

**SCA01QW What is the annual revenue (per financial year) and funding sources of Super Consumers since its inception? Please provide a breakdown of your funding for the financial years since your inception**

Year	2018/19	2019/20	2020/21
<b>Government</b>			
<b>Donations</b>			
<b>Other</b>	\$2,500,300 - as a result of enforcement action by ASIC. These were community benefit payments made by financial services firms so that consumer organisations can address the broader consumer harm that individual redress cannot compensate alone.		\$250,000 - Ecstra Foundation research grant to undertake research and develop a resource to assist people in planning for retirement.

For completeness, we received a \$800,000 grant in 2021-22 in accordance with the 2021-22 Budget measure 'Stronger Consumer Outcomes for Members of Superannuation' (2021-22 Budget Paper 2, page 192), which is to support consumer outcomes on behalf of superannuation fund members. The contract grants an additional \$800,000 in 2022-23 for delivery against the same consumer advocacy project. This has allowed for a continuation of our existing services, including consumer advocacy, investigative journalism, research and data analysis. Our Annual Reports are [available on our website](#).

**SCA02QW Super Consumers is partnered with CHOICE. How much federal government funding does CHOICE receive? What proportion of CHOICE's funding is provided by the federal government? Please provide this for each of the following financial years:**

CHOICE does not receive grant funding from the federal government. CHOICE occasionally provides contracted services to federal government agencies - e.g. product safety testing or producing information to assist consumers. Revenue from these activities is provided below.

Year	2018/19	2019/20	2020/21
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<b>Government</b>	\$2,500 (0.01%)	\$63,668.91 (0.29%)	\$55,993.50 (0.25%)
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**SCA03QW Have you received any assurances from government that Super Consumers funding will continue?**

The funding agreement is for the period November 2021 to June 2023. Super Consumers Australia has not received any assurances that funding will continue beyond June 2023.

**SCA04QW How does a consumer become a member of Super Consumers?**

The process to become a member of the company is outlined in the constitution, available via the [following link](#).

**SCA05QW How many members do you have? How much of your funding is derived from consumer contributions?**

Super Consumers Australia is not intended to be a mass membership organisation. We currently have 6 directors on our board who make up the membership for governance purposes.

We receive no direct funding from consumer contributions.

**SCA06QW How does Super Consumers communicate with its members/consumers?**

Super Consumers Australia communicates with consumers through a wide range of methods, including:

- A regular newsletter detailing updates to advocacy and research
- The Super Consumers Australia website
- The publication of consumer focussed superannuation articles via the CHOICE platform
- We reach over 400,000 people via email lists
- Public media such as media releases, commentary and through social platforms

**SCA07QW How does Super Consumers satisfy itself that its policy positions are in the best interests of consumers? How many consumers does Super Consumers consult with to determine a policy position? Please outline your policy development process.**

Super Consumers Australia operates to advance and protect the interests of low and middle income people in Australia's superannuation system. Like all consumer protection and advocacy bodies, Super Consumers Australia casts a consumer lens over marketplace conduct and public

policy settings in accordance with the principles established by the United Nations Guidelines for Consumer Protection. We work hard to keep the super industry accountable and fair.

We ensure this through our policy development process. This includes regular planning to develop priorities based on addressing consumer needs in areas where we can have the most impact. In assessing if we can have an impact we look at factors such as our internal expertise, level of consumer harm and whether the organisation can make a unique contribution to advance the interests of consumers. Our internal expertise incorporates our experience in understanding consumer engagement with markets and products as well as assessing the value to consumers of those underlying products. We weigh factors such as consumer harm by drawing on both internal and external consumer research (e.g. surveys, qualitative studies, public data and reporting). We also engage directly with experts including academics and frontline case workers (e.g. weekly meetings with financial counsellors and community lawyers). Examples of the types of inputs we consider include:

- Our nationally representative survey and qualitative research on retirement planning decisions, which helped inform our response to consultations on retirement planning.
- Regular surveys sent by email to over 400,000 people, which capture the responses of thousands of Australians and how they navigate the superannuation market. For example, the Super Consumers Australia and CHOICE, 2020, 'Retirement in Australia Survey', conducted between 17-24 January 2020, includes both quantitative and qualitative data from a self-selecting sample. n=10,732)

**SCA08QW Have you sought or received legal advice that everything you do is in the best financial interests of super fund members and the sole purpose test? If so, please provide this advice.**

The best financial interests test is an obligation placed on superannuation funds. Super Consumers Australia is not a superannuation fund.

Our purpose is outlined in our [constitution](#). Please also see our response to SCA07QW.

**SCA09QW Do you operate in line with the sole purpose test?**

The sole purpose test is an obligation placed on superannuation funds. Super Consumers Australia is not a superannuation fund.

Please see SCA07QW to see how Super Consumers Australia satisfies itself that its policy positions operate to advance and protect the interests of low and middle income people in Australia's superannuation system.

**SCA10QW Are you regulated by ASIC or APRA?**

Super Consumers Australia is a registered not-for-profit charity. The Australian Charities and Not-for-profits Commission is the national regulator of charities.

**SCA11QW Please provide a copy of your constitution.**

Please see attached. The constitution is also publicly available on our [website](#).

**SCA12QW Over the past decade, how many non-disclosure agreements have you agreed to in relation to: a) human resources issues b) sexual harassment issues**

None.

**SCA13QW Taxpayer money was committed to Super Consumers in the 2021/22 federal budget. Has Super Consumers entered into a funding agreement with the government? What obligations does this impose on Super Consumers and the government? Please provide a copy of this agreement.**

Please see the attached copy of the agreement.

**SCA14QW Since June 30, 2020, what research has Super Consumers undertaken on the impact of government policy proposals and changes on low to middle income Australians? Please provide a copy of this research.**

Much of our research and modeling on government proposals and changes are housed in our submissions which are [available on our website](#). We also produce standalone research available on our [research blog](#) and via [articles on the CHOICE website](#). Recent topics have included:

**Research blog**

- Your Future, Your Super test underperformers, March 2021  
<https://superblog.netlify.app/2021/03/25/funds-failing-test/>
- Retirement planning survey, (Retirement Income Covenant) , July 2021,  
<https://superblog.netlify.app/2021/07/28/nationally-representative-retirement-survey-results/>
- Analysis of fund member outcome assessments, August 2021  
<https://superblog.netlify.app/2021/08/16/member-outcome-assessments-analysis/>
- Restrictive definitions in default TPD insurance policies. July 2020,  
<https://superblog.netlify.app/2020/07/08/tpd/>

**Submissions**

- **October 2020** — [Submission to Treasury Laws Amendment \(Self Managed Superannuation Funds\) Bill 2020](#)
- **December 2020** — [Your Future, Your Super package](#)
- **March 2021** — [Submission to the Senate Economics Legislation Committee inquiry on Your Future Your Super reforms](#)
- **May 2021**— [Submission to Treasury: Single Disciplinary Body for Financial Advisers](#)
- **May 2021**— [Treasury Laws Amendment \(Your Future, Your Super\) Regulations and associated measures](#)
- **June 2021**— [Submission to Treasury: Greater transparency of proxy advice](#)
- **June 2021**— [Submission to Treasury: Improving the visibility of superannuation assets in family law proceedings](#)
- **August 2021** — [Retirement Income Covenant Position Paper](#)
- **August 2021**— [Superannuation Portfolio Holdings Disclosure Consultation](#)
- **September 2021**— [Strategic Assessment to inform an economy-wide Consumer Data Right](#)
- **September 2021**— [Making funds work for peoples' superannuation - A new default model](#)
- **October 2021** — [Retirement Income Covenant - Exposure Draft](#)
- **October 2021**— [Better Advice Bill - Exposure Draft Regulations](#)
- **October 2021**— [Review of Occupational Exclusions in Default Insurance offered through MySuper Products](#)
- **January 2022**- [Corporate Collective Investment Vehicle Framework and Other Measures Bill 2021 \[Provisions\]](#)

**SCA15QW Since June 30, 2020, how many times has Super Consumers advocated about the following issues in its media releases or via social media:**

**Media releases**

Total media releases: 33

	Unqualified support for proposed policy or legislation	Qualified support/call to amend the legislation/call on funds to do better
YFYS reforms	0	12
Superannuation guarantee	0	0
Early release of super scheme	0	0

'Other super industry bodies'	-	-
Insurance in superannuation	0	6
Non-payment or underpayment of compulsory super	0	0 <i>Note: We have advocated for other cohorts who don't receive super (e.g. carers, people taking paid parental leave, people earning under the \$450/month threshold, realtime payment of super.</i>
FS Royal Commission recommendations		3
PC recommendations		3

### Social Media

	Unqualified support for proposed policy or legislation	Qualified support/call to amend the legislation/call on funds to do better
YFYS reforms	0	10 <i>Note: no standalone advocacy for YFYS on Twitter. These are links to MRs.</i>
Superannuation guarantee	0	0
Early release of super scheme	0	0
'Other super industry bodies'	-	-
Insurance in superannuation	0	6
Non-payment or underpayment of compulsory super	0	0
FS Royal Commission recommendations	0	3
PC recommendations	0	3

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# **Constitution**

**Superannuation Consumers' Centre**

**(ACN 163 636 566)**

**(A public company limited by guarantee)**

**September 2013**

**Amended by Special Resolution of Members to insert a new clause 3.1**

**20 September 2013**

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## 1 Defined terms and interpretation

Schedule 1:

- (a) defines some of the terms used in this constitution;
- (b) sets out the rules of interpretation which apply to this constitution; and
- (c) clarifies the effect of the Corporations Act on this constitution.

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## 2 Nature of company and liability

- (a) The company is a public company limited by guarantee.
- (b) The liability of each member is limited to \$10. This means that if the company does not have enough assets to cover all of its liabilities upon winding up, each member must contribute up to a maximum of \$10 to the assets of the company.

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## 3 Purpose and activities of the company

### 3.1 Purpose

The principal purpose of the company is to engage, empower, educate, assist, conduct research, develop policy, and advocate for the benefit of low and middle income consumers of the superannuation system in both the accumulation and retirement phases and to thereby assist to:

- (a) reduce the confusion and anxiety experienced by consumers of the superannuation system;
- (b) increase engagement to ensure consumers and the community generally gets the maximum benefit from the compulsory superannuation system;
- (c) increase economic security of Australians of retirement age; and
- (d) increase the life choices and standard of living of people of retirement age.

### 3.2 Activities

Without limiting or derogating from the inherent powers of the company in any way, and in the furtherance of the company's purpose, the activities of the company include:

- (a) engaging, empowering and educating consumers to act in their own interests to achieve better superannuation outcomes
- (b) promoting continual improvement in consumer outcomes in the superannuation and retirement incomes systems;
- (c) increasing the effectiveness of competitive markets, including by increasing transparency and meaningful choices for consumers within appropriate regulatory frameworks;
- (d) providing direct assistance and referral services to consumers to help them navigate the superannuation system with a focus on low income earners;

- (e) developing ways to connect consumers to existing superannuation tools and content and fostering the development of new tools and content to help consumers where gaps exist;
  - (f) researching, analysing and developing policy on consumer issues in the superannuation system;
  - (g) capturing data about consumer issues with superannuation and identifying emerging trends and systemic issues;
  - (h) increasing the awareness of individuals, communities, business and government about issues relating to superannuation for consumers;
  - (i) building networks amongst consumer groups, academics, government and industry in relation to superannuation for consumers;
  - (j) facilitating consumer representation on government and industry committees, advisory panels and boards;
  - (k) collaborating with communities, organisations, industry and government to further the company's purpose; and
  - (l) doing all other things necessary for or ancillary to the fulfilment of the purpose and activities of the Company.
- 

## 4 Directors

### 4.1 Number of directors

- (a) The minimum number of directors is three. Subject to rule 4.1(b), the maximum number of directors is ten.
- (b) The directors may change the maximum number of permitted director positions in accordance with the law.
- (c) If at any time there are less than the minimum number of directors, the remaining director or directors may act but only:
  - (i) in an emergency;
  - (ii) for the purpose of convening a general meeting of the company; or
  - (iii) for the purpose of increasing the number of directors to the minimum number required.

### 4.2 Becoming a director and term of office

- (a) Subject to rule 4.2(c), a person may only become a director if he or she is:
  - (i) nominated by the Nominations Committee; and
  - (ii) appointed by the directors.
- (b) Each appointment made under rule 4.2(a) is to be for a period of up to three years with the precise period to be determined by the directors at the time of the appointment.

- (c) The directors may appoint one or more persons as director without first receiving a nomination from the Nominations Committee in the following circumstances:
  - (i) to increase the number of directors to the minimum number required in accordance with rule 4.1(c)(iii);
  - (ii) if a director position has been vacant for at least three months and the Nominations Committee has not nominated anyone to fill the vacant position; or
  - (iii) if the law requires.
- (d) Each appointment made under rule 4.2(c) is to be for a period of up to 12 months with the precise period to be determined by the directors at the time of the appointment.
- (e) Each director is to remain as a director until the term of her or his office expires or until he or she resigns, is expelled or is otherwise removed as a director of the company in accordance with the law and this constitution. For the avoidance of doubt but subject to rule 4.2(f), a previous director of the company is, subject to the law and this constitution, eligible for nomination by the Nominations Committee and appointment by the directors for a further term.
- (f) Notwithstanding anything else in this constitution, no person is permitted to hold the office of director for any more than nine continuous years unless otherwise resolved by a special resolution of members.

#### **4.3 Qualifications and composition of directors**

- (a) An employee of the company is not permitted to be a director of the company.
- (b) Subject to any policies relating to the composition of the board and skills and qualifications of directors developed by the directors from time to time:
  - (i) all directors must have knowledge, and expertise relevant to and be committed to the purpose and activities of the company; and
  - (ii) the directors together must have:
    - (A) knowledge about consumer policy and consumer advocacy
    - (B) knowledge about superannuation policy and the superannuation industry; and
    - (C) an appropriate level of financial knowledge and skills sufficient to properly oversee the prudent administration of any endowment fund owned, operated or maintained by the company.
- (c) A director must be a member of the company.

#### **4.4 Nominations Committee**

- (a) The directors must establish a nominations committee for the purpose of seeking, assessing and nominating candidates for the position of director of the company (**Nominations Committee**).
- (b) The Nominations Committee must be comprised of:

- (i) two directors and
  - (ii) three persons who are not directors or employees of the company (**External Committee Members**).
- (c) When appointing people to the Nominations Committee, the directors should have regard to the interests of consumers, government, any sponsoring university and industry and, so far as possible, ensure a balanced representation of these interests.
- (d) The chair of the Nominations Committee must have experience, skill, knowledge and integrity sufficient to ensure that the proper processes of assessment and nomination of candidates are implemented and followed.
- (e) The chair of the Nominations Committee will be responsible for, among other things:
- (i) chairing all meetings of the Nominations Committee; and
  - (ii) ensuring the proper and effective operation of the Nominations Committee in accordance with principles of good governance.

#### **4.5 Ceasing to be a director**

- (a) The office of a director becomes vacant if that director:
- (i) dies;
  - (ii) due to physical or psychological impairment, is unable to properly perform his or her duties as a director;
  - (iii) ceases to be a member of the company;
  - (iv) becomes bankrupt;
  - (v) is convicted of an indictable offence; or
  - (vi) is absent from three consecutive directors' meetings or half of the number of directors' meetings held in any 12 month period without leave of absence approved by the directors.
- (b) If a director's position becomes vacant under rule 4.5(a) then, so long as the law does not prohibit the directors from doing so, the directors may resolve that the director remain as a director.
- (c) The office of a director becomes vacant if that director becomes an employee of the company.
- (d) Nothing in rule 4.5(a) prevents a director from vacating his or her office if the director resigns by notice in writing to the company.

#### **4.6 Payments to directors**

- (a) Subject to rule 4.6(c), directors are entitled to be paid all reasonable authorised travelling and other expenses properly incurred by them in connection with the affairs of the company, including attending and returning from general meetings of the company or meetings of the directors or of committees but will not otherwise receive any payment for acting as a director.

- (b) Nothing in this rule 4.6 restricts the payment to which a director may be entitled as a consultant or contractor of the company.
- (c) Notwithstanding anything else in this constitution, no payment of any kind which is permitted to be paid to a director by this constitution can be made by the company to a director until that payment is approved by the directors or the relevant directors' delegate.

#### **4.7 Interests of directors, including personal interests**

- (a) No contract made between a director and the company is voided merely because the director holds office as a director or because of the fiduciary obligations arising out of that office.
- (b) Where a director has a material personal interest in a matter to be considered at a meeting, that director must not be present while the matter is being considered, nor receive the relevant papers for that item or vote on the matter, unless the directors who do not have a material personal interest pass a resolution in accordance with the law which permits that director to do so.
- (c) Subject to rules 4.7(d) and (e), a director who is interested in arrangement (other than by having a material personal interest) may, despite that interest:
  - (i) be counted in determining whether or not a quorum is present at any meeting of directors considering that arrangement;
  - (ii) sign or countersign any document relating to that arrangement; and
  - (iii) vote in respect of the arrangement or any matter arising out of it.
- (d) Rule 4.7(c) does not apply to the extent that it would be contrary to law.
- (e) The directors may make regulations requiring the disclosure of interests that a director, and any person deemed by the directors to be related to or associated with the director, may have in any matter concerning the company. Any regulations made under this rule bind all directors and apply in addition to any obligations imposed on the directors by the law to disclose interests to the company.

#### **4.8 Powers and duties of directors**

The directors are responsible for managing the business of the company. As such they may exercise all the powers of the company which are not required by the law or this constitution to be exercised by the company in general meeting.

#### **4.9 Directors' meetings**

- (a) The directors may hold meetings (including by technological means) for the conduct of business and regulate them as they think fit.
- (b) A meeting of directors may be convened by:
  - (i) the chair; or
  - (ii) at least three directors.

#### **4.10 Notice of directors' meetings**

- (a) Notice of a directors' meeting must be given to each current director, other than a director on leave of absence approved by the directors.
- (b) A notice of a directors' meeting must:
  - (i) be given in a way permitted by rule 13;
  - (ii) specify the time and place of and, if relevant, the form of technology for, the meeting; and
  - (iii) state the nature of the business to be transacted at the meeting.
- (c) A resolution passed at a directors meeting is not invalid just because a director did not receive notice of the meeting provided that:
  - (i) the notice was not received because of accident or error;
  - (ii) before or after the meeting, the director notifies the company of his or her agreement to the resolution; or
  - (iii) the director attended the meeting.

#### **4.11 Quorum for directors' meetings**

- (a) No business may be transacted at a directors' meeting unless there is a quorum of directors at the time the business is dealt with.
- (b) A quorum consists of 50% of the current number of directors. If 50% of directors is not a whole number, the number must be rounded up to the nearest whole number.
- (c) For the avoidance of doubt, a director is present at a meeting if participating by technological means such as by telephone and is included when determining whether a quorum is present.
- (d) If, within 30 minutes after the time appointed for the meeting, a quorum is not present, then, without preventing those present from discussing (but not to vote on) any matter, the meeting will be dissolved or stand adjourned to such time, date and place as those present at the meeting decide.

#### **4.12 Chair and deputy-chair of directors**

- (a) The directors must elect at least one director to the office of chair and may, subject to rule 4.2, determine the period for which that person is, or those persons are, to be chair of directors.
- (b) The directors may elect one or more of the directors, other than the chair, to the office of deputy-chair and may, subject to rule 4.2, determine the period for which that person is, or those persons are, to be deputy-chair of directors.
- (c) A person may only fill the office of chair or deputy-chair for so long as that person is a director of the company.
- (d) The chair of directors must preside as chair at each directors' meeting unless he or she is unable to attend or unwilling to act.

- (e) If the chair is unable to attend a directors' meeting or unwilling to act, then a deputy chair, if one has been appointed, must preside as chair of that meeting.
- (f) If both the chair and deputy-chair are unable to attend a directors' meeting or are unwilling to act, then the directors present at that meeting must elect a person from among their number to preside as chair for that meeting.

#### **4.13 Decisions of directors**

- (a) A directors' meeting at which a quorum is present is competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the directors under the law and this constitution.
- (b) Questions arising at a directors' meeting are to be decided by a majority of votes cast by the directors present and a decision of that kind is for all purposes a determination of the directors.
- (c) If there is an equal number of votes cast for and against a resolution at a directors' meeting, then the chair may cast a second vote.

#### **4.14 Decisions without meetings**

Directors may pass resolutions and otherwise make decisions outside of a directors' meeting in any manner (including through the use of technology) so long as such manner complies with:

- (a) the law; and
- (b) any policies and procedures relating to the passing of director resolutions as determined by the directors from time to time.

#### **4.15 Delegation to committees**

- (a) Subject to rule 4.15(b), the directors may resolve to:
  - (i) establish one or more committees consisting of such persons as they determine;
  - (ii) revoke any or all of the powers delegated to each committee and vary the nature and scope of the powers delegated;
  - (iii) determine the way in which committee meetings are to be conducted and how resolutions are to be considered and passed; and
  - (iv) change the makeup of a committee at any time or dissolve it all together.
- (b) No committee may be authorised to make any decision or take any action that binds the company or the directors in any way unless the giving of such authorisation has been approved by a resolution passed by at least 75% of the directors eligible to vote on that resolution.
- (c) A committee must exercise the powers delegated to it in accordance with any directions of the directors.
- (d) The directors may continue to exercise all of their powers despite any delegation made under this rule.



#### 4.16 Delegation to individuals

- (a) Subject to rule 4.16(b), the directors may at any time resolve to delegate any of their powers:
  - (i) to one or more directors;
  - (ii) to one or more members or Representatives of members; or
  - (iii) to one or more employees.
- (b) No person may be authorised to make any decision or take any action that binds the company or the directors in any way unless the giving of such authorisation has been approved by a resolution that is passed by at least 75% of the directors eligible to vote on that resolution.
- (c) The directors may delegate their powers for such time as they determine and may revoke or vary any power so delegated.
- (d) A person to whom any powers have been delegated must exercise the powers delegated in accordance with any directions of the directors.
- (e) The directors may continue to exercise all of their powers despite any delegation.
- (f) A delegation under this rule need not be to a specified person but may be to any person from time to time holding, occupying or performing the duties of a specified office or position.

#### 4.17 Validity of acts

An act done by a director or by a meeting of the directors or a committee attended by a director is not invalidated just because:

- (a) of a defect in the appointment or election of the director;
- (b) the person is disqualified from being a director or has vacated office; or
- (c) the person was not entitled to vote,

if that circumstance was not known by the person or the directors or committee, as the case may be, when the act was done.

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## 5 Company secretary

- (a) The directors must appoint at least one secretary who may be, but does not need to be, a director.
- (b) The appointment of a secretary may be for the period, on the conditions and, subject to rule 5(c), at the remuneration as the directors determine.
- (c) A director may not be remunerated in his or her capacity as secretary.
- (d) Subject to any contract between the company and the relevant secretary, a secretary of the company may be removed or dismissed by the directors at any time. If that person is a director, such removal or dismissal does not remove that person from office as a director.

- (e) The secretary has the responsibilities and duties required by law and as may be described in the company's policies determined by the directors from time to time.
  - (f) An act done by a person acting as a secretary is not invalidated just because:
    - (i) of a defect in the person's appointment as a secretary; or
    - (ii) the person is disqualified from being a secretary,if that circumstance was not known by the person when the act was done.
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## 6 Membership

### 6.1 Who are the Members?

- (a) The members of the company are the members at the date of incorporation of the company and any person or body corporate (**Applicant**) that has:
  - (i) at the invitation of the directors, applied to become a member; and
  - (ii) been approved for membership of the company by the directors.
- (b) If an Applicant is admitted as a member of the company, the secretary must ensure that:
  - (i) the Applicant is given notice of admission as a member of the company; and
  - (ii) the name and details of the Applicant are entered in the members' register.
- (c) The secretary must ensure that each Applicant not admitted as a member of the company is informed of this decision. The directors and secretary are not required to give reasons for the decision not to admit an Applicant as a member of the company.

### 6.2 Member's rights

Each ordinary member has the right to:

- (a) receive notices of and attend and be heard at any general meeting of the company;
- (b) vote at any general meeting of the company; and
- (c) vote on written resolutions.

### 6.3 Register of members

A register of members must be kept and contain:

- (a) the name and address of each member;
- (b) the date each member's membership starts;
- (c) the date each member's membership ends; and
- (d) any other information that may be required by the directors from time to time.

## 6.4 Membership fees

The directors may determine the joining fee and annual membership fee from time to time which, for the avoidance of doubt, includes setting such fees at \$0.

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# 7 Ceasing to be a member

## 7.1 General

- (a) a member will cease to be a member of the company if that member:
  - (i) resigns from membership. See rule 7.2;
  - (ii) automatically ceases to be a member. See rule 7.3; or
  - (iii) is expelled from membership. See rule 7.4.
- (b) Any member who ceases to be a member may, if that member agrees, be readmitted into membership of the company at the directors' complete discretion.

## 7.2 Resignation from membership

A member may resign from membership of the company at any time by providing written notice to the company addressed to the chair or the secretary. Unless the notice provides otherwise, the resignation takes effect from the date the notice is received by the company.

## 7.3 Automatic cessation of membership

A member's membership will automatically cease if:

- (a) the member dies or, in the case of a member that is a body corporate, is wound up;  
or
- (b) the member fails to pay any required membership fee within two months after the date on which that membership fee becomes due or such later time as the directors may determine.

## 7.4 Expulsion of member

- (a) The directors may resolve to expel a member from membership of the company if that member:
  - (i) has wilfully refused or neglected to comply with the provisions of this constitution; or
  - (ii) has acted in a way that, in the reasonable opinion of the directors, is unbecoming of the member or prejudicial to the interests or reputation of the company.

### (Membership Expulsion Resolution)

- (b) The directors must give the member in question at least 14 days notice of the date that the directors will consider the Membership Expulsion Resolution. This notice must be in writing and let the member know:

- (i) that the directors are to consider expelling the member from membership of the company;
  - (ii) the reasons why the member is to be expelled; and
  - (iii) of the right for the member to give the directors, either orally or in writing, any explanation or defence relevant to a decision to expel that member.
- (c) A director that is subject to a Member Expulsion Resolution is not entitled to vote on that resolution.
- (d) Directors have 14 days from the date a Membership Expulsion Resolution is passed to notify the relevant member about the directors' decision. This notice must be in writing and let the member know whether or not the directors have resolved to expel the member.

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## 8 No profits for members

### 8.1 No transfer of income or property

Subject to rule 8.2, the assets and income of the company must be applied solely in furtherance of the purpose of the company and no portion of the income or assets of the company may be paid or transferred, directly or indirectly, to any member.

### 8.2 Payments that may be made to members

- (a) The company may, with the approval of the directors, make payment in good faith to a member of the company:
- (i) by way of reasonable and proper remuneration for any goods supplied or services rendered to the company (including remuneration as an employee or consultant);
  - (ii) by way of interest on money lent to the company by that member at a reasonable and proper rate per annum not exceeding the rate for the time being charged by the company's bankers on overdrawn accounts;
  - (iii) by way of reasonable and proper rent for premises let by that member to the company; and
  - (iv) for authorised out-of-pocket expenses reasonably and properly incurred by that member in connection with the affairs of the company.
- (b) Nothing in this rule 8 prevents a member from receiving services or assistance from the company in its ordinary course of business.

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## 9 General meetings and decisions of members

### 9.1 Convening of general meetings (including annual general meetings)

- (a) A general meeting of members may be convened:
- (i) by a resolution of the directors; or
  - (ii) in a way that the law permits members of the company and the court to call general meetings of members.

- (b) The company must hold an annual general meeting if required by law.
- (c) A meeting of members may be held in 2 or more places linked together by any technology so long as:
  - (i) all members attending are given a reasonable opportunity to participate in proceedings;
  - (ii) the chair is able to be aware of proceedings in each place; and
  - (iii) all members in attendance are able to clearly indicate whether or not they are in favour of a resolution and can also vote on a poll if required.

## **9.2 Notice of general meetings**

- (a) Subject to the provisions of any relevant law relating to special resolutions and consent to short notice, at least 21 days notice of a general meeting must be given to each person who is at the date of the notice:
  - (i) a member of the company;
  - (ii) a director of the company; or
  - (iii) an auditor of the company.
- (b) A notice of a general meeting must:
  - (i) be given in a way permitted by rule 13;
  - (ii) specify the date, time and place of the meeting;
  - (iii) if the meeting is to be held in 2 or more places, specify the technology that will be used to enable members to attend by electronic means;
  - (iv) state the general nature of the business to be transacted at the meeting including any matters to be determined by special resolution; and
  - (v) include any other information required by law.
- (c) A person who is entitled to receive notice of a meeting or who is requested by the chair to attend a general meeting is entitled to be present, whether the person is a member or not.
- (d) The non-receipt of notice of a members' meeting, or a failure to give notice of a members' meeting, does not invalidate any act, matter or thing done or resolution passed at the meeting if:
  - (i) the non-receipt or failure occurred by accident or error; or
  - (ii) the director attended the meeting.

## **9.3 Quorum at general meetings**

- (a) No business may be transacted at any general meeting, except the election of a chair and the adjournment of the meeting, unless a quorum is present when the meeting proceeds to business and remains present throughout the meeting.
- (b) The quorum for a general meeting of members is five members:

- (c) If a quorum is not present within 30 minutes after the time appointed for a general meeting then:
  - (i) if the meeting was convened by members, the meeting must be dissolved; or
  - (ii) if the meeting was convened by directors, the meeting stands adjourned to the same day in the next week at the same time and place.
- (d) If a quorum is not present at an adjourned meeting of members within 30 minutes after the time appointed for that meeting, the meeting must be dissolved.

#### **9.4 Chair of general meetings**

- (a) The chair of the directors must preside as chair at each general meeting of members unless he or she is unable to attend or unwilling to act.
- (b) If the chair is unable to attend a meeting of members or unwilling to act, then the deputy-chair must preside as chair of that meeting.
- (c) If both the chair and deputy-chair are unable to attend a meeting of members or are unwilling to act, then the members present at that meeting must elect a person present at that meeting to preside as chair for that meeting.

#### **9.5 Conduct of general meetings**

- (a) The chair of a general meeting is responsible for the conduct of the meeting and may require the adoption of procedures for the proper and orderly debate and discussion and for the casting or recording of votes.
- (b) The chair of a general meeting at which a quorum is present may, with the consent of the majority of members present at the meeting, adjourn the meeting from time to time and place to place, but no business is to be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.
- (c) Except for an annual general meeting adjourned under rule 9.3(c)(ii) because of a lack of quorum, notice of an adjournment and the business to be transacted at an adjourned meeting must be given to all persons who were entitled to receive notice of the meeting the subject of the adjournment.

#### **9.6 Decisions at general meetings**

- (a) There are certain decisions that the law says can only be made by a special resolution of members. For example, amending this constitution, changing the company's name and winding up the company. Other than these types of decisions, a resolution put to a general meeting is passed if a majority of the members present vote in favour of the resolution. For the avoidance of doubt, a member may attend and vote at a general meeting through technological means.
- (b) Unless a poll is demanded, members are to pass a resolution under consideration at a members' meeting by clearly indicating whether or not they are in favour of the resolution in a way directed by the chair. For example, by a show of hands, by voice or by standing. When passing a resolution in this way:
  - (i) the declaration by the chair of the outcome of the resolution, and an entry to that effect in the members' minutes book, is evidence of that outcome; and

- (ii) there is no need to record or prove the number or proportion of the votes recorded in favour of or against the resolution.
- (c) If the number of votes for and against a resolution put to a members' meeting is equal, then the chair, unless he or she is excluded from doing so under law (for example, because of a conflict of interest), may exercise a second or casting vote.
- (d) A poll may be demanded by the chair or by at least five members present at the meeting who are entitled to do so under law.
- (e) If a poll is demanded at a general meeting, it will be taken when and in the manner the chair of the meeting directs, and the result of the poll will be the resolution of the meeting at which the poll was demanded.
- (f) A poll cannot be demanded on any resolution concerning:
  - (i) the election of the chair of a meeting; or
  - (ii) the adjournment of a meeting.
- (g) The demand for a poll may be withdrawn.

### **9.7 Voting rights**

- (a) Each member has the right to exercise one vote.
- (b) A member is not entitled to vote on any resolution if:
  - (i) any fees or any other amount due and payable by that member to the company under this constitution have not been paid; or
  - (ii) that vote is prohibited by the law or an order of a court.

### **9.8 Representation at general meetings**

- (a) Subject to this constitution, each member entitled to vote at a meeting of members may vote:
  - (i) in person or, where a member is a body corporate, by its Representative; or
  - (ii) by proxy in a form that the directors may prescribe or accept.
- (b) A proxy or Representative may be a member of the company but does not need to be.
- (c) The chair of a meeting may require any person purporting to act as a proxy or Representative to establish to the satisfaction of the chair that the person has been validly appointed and is the person named in the relevant instrument of appointment, failing which the person may be excluded from attending or voting at the meeting.
- (d) If the name of the proxy in a proxy form is not filled in, the proxy of that member is the person specified by the company in the form of proxy, or if no person is so specified, the chair of that meeting.
- (e) A proxy is not permitted to vote at a general meeting (including one that has been adjourned) unless the instrument appointing the proxy is received:

- (i) at the company's registered office or through any technological means specified for that purpose in the notice convening the meeting; and
  - (ii) at least 48 hours before the commencement time specified in the notice of meeting .
- (f) The authority of a proxy to speak and vote for a member at a general meeting is suspended while that member is present at the meeting unless the members present at the meeting resolve otherwise.

## 9.9 Decisions without meetings

Members may pass resolutions and otherwise make decisions outside of a general meeting of members in any manner (including through the use of technology) so long as such manner complies with:

- (a) the law; and
- (b) any policies and procedures relating to the passing of member resolutions as determine by the directors from time to time.

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## 10 Winding up

- (a) If upon the winding up or dissolution of the company there remains after satisfaction of all of its debts and liabilities, any property or moneys whatsoever (**Surplus Assets**), then such Surplus Assets must not be paid to, or distributed amongst members, but must be given or transferred to one or more organisations in Australia that:
  - (i) has objects or purposes similar to those of the company; and
  - (ii) by its constituent rules, prohibits the distribution of its income and property amongst its Members to an extent at least as great as is imposed upon the company.
- (b) The decision as to which organisation is, or which organisations are, to be the recipient of the Surplus Assets distributed in accordance with rule 10(a) is to be determined by the directors at or before the winding up or dissolution of the company or, in the absence of any determination, by the Court.
- (c) Any part of the Surplus Assets consisting of property supplied by a government department or public authority, including any unexpended portion of a grant, must be returned to the department or authority that supplied it or to a body nominated by the department or authority.

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## 11 Minutes and records

### 11.1 Minutes

- (a) The directors must ensure that the following minutes are recorded, approved and kept in accordance with the law:
  - (i) meetings and resolutions of members;
  - (ii) meetings and resolutions of directors; and



- (iii) meetings and resolutions of committees.

## 11.2 Inspection of records

- (a) Subject to the law and rule 11.2(b), the directors may determine whether and to what extent, and at what time and places and under what conditions, the minute books, accounting records and other documents of the company or any of them will be open to the inspection of members.
- (b) A member may, upon reasonable notice to the directors, inspect any books, records or documents of the company, provided the information obtained is only used for a proper purpose in connection with membership of the company. In the case of directors' minutes and resolutions, the directors may, at their complete discretion, refuse to provide all or some of the directors' minutes or provide such records in a redacted form.
- (c) The company must establish and administer all registers required to be kept by law and each member must provide the company with such information as is required for the company to comply with this rule. If events occur which would cause the information contained in a register maintained by the company to be inaccurate the member must notify the company in writing of the change within 21 days of the date of such change occurring.
- (d) The register is sufficient evidence of the matters shown in the register.
- (e) The company must keep all financial and other records required by law.

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## 12 Indemnity and insurance

- (a) To the extent permitted by law, the company indemnifies its officers and auditors (both current and past) for all losses or liabilities incurred by the person as an officer or auditor of the company including, but not limited to, a liability for negligence or for legal costs on a full indemnity basis .
- (b) This indemnity:
  - (i) may only be for losses or liabilities incurred as an officer or auditor of the company (either before or after the adoption of this rule); and
  - (ii) operates only to the extent that the loss or liability is not paid by insurance.
- (c) To the extent permitted by law, the company may take out and pay for insurance for the benefit of its officers (both current and past) against any liability incurred by the person as an officer of the company including, but not limited to, a liability for negligence or for legal costs) .

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## 13 Notices

Any notice, document or other communication required or permitted to be given under this constitution or law may be given in any manner (including through the use of technology) so long as such manner complies with:

- (a) the law; and

- (b) any policies and procedures relating to the giving and receiving of notices, documents and other communications as determine by the directors from time to time.
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## 14 Formulating rules

- (a) Without limiting the directors' powers under this constitution, the directors may from time to time pass resolutions to make regulations and rules about any matter not being inconsistent with the law or this constitution which relates to the operations or conduct of the company.
  - (b) If there is any inconsistency between rules or regulations formulated pursuant to this rule and the provisions of this constitution or the law, the provisions of this constitution and the law will prevail.
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## 15 General

- (a) **Company seal:** The company may, but is not required to, have and use a company seal. If the directors determine that the company have a common seal, then it must be kept and used in accordance with the law.
- (b) **Submission to jurisdiction:** Each member submits to the non-exclusive jurisdiction of the Supreme Court of the State of New South Wales, the Federal Court of Australia and the Courts which may hear appeals from those Courts.

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## Schedule 1 — Dictionary

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### 1 Dictionary

In this constitution:

**Applicant** has the meaning given at rule 6.1(a).

**Business Day** means Monday to Friday, excluding public holidays, in the place where the company's registered office is located.

**External Committee Member** has the meaning given at rule 4.4(b)(ii).

**Nominations Committee** has the meaning given at rule 4.4(a).

**Representative**, in relation to a body corporate, means a representative of the body corporate appointed under section 250D of the *Corporations Act*.

**Surplus Assets** has the meaning given in rule 10(a).

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### 2 Interpretation

#### 2.1 General

- (a) A reference in a rule in general terms to a person holding or occupying a particular office or position includes a reference to any person who occupies or performs the duties of that office or position for the time being.
- (b) In this constitution, headings are for convenience only and do not affect the interpretation of this constitution and, unless the contrary intention appears:
  - (i) words importing the singular include the plural and vice versa;
  - (ii) words importing a gender include every other gender;
  - (iii) words used to denote persons generally or importing a natural person include any company, corporation, body corporate, body politic, partnership, joint venture, association, board, group or other body (whether or not the body is incorporated);
  - (iv) a reference to a person includes that person's successors and legal personal representatives;
  - (v) a reference to any statute, regulation, proclamation, ordinance or by-laws includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute; and
  - (vi) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

## **2.2 Replaceable rules not to apply**

The replaceable rules contained in the *Corporations Act 2001* (Cth) from time to time do not apply to the company.



**Australian Government**

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**The Treasury**

# **Commonwealth Simple Grant Agreement**

between the Commonwealth of Australia  
represented by

**The Department of the Treasury**

and

**Super Consumers Australia**

## Commonwealth Simple Grant Agreement

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## Grant Agreement – Stronger Consumer Outcomes for Members of Superannuation

Once completed, this document, together with each set of Grant Details and the Commonwealth General Grant Conditions (Schedule 1), forms an Agreement between the Commonwealth of Australia (the Commonwealth) and the Grantee.

### Parties to this Agreement

#### The Grantee

Full legal name of Grantee	Superannuation Consumers' Centre LTD
Legal entity type (e.g. individual, incorporated association, company, partnership etc)	Company Limited by Guarantee
Trading or business name	Super Consumers Australia
Australian Company Number (ACN) or other entity identifiers	163 636 566
Australian Business Number (ABN)	34163636566
Registered office (physical/postal)	57 Carrington Rd Marrickville NSW 2204
Telephone	02 9577 3374
Email	[REDACTED]

#### The Commonwealth

The Commonwealth of Australia represented by The Department of the Treasury  
1 Langton Cres  
Parkes, ACT  
2612  
ABN 92 802 414 793

### Background

The Commonwealth has agreed to enter this Agreement under which the Commonwealth will provide the Grantee with one or more Grants for the purpose of assisting the Grantee to undertake the associated Activity.

The Grantee agrees to use each Grant and undertake each Activity in accordance with this Agreement and the relevant Grant Details.

### Scope of this Agreement

This Agreement comprises:

- (a) this document;
- (b) the Supplementary Terms (if any);
- (c) the Commonwealth General Grant Conditions (Schedule 1);
- (d) the Grant Details;
- (e) any other document referenced or incorporated in the Grant Details.

Each set of Grant Details, including Supplementary Terms, only applies to the particular Grant and Activity covered by that set of Grant Details and a reference to the 'Agreement' in the Grant Details or the Supplementary Terms is a reference to the Agreement in relation to that particular Grant and Activity. If there is any ambiguity or inconsistency between the documents comprising this Agreement in relation to a



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Grant, the document appearing higher in the list will have precedence to the extent of the ambiguity or inconsistency.

This Agreement represents the Parties' entire agreement in relation to each Grant provided under it and the relevant Activity and supersedes all prior representations, communications, agreements, statements and understandings, whether oral or in writing.

Certain information contained in or provided under this Agreement may be used for public reporting purposes.

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## Grant Details Stronger Consumer Outcomes for Members of Superannuation

### A. Purpose of the Grant

Funding for this grant is part of the 2021-22 Budget measure 'Stronger Consumer Outcomes for Members of Superannuation' (2021-22 Budget Paper 2, page 192), which is to support stronger consumer outcomes on behalf of superannuation fund members.

The objective of the program is to fund adequate consumer representation in the superannuation system, to ensure that the industry is competitive and efficient. Without the sufficient representation of members, member outcomes research and analysis would be dominated by the well-resourced superannuation industry.

This funding will facilitate continued member outcomes research and analysis. It will also fund research to create an evidence base in support of member outcomes work.

This grant will fund research and analysis for the interests of superannuation members. Work that is consistent with this would include policy analysis, research on relevant issues for superannuation members, and publication of findings that effectively engages stakeholders of the superannuation system.

The program will be administered by the Department of the Treasury according to the [Commonwealth Grants Rules and Guidelines](#) (CGRGs)<sup>1</sup>.

### B. Activity

This funding will enable you to continue promoting member outcomes research and analysis in policy debate 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 member outcomes research and analysis is used to inform public discourse.

You will also be expected to conduct research and analysis of members' outcomes, 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.

Should you undertake fundraising activities (i.e. activities in which you seek to raise additional funding to undertake the grant activities outlined above), no more than 10 per cent of grant monies (\$160,000) should be spent on activities associated with fundraising. Any expenditure made in this regard should be noted in the financial statement submitted at the end of the grant period (Section G3).

You should ensure that in your activities or fundraising, that promoting members outcomes is the first priority of Super Consumers Australia. Preventing any influence by the superannuation industry and ensuring SCA's advice remains independent should continue to be part of SCA's ongoing risk management strategy.

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<sup>1</sup> <https://www.finance.gov.au/sites/default/files/commonwealth-grants-rules-and-guidelines.pdf>

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Grant monies should not be used to undertake activities beyond this, such as direct member assistance or formal education services for members.

### C. Duration of the Grant

The Activity starts on signature of this Agreement, and ends on 30 June 2023, which is the **Activity Completion Date**.

The Agreement ends on when the Grantee has provided all annual reports for the 2021-22 and 2022-23, and the financial statement noted in section E, which is the **Agreement End Date**.

### D. Payment of the Grant

The total amount of the Grant is \$1.6 million.

GST is not payable on the Grant.

The Grantee must ensure that the Grant is held in an account in the Grantee's name and which the Grantee controls, with an authorised deposit-taking institution authorised under the *Banking Act 1959* (Cth) to carry on banking business in Australia.

The Grantee's nominated bank account into which the Grant is to be paid is to be advised.

The Grant will be paid in two instalments of \$800,000 by the Commonwealth for each year of the grant period (2021-22 and 2022-23). This first instalment will be provided on signing of the grant agreement. The second instalment will be provided in July 2022.

### E. Reporting

The Grantee agrees to create the following reports in the form specified and to provide the reports to the Commonwealth representative in accordance with the following:

Provision of Annual Reports to the Department of the Treasury within 4 months after financial year end.

A financial statement detailing the income and expenses relating to the Grant should be provided within 1 month of the conclusion of the grant activity at 1 July 2023.

### F. Party representatives and address for notices

#### Grantee's representative and address

Name	Linda Magee
Position	Company Secretary
Address	57 Carrington Rd Marrickville NSW 2204
E-mail	[REDACTED]

#### Commonwealth representative and address

Name	James Thomson
Position	Director
Address	1 Langton Cres, Parkes, ACT, 2612
E-mail	[REDACTED]

The Parties' representatives will be responsible for liaison and the day-to-day management of the Grant, as well as accepting and issuing any written notices in relation to the Grant.

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## **G. Supplementary Terms**

### **G1. Other Contributions**

Not Applicable

### **G2. Activity budget**

Not Applicable

### **G3. Record keeping**

G3.1 The Grantee agrees to maintain the following records:

- (a) identify the receipt and expenditure of the Grant and any Other Contributions separately within the Grantee's accounts and records so that at all times the Grant is identifiable; and
- (b) keep financial accounts and records relating to the Activity so as to enable all receipts and payments related to the Activity to be identified and reported; and

G3.2 The Grantee agrees to maintain the records for five years after the Activity Completion Date and provide copies of the records to the Commonwealth representative upon request.

G3.3 Term G3 survives the termination, cancellation or expiry of the Agreement.

### **G4. Audit and acquittal**

G4.1 Within one month after the Activity Completion Date, the Grantee agrees to provide a financial statement in relation to the income and expenses relating to the Grant signed by the Grantee verifying the Grant was spent in accordance with this Agreement.

### **G5. Activity Material**

Not Applicable

### **G6. Access**

Not Applicable

### **G7. Equipment and Assets**

Not Applicable

### **G8. Relevant qualifications, skills or checks**

Not Applicable

### **G9. Activity specific legislation, policies and industry standards**

Not Applicable

### **G9A. Fraud**

Not Applicable.

### **G10. Commonwealth Material, facilities and assistance**

Not Applicable

### **G11. Jurisdiction**

Not Applicable

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**G12. Grantee trustee of a Trust**



Not Applicable





## Signatures

Executed as an agreement:

### Commonwealth of Australia:

Signed for and on behalf of the Commonwealth of Australia as represented by The Department of the Treasury	
Name: (print) Position: (print) Signature and date:	<u>Meghan Quinn</u> <u>Deputy Secretary, Markets Group, The Department of the Treasury</u> <u>18/11/2021</u>
Witness Name: (print) Signature and date:	<u>Belinda Smith</u>  <u>18-11-2021</u>

### Grantee:

Name of Company:	The Superannuation Consumers' Centre LTD ABN: 34163636566
Director's Name: (print) Signature and date:	<u>Rod Stowe, Chair</u>  <u>18/11/2021</u>
Director/Company Secretary Name: (print) Signature and date:	<u>Jenni Mack, Board Director</u>  <u>18/11/2021</u>

## 1. Undertaking the Activity

The Grantee agrees to undertake the Activity in accordance with this Agreement.

## 2. Acknowledgements

The Grantee agrees to acknowledge the Commonwealth's support in Material published in connection with this Agreement and agrees to use any form of acknowledgment the Commonwealth reasonably specifies.

## 3. Notices

3.1 Each Party agrees to notify the other Party of anything reasonably likely to adversely affect the undertaking of the Activity, management of the Grant or its performance of its other requirements under this Agreement.

3.2 A notice under this Agreement must be in writing, signed by the Party giving notice and addressed to the other Party's representative.

3.3 The Commonwealth may, by notice, advise the Grantee of changes to the Agreement that are minor or of an administrative nature provided that any such changes do not increase the Grantee's obligations under this Agreement. Such changes, while legally binding, are not variations for the purpose of clause 7.

## 4. Relationship between the Parties

A Party is not by virtue of this Agreement the employee, agent or partner of the other Party and is not authorised to bind or represent the other Party.

## 5. Subcontracting

5.1 The Grantee is responsible for the performance of its obligations under this Agreement, including in relation to any tasks undertaken by subcontractors.

5.2 The Grantee agrees to make available to the Commonwealth the details of any of its subcontractors engaged to perform any tasks in relation to this Agreement upon request.

## 6. Conflict of interest

The Grantee agrees to notify the Commonwealth promptly of any actual, perceived or potential conflicts of interest which could affect its performance of this Agreement and agrees to take action to resolve the conflict.

## 7. Variation

This Agreement may be varied in writing only, signed by both Parties.

## 8. Payment of the Grant

8.1 The Commonwealth agrees to pay the Grant to the Grantee in accordance with the Grant Details.

8.2 The Commonwealth may by notice withhold payment of any amount of the Grant where it reasonably believes the Grantee has not complied with this Agreement or is unable to undertake the Activity.

8.3 A notice under clause 8.2 will contain the reasons for any payment being withheld and the steps the

Grantee can take to address those reasons.

8.4 The Commonwealth will pay the withheld amount once the Grantee has satisfactorily addressed the reasons contained in a notice under clause 8.2.

## 9. Spending the Grant

9.1 The Grantee agrees to spend the Grant for the purpose of undertaking the Activity only.

9.2 The Grantee agrees to provide a statement signed by the Grantee verifying the Grant was spent in accordance with the Agreement.

## 10. Repayment

10.1 If any of the Grant has been spent other than in accordance with this Agreement or any amount of the Grant is additional to the requirements of the Activity, the Grantee agrees to repay that amount to the Commonwealth unless agreed otherwise.

10.2 The amount to be repaid under clause 10.1 may be deducted by the Commonwealth from subsequent payments of the Grant or amounts payable under another agreement between the Grantee and the Commonwealth.

## 11. Record keeping

The Grantee agrees to maintain records of the expenditure of the Grant.

## 12. Intellectual Property

12.1 Subject to clause 12.2, the Grantee owns the Intellectual Property Rights in Activity Material and Reporting Material.

12.2 This Agreement does not affect the ownership of Intellectual Property Rights in Existing Material.

12.3 The Grantee gives the Commonwealth a non-exclusive, irrevocable, royalty-free licence to use, reproduce, publish and adapt Reporting Material for Commonwealth Purposes.

## 13. Privacy

When dealing with Personal Information in carrying out the Activity, the Grantee agrees not to do anything which, if done by the Commonwealth, would be a breach of an Australian Privacy Principle.

## 14. Confidentiality

The Parties agree not to disclose each other's confidential information without prior written consent unless required or authorised by law or Parliament.

## 15. Insurance

The Grantee agrees to maintain adequate insurance for the duration of this Agreement and provide the Commonwealth with proof when requested.

## 16. Indemnities

16.1 The Grantee indemnifies the Commonwealth, its officers, employees and contractors against any claim, loss or damage arising in connection with the Activity.

16.2 The Grantee's obligation to indemnify the Commonwealth will reduce proportionally to the extent any act or omission involving fault on the part of the



Commonwealth contributed to the claim, loss or damage.

## 17. Dispute resolution

17.1 The Parties agree not to initiate legal proceedings in relation to a dispute unless they have tried and failed to resolve the dispute by negotiation.

17.2 The Parties agree to continue to perform their respective obligations under this Agreement where a dispute exists.

17.3 The procedure for dispute resolution does not apply to action relating to termination or urgent litigation.

## 18. Termination for default

The Commonwealth may terminate this Agreement by notice where it reasonably believes the Grantee:

- (a) has breached this Agreement; or
- (b) has provided false or misleading statements in their application for the Grant; or
- (c) has become bankrupt or insolvent, entered into a scheme of arrangement with creditors, or come under any form of external administration.

## 19. Cancellation for convenience

19.1 The Commonwealth may cancel this Agreement by notice, due to:

- (a) a change in government policy; or
- (b) a Change in the Control of the Grantee, which the Commonwealth believes will negatively affect the Grantee's ability to comply with this Agreement.

19.2 The Grantee agrees on receipt of a notice of cancellation under clause 19.1 to:

- (a) stop the performance of the Grantee's obligations as specified in the notice; and
- (b) take all available steps to minimise loss resulting from that cancellation.

19.3 In the event of cancellation under clause 19.1, the Commonwealth will be liable only to:

- (a) pay any part of the Grant due and owing to the Grantee under this Agreement at the date of the notice; and
- (b) reimburse any reasonable expenses the Grantee unavoidably incurs that relate directly to the cancellation and are not covered by 19.3(a).

19.4 The Commonwealth's liability to pay any amount under this clause is subject to:

- (a) the Grantee's compliance with this Agreement; and
- (b) the total amount of the Grant.

19.5 The Grantee will not be entitled to compensation for loss of prospective profits or benefits that would have been conferred on the Grantee.

## 20. Survival

Clauses 10, 12, 13, 14, 16, 20 and 21 survive termination, cancellation or expiry of this Agreement.

## 21. Definitions

In this Agreement, unless the contrary appears:

- **Activity** means the activities described in the Grant Details.
- **Activity Completion Date** means the date or event specified in the Grant Details.
- **Activity Material** means any Material, other than Reporting Material, created or developed by the Grantee as a result of the Activity and includes any Existing Material that is incorporated in or supplied with the Activity Material.
- **Agreement** means the Grant Details, Supplementary Terms (if any), the Commonwealth General Grant Conditions and any other document referenced or incorporated in the Grant Details.
- **Agreement End Date** means the date or event specified in the Grant Details.
- **Asset** means any item of property purchased wholly, or in part, with the use of the Grant.
- **Australian Privacy Principle** has the same meaning as in the *Privacy Act 1988*.
- **Change in the Control** means any change in any person(s) who directly exercise effective control over the Grantee.
- **Commonwealth** means the Commonwealth of Australia as represented by the Commonwealth entity specified in the Agreement and includes, where relevant, its officers, employees, contractors and agents.
- **Commonwealth General Grant Conditions** means this document.
- **Commonwealth Purposes** does not include commercialisation or the provision of the Material to a third party for its commercial use.
- **Existing Material** means Material developed independently of this Agreement that is incorporated in or supplied as part of Reporting Material or Activity Material.
- **Grant** means the money, or any part of it, payable by the Commonwealth to the Grantee as specified in the Grant Details.
- **Grantee** means the legal entity specified in the Agreement and includes, where relevant, its officers, employees, contractors and agents.
- **Grant Details** means the document titled Grant Details that forms part of this Agreement.
- **Intellectual Property Rights** means all copyright, patents, registered and unregistered trademarks (including service marks), registered designs, and other rights resulting from intellectual activity (other than moral rights under the *Copyright Act 1968*).
- **Material** includes documents, equipment, software (including source code and object code versions), goods, information and data stored by any means



including all copies and extracts of them.

- **Party** means the Grantee or the Commonwealth.
- **Personal Information** has the same meaning as in the *Privacy Act 1988*.
- **Reporting Material** means all Material which the Grantee is required to provide to the Commonwealth for reporting purposes as specified in the Grant Details and includes any Existing Material that is incorporated in or supplied with the Reporting Material.

