

Proposed amendments which are a consequence of the *Financial Management Legislation Amendment Act 1999*

Overview of the *Financial Management Legislation Amendment Act 1999*

- 2.1 The FMLA Act, which commenced on the 1 July 1999, included the following amendments to the FMA Act and other instruments:
- the Loan Fund, the Commercial Activities Fund (CAF) and the RMF were abolished;
 - the three Funds were merged into a single CRF; and
 - components of the CAF and the RMF were replaced with Special Accounts—balances of the components were credited to the new Accounts.
- 2.2 The CAF and the RMF were separate funds from the CRF, whereas Special Accounts record amounts in the CRF.¹

1 There are no Acts which established components of the CAF.

- 2.3 The commencement of the FMLA Act followed the adoption of the concept of a self-executing CRF, that is money raised or received by the Executive Government automatically forms part of the CRF, without the need to credit a ledger account designated 'CRF' or make a payment into a bank account so designated.
- 2.4 The FMLA Act included the following deeming provisions, relevant to the Bill, applying to any instrument:
- The name of a component that ends with 'Reserve' or 'Fund' is changed to the same name but ends with 'Account', that is a Special Account (subsection 5(5) of the FMLA Act).
 - A reference to transferring, paying or debiting an amount from the CRF to, or crediting the amount to, a component of the RMF, is to be read as a reference to crediting the amount to the Account (paragraph 5(6)(a)).
 - A reference to transferring, paying or debiting an amount from a component of the RMF to the CRF, or crediting the CRF, is to be read as a reference to debiting the amount from the Account (paragraph 5(6)(b)).
 - A reference to paying an amount out of a component of the RMF is to be read as a reference to paying the amount out of the CRF and debiting the amount from the Account (paragraph 5(6)(c)).
 - A reference to the Loan Fund is to be read as a reference to the CRF (section 6).
 - A reference to paying an amount into the CRF is to be read as a reference to paying the amount to the Commonwealth, unless the amount is already public money (section 7).²
- 2.5 Schedule 1 of the Bill is devoted to amending all legislation which contains references that are affected by the deeming provisions of the FMLA Act. In the event of the Bill being passed by Parliament the deeming provisions in the FMLA Act would become redundant.

2 Public money is defined in section 5 of the FMA Act as:

- (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.

Removal of references to the Loan Fund

- 2.6 Part 1 of Schedule 1 of the Bill is devoted to amendments that remove references in 16 Acts to the Loan Fund. These Acts, relevant sections and the items in the Bill are listed in Appendix D.
- 2.7 The amendments are intended to replace the deeming provision in section 6 of the FMLA Act outlined in paragraph 2.4 of this chapter. Where it is appropriate to do so, references to the Loan Fund are replaced with references to the CRF. Some references, such as to the Minister for Finance authorising the reimbursement of the CRF from the Loan Fund, are repealed, without being replaced, because they are redundant.
- 2.8 The Committee noted that Acts administered by the Department of the Treasury (Treasury) and the Department of Agriculture, Fisheries and Forestry that are included in Part 1 of Schedule 1 were very old. The Committee asked whether the Acts could be repealed in total, rather than just making amendments.³
- 2.9 Treasury responded:
- Schedule 2 of the *AIDC Sale Act 1997* provides for the *Australian Industry Development Corporation Act 1970*⁴ and the *Loans (Australian Industry Development Corporation) Act 1974* to be repealed only after the Minister for Finance and Administration is satisfied that the Australian Industry Development Corporation has no assets and liabilities. The Australian Industry Development Corporation still has assets and liabilities outstanding and it would not be appropriate to repeal these Acts earlier than the timeframe specified in the *AIDC Sale Act 1997*.
- With respect to the *Loans (Qantas Airways Ltd) Act (No. 2) 1971, 1972, 1974 and 1976* it would premature at this point to repeal these Acts. In particular, while the risk of unclaimed interest and principal monies is low further inquiries need to be made to assess the nature of the Commonwealth's liability. The outcome of these inquiries will determine whether the Acts can be repealed.⁵

3 Transcript, p.5.

4 The *AIDC Sale Act 1997* and the *Australian Industry Development Corporation Act 1970* are not included in the Bill for amendment or repeal.

5 Treasury, *Submission No.16*, p.38.

Replacement of references to paid to the Consolidated Revenue Fund with references to paid to the Commonwealth and related amendments

- 2.10 Part 2 of Schedule 1 includes amendments to 34 Acts to replace references to ‘paid to the CRF’ with references to ‘paid to the Commonwealth.’ These Acts, relevant sections, and the items in the Bill, are listed in Appendix E.
- 2.11 The amendments are intended to replace the deeming provision in section 7 of the FMLA Act outlined in paragraph 2.4 of this chapter. The deeming provision does not require references to ‘paid to the CRF’ to be replaced with references to ‘paid to the Commonwealth’ in cases where the money is public money. Public money is part of the CRF regardless of who holds the money; therefore when money is public money no reference to paying the money to the CRF is required.
- 2.12 The Bill departs from the deeming provision in the FMLA Act in Acts that provide for public money to be collected by an entity that is not part of the legal entity of the Commonwealth, for example a body that is subject to the CAC Act. This departure from the FMLA Act is intended to clarify that the money is paid to the Commonwealth by the collecting entity. These particular amendments are separately identified in Appendix E.
- 2.13 The Committee asked if this departure from the deeming provision was in response to known examples of public money collected by particular entities that are legally separate from the Commonwealth not being paid to the Commonwealth.
- 2.14 The Department of Finance and Administration (Finance) responded:
- No, it is not related to practice at all. It is just clarifying the wording – that is, whether there is a statement of ‘pay to the Consolidated Revenue Fund’ or ‘pay to the Commonwealth’. If a body has received money on behalf of the Commonwealth, it has already entered the CRF. Rather than deeming that it must then make a payment to the CRF, the appropriate wording is that that body must make a payment to the Commonwealth.⁶

6 Mr Marc Mowbray-d’Arbela, Finance, *Transcript*, p.31.

2.15 The Committee asked if any CAC body or other entity in the past collected public money that it has not in turn paid to the Commonwealth.⁷

2.16 Finance advised:

Schedule 1 of the Bill is consequential legislation and does not seek to rectify any identified problem associated with bodies not transferring public money back to the Commonwealth.

The FMA Act, the Financial Management and Accountability (Finance Minister to Chief Executives) Delegations and related Directions, and the Finance Minister's Orders impose requirements on Agencies to promptly deposit public money into official Commonwealth bank accounts and directs Agency Chief Executives to provide annual certification that they comply with the Finance Minister's Delegations.

No Agencies, since the commencement of the FMA Act, have certified to the Finance Minister that public money has not been transferred to official Commonwealth bank accounts.⁸

2.17 The Committee asked the Australian National Audit Office (ANAO) if it agreed that it was appropriate that the Bill contain provisions requiring entities that are legally separate from the Commonwealth, but which collect public money, to pay the money to the Commonwealth.⁹

2.18 The ANAO responded:

The ANAO agrees that it is appropriate the Bill contains a provision relating to these payments to the Commonwealth for two reasons.

Firstly, it is a measure of internal control over public moneys collected by a body that is separate from the Commonwealth to have those moneys paid to, and therefore recorded in, the accounting records of the Commonwealth.

Secondly, the provision would be necessary to the extent that moneys collected on the Commonwealth's behalf are to be spent under an appropriation exercised by a body other than the body collecting the moneys.¹⁰

7 Transcript, p.29

8 Finance, *Submission, No.17*, p.68.

9 Transcript, p.25.

10 ANAO, *Submission No.13*, p.30.

2.19 The Committee asked if an entity receiving moneys on behalf of the Commonwealth, which is not subject to the FMA or CAC Acts, is able to be audited by the Auditor-General.¹¹

2.20 The ANAO responded:

For the purposes of our response, the term ‘agent or entity collecting money on behalf of the Commonwealth’ has been interpreted as including any body which is involved in the collection of Commonwealth moneys. Examples might include private sector estate agents managing property on behalf of a Department or a small business withholding goods and services tax on behalf of the Australian Taxation Office. Regardless of the specific circumstances, if the body collecting the money is not a Commonwealth Agency, Authority or Company (as defined by the FMA and CAC Acts), it does not fall within the audit mandate of the Auditor-General.

However, during the course of conducting a performance or financial statement audit of a Commonwealth entity, the ANAO has the power to collect oral or documentary information from relevant third parties, where necessary. As the Committee is aware, in the ordinary course of events the ANAO would obtain this information through the audited entity.¹²

Replacement of references to components of the Reserved Money Fund with references to Special Accounts and related amendments

2.21 Part 2 of Schedule 1 includes amendments to 40 Acts to replace references to components of the RMF with references to Special Accounts and to align the text covering the movement of funds/amounts to and from the Accounts. These Acts, relevant sections, and the items in the Bill are listed in Appendix F.¹³

2.22 The amendments are intended to replace the deeming provisions contained in subsection 5(6) of the FMLA Act outlined in paragraph 2.4 of this chapter. The Bill clarifies the deeming provision in

11 *Transcript*, p.27

12 ANAO, *Submission No.13*, p.31.

13 Many of these Acts are also amended to replace references to paid to the CRF with references to paid to the Commonwealth. This is discussed from paragraph 2.10.

paragraph 5(6)(b) and departs from the deeming provision in paragraph 5(6)(c). These amendments are explained below.

The deeming provision in paragraph 5(6)(b) of the FMLA Act

- 2.23 The Bill contains a clarification of the deeming provision by including new subsections in sections 20 and 21 of the FMA Act (in Items 128 and 129 of Schedule 2)¹⁴ to provide that amounts standing to the credit of a Special Account that are expended on the purposes of the Special Account may be applied on making notional payments for that purpose (unless the contrary intention appears).
- 2.24 These proposed amendments provide a link with section 6 of the FMA Act. This section provides that the FMA Act applies to a notional payment or receipt between Agencies, or between parts of an Agency as if it were a real payment or receipt.¹⁵
- 2.25 The Committee asked for clarification of notional receipts and payments. Finance explained:

Because money from all of the Commonwealth bodies forms part of the CRF, when they make payments the CRF does not change at all. In a legal sense, they are notional payments. But for accounting and appropriation purposes, they are treated as real receipts and payments.¹⁶

The deeming provision in paragraph 5(6)(c) of the FMLA Act

- 2.26 The Bill contains a departure from the deeming provision. The reference 'debited from the Account and paid by the Commonwealth' is used, instead of the reference contained in the deeming provision (paying the amount out of the CRF and debiting the amount from the Account) when it is clear that that amount is to be paid out of the CRF. The amended reference complements the reference to 'paid to the Commonwealth' used in the deeming provision contained in section 7 of the FMLA Act (outlined in paragraph 2.4 of this chapter).
- 2.27 Individual cases of departure from the deeming provision are identified in Appendix F.

14 These are discussed further in Chapter 4, from paragraph 4.27.

15 'Agency' means an organisation that is subject to the FMA Act, that is a Department of State, a Department of the Parliament, or a prescribed Agency. Most Agencies do not handle money that is not public money, which means that their financial operations are based in the CRF.

16 Mr Ian McPhee, Finance, *Transcript*, p.61.

Proposed amendments to the *Superannuation Industry (Supervision) Act 1993*

- 2.28 Item 438 of Schedule 1 of the Bill includes an amendment to subsection 237(2) of the *Superannuation Industry (Supervision) Act 1993* (SIS Act). The SIS Act establishes the Superannuation Protection Account.
- 2.29 Treasury advised:
- [it had] identified a potential source of inconsistency in relation to amendments concerning section 237 of the SIS Act....due to the simultaneous progression of the amendments to the same section of the Act through the *Superannuation Industry (Supervision) Amendment Bill 2002* [SIS Bill], which was introduced to Parliament on 12 December 2002. These potential inconsistencies are of a technical, rather than a policy, nature and have been drawn to the attention of the Department of Finance and Administration.¹⁷
- 2.30 Finance advised that it had provided instructions to the Office of Parliamentary Counsel (OPC) to amend the Bill to take into account the amendment to the SIS Act being made by the SIS Bill.¹⁸ The Committee would be notified of the amendment prior to introduction of the Bill in Parliament.

Acts proposed for repeal

- 2.31 Part 3 of Schedule 1 lists 28 Acts for repeal. These Acts contain the types of provisions that are being amended in Parts 1 and 2 of Schedule 1 of the Bill. However, because the Acts are redundant, they are proposed for repeal rather than amendment.
- 2.32 Appendix G records all of the Acts listed in the Bill for repeal together with the portfolio responsible for each Act under the Administrative Arrangements Order (AAO). Twenty one of the Acts are the total or partial responsibility of the Treasury portfolio.
- 2.33 Treasury advised:
- In correspondence with the Minister for Finance and Administration, the Parliamentary Secretary to the Treasurer

17 Ms Jan Harris, Treasury, *Transcript*, p.4.

18 Finance, *Submission No.17*, p.50.

stated that he was not yet in a position to support these proposals, and noted that he expected that there would be an opportunity to provide additional views in relation to those proposals at a later stage of the consultation process.¹⁹

2.34 Following the hearing, on 1 April 2003 the Parliamentary Secretary to the Treasurer wrote to the Finance Minister, with a copy to the Committee Chair, agreeing to the repeal of Treasury administered Acts and provisions in Acts except as follows:

- The 5 State (Works and Housing Assistance) Acts should not be repealed. If the Finance Minister considered it necessary these Acts should be included in the Bill for amendment to delete references to the Loan Fund.
- The *Loan (Supplementary Borrowing) Act 1969* and the *Loan (Temporary Revenue Deficits) Act 1953* should not be included in the Bill for repeal or amendment, because the status of these Acts will be addressed in the context of a separate policy review process.²⁰

2.35 Finance advised:

After further discussion with Treasury, Finance has provided instructions to ... OPC to:

- amend the 5 State (Works and Housing Assistance) Acts, in Part 1 of Schedule 1 of the ... Bill, which removes references to the Loan Fund; and
- remove any reference in the ... Bill to the *Loan (Supplementary Borrowing) Act 1969*.

Finance and Treasury are discussing the case for making a minor amendment to the *Loan (Temporary Revenue Deficits) Act 1953* in the ... Bill. Although this Act is being considered separately by Treasury, and therefore may not be appropriate to repeal at this time, if not amended, it will retain a reference to the 'Loan Fund' that was abolished by the FMLA Act ...²¹

2.36 The Committee would be notified of the amendments prior to introduction of the Bill in Parliament.

19 Ms Jan Harris, Treasury, *Transcript*, p.4.

20 *Exhibit No.2*: Letter from the Parliamentary Secretary to the Treasurer of 1 April 2003 to the Finance Minister.

21 Finance, *Submission No.17*, p.47.

Conclusion

- 2.37 The Committee notes that the amendments and repeals contained in Schedule 1 of the Bill are a consequence of the commencement of the FMLA Act on 1 July 1999.
- 2.38 The Committee notes the action being taken by Finance to amend the Bill, following advice from Treasury, in relation to the SIS Act and some of the Treasury-administered Acts listed for repeal in Part 3 of Schedule 1 of the Bill.
- 2.39 The Committee considers the proposed amendments and repeals in Schedule 1 of the Bill will strengthen the financial framework of the Commonwealth through effecting an alignment of common references to financial management contained in many Acts applying to the Commonwealth public sector.