

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Finance

*Public Governance, Performance and Accountability Act 2013*

*PGPA Act Determination (Commonwealth Superannuation Corporation SOETM Special Account 2021)*

### ***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 *Commonwealth Superannuation Corporation SOETM Special Account 2021* (the special account) for the Commonwealth Superannuation Corporation (CSC). CSC is a corporate Commonwealth entity for the purposes of the PGPA Act, continued in existence by section 5 of the *Governance of Australian Government Superannuation Schemes Act 2011* (GAGSS Act). As a corporate Commonwealth entity, CSC is a separate legal entity to the Commonwealth. CSC is responsible for the overall management of Australian Government superannuation schemes, including both trustee and administration services roles. CSC's statutory functions are set out in section 8 of the GAGSS Act and the superannuation Acts it administers.

The special account is being established to enable CSC to hold and expend amounts for a range of purposes including in relation to services performed for, on behalf of, or together with, the Commonwealth, other Commonwealth entities or Commonwealth companies, other governments, organisations, bodies or persons. The special account also provides for the expenditure of amounts held on trust, or for the benefit of the Commonwealth or another person, and amounts received that are permitted or required to be repaid. 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. 'SOETM' is an abbreviation of the term 'Services for Other Entities and Trust Moneys'.

This special account will effectively replace the *Services for Other Entities and Trust Moneys – ComSuper Special Account* (SOETM special account), established by the *Financial Management and Accountability (Establishment of Special Account for ComSuper) Determination 2011/06* (SOETM instrument). The SOETM instrument is due to sunset on 1 October 2021 under section 50 of the *Legislation Act 2003*. The SOETM instrument was originally made under subsection 20(1) of the *Financial Management and Accountability Act 1997*. From 1 July 2014, the SOETM instrument was taken to have been made under subsection 78(1) of the PGPA Act pursuant to subitem 36(1) in Part 2 of Schedule 2 to the *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014*.

From 1 July 2015, responsibility for the SOETM special account transferred from ComSuper to CSC pursuant to subitem 8(1) in Schedule 2 to the *Governance of Australian Government Superannuation Schemes Legislation Amendment Act 2015*. This reflected the merger of ComSuper, the then administrator of the main Australian Government schemes, with CSC, the trustee of those schemes. The *Governance of Australian Government Superannuation Schemes Legislation Amendment Act 2015* abolished the statutory agency of ComSuper and the statutory office of CEO of ComSuper. As the continuing entity, CSC assumed responsibility for the administration of superannuation schemes under its management from ComSuper.

Once the special account is established, the legislative instrument establishing the SOETM special account will be repealed and an amount equivalent to the amount standing to the credit of the SOETM special account immediately before its repeal, will be credited to the special account as its opening balance.

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

A special account may be established, varied or revoked 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 monies 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 monies 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 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 day immediately after the last day on which it could have been disallowed. The Board of CSC will be the accountable authority responsible for the special account on commencement of this determination. This is consistent with CSC's statutory functions in section 8 of the GAGSS Act which includes responsibility for the overall management of Australian Government superannuation schemes, including both trustee and administration services roles.

### ***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***

CSC was consulted in the preparation of this determination.