

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance

Financial Framework (Supplementary Powers) Act 1997

*Financial Framework (Supplementary Powers) Amendment
(Treasury Measures No. 2) Regulations 2021*

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

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

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

The *Financial Framework (Supplementary Powers) Amendment (Treasury Measures No. 2) Regulations 2021* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for the Government to provide a grant to Superannuation Consumers' Centre Ltd (known as Super Consumers Australia). The grant will support Super Consumers Australia's continued activities to promote member outcomes through advocacy and campaigning in the context of the superannuation policy debate, and to conduct research and analysis of member outcomes.

Super Consumers Australia, formed in 2013, is an independent not-for-profit consumer organisation with a mission 'to advance and protect the interests of low and middle income people in the Australian superannuation system'. Their primary activities to achieve this outcome are campaigning and policy, investigative journalism, and research and analysis.

Super Consumers Australia was first funded in 2018 through community benefit payments of \$2.5 million made by the Commonwealth Bank of Australia and the Australia and New Zealand Banking Group as a result of court enforceable undertakings imposed by the Australian Securities and Investments Commission. The current funding arrangement is due to expire around the end of 2021.

The Government will provide a grant of \$1.6 million over two years from 2021-22 to support Super Consumers Australia to continue representing the interests of superannuation members

in superannuation-related policy debates, and to conduct research and analysis on issues affecting superannuation members.

Funding for Super Consumers Australia is consistent with the Government's previous policy commitments and is widely supported by stakeholders in its role.

The Department of the Treasury has responsibility for this initiative.

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

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*. The Regulations commence on the day after the instrument is registered on the Federal Register of Legislation.

Consultation

In accordance with section 17 of the *Legislation Act 2003*, consultation has taken place with the Department of the Treasury.

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 (Treasury Measures No. 2) Regulations 2021*

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Treasury Measures No. 2) Regulations 2021*.

Section 2 – Commencement

This section provides that the Regulations commence on the day after the instrument is registered on the Federal Register of Legislation.

Section 3 – Authority

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

Section 4 – Schedules

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

Schedule 1 – Amendments

Financial Framework (Supplementary Powers) Regulations 1997

Item 1 – In the appropriate position in Part 3 of Schedule 1AB (table)

This item adds a new table item to Part 3 of Schedule 1AB to establish legislative authority for government spending on an activity administered by the Department of the Treasury (the department).

New **table item 52** establishes legislative authority for the Government to provide a grant to Superannuation Consumers' Centre Ltd (known as Super Consumers Australia). This funding will allow Super Consumers Australia (SCA) to continue to promote member outcomes through advocacy and campaigning in the context of the superannuation policy debate, and to conduct research and analysis of member outcomes.

SCA, formed in 2013, is an independent not-for-profit consumer organisation with a mission 'to advance and protect the interests of low and middle income people in the Australian superannuation system'. Their primary activities to achieve this outcome are campaigning and policy, investigative journalism, and research and analysis.

SCA was first funded in 2018 through community benefit payments of \$2.5 million made by the Commonwealth Bank of Australia and the Australia and New Zealand Banking Group as a result of court enforceable undertakings imposed by the Australian Securities and Investments Commission. The current funding arrangement is due to expire around the end of 2021.

SCA's recent work in superannuation consumer advocacy has included a campaign against junk insurance products attached to superannuation, and producing numerous media articles, released through CHOICE (the leading consumer advocacy group in Australia), to help inform superannuation consumers on retirement income products.

In the 2019-20 Budget, in response to recommendation 28 of the Productivity Commission's inquiry report *Superannuation: Assessing Efficiency and Competitiveness* (www.pc.gov.au/inquiries/completed/superannuation/assessment/report), the Government announced funding for an expression of interest process to establish an independent advocacy and assistance body for superannuation members.

The expression of interest process was conducted by the department in 2019-20 (treasury.gov.au/consultation/c2019-38640) with the intention of identifying options for establishing the body. The department received 13 written submissions. SCA expressed their interest in filling the role, while only one other organisation expressed interest in being involved in an unspecified capacity.

The expression of interest process found significant and widespread stakeholder support for SCA as the incumbent to continue in its current role. Funding SCA is preferable to the establishment of a new organisation due to the volume of policy changes currently underway in the superannuation system, as part of the *Your Future Your Super* package, and in response to the Productivity Commission's inquiry report and the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. Using an existing organisation means that consumers have an ongoing point of contact for information and representation within the superannuation system during this period of change.

While SCA is not directly affected by these policy changes, they continue to provide information on how government policy affects superannuation consumers. For example, SCA has directed consumers to use information resources on superannuation products designed to achieve better member outcomes (such as the Australian Prudential Regulation Authority's *MySuper Product Heatmap*) when deciding which superannuation fund to use.

The Government will provide a grant of \$1.6 million over two years from 2021-22 to support SCA to continue representing the interests of superannuation members in superannuation-related policy debates by:

- engaging with government, regulators and industry on policy issues affecting superannuation members;
- leveraging existing research and in-house research to support their position; and
- ensuring that the interests of superannuation members are voiced in public discourse.

SCA will also be expected to conduct research and analysis on superannuation-related issues affecting superannuation members including:

- the development of an evidence base supporting member outcomes;
- investigating and developing case studies of the issues that members face; and
- analysis of superannuation funds' performance, fees and insurance.

The purposes of the research and analysis are to advocate for consumers during the development of Commonwealth policy and to assist superannuation members to understand the operation of Commonwealth laws and policies.

SCA would not be obligated to undertake activities beyond this, such as direct member assistance or formal education services for members.

The grant to SCA will be administered through a closed non-competitive grant 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) and the *Commonwealth Grants Rules and Guidelines 2017*. Information on the grant will be publicly available on GrantConnect (www.grants.gov.au) and will be administered by the department. The Secretary of the department, or an appropriate delegate, is responsible for approving expenditure. The department will also develop grant opportunity guidelines and a risk assessment for the grant.

An independent merits review is not appropriate for this grant, because the grant is a one-off grant to a specific service provider. The Administrative Review Council has recognised that it is justifiable to exclude a merits review in relation to decisions of this nature (see paragraphs 4.16 to 4.19 of the guide, *What decisions should be subject to merit review?*).

SCA has been determined to be an appropriate organisation for the provision of a closed non-competitive grant. This was determined on the basis of widespread stakeholder support during the 2019-20 expression of interest process for SCA to fulfil the role of a super consumer advocate. There was also minimal interest from other organisations in fulfilling this role, or any stakeholder support for an alternative organisation.

Performance related to the grant guidelines will be reviewed by the department towards the end of the funding period.

The Australian National Audit Office review and audit process 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.

Persons affected by spending decisions would also have recourse to the Commonwealth Ombudsman where appropriate.

Extensive consultation was conducted as part of the Productivity Commission's inquiry process. The inquiry report remarked that SCA would be a suitable organisation to fill the role of the proposed superannuation advocate.

During the department-led consultation process in 2019-20, there was significant and widespread stakeholder support for SCA as the incumbent superannuation consumer advocate to continue in its current role. In particular, a joint submission from seven consumer advocate organisations and Berrill & Watson Lawyers supported SCA to fill the role. Further stakeholder support of SCA was received in December 2020, when the Government received representations from the Self-Managed Superannuation Funds Association, the Conexus Institute and former State Fair Trading and Consumer Affairs Officials supporting SCA to fill the role of the superannuation consumer advocacy body.

Funding for the initiative of \$1.6 million over two years from 2021-22 was included in the 2021-22 Budget under the measure ‘Stronger Consumer Outcomes for Members of Superannuation’. Details are set out in *Budget 2021-22, Budget Measures, Budget Paper No. 2 2021-22* at page 192.

Funding for this item will come from Program 1.3: Support for Markets and Business, which is part of Outcome 1. Details are set out in the *Portfolio Budget Statements 2021-22, Budget Related Paper No. 1.4, Treasury Portfolio* at page 28.

Noting that it is not a comprehensive statement of relevant constitutional considerations, the purpose of the item references the express incidental power and the executive power (sections 51(xxxix) and 61) of the Constitution.

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 it by the Constitution. Together with the executive power in section 61 of the Constitution, the express incidental power extends to a range of matters, including activities that form part of the ordinary and well-recognised functions of government and the execution and maintenance of the laws of the Commonwealth.

The grant to Superannuation Consumers’ Centre Ltd (known as SCA) concerns the operation of Commonwealth legislation related to superannuation. The item authorises the making of payments to SCA for the purposes of informing Commonwealth policy development and explaining to members and the public the effect of Commonwealth laws and policies related to superannuation.

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 (Treasury Measures No. 2) Regulations 2021

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

Overview of the legislative instrument

Section 32B of the *Financial Framework (Supplementary Powers) Act 1997* (the FF(SP) Act) authorises the Commonwealth to make, vary and administer arrangements and grants specified in the *Financial Framework (Supplementary Powers) Regulations 1997* (the FF(SP) Regulations) and to make, vary and administer arrangements and grants for the purposes of programs specified in the Regulations. Schedule 1AA and Schedule 1AB to the FF(SP) Regulations specify the arrangements, grants and programs. The powers in the FF(SP) Act to make, vary or administer arrangements or grants may be exercised on behalf of the Commonwealth by Ministers and the accountable authorities of non-corporate Commonwealth entities, as defined under section 12 of the *Public Governance, Performance and Accountability Act 2013*.

The *Financial Framework (Supplementary Powers) Amendment (Treasury Measures No. 2) Regulations 2021* amend Schedule 1AB to the FF(SP) Regulations to establish legislative authority for the Government to provide a grant to Superannuation Consumers' Centre Ltd (known as Super Consumers Australia). The grant will support Super Consumers Australia continued activities to promote member outcomes through advocacy and campaigning in the context of the superannuation policy debate and provide research and analysis of member outcomes.

Super Consumers Australia, formed in 2013, is an independent not-for-profit consumer organisation with a mission 'to advance and protect the interests of low and middle income people in the Australian superannuation system'. Their primary activities to achieve this outcome are campaigning and policy, investigative journalism, and research and analysis.

The Government will provide a grant of \$1.6 million over two years from 2021-22 to support Super Consumers Australia to continue representing the interests of superannuation members in superannuation-related policy debates, and to conduct research and analysis on superannuation-related issues affecting superannuation members.

The Department of the Treasury has responsibility for this initiative.

Human rights implications

This disallowable legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

This disallowable legislative instrument is compatible with human rights as it does not raise any human rights issues.

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