

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Finance and Administration

Financial Management and Accountability Act 1997

Determination 2005/28 to establish a Special Account

Purposes of Determination 2005/28

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 *Australia-China Council 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 Australia-China Council Special 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. This determination establishes a Special Account, and sets out the amounts that may be credited to the Account 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.

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

Operation of the Determination 2005/28

Purpose of the Australia-China Council Special Account

This determination is required in order to establish a Special Account for the agency, who provides secretariat services to the Australia China Council (the Council), to administer the financial transactions of the Council. The Council was established by an Order of Executive Council in 1978 for the purpose of promoting understanding and fostering “people to people” relations between Australia and China.

Reasons for establishing a new Special Account

The Australia-China Council Special Account is required in order to give effect to changes that are required to the existing Australia-China Council Account (‘the old account’), but which it is not practical to make by variation to the old account, due to the way in which the Original 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 in the Original 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:

For expenditure subject to the approval of the Minister for Foreign Affairs:

- (i) to promote within Australia and China a greater awareness of each other's country;
 - (ii) to enlarge contact and exchange between Australia and China; and
- to provide a focus for information and a source of advice in relations with China and the Chinese people.

Changes required

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

- the purposes have been changed to make them consistent with other bilateral, foundations', councils' and institutes' Special Accounts that the agency responsible for the Special Account administers. This will make the Special Accounts easier to administer, as the expenditure purpose of all the accounts will be the same except for the country to which the Special Account relates.

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 Australia-China Council 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 2005/28) 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 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 Australia-China Council Special Account

	Opening Balance 2006-07 2005-06 \$'000	Credits 2006-07 2005-06 ⁽¹⁾ \$'000	Debits 2006-07 2005-06 \$'000	Closing Balance 2006-07 2005-06 \$'000
Australia-China Council Special Account	0 0	740 740	740 740	0 0

1. Includes balance debited from old account and credited to the new Australia-China Council Special Account.