**EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Social Services

*Social and Community Services Pay Equity Special Account Act 2012*

*Social and Community Services Pay Equity Special Account (Legal Assistance Services) Specification 2015*

**Purpose**

The *Social and Community Services Pay Equity Special Account (Legal Assistance Services) Specification 2015* (**the Specification**) is made under subsections 7(4) and subsection 8(7) of the *Social and Community Services Pay Equity Special Account Act 2012* (**the Act**).

The Specification omits and substitutes an item that specifies a programme in Schedule 1 to the Act and adds an agreement to Schedule 3 of the Act for the purpose of maintaining the Commonwealth’s efforts in funding legal assistance services.

Schedule 1 of the Act (together with Schedule 2) provides an exhaustive list of the Commonwealth programmes that are within the scope of the Act*.* Schedule 3 provides a list of agreements and payments through which grants of financial assistance are made from the Commonwealth to the States and Territories.

The Specification omits an item that had related to direct funding of community legal services from the Commonwealth (402.005 Payments for the provision of community legal services) from the list of programmes in Part 1 of Schedule 1 to the Act. The Specification substitutes this item with an item in Part 2 of Schedule 1 to the Act to reflect that a component of this funding will continue to be provided through the renamed Justice Services - Community Legal Services Programme.

An additional item 7 referring to the *National Partnership Agreement on Legal Assistance Services* is added to the list of grants of financial assistance in Part 1 of Schedule 3 to the Act.

This Specification will allow the Commonwealth to continue to provide pay equity supplementation under the Act associated with funding for legal assistance services, including community legal services, in accordance with the recently established *National Partnership Agreement on Legal Assistance Services*.

The Specification is a legislative instrument for the purposes of the *Legislative Instruments Act 2003.*

**Background**

The Act establishes the Account, which is a Special Account under section 83 of the *Public Governance, Performance and Accountability Act 2013.* The Account underpins the Commonwealth contribution to pay increases for social and community services sector workers in Commonwealth‑funded programmes. This extends to programmes funded under agreements with and payments to States and Territories, such as National Partnership Payments and National Specific Purpose Payments.

Commonwealth supplementation is delivered through funding drawn down from the Account. The supplementation is then paid to assist employers:

* who are covered by a pay equity order or to whom a pay equity order applies; and
* who receive funding, directly or indirectly, from the Commonwealth for the purposes of a programme, grant of financial assistance or specific purpose payment prescribed under the Act.

All of the programmes within the scope of the Act, and therefore qualified to receive funds from the Account, are listed in Schedules 1 and 2 to the Act. Schedule 3 to the Act lists the grants of financial assistance or specific purpose payments for which specified amounts may be debited from the Account and credited to the COAG Reform Fund Account. Subsections 7(4) and 8(7) of the Act provide flexibility to ensure that the Schedules accurately reflect the programmes, agreements and special purpose payments under which employers are able to receive assistance from the Act, and are therefore within the scope of the Act.

**Commencement**

Under subsections 7(5) and 8(8) of the Act, the Specification is not subject to the disallowance of instruments provisions set out in section 42 of the Legislative Instruments Act 2003. Instead, the Specification commences at the end of the disallowance period set out in section 9 of the Act. That is, on the day immediately after five sitting days has passed since the Specification is tabled in the House under section 38 of the Legislative Instruments Act 2003, and where no disallowance resolution referred to in subsection 9(2) of the Act has been passed.

**Consultation**

The Department of Social Services has had extensive consultations with the Departments of Treasury, Finance and Attorney-General’s in developing the Specification.

**Regulation Impact Statement (RIS)**

The Office of Best Practice Regulation has advised that a Regulation Impact Statement is not required, as the proposal is minor and machinery in nature and unlikely to change compliance costs. Reference Number 19394.

**Explanation of the provisions**

Section 1

Section 1 provides how the Specification is to be cited, that is, as the Social and Community Services Pay Equity Special Account (Legal Assistance Services) Specification 2015.

Section 2

Section 2 provides that the Specification commences on the day immediately after the last day on which a resolution referred to in subsection 9(2) of the Social and Community Services Pay Equity Special Account Act 2012 could have been passed.

Schedule 1

Schedule 1 sets out how the Specification modifies the Social and Community Services Pay Equity Special Account Act 2012.

Schedule 1, item 1

Item 1 modifies Part 1 of Schedule 1 to the Act by omitting an item that specifies a programme, being the programme referred to as “402.005 Payments for the provision of community legal services” in Schedule 1AA to the Financial Framework (Supplementary Powers) Regulations 1997. This programme is no longer being directly funded by the Commonwealth, with the exception of a component of this funding which will continue to be directly funded through the Justice Services - Community Legal Services Programme.

Schedule 1, item 2

Item 2 modifies Part 2 of Schedule 1 to the Act by adding an item that specifies a programme, being the programme referred to as “Justice Services - Community Legal Services Programme” in Item 87 of Schedule 1AB to the Financial Framework (Supplementary Powers) Regulations 1997. This item substitutes the item in Part 1 of Schedule 1, referred to as 402.005 Payments for the provision of community legal services, and reflects that a component of this funding will continue to be provided through the renamed Justice Services - Community Legal Services Programme.

Schedule 1, item 3

Item 2 modifies Part 1 of Schedule 3 to the Act by adding an item that specifies an agreement, being the National Partnership Agreement on Legal Assistance Services. The Commonwealth will now be funding the provision of legal assistance services primarily through grants of financial assistance given to the States and Territories under section 96 of the Constitution. This modification is necessary to reflect that funding through the Account will now occur under the arrangements set out in section 8 of the Act, which enable the Minister to direct that a specified amount is to be debited from the Account and credited to the COAG Reform Fund for the purpose of making a specified grant of financial assistance to a State or Territory.

**Statement of Compatibility with Human Rights**

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

*Social and Community Services Pay Equity Special Account (Legal Assistance Services) Specification 2015*

The Specification 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**

The Act provides Commonwealth service providers with supplementation funding to assist them in paying the higher wage costs associated with the implementation of the Fair Work Australia Equal Remuneration Order for the Social and Community Services Sector.

All of the programmes, special purpose payments or agreements within the scope of the Act, and therefore qualified to receive funds from the Special Account established under the Act, are listed in Schedules to the Act. Subsections 7(4) and 8(7) of the Act allow those Schedules to be amended and provide flexibility to ensure that the Schedules accurately reflect the programmes, agreements and special purpose payments under which employers are able to receive assistance from the Act.

The Specification makes amendments to reflect that some Commonwealth funding will continue to be provided through the renamed Justice Services - Community Legal Services Programme and to reflect that other funding is being made available to States and Territories.

This Specification will allow the Commonwealth to continue to provide pay equity supplementation under the Act associated with funding for legal assistance services, including community legal services, in accordance with the recently established *National Partnership Agreement on Legal Assistance Services*.

**Human rights compatibility**

This Specification is compatible with the right to equality before courts and tribunals as set out in Article 14 of the International Covenant on Civil and Political Rights because the Specification will allow the Commonwealth to continue funding legal assistance services through grants to the States and Territories. As a measure to assist equal treatment of employees covered by Commonwealth and State wages arrangements, the Specification is also compatible with Article 7 of the International Covenant on Economic, Social and Cultural Rights which deals with the right to just and favourable conditions of work.

**Scott Morrison**

**Minister for Social Services**