**EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Finance

*Public Governance, Performance and Accountability Act 2013*

*PGPA Act (Recovery of Compensation for Health Care and Other Services Special Account 2015–Establishment) Determination 2015/06* (this determination)

### *Purpose of this determination*

This determination is made under subsections 78(1) and (3) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and it:

* establishes the *Recovery of Compensation for Health Care and Other Services Special Account 2015* (the special account); and
* varies the *Recovery of Compensation for Health Care and Other Services Special Account* (the sunsetting special account).

The special account is being established because the sunsetting special account*,* whichwas established in 2005, will sunset on 1 October 2015 under section 50 of the *Legislative Instruments Act 2003*. This determination enables the balance of the sunsetting special account to be transferred to the special account before the sunsetting date, so that required payments may be made for the purposes of the special account.

This determination differs from the determination that established the sunsetting special account to the extent that it amends the crediting and debiting clauses to better align the purpose of the special account with payments that are made consistent with the *Health and Other Services (Compensation) Act 1995* (HOSC Act).

### *Purpose of this special account*

The special accountwill be used to manage monies under the Compensation Recovery Programme, which is managed by the accountable authority of the Department of Human Services. The special account will be credited with amounts received consistent with the HOSC Act, such as amounts from compensation payers, insurers and compensable persons. It will be debited to make payments such as excess recoveries to compensable persons, refunds to compensation payers or insurers, and recovered monies to the other Commonwealth entities that manage related programmes.

The Compensation Recovery Programme began in February 1996. The programme aims to prevent a person from ‘double dipping’, that is from receiving (a) benefits and subsidies paid by the Australian Government in medical and nursing home benefits/residential care, as well as (b) compensation received in respect of the same injury.

Using a special account to manage related amounts assists in providing transparency to all related parties.

### *The operating context of special accounts*

A special account may be established by a determination made by the Minister for Finance, (under section 78 of the PGPA Act) or by an Act other than the PGPA Act (consistent with section 80 of the PGPA Act).

A special account is an appropriation mechanism that sets aside amounts within the Consolidated Revenue Fund (CRF) for spending on specified purposes. The purposes of a special account are set out in the establishing determination or Act.

In accordance with section 81 of the Constitution, all revenues or moneys raised or received by the Commonwealth Executive Government form one Consolidated Revenue Fund (CRF). Section 83 of the Constitution provides that such money may not be spent except under an appropriation made by law.

* A special account enables moneys raised or received to be set aside for the purposes of a special account.
* Payments for the purpose of a special account are supported by an appropriation contained in subsection 78(4) of the PGPA Act (for a determination established special account) and subsection 80(1) of the PGPA Act (for an Act established special account).

### *Special account determinations*

Determinations establishing special accounts are made by the Minister for Finance under subsection 78(1) of the PGPA Act. A special account determination sets out the types of amounts that may be credited to the special account and the purposes for which amounts may be debited from the account.

Special account determinations may be varied or revoked by a subsequent determination being made in accordance with subsection 78(3) of the PGPA Act.

Subsection 79(2) of the PGPA Act provides that special account determinations are legislative instruments under the *Legislative Instruments Act 2003.* Special account determinations are subject to Part 6 (sunsetting) of the *Legislative Instruments Act 2003.* A special account determination will, therefore, be repealed on the earlier of 1 April or 1 October falling on or after the tenth anniversary of registration of the determination.

In accordance with subsection 79(3) of the PGPA Act, the Finance Minister must table a copy of such determinations in each House of the Parliament. Subsection 79(4) of the PGPA Act provides that special account determinations are subject to disallowance by either House of the Parliament. The disallowance period starts on the day a special account determination is tabled in the House and ends on the fifth sitting day after the determination was tabled in that House.

This determination will take effect, in accordance with subsection 79(5) of the PGPA Act, on the day immediately after the last day upon which the House could have passed a resolution disallowing the determination under section 79 of the PGPA Act.

### *Human Rights*

A Statement of Compatibility with Human Rights is not required for this determination.  Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires a Statement of Compatibility with Human Rights for all legislative instruments subject to disallowance under section 42 of the *Legislative Instruments Act 2003.* While determinations made or varied under subsections 78(1) or 78(3) of the PGPA Act are subject to disallowance under section 79 of the PGPA Act,they are not subject to disallowance under section 42 of the *Legislative Instruments Act 2003*. As such, a Statement of Compatibility with Human Rights is not required.

### *Consultation*

The Department of Human Services was consulted in the preparation of this determination. As this determination is for internal machinery of government purposes only, no consultation was necessary with other persons (see sections 17 and 18 of the *Legislative Instruments Act 2003*).