

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Finance

Coronavirus Economic Response Package Omnibus Act 2020

Coronavirus Economic Response Package (Deferral of Sunsetting – Financial Management and Accountability Determination 2010/02) Determination 2020

Legislative Authority

This determination is made under subitem 1(2) of Schedule 16 to the *Coronavirus Economic Response Package Omnibus Act 2020*.

Schedule 16 to the *Coronavirus Economic Response Package Omnibus Act 2020* grants the relevant Minister the power to determine a new sunset day for Acts or legislative instruments that are due to sunset on or before 15 October 2020.

Purpose of this determination

This determination defers the original sunset day of the *Financial Management and Accountability Determination 2010/02 – Services for Other Entities and Trust Moneys – Department of the Environment, Water, Heritage and the Arts Special Account Establishment 2010 (current SOETM instrument)*. The current SOETM instrument was originally scheduled to sunset on 1 April 2020. ‘SOETM’ is an abbreviation of the term ‘Services for Other Entities and Trust Moneys’.

On 18 February 2020 the Minister for Finance made the *PGPA Act Determination (Environment SOETM Special Account 2020) (new SOETM instrument)*. The new SOETM instrument is a determination under subsections 78(1) and 78(3) of the *Public Governance, Performance and Accountability Act 2013 (PGPA Act)* to establish the *Environment SOETM Special Account 2020* for the Department of Agriculture, Water and the Environment.

The new SOETM instrument was intended to replace the current SOETM instrument prior to its scheduled sunset day. The new SOETM instrument was tabled in Parliament on 24 February 2020 and had one day left to elapse on the disallowance period under paragraph 79(5)(a) of the PGPA Act. However, as the Parliament is not scheduled to sit again until the Winter sittings in August 2020, the new SOETM instrument will not commence before the current SOETM instrument sunsets on 1 April 2020.

This determination ensures the current SOETM instrument will continue to operate until the earlier of the following days:

- 1 October 2020, or
- the day the new SOETM instrument commences in accordance with paragraph 79(5)(a) of the PGPA Act.

The extension of the operation of the current SOETM instrument will enable the Department of Agriculture, Water and the Environment to continue to hold and expend amounts on behalf of persons other than the Commonwealth, as well as carry out joint activities with other entities and jurisdictions, such as continued work with the Victorian Environmental Protection Agency.

Relevant Minister

The Finance Minister is the “relevant Minister” for the purposes of subitem 1(5) in Schedule 16 to the *Coronavirus Economic Response Package Omnibus Act 2020*.

The current SOETM instrument was made by the Finance Minister under subsection 20(1) of the *Financial Management and Accountability Act 1997*. Under subitem 36(1) in Part 2 of Schedule 2 to the *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014*, the current SOETM instrument is taken to have been made under subsection 78(1) of the PGPA Act.

The Finance Minister administers the PGPA Act under the current Administrative Arrangements Order (Administrative Arrangements Order – 5/12/2019).

Special Account Determinations – Disallowance period under PGPA Act

The current SOETM instrument and the new SOETM instrument are both special account determinations for the purposes of section 79 of the PGPA Act, which deals with disallowance of determinations relating to special accounts.

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 of the House after the determination was tabled in that House.

If neither House passes a resolution to disallow a special account determination, under subsection 79(5) of the PGPA Act, the determination commences on the day immediately after the last day on which it could have been disallowed, or on a later day if specified in the determination. The new SOETM instrument does not specify a later day, and provides that it will commence on the day immediately after the last day on which it could have been disallowed, pursuant to paragraph 79(5)(a) of the PGPA Act.

Regulatory impact analysis

The determination contains measures that are minor or machinery in nature. The Office of Best Practice Regulation (**OBPR**) has advised that the deferral of sunseting instruments under Schedule 16 to the *Coronavirus Economic Response Package Omnibus Act 2020* is expected to have Nil regulatory impacts. A regulation impact statement (RIS) is not required.

OBPR ID Number: 26435

Consultation

The Administrative Law Section in the Attorney-General’s Department, the Office of Parliamentary Counsel and the Department of Agriculture, Water and the Environment were consulted in the preparation of this determination.

Statement of Compatibility with Human Rights

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

Coronavirus Economic Response Package (Deferral of Sunsetting – Financial Management and Accountability Determination 2010/02) Determination 2020

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

Overview of the Legislative Instrument

The *Coronavirus Economic Response Package (Deferral of Sunsetting – Financial Management and Accountability Determination 2010/02) Determination 2020* defers the original sunset day of the *Financial Management and Accountability Determination 2010/02 – Services for Other Entities and Trust Moneys – Department of the Environment, Water, Heritage and the Arts Special Account Establishment 2010 (current SOETM instrument)*.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms outlined in the *Human Rights (Parliamentary Scrutiny) Act 2011*.

This Legislative Instrument defers the original sunset day of the current SOETM Instrument. A Statement of Compatibility with Human Rights is not required for the current SOETM instrument, as it does not engage any human rights. Therefore, by extension this Legislative Instrument does not raise any human rights issues.

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 *Legislation Act 2003*. While this Legislative Instrument is subject to section 42 (disallowance) of the *Legislation Act 2003*, the current SOETM instrument is not.

The current SOETM instrument was made under subsection 20(1) of the *Financial Management and Accountability Act 1997*. Under subitem 36(1) in Part 2 of Schedule 2 to the *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014*, the current SOETM instrument is taken to have been made under subsection 78(1) of the *Public Governance, Performance and Accountability Act 2013 (PGPA Act)*.

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. Subsection 79(2) of the PGPA Act provides that they are not subject to disallowance under section 42 of the *Legislation Act 2003*.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**Senator the Hon Mathias Cormann
Minister for Finance**

Details of the *Coronavirus Economic Response Package (Deferral of Sunsetting – Financial Management and Accountability Determination 2010/02) Determination 2020* (the determination)

Section 1 – Name

1. This section provides that the title of the determination is the *Coronavirus Economic Response Package (Deferral of Sunsetting – Financial Management and Accountability Determination 2010/02) Determination 2020*.

Section 2 – Commencement

2. This section provides that the entire determination commences on the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

3. This section provides that the determination is made under subitem 1(2) of Schedule 16 to the *Coronavirus Economic Response Package Omnibus Act 2020*.
4. Schedule 16 to *Coronavirus Economic Response Package Omnibus Act 2020* allows the relevant Minister for an Act or legislative instrument that is scheduled to sunset on or before 15 October 2020 to determine a new day on which the Act or legislative instrument sunsets. This new date must be no longer than six months after the original sunset date.

Section 4 – Definitions

5. This section explains the defined terms used throughout the determination – namely “current SOETM instrument” and “new SOETM instrument”.
6. The note clarifies the acronym SOETM, which is short for ‘Services for Other Entities and Trust Moneys’.

Section 5 – Deferral of original sunset day

7. This section ensures that the current SOETM instrument continues to operate until it is replaced by the new SOETM instrument. If Parliament does not sit again for a sufficient period or the new SOETM instrument does not commence for some other reason, the current SOETM instrument will cease at the start of 1 October 2020 – which is no longer than six months after the original sunset day.