

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Finance

*Public Governance, Performance and Accountability Act 2013*

*PGPA Act Determination (Recovery of Compensation for Health Care and Other Services  
Special Account Amendment 2020)*

### ***Purpose of the determination***

The determination is made under subsection 78(3) of the *Public Governance, Performance and Accountability Act 2013 (PGPA Act)* to amend the *PGPA Act (Recovery of Compensation for Health Care and Other Services Special Account 2015 - Establishment) Determination 2015/06 (the principal determination)*. The principal determination established the *Recovery of Compensation for Health Care and Other Services Special Account 2015 (the special account)*.

The determination amends section 6 of the principal determination to specify that the Chief Executive Officer of Services Australia is the accountable authority responsible for the special account.

The principal determination currently says that the Secretary of the Department of Human Services is responsible for the special account. However, the reference to the Department of Human Services is out of date, following recent machinery of government changes. In particular, the Department of Human Services no longer exists. Many of its functions are now performed by Services Australia, which was established as an Executive Agency on 1 February 2020 by an order of the Governor-General under section 65 of the *Public Service Act 1999*. Services Australia is a non-corporate Commonwealth entity for the purposes of the PGPA Act within the Department of Social Services (**DSS**) Portfolio.

The determination will ensure that the Chief Executive Officer of Services Australia is responsible for the special account.

### ***The operating context of special accounts***

A special account may be established under the PGPA Act by a determination made by the Minister for Finance (under section 78) or by an Act (see section 80).

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 CRF. Section 83 of the Constitution provides that such money may not be drawn from the Treasury except under an appropriation made by law.

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

### ***Special account determinations***

Special account determinations are legislative instruments under the *Legislation Act 2003*. Special account determinations may be varied or revoked by a subsequent determination made under subsection 78(3) of the PGPA Act.

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.

If neither House passes a resolution to disallow a special account determination, under subsection 79(5) it comes into effect 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. This determination will commence on the day immediately after the last day on which it could have been disallowed or 30 June 2020, whichever is the later day. The Chief Executive Officer of Services Australia will be the accountable authority responsible for the special account on commencement of the determination.

### ***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 *Legislation 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, subsection 79(2) provides that they are not subject to disallowance under section 42 of the *Legislation Act 2003*. As such, a Statement of Compatibility with Human Rights is not required.

### ***Consultation***

Services Australia and the Department of Social Services were consulted in the preparation of this determination.