

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Families and Social Services

Social and Community Services Pay Equity Special Account Act 2012

Social and Community Services Pay Equity Special Account (National Legal Assistance Partnership) Specification 2021

Purpose

The *Social and Community Services Pay Equity Special Account (National Legal Assistance Partnership) Specification 2021 (the Specification)* is made under 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 an agreement in Part 1 of Schedule 3 to 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 programs 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 the expired *National Partnership Agreement on Legal Assistance Services (NPA)* listed under item 7 in Part 1 of Schedule 3 to the Act and substitutes the agreement with the *National Legal Assistance Partnership (NLAP)*.

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 centres and Aboriginal and Torres Strait Islander legal services, in accordance with the recently established NLAP.

Social and Community Services (**SACS**) supplementation under the NLAP is available for the 2020-21 financial year only as the Act ceases on 30 June 2021.

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

Background

The Act establishes the Account, which is a Special Account under section 80 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 programs. This extends to programs funded under agreements with and payments to States and Territories, such as payments for legal assistance services.

Commonwealth SACS 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 program, grant of financial assistance or specific purpose payment prescribed under the Act.

All of the programs 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. Subsection 8(7) of the Act relevantly provides flexibility to ensure that the Schedules accurately reflect the programs, 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.

The NPA expired on 30 June 2020 and was replaced with the NLAP for the period 2020-2025. The NLAP builds on the current trajectory of reform for Commonwealth legal assistance under the NPA and recommendations from the 2018 reviews of the NPA and Indigenous Legal Assistance Program (ILAP). In addition to the inclusion of Aboriginal and Torres Strait Islander legal services, three of which are eligible for SACS supplementation that was paid through their ILAP 2015-20 funding agreements, the NLAP implements a range of reforms including:

- Consolidating and removing duplication - enhancing co-operation and collaboration across the legal assistance sector through the streamlining of funding arrangements.
- Tiered collaborative service planning - the introduction of national, jurisdictional and locally based planning to support holistic approaches to service planning.
- Improved data collection - supporting the collection of comparable data by aligning sector reporting requirements and data obligations.

Commencement

Under subsection 8(8) of the Act, the Specification is not subject to the disallowance of instruments provisions set out in section 42 of the *Legislation 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 *Legislation Act 2003*, and where no disallowance resolution referred to in subsection 9(2) of the Act has been passed by either House of Parliament.

Consultation

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

Regulation Impact Statement

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 (OBPR ID: 43234).

Explanation of the provisions

Section 1

Section 1 provides that the name of the Specification is the *Social and Community Services Pay Equity Special Account (National Legal Assistance Partnership) Specification 2021*.

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 (the Act)* could have been passed.

Section 3

Section 3 provides that the Specification is made under subsection 8(7) of the Act.

Section 4

Section 4 provides that Schedule 1 modifies the Act.

Schedule 1

Schedule 1 sets out how the Specification modifies the Act.

Schedule 1, item 1

Item 1 of Schedule 1 to the Specification modifies Part 1 of Schedule 1 to the Act by omitting item 7 that specifies an agreement, being the agreement referred to as the “*National Partnership Agreement on Legal Assistance Services*” (**NPA**). This agreement has expired and is replaced by the “*National Legal Assistance Partnership*” (**NLAP**) (see item 2 immediately below).

Schedule 1, item 2

Item 2 modifies Part 1 of Schedule 3 to the Act by substituting item 7 that specifies an agreement, being the NLAP.

The Commonwealth will continue funding the provision of legal assistance services primarily through grants of financial assistance to the States and Territories under section 96 of the Constitution. This modification is necessary to reflect the change in agreement from the expired NPA for 2015-2020 to the NLAP for 2020-2025. This modification will continue to 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 (National Legal Assistance Partnership) Specification 2021

This Disallowable 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 Disallowable Legislative Instrument

This *Social and Community Services Pay Equity Special Account (National Legal Assistance Partnership Agreement) Specification 2021 (the Specification)* modifies the *Social and Community Services Pay Equity Special Account Act 2012 (the Act)* to omit the National Partnership on Legal Assistance Services that operated during the period 2015-2020 (**NPA**) and substituting the National Legal Assistance Partnership that operates during the period 2020-2025 (**NLAP**) in Part 1 to Schedule 3 of the Act.

The modification of the Act by the Specification is for the purpose of maintaining the Commonwealth's efforts in funding legal assistance services by the NLAP.

All of the programs, 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. Subsection 8(7) of the Act relevantly allows those Schedules to be amended and provide flexibility to ensure that the Schedules accurately reflect the programs, agreements and special purpose payments under which employers are able to receive assistance from the Act.

The Specification will allow the Commonwealth to continue to pay equity supplementation under the Act associated with funding for legal assistance services, including community legal services and Aboriginal and Torres Strait Islander legal services (ATSILS), in accordance with the recently established NLAP. The NLAP replaces the NPA and adds ATSILS. Three ATSILS are eligible for equity supplementation which was previously paid through funding arrangements under the Indigenous Legal Assistance Program.

The NPA expired in June 2020 and was replaced with the NLAP for the period 2020-2025. The NLAP builds on the current trajectory of reform for Commonwealth legal assistance under the NPA and recommendations from the 2018 reviews of the NPA and Indigenous Legal Assistance Program. In addition to the inclusion of ATSILS and other Commonwealth legal assistance funding streams, the NLAP reforms include:

- Consolidating and removing duplication - enhancing co-operation and collaboration across the legal assistance sector through the streamlining of funding arrangements.

- Tiered collaborative service planning - the introduction of national, jurisdictional and locally based planning to support holistic approaches to service planning.
- Improved data collection - supporting the collection of comparable data by aligning sector reporting requirements and data obligations, including funding for the Australian Bureau of Statistics to undertake projects to improve data retention.

Social and Community Services (**SACS**) supplementation under the NLAP is available for the 2020-21 financial year only as the Act ceases on 30 June 2021.

Human rights implications

The 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.

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Minister for Families and Social Services