

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Finance

*Public Governance, Performance and Accountability Act 2013*

*PGPA Act Determination (Establishment of FCA Litigants' Fund Special Account 2017)*

### ***Purpose of this determination***

This determination is made under subsection 78(1) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) to establish the *FCA Litigants' Fund Special Account 2017* (the special account).

The special account is being established to assist the Federal Court of Australia to continue to manage activities in relation to moneys paid to the Court by parties to proceedings.

Parties to proceedings are often required to pay money to a Court. Such money may be returned to these parties, or paid to other parties, upon settlement of a case. The special account provides an appropriation authority for this purpose.

The balance of the special account may be debited as ordered by the Court, a Judge or a Registrar in accordance with the *Federal Court Rules 2011*.

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

A special account may be established, varied or revoked 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 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 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.

### ***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 Federal Court of Australia was consulted in the preparation of this determination.