



Financial Management and Accountability Determination 2009/05 — Comcover Special Account Establishment 2009

I, LINDSAY TANNER, Minister for Finance and Deregulation, make this determination under subsection 20 (1) of the *Financial Management and Accountability Act 1997*.

Dated 23 February 2009

LINDSAY TANNER
Minister for Finance and Deregulation

1 Name of determination

This determination is the *Financial Management and Accountability Determination 2009/05 — Comcover Special Account Establishment 2009*.

2 Commencement

This determination commences at the time at which subsection 22 (4) of the FMA Act is complied with.

Note This determination takes effect in accordance with section 22 of the FMA Act. 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 Establishment

For subsection 20 (1) of the FMA Act, a Special Account is established with the name *Comcover Special Account*.

4 Amounts to be credited

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

- (a) amounts received in the course of the performance of functions that relate to the purposes of the Comcover Special Account;
- (b) amounts received from any person for the purposes of the Comcover Special Account;
- (c) amounts debited from The Comcover Account for the purpose of crediting the Comcover Special 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 a 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*.

5 Purposes

- (1) The purposes of the Comcover Special Account, in relation to which amounts may be debited from the Special Account, are:
 - (a) to promote risk management to General Government Sector entities; and
 - (b) to administer the Commonwealth's self managed general insurance function; and
 - (c) to make payments in respect of any uninsured superannuation liability claims against an insured Commonwealth entity; and
 - (d) to repay to an original payer amounts credited to the Special Account and residual after any necessary payments have been made under paragraphs (a), (b) or (c); and
 - (e) activities that are incidental to a purpose mentioned in paragraphs (a), (b), (c) or (d); and
 - (f) to reduce the balance of the Special Account (and, therefore, the available appropriation for the Account) without making a real or notional payment; and
 - (g) to repay amounts 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 Special Account; and

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- (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.

6 Definitions

In this determination:

Comcover Insurance Policy means a policy of insurance issued by Comcover.

Comcover means the Commonwealth’s self-managed general insurance fund that was established on 1 July 1998 and provides insurance and risk management services to budget-funded agencies.

Commonwealth Entity means:

- (a) an Agency (as that term is defined in the FMA Act); or

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- (b) a Commonwealth authority or Commonwealth company (as those terms are defined in the Commonwealth Authorities and Companies Act 1997); or

- (c) the High Court of Australia.

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

Insured Commonwealth entity means a Commonwealth Entity that holds a Comcover Insurance Policy.

Uninsured superannuation liability claim means a claim, whether based in tort or otherwise, that:

- (a) is against an insured Commonwealth entity; and
- (b) relates to the claimant's eligibility to participate in any of the superannuation schemes established under:
 - (i) the *Superannuation Act 1922*; or
 - (ii) the *Superannuation Act 1976*; or
 - (iii) the *Superannuation Act 1990*; and
- (c) accrued before the insured Commonwealth entity began to hold a Comcover Insurance Policy.