



PGPA Act (Military Death Claim Compensation Special Account 2015 — Establishment) Determination 2015/08

Public Governance, Performance and Accountability Act 2013

I, MATHIAS HUBERT PAUL CORMANN, Minister for Finance, make this determination.

MATHIAS HUBERT PAUL CORMANN
Minister for Finance

Dated: 17 August 2015

Part 1 – Establishment

1 Name of determination

This determination is the *PGPA Act (Military Death Claim Compensation Special Account 2015 – Establishment) Determination 2015/08*.

Note 1 All special account determinations and compilations are registered on the Federal Register of Legislative Instruments (FRLI) kept under the *Legislative Instruments Act 2003*. See <http://www.comlaw.gov.au>

Note 2 The Determination is subject to Part 6 (sunsetting) of the *Legislative Instruments Act 2003*. The sunsetting provisions mean that this special account will be repealed on the earlier of 1 April or 1 October falling on or after the tenth anniversary of registration.

2 Commencement and effect

(a) This determination takes effect on the day specified in subsection 79(5)(a) of the PGPA Act.

3 Legislative authority

This determination is made under subsection 78(1) of the PGPA Act.

4 Definitions

In this determination:

Defence Force has the same meaning as in the MRC Act.

MRC Act means the *Military Rehabilitation and Compensation Act 2004*.

PGPA Act means the *Public Governance, Performance and Accountability Act 2013*.

SRC Act means the *Safety Rehabilitation and Compensation Act 1988*.

5 Establishment

For paragraph 78(1)(a) of the PGPA Act, a special account is established with the name *Military Death Claim Compensation Special Account 2015* (the special account).

6 Accountable authority

For paragraph 78(1)(d) of the PGPA Act, the accountable authority responsible for the special account is the Secretary of the Department of Veterans' Affairs.

7 Amounts to be credited

For paragraph 78(1)(b) of the PGPA Act, amounts equal to the following are allowed to be credited to the special account:

- (a) amounts received in accordance with a determination of the Military Rehabilitation and Compensation Commission in relation to the death of a member of the Defence Force;
- (b) amounts received for the benefit of a person resulting from a claim made under the SRC Act or the MRC Act in relation to the death of a member of the Defence Force.

Note 1 An Appropriation Act may provide that if any of the purposes of a special account are covered by an item in those Acts (whether or not the item expressly refers to the special account), then amounts may be debited against the appropriation for that item and credited to the special account.

Note 2 Subsection 58 (5) of the PGPA Act provides that the proceeds of an investment of an amount debited from a special account must be credited to that special account.

Note 3 Section 74 of the PGPA Act has the effect that if an amount expended from a special account is repaid to the Commonwealth, that amount must be re-credited to that special account.

Note 4 Section 74A of the PGPA Act has the effect of increasing the appropriation under section 78 of the PGPA Act for the purposes of this special account (and thereby increasing this special account's balance). The increase is of an amount equivalent to any GST amount that is recoverable in relation to a payment, and occurs immediately before the payment is made.

Note 3 Where an amount equal to an amount debited from the special account is repaid to the Commonwealth, the amount may be credited to the special account under paragraph 74(1)(b) of the PGPA Act and s 27(5) of the *Public Governance, Performance and Accountability Rule 2014*.

8 Purposes for which amounts are allowed to be debited

For paragraph 78(1)(c) of the PGPA Act, the purposes for which amounts are allowed to be debited from the special account are:

- (a) payment of compensation made under the SRC Act or the MRC Act in relation to the death of a member of the Defence Force;
- (b) to repay amounts where an Act or other law requires or permits the repayment of an amount received.

Note 1 Subsection 78(4) of the PGPA Act appropriates the Consolidated Revenue Fund (CRF) for expenditure for the purposes of the special account up to the balance for the time being of the special account. Subsection 78(6) of the PGPA Act provides that when an amount is debited against the appropriation, the amount is taken to be also debited from the special account.

- Note 2* In addition to the purposes specified in this determination, other legislation provides authority for amounts to be debited from this special account. Subsection 58(1) of the PGPA Act provides the Finance Minister with the power to invest in any authorised investment. Not all chief executives have been delegated powers to invest under section 58 of the PGPA Act. Where such an investment is made of an amount standing to the credit of a special account, section 58 of the PGPA Act has the effect that the special account must be debited. Subsection 58(4) of the PGPA Act provides that if an amount has been invested by debiting a special account, then the expenses of the investment may be debited from the special account. Subsection 58(7) of the PGPA Act appropriates the CRF for this investment activity.
- Note 3* An amount may be debited from the special account where:
- (a) it has been incorrectly credited by virtue of a clerical mistake; or
 - (b) it has been credited through the exercise of a discretion by an official and the exercise of that discretion was actuated by a fundamental mistake of fact or law. Legal advice should be obtained before an amount is debited on this basis.
- Note 4* Section 76 of the PGPA Act applies to a notional payment by an Agency (or part of an Agency) as if it were a real payment by the Commonwealth. Notional receipts and notional payments are transactions between different parts of the Commonwealth. Real receipts and real payments are transactions between the Commonwealth and other entities.

Part 2 – Transitional Variation

Subsection 5 (1) of the *Financial Management and Accountability Determination 2005/07 – Military Death Claim Compensation Special Account Establishment* is varied by adding at the end:

; and (c) to credit amounts to the *Military Death Claim Compensation Special Account 2015*

Note: That determination is automatically repealed on 1 October 2015 by the operation of section 50 of the *Legislative Instruments Act 2003* (Sunsetting). The variation provides for any remaining amounts in the special account established by that determination to be transferred to the Military Death Claim Compensation Special Account 2015 (a new special account established by this determination).