

The Auditor-General
Audit Report No.24 2003-04
Performance Audit

Agency Management of Special Accounts

Australian National Audit Office

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of Australia 2004

ISSN 1036-7632

ISBN 0 642 80751 5

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Canberra ACT
30 January 2004

Dear Mr President
Dear Mr Speaker

The Australian National Audit Office has undertaken an across agency performance audit in accordance with the authority contained in the *Auditor-General Act 1997*. Pursuant to Senate Standing Order 166 relating to the presentation of documents when the Senate is not sitting, I present the report of this audit and the accompanying brochure. The report is titled *Agency Management of Special Accounts*.

Following its presentation and receipt, the report will be placed on the Australian National Audit Office's Homepage—<http://www.anao.gov.au>.

Yours sincerely



P. J. Barrett
Auditor-General

The Honourable the President of the Senate
The Honourable the Speaker of the House of Representatives
Parliament House
Canberra ACT

AUDITING FOR AUSTRALIA

The Auditor-General is head of the Australian National Audit Office. The ANAO assists the Auditor-General to carry out his duties under the *Auditor-General Act 1997* to undertake performance audits and financial statement audits of Commonwealth public sector bodies and to provide independent reports and advice for the Parliament, the Government and the community. The aim is to improve Commonwealth public sector administration and accountability.

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Abbreviations/Glossary

ABIS	Agency Banking Incentive Scheme
ACIAR	Australian Centre for International Agricultural Research
Audit Act	<i>Audit Act 1901</i>
AGS	Office of the Australian Government Solicitor
AIMS	Accrual Information Management System
ALTD Account	Australian Land Transport Development Account
ALTD Act	<i>Australian Land Transport Development Act 1988</i>
ATMA Act	<i>Audit (Transitional and Miscellaneous) Act 1997</i>
BSTA	Business Services Trust Account
CAC Act	<i>Commonwealth Authorities and Companies Act 1997</i>
CAF	Commercial Activities Fund
CAMM	Cash and Appropriation Management Module
CEIs	Chief Executives Instructions
CFS	Consolidated Financial Statements
CRF	Consolidated Revenue Fund
Customs	Australian Customs Service
DAFF	Department of Agriculture, Fisheries and Forestry
Defence	Department of Defence
DEST	Department of Education, Science and Training
DEWR	Department of Employment and Workplace Relations
DFAT	Department of Foreign Affairs and Trade
DIMIA	Department of Immigration and Multicultural Affairs
DITR	Department of Industry, Tourism and Resources
DoCITA	Department of Communications, Information Technology and the Arts
DoEH	Department of the Environment and Heritage
DoTARS	Department of Transport and Regional Services
DPM&C	Department of the Prime Minister and Cabinet
FACS	Department of Family and Community Services
Federal Court	Federal Court of Australia
Finance	Department of Finance and Administration

Finance Minister	Minister for Finance and Administration, referred to as the Finance Minister in the FMA Act
FMA Act	<i>Financial Management and Accountability Act 1997</i>
FMIS	Financial Management Information System
FMLA Act	<i>Financial Management Legislation Amendment Act 1999</i>
FMOs	Finance Minister's Orders
HoR	Department of the House of Representatives
ITSA	Insolvency and Trustee Service Australia
JCPA	Joint Committee of Public Accounts
JCPAA	Joint Committee of Public Accounts and Audit
NHT Account	Natural Heritage Trust of Australia Account
NHT Act	<i>Natural Heritage Trust of Australia Act 1997</i>
OIGIS	Office of the Inspector-General of Intelligence and Security
OPA	Official Public Account
PBS	Portfolio Budget Statement
RMF	Reserved Money Fund
RTC	Rural Transaction Centres Account
SBS	Special Broadcasting Service
SHFT	Sydney Harbour Federation Trust
Telstra Corporation Act	<i>Telstra Corporation Act 1991</i>
Treasury	Department of the Treasury

Summary and Recommendations

Summary

Introduction

1. The Australian Constitution provides for a Consolidated Revenue Fund (CRF), formed from all revenues and moneys raised or received by the Government. Payments from the Treasury of the Commonwealth are required to be authorised by an appropriation, made by law.
2. A Special Account is a mechanism used to record amounts in the CRF that are set aside for specified purposes.¹ The *Financial Management and Accountability Act 1997* (FMA Act) provides an appropriation for the purposes of each Special Account, up to the balance of the Special Account.
3. As of November 2003, 241 Special Accounts were in existence.² A total of \$3.40 billion was reported as held in Special Accounts as of 30 June 2003 (see Figure 1). During 2002–03, \$10.33 billion was reported as credited to Special Accounts, with \$10.06 billion in payments (debits) from Special Accounts.³

¹ *Inquiry into the Draft Financial Framework Legislation Amendment Bill*, Joint Committee of Public Accounts and Audit, Report 395, August 2003, Appendix J.

² Of the 268 Special Accounts that existed at some time during 2002–03, 29 have subsequently been abolished. An additional two Special Accounts have been established to date in 2003–04. This meant that there were 241 Special Accounts in existence as at November 2003.

³ Transactions on Special Accounts are recorded as credits (which increase the balance of the Account and the related appropriation) and debits (which reduce the balance of the Account and the related appropriation).

Figure 1**Special Account Activities Since the Introduction of the FMA Act**

	Number of Accounts during the year	Number of Agencies with Accounts	Reported credits \$b	Reported debits \$b	Closing balance ^B \$b
1997–98	256	63	33.80	37.14	16.20
1998–99	267	65	33.22	32.88	24.79
1999–00 ^A	274	67	11.09	9.34	3.49
2000–01	271	69	9.42	9.87	3.17
2001–02	266	69	9.56	9.65	3.24
2002–03	268	72	10.33	10.06	3.40

Notes:

^A The Loan Consolidation and Investment Reserve (LCIR) was abolished with effect from 1 July 1999. The LCIR was used for Commonwealth debt management purposes. The 30 June 1999 balance of the LCIR was \$21.09 billion, with \$17.41 billion in receipts for 1998–99 and \$17.41 billion in payments (including investment related credits and debits). The abolition of the LCIR led to a substantial reduction in the aggregate balance of Special Accounts, and transactions through Special Accounts.

^B If balances and transactions for all Special Accounts had been reported in all years, the closing balance for each year would equal the closing balance of the prior year plus reported credits less reported debits. However, due to non-reporting of various Special Accounts, the closing balances in this Figure cannot be derived in this manner.

Source: ANAO analysis.

Audit scope and objectives

4. The audit scope included all Special Accounts (and their predecessors) that have existed at sometime during the time since the FMA Act commenced operation on 1 January 1998. The audit objectives were to:

- identify all Special Accounts that have existed;
- assess the efficiency and effectiveness of the establishment, management and abolition of these Special Accounts; and
- assess compliance with the legislative requirements (including those of the FMA Act and the Finance Minister’s Orders promulgated under that Act).

5. To address the first audit objective, the audit commenced with a census of all Commonwealth agencies. This was combined with analysis of each reported Special Account to confirm that the Account existed at law, and had been properly disclosed by the relevant agency. The second and third audit objectives were met by an assessment of the overall governance framework for Special Accounts, together with a detailed examination of the management of 19 Special Accounts

administered by six agencies. These 19 Special Accounts had reported closing balances totalling \$1.23 billion as of 30 June 2003, with total reported transactions (credits and debits) of \$7.60 billion during 2002–03.

Key Findings

Establishment and abolition

6. Special Accounts can be created by a Finance Minister’s Determination under the FMA Act. These Determinations may be disallowed by the Parliament. Special Accounts can also be established by the passage of separate legislation. Abolition of Special Accounts requires a Determination to be made by the Finance Minister or, for those Accounts established by legislation, by repeal of the legislation in whole or part.

7. There has been uncertainty about the number and identity of Special Accounts that exist. ANAO has concluded that a total of 297 Special Accounts (and their predecessors) have existed at sometime during the time since the FMA Act commenced operation. By November 2003, 56 of these Accounts had been abolished such that there are currently 241 Special Accounts in legal existence. Of these, 199 have been established by Determinations, with the remaining 42 established under legislation other than the FMA Act.

Disclosure

8. Financial reporting on the use of appropriations (including Special Accounts) is an important accountability function. However, a significant number of agencies have not recorded and reported all their Special Accounts. In 2001–02, 41 per cent of Special Accounts were not reported in agency financial statements.

9. In the second quarter of calendar year 2003, both ANAO and the Department of Finance and Administration (Finance) identified to agencies the Special Accounts for which they were responsible. ANAO also identified to each relevant agency which Special Accounts the agency had failed to report in its 2001–02 financial statements so that these oversights could be corrected in the 2002–03 financial statements.

10. In combination with work undertaken by Finance, this process resulted in a significant improvement in disclosures in 2002–03 financial statements, with 17 per cent of Special Accounts not being reported. There is no apparent reason for Special Accounts to have been unreported in 2002–03. This is the case even where there is no balance and/or no transactions, as each Account represents an appropriation that may be credited with amounts to be spent on various matters.

11. In respect of financial statements in agencies' annual reports, there has been a longstanding requirement to report all Special Accounts. (Some Special Accounts also have separate statutory reporting requirements.) During 2002–03, Finance took steps to enhance the disclosure requirements for Special Accounts in the Portfolio Budget Statements, the Consolidated Financial Statements and financial statements in agencies' annual reports. As a result, Finance expects that, in future, all Special Accounts should be identified in these documents.

12. Legislation that established 11 Special Accounts requires separate annual reports to be prepared and tabled in each House of the Parliament in respect of these Accounts.⁴ This requirement has been met in recent years for each of the 11 Special Accounts. However, ANAO identified four Accounts where a substantial period of time elapsed between the conclusion of the relevant financial year and the tabling of one or more annual reports. While particular timeframes are not specified, the legislation establishing each of these four Accounts requires that a report be prepared as soon as practicable after the end of each financial year.

Non-existent but reported Special Accounts

13. ANAO identified 19 instances in 13 agencies where the agency had recorded and/or reported in its financial statements the existence of a Special Account when no Special Account had been legally established. The immediate concern raised by this finding was that there may have been no legal appropriation under the FMA Act to make more than \$486 million in payments from these so-called "Special Accounts". Accordingly, there was a risk that there had been widespread, persistent breaches of Section 83 of the Constitution. Section 83 states that no money shall be drawn from the Treasury of the Commonwealth except under an appropriation made by law.

14. According to legal advice obtained by ANAO, Section 83 of the Constitution is not breached where payments purportedly made from a non-existent Special Account could have been legitimately recorded against another, valid, appropriation. In relation to the 19 instances where a non-existent Special Account had been reported, there were no instances of the audit opinion on the financial statements being qualified on the grounds that Section 83 of the Constitution had been breached. However, in 12 instances across eight agencies, it was concluded that the agency had not met its responsibility under Section 48 of the FMA Act to keep accounts and records in such a manner that ensures the limit on any appropriation is not exceeded. Disclosure of this contravention was made in the respective agencies' 2002–03 financial statements.

⁴ These requirements are in addition to the requirements for each agency to report the financial transactions and position on each Special Account in the notes to its financial statements.

15. The reporting of non-existent Special Accounts also drew attention to uncertainty about whether or not an appropriation is required for expenditure of money held by the Commonwealth on trust for others. Recent legal advice to Finance and other agencies on the issue has been inconsistent. Should it be resolved that an appropriation is required to spend money held on trust, changes to financial management procedures will be necessary for some agencies. ANAO considers that continuing uncertainty about whether or not an appropriation is required for expenditure of trust money is not conducive to sound financial management.

Recording of Special Account balances

16. ANAO undertook a more detailed examination of the management of 19 Special Accounts administered by six agencies, including consideration of the accuracy of reporting of these Accounts. Errors were found to exist in the reported balance of seven of those Accounts, totalling some \$575 million. The major cause of these errors was that agencies had not recorded and reported cumulative credits over a number of years to various Accounts totalling \$544 million. All errors were corrected in the 2002–03 financial statements.

17. As appropriations authorise only the drawing and spending of public money, a Special Account balance should not, by definition, be negative. However, five instances were identified where the amounts reported as being debited exceeded the amounts available for payment from that Special Account. This indicated that the standing appropriation provided by the FMA Act in each of these instances had been exceeded, and the overdrawn funds had been spent without appropriation under law.

18. The results of the performance audit work also resulted in a closer examination of Special Account disclosures in ANAO's audits of 2002–03 financial statements.

Appropriation controls

19. Maintaining proper records of the credits and debits to a Special Account is essential to the management of these appropriations. For appropriation management purposes, each Special Account should be recorded as a ledger account in the financial system of the administering agency.

20. Accounting practices in agencies for recording amounts credited to, and debited from, Special Accounts vary. Most of the six agencies examined in detail maintained accrual based records of Special Account transactions within their financial systems. As Special Account transactions and balances are supposed to be accounted for on a cash basis, these records require adjustment to determine

the balance of the appropriation. In some instances, this adjustment has led to errors in reporting the balance of the Account.

21. Having an appropriation available for the use of public money is not, in itself, sufficient for such money to be spent. For agencies subject to the FMA Act, a valid Drawing Right is required to have been issued before payments of public money may be made from, and debits recorded against, appropriations. In two of the four agencies where the administration of Drawing Rights for Special Account appropriations was examined, ANAO found that valid Drawing Rights had not been issued for transactions on 13 Special Accounts. Since 1 July 1999, when responsibility for maintaining appropriation ledger records was transferred to agencies from Finance, \$618 million in payments have been made from, and debited against, the relevant Special Accounts by these two agencies.

Credits to Special Accounts

22. The Determination or legislation establishing a Special Account usually provides the legal authority for amounts to be credited to the Account. For 16 of the 19 Special Accounts examined in detail by the ANAO, the amounts to be credited to the respective Accounts were within the categories of specified credits. The three exceptions all related to crediting of income from investment activities. Legal advice obtained by the administering agency during the course of the audit provides some support for the approach taken. Nevertheless, from 1 July 2003, two of these three Accounts are no longer being credited with interest.

23. Where legislation requires (as opposed to permits) amounts to be credited to a Special Account, this crediting occurs by operation of law without any administrative action needing to be taken. However, ANAO found that two agencies had not recorded and reported transactions on their Special Account appropriations in a way that was consistent with the legislation that established the respective Accounts.

24. The first instance involved the Rural Transactions Centres Account. The relevant legislation required \$70 million in social bonus funds from the second tranche sale of Telstra shares (Telstra 2) to be credited in 1999 to this Account.⁵ However, only \$61.7 million was recorded and reported against the Account in 1999–2000. The non-compliance with the legislative requirements was corrected by the administering agency in 2002–03, when the balance of the Account was increased by \$8.3 million.

25. The second instance involved the Natural Heritage Trust of Australia (NHT) Account. At the time of ANAO's audit, a total of \$2.394 billion had been credited to the NHT Account by virtue of both annual appropriations and the self-executing *Natural Heritage Trust of Australia Act 1997* (NHT Act). However,

only \$1.909 billion of these funds had actually been recorded and reported by the administering agency. The \$485 million difference resulted from the following errors:

- By operation of law⁶, the first \$250 million in Telstra 2 proceeds was to be credited to the NHT Account in 1999. However, rather than recording this amount as being credited to the Account in 1999 by virtue of the provisions of the legislation, as was required, the agency obtained an annual appropriation in 2001–02 to credit \$250 million to the NHT Account. This meant that, in substance (but not in the agency's records), \$250 million was credited to the NHT Account on two separate occasions.
- The NHT Act requires that a fixed income percentage of eight per cent of the uninvested 30 June balance of the Account be credited to the Account each year. These credits also occur by operation of law without any administrative action being taken. However, over a number of years, the agency recorded the taking up of annual appropriation monies to fund interest credits to the Account. This resulted in two amounts of interest being credited each year to the Account.

26. As reported in the agency's 2002–03 financial statements, \$379 million has been debited from the NHT Account. This comprised \$250 million in Telstra 2 sale proceeds and \$129 million in interest funded from annual appropriations.⁷

Special Account purposes

27. The FMA Act provides a standing appropriation for the purposes of each Account, up to the balance of the Account. In this context, ANAO identified four Accounts in respect of which debits had been reportedly made for purposes other than those specified in the establishing legislation or Determination, or there were doubts about whether the debits accorded with the purpose of the Account.

28. Legal advice to agencies on the management of Special Accounts has identified at least two circumstances in which amounts may be debited other than for the stated purposes. The first involves correcting clerical errors. The second is when the crediting of an Account occurred through the exercise of a

⁵ In 1999, the *Telstra (Further Dilution of Public Ownership) Act 1999* was passed to enable the Telstra 2 sale to proceed. Among other things, this legislation made amendments to provide for a \$671 million social bonus to be funded from the proceeds of the Telstra 2 sale. Each element of the social bonus was to be credited to a Special Account.

⁶ NHT Act, Section 22A.

⁷ The difference between the \$485 million in credits not previously recorded and the \$379 million debited to correct the mistakes relates to \$49 million of corrections made during 2002–03, \$37 million of interest earned on amounts credited in error (legal advice was that these amounts could not be debited) and a recalculation by the administering agency of the amount of annual appropriation revenue previously credited to the Account that had been in the nature of interest (resulting in \$21 million being debited).

discretion by an official, and the exercise of that discretion was actuated by a fundamental mistake of fact or law. ANAO's audit identified only one instance of a fundamental mistake leading to a Special Account being debited other than for the purposes of the Account.

Overall conclusions

29. In terms of the audit objectives, ANAO concluded as follows:

- there has been uncertainty since the introduction of the FMA Act about the number and identity of Special Accounts that exist.⁸ After detailed examination of all available records, ANAO found that a total of 297 Special Accounts have been established since the FMA Act commenced. Of these, 56 have subsequently been abolished, leaving 241 Accounts in existence as at November 2003;
- many agencies need to improve their management of Special Accounts. There has been widespread non-reporting of Special Accounts, and significant inaccuracies in the financial disclosures on some of those Accounts that have been reported. Further, appropriation management procedures were found to be inadequate in a number of agencies; and
- there has been non-compliance with a number of legislative requirements. This includes those provisions of the FMA Act (and subordinate legislation) relating to: the management of appropriations; the keeping of proper accounts and records; and the reporting of all Special Accounts. There has also been inadequate understanding within agencies of, and non-compliance with, aspects of the legislation that has established particular Special Accounts. This includes where legislation requires amounts to be credited to a Special Account.

30. The results of the audit were that deficiencies were identified in the management of 12 of the 19 Special Accounts examined in detail by ANAO. This included Special Accounts not being credited with amounts that legislation required to be credited and debits being recorded against Special Accounts that were outside the specified expenditure purposes of the Account. Inaccuracies in the reported balance of seven Special Account appropriations were one consequence of the deficiencies identified during the course of the audit.

31. The audit demonstrates that there is significant scope for agencies to improve their financial management and reporting practices in respect of their Special Accounts. The improvements to Special Account disclosure requirements and the development and publication in October 2003 of Special Account Guidelines by Finance have provided a stronger platform for enhancing

⁸ See Paragraphs 2.33 to 2.39.

the financial management, reporting and transparency of Special Accounts. However, further improvement in administration must also come from greater understanding of, and increased care and attention to, legislative requirements and appropriation management practices by agencies responsible for the management of individual Special Accounts.

32. ANAO made 13 recommendations to improve management of, and accountability for, Special Accounts.

Agency responses

33. Agencies that responded to the draft report agreed, or agreed with qualification, to all recommendations. In addition, Finance and the Department of the Treasury (Treasury) provided summary comments on the report, as follows.

Finance

34. Finance agrees with ANAO's conclusions regarding the financial framework as it applies to Special Accounts and will act to implement those parts of the report relevant to Finance's responsibilities.

35. With regard to the Special Accounts framework, Finance has recently:

- thoroughly reviewed the authority for all Special Accounts;
- enhanced the transparency of the operation of Special Accounts through greater disclosure requirements in Portfolio Budget Statements, the Consolidated Financial Statements and the financial statements in agency annual reports; and
- issued comprehensive guidance to agencies on the management of Special Accounts.

36. This work provides a stronger platform for enhancing agencies' management of Special Accounts and compliance with the financial framework.

Treasury

37. Treasury values the work undertaken by the ANAO to highlight the complexities associated with (and importance of) the management of Special Accounts within Australian government agencies. Treasury agrees with the ANAO's overall conclusion that there is scope for agencies to improve their financial management and reporting practices in respect of their Special Accounts. To this end, Treasury is currently reviewing various aspects of its management of Special Accounts in conjunction with the Australian Government Solicitor and Finance.

Recommendations

Set out below are ANAO's recommendations and abbreviated responses from agencies. More detailed responses are shown in the body of the report immediately after each recommendation.

**Recommendation
No.1
Para 2.8**

ANAO *recommends* that all agencies with responsibility for Special Accounts examine their existing procedures for managing these Accounts in order to ensure that they accord with all relevant legal requirements, as well as the policy and best practice procedures outlined in the Guidelines for the Management of Special Accounts issued recently by the Department of Finance and Administration.

Agreed: All responding agencies.

**Recommendation
No.2
Para 2.30**

ANAO *recommends* that agencies regularly review the continuing need for individual Special Accounts, particularly where they are no longer used. Where appropriate, agencies should liaise with the Department of Finance and Administration to abolish Accounts that are no longer required.

Agreed: All responding agencies.

**Recommendation
No.3
Para 2.40**

ANAO *recommends* that the Department of Finance and Administration maintain a comprehensive and accurate register of all Special Accounts.

Agreed: All responding agencies.

**Recommendation
No.4
Para 2.48**

ANAO *recommends* that, where legislation requires an annual report to be prepared in relation to a Special Account, agencies adopt procedures that ensure a timely report is prepared and presented to the Parliament.

Agreed: All responding agencies.

**Recommendation
No.5
Para 2.56**

ANAO *recommends* that, to ensure all appropriations are properly managed, agencies establish a ledger record for all current Special Accounts for which they are responsible.

Agreed: All responding agencies.

**Recommendation
No.6
Para 3.31**

ANAO *recommends* that agencies maximise transparency over the operations of Special Accounts by, where necessary, seeking an amendment to relevant Determinations so that these Determinations identify all amounts that are to be credited to the Special Account.

Agreed: All responding agencies.

**Recommendation
No.7
Para 3.50**

ANAO *recommends* that, where legislation requires amounts to be credited to a Special Account, agencies develop and implement procedures that ensure full compliance with these requirements.

Agreed: All responding agencies.

**Recommendation
No.8
Para 4.11**

ANAO *recommends* that agencies ensure effective controls are in place to prevent Special Account appropriations from being debited other than for the purposes of the Special Account.

Agreed: All responding agencies.

**Recommendation
No.9
Para 4.25**

ANAO *recommends* that agencies re-examine their ledger accounting procedures and controls so as to ensure that an accurate daily record is maintained of the transactions and balances on each Special Account.

Agreed: All responding agencies other than DoTARS, which agreed with qualification.

**Recommendation
No.10
Para 4.34**

ANAO *recommends* that the Department of Finance and Administration take steps to resolve financial framework issues concerning whether an appropriation is needed for the expenditure of money held by agencies on trust, and inform agencies accordingly.

Agreed: All responding agencies.

**Recommendation
No.11
Para 4.40**

ANAO *recommends* that agencies implement appropriate controls that ensure a valid appropriation exists before seeking to draw funds from the Treasury of the Commonwealth.

Agreed: All responding agencies.

**Recommendation
No.12
Para 4.48**

ANAO *recommends* that agencies examine their financial procedures to ensure that valid Drawing Rights have been issued for all payments of public money and debits of appropriation ledger records.

Agreed: All responding agencies.

**Recommendation
No.13
Para 4.55**

ANAO *recommends* that all agencies ensure appropriate controls are in place to prevent the limit on Special Account appropriations from being exceeded, as reflected in negative Special Account balances.

Agreed: All responding agencies.

Audit Findings and Conclusions

1. Introduction

Background

1.1 A Special Account is a mechanism used to record amounts in the Consolidated Revenue Fund (CRF) that are appropriated for specified purposes.⁹ A Special Account can be established either by a Finance Minister's Determination under Section 20 of the *Financial Management and Accountability Act 1997* (FMA Act); or by separate legislation.

1.2 Each Special Account represents a notional division within the CRF.¹⁰ Accordingly, Special Accounts enable money to be earmarked for the purposes for which each Account is established. In this context, Sections 20 and 21 of the FMA Act provide separate standing appropriations for each Special Account, with the amount of the appropriation being the balance for the time being standing to the credit of the Special Account.

1.3 Special Accounts are used for a variety of purposes. This includes: delivering some government regulatory and business activities; accounting for trust money;¹¹ segregating money for activities that the Commonwealth funds jointly with other parties; and setting aside funds for medium to long-term Government programmes. There are currently 241 Special Accounts in existence. As of 30 June 2003, \$3.40 billion was reported as held in Special Accounts. During 2002–03, \$10.33 billion was reported as credited to Special Accounts, with \$10.06 billion in payments (debits) from Special Accounts.

Legislation

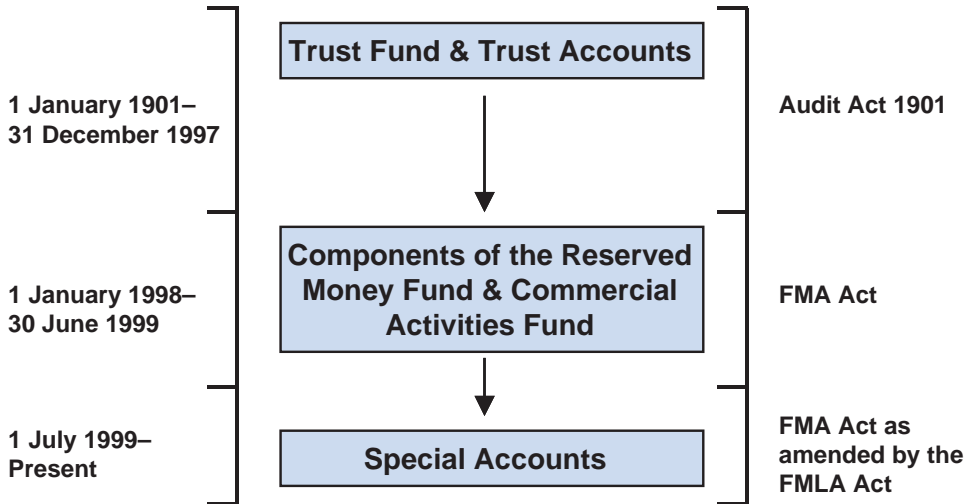
1.4 The concept of what are now known as Special Accounts originated in the early part of the 20th century when the *Audit Act 1901* (Audit Act) established trust accounts as part of the Trust Fund (see Figure 1.1). The financial framework relating to funds held in trust accounts remained largely unchanged for over 90 years, until the FMA Act commenced operation on 1 January 1998. This framework was changed again 18 months later when the FMA Act was amended by the *Financial Management Legislation Amendment Act 1999* (FMLA Act).

⁹ *Inquiry into the Draft Financial Framework Legislation Amendment Bill*, op. cit., Appendix J.

¹⁰ *Second Submission to the Inquiry by the Joint Committee of Public Accounts and Audit into the Draft Financial Framework Legislation Amendment Bill*, Department of Finance and Administration, May 2003, p.26.

¹¹ Not all money held on trust by agencies is accounted for in Special Accounts.

Figure 1.1
Legislative History of Special Accounts



Source: ANAO analysis.

1.5 Under the legislative arrangements of the Audit Act, the financial transactions of the Commonwealth were accounted for in three funds namely the CRF, the Loan Fund and the Trust Fund. Money set aside for particular purposes was accounted for in ‘trust accounts’¹² and, together with moneys held received in trust for other parties, formed the Trust Fund.

1.6 Within the Trust Fund, funds held by the Commonwealth while acting as trustee for private moneys in its possession were referred to as ‘Heads of Trust’. Funds held for special operations and business undertakings conducted by the Commonwealth were referred to as ‘Trust Accounts’.¹³ Trust Accounts could be established in one of two ways: administratively by the Finance Minister pursuant to Section 62A of the Audit Act; or directly by the Parliament under separate legislation.

1.7 On 1 January 1998, the Audit Act was replaced with, among other Acts, the FMA Act. The FMA Act introduced a significant revision to the Commonwealth’s Fund Accounting structure.¹⁴ This included the replacement

¹² In 1906, the Audit Act was amended by inserting section 62A which established existing funds of an operational or trading nature as trust accounts and gave power to the Treasurer (since 1976, the Minister for Finance) to establish additional trust accounts and to define the purposes for which each account was established. Section 62A of the Audit Act also empowered the Minister for Finance to close trust accounts and to direct that moneys be paid into the Loan Fund or the Consolidated Revenue Fund, defined the moneys which could be paid to the credit of a trust account and authorised the expenditure of moneys standing to the credit of a trust account for the purposes of that account.

¹³ *Trust Fund Reference Guide*, Department of Finance, May 1990, paragraph 2.

¹⁴ *Financial Management and Accountability Bill 1996—Explanatory Memorandum*, clause 5.

of the Trust Fund with two new purpose-based Funds—the Reserved Money Fund (RMF) and the Commercial Activities Fund (CAF). Each of the new Funds comprised ‘components’ that were comparable to Heads of Trust and Trust Accounts under the former regime.¹⁵ The RMF accounted for money which the Commonwealth held on trust for, or otherwise for the benefit of, a person other than the Commonwealth, as well as moneys which were reserved for future Commonwealth purposes. The CAF accounted for various activities of agencies, which needed to be dealt with as if they were genuinely commercial.

1.8 The *Audit (Transitional and Miscellaneous) Amendment Act 1997* (ATMA Act) provided for moneys in a Trust Account established under the Audit Act to be transferred to a component of the RMF or the CAF established under Section 20 or Section 21 of the FMA Act, subject to the condition that the spending purposes were not broadened from those that applied to the original Trust Account.

1.9 The FMLA Act came into effect on 1 July 1999. This Act abolished the Loan Fund, the RMF and the CAF, with their functions and purposes being merged within the CRF. It also converted components of the RMF and CAF into Special Accounts within the CRF. In doing so, the FMLA Act preserved the rights and obligations attached to the old components. The purpose of each old component became the purpose of the corresponding Special Account. Subsection 5(3)(a) of the FMLA Act required agencies to credit the balance of the old component to the new Special Account.¹⁶

1.10 Further amendments to the FMA Act are proposed by the Financial Framework Legislation Amendment Bill, currently in draft form. The draft Bill contains amendments to 81 Acts to replace obsolete legislative references to the RMF and CAF with references to Special Accounts.¹⁷

Appropriations framework

1.11 An appropriation is an authorisation by Parliament to spend an amount from the CRF for a particular purpose.¹⁸ There are two main provisions in the Constitution relating to appropriations. These are Sections 81 and 83. They provide as follows:

All revenue or moneys raised or received by the Executive Government of the Commonwealth shall form one Consolidated Revenue Fund, to be appropriated

¹⁵ *ibid.*

¹⁶ Department of Finance and Administration, *Finance Brief 2002/5*.

¹⁷ *Submission to the Inquiry by the Joint Committee of Public Accounts and Audit into the draft Financial Framework Legislation Amendment Bill*, Department of Finance and Administration, 4 March 2003, p.1.

¹⁸ Department of Finance and Administration, *Estimates Memorandum 2003/27, Refresher on Appropriation Framework—Rules*, 28 August 2003, p.3.

for the purposes of the Commonwealth, in the manner and subject to the charges and liabilities imposed by this Constitution. (Section 81)

No money shall be drawn from the Treasury of the Commonwealth¹⁹ except under appropriation made by law. (Section 83)

1.12 The Section 83 requirement that no money be drawn from the CRF without Parliamentary approval is long-standing. It derives from principles established at the time of passage of the Bill of Rights in Britain in 1688. Together with the requirements of Section 81, this rule creates a regime for Parliament to control the Executive Government's spending.²⁰

1.13 The broad framework for appropriations established by the Constitution is supported by provisions in the FMA Act relating to the management and handling of public money. These include provisions relating to accounts and record keeping, the creation of Special Accounts, Drawing Rights, general machinery provisions for appropriations, and appropriations for commonly occurring situations (such as repayments).

Types of appropriations

1.14 Laws authorising money to be drawn from the CRF are either annual or special appropriations.

1.15 Annual Appropriation Acts are prepared each year, and are the source for approximately 30 per cent of all Government expenditure.²¹ The Budget is typically presented to Parliament in the form of three Appropriation Bills being appropriations for the Parliamentary Departments, Appropriation Bill No. 1 for the ordinary annual services of the Government and Appropriation Bill No. 2 for payments other than the ordinary annual services of the Government.²² A further three Bills are usually presented during the Spring Sittings of the Parliament. Called the Additional Estimates, they are analogous to the three Budget appropriation bills.²³ There may also be other annual Appropriation Bills presented, such as the *Appropriation (East Timor) Act 1999–2000*.

1.16 Special appropriations are in Acts that deal with particular purposes of spending and are often ongoing and/or open-ended. They cover the remaining 70 per cent of Government spending.²⁴ An important sub-category of special appropriations are standing appropriations, which provide for the

¹⁹ In this context, the Treasury of the Commonwealth refers to the CRF.

²⁰ Estimates Memorandum 2003/27, op. cit., p.4.

²¹ *Agency Resourcing 2003–04*, Budget Paper No.4, p.2.

²² *ibid.*

²³ *ibid.*

²⁴ *ibid.*

automatic payment of funds where an entitlement exists, with the amount to be appropriated and paid having to be calculated, rather than being specified in the appropriation itself.

1.17 Special Accounts represent a type of special appropriation, as there is a standing appropriation for the purposes of each Account, up to the balance of the Account. The FMA Act provides these standing appropriations, as follows:

- For Special Accounts established by a Finance Minister's Determination, Section 20(4) provides that the CRF is appropriated for expenditure for the purposes of the Special Account up to the balance for the time being of the Special Account. The purposes of Special Accounts established by Determination have been specified in the relevant Determination. On occasion, these purposes have been amended, as is possible under Section 20(2) of the FMA Act.
- Section 21(1) of the FMA Act provides that if another Act establishes a special account and identifies the purposes of the account, then the CRF is appropriated for expenditure for those purposes, up to the balance for the time being of the Special Account. The purposes of Special Accounts established by Acts other than the FMA Act are identified in the relevant establishing legislation.

Finance's role

1.18 With the repeal of the Audit Act and the introduction of the FMA Act and other associated acts, there was an important change in the role of the Department of Finance and Administration (Finance) in respect to appropriation management. Under the Audit Act, Finance had a central role in maintaining a reasonably detailed and prescriptive financial framework and maintaining central accounting and payment systems. This latter role included the control of appropriations. Under the FMA Act, agencies are now responsible for the control and management of their own finances. This includes responsibility for recording transactions under relevant appropriations.

1.19 Finance commented to ANAO in November 2003 that the Government's decisions in relation to the findings and recommendations of the 2002 Budget Estimates and Framework Review²⁵ do not change this fundamental allocation

²⁵ In endorsing the implementation of the accrual framework in 1998, the Government also agreed to a periodic review of the budget system and framework. As part of that process, the Government requested, in early 2002, that Finance and the Department of the Treasury jointly conduct a review of the current budget estimates system and framework to assess its accuracy, responsiveness and effectiveness in meeting the needs of Government. The Review, known as the Budget Estimates and Framework Review, assessed those elements of the system that are working well and, as part of a process of continuous improvement, identified those areas where further refinements might be made.

of responsibilities between Finance and agencies. Agencies continue to be responsible for controlling and managing their finances, the control of appropriations, the making of payments, and keeping detailed accounts and records of agency operations.

1.20 For its part, Finance continues to be responsible for the financial framework, as well as the provision of advice to the Government on Commonwealth finances and on budget proposals. Finance's role in relation to providing accurate and timely financial and policy advice was enhanced. Following the Review, a number of other changes were made including a shift to 'as needed drawdowns' of cash by agencies. Finance is also expected to better understand the operations of agencies and the associated implications for whole-of-government finances.

1.21 To meet its responsibilities, Finance uses the Cash and Appropriation Management Module (CAMM).²⁶ CAMM provides a mechanism to draw money from the Official Public Account (OPA) under appropriations and transfer that money to agency bank accounts. CAMM is designed to meet Finance's responsibilities in relation to the administration of the annual Appropriation Acts and special appropriations. It is not, however, intended to be a control mechanism for administering amounts standing to the credit of Special Accounts as such administration is the responsibility of agencies.

1.22 In terms of Special Accounts, Finance is responsible for ensuring that the financial framework is robust and reliable. Agencies are responsible for the direct control of their Special Accounts and for ensuring they are managed in accordance with the framework.

Parliamentary Scrutiny

1.23 The Commonwealth Parliament and its various Committees have often shown an interest in Special Accounts and their predecessors. Most recently, in August 2003, the Joint Committee of Public Accounts and Audit (JCPAA)²⁷ reported on its inquiry into the Draft Financial Framework Legislation Amendment Bill.²⁸ Among other things, the Inquiry examined proposed amendments to the FMA Act provisions covering Special Accounts, as well as

²⁶ CAMM is a module within the Accrual Information Management System (AIMS). AIMS was created to support the introduction of accrual budgeting in the Commonwealth public sector from 1999. AIMS is the central budgeting and reporting system, which Finance uses to develop the Budget and perform centralised appropriation management.

²⁷ Demonstrating this Committee's interest in the Commonwealth's financial framework, in 1957 the then Joint Committee of Public Accounts conducted an inquiry into the Trust Fund. This inquiry examined the effects trust accounts had upon Parliament's control over expenditure. The Committee found that, although there were misunderstandings regarding the operation of trust accounts and the accounts had weaknesses as instruments of financial control, they were a necessary and useful financial instrument.

²⁸ *Inquiry into the Draft Financial Framework Legislation Amendment Bill*, op. cit.

issues relating to the operation and management of Special Accounts. Of the five recommendations made by the JCPAA in its report, four related to Special Accounts, as outlined in Figure 1.2. The final recommendation was that the Financial Framework Legislation Amendment Bill be introduced into Parliament as soon as is feasible.

Figure 1.2

Relevant Recommendations of the 2003 JCPAA Inquiry

Recommendation 1: The proposed amendments to subsection 20(1) of the FMA Act contained in the draft Financial Framework Legislation Amendment Bill should include the following:

- A determination of the Finance Minister establishing a Special Account should include a reference to amounts that are allowed or required to be debited from a Special Account and this reference should be linked to the purposes of the Special Account.
- A determination of the Finance Minister may specify that amounts debited from a Special Account may be or must be otherwise than for the making of real or notional payments.

Recommendation 2: The draft Financial Framework Legislation Amendment Bill should include amendments to the FMA Act and all other relevant Acts to replace references to ‘Special Account’ with references to ‘Designated Purpose Account’.

Recommendation 3: The annual Appropriation Acts should not authorise the crediting of appropriated amounts to a Special Account if the Act or the Finance Minister’s determination that establishes the Special Account does not specifically provide for appropriated amounts to be credited to the Special Account.

Recommendation 4: The Financial Framework Legislation Amendment Bill should include an amendment to establish the Aboriginal Advancement Account under section 38 of the *Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987*.

The Condah Land Account and the Framlingham Forest Account should be subsumed into the Aboriginal Advancement Account.

Source: *Inquiry into the Draft Financial Framework Legislation Amendment Bill*, JCPAA, Report 395, August 2003.

Audit Approach

1.24 The objectives of the audit were to:

- identify all Special Accounts that have existed;
- assess the efficiency and effectiveness of the establishment, management and abolition of these Special Accounts, including the administration and reporting of the standing appropriations arising from Special Accounts; and
- assess compliance with the legislative requirements (including those of the FMA Act and the Finance Minister's Orders (FMOs) promulgated under that Act).

1.25 The audit proceeded in two stages. The first stage involved a census of all Commonwealth agencies in order to address the audit objective of identifying all Special Accounts that have existed. The census stage also involved analysis of each reported Special Account to confirm that the Account existed at law and had been reported by the relevant agency in its financial statements.

1.26 The second stage of the audit involved fieldwork in Finance to examine the overall governance framework for Special Accounts together with examination of the management of a selection of 19 Special Accounts in six agencies. The Accounts examined are identified in Figure 1.3. The purpose of this stage of the audit was to address the second and third audit objectives.

Figure 1.3
Special Accounts Examined by ANAO

Agency	Special Accounts Examined
Department of the Environment and Heritage	Natural Heritage Trust of Australia Account
	The Ozone Protection Account
	The Federation Fund Account
Department of Transport and Regional Services	Australian Land Transport Development Account
	The Rural Transaction Centres Account
	The Federation Fund Account
	The Federal Office of Road Safety—Research and Public Education Program Account
	The Other Trust Moneys Account
	The Services for Other Governments and Non-Agency Bodies Account
Department of Communications, Information Technology and the Arts	The Regional Telecommunications Infrastructure Account
	The Television Fund Account
	The Untimed Local Call Access Account
	NRS (National Relay Service) Account
Department of Agriculture, Fisheries and Forestry	National Residue Survey Account
	Natural Resources Management Account
Department of Education, Science and Training	Higher Education (HECS) Account
Department of Finance and Administration	Business Services Trust Account
	Property Account
	Comcover Account

Source: ANAO.

1.27 Audit fieldwork was conducted between April 2003 and September 2003. Issues Papers were provided to a number of agencies between July and September 2003. Issues were also raised and resolved with agencies as part of the finalisation of the ANAO audit of their 2002–03 financial statements. In October 2003, a Discussion Paper was prepared and extracts provided to relevant agencies for comment.

1.28 The proposed report was provided in December 2003 to agencies for comment in accordance with Section 19 of the *Auditor-General Act 1997*. In recognition that most recommendations are directed to all agencies with Special Accounts, and that the audit scope included all such agencies, the draft report was provided to all 72 audited agencies that currently have, or have had, one or more Special Accounts. Of these agencies, 40 provided a response to the draft report.

1.29 The audit was conducted in accordance with ANAO auditing standards at a cost to the ANAO of \$366 000.

2. Financial Framework

Introduction

2.1 Finance is responsible for developing and maintaining the financial framework for the Commonwealth public sector.²⁹ At the time of this performance audit, the financial framework covered 86 agencies under the FMA Act and 114 authorities and companies under the *Commonwealth Authorities and Companies Act 1997* (CAC Act).

2.2 The FMA Act sets out the financial management, accountability and audit obligations of agencies (including Departments of State) forming part of the General Government Sector. Division 1A of Part 4 of the FMA Act relates specifically to the establishment, operation and abolition of Special Accounts. Other aspects of the FMA Act relevant to the operation of Special Accounts include provisions governing the investment of public money (Section 39); the requirement to keep proper accounts and records (Section 48); and the requirement to prepare annual financial statements in accordance with Orders made by the Finance Minister (Section 49).

Finance's 2002 Review of Special Accounts

2.3 In late 2002, Finance conducted a review of Special Accounts. The review was undertaken at the request of the Secretary of the Department, following discussion about Special Accounts during the 2002–03 Budget process and issues raised in an ANAO audit of the management of trust monies.³⁰

2.4 The review aimed to identify potential risks that stem from the use of Special Accounts. It was completed in September 2002, with a report provided to the Secretary of the Department and, in October 2002, to the Finance Minister. The review identified nine broad areas of concern and risk ranging from lack of guidance for establishing Special Accounts to a lack of central monitoring of Special Accounts on an individual basis.

2.5 As part of the review, Finance developed a risk management plan outlining strategies for addressing these risks. Finance advised the Finance Minister that the implementation of the recommended strategies would result in an enhanced level of central monitoring and control of Special Account activities and would allow

²⁹ *Portfolio Budget Statements 2003–04: Finance and Administration Portfolio*, Budget Related Paper No.1.9, p.35.

³⁰ ANAO Audit Report No.18 2002–03, *Management of Trust Monies*, examined the management of trust monies by five Commonwealth organisations.

agencies, Finance and the Government to have a comprehensive understanding of the magnitude, detail and nature of Special Accounts.

2.6 Also as a result of the review, Finance proposed to develop, for Ministerial endorsement early in 2003, comprehensive guidelines for agencies outlining relevant policy and operational matters concerning Special Accounts. A draft of these Guidelines was provided to a selection of agencies for comment in May 2003. The Guidelines were published in October 2003 and were the subject of an education program by Finance.³¹

2.7 The purpose of the Guidelines is to assist agencies through the legal and financial requirements of managing Special Accounts. Accordingly, the Guidelines contain a mixture of legal requirements, policy and best practice procedures. They were developed after analysis of the financial framework and to a significant extent draw upon legal advice provided by the Office of the Australian Government Solicitor (AGS). Based on the findings of this performance audit, ANAO considers that the promulgation by Finance of appropriate guidance on the management of Special Accounts should be of value to all agencies with responsibility for Special Accounts.

Recommendation No.1

2.8 ANAO *recommends* that all agencies with responsibility for Special Accounts examine their existing procedures for managing these Accounts in order to ensure that they accord with all relevant legal requirements, as well as the policy and best practice procedures outlined in the Guidelines for the Management of Special Accounts issued recently by the Department of Finance and Administration.

Agency responses

2.9 All responding agencies agreed.

2.10 Some respondents also made comments on the recommendation, as follows:

- DAFF advised that, following the preparation of its 2002–03 Financial Statements, the Department undertook a review of all its Special Accounts to ensure they were underpinned by valid legislation. It has also commissioned a review of its operating policies and procedures that will be promulgated to all relevant business units in early 2004 together with appropriate training. A Chief Executive Instruction is also being

³¹ With the release of the Guidelines, Finance Circular 1999/03 *Reserved Money Fund (RMF) and Commercial Activities Fund (CAF)—Transition to 'Special Accounts' From 1 July 1999*, dated May 1999, was withdrawn.

developed and will be issued at around the same time to reinforce the strict operational requirements of Special Accounts.

- DFAT stated that it is currently undertaking a review of its accounting framework for all administered items, including Special Accounts, as a result of the Budget Estimates Framework Review and will expand this review to incorporate the recommendations of this ANAO performance audit report.
- Treasury commented that its procedures for the management of Special Accounts are contained in its Chief Executive Instructions. These procedures were updated in July 2003 and are currently being reviewed to ensure that they are consistent with the *Guidelines for the Management of Special Accounts* recently issued by Finance.
- FACS advised that it is currently updating its policy and procedures to ensure that they conform to best practice procedures as outlined in Financial Management Guide No. 7 *Guidelines for the Management of Special Accounts* issued by Finance.
- DPM&C commented that, in line with this recommendation, it has undertaken a review of the procedures for the management of its Special Accounts. These procedures have been updated and reviewed by Internal Audit.
- DIMIA commented that it will examine its current procedures to ensure compliance with relevant legislation and guidance issued by Finance.
- DEWR stated that it has implemented this recommendation and is fully compliant.
- The Federal Court stated that it will continue to strengthen its management of Special Accounts. Each year the Court has disclosed its Special Accounts within the notes section of its financial statements. Since the ANAO audit on the Management of Trust Money,³² the Court has been reviewing its Special Accounts and Special Public Money Accounts. The Court has been discussing the requirement for these Accounts with Finance and has sought separate legal advice at times with respect to the classification and usage of these Accounts.
- HoR advised that an examination of current procedures is underway.
- ACIAR commented that its policies and procedures will be reviewed to consider legal requirements and best practice.

³² Audit Report No.18 2002–03, *Management of Trust Monies*.

2.11 In addition to those agencies that agreed to the Recommendation, the Department of the Senate commented as follows:

Due to the various changes that have occurred over the past six years to the relevant financial legislation, and to the banking and budgeting frameworks, there remains uncertainty about where Special Accounts fit within the overall financial management framework. Now that only one fund exists (the CRF), and with the flexibility allowed by the banking and budgeting frameworks, it is questionable whether Special Accounts are required at all. Accountability would be enhanced by their abolition.

Establishment of Special Accounts

2.12 Special Accounts have been established in three ways:

- at the time the FMA Act commenced, moneys in 248 Trust Accounts established under the Audit Act were transferred to a component of the RMF or the CAF. In 1999, these components became Special Accounts;
- the Finance Minister has made 18 Determinations establishing Reserved Money Fund or Commercial Activities Fund components (which later became Special Accounts) and 18 Determinations under Section 20 of the FMA Act establishing Special Accounts; and
- 13 Special Accounts have been established by various Acts of Parliament since 1 January 1998.

Section 20 Determinations

2.13 Subsection 20(1) of the FMA Act provides for the Finance Minister to make a written Determination that does all or any of the following: establish a Special Account; allow or require amounts to be credited to a Special Account; and / or specify the purposes of a Special Account. A Special Account Determination can be revoked or varied by a Determination made under Subsection 20(2).

2.14 Under Section 22 of the FMA Act, Determinations made under Subsections 20(1) and 20(2) of the Act are disallowable instruments. That is, they are required to be tabled in each House of the Parliament, and either House may disallow the Determination by passing a resolution within 5 sitting days of the Determination being tabled in the House. Provided the Determination has not been disallowed by either House of the Parliament, it takes effect on the next calendar day after the disallowance period has passed in both Houses.

2.15 Responsibility for the tabling of Section 20 Determinations in each House of the Parliament lies with Finance. If a Determination establishing a Special Account is not tabled, and thus is not subjected to the disallowance rules, then

the Special Account the Determination purports to establish never comes into legal existence.³³

2.16 In general, ANAO found that Finance had tabled Determinations in each House in a timely manner following their signature by the Minister or his delegate. The one exception relates to one of five separate Determinations made on 7 April 1998 establishing five components of the RMF. Only four of these five Determinations were tabled in the Parliament. The Determination establishing the Multimedia Industry Development Account was not tabled and, as such, the Account never legally existed, although a further Determination was made in February 2000 that purported to abolish this Account.

2.17 Prior to the 1999 amendments to the FMA Act, the Finance Minister had delegated his power to establish components of the RMF and CAF, which were subject to the same disallowance rules as Special Accounts, to the Finance Chief Executive under Section 62 of the FMA Act. Section 53 of the FMA Act further provides for a Chief Executive to delegate powers delegated to them by the Finance Minister.

2.18 When the FMLA Act converted RMF and CAF components to Special Accounts, the delegation by the Finance Minister to the Finance Chief Executive was not amended to reflect the change, rendering the delegation ineffective. In September 2000, on the basis of legal advice, Finance provided a brief to the Finance Minister indicating that a number of Determinations establishing and amending Special Accounts had been made by sub-delegates of the Finance Chief Executive, in reliance upon the ineffective delegation. The Determinations made by sub-delegates were subsequently ratified by the Finance Minister in late 2000, as well as amendments being made to the relevant Finance Chief Executive delegation. The new delegation specifically excluded the power to establish and vary Special Accounts under FMA Act Section 20. As a result, Determinations establishing or amending Special Accounts are now made only by the Minister.

Abolition of Special Accounts

2.19 Until such time as it is abolished, a Special Account continues to exist and should be recorded by agencies in their financial records, and reported in their financial statements.³⁴ Any amounts standing to the credit of a Special Account

³³ Under the ATMA Act, the Initial Determinations made on 31 December 1997 to establish components of the RMF and CAF were required to be tabled, but these Determinations were exempt from the disallowance rules. Because of an oversight within Finance, the Initial Determinations were not tabled in the Parliament until June 2003. Legal advice obtained by Finance was that the delay in tabling had no effect on the validity of these Initial Determinations.

³⁴ *Requirements and Guidance for the Preparation of Financial Statements of Commonwealth Agencies and Authorities—Reporting periods ending on or after 30 June 2003, unless amended*, Department of Finance and Administration, paragraphs 2C.1.23 and 2C.1.24.

at the time it is abolished remain in the CRF, but are no longer set aside for particular expenditure purposes.

2.20 The manner in which Special Accounts may be abolished depends on the manner in which they were established, as follows:

- A Special Account established by a Finance Minister's Determination made under Subsection 20(1) of the FMA Act may only be abolished by a Finance Minister's Determination made under Subsection 20(3) of the FMA Act.
- A Special Account established by another Act of Parliament can only be abolished with the repeal or amendment of the establishing Act or its enabling provisions.

Abolition Determinations

2.21 Unlike Determinations made to establish and amend Special Accounts, Determinations to abolish a Special Account are not required to be tabled in the Parliament, and are thus not subject to the disallowance rules. However, agencies are expected to disclose in their financial statements that an Account has been abolished.

2.22 Of the 54 Special Accounts abolished by Determination since 1 January 1998, 29 were abolished by a single Determination made by the Finance Minister on 25 June 2003.³⁵ Determinations abolishing such a large number of Special Accounts at once have not been common. During 2003, agencies were asked by Finance to identify which Special Accounts should be abolished. The 29 Accounts were abolished by the Determination of 25 June 2003 based on the advice provided by agencies.

Repeal or Amendment of Legislation

2.23 Any balance standing to the credit of a Section 21 Special Account remains in the Account until such time as the legislation establishing the Account is repealed or amended. Since 1 January 1998, only two Section 21 Special Accounts have been abolished.

2.24 The Loan Consolidation and Investment Reserve (LCIR) was established by Section 3 of the *Loan Consolidation and Investment Reserve Act 1955*. That Act was repealed with effect from 1 July 1999, abolishing the LCIR. The funds of the LCIR were devoted to the redemption of, or investment in, Commonwealth

³⁵ This Determination also included an additional six 'Accounts' to be abolished that, in all likelihood, were never legally established as Special Accounts, as no establishing Determinations can be found, and there is no evidence of any such Determinations having been tabled in Parliament. These were 'abolished' to remove any uncertainty about their status.

Government securities, representing a portion of the public debt of the Commonwealth. At the time the Account was abolished, there was \$21.09 billion standing to its credit.

2.25 The Strategic Ballast Water Research and Development Account (Strategic Ballast Account) was established by Section 11 of the *Ballast Water Research and Development Funding Levy Collection Act 1998* (the Collection Act). The Collection Act imposed a levy in respect of ships in accordance with the provisions of the Act, and the levy received by the Commonwealth was credited to the Special Account. The Collection Act expired on 30 June 2000 pursuant to a proclamation made under Section 14 of the Act. This meant that the Special Account was abolished on 30 June 2000, with a balance of \$995 000 still standing to the credit of the Account.

2.26 Even if a Special Account is no longer in use, any credit balance in the Account must be recorded in the Account until the Account is legally abolished, or amounts are debited in accordance with the purposes of the Account. In these circumstances, new provisions may need to be inserted into the legislation establishing the Account in order to reduce the balance to zero, prior to abolition.

2.27 For example, the Income Equalisation Deposits Account (IED Account) was established by the *Loan (Income Equalisation Deposits) Act 1976* (the IED Act). The Income Equalisation Deposits Scheme was replaced by the Farm Management Deposits Scheme in 1997–98. Schedule 2 to the *Taxation Laws (Farm Management Deposits) Amendment Act 1998* inserted a new Section in the IED Act enabling the transfer of amounts standing to the credit of the IED Account to financial institutions, in accordance with the provisions of the new Scheme. The IED Account is no longer in use and has a nil balance. However, because the amending Act did not repeal the provisions establishing the Account, the IED Account remains in legal existence and should be reported by the Department of Agriculture, Fisheries and Forestry (DAFF) in its financial statements. This has yet to occur.

2.28 Another instance examined by the ANAO was the Untimed Local Calls Access Account (ULCAA) administered by the Department of Communications, Information Technology and the Arts (DoCITA). Section 52 of the *Telstra Corporation Act 1991* (the Telstra Corporation Act), which was inserted by the *Telstra (Further Dilution of Public Ownership) Act 1999*, established the ULCAA. The Telstra Corporation Act also contained a provision whereby the ULCAA could not be debited after 30 June 2003. As at 30 June 2003, the ULCAA had a balance standing to its credit of \$34.16 million. Section 52 of the Telstra Corporation Act has not been repealed or amended, meaning the ULCAA is still legally in existence. Although the Account is no longer allowed to be debited, the \$34.16

million standing to its credit remains in the Account. The ULCAA must still be reported in the agency's financial statements with this credit balance. This has occurred in the agency's 2002–03 financial statements.

2.29 In November 2003, the DoCITA advised ANAO that it had raised the issue of the ULCAA with Finance as recently as October 2003. DoCITA further advised that recent correspondence had indicated that the Financial Framework Legislation Amendment Bill may be used to resolve these issues by repealing Section 52 of the Telstra Corporation Act.

Recommendation No.2

2.30 ANAO *recommends* that agencies regularly review the continuing need for individual Special Accounts, particularly where they are no longer used. Where appropriate, agencies should liaise with the Department of Finance and Administration to abolish Accounts that are no longer required.

Agency responses

2.31 All responding agencies agreed.

2.32 Some respondents also made comments on the recommendation, as follows:

- Finance commented that the abolition of Special Accounts that are established by legislation will require the passage of legislative amendments. These should be initiated by the responsible agency in consultation with Finance.
- DAFF stated that it completed a review of all its Special Accounts in December 2003. Its Federation Fund Account was abolished on 25 June 2003 and the Meat Inspection Service Account and Income Equalisation Deposits Account are both planned to be abolished during 2003–04 as they are no longer required. DAFF further stated that it maintains a central register of Special Accounts and will periodically review its Special Accounts to ensure they are still required.
- Treasury commented that it is currently reviewing the operations of several Special Accounts in conjunction with the Australian Government Solicitor and Finance.
- DFAT advised that it has been liaising with Finance since October 2002 regarding the closure of three Special Accounts and requested that these Accounts be closed in April 2003. On 18 December 2003, Finance advised DFAT that these Accounts remain open.

- FACS stated that it will be including in its update of its Special Account procedures the need to undertake regular review of all its Special Accounts to determine their continuing need.
- DIMIA advised that it reviews the continuing need for its Special Accounts on an ongoing basis.
- DEWR stated that it has implemented this recommendation and is fully compliant.
- HoR advised that a focus of rationalising existing Accounts is currently underway.
- The Commonwealth Ombudsman advised that it has requested Finance to arrange to abolish its two unused Special Accounts as soon as possible.
- ACIAR stated that action has been taken to close those Accounts that are no longer required and that other Accounts will be reviewed regularly to assess their ongoing use.

Special Accounts Register

2.33 Up until February 2003, Finance had published on its website a register of Special Accounts established by Finance Minister Determinations. In November 2002, Finance advised the Senate Finance and Public Administration Legislation Committee that the register published at that time contained all Special Accounts established by Determinations under Section 20 but that it did not contain any Special Accounts that had been established under other legislation. Finance advised ANAO in November 2003 that the register was only intended to include Section 20 Special Accounts. As a consequence, it did not include the 41 Special Accounts established other than under a Finance Minister's Determination.

2.34 The most recently published register contained 225³⁶ Section 20 Special Accounts. However, this was not a complete list. As at 30 June 2002, there were 251 Section 20 Special Accounts that had existed since the FMA Act commenced. This meant that as at 30 June 2002, there were 26 Section 20 Special Accounts that had existed over time that were not contained in the published list.

2.35 The register mentioned at the November 2002 Estimates Hearings was removed from the Finance website in February 2003 because Finance considered it was out of date. Plans were made in February 2003 to reinstate an updated

³⁶ This figure includes 62 Services for Other Governments and Non-Agency Bodies Accounts and 62 Other Trust Moneys Accounts. The published Finance register did not specifically assign these Accounts to the agencies that are responsible for them, as was the case with other Special Accounts, but rather noted that one of each of these Accounts existed for 'all agencies'. Given that one of each of these Accounts was initially established for each of the 62 agencies in existence at 1 January 1998, this is the number of Accounts that appears to have been included in the Finance register.

version of the register on the Finance website. However, Finance advised ANAO in November 2003 that it later decided that publishing the name and summary financial detail of each Special Account in the Consolidated Financial Statements (CFS) was adequate. ANAO notes that the information involved in the CFS will not include the expenditure purpose of each Account, or the credits that may be made to each Account. It will also only provide information at a single point in time each year.

2.36 At the November 2002 Estimates Hearings, Finance was asked by the Committee how many Special Accounts existed and how many agencies held those Accounts. In January 2003, Finance advised the Committee that, on the basis of agency disclosures in annual reports, there were 187 active Special Accounts in 2001–02, held by 51 agencies. This data was based on Finance’s examination of two years of annual reports, and identified those Special Accounts that Finance considered were in active use, rather than those that legally existed. As indicated above, at this time Finance did not maintain a register of all Special Accounts established under the provisions of Sections 20 and 21 of the FMA Act.

2.37 Subsequent to the provision of this information to the Committee, Finance undertook a more comprehensive research process, which examined original FMA Act Section 20 Determinations as well as legislation for Section 21 Accounts. In March 2003, at the JCPAA Inquiry into the Draft Financial Framework Legislation Amendment Bill, Finance advised the JCPAA that there were around 260 Special Accounts in existence, with a balance of around \$3 billion as at 30 June 2002.

2.38 Commencing in March 2003, ANAO conducted a census of all agencies in order to address the audit objective of identifying all Special Accounts that have existed. Subsequent analysis of the census results and information from other sources revealed that, since the FMA Act commenced on 1 January 1998, 297 Special Accounts and components of the RMF and CAF have existed. Appendix 1 to this report provides further details on each of the 297 Special Accounts, including their current status.

2.39 By November 2003, 56 of the 297 Special Accounts and components of the RMF and CAF that have existed had been abolished such that there were 241 Special Accounts in legal existence as at November 2003. Figure 2.1 shows the number of Special Accounts (and their predecessors) established and abolished since 1 January 1998. Finance advised ANAO in September 2003 of its agreement with these numbers.

Figure 2.1
Establishment and Abolition of Special Accounts (Numbers)

	Established	Abolished	Total
Transition from Audit Act to FMA Act			
• ATMA Act Schedule 2	27	N/A	
• Other legislation	4	N/A	
• RMF Initial Determination	206 ^A	N/A	
• CAF Initial Determination	11	N/A	
1 January 1998 Position	248	N/A	248
1/1/98—30/6/99: FMA Act			
• Legislation	3	0	
• RMF Determinations	17	2	
• CAF Determinations	1	0	
30 June 1999 Position	21	2	267
1/7/99 onwards: FMA Act as amended by FMLA Act			
• Legislation	10 ^B	2	
• s.20 Determinations	18	52 ^C	
November 2003 Position	28	54	241
Total Special Accounts and predecessors	297	56	241
Notes:			
^A This figure includes the establishment of a Services for Other Governments and Non-Agency Bodies Account (SOG Account) and an Other Trust Moneys Account (OTM Account) for each Department of State, Parliamentary Department and Prescribed Agency in existence at 1 January 1998. A total of 62 SOG Accounts and 62 OTM Accounts were established.			
^B This figure includes the National Cultural Heritage Account established by Section 25 of the <i>Protection of Movable Cultural Heritage Act 1986</i> (the original Act). Under the original Act, the Account was a component of the Trust Fund for the purposes of the Audit Act. However, the original Act was not included in Schedule 2 to the ATMA Act and, as such, the Account did not become a component of the RMF. The original Act was then amended by the <i>Protection of Movable Cultural Heritage Amendment Act 1999</i> . Section 25 was repealed and substituted with a provision establishing the National Cultural Heritage Account as a Special Account under the FMA Act.			
^C Determination number 2001/08, made on 30 June 2001, abolished four Special Accounts, including the Political Exchange Program Account. However, the Political Exchange Program Account has not been included in this figure, as it had already previously been abolished by a Determination made on 24 March 1998. The abolition of the Account has been included in the figure for RMF components abolished by Determination.			

Source: ANAO Analysis

Recommendation No.3

2.40 ANAO recommends that the Department of Finance and Administration maintain a comprehensive and accurate register of all Special Accounts.

Agency responses

2.41 All responding agencies agreed.

2.42 Two respondents also made comments on the recommendation, as follows:

- Finance stated that a complete listing of Special Accounts and their financial details is now published annually in the Consolidated Financial Statements. In addition, for operational purposes, Finance also maintains a register of all Special Accounts that contains references to the relevant legal authorities.
- DAFF noted the recommendation and stated that it believes it is also important that the roles and responsibilities between Finance and agencies regarding Special Accounts be clearly articulated to ensure all parties clearly understand and comply with their accountabilities.

Disclosure of Special Accounts

2.43 Financial reporting on the use of appropriations (including Special Accounts) is an important accountability function for the purposes of Section 83 of the Constitution.³⁷ This Section states that ‘no money shall be drawn from the Treasury of the Commonwealth except under appropriation made by law.’

2.44 The major financial reports prepared in the Commonwealth comprise the Budget Papers (including agency Portfolio Budget Statements—PBSs), the CFS and agency financial statements (which are tabled in the Parliament). While the requirement for individual agencies to report each Special Account (and their predecessors) for which they are responsible in their financial statements has not changed over time, reporting of Special Account activities in the Budget Papers and CFS has varied, as follows.

- The 1998–99 Budget Papers included details on estimated receipts and payments for each component of the RMF and CAF. Similar information was provided in earlier years in relation to the Trust Fund. Reporting of this information in the Budget Papers was discontinued in 1999–2000, but recommenced in the 2003–04 Budget Papers. For that year, each agency was required to disclose in its PBS the opening balances, receipts, payments, adjustments and closing balances for each individual Special Account for which it is responsible. Those requirements also applied to Special Accounts with nil balances and/or those that have not been used during the financial year.

³⁷ *Requirements and Guidance for the Preparation of Financial Statements of Commonwealth Agencies and Authorities—Reporting periods ending on or after 30 June 2003, unless amended, op. cit., paragraph 2C.1.1.*

- Until 1997–98, an aggregate financial statement for the Commonwealth was prepared and audited, pursuant to Section 50AB of the Audit Act.³⁸ The aggregate financial statement included details on the operations of the Trust Fund including opening and closing balances, receipts and payments for each individual Trust Account. For 1997–98 and later years, this statement was replaced by the CFS as required by Section 55 of the FMA Act.³⁹ Details of the operation of the RMF and CAF and, subsequently, Special Accounts were not included in the CFS for 1998–99 through to 2001–02 inclusive. Since the 2002–03 CFS, the opening balances, receipts, payments and closing balances of Special Accounts held by agencies have been disclosed.

Legislated Reporting Requirements

2.45 Separate annual reports are required by various enabling legislation to be prepared and tabled in each House of Parliament for 11 Section 21 Special Accounts. These requirements are in addition to the reports of financial transactions and position on each Special Account in the notes to agencies' financial statements.

2.46 In the period from 1999–2000 to 2001–02, annual reports were prepared and tabled for each of the 11 Special Accounts where legislation required an annual report. Reports were not tabled in 1997–98 or 1998–99 for the Superannuation Holding Accounts Account, established by the *Small Superannuation Accounts Act 1995* and administered by the Australian Taxation Office.⁴⁰ Since 1999–2000, the Australian Taxation Office's Annual Report has included a section reporting on the Superannuation Holding Accounts Account.

2.47 ANAO identified four Accounts where a substantial period of time elapsed between the conclusion of the relevant financial year and the tabling of one or more annual reports. Whilst particular timeframes are not specified, the legislation establishing each of these four Accounts requires that a report be prepared as soon as practicable after the end of each financial year. The four Accounts involved were:

- the National Cultural Heritage Account—in one year (2000–01) the report was tabled 11 months after the end of the financial year;

³⁸ This statement comprised Fund and Public Account balances, the CRF, the Trust Fund, the Loan Fund, the Budget Outcome, Determinations by the Minister for Finance and further information relating to the financial affairs of the Commonwealth.

³⁹ Consolidated Financial Statements were also prepared for 1995–96 and 1996–97, prior to the commencement of the FMA Act.

⁴⁰ Section 93 of the *Small Superannuation Accounts Act 1995* requires a report to be prepared on the operation of the Act each year, as soon as practicable after the end of each financial year. The report is required to be tabled in each House of the Parliament within 15 sitting days of the Minister receiving the report.

- the National Residue Survey Account—in one year (1999–2000) the report was tabled 11 months after the end of the financial year;
- the Natural Heritage Trust of Australia Account (NHT Account)—between 1997–98 and 2001–02, the tabling of the reports varied from six months to more than 14 months after the end of the respective financial years; and
- the Australian Land Transport Development Account (ALTD Account)—between 1997–98 and 2001–02, the tabling of reports varied from 11 months to more than two years after the end of the relevant financial years. On this issue, the Department of Transport and Regional Services (DoTARS) commented to ANAO in November 2003 that the *Australian Land Transport Development Act 1988* (ALTD Act) does not specify a timeframe in which the report is to be tabled and that, for various reasons, it took longer to secure tabling in some years than others. DoTARS advised ANAO in November 2003 that it did not consider that this reflected a deficiency in reporting in the sense that it has not breached legislation. However, DoTARS advised ANAO that it has taken action to ensure that reports are tabled in the six months following completion of the financial year.

Recommendation No.4

2.48 ANAO recommends that, where legislation requires an annual report to be prepared in relation to a Special Account, agencies adopt procedures that ensure a timely report is prepared and presented to the Parliament.

Agency responses

2.49 All responding agencies agreed.

2.50 Two respondents also made comments on the recommendation, as follows:

- DAFF commented that the Budget Estimates and Framework Review has further strengthened the importance of meeting all reporting deadlines. It noted that a challenge for agencies, including DAFF, will be to meet the reduced reporting timeframes for the audited financial statements in 2003–04 and 2004–05 and beyond, and that DAFF is working with ANAO and Finance to ensure the achievement of this requirement. DAFF suggested that Special Accounts with nil balances could be accounted for to Finance through mechanisms other than through the audited financial statements.
- ACIAR stated that it already has procedures in place.

Agency Financial Statements

2.51 The financial reporting requirements for Commonwealth agencies and authorities are contained in FMOs made under Section 49 of the FMA Act and Section 48 of the CAC Act. The FMOs provide minimum disclosure and reporting requirements for each Commonwealth agency and authority. In relation to Special Accounts, those entities are required to:

- separately disclose each Special Account for which they are responsible;
- state the purpose of each Special Account;
- provide financial information on a cash basis;
- report receipts, payments and opening and closing balances for each Special Account; and
- disclose major classes of assets relating to each Special Account.

2.52 Special Accounts are established either by Determinations made by the Finance Minister and tabled in the Parliament or through separate legislation. Accordingly, the population of Special Accounts is readily identifiable. However, a substantial number of Special Accounts have not been reported by agencies in their financial statements. During 2001–02, 266 Special Accounts existed but, of these, 108 (41 per cent) were not reported.

2.53 Figure 2.2 demonstrates that agencies' collective performance in reporting Special Accounts in their financial statements has been consistently poor and actually deteriorated between the introduction of the FMA Act and the commencement of this performance audit. In June 2003, ANAO identified to each relevant agency which Special Accounts the agency had failed to report in its 2001–02 financial statements so that these oversights could be corrected in the 2002–03 financial statements. Finance has also worked with agencies and the ANAO in examining the legal basis for Special Accounts and has increased the disclosure requirements for agency financial statements. The combined effect of this work is reflected in a significant improvement in disclosures in 2002–03 financial statements, with 17 per cent of Special Accounts not being reported.

Figure 2.2

Reporting of Special Accounts in Agency Financial Statements

Year	Number of Special Accounts in Existence	Number of Special Accounts Not Reported in Financial Statements	Not reported %
1997–98	256	82	32
1998–99	267	86	32
1999–00	274	104	38
2000–01	271	106	39
2001–02	266	108	41
2002–03	268	46	17

Source: ANAO analysis.

2.54 There is no apparent reason for Special Accounts not to have been reported. This is the case even where there is no balance and/or no transactions. Legal advice from AGS is that Section 48 of the FMA Act requires each agency that has a Special Account to record the Account in its books. This is because each Account represents an amount that is earmarked for certain purposes and which is appropriated. Even if the balance of the Account is zero, AGS advised Finance in February 2003 that it must be recorded because the Account exists and may be credited by the Parliament or by the Agency with amounts available to be spent on various matters.

2.55 In December 2003, ANAO sought details from agencies of 2001–02 and 2002–03 transactions and balances for those Special Accounts not reported in 2002–03 financial statements. This investigation revealed that, of the 46 Accounts not reported:

- thirty-nine Accounts had no balances and no transactions in either 2001–02 or 2002–03;
- one Account (the Services for Other Governments and Non-Agency Bodies Account of the Department of Veterans’ Affairs) has had a balance of \$6,563 since the Account was last reported in the agency’s 1998–99 financial statements;
- five Accounts had balances the last time they were reported in the respective agency financial statements, aggregating to \$45.5 million. There has been no subsequent reporting on the use of these balances. Although the relevant agencies advised ANAO that there were nil balances and no transactions in 2001–02 and 2002–03, there was insufficient information available to ANAO to confirm that the last reported balances had been debited in accordance with the expenditure purposes of each Account.

These Accounts are being further investigated by ANAO's financial statement auditors. They are identified in Appendix 1; and

- another Account (the Australia-Japan Foundation Account) has not been reported in any of the Foundation's financial statements for the period examined by ANAO (1997–98 to 2002–03). This Account was established by the *Australia-Japan Foundation Act 1976* to fund the operations of the Foundation. Among other things, it is to be credited with moneys appropriated by the Parliament to the Foundation, income from the investment of monies standing to the credit of the Account and proceeds from property disposals. The 2003 CFS⁴¹ stated that this Account had an opening balance of \$738 000 in 2002–03, with credits of \$2.80 million, debits of \$2.93 million and a closing balance of \$609 000.

Recommendation No.5

2.56 ANAO *recommends* that, to ensure all appropriations are properly managed, agencies establish a ledger record for all current Special Accounts for which they are responsible.

Agency responses

2.57 All responding agencies agreed.

2.58 Some respondents also made comments on the recommendation, as follows:

- DAFF stated that it has a chart of accounts in place that, among other things, separates each Special Account into a discrete set of account numbers. Appropriate controls are in place to ensure all appropriations are properly managed and that expenditure relating to any of DAFF's Special Accounts is made within the purpose of each of those Accounts.
- Treasury commented that it has established appropriate ledger records to ensure that it is able to manage (and report on) its Special Accounts. Treasury noted that all six of its valid (and current) Special Accounts were accurately reported in its 2002–03 Financial Statements.
- DFAT advised that its Financial Management Information System (FMIS) is configured to record all transactions through the departmental and administered Special Accounts.
- FACS commented that it does maintain separate records for all Special Account transactions.
- DIMIA stated that it has ledger records of all Special Accounts.

⁴¹ Consolidated Financial Statements for the Year Ended 30 June 2003, p.171.

- DEWR stated that it has implemented this recommendation and is fully compliant.
- HoR advised that separately identifiable ledgers already exist.
- ACIAR stated that it already maintains ledger records.

Accuracy of financial reporting

2.59 ANAO examined in detail the management of 19 Special Accounts by six agencies, including consideration of the accuracy of reporting of these Accounts. Deficiencies were found to exist in the reported balance of seven of these 19 Accounts, as follows:

- The balance of the NHT Account has been understated since 1999–2000 due to credits not being recorded and reported (see Chapter 3). As of 30 June 2003, prior to accounting journal entries being made to correct errors that had been made (see Chapter 4), the actual balance of the Account was \$485 million more than had been recorded.
- The balance of the Department of the Environment and Heritage’s (DoEH) Federation Fund Account was understated by \$30.2 million in 2001–02 because a debit had been made that was outside the purposes of the Account (see Chapter 4). This error was corrected in the 2002–03 financial statements.
- The report on the operation of the *Ozone Protection Act 1989* contained in the DoEH’s 2000–01 Annual Report incorrectly set out the receipts to the Ozone Protection Account for that year. However, the Special Account receipts for that year were correctly reported in the agency’s audited annual financial statements within the Annual Report.
- A \$2.854 million credit adjustment to the opening balance of the ALTD Account was reported in DoTARS’ 2002–03 financial statements. Chapter 3 provides further details of the reason for this adjustment.
- The balance of the Rural Transaction Centres (RTC) Account was understated by \$8.343 million in DoTARS’ 1999–2000, 2000–01 and 2001–02 financial statements because that amount was appropriated separately to DoTARS to meet the costs of administering the programme (see Chapter 3). DoTARS’ 2002–03 financial statements acknowledged that the \$8.343 million understatement was a breach of Section 47 of the Telstra Corporation Act. This was corrected in the DOTARS’ 2002–03 financial statements
- The balance of the Regional Telecommunications Infrastructure Account (RTIA) has been understated since 1999–2000. In that year, the RTIA should

have been credited with \$81 million in proceeds from the second tranche sale of Telstra shares (Telstra 2) as well as \$48.243 million in funds from the first tranche sale of Telstra shares. Whilst the \$48.243 million was credited to the Account in its ledger, the financial statements did not reflect that the credit had occurred. Smaller reporting errors were also made in 2000–01 and 2001–02. In 2002–03, the cumulative effect of these errors (\$47.535 million) was corrected in the financial statements of DoCITA.

- The reported 30 June 2002 balance of the Television Fund Account was understated by \$0.818 million in DoCITA's financial statements because of unrectified reporting errors that were made during the 1999–2000 financial statement process. These errors were both identified and corrected as part of the 2002–03 financial statement process in consultation with the ANAO financial statement audit team.

2.60 In addition to those Accounts examined by ANAO in this performance audit, ANAO is aware of two agencies that undertook their own examination, during 2002–03, of financial records for a number of their Special Accounts, so as to assure themselves that Special Account balances had been correctly reported. In each instance, errors were detected, as follows:

- The Australian Customs Service (Customs) identified two instances where the balance of a Special Account could not be reconciled to individual records of transactions. During the course of the audit, Customs advised ANAO that there were errors in the recording and posting of some pre-1999 transactions that resulted in the balance of the Security Deposits Account being understated by \$748 134, with its OTM Special Account being overstated by this same amount. In addition, a further \$512 688 in the balance of the OTM Account was unable to be identified or supported by records. As part of the 2002–03 financial statements audit, ANAO recommended that Customs identify and resolve this remaining difference and review its processes for the management of this Special Account to ensure the accuracy and completeness of records.
- DoCITA examined the financial records and financial reporting of eight Special Accounts, namely: the Untimed Local Calls Access Account; the RTIA; the Federation Fund Account; the Television Fund Account; the Other Trust Monies Account; the NRS (National Relay Service) Account; the Universal Service Account; and the Standing Committee on Recreation and Sport Consultant Account. Errors were found in the reported balance of the RTIA, the Federation Fund Account and the Television Fund Account. These reporting errors were identified and rectified in 2002–03 as part of the financial statement preparation process.

3. Special Account Receipts

Introduction

3.1 The CRF established under Section 81 of the Constitution is considered to be ‘self-executing’.⁴² That is, moneys received by the Commonwealth automatically form part of the CRF, whether or not the Commonwealth has credited those moneys to a fund or account which is designated as the CRF.⁴³ This is the case, even where the money is received by entities that are legally separate from the Commonwealth.⁴⁴

3.2 The self-executing nature of the CRF was emphasised at the time the FMLA Act was introduced to convert components of the RMF and CAF to Special Accounts, both in the second reading speech for the legislation and the Explanatory Memorandum. Furthermore, May 1999 guidance from Finance to agencies on the transition from the RMF and CAF to Special Accounts stated that:

The FMLA Act reflects the “self executing” nature of the CRF which recognises the processing and recording of transactions of agencies in their own accounting systems as transactions of the CRF. This facilitates the move to devolved accounting and banking arrangements for agencies.

Central accounting for CAF and RMF components will be replaced with appropriation ledger records termed Special Accounts, which will be maintained by agencies. ...Where agencies previously relied solely on [*Finance*] for automatically recording RMF and CAF cash transactions, the recording of transactions of Special Accounts will be a new accounting function.

3.3 Accordingly, following the passage of the FMLA Act, agencies needed to develop and implement controls and systems that ensure their accounting records and financial reports accurately reflect those amounts placed in (or credited to) the appropriations they manage, including Special Accounts.

⁴² In 1998, the Solicitor-General issued an opinion stating that the CRF is self-executing. In addition, in May 2003, Finance advised the JCPAA that this point has been made known in proceedings involving both the Parliament and the High Court.

⁴³ *Cheques and Balances*, Department of the Parliamentary Library, Research Paper No. 16 2001–02, p.38.

⁴⁴ Department of Finance and Administration, Submission to the Joint Committee of Public Accounts and Audit’s Inquiry into the Draft Financial Framework Legislation Amendment Bill, op. cit., p.2.

Legal authority for credits to a Special Account

3.4 The Determination or legislation establishing a Special Account usually provides the legal authority for amounts to be credited to the Special Account, as follows:

- The Determination or legislation establishing a Special Account may outline the source of funds that must or may be credited to the Special Account. This may include funds from external sources (for example, industry levies, state contributions, money to be held on trust and gifts), notional payments within the CRF (such as transfers from one Special Account to another) and amounts appropriated for credit to the Special Account.
- Legislation may require certain amounts to be credited to a Special Account. This crediting happens by operation of law. No appropriation is necessary and no administrative action needs to be taken.

3.5 In addition, the annual Appropriation Acts include a standard clause that permits an appropriated amount to be credited to a Special Account in cases where any of the purposes of the Special Account are covered by an appropriation item. This is permitted to occur regardless of whether the annual appropriation item expressly refers to the Special Account, and irrespective of whether the establishing Determination or legislation provide for appropriated amounts to be credited to the Account.⁴⁵

3.6 In its recent inquiry into the Draft Financial Framework Legislation Amendment Bill, the JCPAA raised concerns that amounts could be credited from annual appropriations without the establishing Determination/legislation providing for such amounts to be credited to the Special Account. The JCPAA recommended that the annual Appropriation Acts not authorise the crediting of appropriated amounts to a Special Account, if the Act or Finance Minister's Determination that establishes the Special Account does not specifically provide for appropriated amounts to be credited to the Special Account.⁴⁶

Income from investment activities

3.7 According to Finance's October 2003 Special Account Guidelines, the policy regarding the earning of interest on amounts standing to the credit of Special

⁴⁵ In two instances, the establishing Determination of a Special Account explicitly provide that amounts appropriated by the Parliament for the outcome of a department can be credited to the Special Account. These instances are the Employee Entitlements Support Scheme Account and the Australian Council for Safety and Quality in Health Care Account.

⁴⁶ *Inquiry into the Draft Financial Framework Legislation Amendment Bill*, op. cit., Recommendation No.3.

Accounts is that no interest will be paid unless at least one of the following criteria⁴⁷ are met:

- legislation mandates the earning of interest;
- the Government approves the earning of interest;
- the Commonwealth is a Trustee and the Trust Deed mandates that the funds subject to the trust must earn interest; and/or
- the Commonwealth has a contractual obligation to pay interest on money it holds in a Special Account.

3.8 Prior to June 2003, these criteria had not been enunciated.

3.9 To date, Special Accounts have been credited with income from investment activities in three ways:

- legislation establishing two Special Accounts has specified that a fixed income percentage of the balance of the Account is to be credited to the Account;
- external investment of funds has taken place in accordance with Section 39 of the FMA Act; and
- interest equivalency payments have been made on departmental Special Accounts.

3.10 While the fixed income percentage and Section 39 approaches are direct and highly transparent, processes for Agency Banking Incentive Scheme (ABIS) payments were convoluted. For Finance, this involved relying on standard provisions of the annual Appropriation Acts to debit Finance's Outcome 2 appropriation ('Improved and More Efficient Government Operations') in order to credit Finance's own Special Accounts. For agencies other than Finance, the process relied on the authority of net appropriation agreements made under Section 31 of the FMA Act (see Chapter 4) to debit Finance's Outcome 2 appropriation and credit one of the agency's annual appropriations. Standard provisions of the annual Appropriation Acts could then be relied upon to debit the annual appropriation and credit the Special Account.

3.11 ABIS payments also did not rely on a clear authority in the establishing Determination or legislation. Instead, Finance relied on legal advice to make the payments.

⁴⁷ The guidelines note that these criteria are subordinate to any relevant legislation.

Fixed income percentages

3.12 Fixed income percentages apply to the Alcohol Education and Rehabilitation Account and the NHT Account.

3.13 The Alcohol Education and Rehabilitation Account was established by the *Alcohol Education and Rehabilitation Account Act 2001*. Under Section 6 of this Act, the fixed income percentage used to calculate annual interest earned for the 2001–02, 2002–03 and 2003–04 financial years is specified to be:

- the rate of interest earned by the Commonwealth, as at the end of the financial year, on deposits held with the Reserve Bank of Australia; or
- if the Finance Minister, by written instrument made within 28 days after the end of the financial year, determines a higher percentage—that higher percentage.

3.14 As at November 2003, no interest had been credited to the Account, as interest earned in respect of the 2001–02, 2002–03 and 2003–04 financial years does not have to be credited until 30 June 2004. The effect of the formula specified in the legislation⁴⁸ is that, by delaying the crediting of interest, rather than crediting the interest for each year at the end of each year, a greater amount will accrue to the Account.

3.15 Section 4 of the *Natural Heritage Trust of Australia Act 1997* (NHT Act) established the NHT Account. Interest can be credited to the NHT Account in two ways:

- under Section 6(1) of the NHT Act, amounts equal to income derived from the investment of money in the Account are to be credited to the Account; and
- under Section 6(2), an amount equal to the fixed income percentage of the uninvested money in the Account as at the end of the financial year must be credited to the Account. For financial years up to and including 2001–02, the fixed income percentage was eight per cent and for subsequent years it is the rate of interest earned by the Commonwealth, as at the end of the financial year, on deposits held with the Reserve Bank of Australia. In either instance the Finance Minister is able to specify a higher rate, but this has not yet occurred.

3.16 For both Special Accounts, the fixed income percentage is applied to the uninvested balance of the Account at the end of each year. There have been no investments made of funds standing to the credit of the Alcohol Education and Rehabilitation Account. The only investments made of funds standing to the

⁴⁸ The interest amount for a financial year is \$115 million less the sum of amounts credited to the Account in that financial year or an earlier financial year multiplied by the fixed income percentage.

credit of the NHT Account occurred on 30 June 1998 (\$1.16 billion) and 30 June 1999 (\$920 million). These investments left negligible balances remaining in the NHT Account as at the end of the respective financial years.⁴⁹ Had the funds remained in the NHT Account rather than being invested, fixed income percentage interest of \$173 million⁵⁰ would have been credited under Section 6(2) to the NHT Account.

3.17 Each investment was made in Internal Treasury Bills for the period between midnight on 30 June and the commencement of business on 1 July. Although Internal Treasury Bills have a nominal interest rate of one per cent per annum, no interest was paid for crediting to the NHT Account under Section 6(1) of the NHT Act. These investments were made by Finance as part of the normal end of year transactions that took place under fund accounting to ensure that none of the four Funds that made up the Commonwealth Public Account was in deficit as at 30 June. The abolition of fund accounting from 1 July 1999 meant that, in subsequent years, there has been no nominal investment of the balance of the NHT Account, with all amounts standing to the credit of the Account being included in the calculation of the fixed income percentage interest.

External investments

3.18 According to legal advice obtained by Finance in November 2002, to earn income from investment requires an actual power to invest either in the legislation establishing the Account, or in some other legislative provision such as Section 39 of the FMA Act. Section 39 of the FMA Act enables the Finance Minister or his delegate to invest public money, including that held in Special Accounts, in authorised investments.⁵¹

3.19 At the time this performance audit commenced in April 2003, Section 39 investment delegations had been issued in relation to 14 Special Accounts. In October 2003, following a Finance review of interest eligibility of Special Accounts in accordance with the recently promulgated interest crediting criteria, a revised delegation was issued reducing the number of Special Accounts with Section 39 investment powers to seven.

3.20 In the course of the transition from the Audit Act to the FMA Act, inconsistencies arose between the delegation of powers under Section 39 of the FMA Act, and the establishment of components of the RMF and CAF

⁴⁹ Interest of \$752 was credited to the Account for 1997–98 and \$277 645 for 1998–99.

⁵⁰ Comprising \$92 million for 1997–98 and \$81 million for 1998–99 (including \$7 million in compound interest on the 1997–98 investment).

⁵¹ These are Commonwealth or state/territory securities, securities guaranteed by the Commonwealth or a state/territory, a deposit with a bank, a bill of exchange accepted or endorsed by a bank, and a professionally managed money market trust (with certain conditions).

by Determinations under Sections 20 and 21 of the original FMA Act. On 16 December 1997, the Finance Minister delegated to specified Agency Chief Executives the power to invest public money that would be held in particular components of the RMF and CAF (the predecessors to Special Accounts). This delegation was prepared by Finance for the Minister. However, the delegation included the power to invest public money in a number of components that were not established on 1 January 1998, or subsequently. The effect was that investment powers were delegated in relation to seven components that were not created at law.

3.21 In 2000, the 1997 delegation was replaced with a consolidating delegation that aggregated subsequent amendments together with the original delegation. The deficiencies in the previous delegation were not corrected. In 2002, the 2000 delegation was replaced with a consolidating delegation that aggregated subsequent amendments together with the 2000 delegation. Again, the deficiencies were not corrected. In 2003, a new delegation was issued correcting the earlier deficiencies and making other changes to the Special Accounts for which Agency Chief Executives have investment powers.

Interest equivalency payments

3.22 ABIS came into effect on 1 July 1999 for agencies subject to the FMA Act. ABIS provided agencies with an opportunity to earn incentive payments on temporarily surplus departmental funds. Along with transactional banking arrangements, ABIS was intended to encourage agencies to manage working capital, including cash, in a more business-like manner.

3.23 For administered⁵² Special Accounts, amounts standing to the credit of a Special Account could only be invested where investment was prescribed by legislation (for example, as a fixed income percentage arrangement) and/or agencies administering the Special Account were delegated investment powers by the Finance Minister pursuant to Section 39 of the FMA Act. Departmental Special Accounts could obtain interest under these two arrangements and/or from ABIS. In October 2003, Finance advised ANAO that \$26.5 million in ABIS incentive payments had been credited to Special Accounts in 15 agencies during 2002–03.⁵³ The only Departmental Special Accounts examined as part of this

⁵² Administered items are revenues, expenses, assets and liabilities that the Government controls, but which an agency manages on the Government's behalf. In comparison, departmental items are resources (assets, liabilities, revenues and expenses) that agencies (or subsidiaries) control directly and use to produce outputs on behalf of Government - including outsourced activities funded and controlled by the agency.

⁵³ Finance further advised ANAO that it has only collected information on ABIS payments into Special Accounts for the 2002–03 year and not for earlier years. This data was by agency only and did not identify individual Special Accounts.

performance audit that had been credited with ABIS incentive payments were the three Finance Special Accounts that ANAO examined.

3.24 Following the Government's agreement to the recommendations of the Budget Estimates and Framework Review, ABIS was abolished from 1 July 2003. In accordance with Government policy, Special Accounts that meet the criteria for earning interest will be appropriated an interest equivalent amount from the Budget according to estimates agreed with Finance.⁵⁴ Once a direct appropriation has been made to agencies, each agency is to credit their Special Account with the interest equivalency payments on a quarterly basis, based on actual minimum monthly Special Account balances and the predetermined interest rate advised by Finance in deriving the initial estimates. The interest equivalency appropriation will be a separate appropriation, only to be used for interest equivalency payments for eligible Special Accounts, with unspent appropriations being taken into consideration in the following financial year's Budgetary process. Consistent with AGS advice, Finance requires a note to be included in each agency's PBS that allows the appropriation to be credited to the Special Account without the need to amend the Determination.

3.25 For 16 of the 19 Special Accounts examined in detail by the ANAO, the amounts credited to the respective Accounts were within the categories of credits specified in the establishing Determination/legislation. The three exceptions related to \$62.68 million in interest equivalency amounts under ABIS credited since 1 July 2000⁵⁵ to the Property Account, the Business Services Trust Account (BSTA) and (up to February 2001) the Comcover Account. Each of these Accounts is managed by Finance.

3.26 Since the commencement of ABIS, the approach adopted by Finance regarding the crediting of interest to its Special Accounts under ABIS was formulated through discussions with AGS.

3.27 In February 2001, an amendment to the Comcover Account⁵⁶ took effect that permitted interest earned on the investment of an amount, debited from the Account under Section 39 of the FMA Act, to be credited to the Account.⁵⁷ This amendment did not, and was not intended to, deal with incentive payments under ABIS.

⁵⁴ The equivalency payment estimate will be calculated by multiplying the estimated average quarterly Special Account balance by the OPA interest rate (the cash rate less 10 basis points).

⁵⁵ Data for 1999–2000 was not available.

⁵⁶ *Financial Management and Accountability (Comcover Special Account) Amendment Determination 2000/14*.

⁵⁷ On 9 October 2000, the then Minister for Finance and Administration had granted Comcover the power to invest funds in investments authorised by Section 39 of the FMA Act.

3.28 Amounts credited to Special Accounts under ABIS relied on the standard provisions of the annual Appropriation Acts rather than the provisions of Special Account Determinations. In December 2002, following a series of legal advices, doubts were raised within Finance about the validity of crediting ABIS interest equivalency payments to the Property Account and the BSTA. Finance discussed the issue further with AGS and obtained further legal advice in April 2003. In regard, to Finance’s Special Accounts, AGS drew the following conclusion:

In our view, Section 13 of Appropriation Act (No.1) 2002–03 would probably allow the Business Services Trust Account or the Property Account to be credited by the amounts of incentive payments ... Given the breadth of outcome 2 of the Act (“Improved and more efficient government operations”), and the specified purposes of the two Special Accounts, it seems to us that a purpose of each of the two Special Accounts is a purpose that is covered by Outcome 2. Amounts equal to the amounts of incentive payments could therefore be credited to the accounts.

3.29 In this context, Finance advised ANAO in January 2004 that it is of the view that the advice received from AGS supported the crediting of ABIS incentive payments to its Special Accounts. In relation to non-Finance Special Accounts credited interest under ABIS, AGS concluded that:

There is no express statement in the relevant series of Portfolio Budget Statements for Finance indicating that amounts appropriated to Finance in respect of ABIS may be credited to Special Accounts. Nevertheless, there would appear to be a reasonable basis for arguing that Parliament, in appropriating amounts to Finance for ABIS payments, impliedly authorised such crediting if Finance considered that to be an efficient, effective and ethical means of administering ABIS. Having said this, the position is not entirely clear, and it would be preferable in future for there to be a clearer indication of Parliament’s intention that particular amounts may be credited to a Special Account.

3.30 Following the abolition of ABIS from 1 July 2003, the Property Account and the BSTA are not being credited interest, as Finance did not make an application for interest under the new criteria approved by the Government.

Recommendation No.6

3.31 ANAO *recommends* that agencies maximise transparency over the operations of Special Accounts by, where necessary, seeking an amendment to relevant Determinations so that these Determinations identify all amounts that are to be credited to the Special Account.

Agency responses

3.32 All responding agencies agreed.

3.33 Some respondents also made comments on the recommendation, as follows:

- DFAT advised that it will review all Special Account Determinations to ensure they specify the types of receipts that can be credited to those Accounts.
- DIMIA stated that it will investigate the necessity for amending the Determinations and, where necessary, specify all amounts that are to be credited to the Special Accounts.
- DEWR stated that it has implemented this recommendation and is fully compliant.
- HoR commented that the Determinations of existing Accounts are being examined and it will ensure any Determinations specify amounts to be credited to Accounts.
- ACIAR stated that its establishing legislation specified amounts to be credited to the ACIAR Account.

Australian Land Transport Development Account

3.34 ANAO Audit Report No.21 of 2000–01, *Management of the National Highways System Program*, included an examination of the operations of the ALTD Account. The report found that successive Ministers had not made a charge rate Determination under Section 10 of the ALTD Act since 1993–94. This effectively meant that amounts had been accruing to the account using the charge rate of 4.95 cents per litre, as defined in Section 3 of the ALTD Act, resulting in a cumulative surplus in the ALTD Account.

3.35 In an effort to reduce the balance of the Account to zero, retrospective Determinations were made by the Minister for the financial years 1994–95 to 1999–2000 inclusive, setting a charge rate that attempted to equate the amounts credited to the ALTD Account with the amounts expended under the ALTD program for each of those financial years. The methodology adopted was provided to ANAO at this time, with ANAO’s financial statement auditors indicating that it complied with the ALTD Act. Determinations setting the charge rate for the financial years 2000–01 and 2001–02 have also since been made, again with the objective of equating the amount of road user charge with expenditure.

3.36 However, this current performance audit found that the amounts credited to the Account for the financial years 1994–95 to 2001–02, as ascertained by the application of the determined charge rate for each of those financial years, were incorrect. The determined charge rates for that period were stated to

two decimal places, whereas the underlying rate calculations by the agency aimed at ensuring a zero account balance were not rounded.⁵⁸ In most years, applying the rate actually determined by the Minister rather than the unrounded calculated rate meant the credit to the ALTD Account was greater than that recorded and reported by the agency.⁵⁹ Figure 3.1 below shows the cumulative effect on the Account balance of DoTARS using the unrounded rate rather than that determined by the Minister between 1994–95 and 2001–02. Figure 3.1 demonstrates that a difference of several decimal places in the rate can have a significant effect on the amount credited to the Account.

Figure 3.1
Credits to the ALTD Account as at June 2002

Year	ALTD Act		DoTARS' Calculations		Difference \$	Cumulative Effect \$
	Charge Rate Determined by Minister Cents per litre	Actual Credits \$	Unrounded Charge Rate Used Cents per litre	Credits Reported \$		
1994–95	3.40	820,286,987	3.3976114975	819,100,000	1,186,987	1,186,987
1995–96	3.16	834,324,548	3.1585435265	833,940,000	384,548	1,571,535
1996–97	3.20	839,092,007	3.2013805142	839,454,000	-361,993	1,209,542
1997–98	3.16	854,284,942	3.1550398540	852,944,000	1,340,942	2,550,484
1998–99	3.32	912,235,468	3.3231936989	913,113,000	-877,532	1,672,952
1999–00	3.10	855,652,018	3.0994528661	855,501,000	151,018	1,823,970
2000–01	3.35	876,078,733	3.3475690460	875,443,000	635,733	2,459,703
2001–02	3.97	1,063,664,017	3.9685256432	1,063,268,999	395,018	2,854,722

Source: ANAO analysis

3.37 In the DoTARS' 2002–03 financial statements, the opening balance of the account was increased by \$2 854 722. As the agency's intention is to maintain a zero balance in the Account, the charge rate for 2002–03 was determined in such

⁵⁸ DoTARS obtained legal advice on 28 July 2003 in relation to the current balance of the ALTD Account, which stated:

... where a statutory instrument determining a 'rate' identifies or specifies a particular number as the 'rate', only that number is the determined rate, notwithstanding general conventions of rounding. In the present case, therefore, we do not consider that the balance of the Account can be ascertained by using any charge rate other than that determined by the Minister for the relevant financial year and specified in the instrument of Determination. The Account balance must be determined by applying the determined rate. Thus, if the outcome of the application of the various formulae specified in the ALTD Act as the means of ascertaining the balance of the Account, using the determined charge rate, yields a credit, that is the correct balance of the Account, and not zero.

⁵⁹ In 1996–97 and 1998–99, applying the rate actually determined by the Minister rather than the intended Department rate meant the credit to the Account was lower than that recorded and reported by the Department.

a manner, and to sufficient decimal places, to reduce the balance of the Account to zero as at 30 June 2003.

Telstra 2 Social Bonus Funding

3.38 In 1999, the *Telstra (Further Dilution of Public Ownership) Act 1999* was passed to enable the Telstra 2 sale to proceed. Among other things, this legislation made amendments to provide for a \$671 million social bonus to be funded from the proceeds of the Telstra 2 sale.⁶⁰ Each element of the social bonus was to be credited to a Special Account (see Figure 3.2). Of these elements, DoEH administers the NHT Account, DoTARS administers the Rural Transaction Centres RTC Account with the remaining Special Accounts administered by DoCITA.

Figure 3.2
Elements of the Telstra 2 Social Bonus

Element	Special Account	Funding \$m
Extension of Natural Heritage Trust	Natural Heritage Trust of Australia Account	250
Extended access to untimed local calls	Untimed Local Call Access Account	150
Improved television reception, extended SBS television coverage and a New Media Unit within SBS	Television Fund Account	120
Rural Transaction Centres	Rural Transaction Centres Account	70
Rural and regional internet access	Regional Telecommunications Infrastructure Account	36
Remote telecommunications needs	Regional Telecommunications Infrastructure Account	20
Mobile phone coverage along highways	Regional Telecommunications Infrastructure Account	25
	Total:	671

Source: ANAO analysis.

3.39 Legislation required the \$671 million in social bonus to be credited to the respective Special Accounts in 1999, following the receipt of Telstra 2 sale proceeds. Because of the self-executing nature of the CRF, this crediting occurred by operation of law. Consistent with this principle, those elements of the Telstra 2 social bonus administered by DoCITA were recorded by this agency as being credited, in full, to the respective Special Account ledgers on 31 December 1999.

⁶⁰ *Telstra (Transition to Full Private Ownership) Bill 1998—Explanatory Memorandum*, Circulated by authority of Senator the Hon. Richard Alston, Minister for Communications, Information Technology and the Arts, p.2.

However, ANAO found that the manner in which DoTARS and DoEH recorded and reported transactions on the RTC Account and NHT Account respectively was inconsistent with legislative requirements.

Rural Transaction Centres Account

3.40 The *Telstra (Further Dilution of Public Ownership) Act 1999* inserted a new Part 9 (Sections 43 to 71 inclusive) into the Telstra Corporation Act relating to \$421 million of the Telstra 2 social bonus. Section 46 established the RTC Special Account. Section 48 provided that the RTC Account had the following purposes:

- the purpose of enabling people in rural areas to have access to services and technology that enable them to obtain information or carry out transactions;
- a purpose incidental or ancillary to the above purpose; and
- the making of grants of financial assistance for either of the above purposes.

3.41 Section 47 of the Telstra Corporation Act required that \$70 million be credited to the RTC Special Account as soon as practicable after the 'social bonus commencement day'. This day was defined in the legislation as being the day on which the total amount received by the Commonwealth by way of proceeds of the sale of shares in Telstra 2 first reached \$671 million. On 9 November 1999, a declaration was made that 22 October 1999 was the social bonus commencement day.⁶¹

3.42 Of the \$70 million required to be credited to the RTC Account, DoTARS recorded and reported in 1999–2000 only \$61.657 million as standing to the credit of the Account.⁶² The \$8.343 million difference represented DoTARS' initial estimate of the cost of administering and delivering the RTC programme. Instead of crediting the \$8.343 million to the RTC Account, it was made available as part of a departmental appropriation. DoTARS advised ANAO in November 2003 that the intent was to provide a high level of transparency regarding the allocation of funds between Administered funding and Departmental funding. The split of funding between the Special Account and the annual appropriations to the Department was disclosed in the 1999–2000 PBS.

⁶¹ *Social Bonus Commencement Day Declaration 1999 (No. 1)*, made by the Minister for the Arts and the Centenary of Federation acting for and on behalf of the Minister for Communications, Information Technology and the Arts, Commonwealth of Australia Special Gazette, No. S 540, Thursday 11 November 1999.

⁶² *Annual Report 1999–2000*, Department of Transport and Regional Services, p.277.

3.43 In August 2003, DoTARS obtained legal advice that confirmed the view formed by ANAO during this performance audit, that Section 47 of the Telstra Corporation Act had the effect of crediting the full \$70 million to the RTC Account. As a result, the full \$70 million should have been recorded and reported against the RTC Account, with Departmental costs being debited directly to the RTC Account rather than being separately appropriated.

3.44 Based on legal confirmation that the full \$70 million was automatically credited to the RTC Account, in addition to the \$8.343 million appropriated directly to DoTARS, the reported closing balance of the RTC Account was increased by \$8.343 million in the agency's 2002–03 financial statements. In November 2003, DoTARS advised ANAO that it had made arrangements with Finance to repay the unintended excess appropriation by way of a Special Dividend to the Government during 2003–04.

Natural Heritage Trust of Australia Account

3.45 The NHT Account was originally established in 1997 as part of the first sale of Telstra shares. From the proceeds of this sale, \$1.1 billion was allocated to the NHT. Further funding of \$250 million was allocated from the second sale of Telstra shares.

3.46 There are various provisions in the NHT Act permitting amounts from different sources to be credited to the NHT Account. At the time of ANAO's performance audit, a total of \$2.394 billion had been credited to the NHT Account. However, only \$1.909 billion of these funds had been recorded and reported by DoEH (see Figure 3.3).

Figure 3.3
Credits to the NHT Account as at June 2003

Legislative Basis for Credit	Source of Funds	Amount \$
Section 22 NHT Act	Telstra 1 proceeds	1 100 000 000
Section 22A NHT Act	Telstra 2 proceeds	250 000 000
Section 23 NHT Act	Annual appropriations from Parliament	785 957 276
Section 6(1) NHT Act	Interest from investment activities	Nil
Section 6(2) NHT Act	Fixed interest on uninvested balance of Account	235 499 341
Section 24 NHT Act	Gifts and bequests	8 617 188
Section 30A FMA Act	GST Credits	14 031 061
Total Credits		2 394 104 866
Total Reported Credits		1 908 605 525
Difference		485 499 341^A
Note:		
^A Refer to paragraph 3.49 for a reconciliation of how this amount was disclosed in DoEH's 2002–03 financial statements.		

Source: ANAO analysis.

3.47 The \$485 million difference between the amounts credited to the Account, and the amounts recorded by DoEH as being credited to the Account, relate to the treatment by the agency of Telstra 2 social bonus funds (\$250 million), and accumulated interest on the uninvested balance of the Account (\$235 million), as follows:

- Section 22A of the NHT Act required the first \$250 million in Telstra 2 proceeds to be credited to the NHT Account. Although this amount was credited to the Account in 1999 by operation of law, because of a misunderstanding of the operation of the NHT Act, DoEH did not record or report this credit to the NHT Special Account in the agency's accounting records, the agency's 1999–2000 financial statements or the 1999–2000 financial statements of the NHT.⁶³ Because of this misunderstanding, accounting records and financial statements for 2000–01 also did not report that \$250 million had been credited to the NHT Account. However, \$250 million made available in 2001–02 through an annual appropriation was credited to the NHT Account in that year.

⁶³ Section 43 of the NHT Act requires an annual report on the operation of the NHT Account, including financial statements, to be prepared and tabled in the Parliament.

- Section 6(2) of the NHT Act requires an amount equal to a fixed income percentage of the uninvested money in the Account⁶⁴ as at the end of each financial year to be credited to the NHT Account. However, over a number of years, as a result of the misunderstanding referred to above, DoEH recorded in its accounting records the taking up of annual appropriation monies for the purposes of the NHT Account in respect of Section 6(2) of the NHT Act.

3.48 According to legal advice obtained by DoEH in September 2003:

The crediting of amounts referred to in Sections 6(2) and 22A occurs by operation of law without any administrative action being taken. It is apparent that the debiting from the annual appropriations of amounts corresponding to those referred to in Sections 6(2) and 22A and the crediting of those amounts to the Trust were based on a fundamental mistake.

Specifically, in debiting the annual appropriation and crediting the Trust, the Department failed to realise that Sections 6(2) and 22A had operated by their own force to increase the balance of the Trust by the relevant amounts. The Department was labouring under a mistake of law, in that it failed to realise the legal effect of Sections 6(2) and 22A. It was also labouring under a consequential mistake of fact, in that it thought the amount standing to the credit of the Trust prior to the crediting of the annual Appropriation Acts was significantly less than it in fact was. In short, the action of the Department resulted in the relevant amounts unwittingly being credited twice to the Trust.

3.49 Until 2002–03, the financial statements of DoEH and the NHT reported the drawing down of the annual appropriations and not the automatic crediting of amounts under Sections 22A and 6(2). As a result, DoEH's 2002–03 financial statements were adjusted to reflect for the first time \$404 million in credits made between 1998–99 and 2001–02 that were required by Sections 22A and 6(2) to be credited by operation of law. A further \$81 million in credits required by Section 6(2) to be credited during 2002–03 to the NHT Account was separately disclosed in the agency's financial statements.⁶⁵ Corrections will also need to be made to the financial statements of the NHT contained within the NHT Annual

⁶⁴ Uninvested money refers to funds which have not been invested in accordance with other legislation, in particular, Section 39 of the FMA Act, and which have not been debited from the NHT Account.

⁶⁵ At the time ANAO brought to DoEH's attention the non-crediting of amounts required by the NHT Act to be credited (July 2003), DoEH had not credited the \$81 million in interest on the 30 June 2002 balance of the NHT Account to the Account. This was corrected by DoEH in September 2003 as a within year (2002–03) credit. The credit was able to be processed in September 2003, for the 2002–03 year, as the accounting records for 2002–03 had not been finalised at that time.

Report.

Recommendation No.7

3.50 ANAO *recommends* that, where legislation requires amounts to be credited to a Special Account, agencies develop and implement procedures that ensure full compliance with these requirements.

Agency responses

3.51 All responding agencies agreed.

3.52 Some respondents also made comments on the recommendation, as follows:

- DIMIA advised that it will review its procedures and ensure that these are in full compliance with the legislation.
- DEWR stated that it has implemented this recommendation and is fully compliant.
- The Federal Court stated that it is continuing to maintain, develop and implement procedures to ensure compliance within the current statutory framework (including the Rules of Court).
- ACIAR stated that it has procedures in place.

4. Use of Special Account Appropriations

Special Account purposes

4.1 Special Accounts allow amounts in the CRF to be set aside for particular spending purposes.⁶⁶ Accordingly, amounts in a Special Account are only supposed to be used for the specified purposes.⁶⁷ In relation to Special Accounts, in 2003, Finance advised the JCPAA that:

It is established that an appropriation has a twofold purpose. Not only does it authorise the Executive to withdraw moneys from the Treasury, it restricts expenditure to a particular purpose. In this respect, a valid appropriation must specify the purpose for which amounts are being appropriated. In its application to a Finance Minister's Determination, the standing appropriation provided by Section 20(4) [of the FMA Act] would clearly appear to satisfy both these requirements, assuming that the Determination stipulates with reasonable clarity the purposes of the account and the amounts to be credited to it.⁶⁸

4.2 In its recent report on the draft Financial Framework Legislation Amendment Bill, the JCPAA recommended that Special Account Determinations include a reference to amounts that are allowed or required to be debited from a Special Account and that this reference be linked to the purposes of the Account.⁶⁹ In this context, included in the 19 Special Accounts examined in detail by the audit were two where ANAO found debits had been made other than for purposes specified in the establishing legislation or Determination, or there were doubts about whether the debits accorded with the purpose of the Account.

4.3 The first instance involved the Property Group Account administered by Finance. The Determination establishing this Account stated that the purpose of the Account was to provide for:

- expenditure related to the real property of the Commonwealth in and outside Australia, including expenditure on acquisition or leasing of property, construction, repairs, maintenance, management, running costs and financing costs;
- payments to the CRF, as agreed from time to time by the Finance Minister and the relevant Minister; and

⁶⁶ *Financial Management Legislation Amendment Bill 1999—Explanatory Memorandum*, Clause 24.

⁶⁷ *Hansard*, JCPAA, 7 March 2003, pp. PA 8, 15, 23, 43, 44, 45 and 47.

⁶⁸ *Second Submission to the Inquiry by the Joint Committee of Public Accounts and Audit into the draft Financial Framework Legislation Amendment Bill*, op. cit., pp.26–27.

⁶⁹ *Inquiry into the Draft Financial Framework Legislation Amendment Bill*, op. cit., p.33.

- payments to the CRF required by law.

4.4 Since 2000–01, Finance has debited the Property Account with a total of \$12.5 million representing a share of indirect expenses, internal service charges and overhead expenses initially paid by the agency out of its annual appropriations. Similar action was taken in relation to Finance’s other business operation Special Accounts (the BSTA Account and the Comcover Account). However, in these latter instances, the respective Determinations both included specific provision for indirect costs to be debited to the Account. No such provision exists for the Property Account.

4.5 During 2002, Finance obtained legal advice on the use of the Property Account, BSTA Account and Comcover Account for meeting indirect and overhead costs, and for crediting of interest to each Account. The most recent legal advice obtained by Finance included the following excerpts:

The position is not as clear in relation to whether the Property Special Account may be debited for the purpose of meeting indirect and overhead expenses related to the administration of the Account... We consider that there is some doubt whether such expenditure could be regarded as sufficiently related to those matters given the absence of any reference to “incidental matters or administration”. There is, however, an argument that there is a general connection between such expenditure and those specified matters. The strength of that argument will obviously depend to some extent on just how ‘indirect’ the expenses are in relation to the purposes of the Account and its administration.

4.6 In January 2004, Finance advised ANAO that it is of the view that the legal advice obtained from AGS supports the position taken.

4.7 The second instance involved one of the Federation Fund Special Accounts that have been established for a number of agencies. The purpose of each Federation Fund Account was ‘for expenditure on substantial capital projects throughout Australia which will mark the centenary of Federation and make a significant and lasting contribution to the Australian community’.

4.8 In the examination of DoEH’s Federation Fund Special Account, ANAO identified a \$30.2 million debit in 2002 to return money to the OPA. These funds had been allocated to Sydney Harbour Federation Trust (SHFT) for the decontamination of Cockatoo Island and related sites. DoEH advised ANAO during the course of the audit that delays in the passage of relevant legislation and in necessary plans to enable the decontamination work led to a decision to revise the funding arrangements for the whole SHFT. DoEH further advised ANAO that, as a consequence, the funds allocated within the Federation Fund were returned and funding was then provided to the SHFT through annual appropriations.

4.9 As the reported debit of \$30.2 million from the DoEH Federation Fund Account did not accord with the expenditure purposes of the Account, ANAO advised DoEH in July 2003 that it considered the Special Account balance was understated by \$30.2 million in the agency's 2001–02 financial statements. In its 2002–03 financial statements, DoEH corrected the reported position of its Federation Fund Account to include the \$30.2 million in the reported balance of the appropriation.

4.10 In addition, during the process of finalising this report, a further two Accounts were identified where there are doubts about the whether certain reported debits accorded with the specified purposes of each Account. These were the Campaign Account⁷⁰ and the Media Commissions Account⁷¹, both of which are administered by the Department of the Prime Minister and Cabinet (DPM&C). Similar to DoEH's Federation Fund Account, transfers to the OPA were reported in both 2001–02 and 2002–03 totalling \$6.47 million for the Campaign Account and \$12.9 million for the Media Commissions Account. In December 2003, DPM&C obtained the following advice in relation to these transactions, and a similar transfer reported in relation to a third Account:⁷²

It would not have been permissible for the Special Accounts to be debited in the present case for the purposes of making payments to the OPA. However, on the material provided, it does not appear that any official purported to debit the Special Accounts in respect of the return of cash to the OPA. Specifically, it does not appear that any debiting of the appropriations supporting the Special Accounts occurred.

What seems clear is that the balance standing to the credit of the Special Accounts should have been unaffected by the transfer of funds to the OPA. We note that if, contrary to our understanding, the amount had been debited from the Special Accounts as a result of that transfer, the proper course would be for the Special Accounts to be recredited. This Office has consistently advised that such recrediting is possible where the original debiting was not authorised by the terms of the Special Account.

In summary, the legal position seems to be that the amounts appropriated for the purposes of the Special Account were unaffected by the transfer of cash to the OPA, with the consequence that the full amount remains appropriated for the purposes of the Special Accounts. However, as a practical matter, only the relevant amounts currently held by your Department in its official bank accounts will be available to meet expenditure for the purposes of the Special Account.

⁷⁰ The purpose of this Account is for expenditure relating to the costs associated with running the central advertising system.

⁷¹ The purpose of this Account is for expenditure to transfer media commissions through the central advertising system to advertising agencies.

⁷² The Department's Services for Other Governments and Non-Agency Bodies Account, with a transfer of \$1.2 million reported in 2002–03.

Recommendation No.8

4.11 ANAO *recommends* that agencies ensure effective controls are in place to prevent Special Account appropriations from being debited other than for the purposes of the Special Account.

Agency responses

4.12 All responding agencies agreed.

4.13 Some respondents also made comments on the recommendation, as follows:

- DAFF advised that it commenced a review of its controls over Special Accounts in November 2003 to ensure they are sufficiently rigorous to ensure full compliance particularly in light of the practical implications stemming from issues arising during the 2002–03 Financial Statements concerning Section 48 of the FMA Act and the Strategic Ballast Water Research and Development Account (see below). DAFF stated that updated policies and procedures will be issued in early 2004 and additional training provided, additional controls have been established to ensure the validity of any new or existing Special Accounts and a Chief Executive Instruction will be issued in early 2004 to reinforce the importance of the strict requirements in correctly managing Special Accounts. DAFF also stated that it believes there could be practical issues for agencies if ‘clerical’ errors are not able to be corrected mid-year even where strong control frameworks are in place.
- DFAT advised that it will review all Special Account Determinations to ensure that they specify adequately the types of expenditure that can be debited to those Accounts.
- FACS commented that its current project to revise procedures and policy for Special Accounts will address this issue.
- DIMIA advised that its FMIS is configured so that Special Accounts are separated from Departmental and Administered at all times. DIMIA also holds separate bank accounts for Special Public Money specifically for appropriation drawdown and payments.
- DEWR stated that it has implemented this recommendation and is fully compliant.
- The Federal Court stated that it is reviewing all Special Account policies, including Drawing Right delegations, to ensure that they continue to prevent Special Account appropriations from being debited other than for the purposes of the Special Account.
- ACIAR stated that it has procedures in place.

Reimbursement of Departmental appropriations

4.14 Section 31 of the FMA Act enables the Finance Minister⁷³ to enter into agreements with Chief Executives of Agencies for the purposes of items in annual Appropriation Acts marked 'net appropriation'. Section 31 Agreements set out the extent to which certain receipts of each Agency may be deemed to be appropriated for the purposes of the delivery of Departmental outputs. Agreements are usually expressed in broad terms and include receipts from user charging activities and net receipts of an administrative nature.

4.15 Under standard provisions in the annual Appropriation Acts, each departmental item is to be marked 'net appropriation' for the purposes of Section 31 of the FMA Act. Under these standard provisions, if a Section 31 Agreement applies to a departmental item, then the amount specified in the item is taken to be increased in accordance with the Agreement.

4.16 Included in those Special Accounts examined by ANAO were two where debits were made to the Special Account to reimburse Departmental appropriations, via the operation of the relevant Section 31 Agreement. This involved:

- In November 2001, a \$500 000 debit was made to the Television Fund Special Account for consultants payments originally debited against DoCITA's Departmental Outputs Appropriation.
- During 2001–02 and 2002–03, a total of \$2.314 million was debited by DoCITA against the ULCAA to reimburse the Departmental Outputs Appropriation for estimated costs of administering the program. These debits have been funded from earnings on investments made under Section 39 of the FMA Act.⁷⁴ These expenses were not identified or itemised.

4.17 According to legal advice obtained by Finance on the Special Accounts framework, it is ordinarily not possible to debit a Special Account and credit an annual appropriation. This is because the purposes of the Special Account are normally different from, and narrower than, the purposes of an annual appropriation item. The uncontrolled crediting of amounts to Departmental appropriations therefore would be inconsistent with those statutory provisions

⁷³ This power has been delegated to the Finance Chief Executive.

⁷⁴ In August 2001, the Minister for Finance and Administration delegated to the DoCITA Chief Executive the power to invest, and re-invest, under Section 39 of the FMA Act, public money held in the ULCAA. In advising the Minister for Communications, Information Technology and the Arts of his decision to make a Section 39 delegation over the ULCAA, the Minister for Finance and Administration noted that the income from investments was only to be spent for the purposes specified in Section 54 of the Telstra Corporation Act.

that confine expenditure from Special Accounts to the specified purposes of the Account.

4.18 In response to ANAO's concerns, in October 2003, DoCITA obtained legal advice on the debits that were made to the Television Fund Special Account and the ULCAA. The legal advice concluded that the purpose of the expenditure when originally made from the Departmental Outputs Appropriations would have been within the purposes of the respective Special Accounts. However, the legal advice also concluded that it was not clear that DoCITA had the ability to reimburse the Departmental Appropriation under the terms of its Section 31 Agreement.

4.19 In the absence of a clearer statutory indication that such actions are permissible, DoCITA was advised that it would be preferable in future for expenditure that is to be attributed to a Special Account to be met directly from that Account rather than by way of reimbursement of a Departmental appropriation. DoCITA advised ANAO in October 2003 that it will endeavour in the future to have expenditure from these Accounts met directly by debiting the Account. It is also seeking to have its Section 31 Agreement amended. Subsequently, in December 2003, DoCITA advised ANAO as follows:

We do not disagree that the purpose of an annual appropriation is broader than that of a Special Account, however it is conceivable that, within the broader purpose of an annual appropriation, lies the narrower purpose of a Special Account. From a Special Account perspective, therefore, the crediting of an annual appropriation after debiting a Special Account would not be inconsistent with the statutory provisions that confine expenditure from Special Accounts to the purposes of the Special Account, provided that the goods or services (for which the annual appropriation was debited and Special Account credited) were within the purposes of the Special Account.

The Department considers that Finance should consider amending the relevant provisions of the annual Appropriation Acts and the FMA Act governing Section 31 Agreements to enable a Special Account to be debited and an annual appropriation credited where the debit and the credit are for a purpose within the purposes of the Special Account.

Appropriation controls

4.20 Special Accounts are required to be recorded as ledger accounts in the Financial Management Information System (FMIS) of each agency.⁷⁵ Furthermore,

⁷⁵ *Requirements and Guidance for the Preparation of Financial Statements of Commonwealth Agencies and Authorities—Reporting periods ending on or after 30 June 2003, unless amended, op. cit., paragraph 2C.1.23.*

to fulfil their obligation to account for the balances of all appropriations at any point in time, agencies are required to debit these appropriation ledgers whenever payments are made from a Special Account. Ledger accounting for the transactions of Special Accounts is a matter for agencies.

4.21 Maintaining proper records for the credits and debits to a Special Account is essential to management of appropriations. In turn, this will enable agencies to meet the requirements that moneys only be expended for the purposes for which they are appropriated and that the limit on any appropriation not be exceeded.⁷⁶ For Special Accounts, this means that the balance of the Special Account (which represents the limit on the appropriation) must never be negative.

4.22 Accounting practices in agencies for recording amounts credited to, and debited from, Special Accounts vary. Most of those agencies where ANAO examined the management of a selection of Special Accounts maintained accrual-based records of Special Account transactions within their financial systems. As Special Account appropriations are not accounted for on an accrual basis, these agencies find it necessary to adjust these records to determine the balance of the Special Account. In some instances, this process has led to errors in reporting on the balance of the Special Account.

4.23 In Finance, a different approach has been adopted to accounting for Special Account activities. Finance advised ANAO in November 2003 that each of its Special Accounts is maintained separately within the agency's General Ledger under a structure that can be analogous to a ledger. Finance further advised that, as each structure has the characteristics of a separate ledger, at any point in time a cash balance, supported at a transaction level, can be obtained for its Special Accounts.

4.24 ANAO also noted that there were a number of business operation Special Accounts in other agencies where there was no separate disclosure of the opening balance, credits and debits and closing balance of the Special Account. This was occurring where all the financial activities of the relevant agency were transacted through the Special Account.

Recommendation No.9

4.25 ANAO *recommends* that agencies re-examine their ledger accounting procedures and controls so as to ensure that an accurate daily record is maintained of the transactions and balances on each Special Account.

⁷⁶ *Financial Management and Accountability Orders 1997*, Order 2.3(3) and (f).

Agency responses

4.26 All responding agencies agreed, other than DoTARS, which agreed with qualification. DoTARS commented that it supported the thrust of the recommendation. However, it considered that, for the RTC Account, more effective and transparent control over correct attribution of Departmental costs to the Special Account is achieved by reimbursing costs incurred by DoTARS in administering the Account from the RTC on a regular basis throughout the year.

4.27 Some respondents that agreed also made comments on the recommendation, as follows:

- Treasury stated that, as part of updating the Drawing Rights issued under Section 26(c) of the FMA Act, it is currently re-examining its ledger accounting procedures to ensure that daily records are maintained of the transactions and balances of each Special Account.
- FACS commented that it undertakes monthly reconciliations between its Special Account ledger records and Cash and Appropriation Management Module data from Finance as part of its controls. Separate categories also now exist in its FMIS to monitor Special Account drawdowns separately.
- DIMIA advised that its Special Accounts are updated periodically and not daily due to difficulties in obtaining data from third parties. DIMIA undertook to investigate the feasibility of maintaining an accurate daily record of all its Special Accounts, and implement this if practical and cost effective.
- DEWR stated that it has implemented this recommendation and is fully compliant.
- The Federal Court advised that it is currently reviewing the ledger accounting practices and controls for each of its Special Accounts. As part of this review, the Court is investigating whether all Special Accounts should be maintained within the Court's FMIS, or whether some Accounts should continue to be maintained within the Court's case management system.
- HoR stated that it has controls in place to ensure all transactions are recorded accurately.
- ACIAR stated that it has accounting procedures and controls in place.

Non-existent but reported Special Accounts

4.28 The fact that Special Accounts are a component of the CRF means that debiting them may only take place in conjunction with an appropriation made by law. Where Special Accounts are properly established either by a Finance Minister's Determination (Section 20 Accounts) or in separate legislation (Section 21 Accounts), there exists an appropriation made by law for the purposes of the Special Account.

4.29 Establishing Special Accounts requires the approval of Parliament. This occurs either through Parliament not disallowing a Section 20 Determination or by Parliament passing legislation that establishes a Section 21 Special Account. In each instance, documentary evidence exists that a Special Account has been established. However, as part of this performance audit, ANAO identified 19 instances in 13 agencies where the agency had recorded and/or reported the existence of a Special Account when no Special Account had been legally established (see Figure 4.1).

Figure 4.1

Non-existent Special Accounts reported by agencies

Agency	Reported 'Special Account'	Payments 1997–98 to 2002–03 \$	Outcome
DoCITA	Multimedia Industry Development Account	Nil	Establishing Determination was signed but not tabled by Finance
	Services for the Australian Communications Authority Reserve	68 954 540	Breach of Section 48 of the FMA Act (in 1997–98 and 1998–99). A valid appropriation was at all times available.
Australian Customs Service	Air Express Courier Deposits Account	30 106 889	Breach of Section 48 of the FMA Act. Another valid appropriation now being used.
Department of Defence	Projects for Other Governments and International Bodies	378 628 618	Breach of Section 48 of the FMA Act. ^A Another valid Special Account existed.
Department of Education, Science and Training	Superannuation Productivity Benefits ATAS Tutors	20 000	Breach of Section 48 of the FMA Act. Another valid appropriation now being used.

Agency	Reported 'Special Account'	Payments 1997-98 to 2002-03 \$	Outcome
Department of Family and Community Services	Capital Replacement and Upgrade Account	1 386 524	Breach of Section 48 of the FMA Act. Another valid appropriation existed. Agency is seeking to have a Special Account established.
	Victorian Outside School Hours Care Official Trust Account	Nil, but \$4.41m has been credited	Breach of Section 48 of the FMA Act. Another valid appropriation existed. Agency is seeking to have a Special Account established.
Department of the Treasury	Ministerial Council on Consumer Affairs	917 589	Breach of Section 48 of the FMA Act. Another valid appropriation existed.
	Advisory Panel for Marketing in Australia of Infant Formula	71 231	Breach of Section 48 of the FMA Act. Another valid appropriation existed.
	Commonwealth Consumer Affairs Advisory Council	26 845	Breach of Section 48 of the FMA Act. Another valid appropriation existed.
Australian Electoral Commission	Funds Held Pending Refund	1 021 307	Incorrect disclosure made of a valid Special Account.
Department of Industry, Tourism and Resources	Projects for Other Governments and International Bodies Account	3 422 987	Incorrect disclosure made of a valid Special Account. ^B
Department of Health and Ageing	Australian Government Health Service Trust Account	Nil	Drawn out finalisation of the balance of a Trust Account that existed under the Audit Act but did not become a component of the RMF. Incorrectly reported as part of the RMF in 1997-98 and 1998-99. However, as no external payments were made in 1997-98 or 1998-99, Section 83 of the Constitution was not breached.
Department of the House of Representatives	Commonwealth Parliamentary Association - Training Head of Trust	295 168	Breach of Section 48 of the FMA Act. Another valid appropriation existed. Agency is seeking to have a Special Account established.
	Commonwealth Parliamentary Association - Commonwealth of Australia Branch	315	Breach of Section 48 of the FMA Act. Another valid appropriation existed. Agency is seeking to clarify the legal status of the monies held.

Agency	Reported 'Special Account'	Payments 1997–98 to 2002–03 \$	Outcome
Federal Magistrates Court	Court Litigants Trust Account	130 000	Agency is seeking to have a Special Account established.
Geoscience Australia	AGSO Departmental Joint Geology and Geophysics Research Station (JGGRS) Receipts and Payments Account	906 161	Breach of Section 48 of the FMA Act. Another valid Special Account appropriation has now been identified.
	JGGRS Official Operational Account	192 930	Arrangement set up by foreign government for which the agency provides administrative support. Funds are not under the custody or control of the agency. As a result, no appropriation was necessary.
Department of Agriculture, Fisheries and Forestry	Strategic Ballast Water Research and Development Account	485 583	Account existed up until 30 June 2000. Breach of Section 48 of the FMA Act since this date. Agency is seeking to have its Departmental appropriations increased by the amount of the balance in the Account at the time it was abolished.

Notes:

^A The agency's 2002–03 financial statements acknowledged that for a number of years it had reported on two Special Accounts, namely the *Projects for Other Governments and International Bodies* and the *Services for Non-Departmental Bodies*. However, the original Determination to establish components of the RMF did not include the *Projects for Other Governments and International Bodies* Account. The agency stated in its 2002–03 financial statements that, as the Accounts were operated on the basis that each represented a separate appropriation, it recognised that it had breached Section 48 of the FMA Act. It was intended that the 2002–03 financial statements report on only one Account, namely the *Services for Other Governments and Non-Agency Bodies Account*. However, for 2002–03 the agency continued to report two separate Accounts (the Account formerly reported as *Projects for Other Governments and International Bodies* was reported as *Defence—Services for Other Governments and Non-Agency Bodies* whilst the Account formerly reported as *Services for Non-Departmental Bodies* was reported as *Comcare Trust Account*).

^B The agency advised ANAO as follows in December 2003: *The account in question was transferred to DITR in the 1998–99 financial year as a result of the disbandment of the Department of Administrative Services to various other Commonwealth agencies in the previous year. During this transfer, the account was added to the Department's chart of accounts at Finance as Projects for Other Governments and International Bodies. The misnomer was perpetuated when Finance balances were confirmed back to DITR at the beginning of the 1999–00 year for the commencement of devolved banking. Following discussions between DITR and Finance earlier this year, it was agreed that the purpose of the Services for Other Governments and Non-agency Bodies Special Account meets the purpose of the transactions that have been recorded against the Projects for Other Governments and International Bodies Account. Accordingly, the balance of Projects for Other Governments and International Bodies funds was transferred to the Services for Other Governments and Non-agency Bodies Special Account and will continue to be operated from that Account.*

Source: ANAO analysis.

4.30 The immediate concern raised by this finding was that there may have been no legal appropriation under Sections 20 or 21 of the FMA Act to make more than \$486 million⁷⁷ in payments from these so-called 'Special Accounts'. Accordingly, there was a risk that there had been widespread, persistent breaches of Section 83 of the Constitution.

4.31 According to legal advice obtained by the ANAO, Section 83 of the Constitution is not breached where payments purportedly made from a non-existent Special Account could have been legitimately recorded against another, valid, appropriation. Unlike other agencies that had reported payments out of a non-existent Special Account, there was no alternative appropriation available to the Federal Magistrates Service for payments made out of its Court Litigants Trust Account, which is used to account for money held on trust. Payments into, and out of, the Account were made on the basis of Court Orders. The operation of the Account was consistent with similar accounts operated by other Federal courts, which had previously relied on the view that an appropriation was not necessary to spend trusts money. In this respect, in September 2003, Finance obtained legal advice on, among other things, whether an appropriation was required prior to the expenditure of funds held in the Court Litigants Trust Account. AGS advised the following:

Money held by the Commonwealth will form part of the CRF if it satisfies the description of 'revenues or moneys raised or received by the Executive Government of the Commonwealth' in Section 81 of the Constitution. Traditionally, the Commonwealth acted on the view that it was confined to revenue (eg taxes) or money in the nature of revenue (eg penalties and fines). This necessarily excluded money that the Commonwealth held for the benefit of another person, whether under a trust or otherwise. There are clearly arguments that can be put in support of this view.

There is, however, a reasonable basis for adopting the contrary view. The terms of Section 81 simply refer to money 'received' by the Commonwealth, and there is no compelling basis for reading the reference to 'moneys' as confined to money in the nature of revenue. Further, the Commonwealth has a strong policy preference for treating all money held by it as part of the CRF. Consistent with these considerations, the Commonwealth now acts on the view that the reference to 'revenues or moneys' in Section 81 of the Constitution is not limited to revenue or other money of that nature but extends to money borrowed by the Commonwealth and 'trust money' or money held otherwise than for the use or benefit of the Commonwealth.

⁷⁷ As these instances involved apparently non-existent Special Accounts, ANAO did not examine the purposes for which the moneys were used or other internal controls over the relevant funds. The focus was on determining the legal status of the arrangements and identifying what, if any, alternative valid funding mechanisms were available. That said, ANAO saw no evidence that the payments were not for proper purposes.

Once it is established that certain money forms part of the CRF, Section 81 of the Constitution provides that it may be appropriated for the purposes of the Commonwealth and Section 83 of the Constitution provides that the appropriation must be made by law. Accordingly, special public money (incorporating the money in the Litigants Fund) requires an appropriation under Section 83 of the Constitution prior to its expenditure.

4.32 In this context, the Court is now seeking to have a Special Account established for the receipt and payment of amounts held on behalf of litigants. However, ANAO notes that there remains doubt about the legal position in as much as there are different legal views on whether an appropriation is necessary to spend money held on trust. For example, AGS advised one agency in August 2003 that, if trust money is not held in a Special Account, no appropriation is necessary for the expenditure in accordance with the terms of the trust of that money. This advice was premised on the view that there are strong grounds for arguing that the reference to ‘revenues or moneys’ in Section 81 of the Constitution is a reference to money raised or received on the Commonwealth’s own account rather than in the capacity of trustee or in some other fiduciary capacity.

4.33 ANAO considers that continuing uncertainty about whether or not an appropriation is required for expenditure of money held on trust by the Commonwealth is not conducive to sound financial management. Further, ANAO notes that, should it be resolved that an appropriation is required to spend money held on trust, changes to financial management procedures will be necessary for some agencies. Firstly, there are numerous agencies with an OTM Account⁷⁸ that do not report trust moneys as standing to the credit of their OTM Account, or another appropriation. Secondly, where agencies do not have an OTM Account,⁷⁹ another appropriation source would need to be found. Otherwise, payments may be made in breach of Section 83 of the Constitution.

Recommendation No.10

4.34 ANAO *recommends* that the Department of Finance and Administration take steps to resolve financial framework issues concerning whether an appropriation is needed for the expenditure of money held by agencies on trust, and inform agencies accordingly.

⁷⁸ At the time the FMA Act was introduced, an OTM Account was established under Section 20 of the FMA Act for each Department of State, Parliamentary Department and Prescribed Agency in existence at this date. The establishing Determination permits ‘money that is held in trust for, or otherwise for the benefit of, a person other than the Commonwealth to be credited to each OTM Account.’ Accordingly, Special Public Money, including trust money, may be credited to OTM Accounts.

⁷⁹ At the time of ANAO’s performance audit, there were 19 FMA Act agencies that had been prescribed after 1 January 1998 and, accordingly, did not have an OTM Account.

Agency responses

4.35 All responding agencies agreed.

4.36 Two respondents also made comments on the recommendation, as follows:

- Finance stated that it considers the matter is settled. An appropriation is required for the expenditure of moneys held on trust. Finance will be issuing formal guidance to ensure this information is readily available to all FMA Act agencies.
- The Federal Court stated that it strongly agreed with the recommendation, and considers it would also be of significant assistance to agencies if Finance were to provide timely and effective advice on whether an appropriation is needed in relation to each Special Account maintained by an agency.

Accounts and records

4.37 Each of the 19 instances of non-existent Accounts had the potential to adversely impact on the preparation of affected agencies' financial statements. Accordingly, as part of the 2002–03 financial statement audit process, ANAO's Assurance Audit Services Group considered the effect of each instance on the financial statements, including whether agencies had met their responsibility under Section 48 of the FMA Act to keep accounts and records in such a manner that ensures the limit on any appropriation is not exceeded. In 12 instances across eight agencies, ANAO concluded that this requirement had been contravened. Disclosure of this was made in the respective financial statements.

4.38 ANAO considers that agencies must ensure that there is a valid legal instrument supporting the existence of each appropriation (including Special Accounts) before seeking to draw funds from the Treasury of the Commonwealth, and then reporting payments against these appropriations in the financial statements. In this respect, DAFF commenced actions in early 2003–04 to review all enabling legislation underpinning its existing special appropriations and Special Accounts to ensure there is valid legislation for each of these items. DAFF has also commenced actions to ensure any new Special Accounts and special appropriations are underpinned by valid enabling legislation before being permitted to operate. It is also planned to incorporate rules regarding appropriations into DAFF's CEIs in 2003–04 to reinforce the absolute importance of strict adherence to the appropriation framework.

4.39 In addition to individual agency responsibilities, Finance is responsible for overseeing the administration of appropriations and cash drawdown

arrangements.⁸⁰ In this context, DoCITA commented to ANAO in November 2003 that Finance and agencies have a joint responsibility for ensuring that an appropriate control framework is implemented in relation to ensuring that a valid legal instrument exists to support the drawing of funds from the Treasury of the Commonwealth via appropriations.

Recommendation No.11

4.40 ANAO *recommends* that agencies implement appropriate controls that ensure a valid appropriation exists before seeking to draw funds from the Treasury of the Commonwealth.

Agency responses

4.41 All responding agencies agreed.

4.42 Some respondents also made comments on the recommendation, as follows:

- DAFF stated that it has appropriate controls in place and all Special Accounts were recently examined to ensure they were supported by valid underpinning legislation.
- Treasury commented that, notwithstanding that it agrees with the recommendation, it notes that in the three instances where it had reported the existence of a Special Account when no Special Account had been legally established, a valid appropriation did exist.
- DIMIA stated that appropriate controls are in place, with its Determinations dated 31 December 1997.
- DEWR stated that it has implemented this recommendation and is fully compliant.
- The Federal Court stated that it is continuing to strengthen its internal controls to ensure that a valid appropriation and Drawing Right has been issued before any funds from the Treasury are drawn.
- HoR commented that it has appropriate controls in place.
- ACIAR stated that it has procedures in place.

⁸⁰ Finance Circular 2003/03, *Drawing Rights: Payments and Debiting Appropriations*, 24 September 2003, paragraph 1.

Drawing Rights

4.43 Having an appropriation available for the use of public money is not, in itself, sufficient for such money, in fact, to be used. Assuming there is a lawful purpose for the spending of money, it may only be accessed by the means provided for by the FMA Act or other legislation applicable to specific appropriations. In this respect, the system of Drawing Rights under Sections 26 and 27 of the FMA Act provides a basis for controls over the drawing of money from the Commonwealth's cash holding; the approval of payments; and the application of limits on the amounts that can be spent. The Drawing Rights regime established by the FMA Act is intended to complement the Constitutional requirement that no money should be drawn from the CRF except under an appropriation made by law.

4.44 Section 27 of the FMA Act provides the authority for the issue, amendment and revocation of Drawing Rights. Section 26 of the FMA Act prohibits an official or Minister from doing any of the following except as authorised by a valid Drawing Right:

- make a payment of public money (Sub-section 26(a));
- request that an amount be debited against an appropriation (Sub-section 26(b)); or
- debit an amount against an appropriation (Sub-section 26(c)).

4.45 The Finance Minister has delegated the power to issue, amend or revoke Drawing Rights to each agency Chief Executive. In this context, ANAO examined the administration of Drawing Rights in four of the instances where an agency was able to rely on another appropriation for expenditure recorded against a non-existent Special Account.⁸¹ This examination considered whether valid and appropriate Drawing Rights were in existence to cover payments from all Special Accounts reported by the relevant agencies, not only those payments reported against the non-existent Special Accounts.

4.46 ANAO found that compliance with the Drawing Rights provisions of the FMA Act has been variable. Two agencies (the Department of Education, Science and Training and DAFF) were found to have issued and exercised legally valid

⁸¹ The four agencies were selected to enable an examination of the range of different approaches being relied upon in the absence of a valid Special Account existing. In addition, some agencies did not identify an alternative appropriation until later in the audit process.

Drawing Rights for payments reported from Special Accounts.⁸² Deficiencies were identified in the other two agencies examined, as follows:

- Since 1 July 1999, the Department of the Treasury has reported aggregate payments of \$246 million from Special Accounts.⁸³ Treasury issued a Drawing Right in 1999, but this instrument did not encompass payments from the agency's Special Accounts. A new Drawing Right was issued in May 2003 that encompasses payments from Special Accounts. This Drawing Right complies with two of the three requirements of Section 26 of the FMA Act but does not authorise officials to debit amounts against an appropriation (Sub-section 26(c)). Accordingly, up to May 2003, for payments from Special Accounts, the agency had not complied with the Drawing Rights provisions of the FMA Act. Since this date, there has been partial compliance with the Drawing Rights provisions. In October 2003, Treasury advised ANAO that it is updating its Drawing Rights to reflect the provisions contained in Sub-section 26(c) of the FMA Act.
- From time to time, the Department of Defence (Defence) issues a standing Drawing Right for specified appropriations and, within each specified appropriation, for defined purposes. However, no Drawing Rights have been issued to cover Special Account appropriations under Section 20 of the FMA Act because of an incorrect reference in the instrument of authorisation. Accordingly, for payments from Special Accounts, the agency had not complied with the Drawing Rights provisions of the FMA Act. This situation applies to \$372 million in reported payments between 1999–2000 and 2002–03. In November 2003, Defence advised ANAO that it had initiated remedial actions to make the delegation and ratify past actions. It had also requested AGS to conduct a legal review of Defence's delegation manual to be completed by the end of February 2004.

4.47 In September 2003, Finance issued a Circular to agencies that reaffirmed the legal requirements of the Drawing Rights framework established by the FMA Act (see Appendix 3). This Circular will provide a useful reminder to agencies of their legal obligations.

⁸² In relation to DAFF, Drawing Rights for payments from the agency's five Administered Special Accounts made explicit reference to the Drawing Rights provisions of the FMA Act. In relation to the agency's six Departmental Special Accounts, draw downs and appropriation debits were authorised by an officer with a delegation to issue Drawing Rights, but without explicit reference to the Drawing Rights provisions. In December 2003, in response to a draft report of this audit, DAFF obtained legal advice that: *There is nothing in Section 26 or 27 which says that the authorisations with which those sections deal have to recite the legal source of the authorisations. If, in fact, the draw downs have been made in accordance with the authorisation given by the DAFF Chief Executive, the FMA Act has been complied with.*

⁸³ Of this amount, \$243 million relates to the Royal Australian Mint and Coinage Account. The Royal Australian Mint is a semi-autonomous operating arm of the Department.

Recommendation No.12

4.48 ANAO *recommends* that agencies examine their financial procedures to ensure that valid Drawing Rights have been issued for all payments of public money and debits of appropriation ledger records.

Agency responses

4.49 All responding agencies agreed.

4.50 Some respondents also made comments on the recommendation, as follows:

- Finance reiterated that it has issued a Finance Circular to remind agencies of the need to properly administer Drawing Rights.
- DAFF stated that it has appropriate controls and procedures in place to ensure delegated officers correctly exercise Drawing Rights on all appropriations and payments of public money related to Special Accounts, both departmental and administered. It also recently introduced a further requirement to explicitly state the Section 27 Drawing Right delegation on relevant paperwork for departmental Special Accounts items.
- Treasury advised that it is currently updating its Drawing Rights issued under Section 26(c) of the FMA Act.
- DFAT advised that it will undertake a review of all current Drawing Rights to ensure that all Special Accounts have valid Drawing Rights.
- DIMIA commented that it has valid Drawing Rights in place.
- DEWR stated that it has implemented this recommendation and is fully compliant.
- The Federal Court agreed that agencies should examine their financial procedures to ensure that valid Drawing Rights have been issued for all payments of public money and debits of appropriation ledger records. The Court is reviewing all current Drawing Rights of funds from the Treasury and will put in place any additional controls that might be needed to ensure that appropriate Drawing Rights are maintained for each of the Court's accounts. The Court is also reviewing its internal controls with respect to its financial delegations and security and authorisation controls within its FMIS.
- HoR stated that valid Drawing Rights have been issued for all payments and debits of appropriation ledger records.
- ACIAR stated that it is to take action to examine its Drawing Rights.

Negative Special Account balances

4.51 Sections 20(4) and 21(1) of the FMA Act provide standing appropriations up to the balance for the time being of each Special Account. A Special Account balance should not, by definition, be negative.⁸⁴ However, during the course of the audit, five instances were identified where the amounts reported to have been paid out from a Special Account exceeded the amounts available for payment from that Special Account. This resulted in a negative closing balance being reported as at 30 June of the respective year (see Figure 4.2). This indicated that the standing appropriation provided by the FMA Act in each of these instances had been exceeded, and the overdrawn funds had been spent without appropriation under law.

⁸⁴ Estimates Memorandum 2003/27, *Refresher on Appropriation Framework—Rules*, 28 August 2003.

Figure 4.2
Special Accounts with Reported Negative Balances

Account	Agency	Financial Year	Amount available for payments \$	Payments made \$	Closing Balance \$
Law Enforcement Projects Account ^A	Attorney-General's Department	1998–99	238 025	238 335	-310
Common Investment Fund Equalisation Account ^B	Attorney-General's Department	1998–99	630 507	635 192	-4 685
Services for Other Governments and Non-Agency Bodies Account ^C	Attorney-General's Department	2002–03	7 811 693	7 819 343	-7 650
NRS (National Relay Service) Account	DoCITA	2002–03	16 285 454	16 285 705	-251
Campaign Account ^D	Department of the Prime Minister and Cabinet	2002–03	3 258 880	3 262 599	-3 719

Notes:

^A The Attorney-General's Department advised ANAO in December 2003 this Account was not actually overdrawn. The negative balance for 30 June 1999 in the Department's financial statements was a reporting error that arose as a result of a rounding mistake made in the preparation of the financial statements.

^B The Insolvency and Trustee Service Australia (ITSA) administers the Common Investment Fund Equalisation Account. In 1998–99, ITSA was a division within the Attorney-General's Department. In October 2003, ITSA advised ANAO that the negative balance reported in the 1998–99 financial statements was a compilation error and that the actual balance was \$36,814. This was the opening balance disclosed in the 1999–2000 financial statements.

^C The Attorney-General's Department advised ANAO in December 2003 that, in 2002–03, the Department's Special Accounts were not overdrawn in total. The reported negative balance in the Services for Other Governments and Non-Agency Bodies Account arose from difficulties in reconciling the two Special Accounts reported in Finance's Cash and Appropriation Management Module to the Attorney-General's Department's FMIS which separately records the three active Special Accounts reported in the financial statements.

^D A major factor contributing to the negative balance for this Account was a reported transfer of \$2.47 million from the Account to the OPA in 2002–03. A similar transfer from this Account of \$4.00 million was reported for 2001–02 (refer to paragraph 4.10). In November 2003, DPM&C advised ANAO that the reported balance only reflected the cash balance in the agency's bank account and that, after taking into account funds held in the OPA, the actual funds available for this Special Account were \$1 466 281 as at 30 June 2003. DPM&C further advised that the correct balance is reflected in the CFS and that it is seeking advice as to whether a corrigenda is required to correct the note disclosure in its financial statements (Note 19).

Source: ANAO analysis of financial statements.

4.52 The instances of appropriations being overdrawn illustrated in Figure 4.3 were identified as at 30 June of the relevant financial year, being the only time throughout the financial year that the balances of the Special Accounts are required to be reported. However, the standing appropriations provided by Sections 20(4) and 21(1) of the FMA Act cannot be exceeded at *any time* during the year, not just at 30 June.

4.53 Of those five instances identified, ANAO examined in more detail the management of the NRS (National Relay Service) Account. ANAO found that, during 2002–03, this Account had regularly had a negative balance in DoCITA’s FMIS, with the amount of the recorded deficit at any point being as much as \$580 709. DoCITA advised ANAO in October 2003 that most instances where the FMIS recorded a negative balance can be attributed to timing differences between recording the actual receipt of funds into the Special Account and the recording of this receipt in the FMIS. After factoring in the timing difference, DoCITA advised ANAO that the maximum amount the Account was overdrawn at any stage during 2002–03 was \$33 000.

4.54 DoCITA further advised ANAO that the framework under which the NRS Account has been established means that, on occasions, there will be insufficient funds received into the Account for DoCITA to meet its contractual obligations with the NRS service provider. DoCITA advised that administrative steps are being implemented to prevent payments made from the Account exceeding the amount credited to the Account. More broadly, it has sought Finance’s advice on whether an alternative funding arrangement can be implemented, but this may require legislative amendment.

Recommendation No.13

4.55 ANAO *recommends* that all agencies ensure appropriate controls are in place to prevent the limit on Special Account appropriations from being exceeded, as reflected in negative Special Account balances.

Agency responses

4.56 All responding agencies agreed.

4.57 Some respondents also made comments on the recommendation, as follows:

- DAFF stated that it has controls in place to prevent any negative Special Account balances occurring.
- FACS commented that none of its Special Accounts has ever been drawn over and above the limit of appropriations plus any balances carried

forward. In addition, FACS' revised procedures will include a section on this issue.

- DIMIA advised that it reconciles its Special Accounts monthly and monitors expenditure to ensure that the Special Account appropriations are not exceeded.
- DEWR stated that it has implemented this recommendation and is fully compliant.
- The Federal Court stated that it currently has in place controls within its FMIS to ensure that appropriation funds are not overdrawn. The Court advised that it will continue to maintain these fund control measures.
- HoR advised that it has separate bank accounts that do not have overdraft facilities. Accounts are also regularly reconciled to confirm balances.
- ACIAR stated that it has procedures in place.

Fundamental mistakes of fact or law

4.58 Legal advice provided to agencies on the management of Special Accounts has identified at least three circumstances in which Special Accounts may be debited. These are: where the debit is for the purposes of the Account; to correct a clerical error; and where there has been a fundamental mistake made in the management of the Account.

4.59 ANAO's audit identified only one instance where a Special Account had been debited by an agency to correct a fundamental mistake. This occurred in relation to the NHT Account, in order to correct the errors outlined in Chapter 3 of this Audit Report. In this instance, DoEH was advised by AGS in September 2003 as follows.

There are, in our view, exceptions to the general proposition that a special account may only be debited for the specified purpose of the account. One such exception is where an amount has been incorrectly credited by virtue of a clerical mistake. Another exception, in our view, is where the crediting of the account occurred through the exercise of a discretion⁸⁵ by an official, and the exercise of that discretion was actuated by a fundamental mistake of fact or law. These exceptions arise by implication from the annual Appropriation Acts that permitted the relevant debiting and crediting, and are supported by considerations that have guided the courts in resolving a wide range of public law and private law issues in relation to mistake.

⁸⁵ The legal advice was that the NHT Act did not require amounts appropriated for DoEH in general terms in an annual Appropriation Act to be credited to the NHT Account, even where the relevant PBSs indicated that it was intended that some of the amount appropriated in the annual Appropriation Act was to be credited to the NHT Account.

4.60 DoEH was advised that the mistaken credits to the NHT Account, and corresponding debits of annual appropriations could be reversed in accordance with accounting practices. AGS did, however, advise DoEH that amounts of fixed income percentage interest earned on those amounts credited by mistake to the NHT Account from annual appropriations could not be debited from the Account. In this context, the total amount debited from the NHT Account was \$378.53 million, representing \$250 million in Telstra 2 sale proceeds and \$128.53 million in interest. The \$107 million difference between the \$485 million in credits not previously recorded (see Chapter 3) and the amount debited to correct the mistakes relates to:

- \$48.94 million of corrections made within the 2002–03 accounts and records, rather than as an end-of-year adjustment. This amount related to interest from annual appropriations credited during 2002–03 in the agency’s financial records, which was then reversed prior to finalisation of the 2002–03 financial statements;
- \$37.27 million of interest earned on amounts credited in error. As indicated above, legal advice was that these amounts could not be debited to reduce the balance of the Account; and
- a \$20.77 million recalculation by DoEH of the amount of annual appropriation revenue previously credited to the Account that had been in the nature of interest. DoEH had previously recorded and reported⁸⁶ interest from appropriations of \$60.15 million in 2000–01 and \$47.33 million in 2001–02. The amounts debited from the NHT Account to reverse the fundamental mistake were \$80.17 million and \$48.08 million respectively, an aggregate difference of \$20.77 million.

⁸⁶ For 1999–2000 in both the Department’s financial statements and those of the NHT Account and, for 2000–01, in the Department’s financial statements, the NHT financial statements and the PBSs and Portfolio Additional Estimates Statements.

4.61 Finance commented to ANAO in November 2003 that, in the context of its 2002 review of Special Accounts, it examined the legislative framework and, through the Financial Framework Legislation Amendment Bill, put forward a number of amendments resolving and clarifying issues that required addressing. Finance has also sought legal advice on a range of legislative provisions relevant to Special Accounts. ANAO was advised that none of these processes of review has identified any fundamental problems with the financial framework for Special Accounts, rather the issues are largely ones of implementation.

Canberra ACT
30 January 2004



P. J. Barrett
Auditor-General

Appendices

Appendix 1: Special Accounts that have existed

Figure A1 below contains all 297 Special Accounts (and their predecessors) that have existed. The table, which lists Accounts for each agency organised on a portfolio basis, also shows the following:

- The legal status of each Account. The relevant column gives the date establishing Determinations were made (for Accounts established by Finance Minister Determinations) or the name of the Act establishing the Special Account. For those Accounts that have been abolished, the legal status column is annotated 'abolished' with the date of the abolishing determination or the date of repeal of the establishing Acts also noted.
- Closing balances reported for each Account as at 30 June 2003. This data has been taken from each Agency's 2002–03 Financial Statements. As outlined in Chapter 2, some Accounts have not been reported in Agency financial statements. For these Accounts, the balances were obtained from agencies after the completion of the 2002–03 Financial Statements. These closing balances are identified by notes within the table.
- Total reported credits to the Accounts for the period 1997–98 to 2002–03 inclusive. This includes, where applicable: appropriations; receipts from other sources; Goods and Services Tax credits; adjustments; realisations of investments; interest; refunds credited; costs recovered; and all other receipts reported in Agencies' financial statements.
- Total reported debits from the Accounts, also for the period 1997–98 to 2002–03 inclusive. This includes, where applicable: payments for operations; payments to employees and suppliers; purchases of investments; adjustments; and all other payments as reported in Agencies' financial statements.

Figure A1
Special Accounts that have existed

Special Account Name	Legal Status	30/6/03 Balance	Total Reported Credits	Total Reported Debits
Department of Agriculture, Fisheries and Forestry				
Australian Quarantine and Inspection Service	Determination 31/12/97	\$21,732,265	\$906,143,789	\$865,828,513
Federation Fund	Determination 9/11/98. Abolished 25/6/03	Nil ^A	Nil	\$12,000,000
Forestry Account	<i>Forestry and Timber Bureau Act 1930</i>	\$127,190	\$4,946,700	\$4,947,000
Income Equalisation Deposits	<i>Loan (Income Equalization Deposits) Act 1976</i>	Nil ^A	\$856,382,524	\$1,201,322,043
Meat and Inspection Service	Determination 31/12/97	Nil	\$408,528,508	\$396,764,255
National Action Plan for Salinity and Water Quality (National Activities)	Determination 24/6/03	N/A	N/A	N/A
National Cattle Disease Eradication	<i>National Cattle Disease Eradication Reserve Act 1991</i>	\$14,118,633	\$856,288,681	\$856,292,647
National Residue Survey	<i>National Residue Survey Administration Act 1992</i>	\$14,783,754	\$63,270,509	\$63,181,461
Natural Resources Management	<i>Natural Resources Management (Financial Assistance) Act 1992</i>	\$727,221	\$91,974,273	\$92,005,589
Other Trust Moneys	Determination 31/12/97	Nil	\$2,021,869	\$2,128,102
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	\$34,322	\$36,005,895	\$28,053,952
Strategic Ballast Water Research & Development	<i>Ballast Water Research and Development Funding Levy Collection Act 1998. Abolished 30/6/00.</i>	N/A	\$1,184,000	\$189,000

Special Account Name	Legal Status	30/6/03 Balance	Total Reported Credits	Total Reported Debits
Attorney-General's Department				
Law Enforcement Projects	Determination 31/12/97	Nil ^A	\$230,000	\$548,310
AUSCRIPT—Commonwealth Reporting Service	Determination 31/12/97. Abolished 25/6/03	Nil	\$27,324,677	\$28,856,915
Legal Practice	Determination 31/12/97	^B	\$182,343,313	\$221,542,862
Other Trust Moneys	Determination 31/12/97	\$86,292	\$214,748	\$183,065
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	-\$7,650	\$45,711,244	\$53,318,401
Administrative Appeals Tribunal				
Other Trust Moneys	Determination 31/12/97	Nil ^A	Nil	Nil
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	Nil ^A	Nil	Nil
Australian Transaction Reports and Analysis Centre (AUSTRAC)				
Law Enforcement Projects	Determination 31/12/97. Abolished 25/6/03	Nil ^A	Nil	Nil
Other Trust Moneys	Determination 31/12/97	Nil	Nil	Nil
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	Nil	Nil	Nil
Australian Crime Commission				
Financial Action Task Force Asia Pacific Group Secretariat	Determination 7/4/98	\$389,225	\$544,857	\$1,030,642
Law Enforcement Projects	Determination 31/12/97	Nil ^A	\$929,157	\$1,998,388
Other Trust Moneys	Determination 31/12/97	Nil ^A	Nil	Nil
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	^C	\$86,414	\$77,335

Special Account Name	Legal Status	30/6/03 Balance	Total Reported Credits	Total Reported Debits
Australian Customs Service				
Security Deposits	Determination 31/12/97	\$7,640,227	\$60,667,754	\$57,653,894
Tradegate Fees	Determination 31/12/97	\$282,562	\$61,074,098	\$60,795,433
Industry Related Systems Development	Determination 31/12/97	\$2,677,137	\$4,468,374	\$1,791,237
Other Trust Moneys	Determination 31/12/97	\$5,940,780	\$15,185,933	\$12,852,214
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	Nil ^A	\$1,050,661	\$1,236,297
Australian Federal Police				
Law Enforcement Projects	Determination 31/12/97. Abolished 25/6/03	^D	\$247,620	\$806,854
Sponsored Activities	Determination 31/12/97. Abolished 25/6/03	^D	\$3,125,848	\$3,675,785
Australian Protective Service	Determination 31/12/97	\$20,260,626	\$474,312,254	\$464,058,318
Other Trust Moneys	Determination 31/12/97	\$1,234,437	\$8,872,918	\$7,987,319
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	\$11,298	\$3,980,706	\$3,994,327
Australian Security Intelligence Organisation				
Other Trust Moneys	Determination 31/12/97	Nil	Nil	Nil
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	Nil	Nil	Nil
Classification Board				
Other Trust Moneys	Determination 31/12/97	Nil	Nil	Nil
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	Nil	Nil	Nil

Special Account Name	Legal Status	30/6/03 Balance	Total Reported Credits	Total Reported Debits
Classification Review Board				
Other Trust Moneys	Determination 31/12/97	Nil	Nil	Nil
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	Nil	Nil	Nil
CrimTrac				
CrimTrac	Determination 9/8/00	\$14,060,000	\$133,411,902	\$118,637,255
Director of Public Prosecutions				
Law Enforcement Projects	Determination 31/12/97. Abolished 25/6/03	Nil	Nil	Nil
Other Trust Moneys	Determination 31/12/97	Nil	\$8,985,288	\$9,387,785
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	Nil	\$109,795	\$91,795
Family Court of Australia				
Other Trust Moneys	Determination 31/12/97	\$92,343	\$1,214,308	\$1,178,561
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	Nil	\$747,436	\$668,191
Federal Court of Australia				
Other Trust Moneys	Determination 31/12/97	\$100,782	\$7,313,276	\$7,390,397
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	\$10,398	\$838,625	\$879,676
Human Rights and Equal Opportunity Commission				
Other Trust Moneys	Determination 31/12/97	Nil ^A	Nil	Nil
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	Nil ^A	Nil	Nil

Special Account Name	Legal Status	30/6/03 Balance	Total Reported Credits	Total Reported Debits
<i>Insolvency and Trustee Service Australia</i>				
Common Investment Fund Equalisation	<i>Bankruptcy Act, 1966</i>	\$66,723	\$3,447,916	\$3,423,691
Confiscated Assets	<i>Proceeds of Crime Act, 1987</i>	\$72,174	\$32,108,601	\$32,347,017
Confiscated Assets	<i>Proceeds of Crime Act, 2002</i>	\$161,606	\$161,606	Nil
<i>National Native Title Tribunal</i>				
Other Trust Moneys	Determination 31/12/97	Nil ^A	Nil	Nil
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	Nil ^A	Nil	Nil
<i>Office of Film and Literature Classification</i>				
Other Trust Moneys	Determination 31/12/97	Nil	Nil	Nil
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	Nil	Nil	Nil
<i>Office of Parliamentary Counsel</i>				
Other Trust Moneys	Determination 31/12/97	Nil	Nil	Nil
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	Nil	\$14,816	\$14,816
<i>Department of Communications, Information Technology and the Arts</i>				
Arbbank	Determination 31/12/97	\$2,066,291	\$12,367,889	\$10,557,015
Cultural Ministers' Council	Determination 31/12/97. Abolished 30/6/00	N/A	\$2,727,576	\$3,472,680
Federation Fund	Determination 9/11/98	\$17,702,748	\$868,421,378	\$837,004,089
National Film and Sound Archive/ ScreenSound Australia	Determination 31/12/97	\$303,959	\$1,338,063	\$1,218,013
National Science and Technology Centre	Determination 31/12/97	\$389,088	\$11,549,235	\$11,549,567

Special Account Name	Legal Status	30/6/03 Balance	Total Reported Credits	Total Reported Debits
NRS (National Relay Service)	<i>Telecommunications (Consumer Protection and Service Standards) Act 1999</i>	- \$251	\$51,104,732	\$51,104,983
Other Trust Moneys	Determination 31/12/97	Nil	\$18,055,513	\$18,371,876
Regional Telecommunications Infrastructure	Determination 31/12/97	\$54,430,158	\$422,229,807	\$367,799,649
Service for Other Governments & Non-Agency Bodies	Determination 31/12/97. Abolished 30/6/01	N/A	\$97,947,925	\$99,580,718
Standing Committee on Recreation and Sport Consultant	Determination 31/12/97	\$56,437	\$2,201,276	\$1,825,732
Television Fund	<i>Telstra Corporation Act 1991</i>	\$28,209,810	\$121,808,103	\$93,598,293
Universal Service	<i>Telecommunications (Consumer Protection and Service Standards) Act 1999</i>	\$46,247	\$327,206,332	\$327,160,085
Untimed Local Call Access	<i>Telstra Corporation Act 1991</i>	\$34,160,153	\$160,016,446	\$125,856,293
National Archives of Australia				
Projects and Sponsored Activities	Determination 7/4/98	\$172,211	\$776,887	\$565,164
Department of Defence				
Defence Support Centre, Woomera	Determination 31/12/97. Abolished 25/6/03	Nil	\$39,502,286	\$31,137,444
Endowments Defence	Determination 31/12/97	\$263,908	\$849,128	\$829,006
Fedbrckenko Legacy	Determination 31/12/97	\$148,410	\$332,345	\$373,684
Other Trust Moneys	Determination 31/12/97	\$10,885,311	\$80,152,455	\$74,037,547
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	\$72,068,264	\$540,468,434	\$460,244,512
Young Endeavour Youth Program Operating Fund	Determination 31/12/97	\$2,035,363	\$3,790,560	\$3,185,904

Special Account Name	Legal Status	30/6/03 Balance	Total Reported Credits	Total Reported Debits
Department of Veterans' Affairs				
Australians at War	Determination 29/8/00	\$685,283	\$1,161,513	\$476,230
Defence Service Homes Insurance	Defence Service Homes Act 1918	\$58,292,000	\$205,778,136	\$186,219,194
Federation Fund	Determination 9/11/98. Abolished 25/6/03	Nil	\$16,900,000	\$16,900,000
Lady Davidson Repatriation Hospital	Determination 31/12/97. Abolished 30/6/98.	N/A	\$12,129,734	\$15,333,615
Other Trust Moneys	Determination 31/12/97	Nil	\$2,170,041	\$2,623,607
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	\$6,563	\$15,620,494	\$15,618,224
Department of Education, Science and Training				
Australian International Education Foundation International Marketing	Determination 31/12/97	\$2,373,000	\$37,222,104	\$36,728,194
Federation Fund	Determination 9/11/98	\$1,000,000	\$13,550,000	\$12,550,000
Higher Education (HECS)	Higher Education Funding Act 1988	Nil	\$8,335,637,256	\$8,335,637,256
Other Trust Moneys	Determination 31/12/97	\$2,691,000	\$3,110,000	\$2,615,036
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	\$1,634,000	\$16,467,982	\$18,026,548
Australian Research Council				
ARC Research Endowment	Australian Research Council Act 2001	Nil ^A	Nil	Nil
Department of the Environment and Heritage				
Australian and New Zealand Environment Council	Determination 31/12/97	\$12,429	\$1,014,378	\$2,067,718
Federation Fund	Determination 9/11/98	\$31,042,724	\$214,901,325	\$183,858,601
National Cultural Heritage	Protection of Movable Cultural Heritage Act 1986	\$357,000	\$382,050	\$525,050

Special Account Name	Legal Status	30/6/03 Balance	Total Reported Credits	Total Reported Debits
Natural Heritage Trust of Australia	Natural Heritage Trust of Australia Act 1997	\$484,147,043	\$4,420,714,590	\$3,936,567,547
Other Trust Moneys	Determination 31/12/97	\$10,591	\$1,347,517	\$1,907,184
Ozone Protection	Ozone Protection Act 1989	\$1,765,286	\$4,294,806	\$3,076,368
Sea Installations	Sea Installations Act 1987	Nil	Nil	Nil
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	\$3,424,057	\$82,363,617	\$90,339,969
Australian Greenhouse Office				
Australian Greenhouse Office	Determination 12/5/98. Abolished 15/3/01	N/A	Nil	Nil
Department of Employment and Workplace Relations				
Employee Entitlements Support Scheme	Determination 13/3/00	\$14,345,425	\$231,744,327	\$145,750,645
Other Trust Moneys	Determination 31/12/97	\$162,956	\$3,156,361	\$3,263,557
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	Nil	\$15,407,489	\$15,457,571
Seafarers Rehabilitation and Compensation	Determination 9/8/02	\$225,736	\$300,170	\$74,434
Australian Industrial Registry				
Other Trust Moneys	Determination 31/12/97	Nil	Nil	Nil
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	Nil	\$5,518	\$11,748
Equal Opportunity for Women in the Workplace Agency				
Other Trust Moneys	Determination 31/12/97	Nil ^A	Nil	Nil
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	Nil ^A	Nil	Nil

Special Account Name	Legal Status	30/6/03 Balance	Total Reported Credits	Total Reported Debits
Department of Family and Community Services				
ACT National Child Care Strategy	Determination 31/12/97. Abolished 25/6/03	Nil	\$547,837	\$932,309
Child Support	<i>Child Support (Registration and Collection) Act 1988</i>	\$28,426,000	\$3,695,027,624	\$3,690,756,057
Commonwealth/State Disability Agreement	Determination 9/11/98	\$415,000	\$3,100,490	\$2,684,999
National Housing Research	Determination 31/12/97. Abolished 25/6/03	Nil	\$972,900	\$1,175,564
National Youth Affairs Research Scheme	Determination 31/12/97	\$890,000	\$2,009,000	\$1,524,025
NSW National Child Care Strategy	Determination 31/12/97. Abolished 25/6/03	Nil	\$237,301	\$329,029
NT National Child Care Strategy	Determination 31/12/97. Abolished 25/6/03	Nil	\$929	\$30,566
Other Trust Moneys	Determination 31/12/97	Nil	\$73,302,698	\$116,923,463
QLD National Child Care Strategy	Determination 31/12/97. Abolished 25/6/03	Nil	\$485,875	\$1,403,504
SA National Child Care Strategy	Determination 31/12/97. Abolished 25/6/03	Nil ^A	Nil	Nil
Services for Other Governments and Non-Agency Bodies	Determination 31/12/97	\$373,000	\$47,666,616	\$49,045,481
Special Accommodation Assistance Program (SAAP) Research and Development	Determination 29/8/00	\$1,873,000	\$6,900,000	\$5,027,000
Students (Financial Supplement) Account	<i>Student Assistance Act 1973</i>	Nil ^A	Nil	Nil
TAS National Child Care Strategy	Determination 31/12/97. Abolished 25/6/03	Nil	\$85,459	\$213,953
VIC National Child Care Strategy	Determination 31/12/97. Abolished 25/6/03	Nil	\$39,520	\$103,129
WA National Child Care Strategy	Determination 31/12/97. Abolished 25/6/03	Nil	\$503,932	\$926,409
Centrelink				
Bertrand Albert Lindholdt Bequest	Determination 31/12/97. Abolished 15/6/00	N/A	\$100,000	\$103,985
Centrelink Special Account	Determination 6/8/99	\$113,311,649	\$7,583,954,235	\$7,471,087,808

Special Account Name	Legal Status	30/6/03 Balance	Total Reported Credits	Total Reported Debits
Louisa Jane Cave Bequest	Determination 31/12/97. Abolished 15/6/00	N/A	Nil	Nil
Other Trust Monies	Determination 31/12/97	\$667,638	\$36,332,350	\$35,719,091
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	Nil	Nil	Nil
Department of Finance and Administration				
Accounting Services for the ACT Government	Determination 31/12/97. Abolished 31/5/00	N/A	\$1,223,874,808	\$1,224,339,825
Accounting Services	Determination 31/12/97. Abolished 31/5/00	N/A	\$178,755,581	\$178,911,979
AusInfo	Determination 31/12/97. Abolished 30/4/00	N/A	\$112,286,788	\$133,739,052
Australian Property Group	Determination 31/12/97. Abolished 30/6/01	N/A	\$14,094,264	\$75,709,610
Business Services Trust Account	Determination 31/12/97	\$24,500,000	\$416,077,552	\$610,406,756
COMCAR	Determination 31/12/97. Abolished 30/11/00	N/A	\$50,509,597	\$58,779,614
Comcover Account	Determination 7/4/98. Amended 5/12/00.	\$156,712,000	\$381,533,115	\$309,811,795
Commonwealth Bank of Australia Public Share Offer	Determination 31/12/97	\$2,000	\$4,159,988,666	\$4,160,832,968
CSL Limited Public Share Offer	Determination 31/12/97. Abolished 30/6/01	N/A	Nil	Nil
Domestic Property Group	Determination 31/12/97. Abolished 29/11/00	N/A	\$1,019,212,006	\$1,239,154,919
Federation Fund	Determination 9/11/98. Abolished 30/6/01	N/A	\$9,000,000	\$8,999,751
Lands Acquisition	<i>Lands Acquisition Act 1989</i>	Nil	Nil	Nil
Other Trust Monies	Determination 31/12/97	\$60,000	\$156,492,114	\$156,470,864
Overseas Property Group	Determination 31/12/97. Abolished 29/11/00	N/A	\$977,044,518	\$1,478,100,112
Political Exchange Program	Determination 31/12/97. Abolished 17/7/98.	N/A	\$108,691	\$216,382
Property Account	Determination 29/11/00	\$285,170,000	\$1,400,507,000	\$1,114,814,000

Special Account Name	Legal Status	30/6/03 Balance	Total Reported Credits	Total Reported Debits
Provision of Accounting Services to Concord Hospital	Determination 31/12/97. Abolished 31/5/00	N/A	\$10,000	\$22,043
Provision of Accounting Services to Daw Park Hospital	Determination 31/12/97. Abolished 30/6/01	N/A	Nil	Nil
Removals Australia	Determination 31/12/97. Abolished 30/6/01	N/A	\$240,716,307	\$256,808,570
Returned Payments Reserve	Determination 31/12/97. Abolished 31/5/00	N/A	\$402,080,453	\$402,084,598
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	Nil	\$63,032,272	\$63,139,772
Telstra Public Share Offer	Determination 31/12/97	\$385,000	\$13,685,492,463	\$13,685,507,463
Australian Electoral Commission				
Other Trust Moneys	Determination 31/12/97	\$49,844	\$2,207,082	\$2,217,115
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	E	\$1,251,098	\$1,793,392
ComSuper				
Commonwealth Superannuation Administration	Determination 12/5/98. Abolished 1/7/02	N/A	\$150,471,000	\$110,126,723
ComSuper Special Account	Determination 14/6/02	\$3,253,000	\$93,829,000	\$99,046,000
Other Trust Moneys	Determination 31/12/97	\$5,418,529	\$123,874,671	\$123,659,292
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	\$618,177	\$3,025,197,491	\$3,024,208,020
CSS Board				
CSS Special Account	Determination 14/6/02	\$343,577	\$3,290,783	\$2,947,206
PSS Board				
PSS Special Account	Determination 14/6/02	\$521,211	\$3,726,761	\$3,205,550

Special Account Name	Legal Status	30/6/03 Balance	Total Reported Credits	Total Reported Debits
Department of Foreign Affairs and Trade				
Australia Abroad Council	Determination 31/12/97	Nil	\$4,983,496	\$5,274,323
Australia-China Council	Determination 31/12/97	\$17,689	\$4,183,754	\$4,785,795
Australia-France Endowment	Determination 31/12/97	\$25,053	\$472,863	\$518,119
Australia-India Council	Determination 31/12/97	\$4,502	\$4,622,269	\$5,210,594
Australia-Indonesia Institute	Determination 31/12/97	\$17,101	\$6,388,419	\$7,089,904
Australia-Korea Foundation	Determination 31/12/97	\$13,440	\$4,550,233	\$4,653,271
Australia-New Zealand Foundation	Determination 31/12/97	Nil ^A	Nil	\$27,369
Consular Services	Determination 31/12/97	\$29,123	\$1,638,539	\$1,637,261
Grawemeyer Award	Determination 31/12/97	Nil	\$143,000	\$188,857
Ministerial Publications	Determination 31/12/97	\$1,132	\$17,366	\$30,813
National Trade and Investment Outlook Conference 1996	Determination 31/12/97. Abolished 15/3/01	N/A	Nil	Nil
Official Administered Payments Account for Other Agencies	Determination 29/8/00	\$5,000,000	Nil	Nil
Other Trust Moneys	Determination 31/12/97	\$87,768	\$1,554,145	\$1,792,882
Overseas Property	Determination 12/3/02	\$62,907,195	\$310,757,579	\$247,850,384
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	\$1,241,173	\$17,249,910	\$15,928,942
AusAID				
Other Trust Moneys	Determination 31/12/97	Nil	Nil	\$436
Services for other Governments & Non-Agency bodies	Determination 31/12/97	\$139,562	\$4,183,541	\$4,096,186

Special Account Name	Legal Status	30/6/03 Balance	Total Reported Credits	Total Reported Debits
Australia-Japan Foundation				
Australia-Japan Account	Australia-Japan Foundation Act 1976	\$608,557 ^F	F	F
Other Trust Moneys	Determination 31/12/97	Nil ^A	Nil	Nil
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	Nil ^A	Nil	Nil
Australian Centre for International Agricultural Research				
Australian Centre for International Agricultural Research	Australian Centre for International Agricultural Research Act 1982	\$456,460	\$199,754,486	\$201,202,530
Other Trust Moneys	Determination 31/12/97	Nil	Nil	Nil
Service for Other Governments & Non-Agency Bodies	Determination 31/12/97	Nil	Nil	Nil
Australian Secret Intelligence Service				
Other Trust Moneys	Determination 31/12/97	Nil	Nil	Nil
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	Nil	Nil	Nil
Department of Health and Ageing				
Alcohol Education & Rehabilitation	Alcohol Education and Rehabilitation Account Act 2001	Nil	\$37,400,000	\$37,400,000
Australian Childhood Immunisation Register	Determination 9/11/98	\$1,933,727	\$32,218,596	\$30,284,869
Australian Council for Safety and Quality in Health Care	Determination 4/2/00	\$22,592,505	\$31,833,679	\$9,232,613
Federation Fund	Determination 29/8/01. Abolished 25/6/03	Nil	Nil	Nil
Gene Technology	Gene Technology Act 2000	\$3,211,883	\$17,440,452	\$14,228,569

Special Account Name	Legal Status	30/6/03 Balance	Total Reported Credits	Total Reported Debits
Human Pituitary Hormones	Determination 31/12/97	\$4,042,963	\$7,340,520	\$7,766,868
Industrial Chemicals	<i>Industrial Chemicals (Notification and Assessment) Act 1989</i>	\$1,729,903	\$6,691,870	\$4,961,967
Medical Research Endowment	<i>National Health and Medical Research Council Act 1992</i>	\$101,990,694	\$1,317,449,589	\$1,251,753,634
Ministerial Council	Determination 31/12/97. Abolished 25/6/03	Nil	\$1,019,000	\$1,938,562
Nationally Funded Medical Centres	Determination 31/12/97	Nil	\$31,201,275	\$32,794,960
Nursing Home Sales	Determination 31/12/97. Abolished 25/6/03	Nil	\$10,365,500	\$13,747,233
Other Trust Moneys	Determination 31/12/97	\$519,426	\$41,529,680	\$44,517,894
PBPA—Factor (f) Funds	Determination 7/4/98. Abolished 25/6/03	Nil	\$5,651,270	\$5,651,270
Rehabilitation Services	Determination 31/12/97. Abolished 25/6/03	Nil	\$659,484,701	\$661,566,583
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	\$27,461,789	\$1,986,559,207	\$1,963,331,618
Strategic Intergovernmental Nutrition Alliance	Determination 9/11/98	\$250,518	\$421,395	\$170,877
Therapeutic Goods Administration	<i>Therapeutic Goods Act 1989</i>	\$19,085,029	\$313,032,686	\$316,142,014
Australian Radiation Protection and Nuclear Safety Agency				
ARPANSA Account	<i>Australian Radiation Protection and Nuclear Safety Act 1998</i>	\$3,102,740	\$76,097,472	\$72,994,732
National Blood Authority				
National Blood Account	<i>National Blood Authority Act 2003</i>	N/A	N/A	N/A
Professional Services Review Scheme				
Other Trust Moneys	Determination 31/12/97	Nil ^A	Nil	Nil

Special Account Name	Legal Status	30/6/03 Balance	Total Reported Credits	Total Reported Debits
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	Nil ^A	Nil	Nil
Department of Immigration, Multicultural and Indigenous Affairs				
Australian Population, Multicultural & Immigration Research Program	Determination 31/12/97	\$277,000	\$720,000	\$597,249
Other Trust Moneys	Determination 31/12/97	\$28,498,000	\$150,811,897	\$123,953,652
Services for Other Governments and Non-Agency Bodies	Determination 31/12/97	\$15,000	\$3,476,979	\$3,476,584
Aboriginal and Torres Strait Islander Commission				
Aboriginal Advancement Account	Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987	Nil	Nil	Nil
Aboriginal Benefits Account	Aboriginal Land Rights (Northern Territory) Act 1976	\$89,613,405	\$246,125,596	\$201,839,819
Condah Land Account	Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987	Nil	Nil	Nil
Framlingham Forest Account	Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987	Nil	Nil	Nil
Other Trust Moneys	Determination 31/12/97	Nil	Nil	Nil
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	Nil	Nil	Nil
The Aboriginal and Torres Strait Islander Land Fund Account	Aboriginal and Torres Strait Islander Commission Act 1989	\$1,213,189,207	\$1,129,546,664	\$306,755,000
Department of Industry, Tourism and Resources				
Australian & New Zealand Minerals & Energy Council Energy Sector	Determination 31/12/97. Abolished 25/6/03	Nil	Nil	\$1,042,000

Special Account Name	Legal Status	30/6/03 Balance	Total Reported Credits	Total Reported Debits
Australian Government Analytical Laboratory	Determination 31/12/97	\$3,019,000	\$218,399,005	\$215,380,108
Australian Uniform Building Regulations	Determination 31/12/97	\$3,752,000	\$25,827,906	\$24,020,024
Building Research	Determination 31/12/97. Abolished 25/6/03	Nil	\$50,000	\$55,819
Bureau of Tourism Research	Determination 31/12/97	\$251,000	\$25,165,013	\$25,880,475
Federation Fund	Determination 9/11/98. Abolished 25/6/03	Nil	\$155,687,000	\$271,687,000
Housing Cost Program	Determination 31/12/97. Abolished 25/6/03	Nil	\$150,000	\$308,000
Other Trust Moneys	Determination 31/12/97	\$184,000	\$736,380	\$604,336
Ranger Rehabilitation	Determination 31/12/97	\$36,581,000	\$100,158,107	\$63,648,696
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	\$626,000	\$12,050,331	\$12,105,450
Geoscience Australia				
Australian Geological Survey Organisation	Determination 31/12/97	\$82,411	\$436,502	\$588,284
Australian Surveying and Land Information Group	Determination 31/12/97. Abolished 25/6/03	Nil	\$157,622,046	\$157,550,057
Australia New Zealand Land Information Council	Determination 14/8/01	\$607,638	\$894,412	\$808,664
IP Australia				
IP Australia Account	Determination 31/12/97	\$2,202,163	\$250,117,450	\$298,675,339
Other Trust Moneys	Determination 31/12/97	\$360,945	\$14,750,871	\$15,050,706
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	Nil	\$143,758	\$188,010
Department of the House of Representatives				
Commonwealth Parliamentary Association Conference and Seminar Contributions	Determination 24/6/98.	\$1,127,482	\$3,975,361	\$2,848,346

Special Account Name	Legal Status	30/6/03 Balance	Total Reported Credits	Total Reported Debits
Other Trust Moneys	Determination 31/12/97	Nil ^A	\$300,098	\$305,821
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	Nil ^A	Nil	Nil
Department of the Parliamentary Library				
Other Trust Moneys	Determination 31/12/97	Nil	Nil	Nil
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	Nil	Nil	Nil
Department of the Parliamentary Reporting Staff				
Other Trust Moneys	Determination 31/12/97	Nil ^A	Nil	Nil
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	Nil ^A	Nil	Nil
Department of the Senate				
Other Trust Moneys	Determination 31/12/97	Nil ^A	Nil	Nil
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	Nil ^A	Nil	Nil
Joint House Department				
Other Trust Moneys	Determination 31/12/97	Nil ^A	Nil	Nil
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	Nil ^A	Nil	Nil
Department of the Prime Minister and Cabinet				
Business Against Domestic Violence	Determination 31/12/97. Abolished 15/3/01	N/A	\$2,050,010	\$1,000,000
Campaign Account	Determination 31/12/97	-\$3,719	\$8,254,521	\$9,151,171
Federation Fund	Determination 31/12/97. Abolished 15/3/01	N/A	\$2,000,000,000	\$1,999,894,834

Special Account Name	Legal Status	30/6/03 Balance	Total Reported Credits	Total Reported Debits
Media Commissions	Determination 31/12/97	\$93,845	\$34,597,952	\$36,420,571
Other Trust Moneys	Determination 31/12/97	Nil ^A	\$2,808,304	\$2,131,801
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	\$781	\$141,515,698	\$143,850,146
Australian National Audit Office				
Other Trust Moneys	Determination 31/12/97	Nil	Nil	Nil
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	Nil	Nil	Nil
Australian Public Service Commission				
Other Trust Moneys	Determination 31/12/97	Nil ^A	Nil	Nil
Public Sector Management Course	Determination 31/12/97. Abolished 21/7/99	N/A	\$337,980	\$467,503
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	Nil ^A	\$6,206	\$53,289
Commonwealth Ombudsman's Office				
Other Trust Moneys	Determination 31/12/97	Nil	Nil	Nil
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	Nil	Nil	Nil
Office of National Assessments				
Other Trust Moneys	Determination 31/12/97	Nil	Nil	Nil
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	Nil	Nil	Nil
Office of the Inspector-General of Intelligence and Security				
Other Trust Moneys	Determination 31/12/97	Nil	Nil	Nil

Special Account Name	Legal Status	30/6/03 Balance	Total Reported Credits	Total Reported Debits
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	Nil	Nil	Nil
Office of the Official Secretary to the Governor-General				
Other Trust Moneys	Determination 31/12/97	Nil	Nil	Nil
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	Nil	Nil	Nil
Department of Transport and Regional Services				
Australian Land Transport Development Account	<i>Australian Land Transport Development Act 1988</i>	Nil	\$5,587,722,134	\$5,587,720,289
Christmas Island Community Benefit Fee	Determination 31/12/97. Abolished 25/6/03	Nil	\$191,385	\$191,710
Federal Office of Road Safety Research and Public Education Program	Determination 31/12/97. Abolished 25/6/03	Nil	\$755,138	\$896,700
Federation Fund	Determination 9/11/98	\$78,666,076	\$230,951,593	\$382,285,609
Interstate Road Transport	<i>Interstate Road Transport Act 1985</i>	Nil	\$152,416,374	\$152,416,457
Other Trust Moneys	Determination 31/12/97	\$1,637,623	\$5,783,889	\$3,833,287
Rural Transaction Centres	<i>Telstra Corporation Act 1991</i>	\$34,471,533	\$72,101,743	\$37,630,507
Services for Other Governments and Non-Agency Bodies	Determination 31/12/97	\$1,311,520	\$13,301,643	\$12,914,366
National Capital Authority				
Other Trust Moneys	Determination 31/12/97	\$66,780	\$775,068	\$1,284,678
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	Nil	Nil	Nil
Department of the Treasury				
Australian Government Actuary	Determination 30/3/00	\$1,386,343	\$1,915,005	\$1,417,106

Special Account Name	Legal Status	30/6/03 Balance	Total Reported Credits	Total Reported Debits
Lloyd's Deposit Trust Fund	Determination 31/12/97	\$2,000,000	\$3,667,355	\$650,280
Loan Consolidation and Investment Reserve	<i>Loan Consolidation and Investment Reserve Act 1955. Abolished 1/7/99.</i>	N/A	\$27,286,588,833	\$29,584,519,178
Other Trust Moneys	Determination 31/12/97	Nil	\$23,000	\$23,000
Royal Australian Mint and Coinage	Determination 31/12/97	\$5,457,000	\$385,699,972	\$386,193,879
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	Nil	\$857,591	\$785,569
Trustee Companies (ACT) Deposits	Determination 31/12/97	\$120,000	\$149,755	\$154,318
Australian Competition and Consumer Commission				
Other Trust Moneys	Determination 31/12/97	\$381,412	\$8,807,198	\$8,564,742
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	Nil ^A	\$111,966	\$111,966
Australian Bureau of Statistics				
Other Trust Moneys	Determination 31/12/97	\$15,939	\$28,691	\$19,820
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	\$30,000	\$3,246,598	\$3,305,678
Australian Office of Financial Management				
Debt Retirement Reserve Trust Account	Financial Agreement Act 1994	\$5,997,210	\$3,405,460,455	\$3,404,673,579
Australian Prudential Regulation Authority				
Superannuation Protection	<i>Superannuation Industry (Supervision) Act 1993</i>	Nil	Nil	Nil
Australian Securities and Investments Commission				
Other Trust Moneys	Determination 31/12/97	Nil	Nil	Nil

Special Account Name	Legal Status	30/6/03 Balance	Total Reported Credits	Total Reported Debits
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	Nil	\$131,008,518	\$130,403,070
Australian Taxation Office				
Australian Valuation Office	Determination 31/12/97	\$5,601,873	\$112,173,188	\$124,297,333
Excise Security Deposits	Determination 14/8/01	\$36,000	\$17,026,000	\$7,000
Other Trust Moneys	Determination 31/12/97	\$20,351,794	\$12,990,776	\$52,705,801
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	\$2,191,000	\$15,873,651	\$14,070,781
Superannuation Holding Accounts	Small Superannuation Accounts Act 1995	\$56,021,336	\$103,235,012	\$102,519,703
National Competition Council				
Other Trust Moneys	Determination 31/12/97	Nil ^A	Nil	Nil
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	Nil ^A	Nil	Nil
Productivity Commission				
Other Trust Moneys	Determination 31/12/97	Nil ^A	Nil	Nil
Services for Other Governments & Non-Agency Bodies	Determination 31/12/97	Nil ^A	Nil	Nil

Notes:

- ^A This Account was not reported in the 2002–03 financial statements. Subsequent investigation revealed that it had no transactions during 2001–02 and 2002–03 and had nil balances on 30 June 2002 and 30 June 2003.
- ^B This Account was not reported in the 2002–03 financial statements. It was last reported by the Attorney-General's Department in its 1998–99 financial statements with a 30 June 1999 balance of \$43,892,452. This Account was used for the Attorney-General's Department's Legal Practice which subsequently became AGS. On 1 September 1999, AGS became a CAC Act agency and a Government Business Enterprise. In December 2003, AGS advised ANAO that, on 1 September 1999 the Attorney-General operating under powers in the Judiciary Act transferred various assets and liabilities to AGS by Order. AGS further advised that this Order transferred the cash in the Legal Practice Account to new AGS and would have had the effect of reducing the balance of the Special Account in the Attorney-General Department's books to zero on 1 September 1999.
- ^C This Account was not reported in the 2002–03 financial statements. It was last reported by the then National Crime Authority in its 1998–99 financial statements with a 30 June 1999 balance of \$54,806.
- ^D These two Accounts were not reported in the 2002–03 financial statements. They were last reported in the 1999–2000 financial statements with balances of \$202,375 (Law Enforcement Projects Account) and \$42,304 (Sponsored Activities Account).
- ^E This Account was not reported in the 2002–03 financial statements. It was last reported in the 1998–99 financial statements with a 30 June 1999 balance of \$589,088.
- ^F This Account was not reported in the 2002–03 agency financial statements, although the 2003 CFS included balances and transactions for the Account. As there has been no reporting on its credits and debits in financial statements prior to the 2003 CFS, total credits and debits figures are unable to be provided. The balance included in the above figures is the amount reported in the 2003 CFS.

Source: ANAO analysis

Appendix 2: Finance Guidelines for the Management of Special Accounts

1. Purpose

1. These guidelines provide guidance to agencies¹ in relation to the management of their Special Accounts. The document sets out government policy with regard to Special Accounts and, among other things, describes establishment, management, reporting and banking procedures for these Accounts. Guidance when enacting machinery of government changes is also provided.
2. The guidelines describe procedures which accord with the Government's requirements in regard to Special Accounts. The intention is to guide agencies through the legal and financial requirements of Special Accounts. This document contains a mixture of legal requirements, policy and best practice procedures. To assist the reader, **sentences** which describe legal requirements as opposed to policy and best practice processes are highlighted in **bold lettering**.
3. Examples used throughout this document may be hypothetical.

¹ For the purposes of this document an agency is defined as a Department of State, a Parliamentary Department or an agency prescribed by the FMA Act. Some prescribed agencies are subject to the *Commonwealth Authorities and Companies Act 1997*, but are subject to the FMA Act for their functions of managing or spending public money.

2. Overview

4. **Under section 81 of the Constitution, all moneys raised or received by the Commonwealth, form part of the Consolidated Revenue Fund (CRF). Also, under section 83 of the Constitution, no money may be drawn from the Treasury of the Commonwealth without a legal appropriation authority. The CRF in section 81 of the Constitution is synonymous with the Treasury in section 83.**
5. **A Special Account is a ledger account recording a right to draw money from the CRF. The *Financial Management and Accountability Act 1997* (FMA Act) provides the appropriation authority for expenditure up to the balance of a Special Account, whether for the purposes of expending those moneys from the CRF or notionally transferring them within the CRF.**
6. Special Accounts provide a useful method for delivering some government activities, particularly where it is desirable to hypothecate funds within the CRF for specified purposes.

Salient Characteristics of Special Accounts

A Special Account can be established either by the Finance Minister under section 20 of the FMA Act; or by enabling legislation as recognised under section 21 of the FMA Act. (In these guidelines these types of accounts are referred to as section 20 Special Accounts and section 21 Special Accounts, respectively.)

- The Finance Minister may vary, revoke a variation, or abolish a Special Account established under section 20 of the FMA Act.
- Section 21 Special Accounts can only be varied, revoked or abolished with the amendment or repeal of the provision which establishes the Special Account in the enabling legislation.

While Special Accounts can record amounts solely from Commonwealth appropriations, they can also record amounts from other sources as allowed by the terms of the Special Account's establishing determination. These funds can include indirect taxes or other imposts (e.g. an industry levy), contributions by other governments, or discretionary contributions by members of the community.

Amounts standing to the credit of either section 20 or 21 Special Accounts may only be debited strictly in accordance with the Account's purpose.

- A standing appropriation provided by section 20(4) or section 21(1), respectively, of the FMA Act provides the legal authority for debiting the payments from the Account.

CONTINUED OVER

Special Accounts are subject to particular reporting requirements in the Portfolio Budget Statements (PBS), Consolidated Financial Statements (CFS) and financial statements included in agencies' annual reports.

Special Accounts are a separate concept to bank accounts although the balance of a Special Account may be held in a bank account.

The general policy regarding the earning of interest on amounts standing to the credit of Special Accounts is that no interest will be paid on Public Money or Special Public Money unless strict criteria are met.

3. History of Special Accounts

7. A concept similar to Special Accounts originated in the early part of the 20th century when the *Audit Act 1901* (Audit Act) established the Trust Fund. In introducing the Audit Bill on 19 June 1901 then Commonwealth Treasurer, Sir George Turner, found trust funds to be of sufficient significance as to make special mention of the provisions being included in the Audit Act to establish the Trust Fund. While the 1901 provisions were found to be adequate in respect of the type of funds that might be described as “trustee funds”, they were felt to be insufficient to cover the needs of the Commonwealth for certain other purposes, particularly in connection with working accounts operated by certain departments. Consequently, the Audit Act was amended in 1906 to empower the Treasurer to establish Trust Accounts as part of the Trust Fund.
8. On 1 January 1998 the Audit Act was repealed by the *Audit (Transitional and Miscellaneous) Amendment Act 1997* (ATMA Act) and was replaced by three Acts, one of which was the FMA Act. The replacement Acts simplified and clarified financial control provisions and supported recent reforms in public sector financial management. The new legislation included the replacement of the Trust Fund with the Reserved Money Fund (RMF) and the Commercial Activities Fund (CAF). The ATMA Act provided for the transfer of funds from the Trust Fund to components of the RMF and CAF. Like the Trust Fund, the RMF and CAF were not part of the CRF but their balances were still part of the Commonwealth Funds.
9. On 1 July 1999 the FMA Act was amended by the *Financial Management Legislation Amendment Act 1999* (FMLA Act) to facilitate the introduction of accrual budgeting and financial reporting. The FMLA Act abolished the RMF and CAF and replaced them with Special Accounts. Special Accounts are ledger accounts recording amounts in the CRF. Balances in the components of the RMF and CAF were transferred to Special Accounts.
10. Appendixes 1-3 provide diagrammatical representations of financial flows under the three regimes.
11. While the legislative and accounting regime for these accounts has changed over the years, it can be said that the concept underlying these accounts has not varied greatly.
12. One constant through the years has been a keen parliamentary interest in these accounts that continues to this day. Of particular note is the 1957 Joint Committee of Public Accounts’s inquiry into the Trust Fund which examined the effects Trust Accounts had upon Parliament’s control over expenditure. The Committee found that, although there were misunderstandings regarding the operation of Trust Accounts and that the Accounts had weaknesses as instruments of financial control, they were a necessary and useful financial mechanism. Today’s Joint Committee of Public Accounts and Audit continues to take a particular interest in the administration of Special Accounts.

4. When are Special Accounts Appropriate?

13. When considering an appropriation and accounting regime for an activity, an agency should start from the premise that an activity should be funded through the annual budget mechanism. That is, the initial position should be that an activity can be funded through annual appropriations. Where the activity necessitates the appropriation of a significant amount of funding, an agency could consider creating a new outcome.
14. In some cases, say where an agency is seeking authority to spend funds received from the sale of goods and services, it may be possible to utilise an FMA Act section 31 agreement. **Section 31 allows the Finance Minister (or his delegate) to enter into agreements with agencies for the retention of receipts which are automatically appropriated through being recognised in the annual Appropriation Act (No. 1).**
15. Only when it is clear that other types of appropriations are not suitable should Special Accounts be considered.
16. **At a minimum the establishment of a Special Account should promote the efficient, effective and ethical use of Commonwealth resources as required by FMA Act section 44.** If, for example, the size of an activity managed through a Special Account is relatively small then it could well be that the Account's set up and ongoing management, accounting and reporting responsibilities will not be an efficient and effective use of Commonwealth funds. Therefore, alternative administrative and accounting arrangements should be explored to ensure that the appropriate financial arrangements are in place.
17. The following is a set of specific criteria that should be critically evaluated when the establishment of a Special Account is being considered.
 - Will the management of an activity be enhanced by the establishment of a Special Account?
 - Is there a requirement for increased transparency (e.g. through a Cabinet Decision)?
 - Is the use of a Special Account essential to the effective implementation of an activity?
 - Is the non-lapsing nature of a Special Account appropriation necessary?
 - Can the purpose of the Special Account be sufficiently bound within a written determination?
18. While it is difficult to make an *a priori* judgement of whether a Special Account is appropriate in a particular circumstance, as a broad rule of thumb it can be said that a successful proposal for a Special Account would satisfy one or a number of the above criteria while also being able to demonstrate that none of the other budget accounting mechanisms are satisfactory.

4a. Categories of Special Accounts

19. Broadly classifying Special Accounts into several groups can also assist in identifying whether a Special Account is appropriate for a particular policy or activity. The existing set of Special Accounts can be broadly segregated into the following categories:

- **Australian Government Funded Expenditure Commitments.** These types of accounts are used when the Government wishes to enhance the transparency and visibility of certain medium to long term Government programmes. They often entail a medium to long term funding commitment.

Example 1: The Federation Fund Account is for expenditure on substantial capital projects throughout Australia which will mark the Centenary of Federation and make a significant and lasting contribution to the Australian community.

Example 2: The Natural Heritage Trust of Australia Account is primarily concerned with expending grants of financial assistance for a number of initiatives such as the Murray-Darling 2001 Project and the National Vegetation Initiative.

- **Joint Programmes with the States and/or Industry.** The Australian Government may enter into agreements with State, Territory, international governments and/or industry to jointly fund specific policies. A Special Account can provide some comfort to the other parties that the funds are being directed toward the agreed activities.

Example 1: The Australian and New Zealand Minerals and Energy Council Energy Sector Account is for expenditure relating to the conduct of energy sector activities commissioned by the Australian and New Zealand Minerals and Energy Council.

Example 2: The Commonwealth/State Disability Agreement Account is for expenditure on projects which relate to the Commonwealth/State Disability research and development agenda.

- **Business Operations and Activities.** These types of accounts may be used as working accounts for certain significant cost recovered regulatory and business type operations.

Example 1: The Australian Quarantine Inspection Service Account is for, *inter alia*, expenditure relating to the provision of quarantine and inspection services and incidental matters thereto.

Example 2: The Australian Protective Service Account is for expenditure relating to the provision of protective, guarding security and related services by the Australian Protective Service to the Commonwealth or to an Australian Government body or to a company over which the Australian Government or one of its bodies is able to exercise control.

- **Special Public Moneys².** These accounts may be established to record amounts of Special Public Money that are being held.

Example: The Other Trust Moneys Account is for “expenditure of moneys temporarily held on trust or otherwise for the benefit of a person other than the Commonwealth”.

Finance expects to publish guidance on the management of Special Public Moneys, including moneys subject to trust law, in the middle of the 2003-04 fiscal year.

² **Public Money** is defined in section 5 of the FMA Act as meaning:

- i. money in the custody or under the control of the Commonwealth; or
- ii. money in the custody or under the control of any person acting for or on behalf of the Commonwealth in respect of the custody or control of the money; including such money that is held on *trust* for, or otherwise for the benefit of, a person other than the Commonwealth.

Special Public Money is defined in section 16 of the FMA Act as meaning Public Money that is not held on account of the Commonwealth, or for the use or benefit of the Commonwealth. Money held by the Commonwealth on trust for another person is an example of Special Public Money.

5. Establishing a Special Account

20. **Special Accounts are established in either of two ways:**

- **through a written determination of the Finance Minister under section 20 of the FMA Act; or**
- **by an Act of Parliament as recognised in section 21 of the FMA Act.**

5a. Section 20 Special Accounts

21. Agencies should factor in sufficient lead time into the establishment of an FMA Act section 20 Special Account. The process commonly entails a series of discussions between the agency and Finance followed by ministerial correspondence and adherence to parliamentary procedures. Accordingly, agencies should plan for a timeline of several months from the first contact with Finance to the end of the disallowance period. The timeline will be influenced by factors such as the complexity of the purpose (as several drafting iterations may be required) and the parliamentary sitting timetable.

22. **The FMA Act stipulates that the Finance Minister may make a written determination that does all or any of the following:**

- **establishes a Special Account;**
- **allows or requires amounts to be credited to the Special Account; and**
 - That is, the type of receipts that are allowed or required to be credited to the Special Account.
- **specifies the purposes of the Special Account.**
 - A purpose is generally expressed in specific terms that distinguish the Special Account from other purposes for which money may be appropriated by Parliament.

These are the minimum legal requirements. However, best practice would dictate that a determination includes *all* of the above.

23. **Section 20 determinations must be tabled in Parliament for five sitting days and are subject to disallowance by both Houses of Parliament.**

24. An example of a section 20 establishing determination is given at Appendix 4.

25. The following is a step-by-step guide to establishing an FMA Act section 20 Special Account.

The Process for Establishing a Section 20 Special Account

Prior to approaching Finance for the establishment of a Special Account agencies should consider:

- whether a Special Account is the most appropriate financial mechanism to provide the required appropriation of the CRF (*see the section When Are Special Accounts Appropriate?*);
- which agency would be the most appropriate to administer the Special Account; and
- whether there is likely to be Ministerial support for the establishment of a Special Account.

Once an agency considers that a proposed Special Account satisfies the above, it should liaise with the relevant Agency Advice Unit (AAU) in Finance regarding the proposal for establishing the Special Account.

- Finance will analyse the information provided to ensure it meets with current guidelines and criteria.

After the agency has consulted with Finance, it should recommend to its portfolio Minister that s/he write to the Finance Minister requesting the establishment of the Special Account.

- To assist the Finance Minister in making the decision, the letter should clearly set out the portfolio Minister's support for the establishment of the Special Account and why a Special Account is the most effective mechanism for achieving the purposes.

If supported at Ministerial level, Finance will then liaise as necessary with the Australian Government Solicitor (AGS)/Office of Legislative Drafting (OLD) to have the determination drafted.

Finance will provide the agency with the opportunity to clear a draft of the determination.

If any amendments are required, Finance will request AGS/OLD to redraft the determination and put it in a final form.

Finance will then prepare all necessary documentation for the Finance Minister, including an Explanatory Statement. The Explanatory Statement explains to Members of Parliament the determination's intention in plain English. The agency will be required to clear – and may be called upon to assist in – the drafting of the Explanatory Statement.

The Finance Minister will then consider signing the establishing determination. **The signed determination and the Explanatory Statement must then be tabled in both Houses of Parliament for five sitting days.** Tabling will be organised by Finance. **The determination comes into effect on the next calendar day after the fifth sitting day unless either House, following a motion or notice, has passed a resolution disallowing the determination. That is:**

Day 1	Determination tabled in both Houses of Parliament
Days 2-6	Disallowance period (five sitting days)
Next calendar day	Determination takes effect

Finance will provide a copy of the signed determination to the agency involved. It will be the responsibility of the agency to inform the portfolio Minister that the Special Account has been established.

5b. Section 21 Special Accounts

- 26. Section 21 of the FMA Act recognises Special Accounts established by legislation. Section 21 provides a standing appropriation for expenditures of the Account for the purposes designated in the legislation.**
27. Establishment of a Special Account through legislation requires agencies to carefully consider the drafting of the legislation. Particular attention should be paid to defining, in the legislation, the scope of the purposes of the Special Account and the types of credits to and debits from the Account which can be made. **Once the legislation has commenced further legislation is necessary to amend the provisions. Achieving even the most minor of alterations to the purposes is not possible through administrative action.**
28. As Special Accounts recognised under section 21 are established through legislative process, agencies will need to follow practices relating to the development of legislation when seeking to establish these types of Special Accounts. However, because all proposed provisions relating to the allocation, use or control of Commonwealth moneys should be determined in consultation with Finance, agencies are encouraged to consult with their AAU in the first instance. The AAU will then consult internally with Financial Management Group.

6. Varying, Revoking and Abolishing Special Accounts

29. **The Finance Minister may vary, revoke a variation, or abolish a Special Account established under section 20 of the FMA Act. Section 21 Special Accounts can only be varied, revoked or abolished with the amendment or repeal of the provision which establishes the Special Account in the enabling legislation.**
30. Variation or revocation may occur when it has become necessary to alter the purposes of a Special Account. Abolition of a Special Account is necessary when there is no longer a need for the Special Account as its purpose has been fulfilled.

6a. Variations and Revocations Under a Section 20 Determination

31. **A determination which established a Special Account may be varied in accordance with subsection 20(2) of the FMA Act. Variations to Special Account determinations may be revoked by a determination in accordance with subsection 20(2).**
- **Determinations which vary or revoke a previous determination are subject to the same tabling and disallowance process as determinations establishing Special Accounts - ie. five sitting days must pass before they take effect.**
32. An example of a section 20 amending determination is at Appendix 5.

Steps to Vary or Revoke an FMA Act section 20 Special Account Determination

Prior to approaching Finance for the variation or revocation of a variation of a Special Account an agency should consider whether there is portfolio Minister support for such a step.

If it is considered that there is ministerial support the agency should approach their Finance AAU to discuss the variation/revocation.

After Finance has been consulted, the agency should recommend to its portfolio Minister that s/he write to the Finance Minister requesting variation/revocation.

Finance will have AGS/OLD draft the determination and Explanatory Statement.

These will be cleared by Finance in consultation with the relevant agency.

Variation/revocation takes effect after the Finance Minister has signed the determination and the disallowance period has been completed.

The determination and the Explanatory Statement will be tabled in both Houses of Parliament by Finance for the requisite five sitting days.

A copy of the signed determination will be provided to the agency by Finance. It will be the responsibility of the agency to inform the portfolio Minister that the Special Account has been varied/revoked.

6b. Abolitions Under Section 20

- 33. The Finance Minister can make a determination to abolish a section 20 Special Account under subsection 20(3) of the FMA Act. This then extinguishes the right to spend amounts that stood to the credit of that Account.**
- 34. Determinations which abolish Special Accounts are not subject to disallowance and do not require tabling. Instead, a Special Account's operation is terminated upon signature and dating of the determination by the Finance Minister.**
35. An example of a section 20 abolishing determination is at Appendix 6.

Steps to Abolish a Section 20 Special Account

When considering the abolition of a Special Account the agency is to consult with its Finance AAU.

In agreeing that an Account should be abolished, consideration also has to be given as to what action is to be taken with regard to any existing balance of the Special Account prior to abolition. That is, should the balance be:

- debited according to the purposes designated in the establishing determination (*see the section Management of Special Accounts*) or
- abolished without any further action.
 - This action signifies that the balance of the Account is no longer legally hypothecated within the CRF.
 - The financial reporting protocol in this instance would be to show the Special Account as having been debited to create a nil balance. (*Further information is contained in the section Reporting.*)

After the agency has consulted with relevant parties, it should recommend to the portfolio Minister that s/he write to the Finance Minister requesting abolition and outlining why the account is no longer required.

If the Finance Minister agrees to the request, Finance will then prepare a draft determination.

Abolition takes effect once the Finance Minister has signed and dated the determination.

- A copy of the signed determination will be provided to the agency by Finance. Again, it will be a matter for the agency to inform the portfolio Minister that the Special Account has been abolished.

6c. Variations, Revocations and Abolitions of Section 21 Special Accounts

36. **As with an FMA Act section 20 Special Account, abolition of a Special Account recognised under FMA Act section 21 extinguishes the right to spend amounts that stood to the credit of that Special Account.**
37. **However, in the absence of specific provisions in the legislation, section 21 Special Accounts cannot be varied, revoked or abolished until the legislative provisions which created them are amended or repealed.** Therefore, agencies need to raise issues relating to variation, revocation and abolition with their portfolio Minister and seek approval to go through the legislative amendment process. As stated earlier, because all proposed provisions relating to the allocation, use or control of Commonwealth moneys should be determined in consultation with Finance, agencies are encouraged to contact their Finance AAU which will then consult internally with Financial Management Group.
38. As with section 20 Special Accounts, the agency and Finance will need to consider what is to be done with the balance of the Special Account prior to abolition:
- debited according to the purposes designated in the establishing determination; or
 - abolished without any further action.

7. Management of Special Accounts

39. **Special Accounts represent a claim against the CRF in accordance with the particular purpose specified in the determination or legislation establishing the Special Account. Consequently, amounts standing to the credit of either FMA Act sections 20 or 21 Special Accounts are only for use strictly in accordance with the Account's purpose.**
40. **Special Accounts do not have an overdraft facility. This means that under absolutely no circumstances can the balance of a Special Account become negative. A negative balance would indicate that expenditure has been recorded against the Special Account without sufficient appropriation being available under either section 20 or section 21 of the FMA Act. In the absence of another available appropriation to support this expenditure, this would breach section 83 of the Constitution which stipulates that "No money shall be drawn from the Treasury of the Commonwealth except under appropriation made by law."**
41. **It is an agency's responsibility to maintain proper records of the management of their Special Accounts in accordance with the Finance Minister's Orders (FMOs) and Chief Executive's responsibilities for the management of Public Money pursuant to FMA Act sections 44 and 48. (The section Reporting provides further details.)**
42. **In all cases, agencies need to ensure that all amounts to be credited to and debited from Special Accounts are within the terms of the determination of the Special Account and obtain legal advice where necessary.**

7a. Periodic Review

43. Agencies should periodically review the need for maintaining their Special Accounts. Consideration should be given to the abolition of a Special Account where either:
- the purpose has been fulfilled; and/or
 - no further amounts stand to the credit of the Account and there is no likelihood of further credits.
44. As part of the review process, agencies should consult the section *When are Special Accounts Appropriate?* to determine whether the initial rationale for a Special Account still exists.

7b. Credits

45. **Special Accounts may only be credited with amounts where the Finance Minister's determination or relevant legislation authorises it. Subject to the amounts that may be specified in these documents, amounts credited to a Special Account may be either appropriations or come from external sources.**

46. That is, depending on the establishing determination/legislation, Special Accounts may be credited with amounts raised from:

- **the annual Appropriation Acts;**

- **Where the purposes of the Special Account are covered by an outcome in the annual Appropriation Acts, amounts can be transferred from that annual appropriation to the Special Account.**

Example: The Australian Population, Multicultural and Immigration Research Program Account receives partial funding through the annual Appropriation Acts under the Department of Immigration and Multicultural and Indigenous Affairs's Outcome 1 "Contributing to Australia's society and its economic advancement through the lawful and orderly entry and stay of people".

- **special appropriations;**

Example: The enabling legislation for the ATSIC Land Account Special Account is the *Aboriginal and Torres Strait Islander Commission Act 1989*. The legislation provides a standing appropriation for the ATSIC Land Account.

- **legislation which credits a Special Account with amounts (sometimes upon the occurrence of specified events);**
 - **In these circumstances no appropriation is required for the Special Account to be credited.**
- **notional payments (under section 6 of the FMA Act) from other Special Accounts or other appropriations (including notional interest payments);**

Example: The Royal Australian Mint (which is a Special Account that has been determined as a Business Operation) can be credited for commemorative coins purchased by another Special Account, such as the Artbank Special Account, whose purpose allows such an expenditure.

- **external sources (e.g. industry levies, state contributions and gifts); and**

Example: The National Action Plan for Salinity and Water Quality (National Activities) Special Account is used to hypothecate funds for expenditures relating to salinity and water quality. These activities are jointly funded by the State, Territory and Australian Governments. Therefore, amounts in the Special Account partially represent contributions from the States and Territories.

- **the realisation of investments.**

Example: The Defence Services Homes Insurance Account has investment powers by virtue of a delegation from the Finance Minister under section 39 of the FMA Act. Amounts hypothecated to this Account can be invested in authorised investments listed in section 39(10) of the FMA Act with the investment proceeds subsequently credited to the Special Account.

7c. Debits

47. **Amounts may be debited from a Special Account, provided they are consistent with the purpose of the account, for:**

- **making payments out of the CRF (that is to non-Commonwealth parties);**

Example: Payments to a contractor for the provision of goods or services.

- **making notional payments (i.e. payments that remain within the CRF).³ Such notional payments must be in the nature of compensation/recompense for goods or services or the discharge of an obligation;**

Example 1: This includes payments of dividends, Superannuation, Comcover, tax, and Competitive Neutrality payments. Also included is the reimbursement of expenses incurred by the agency administering the Account that are a legitimate charge to the Account.

Example 2: The purpose of the Artbank Special Account allows for expenditure on coins. These coins can be purchased from the Mint. Therefore, since the Mint is also a Special Account which has been determined as a Business Operation, there is a notional payment from the Artbank Special Account to the Mint. (This example is the counterpart of the Royal Australian Mint example provided in section 7b.)

- **making investments under section 39 of the FMA Act where a delegation from the Finance Minister exists. (See the section Banking and Investment.)**

³ Notional payments are defined in section 6 of the FMA Act.

- 48. Where agencies are debiting a Special Account for expenses associated with administering the Account such as overhead expenses, they should ensure the purposes properly cover debits.**
- 49. There is no provision in the FMA Act or the annual Appropriation Acts which authorises amounts to be debited from a Special Account and credited to another appropriation, apart from the following *exceptional* circumstances:**
- it is a notional payment and a section 31 agreement (or another Special Account) that provides for the receipt is in place and the payment is consistent with the purposes of the Special Account; or**
 - there has been a clerical error and an amount has been debited from an annual appropriation rather than a Special Account. (Before this step is taken legal advice should be sought).**

8. Reporting

50. All Special Accounts are subject to particular reporting requirements in the PBS, CFS and financial statements contained in agencies' annual reports (which are tabled in Parliament). Examples of reporting templates are contained in Appendixes 7 and 8.
51. From 2003-04 Special Account disclosure requirements for PBSs were enhanced to allow readers to more readily identify the impact Special Accounts have on an outcome's estimates. Accordingly, Appendix 3 of an agency's PBS is to disclose opening balances, receipts, payments, adjustments and closing balances for each individual Special Account.⁴ Agencies are strongly encouraged to follow similar practice for Special Accounts with nil balances or those that have not been used during the financial year.
52. Special Accounts are also separately disclosed in an agency's financial statements. The FMOs for reporting periods ending on or after 30 June 2003 which provide for the minimum level of disclosure, require Australian Government agencies to separately disclose in their financial statements the total receipts, payments and balances for each Special Account within their portfolio. Additionally, receipts must be separated into those from appropriations and those from other sources.
53. An abbreviated disclosure is acceptable for those Special Accounts which have not been used during the financial year, regardless of whether they have a nil or positive balance. The abbreviated disclosure would consist of:
- the Special Account's title;
 - the Account's classification (departmental/administered);
 - a statement noting the Account has not been used during the financial year;
 - the opening and closing balance; and
 - purpose.
- This treatment will be made explicit in the 2004 FMOs.⁵
54. Agencies should report moneys subject to trust law that stand to the credit of a Special Account in the notes to the financial statements dealing with Special Accounts. However, a footnote in the Assets Held in Trust note should also cross reference to the entry in the note dealing with Special Accounts.
55. Beginning with the 2002-03 Consolidated Financial Statements, the CFS will disclose the opening balances, receipts, payments and closing balances of Special Accounts held by agencies.

⁴ It is an agency's responsibility to be aware of any changes to PBS reporting requirements which affect Special Account reporting requirements.

⁵ As above, it is an agency's responsibility to be aware of any changes to Finance Minister's Orders which affect Special Account reporting requirements.

56. In the interest of parliamentary transparency, whenever a Special Account is reported in the PBS, CFS, financial statements or other Australian Government documents, its full official title as set out in the determination or legislation should be referenced. The Account's common name, if one exists, may be a secondary reference after the official title has been identified.
57. In relation to financial reporting, the Account's legal authority (ie. FMA Act section 20 or the relevant legislation) should be identified and a summary of its purpose included. Where a Special Account has been either established/varied/revoked/abolished during a reporting year, the date of effect of these events should be stated in the report. In cases where a Special Account is abolished and a new one created with the same name, then both Special Accounts must be separately identified.
58. Where the purposes of a Special Account have been changed during the year, best practice treatment would be similar to that where a Special Account has been abolished and a new one created. That is, the Special Account's transactions should be reported separately under each purpose. The date of effect should also be recorded. In this way, the expenditure against each purpose is fully transparent.
59. Special Accounts that have been determined as Business Operations pursuant to the *Financial Management and Accountability Orders 6.2.1* (e.g. the Royal Australian Mint) are required to produce full financial statements in accordance with Clause 1.B.1(c) of the FMOs applicable for reporting periods on or after 30 June 2003.
60. The primary objective of the reporting requirements is that an agency should leave a transparent, easily followed information trail that discloses the main financial aspects of a Special Account. Adhering to the PBS guidelines, FMOs and these guidelines will generally achieve this objective. However, where a unique situation has arisen such that not all appropriate financial information will be disclosed from following these documents, further information should be disclosed or guidance should be sought in the first instance from the relevant AAU in Finance, which may then consult internally with Financial Management Group.

9. Banking and Investment

9a. Banking

61. As noted previously, Special Accounts do not physically hold cash. They are ledger accounts of the CRF that through the operation of section 20(4) or 21(1) of the FMA Act record the right to draw money from the CRF. This means Special Accounts are a mechanism for recording amounts of money in agency Financial Management Information Systems (FMIS), which represent a claim against the CRF according to particular purposes specified in the determination establishing the Special Account.
62. The banking arrangements transact the flow of cash that is accounted for through Special Accounts. That is, when a relevant amount is received by an agency the amount should be credited to the Special Account (FMIS ledger) and the money should be banked in the appropriate official bank account in accordance with the requirements of the financial framework, and as detailed in the Agency Banking Guidance Manual.
63. In accordance with the banking arrangements, agencies are required to classify their bank accounts according to the following:
- Official Departmental Receipts and Payments;
 - Official Administered Payments;
 - Official Administered Receipts;
 - Official Exempt SPM; and
 - Official SPM.
64. The purpose of the Special Account would in most cases guide the decision on whether the Account should be classified as departmental, administered or Special Public Money. All classifications of Special Accounts should be cleared through the agency's AAU contact in Finance.

9b. General Banking Operations

65. Consistent with the "on an as needs basis" drawdown arrangements implemented from 1 July 2003, generally moneys received will be centrally managed in the Official Public Account (OPA) by Finance. In order to achieve this, Special Account receipts may need to be returned to the OPA after taking into account allocated working cash levels.⁶ Agencies are to make arrangements to allow for the transfer of Special Account receipts to the OPA (one potential mechanism is to use the "Administered Receipts Account", where the agency has one). The specific processes for these funds are as follows.

⁶ Working cash levels for Administered Accounts and SPM Accounts are zero.

Banking of Special Accounts' Receipts

Where a Special Account is credited with an amount that is departmental in nature then these moneys up to working cash levels should be deposited into the Official Departmental Receipts and Payments Account. Moneys surplus to allocated working cash levels should be returned to the OPA by depositing moneys to the agency's Official Administered Receipts account in line with the banking arrangements. These receipts will be transferred to the OPA at the close of that day's business.

- Agencies will need to enter receipt details into CAMM in order to tag those receipts to the relevant Special Account.
- When the agency wishes to make debits from the Special Account, the agency will request (through CAMM) for the funds in excess of working cash levels to be drawn down from the OPA to the agency's Official Departmental Receipts and Payments bank account.
- If the Special Account was created for a Business Operation, that Business Operation may opt to have a separate departmental bank account from the main departmental bank account to improve the transparency of these cash flows.
- If an agency does not have an Official Administered Receipts Account, moneys can be returned directly to the OPA by Electronic Funds Transfer. Agencies will still need to record the transfer to the OPA in CAMM.

Where a Special Account is credited with an amount that is administered in nature, the moneys will be deposited straight to the agency's Official Administered Receipts account in line with the banking arrangements. These receipts will be transferred to the OPA at the close of business on that day.

- Agencies will need to enter receipt details into CAMM in order to tag those receipts to the relevant Special Account.
- When the agency wishes to make debits from the Special Account, the agency will request (through CAMM) for the funds to be drawn down from the OPA to the agency's Official Administered Payments bank account.

Where a Special Account is credited with an amount that is Special Public Money, for banking purposes, the agency will need to determine if the money meets the definition of an Official SPM Account or an Official Exempt SPM Account as described in the current Financial Management & Accountability (Finance Minister to Chief Executives) Delegation.

- If the money meets the definition of an Official SPM Account then the money will be deposited to the agency's Official Administered Receipts account in line with the banking arrangements. These receipts will be transferred to the OPA at the close of business on that day.
- Agencies will need to enter receipt details into CAMM in order to tag those receipts to the relevant Special Account.

- When the agency wishes to make debits from the Special Account, the agency will request (through CAMM) for the funds to be drawn down from the OPA to the agency's Official Administered Payments Account from where the agency makes the payment or, if preferred, transfers it to a specific SPM Account for payment.

If the money meets the definition of an Official Exempt SPM Account then the money will be deposited into a bank account the agency establishes with their transactional banker, which physically holds the funds. This account is exempt from the sweeping arrangements detailed in Schedule 4 of the current Financial Management & Accountability (Finance Minister to Chief Executives) Delegation.

- Receipts and payments will be transacted directly through this account, as money is not swept back to the OPA.

Where Special Public Money is also subject to trust law and the trust deed mandates the physical separation of these moneys from other moneys (trust or public money) then a separate exempt trust account must be opened and maintained for this purpose.

NOTE: Where agencies do not possess an Official Administered Receipts Account then funds can be transferred directly to the Official Public Account (092-009 110003) via Electronic Funds Transfer.

66. For further information on the Agency Banking Framework, the reader is referred to the Finance website at <http://www.finance.gov.au/finframework/banking.html>

9c. Investment and Interest

67. The policy regarding the earning of returns (interest or investment) on amounts standing to the credit of Special Accounts is that no return will be paid on Public Money (administered or departmental funds) or Special Public Money unless they meet the criteria listed below.

68. In the first instance, Special Accounts that meet the eligibility criteria will be provided with an interest equivalency payment funded via a direct appropriation. Eligible Special Accounts will only qualify to have investment powers delegated by the Finance Minister under section 39 of the FMA Act where absolutely necessary.

Eligibility Criteria

69. A direct appropriation for interest will only be available for Special Accounts that have a legal entitlement or approval from Government. Eligibility will be determined subject to any of the following criteria:

- legislation mandates the earning of interest;
- the Government approves the earning of interest;

- the Commonwealth is a Trustee and the Trust Deed mandates that the funds subject to the trust must earn interest; or
- the Commonwealth has a contractual obligation to pay interest on money it holds (for example, through an inter-governmental agreement with State, Territory or foreign Governments).

70. This policy applies to both FMA section 20 and section 21 Special Accounts. However, it is subordinate to any relevant legislation. That is, a section 21 Special Account may have legislation which overrides this policy through its own prescribed interest earning/investment mechanism.

How Can Interest be Earned

71. Special Accounts that meet the eligibility criteria, mentioned above, will receive a direct appropriation.
72. Each agency will be appropriated an interest equivalent amount from the Budget according to estimates agreed with Finance. However, until eligibility can be assessed, interim arrangements have been put in place, which are detailed in Estimates Memorandum 2003/23.

How the Equivalency Payment will be Calculated and Drawn

73. The interest estimate will be calculated by multiplying the estimated average quarterly Special Account balance by the OPA rate (cash rate less 10 basis points) advised by Finance.
74. Agencies will be required to build interest equivalency estimates into AIMS as part of the usual Budget process. Agencies will also be required to ensure that the outcomes from which the appropriation is funded covers the purpose of the Special Account concerned and that the relevant table in the agency's PBS includes a statement that the appropriation can only be credited to the eligible Special Account.
75. Once appropriated, agencies will draw down the cash in accordance with the "as needed" drawdown procedures detailed in Estimates Memorandum 2003/22. Agencies will not be able to access more than the appropriated amount. The direct appropriation for interest will only be available for the purposes of the eligible Special Account(s) and will not be transferred or available as an offset.
76. Where insufficient unspent appropriation exists in the agency's appropriation, no additional interest drawdowns will be made and the agency should seek additional funding through Additional Estimates or an Advance to the Finance Minister. Special Accounts will only be credited with the amount of interest owing when the additional appropriation becomes available.

Certification

77. At the end of the financial year, agencies are to certify to Finance in writing the extent to which interest based on actual quarterly Special Account balances compares against the estimate. Where variances between the actual and the estimated interest are significant, adjustments to the estimates

model for future direct appropriations may be required in consultation with the relevant Finance AAU contacts.

Investment Powers under section 39 of the FMA Act

78. Eligible agencies will be directly appropriated for interest unless authorising documentation mandates that the funds must be invested externally to the OPA. **Where external investment is mandated, agencies must seek a delegation of section 39 investment powers from the Finance Minister, if this is not already in place.**
79. As funds physically leave the CRF when they are invested under FMA Act section 39 the Special Account ledger must be debited for the full amount of the investment and credited upon its realisation. The return on any investment under section 39 of the FMA Act should be credited to the relevant Special Account. Over the course of the year, debits and credits (reflecting principal) may cancel out leaving only unrealised investments debited from the Special Account balance at year's end. The balance of the Special Account together with the value of unrealised investments, comprise the total value that will be available for expenditure in accordance with the purpose of the Special Account (once the investment has been realised).
 - As invested amounts leave the CRF, it is essential that the balance of the Special Account be immediately adjusted in order to ensure any subsequent debiting of the Special Account does not result in a negative balance - and therefore a breach of the agency's appropriation authority.
80. **Once delegated by the Finance Minister, investment powers allow Chief Executives to invest funds outside the CRF in the authorised investments prescribed by section 39(10)(a) of the FMA Act.** The effective management of section 39 investments requires a certain level of financial expertise, which agencies may not possess and consequently may need to source externally.

10. “Other Trust Moneys” and “Services for Other Government and Non-Agency Bodies” Special Accounts

81. The “Other Trust Moneys” (OTM) and “Services for Other Government and Non-Agency Bodies” (SOG) Special Accounts were created for each agency that existed at the date of the original determination (31 December 1997) which established components of the RMF. These components were transformed into Special Accounts by section 5 of the *Financial Management Legislation Amendment Act 1999*. (see the section *History of Special Accounts*)
82. The purpose of the OTM Account is for “expenditure of moneys temporarily held on trust or otherwise for the benefit of a person other than the Commonwealth”. There is no requirement to keep moneys subject to trust law in the OTM Special Account. There are, however, considerable advantages with crediting these moneys to such accounts.

Example 1: The OTM Account is used by some Australian Government agencies to repatriate the overseas funds of Australian staff. That is, where a country has currency controls such that individuals – but not foreign governments – are prevented from transferring funds out of the country, an agency can credit its employees’ moneys to the OTM Account and then re-imburse employees once they have arrived back in Australia.

Example 2: The OTM Account may be used to provide an appropriation to allow moneys found by Commonwealth officials to be paid to their rightful owner once the owner has been identified.

83. **The existence of money within a bank account does not amount to an appropriation.** Special Accounts offer a convenient means of hypothecating amounts for particular purposes and the standing appropriation in sections 20 and 21 of the FMA Act ensure that they are available for expenditure. The Account may also be used to record Special Public Moneys held by the agency.
84. The purpose of the SOG Account is for “expenditure in connection with services performed on behalf of other Governments and bodies that are not FMA Agencies”. SOG Accounts can be used to receive payments from other Governments and bodies that are not FMA agencies.

Example: The SOG Account may be used to hold contributions from a Commonwealth Authorities and Companies Act body or State Government for the purpose of a jointly funded conference.

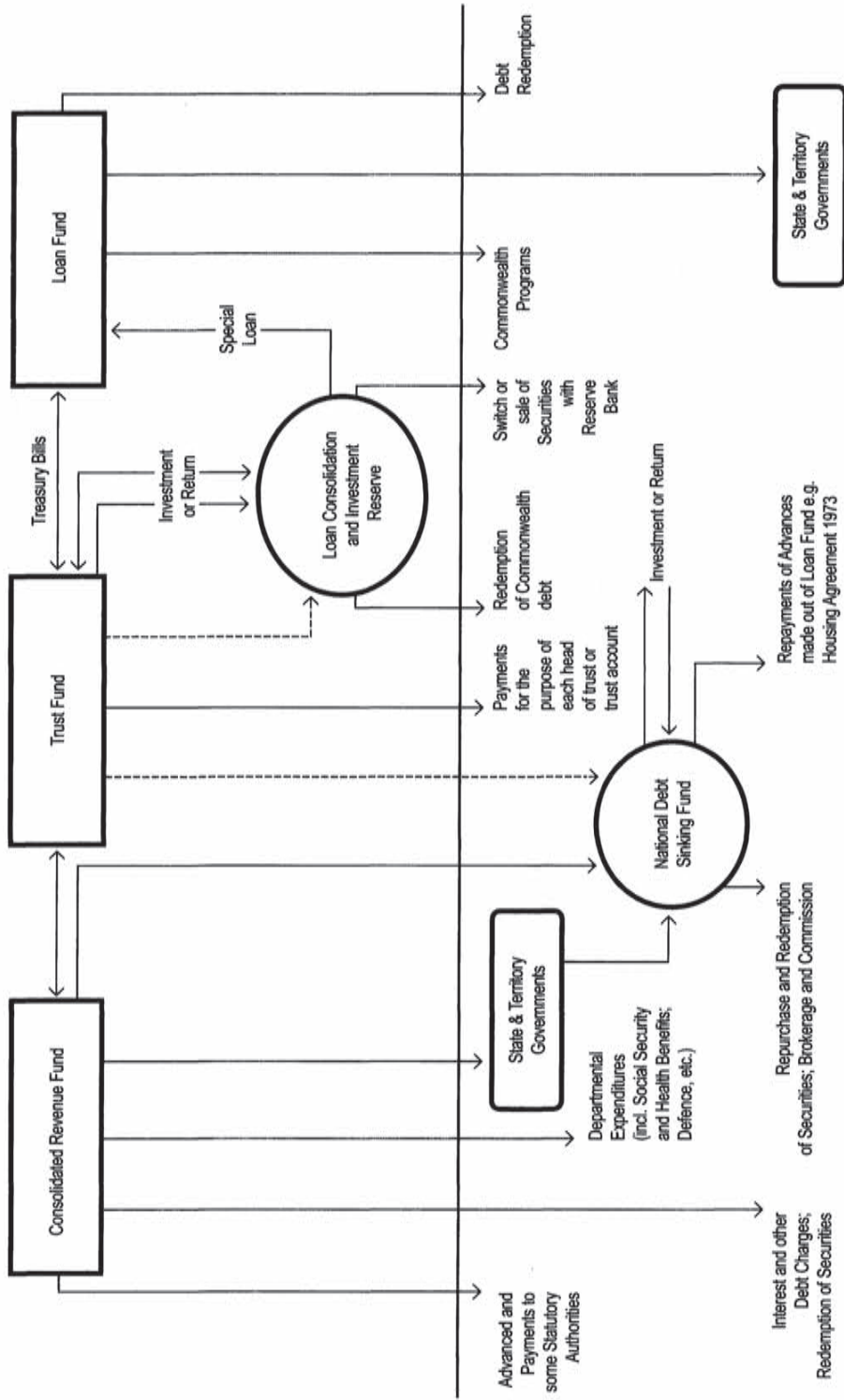
85. Similar to OTM Accounts, the advantage of using SOG Accounts is that the amounts are earmarked for the purpose of the Account and there is already a standing appropriation (section 20(4) of the FMA Act) available up to the balance of the account.

86. The OTM and SOG Special Accounts generally accommodate small amounts of miscellaneous Public Moneys. It is possible to use the accounts to record a large amount of funds that are associated with a single, identifiable purpose. This might, however, hinder the transparency of these moneys. Therefore, in such circumstances agencies need to consider whether it would instead be better to establish a separate Special Account with a narrower purpose or whether enhanced reporting in the PBS and agency Financial Statements may be sufficient. This is a matter of judgement and agencies should consult their Finance AAU as to whether a separate Special Account is preferable.

11. Transferring Special Accounts Following Machinery of Government (MOG) Changes

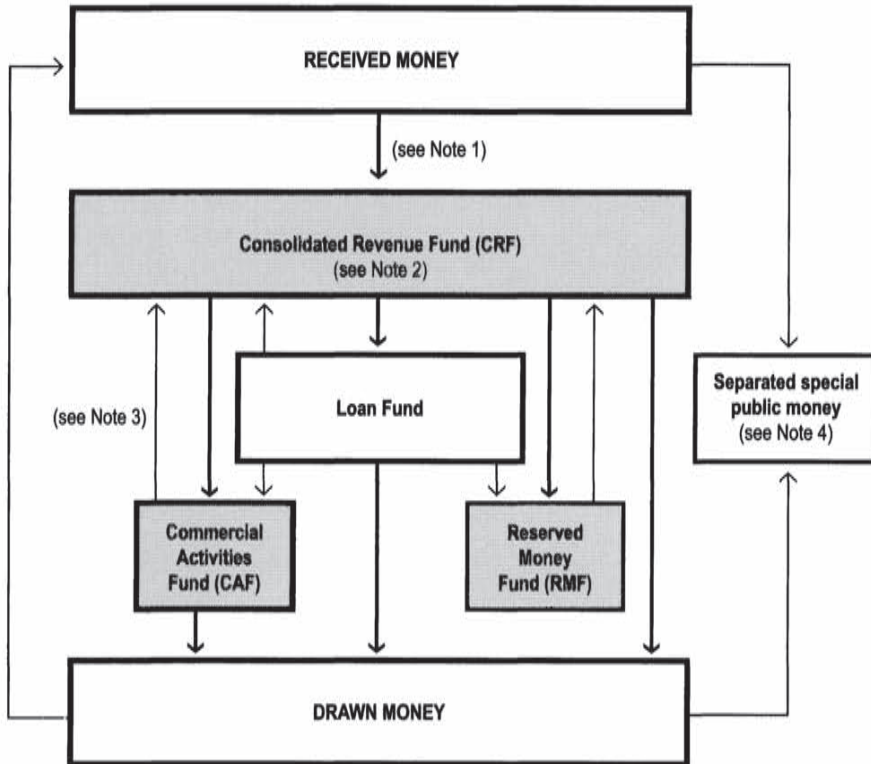
87. MOG changes can involve the abolition/creation of agencies, and/or the transfer of functions between agencies. While these changes can occur at any time, they are most likely to take place after a federal election. **Depending on the nature of the changes, they may be put into effect through a new Administrative Arrangements Order (AAO).**
88. Where a Special Account has been established in accordance with subsection 20(1) of the FMA Act and where, as a result of a MOG change, it has become necessary to transfer administrative responsibility of the Special Account to another agency, agencies should consult with their Finance AAU in the first instance as to whether:
- the matter can be handled administratively by the Finance Minister;
 - an amendment to the determination is necessary; or
 - the losing agency's Special Account should be abolished and a Special Account established for the gaining agency (in accordance with subsections 20(3) and 20(1), respectively, of the FMA Act).
89. **Apart from a determination which abolishes a Special Account, all determinations must be tabled in both Houses of Parliament and are subject to a disallowance period of five sitting days.**
90. **FMA section 21 Special Accounts are established by legislation. Responsibility for section 21 Special Accounts is determined either in the legislation itself or in the AAOs which set out the legislation administered by Ministers.**

Appendix 1: The Consolidated Revenue Fund Under the Audit Act 1901



Source: Aggregate Financial Statement prepared by the Minister for Finance year ended 30 June 1994 (Audit Report No.8, 1994-95).

Appendix 2: Financial Flows Related to the Reserved Money Fund and Commercial Activities Fund Under the *FMA Act 1997* (From 1 January 1998 to 30 June 1999)



- Indicates a common type of transfer
- Indicates a less common type of transfer

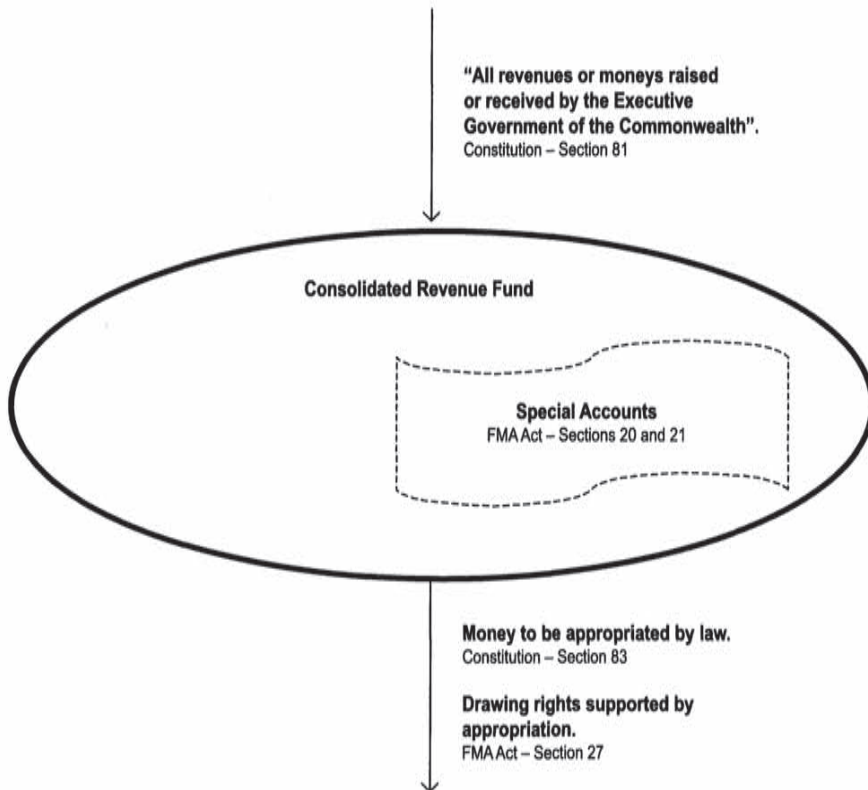
1. All Received Money must be credited to the CRF as soon as practicable after receipt (unless a Special Instruction applies).
2. The following transfers pass through the CRF: transfers between components of the CAF or the RMF; transfers between the CAF and the RMF; transfers from the CAF or RMF to the Loan Fund.
3. An example of this transfer is an unused advance on expiry of the relevant appropriation.
4. Separated special public money is special public money that is subject to a Special Instruction.

The Consolidated Revenue Fund under the *Financial Management and Accountability Act 1997*.

Source: Adapted by the Department of Finance and Administration, 7 March 2003, from Appendix A to the *Financial Management and Accountability Act 1997*.

Appendix 3: Financial Responsibilities Under the FMLA Act 1999 (From 1 July 1999)

The Consolidated Revenue Fund from 1 July 1999



The Consolidated Revenue Fund under the *Financial Management and Accountability Act 1997* (FMA Act) as amended by the *Financial Management Legislation Amendment Act 1999*.

Source: Department of Finance and Administration, 2003.

Appendix 4: Example of an Establishing Determination



Financial Management and Accountability (XYZ Special Account) Determination 2003/01

I, NICHOLAS HUGH MINCHIN, Minister for Finance and Administration, make this Determination under section 20 of the *Financial Management and Accountability Act 1997*.

Dated 2003

[DRAFT ONLY - NOT FOR SIGNATURE]
Minister for Finance and Administration

1 Name of Determination

This Determination is the *Financial Management and Accountability (XYZ Special Account) Determination 2003/01*.

Note: This Determination commences in accordance with section 22 of the *Financial Management and Accountability Act 1997*.

2 Creation of Special Account

- (1) A Special Account is established with the name of *XYZ Special Account*.

3 Amounts to be credited to the XYZ Special Account

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

- (a) amounts appropriated by the Parliament for the purposes of the XYZ Special Account; and
- (b) amounts received by the Commonwealth for the purposes of the XYZ Special Account (including an amount received by the Commonwealth in consideration for any service, benefit, activity, transaction or other matter that is done or provided for the purposes).

4 Purpose of the XYZ Special Account

- (1) The purpose of the XYZ Special Account, is to provide for:
 - (a) expenditure related to the purchase of office equipment for the use on a loan basis by XYZ classified persons (as determined under the XYZ Entitlements Act 1990); and
 - (b) expenditure in relation to the operation and administration of the XYZ Special Account.
- (2) Amounts may be debited to the XYZ Special Account in relation to the purposes specified in subclause (1).

Appendix 5: Example of an Amending Determination



Financial Management and Accountability (XYZ Special Account) Amendment Determination 2003/02

I, NICHOLAS HUGH MINCHIN, Minister for Finance and Administration, make this Determination under section 20 of the *Financial Management and Accountability Act 1997*.

Dated 2003

[DRAFT ONLY - NOT FOR SIGNATURE]
Minister for Finance and Administration

1 Name of Determination

This Determination is the *Financial Management and Accountability (XYZ Special Account) Amendment Determination 2003/02*.

Note: This Determination commences in accordance with section 22 of the *Financial Management and Accountability Act 1997*.

2 Amendment of XYZ Special Account

Schedule 1 amends the *Financial Management and Accountability (XYZ Special Account) Determination 2003/01*.

3 Schedule 1 Amendments

[1] **Subparagraph (4)(1)(a)**

omit

office equipment

insert

motor vehicles

Appendix 6: Example of an Abolishing Determination



Financial Management and Accountability (XYZ Special Account) Abolition Determination 2003/03

I, NICHOLAS HUGH MINCHIN, Minister for Finance and Administration, make this Determination under subsection 20 (3) of the *Financial Management and Accountability Act 1997*.

Dated 2003

[DRAFT ONLY - NOT FOR SIGNATURE]

Minister for Finance and Administration

1 Name of Determination

This Determination is the *Financial Management and Accountability (XYZ Special Account) Abolition Determination 2003/03*.

Note: This Determination commences in accordance with section 22 of the *Financial Management and Accountability Act 1997*.

Abolition of Special Accounts

The XYZ Special Account established by the *Financial Management and Accountability (XYZ Special Account) Determination 2003/01* is abolished.

Appendix 7: Example of PBS Reporting of Special Accounts

Estimated Special Account Flows and Balances

Estimate - 2003-04, Heavy Figures
Actual - 2002-03, Light Figures

	Opening Balance	Receipts	Payments	Adjustments ⁽²⁾	Closing Balance
	2003-04 ⁽¹⁾	2003-04	2003-04	2003-04	2003-04
	2002-03 ^(1a)	2002-03	2002-03	2002-03	2002-03
	\$'000	\$'000	\$'000	\$'000	\$'000
Special Account Name 1 - XXX Act 199x (A)	0	0	0	0	0
	0	0	0	0	0
Special Account Name 2 - YYY Act 199x (A)	0	0	0		0
	0	0	0		0
Special Account Name 3 - ZZZ Act 199x (A)	0	0	0		0
	0	0	0		0
Special Account Name 4 - XXX Act 199x (A)	0	0	0		0
	0	0	0		0
Special Account Name 5 - XXX Act 199x (A)	0	0	0		0
	0	0	0		0
Special Account Name 6 - AAA Act 199x (A)	0	0	0		0
	0	0	0		0
Special Account Name 7 - s20 FMA Act (D)	0	0	0		0
	0	0	0	0	0
Special Account Name 8 - BBB Act 199x (D)	0	0	0		0
	0	0	0	0	0
Total Special Accounts	-	-	-	-	-
	-	-	-	-	-

D = Departmental

A = Administered

Acts Glossary:

FMA Act = Financial Management and Accountability Act, 1999

XXX Act 199x = Xxxxxxx Xxxx Xxxx Act, 199x

YYY Act 199x = Yyyyy(Yyyyy Yyyyy) Act, 199x

ZZZ Act 199x = Zzzzzzz Zzzz Zzz Act, 199x

AAA Act 199x = Aaaa(Aaaaa Aaaa Aaaa) Act, 199x

BBB Act 199x = Bbbb Bbbbbb Bbbb Bbbb Act, 199x

Note 1 The Opening Balance for 2003-04 is the same as the Closing Balance for 2002-03

Note 2 Receipts from appropriations and other sources are further specified in the Total Resources for Outcome tables [include cross-references to table numbers and page references as appropriate]

Note 3 Estimated adjustments include xxxxx [specify what adjustments are applicable. Note also that this column is optional and can be deleted if not required]

Note: The reader is referred to the most recent PBS guidance to ensure the current format will be used.

Total Resources for Outcome 1

	Estimated actual 2002-03 \$'000	Budget estimate 2003-04 \$'000
Administered appropriations		
to Special Account Name 1 ⁽¹⁾		
XXXX Act 1999x - to Special Account Name 2		
YYYY Act 1999x - to Special Account Name 3		
Total administered appropriations		
from Special Accounts (estimated payments from Special Account balances)⁽²⁾		
Special Account Name 1 - s20 FMA Act ⁽³⁾		
Special Account Name 2 (XXXX Act 1999x) ⁽⁴⁾		
Special Account Name 3 (YYYY Act 1999x)		
Special Account Name 4 (ZZZZ Act 1999x)		
Special Account Name 5 (AAAA Act 1999x)		
Special Account Name 6 (BBBBB Act 1999x)		
Total Special Account Outflows		
Departmental appropriations		
Output Group 1.1 -		
Output 1.1.1 -		
Output 1.2.2 - (to Special Account Name 7) ⁽¹⁾		
Output 1.1.2 -		
Subtotal Output Group 1.1		
Departmental appropriations		
Output Group 1.2 -		
Output 1.2.1 -		
Output 1.2.2 -		
Output 1.1.1 - (to Special Account Name 8) ⁽¹⁾		
Subtotal Output Group 1.2		
Total revenue from government (appropriations)		(C1) ⁽¹⁾
Contributing to price of departmental outputs		
Revenue from other sources		
[Itemise revenue from other sources]		
Output 1.1.1 - (to Special Account Name 7) ⁽¹⁾		
Output 1.2.2 - (to Special Account Name 8) ⁽¹⁾		
Total revenue from other sources		
Total price from departmental outputs		
(Total revenue from government and from other sources)		(E1) ⁽¹⁾

from Special Accounts (estimated payments from Special Account balances) ⁽²⁾

Special Account Name 7

Special Account Name 8

**Total Departmental Special Account
outflows**

Total estimated resourcing for Outcome 1

(Total price of outputs and administered appropriations)

2002-03

2003-04

Average staffing level (number)

Note 1. Flows into Special Accounts are also shown in the receipts column of the Special Accounts table in Table 1.5

Note 2. Special Account outflows are shown in the payments column of the Special Account table in Table 1.5

Note 3. Where names of Acts have been abbreviated, the full name of the Act can be found in the Acts Glossary at the end of Table 1.5

Note 4. [possible text explaining forward year special account trends] (repeat as necessary)

Source: Department of Finance and Administration, Estimates Memorandum 2003/13 Portfolio Budget Statements Guidelines Tables 1.5 and 2.1.1.

Appendix 8: Required Financial Statements Reporting of Special Accounts

Cash Basis Acquittal Special Accounts¹

Account Name	2003	2002
Balance carried from previous period		
Appropriation for reporting period ²		
Costs Recovered		
Other receipts (<i>Show each major class</i>) ³		
Available for payments		
Payments made		
(<i>Show each major class</i>) ³		
Balance carried to the next period		
Represented by:		
(<i>Show each major class</i>) ³		
Total⁴		

¹ Prepare a separate table for each Special Account. In the heading information, indicate whether the account is administered or departmental in nature.

² Each current year Appropriation Act should be reported on a separate line and the total amount transferred should agree with the Special Accounts disclosures in Tables A and B.

³ Major classes are as per Appendix A of this Schedule.

⁴ The total in the lower section in the table should balance to the balance carried to the next report.

Source: Department of Finance and Administration, *Finance Minister's Orders (FMOs) for Reporting Periods Ending On or After June 2003*, p. 30.

Appendix 9: Selected Sections of the FMA Act

FINANCIAL MANAGEMENT AND ACCOUNTABILITY ACT 1997 - SECTION 5 Definitions

In this Act, unless the contrary intention appears:

...

Public Money means:

- (a) money in the custody or under the control of the Commonwealth; or
- (b) money in the custody or under the control of any person acting for or on behalf of the Commonwealth in respect of the custody or control of the money;

including such money that is held on trust for, or otherwise for the benefit of, a person other than the Commonwealth.

...

Special Account means:

- (a) a Special Account that is established by the Finance Minister under section 20; or
- (b) a Special Account that is established by an Act other than this Act.

Note: See also the *Financial Management Legislation Amendment Act 1999*, which converted components of previously existing funds into Special Accounts.

Special Instruction means an instruction by the Finance Minister under section 16.

Special Public Money has the meaning given by section 16.

FINANCIAL MANAGEMENT AND ACCOUNTABILITY ACT 1997 - SECTION 6 Notional payments and receipts by Agencies

- (1) This Act applies to a notional payment by an Agency (or part of an Agency) as if it were a real payment by the Commonwealth.
- (2) This Act applies to a notional receipt by an Agency (or part of an Agency) of such a notional payment as if it were a real receipt by the Commonwealth.

Note: This section applies to transactions that do not actually involve payments or receipts, because the parties to the transaction are merely parts of the Commonwealth, or acting as agents for the Commonwealth. For example, Agency 1 “pays” Agency 2 for services provided by Agency 2. One of the effects of this section is that a drawing right under section 27 will be required for the transaction.

FINANCIAL MANAGEMENT AND ACCOUNTABILITY ACT 1997 - SECTION 16
Special Instructions by Finance Minister about handling etc. of Special Public Money

- (1) The Finance Minister may issue Special Instructions^a in writing about Special Public Money, including instructions about:
 - (a) the custody of special public money;
 - (b) the investment of special public money;
 - (c) the application of interest or other amounts derived from the investment of special public money;
 - (d) the application of special public money in paying the expenses involved in dealing with special public money.
- (2) In case of inconsistency, Special Instructions override this Act, the regulations and the Finance Minister's Orders. However, Special Instructions cannot be inconsistent with the terms of any trust that applies to the money concerned.
- (3) An official or Minister must not contravene any Special Instruction. Maximum penalty: Imprisonment for 2 years. Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.
- (4) In this section:

'special public money' means Public Money that is not held on account of the Commonwealth or for the use or benefit of the Commonwealth. Note: Money held by the Commonwealth on trust for another person is an example of Special Public Money.

^a Note: Money held by the Commonwealth on trust for another person is an example of Special Public Money.

FINANCIAL MANAGEMENT AND ACCOUNTABILITY ACT 1997 - SECTION 20
Establishment of Special Accounts by Finance Minister

- (1) The Finance Minister may make a written determination that does all or any of the following:
 - (a) establishes a Special Account;
 - (b) allows or requires amounts to be credited to the Special Account;
 - (c) specifies the purposes of the Special Account.
- (2) The Finance Minister may make a determination that revokes or varies a determination made under subsection (1).

- (3) The Finance Minister may make a determination that abolishes a Special Account established under subsection (1).
- (4) The CRF is hereby appropriated for expenditure for the purposes of a Special Account established under subsection (1), up to the balance for the time being of the Special Account.
- (5) Whenever an amount is debited against the appropriation in subsection (4), the amount is taken to be also debited from the Special Account.

FINANCIAL MANAGEMENT AND ACCOUNTABILITY ACT 1997 - SECTION 21 **Special Accounts established by other Acts**

- (1) If another Act establishes a Special Account and identifies the purposes of the Special Account, then the CRF is hereby appropriated for expenditure for those purposes, up to the balance for the time being of the Special Account.

Note: An Act that establishes a Special Account will identify the amounts that are to be credited to the Special Account.

- (2) Whenever an amount is debited against the appropriation in subsection (1), the amount is taken to be also debited from the Special Account.

FINANCIAL MANAGEMENT AND ACCOUNTABILITY ACT 1997 - SECTION 22 **Disallowance of determinations relating to Special Accounts**

- (1) This section applies to a determination made by the Finance Minister under subsection 20(1) or (2).
- (2) The Finance Minister must cause a copy of the determination to be tabled in each House of the Parliament.
- (3) Either House may, following a motion upon notice, pass a resolution disallowing the determination. To be effective, the resolution must be passed within 5 sitting days of the House after the copy of the determination was tabled in the House.
- (4) 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.

FINANCIAL MANAGEMENT AND ACCOUNTABILITY ACT 1997 - SECTION 31
Agreements for “net appropriations”

- (1) The Finance Minister may enter into agreements^b for the purposes of items in Appropriation Acts that are marked “net appropriation”.
- (2) In the case of items for which the Finance Minister is responsible, the agreement is to be made with the Chief Executive of the Agency for which the appropriation is made. In all other cases, the agreement is to be made with the Minister who is responsible for the item.
- (3) An agreement need not relate to a particular Appropriation Act or Acts and may be made for any period, including a period longer than a financial year.
- (4) The Finance Minister may at any time cancel or vary an agreement, without the consent of the other party.
- (5) In this section:
Appropriation Act includes a Supply Act.

^b The Finance Minister has delegated this power/function to the Finance Chief Executive.

FINANCIAL MANAGEMENT AND ACCOUNTABILITY ACT 1997 - SECTION 39
Investment of Public Money

- (1) The Finance Minister may invest Public Money^c in any authorised investment.
- (2) For the purpose of managing the public debt of the Commonwealth, the Treasurer may invest Public Money in any authorised investment.
- (3) An investment of Public Money under this section must not be inconsistent with the terms of any trust that applies to the money concerned.
- (4) If an amount invested under this section was debited from a Special Account, then expenses of the investment may be debited from that Special Account.
- (5) 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.
- (6) At any time before an investment matures, the Finance Minister^c or Treasurer, as the case requires, may authorise the re-investment of the proceeds upon maturity in an authorised investment with the same entity.

Note: The proceeds of investment of the original investment will not become Public Money when the investment matures because the proceeds will not be received by or on behalf of the Commonwealth.

- (7) The corporation established by section 62B of the *Audit Act 1901* is continued in existence for the purposes of this section with the name “The Minister for Finance of the Commonwealth”. Investments by the Finance Minister under this section must be made in that corporate name.
- (8) The corporation established by section 8 of the *Loan Consolidation and Investment Reserve Act 1955* is continued in existence for the purposes of this section with the name “The Treasurer of the Commonwealth”. Investments by the Treasurer under this section must be made in that corporate name.
- (9) The CRF is appropriated as necessary for the purposes of this section.
- (10) In this section:
authorised investment means:
- (a) in relation to the Finance Minister—any of the following investments:
- a. securities of the Commonwealth or of a State or Territory;
 - b. securities guaranteed by the Commonwealth, a State or a Territory;
 - c. a deposit with a bank, including a deposit evidenced by a certificate of deposit;
 - d. any other form of investment prescribed by the regulations; and
- (b) in relation to the Treasurer—any of the following investments:
- a. securities of the Commonwealth or of a State or Territory;
 - b. securities guaranteed by the Commonwealth, a State or a Territory;
 - c. a deposit with a bank, including a deposit evidenced by a certificate of deposit;
 - d. debt instruments issued or guaranteed by:
 - i. the government of a foreign country; or
 - ii. a financial institution whose members consist of foreign countries, or of Australia and foreign countries;
 - iii. being debt instruments with a credit rating that is consistent with the sound management of public debt;
 - iv. any other form of investment prescribed by the regulations.

^c. The Finance Minister has delegated this power/function to all Chief Executives.

FINANCIAL MANAGEMENT AND ACCOUNTABILITY ACT 1997 - SECTION 44
Promoting efficient, effective and ethical use of Commonwealth resources

- (1) A Chief Executive must manage the affairs of the Agency in a way that promotes proper use of the Commonwealth resources for which the Chief Executive is responsible.
- (2) If compliance with the requirements of the regulations, Finance Minister's Orders, Special Instructions or any other law would hinder or prevent the proper use of those resources, the Chief Executive must manage so as to promote proper use of those resources to the greatest extent practicable while complying with those requirements.
- (3) In this section:

'proper use' means efficient, effective and ethical use.

FINANCIAL MANAGEMENT AND ACCOUNTABILITY ACT 1997 - SECTION 48
Accounts and Records

- (1) A Chief Executive must ensure that accounts and records of the Agency are kept as required by the Finance Minister's Orders.
- (2) The Finance Minister is entitled to full and free access to the accounts and records kept under subsection (1). However, the Finance Minister's access is subject to any law that prohibits disclosure of particular information.

Appendix 10: Glossary of Terms

Administered Items	<p>Revenues, expenses, assets and liabilities that the Government controls, but which an agency manages on the Government's behalf. They include:</p> <ul style="list-style-type: none">• Grants, subsidies, benefit payments and transfers to other levels of government;• Taxes, fees, fines and excise;• Public debt and related interest; and• Loans to other governments and related interest. <p>Such resources may be used to produce outputs by third party organisations. Administered items need to be specified and costed as part of budgeting, accounting and reporting processes.</p>
Administered payments	<p>Means payments made from administered appropriations by an agency on behalf of the Commonwealth.</p>
Administered receipts	<p>Receipts that are collected by an agency on behalf of the Commonwealth.</p>
Agency	<p>For the purposes of this document an agency is defined as a Department of State, a Parliamentary Department or an agency prescribed by the FMA Act. Some prescribed agencies are subject to the <i>Commonwealth Authorities and Companies Act 1997</i>, but are subject to the FMA Act for their functions of managing or spending public money.</p>
Appropriation	<p>An authorisation by Parliament to spend moneys from the Consolidated Revenue Fund.</p>
Appropriation Act	<p>An appropriation bill that has been passed by Parliament and received Royal Assent. The Act authorises the drawing of Public Money from the Consolidated Revenue Fund for spending according to restricted purposes outlined by the Act.</p>

Consolidated Revenue Fund (CRF) Section 81 of the Constitution requires that all revenue raised or money received by the Executive Government has to form one consolidated revenue fund to be appropriated for Commonwealth purposes. The CRF is thus the principal operating fund where the transactions associated with the general activities of the government are recorded. The withdrawal of Public Money from the CRF requires an appropriation made by law (as required by section 83 of the Constitution).

Departmental Items Resources (assets, liabilities, revenues and expenses) that agencies (or subsidiaries) control directly and use to produce outputs on behalf of government - including outsourced activities funded and controlled by the agency. Examples include computers and plant and equipment used in producing goods and services; accruing liabilities for employee entitlements; revenues from user charges and profits; and employee salaries and other administrative expenses incurred in providing goods and services.

Official Exempt SPM Account An official bank account that is established for the receipt, custody, payment or transmission of Public Money held by the Commonwealth as Special Public Money. The Account requires the Commonwealth to:

- (i) invest and retain the balance of the account outside the Commonwealth's Central Official Accounts; and
- (ii) operate a separate bank account from other Public Money held by the agency's transactional banker.

Official Public Account (OPA) The Government's central bank account. The OPA replaced the Commonwealth Public Account (from the Audit Act 1901) as the Government's central bank account.

Official SPM Account An official bank account designated as a Special Public Money account by the agency that is:

- (a) established for the receipt, custody, payment or transmission of Public Money held by the Commonwealth as Special Public Money; and
- (b) not designated as an Exempt SPM Account by the agency.

Public Money Defined in the section 5 of the FMA Act as meaning:
(i) money in the custody or under the control of the Commonwealth; or

(ii) money in the custody or under the control of any person acting for or on behalf of the Commonwealth in respect of the custody or control of the money;

including such money that is held on *trust* for, or otherwise for the benefit of, a person other than the Commonwealth.

Special Appropriations

Moneys appropriated by Parliament in an Act separate to an annual Appropriation Act. Special appropriations are not subject to Parliament's annual budget control, unlike the annual appropriations.

Special Public Money

Defined in section 16 of the FMA Act as meaning Public Money that is not held on account of the Commonwealth, or for the use or benefit of the Commonwealth. Money held by the Commonwealth on trust for another person is an example of Special Public Money.

Appendix 11: Abbreviations

AAO	Administrative Arrangements Order
AAU	Agency Advice Unit in the Department of Finance and Administration
AGS	Australian Government Solicitor
AIMS	Accrual Information Management System
ATMA Act	<i>Audit (Transitional and Miscellaneous) Amendment Act 1997</i>
Audit Act	<i>Audit Act 1901</i>
CAC Act	<i>Commonwealth Authorities and Companies Act 1997</i>
CAF	Commercial Activities Fund
CAMM	Cash Appropriation Management Module
CFS	Consolidated Financial Statements of the Commonwealth
CRF	Consolidated Revenue Fund
Finance	Department of Finance and Administration
Finance Minister	Minister for Finance and Administration
FMA Act	<i>Financial Management and Accountability Act 1997</i>
FMIS	Financial Management Information Systems
FMLA Act	<i>Financial Management Legislation Amendment Act 1999</i>
FMOs	Finance Minister's Orders
MOG	Machinery of Government
OLD	Office of Legislative Drafting
OPA	Official Public Account
PBS	Portfolio Budget Statement
RMF	Reserved Money Fund

Appendix 3: Finance Circular 2003/03—Drawing Rights: Payments and Debiting Appropriations

To All FMA Agencies

Purpose

To assist Agencies with the application of drawing rights in accordance with sections 26 and 27 of the *Financial Management and Accountability Act 1997* (FMA Act).

Key Points

Legislative Framework Requirements

1. The Finance Minister is responsible for overseeing the administration of appropriations and cash drawdown arrangements. Drawing rights are a means of fulfilling part of this function. The Finance Minister has delegated many of the financial management responsibilities prescribed by the FMA Act, including drawing rights, to agency Chief Executives.
2. A drawing right is an authorisation, which enables an official or Minister to expend public money or an appropriation. Drawing rights provide additional controls around the processes used by officials¹ within Agencies to debit appropriations and make payments.
3. Section 26 and section 27 of the FMA Act govern the issuance of drawing rights and limit certain activities to those officials who have been issued drawing rights.
 - Section 26 requires a an official or Minister to be authorised by a valid drawing right, in order to do any of the following:
 - a) make a payment of public money;
 - b) request that an amount be debited against an appropriation; or
 - c) debit an amount against an appropriation.
 - Section 26 also provides that undertaking these activities without a valid drawing right is a criminal offence.
 - Section 27 provides a Minister or an official the power or obligation to issue, revoke or amend drawing rights.
4. The Finance Minister has delegated the powers under sub-sections 27(1), 27(2) and 27(4) to Chief Executives.

¹ Official is defined in section 5 of the FMA Act.

5. It is the responsibility of Chief Executives to issue drawing rights to the appropriate officials within their Agency and to ensure that officials do not perform any of the actions identified in section 26 of the FMA Act without a valid drawing right.
6. The Chief Executive may elect to delegate these powers to officials, such as the Chief Financial Officer of the Agency. A written record should be maintained which lists the positions of each official or class of official that has been issued drawing rights. In order to assist the application of drawing rights within an Agency, the operational processes surrounding drawing rights should be detailed in the Agency's Chief Executive Instructions (CEIs).²
7. Agencies should be aware that drawing rights are required for any of the actions detailed under section 26 of the FMA Act for all appropriations, including:
 - annual appropriations;
 - special appropriations;
 - standing appropriations prescribed under the FMA Act (includes sections 20 and 21 in respect of Special Accounts, section 28 in respect of repayments and section 39 in respect of investments); and
 - appropriations provided for in other Commonwealth legislation.

Procedural Issues

8. Where the terms of an appropriation permit (rather than compel) the Australian Government to spend money, the issuance of an appropriate drawing right may include limits and conditions to assist the Agency to manage its appropriation. For example, a limit may be applied restricting an official from exceeding the Agency's authority. This is particularly important where several individuals may be exercising drawing rights concurrently. A condition may specify the purpose for which drawing rights can be exercised, but this must be consistent with the purpose for which the Agency has been appropriated the funds.
9. Depending on internal systems and the size of an Agency, different officials may require drawing rights when making payments to external parties out of their Agency bank accounts and recording the amounts debited against their appropriation.

² *Financial Management and Accountability Order* 6.1, states "An official who uses another Agency to perform a financial task must comply with an instruction by the Chief Executive of the other Agency about the performance of the task". Section 52 of the FMA Act gives power to Chief Executives to give instructions to officials in their Agency.

10. Agencies are required to debit appropriation ledgers within their own accounting records whenever payments are made to parties external to the Agency. This enables the Agency to fulfill its obligation to be able to account for the remaining balances of all appropriations at any point in time.

11. Depending on Agencies' internal processes, the debiting of an appropriation and the making of a payment may be performed automatically within the Agency's Financial Management Information System, but a valid drawing right is still required by the appropriate officers undertaking the relevant tasks.

Contacts

12. For more information please contact the Banking Team within Financial Management Group (02) 6215 2222 or at Banking@finance.gov.au

Finance and Banking Branch
Financial Management Group
24 September 2003

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