**EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Finance and Deregulation

*Financial Management and Accountability Act 1997*

*FMA Act (Variations and abolitions of Special Accounts) Determination 2013/05*

This determination (the Determination) is made under subsections 20(2) and 20(3) of the *Financial Management and Accountability Act 1997* (FMA Act). The Determination varies and abolishes two Special Accounts. Section 48A of the *Legislative Instruments Act 2003* applies to the Determination.

### *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 may be 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 the purposes specified in the determination.

Determinations that establish Special Accounts under subsection 20(1) of the FMA Act or vary Special Accounts under subsection 20(2) of the FMA Act are subject to the tabling and disallowance procedures in section 22 of the FMA Act.  Section 22 of the FMA Act requires the Finance Minister to table a copy of the determination in each House of the Parliament.  Either House may pass a resolution disallowing a determination within five sitting days of tabling.  If the determination is not disallowed, it comes into effect on the day immediately after the last day on which it could have been disallowed.

Subsection 20(6) of the FMA Act exempts determinations that establish Special Accounts under subsection 20(1) of the FMA Act or vary Special Accounts under subsection 20(2) of the FMA Act from the operation of Part 6 (sunsetting) of the *Legislative Instruments Act 2003*.

### Subsection 20(7) of the FMA Act exempts determinations that abolish Special Accounts under subsection 20(3) of the FMA Act from the operation of section 42 (disallowance) and Part 6 (sunsetting) of the *Legislative Instruments Act 2003*.

### *Exemption from Statement of Compatibility with Human Rights*

A Statement of Compatibility with Human Rights is not required for this determination.  Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires a Statement of Compatibility with Human Rights for all legislative instruments subject to disallowance under section 42 of the *Legislative Instruments Act 2003.* While determinations made or varied under subsections 20(1) or 20(2) of the FMA Act are subject to disallowance under section 22 of the FMA Actthey are not subject to disallowance under section 42 of the *Legislative Instruments Act 2003*.  Determinations made under subsection 20(3) of the FMA Act are exempt from disallowance under subsection 20(7) of the FMA Act, as such a Statement of Compatibility with Human Rights is not required.

### *Purposes of this Determination*

The Determination varies the *Family Court of Australia Litigants’ Fund Special Account* and the *Federal Magistrates Court Litigants’ Fund Special Account* (the Special Accounts) to allow the new *Family Court and Federal Circuit Court of Australia* Agency (the Agency) to be able to pay amounts from the Special Accounts to another Special Account with a similar purpose.

Should the *Litigants' Fund Special Account* determination (2013/06) not be disallowed by the Parliament, it is expected that the Agency would transfer to it the entire balance of the Special Accounts, and manage all future amounts relating to litigation in the courts that it manages through the *Litigants' Fund Special Account*. The Determination provides that the Special Accounts are abolished either on the day the balance reaches zero, or 31 December 2013.

### *Consultation*

The Family Court of Australia, Federal Circuit Court of Australia and Attorney-General’s Department were consulted. As the instrument is for internal machinery of government purposes only, no consultation was necessary with other persons outside the Commonwealth (see sections 17 and 18 of the *Legislative Instruments Act 2003*).

### *Table of Balances and Transactions*

The table below outlines the financial implications of the Determination. There is no net change to the Commonwealth’s fiscal and underlying cash balances.

|  |  |
| --- | --- |
| **Special Account** | **2013-2014 ($’000)** |
| **Opening Balance** | **Credits** | **Debits** | **Closing Balance** |
| *Federal Magistrates Court Litigants’ Fund Special Account*  | 844 | 0 | -844 | 0 |
| *Family Court of Australia Litigants’ Fund Special Account*  | 647 | 0 | -647 | 0 |

Note: these figures are estimates that may vary from the Agencies’ actuals published in the Portfolio Budget Statements and Annual Reports.