

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Finance and Administration

Financial Management and Accountability Act 1997

Determination 2006/36 to vary a Special Account

Purposes of Determination 2006/36

The attached instrument makes a determination under subsection 20 (2) of the *Financial Management and Accountability Act 1997* (FMA Act) to vary a previous Special Account Determination. This variation is in relation to the Determination titled *Financial Management and Accountability (Special Accounts) Determination 2002/01* which established the *Overseas Property Account*.

Special Accounts Generally

In accordance with the Constitution, all revenues or moneys raised or received by the Government of the Commonwealth form one Consolidated Revenue Fund (CRF) and may not be spent unless under an appropriation by the Parliament for the purposes of the Commonwealth. A Special Account is established by a determination that sets out the amounts that may be credited and the purposes for which it may be debited. Special Accounts established by determination are supported by an appropriation under section 20 of the FMA Act. In effect, Special Accounts allow amounts from the CRF to be spent on a purpose specified in the determination.

Determinations that establish Special Accounts, or vary determinations that establish Special Accounts, are subject to section 22 of the FMA Act. Section 22 of the FMA Act requires the Finance Minister to table a copy of the establishing or varying determination in each House of Parliament. Either House may disallow a determination within five sitting days of tabling. If the determination is not disallowed, it comes into effect on the calendar day after the last day on which it could have been disallowed.

Regulation 10 of the *Legislative Instruments Regulations 2004* preserves the disallowance provisions under section 22 of the FMA Act by exempting Special Account determinations from subsections 57(2) and 57(5) of the *Legislative Instruments Act 2003*.

Special Accounts can be abolished by a determination of the Finance Minister. However, there is no requirement to table such a determination.

Operation of Determination 2006/36

Reasons for varying the Special Account

This determination varies the Financial Management and Accountability (Special Accounts) Determination 2002/01, which established the Overseas Property Account.

The Special Account provides for the operation of the Australian Government's overseas property. Where appropriate, any amounts debited from the Special Account should be made in a manner consistent with any memorandum of understanding, contract or other agreement that is in force relating to the Special Account.

The determination is required in order to give effect to changes that are required to the Overseas Property Account. The current purpose of the Special Account is:

- (a) expenditure related to the real property of the Commonwealth outside Australia, including expenditure on acquisition or leasing of property; construction, repairs, maintenance, management, running costs and financing costs; and
- (b) payments to the CRF, as agreed from time to time by the Finance Minister and the relevant Minister; and
- (c) payments to the CRF required by law.

Changes required

The changes required to the Special Account are set out below:

- *Special* has been inserted into the Special Account's title to make it consistent with all new Special Accounts;
- the purpose of the Special Account has been varied to better describe the activities of the Special Account. It is not intended to change the current scope of the Special Account.

As part of a programme to enhance the clarity of Special Account determinations and to remove any areas of doubt over the scope of the purposes of Special Accounts, the following changes are being incorporated within the determinations of all Special Accounts, where appropriate, and where the need for other variations arise:

- *a provision to debit amounts relating to incidental activities.* This allows administration costs, including such items as auditing, reporting, budgeting, accounting and information technology services incurred in the course of operating the Special Account, to be debited from the Special Account. The existing purpose clause would often allow the debiting of the Special Account for these costs, depending on the degree of directness of connection of the costs with other purposes of the Special Account. The inclusion of the new incidental clause removes the need to obtain legal advice on the degree of directness of connection for individual transactions;
- *a capacity to return excess amounts to the Budget* (that is, reduce the balance of the Special Account without a real or notional payment). This provision does not allow amounts to be transferred to another Special Account, or to be allocated for any other purpose, that is not consistent with the purposes of the Special Account;
- *a clause to allow for amounts to be repaid when another Act or law allows it.* This has always been permitted by section 28 of the FMA Act, but is now included in determinations to simplify accounting for these transactions; and
- *notes that identify general credits and debits that can be made to Special Accounts,* for information purposes, in reliance on other laws.

Effect of this determination

This determination varies *Financial Management and Accountability (Special Accounts) Determination 2002/01* to make its purposes and appearance consistent with a new template for all Special Account determinations. The compiled determination will be in a format that makes the determination as clear and informative as possible.

Consultation

The Department of Foreign Affairs and Trade is the agency affected by this instrument. The agency was provided with drafts of the instrument and agrees with the form of the instrument. As the instrument is for internal machinery of government purposes only, no consultation was considered necessary with other persons (see sections 17 and 18 of the *Legislative Instruments Act 2003*).

Estimates of transactions on the Overseas Property Special Account

	Opening Balance 2007-08 <i>2006-07</i> \$'000	Credits 2007-08 <i>2006-07</i> \$'000	Debits 2007-08 <i>2006-07</i> \$'000	Closing Balance 2007-08 <i>2006-07</i> \$'000
Overseas Property Special Account	161,664 <i>188,133</i>	157,264 <i>156,261</i>	113,767 <i>182,730</i>	205,161 <i>161,664</i>