



Financial Management and Accountability Determination 2005/39 — PSS Special Account Variation 2005

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

Dated 14 September 2005

Nick Minchin
Minister for Finance and Administration

1 Name of Determination

This Determination is the *Financial Management and Accountability Determination 2005/39 — PSS Special Account Variation 2005*.

2 Commencement

This Determination commences at the time at which subsection 22 (4) of the *Financial Management and Accountability Act 1997* is complied with.

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, and either House may pass a resolution disallowing the Determination. If neither House passes such a resolution, the Determination takes effect on the day immediately after the last day upon which such a resolution could have been passed.

3 Variation of Determination made under the *Financial Management and Accountability Act 1997*

Schedule 1 varies the Determination by the Minister for Finance and Administration under section 20 of the *Financial Management and Accountability Act 1997* made on 14 June 2002, that established the PSS Special Account.

Schedule 1 Variation

(section 3)

[1] Sections 1, 2, 3 and 4

substitute

- (1) establish a Special Account to be called the PSS Special Account.

2 Amounts to be credited

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

- (a) amounts received in the course of the performance of functions that relate to the purposes of the PSS Special Account; and
- (b) amounts received from any person for the purposes of the PSS Special Account, including:
 - (i) amounts received by ComSuper in relation to the administration by the PSS Board of the PSS Scheme and PSSAP; and
 - (ii) amounts paid from the PSS Fund or PSSAP Fund in relation to the management and investment of the PSS Fund or the PSSAP Fund, that is to be met from the 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 (the Goods and Services Tax is defined as the GST in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999*).

3 Purposes

- (1) Subject to section 4, the purposes of the PSS Special Account, in relation to which amounts may be debited, are:
- (a) administering the PSS Scheme and PSSAP by the Agency; and
 - (b) performing any other function conferred on the Agency under legislation; and

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- (c) any of the following:
 - (i) managing and investing the PSS Fund or the PSSAP Fund; and
 - (ii) to repay amounts relating to subparagraph (i) where an Act or other law requires or permits the repayment of an amount received; and
 - (iii) activities incidental to a purpose mentioned in subparagraph (i); and
 - (d) activities that are incidental to a purpose mentioned in paragraphs (a) and (b); and
 - (e) to reduce the balance of the PSS Special Account (and, therefore, the available appropriation for the PSS Special Account) without making a real or notional payment; and
 - (f) to repay amounts (except where specified in subparagraph 4(1)(c)(ii)) where an Act or other law requires or permits the repayment of an amount received.
- (2) To avoid doubt, incidental activities include:
- (a) the administration of the PSS Special Account; and
 - (b) 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 Special 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 Special Account.

Note 2 In addition to the purposes specified in this determination, other provisions of the FMA Act provide authority for amounts to be debited from this Special Account.

Subsection 39 (1) of the FMA Act provides the Finance Minister with the power to invest public money in any authorised investment. 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.

Not all chief executives have been delegated powers to invest under section 39 of the FMA Act.

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 the 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 for the Special Account) 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.

4 Specifying Amounts which may be debited

- (1) The amounts which may be debited from the PSS Special Account in relation to each of the purposes specified in section 3 may not exceed:
 - (a) in relation to the purposes specified in paragraph 3(1)(c) – the total of the amounts credited to the Special Account in accordance with:
 - (i) prior to the relevant date – paragraph 2(c) of this determination as amended from time to time; and
 - (ii) on and after the relevant date – subparagraph 2(b)(ii) of the Determination.
 - (b) in relation to the purposes specified in paragraphs 3(1)(a),(b),(d),(e) and (f) – the total of the amounts credited to the PSS Special Account otherwise than in accordance with:
 - (i) prior to the relevant date – paragraph 2(c) of this Determination as amended from time to time; and
 - (ii) on and after the relevant date – subparagraph 2(b)(ii) of this Determination.

5 Definitions

In this Determination:

Agency means the entity administering the PSS Special Account.

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

PSS means the Public Sector Superannuation Scheme established by Trust Deed in accordance with section 4 of the *Superannuation Act 1990*.

PSSAP means the Public Sector Superannuation Accumulation Plan established by Trust Deed in accordance with section 10 of the *Superannuation Act 2005*.

relevant date means the date on which the *Financial Management and Accountability Determination 2005/39 – PSS Special Account Variation 2005* commences.

Note **Agency** is defined in section 5 of the FMA Act to mean a Department of State, a Department of the Parliament, or a prescribed agency.