

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Finance and Administration

Financial Management and Accountability Act 1997

Determination 2005/37 to vary and abolish a Special Account

Purposes of Determination 2005/37

The attached instrument makes a determination under section 20 of the *Financial Management and Accountability Act 1997* (FMA Act) to vary and subsequently abolish the *Consular Services Account*.

Special Accounts generally

In accordance with the Constitution, all revenues or moneys raised or received by the Executive Government of the Commonwealth form one Consolidated Revenue Fund (CRF) and may not be used unless in accordance with 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 specified amounts from the CRF to be expended for a particular specified purpose.

A Special Account determination can be varied by a subsequent determination by the Finance Minister.

The Finance Minister must table a copy of a determination relating to a Special Account 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*.

The notes to determinations identify legislation and other laws that allow or require amounts to be credited to, or debited from, the Special Account.

Special Accounts can also be abolished by a determination of the Finance Minister. However, there is no requirement to table the determination to abolish a Special Account and, therefore, it has immediate effect.

Operation of the Determination 2005/37

Purpose of the Consular Services Account

A new Special Account, entitled Consular Services Special Account ('the new Account') is required in order to give effect to changes that are required to the Consular Services Account, but which it is not practical to make by variation to the Consular Services Account due to the way in which the Original Determination was structured.

The current purposes of the Consular Services Account is:

For expenditure on behalf of Australian citizens overseas in circumstances of urgency where recourse to the international banking system is inappropriate.

Changes required

The changes required to the Consular Services Account are set out below:

- the inclusion of permanent residents as persons eligible to receive consular assistance facilitated through this account, in order to provide an avenue for family in Australia to provide financial assistance to Australian permanent residents travelling abroad in emergency circumstances or when commercial money transfer services are unavailable or inappropriate; and
- the addition of an expenditure purpose that allows residual balances to be returned to the original payee.

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.

Limitations in the structure of the Original Determination

It is not practical to vary the Original Determination signed by the delegate of the Minister for Finance on 31 December 1997 (establishing a Consular Services Reserve as a component of the Reserved Money Fund). This is because the format of the determination constrains the amount of information that can be included. In addition, the Original Determination was not made in a reader-friendly format, suitable for inclusion on the Federal Register of Legislative Instruments. Accordingly, a new Account is being established (determination 2005/38) to provide for the continuation

of the activities of the Consular Services Account, the incorporation of the necessary changes, and to ensure that the determination is as clear and informative as possible.

Effect of this determination

The Consular Services Account, is being varied by this determination (determination 2005/37) to enable its balance to be credited to the new Account. Once the balance of the Consular Services Account reaches zero, clause 3 of the determination will abolish the Consular Services Account.

Consultation

The Department of Foreign Affairs and Trade is the agency affected by this instrument. The agency was provided with drafts of the instrument before it was finalised 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 Consular Services Account

	Opening Balance 2005-06 \$'000	Credits 2005-06 \$'000	Debits 2005-06 ⁽¹⁾ \$'000	Closing Balance 2005-06 \$'000
Consular Services Account	0	100	100	0

1. Balance debited from the Consular Services Account and credited to the new Account.