

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Finance and Administration

Financial Management and Accountability Act 1997

Determination 2006/79 to establish a Special Account

Purposes of Determination 2006/79

The attached instrument makes a determination under subsection 20 (1) of the *Financial Management and Accountability Act 1997* (FMA Act) to establish a Special Account, entitled *Protective Services Special Account*. It also specifies the nature of amounts that may be credited to, and the purposes for which amounts may be debited from, the Protective Services Special 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 2006/79

Purpose of the Protective Services Special Account

This determination is required in order to establish a Special Account to fund the performance of security and protective services provided within Australia and overseas in accordance with the *Australian Federal Police Act 1979*.

Reasons for establishing a new Special Account

The Protective Services Special Account is required in order to give effect to changes that are required to the existing Australian Protective Service Account ('the old Account'), but which are not practical to make by variation to the old Account, due to the way in which the Initial Determination was structured. Upon commencement of the FMA Act on 1 January 1998, the old Account was established as a component of

the Reserved Money Fund (RMF) in the Initial Determination. The *Financial Management Legislation Amendment Act 1999*, which varied the FMA Act, converted the component of the RMF into a Special Account.

The current purposes of the old Account are:

1. For expenditure relating to:
 - (a) The provision of protective, guarding security and related services by the APS to the Commonwealth or to a Commonwealth body or to a company over which the Commonwealth or a Commonwealth body is able to exercise control, inside or outside Australia, and matters relating thereto;
 - (b) The provision of services referred to in (a) above to any other person or persons, inside or outside Australia, and matters relating thereto; and
 - (c) Reimbursement of any payments made on behalf of the APS up to 31 December 1992 out of moneys standing to the credit of the DAS Business Services Trust Account.
2. Notional payments of moneys to the Official Public Account.

Changes required

The changes required to the old account are set out below:

- a change in the Special Account's name from Australian Protective Service Account to the Protective Services Special Account, in order to avoid referring specifically to the body; 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 Initial Determination

It is not practical to vary the Initial Determination signed by the delegate of the Minister for Finance and Administration on 31 December 1997 (establishing an Australian Protective Service 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. Accordingly, a new Account is being established (Determination 2006/79) to provide for the continuation of the activities of the old Account, the incorporation of the necessary changes, and to ensure that the determination is as clear and informative as possible.

Consultation

The Australian Federal Police 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 Protective Services Special Account

	Opening Balance 2007-08 2006-07 \$'000	Credits 2007-08 2006-07 ⁽¹⁾ \$'000	Debits 2007-08 2006-07 \$'000	Closing Balance 2007-08 2006-07 \$'000
Protective Services Special Account	4,605 0	167,225 161,820	165,075 157,215	6,755 4,605

1. Includes balance debited from the old Account and credited to the new Protective Services Special Account.