploitation, violence and abuse against older people with disabilities, including frailty, reduced cognitive capacity or other age-related impairments. Section 4(1) of the *Disability Discrimination Act 1992* defines disability as including a disability that is 'imputed to a person' as well as impairments, illness or disease, malfunctions of the body and disorders that affect a person's thought processes, perception of reality, emotions or judgement. Options for, or delivery of, a hotline will directly assist victims to access services or supports to address abuse of older people with disability.
- Article 8(1)(b) of the CRPD which requires States Parties to adopt 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. Activities such as training, information sharing and raising awareness and changing attitudes will assist in addressing stereotypes and prejudices against older people with disabilities, or perceived as being disabled by virtue of age. Options for, or delivery of, a hotline will assist in providing victims or others with information to combat stereotypes and prejudice.
- Article 26 of the ICCPR which provides for equality before the law and prohibits discrimination on a range of grounds, including prohibition of discrimination on 'other status' which includes age. Activities such as training, information sharing and raising awareness and changing attitudes will assist in addressing stereotypes and prejudices against older people by virtue of age. Options for, or delivery of, a hotline will assist in providing victims or others with information to combat stereotypes and prejudice.

The initiative involves funding activities that are taken in the exercise of the executive power of the Commonwealth in section 61 of the Constitution. Under this program, research will be carried out to build the national evidence base on elder abuse to ensure policies and programs are adapted to the purpose of addressing the dynamics and problems of elder abuse. Further research will be carried out into existing services and interventions.

Statement of Compatibility with Human Rights

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

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These Regulations are 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*.

The Regulations amend Schedule 1AB to the FF(SP) Regulations to establish legislative authority for the Government to fund the Protecting the Rights of Older Australians initiative. The commitment to better protect the rights of older Australians was announced during the 2016 federal election. The Attorney-General's Department has responsibility for this initiative.

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- a national awareness campaign to educate and change attitudes and values.

The Attorney-General has portfolio responsibility for this initiative.

Human rights implications

The Regulations do not engage any of the applicable rights or freedoms.

Conclusion

These Regulations are compatible with human rights as they do not raise any human rights issues.

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