**EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Finance

*Public Governance, Performance and Accountability Act 2013*

*PGPA Act Determination (Energy and Climate Change Special Account 2023)*

### *Purpose of this determination*

This determination is made under subsections 78(1) and 78(3) of the *Public Governance, Performance and Accountability Act 2013* (**PGPA Act**) to establish the *Energy and Climate Change Special Account 2023* (**the special account**) for the Department of Climate Change, Energy, the Environment and Water (**the Department)**.

The special account is being established to administer funding for Energy and Climate Change Ministerial Council (**ECMC**) programs. It enables the Department to manage funding for activities that contribute to policy development in relation to energy, as well as policy development in relation to climate change including climate change adaptation and building climate change resilience.

This special account will effectively replace the *Energy Special Account 2015,* established by the *PGPA Act (Energy Special Account 2015—Establishment) Determination 2015/07* which is due to sunset on 1 October 2025 under section 50 of the *Legislation Act 2003*. The *Energy Special Account 2015* was established to administer funding for the then Energy National Cabinet Reform Committee and the Energy Ministers’ Meeting (**EMM**) programs. On 30 September 2022, National Cabinet made the decision to replace the EMM with the ECMC. The ECMC also brings climate-focused matters under its remit, such as climate adaptation and climate resilience.

The balance of the special account may be reduced without making a real or notional payment, which would have the effect of reducing the available appropriation for the purposes of the special account.

Once the special account is established, the legislative instrument establishing the *Energy Special Account 2015* will be repealed and an amount equivalent to the amount standing to the credit of the *Energy Special Account 2015* immediately prior to the commencement of the instrument establishing the special account will be credited to the special account as its opening balance.

### *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 (see 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 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.
* Expenditure for the purposes of a special account is 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 for the purposes of the *Legislation Act 2003*. Special account determinations may be varied or revoked by a subsequent determination being made in accordance with 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 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) it 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. This determination specifies that it will commence on the later of the day immediately after the last day on which it could have been disallowed and 1 July 2023. The Secretary of the Department will be the accountable authority responsible for the special account on commencement of this 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*

The Department was consulted in the preparation of this determination.