



Financial Management and Accountability (Determination 2004/02 — Property Special Account) Variation 2004

I, NICK MINCHIN, Minister for Finance and Administration, make this Determination under subsection 20 (2) of the *Financial Management and Accountability Act 1997*.

Dated 15 June 2004

Nick Minchin
Minister for Finance and Administration

1 Name of Determination

This Determination is the *Financial Management and Accountability (Determination 2004/02 — Property Special Account) Variation 2004*.

Note This Determination takes effect in accordance with section 22 of the *Financial Management and Accountability Act 1997*. The Parliament must consider the Determination before it can take effect.

2 Amendment of *Financial Management and Accountability (Special Accounts) Determination 2000/15*

Schedule 1 amends *Financial Management and Accountability (Special Accounts) Determination 2000/15*.

Schedule 1 Amendments

(section 2)

[1] After section 1

insert

1A Definitions

In this Determination:

Agency means the agency administering the Property Special Account from time to time.

FMA Act means the *Financial Management and Accountability Act 1997*.

real property includes leasehold interests and any other estate or interest in relation to land, and extends to any innominate or anomalous interest or right exercisable with respect to land or the fixtures on it.

[2] Subsection 2 (1)

omit

Property Account, to be administered by the Department of Finance and Administration.

insert

Property Special Account.

[3] Subsections 2 (2) and (3)

omit

[4] After section 2

substitute

3 Amounts to be credited to the Property Special Account

The following amounts may be credited to the Property Special Account:

- (a) amounts received in the course of the performance of functions that relate to the purposes of the Property Special Account;
- (b) amounts received from any person for the purposes of the Property Special Account.

Note 1 The Appropriation Acts provide that if any of the purposes of a Special Account are covered by an item in those Acts (whether or not the item expressly refers to the Special Account), then amounts may be debited against the appropriation for that item and credited to the Special Account.

Note 2 Subsection 39 (5) of the FMA Act provides that upon realisation of an investment of an amount debited from a Special Account, the proceeds of the investment must be credited to that Special Account.

Note 3 Section 30 of the FMA Act has the effect that if an amount expended from a Special Account is repaid to the Commonwealth, that amount must be re-credited to that Special Account.

Note 4 Section 30A of the FMA Act has the effect of increasing the appropriation under section 20 of the FMA Act for the purposes of this Special Account (and thereby increasing this Special Account's balance). The increase is of an amount equivalent to any GST amount that is recoverable in relation to a payment, and occurs immediately before the payment is made.

4 Purposes of the Property Special Account

- (1) The purposes of the Property Special Account, in relation to which amounts may be debited from the Special Account, are:
 - (a) acquiring, leasing, constructing, managing, operating, repairing, maintaining, divesting, financing, identifying, advising on, and undertaking any other activities in relation to the real property of the Commonwealth; and
 - (b) activities that are incidental to a purpose mentioned in paragraph (a); and
 - (c) to reduce the balance of the Special Account (and, therefore, the available appropriation) without making a real or notional payment.
- (2) To avoid doubt, incidental activities include the administration of the Special Account, including dealing with direct and indirect costs.

Note 1 Subsection 20 (4) of the FMA Act appropriates the Consolidated Revenue Fund (CRF) for expenditure for the purposes of the Special Account up to the balance for the time being of the Account. Subsection 20 (5) of the FMA Act provides that whenever an amount is debited against the appropriation, the amount is taken to be also debited from the Account.

Note 2 In addition to the purposes specified in this determination, other legislation provides authority for amounts to be debited from this Special Account:

- (a) Section 28 of the FMA Act provides that, where a repayment of an amount received by the Commonwealth and credited to a Special Account is supported by the appropriation in subsection 28 (2) of the FMA Act (that is a law requires or permits the repayment and there is no other appropriation for the repayment), the amount of the repayment must be debited from the Special Account.
- (b) Subsection 39 (1) of the FMA Act provides the Finance Minister with the power to invest public money in any authorised investment. Not all chief executives have been delegated powers to invest under section 39 of the FMA Act. Where such an investment is made of an amount standing to the credit of a Special Account, section 39 of the FMA Act has the effect that the Special Account must be debited. Subsection 39 (4) of the FMA Act provides that if an amount has been invested by debiting a Special Account, then the expenses of the investment may be debited from the Account. Subsection 39 (9) of the FMA Act appropriates the CRF for this investment activity.

Note 3 An amount may be debited from a Special Account where:

- (a) it has been incorrectly credited by virtue of a clerical mistake; or
- (b) it has been credited through the exercise of a discretion by an official and the exercise of that discretion was actuated by a fundamental mistake of fact or law.

Legal advice should be obtained before an amount is debited on this basis of paragraph (b).

Note 4 Section 6 of the FMA Act applies to a notional payment by an Agency (or part of an Agency) as if it were a real payment by the Commonwealth. Notional receipts and notional payments are transactions between different parts of the Commonwealth. Real receipts and real payments are transactions between the Commonwealth and other entities.

Note 5 The purpose set out above, ‘to reduce the balance of the Special Account (and, therefore, the available appropriation) without making a real or notional payment’, is solely for extinguishing all or part of the appropriation under section 20 of the FMA Act for the purposes of this Special Account. When this Special Account is debited for this purpose, there is no payment or credit available to another party, account or appropriation.

[5] Section 3 (second occurring)

renumber as section 6

[6] Section 4 (second occurring)

renumber as section 7