



Financial Management and Accountability (Establishment of SOETM Special Account – ITSA) Determination 2012/12¹

Financial Management and Accountability Act 1997

I, PENELOPE YING YEN WONG, Minister for Finance and Deregulation, make this Determination under subsection 20 (1) of the *Financial Management and Accountability Act 1997*.

Dated 30 May 2012

Minister for Finance and Deregulation

1 Name of Determination

This Determination is the *Financial Management and Accountability (Establishment of SOETM Special Account – ITSA) Determination 2012/12*.

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 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.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.comlaw.gov.au>

3 Definitions

In this Determination:

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

FMA Act Agencies means Agencies that are subject to the *Financial Management and Accountability Act 1997*.

Special Account has the meaning given by section 5 of the *Financial Management and Accountability Act 1997*.

4 Establishment

For paragraph 20 (1) (a) of the Act, a Special Account is established with the name *Services for Other Entities and Trust Moneys Special Account — Insolvency and Trustee Service Australia*.

5 Amounts to be credited

For paragraph 20 (1) (b) of the Act, the following amounts are allowed to be credited to the *Services for Other Entities and Trust Moneys Special Account — Insolvency and Trustee Service Australia*:

- (a) amounts to be held on trust or otherwise for the benefit of a person other than the Commonwealth;
- (b) amounts received in the course of the performance of functions that relate to the purposes of the *Services for Other Entities and Trust Moneys Special Account — Insolvency and Trustee Service Australia*; and
- (c) amounts received from any person for the purposes of the *Services for Other Entities and Trust Moneys Special Account — Insolvency and Trustee Service Australia*.

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 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 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 Act has the effect of increasing the appropriation under section 20 of the 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*.

Purposes for which amounts may be debited

For paragraph 20 (1) (c) of the Act, the purposes for which amounts may be debited from the *Services for Other Entities and Trust Moneys Special Account – Insolvency and Trustee Service Australia* are as follows:

- (a) to disburse amounts held on trust or otherwise for the benefit of a person other than the Commonwealth;
- (b) to disburse amounts in connection with services performed on behalf of other governments and bodies that are not FMA Act agencies;
- (c) to repay amounts where an Act or other law requires or permits the repayment of an amount received; and
- (d) to reduce the balance of the Special Account (and, therefore, the available appropriation for the Special Account) without making a real or notional payment.

Note 1 Subsection 20 (4) of the 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 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 Act provide authority for amounts to be debited from this Special Account.

Subsection 39 (1) of the 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 Act has the effect that the Special Account must be debited.

Subsection 39 (4) of the 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 Act appropriates the CRF for this investment activity. Not all chief executives have been delegated powers to invest under section 39 of the 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 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 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.