
The Parliament of the Commonwealth of Australia

Report 395

INQUIRY INTO THE DRAFT FINANCIAL FRAMEWORK LEGISLATION AMENDMENT BILL

Joint Committee of Public Accounts and Audit

August 2003
Canberra

© Commonwealth of Australia 2001

ISBN [Click **here** and type ISBN Number]



Chairman's Foreword

This report presents the Joint Committee of Public Accounts and Audit's review of an exposure draft of the Financial Framework Legislation Amendment Bill. The review commenced following a proposal from the Minister for Finance and Administration.

The Committee has had an ongoing interest in the Commonwealth's financial framework, having recommended in 1995 that the Government introduce accrual budgeting. Most recently the Committee reviewed the accrual budget documentation in 2002. The Committee believes that the review of the draft Bill will identify at an early stage any changes that are needed and will expedite passage of the Bill when it is introduced in Parliament.

The Committee notes that the Bill is very long. It proposes amendments to 108 Acts and the repeal of 28 Acts. Some of the amendments in the Bill cover technical matters, such as the replacement of references to amounts paid to the Consolidated Revenue Fund with references to amounts paid to the Commonwealth; and replacement of references to components of the Reserved Money Fund with references to Special Accounts.

The Committee has concluded that the Bill will make an important contribution to improving the financial framework. It will do so by aligning references, in many Acts, to financial management with the *Financial Management and Accountability Act 1997* (FMA Act); by updating provisions to reflect good practice; and by clarifying other provisions.

However, the Committee has recommended some changes to the draft Bill with a view to further improving the financial framework legislation. These include:

- enhanced information to be included in determinations of the Finance Minister, made under the FMA Act, to establish a Special Account; and
- a change of the name 'Special Account' to 'Designated Purpose Account'.

The Committee also considered whether reporting in the Commonwealth will be improved by the Bill. In relation to Special Accounts the Committee has noted the improvements in reporting to Parliament for 2003-04. However, it will keep a watching brief on actual improvements to ensure that greater transparency and accountability to Parliament is achieved.

The Committee is of the firm belief that the Commonwealth's financial framework legislation is important to underpin the efficient and effective management of the Commonwealth's resources, and for promoting good practice. The Bill, with the changes recommended by the Committee, will bring this framework up to date. Consequently, the Bill should be introduced into Parliament as soon as is feasible.

Bob Charles, MP

Chairman

Contents

Chairman's Foreword.....	iii
Membership of the Committee.....	ix
Membership of the Sectional Committee	x
Duties of the Committee	xi
Terms of reference	xiii
List of abbreviations	xv
List of recommendations.....	xix

REPORT

1	Introduction	1
	Background	1
	Context and broad contents of the Bill	2
	The Committee's interest	2
	The Committee's inquiry	3
	Structure of this report	4
2	Proposed amendments which are a consequence of the <i>Financial Management Legislation Amendment Act 1999</i>	7
	Overview of the <i>Financial Management Legislation Amendment Act 1999</i>	7
	Removal of references to the Loan Fund.....	9
	Replacement of references to paid to the Consolidated Revenue Fund with references to paid to the Commonwealth and related amendments	10

Replacement of references to components of the Reserved Money Fund with references to Special Accounts and related amendments	12
Proposed amendments to the <i>Superannuation Industry (Supervision) Act 1993</i>	14
Acts proposed for repeal.....	14
Conclusion.....	16
3 Proposed transfer of approval powers from the Treasurer to the Finance Minister	17
Approval powers proposed for transfer.....	17
Delegation powers proposed for the Finance Minister.....	20
Definition of the 'Finance Minister'	23
Conclusion.....	24
4 Special Accounts.....	25
Introduction	25
Constitutional status of Special Accounts	25
Usefulness of the Special Account mechanism	28
The establishment of Special Accounts by the Finance Minister	29
Notional payments and expenditure of amounts credited to a Special Account	33
Use of the name 'Special Account'	35
Disallowance period for Special Accounts.....	36
Reporting on Special Accounts.....	39
Appropriated amounts and Special Accounts	43
Acts that establish Special Accounts.....	44
Regional Telecommunications Infrastructure Account.....	46
Aboriginal Advancement Account.....	47
5 Other amendments and issues relating to the Bill.....	51
Proposed amendments to the <i>Aboriginal and Torres Strait Islander Commission Act 1989</i>	51
Other proposed amendments to the <i>Financial Management and Accountability Act 1997</i>	52
Other proposed amendments to the <i>Commonwealth Authorities and Companies Act 1997</i>	53
Proposed amendment to the <i>Native Title Act 1993</i>	54
Conclusion.....	54

Retrospectivity issues	54
Proposed amendments to the <i>Child Support (Registration and Collection) Act 1988</i>	56
Proposed amendments to the <i>Australian Land Transport Development Act 1988</i>	57
Proposed amendments to the <i>Safety, Rehabilitation and Compensation Act 1988</i>	58
6 Other reporting matters	61
Introduction	61
Government response to JCPAA <i>Report 388 Review of the Accrual Budget Documentation</i>	61
Disclosure of rephasing of expenditure	64
Review of outcomes and outputs	65
Improved reporting following from the recommendations of the Budget Estimates and Framework Review	65
Reconciliation of the Consolidated Revenue Fund with the cash budget balance	66
Reporting on the Consolidated Revenue Fund	67
Conclusion	67
7 Concluding comments	69
Significance of the Financial Framework Legislation Amendment Bill	69
Further amendments to the Financial Framework Legislation Amendment Bill	70
Final recommendation	70

APPENDICES

A Appendix A—List of Submissions	71
B Appendix B—List of Exhibits	73
C Appendix C —Witnesses appearing at the public hearing	75
Canberra, Friday 7 March 2003	75
D Appendix D — Proposed amendments that delete references to the Loan Fund	79

E	Appendix E — Proposed amendments that replace references to paid the Consolidated Revenue Fund with references to paid to the Commonwealth, and related amendments	81
F	Appendix F — Proposed amendments that replace references to components of the Reserved Money Fund with references to Special Accounts and related amendments	87
G	Appendix G — Acts proposed for repeal.....	95
H	Appendix H — Proposed amendments that transfer approval powers from the Treasurer to the Finance Minister	97
I	Appendix I — Proposed amendments to provide the Finance Minister with delegation powers and existing delegation powers of the Treasurer	101
J	Appendix J — The Consolidated Revenue Fund.....	105
K	Appendix K — Special Accounts established by Acts	111
L	Appendix L — <i>Australian Land Transport Development Act 1988</i>	118
	(A) Mark-up of the ALTD Act to reflect proposed changes to the Act contained in the draft Financial Framework Legislation Amendment Bill <i>Australian Land Transport Development Act 1988</i>	118
	(B) Operational arrangements under the Australian Land Transport Development Act 1988	166

Membership of the Committee

40th Parliament

Chairman Mr Bob Charles MP

Deputy Chair Ms Tanya Plibersek MP

Members	Senator Richard Colbeck (until 25/03/03)	Mr Steven Ciobo MP
	Senator Stephen Conroy (from 5/02/03)	Mr John Cobb MP
	Senator John Hogg (until 5/02/03)	Mr Petro Georgiou MP
	Senator Gary Humphries (from 25/03/03)	Ms Sharon Grierson MP
	Senator Kate Lundy (from 19/11/02)	Mr Alan Griffin MP
	Senator Claire Moore (until 19/11/02)	Ms Catherine King MP
	Senator Andrew Murray	Mr Peter King MP
	Senator Nigel Scullion	The Hon Alex Somlyay MP
	Senator John Watson	



Membership of the Sectional Committee

40th Parliament

Chairman Mr Bob Charles MP

Deputy Chair Ms Tanya Plibersek MP

Members Senator Stephen Conroy

Mr Alan Griffin MP

Senator Kate Lundy

Ms Catherine King MP

Senator Nigel Scullion

Senator John Watson

Committee Secretariat

Secretary Mr James Catchpole

Inquiry staff Dr John Carter

Mr Gavin Ford

Ms Suzanne Hinchcliffe

Ms Maria Pappas

Mr Justin Craig



Duties of the Committee

The Joint Committee of Public Accounts and Audit is a statutory committee of the Australian Parliament, established by the *Public Accounts and Audit Committee Act 1951*.

Section 8(1) of the Act describes the Committee's duties as being to:

- (a) examine the accounts of the receipts and expenditure of the Commonwealth, including the financial statements given to the Auditor-General under subsections 49(1) and 55(2) of the *Financial Management and Accountability Act 1997*;
- (b) examine the financial affairs of authorities of the Commonwealth to which this Act applies and of intergovernmental bodies to which this Act applies;
- (c) examine all reports of the Auditor-General (including reports of the results of performance audits) that are tabled in each House of the Parliament;
- (d) report to both Houses of the Parliament, with any comment it thinks fit, on any items or matters in those accounts, statements and reports, or any circumstances connected with them, that the Committee thinks should be drawn to the attention of the Parliament;
- (e) report to both Houses of the Parliament any alteration that the Committee thinks desirable in:
 - (i) the form of the public accounts or in the method of keeping them; or
 - (ii) the mode of receipt, control, issue or payment of public moneys;

- (f) inquire into any question connected with the public accounts which is referred to the Committee by either House of the Parliament, and to report to that House on that question;
- (g) consider:
 - (i) the operations of the Audit Office;
 - (ii) the resources of the Audit Office, including funding, staff and information technology;
 - (iii) reports of the Independent Auditor on operations of the Audit Office;
- (h) report to both Houses of the Parliament on any matter arising out of the Committee's consideration of the matters listed in paragraph (g), or on any other matter relating to the Auditor-General's functions and powers, that the Committee considers should be drawn to the attention of the Parliament;
- (i) report to both Houses of the Parliament on the performance of the Audit Office at any time;
- (j) consider draft estimates for the Audit Office submitted under section 53 of the *Auditor-General Act 1997*;
- (k) consider the level of fees determined by the Auditor-General under subsection 14(1) of the *Auditor-General Act 1997*;
- (l) make recommendations to both Houses of Parliament, and to the Minister who administers the *Auditor-General Act 1997*, on draft estimates referred to in paragraph (j);
- (m) determine the audit priorities of the Parliament and to advise the Auditor-General of those priorities;
- (n) determine the audit priorities of the Parliament for audits of the Audit Office and to advise the Independent Auditor of those priorities; and
- (o) undertake any other duties given to the Committee by this Act, by any other law or by Joint Standing Orders approved by both Houses of the Parliament.



Terms of reference

The Joint Committee of Public Accounts and Audit will inquire into the draft Financial Framework Legislation Amendment Bill to determine whether the Bill makes an appropriate contribution to improving the financial framework and reporting of the Commonwealth public sector, including in relation to:

- alignment of financial management provisions and practices with the *Financial Management Legislation Amendment Act 1999*;
- consolidation of approval powers in relation to money raising, investments and guarantees by, and for, specific entities that are legally separate from the Commonwealth; and
- information to be included in determinations of the Finance Minister under the Financial Management and Accountability Act 1997 that establish Special Accounts.



List of abbreviations

AAO	Administrative Arrangements Order
Account	Special Account
AGD	Attorney-General's Department
Agency or Agencies	an organisation that is subject to the FMA Act, that is a Department of State, a Department of the Parliament or a prescribed Agency
AGS	Australian Government Solicitor
ALTD Act	<i>Australian Land Transport Development Act 1988</i>
ANAO	Australian National Audit Office
ATSIC	Aboriginal and Torres Strait Islander Commission
ATSIC Act	<i>Aboriginal and Torres Strait Islander Commission Act 1989</i>
Audit Act	<i>Audit Act 1901</i>
Authority or Authorities	statutory authority that is subject to the CAC Act
Bill	exposure draft of the Financial Framework Legislation Amendment Bill, dated 18/2/2003
CAC Act	<i>Commonwealth Authorities and Companies Act 1997</i>
Child Support Act	<i>Child Support (Registration and Collection) Act 1988</i>

Condah Framlingham Act	<i>Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987</i>
Corporations Act	<i>Corporations Act 2001</i>
CSA	Child Support Agency (part of the Department of Family and Community Services)
CAC body or bodies	Authorities and Commonwealth companies that are subject to the CAC Act
CAF	Commercial Activities Fund
CFS	Consolidated Financial Statements for the Commonwealth
CITA	Department of Communications, Information Technology and the Arts
Charter of Budget Honesty Act	<i>Charter of Budget Honesty Act 1998</i>
Comcare Australia	Comcare
Committee	Joint Committee of Public Accounts and Audit
Corporations Act	<i>Corporations Act 2001</i>
CRF	Consolidated Revenue Fund
Criminal Code	<i>Criminal Code Act 1995</i>
CSA	the Child Support Agency
FACS	Department of Family and Community Services
FBO	Final Budget Outcome
FBO Report	Final Budget Outcome report required under section 18 of the <i>Charter of Budget Honesty Act 1998</i>
Finance	Department of Finance and Administration
Finance Minister	Minister for Finance and Administration
FMA Act	<i>Financial Management and Accountability Act 1997</i>
FMLA Act	<i>Financial Management Legislation Amendment Act 1999</i>

FMOs	the Finance Ministers Orders for the preparation of financial statements of Commonwealth Agencies and Authorities
JCPAA	Joint Committee of Public Accounts and Audit
OPC	Office of Parliamentary Counsel
PAES	Portfolio Additional Estimates Statement(s)
PBS	Portfolio Budget Statement(s)
PBS Guidelines	Guidelines for the preparation of Portfolio Budget Statements
RMF	Reserved Money Fund
RTIA	Regional Telecommunications Infrastructure Account
SIS Act	<i>Superannuation Industry (Supervision) Act 1993</i>
SIS Bill	<i>Superannuation Industry (Supervision) Amendment Bill 2002</i>
SRC Act	<i>Safety, Rehabilitation and Compensation Act 1988</i>
Telstra Corporation Act	<i>Telstra Corporation Act 1991</i>
Treasury	Department of the Treasury

List of recommendations

Recommendation 1

4.26 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 reference 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

4.41 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

- 4.66 **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

- 4.93 **The Financial Framework Legislation Amendment Bill should include an amendment to establish the Aboriginal Advancement Account under the 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.

Introduction

Background

- 1.1 On 11 February 2003 the Minister for Finance and Administration (Finance Minister), Senator the Hon Nick Minchin, wrote to the Chairman of the Joint Committee of Public Accounts and Audit (the Committee) proposing that the Committee inquire into an exposure draft of the Financial Framework Legislation Amendment Bill (the Bill) before it was introduced to Parliament. The Finance Minister saw considerable benefit in the Committee undertaking such an inquiry.
- 1.2 The Finance Minister stated that although the Bill was not in final form he believed that the draft was sufficiently robust and comprehensive for it to be subject to an inquiry by the Committee. The Minister has asked his department to keep the Committee informed of any further changes to the Bill.
- 1.3 On 12 February 2003 the Committee resolved to undertake the inquiry under terms of reference agreed by the Committee.

Context and broad contents of the Bill

- 1.4 The antecedent for the Bill was the amendments made to the *Financial Management and Accountability Act 1997* (FMA Act), on 1 July 1999, by the *Financial Management Legislation Amendment Act 1999* (FMLA Act). Sections 5, 6 and 7 of the FMLA Act contain deeming provisions that provide that references in instruments to Funds, etc, abolished or amended by the FMLA Act, are changed to the terms and concepts contained in the FMLA Act.
- 1.5 Schedule 1 of the Bill contains amendments to 81 Acts to align relevant references in the Acts with the deeming provisions contained in the FMLA Act.
- 1.6 Schedule 1 of the Bill also contains the proposed repeal of 28 redundant Acts, which, if not listed for repeal, would need to be included in Schedule 1 for amendment.
- 1.7 Schedule 2 of the Bill contains amendments to 31 Acts to make other updates, alignments and clarifications to the Commonwealth's financial framework. The amendments to 27 of these Acts propose the transfer of approval powers from the Treasurer to the Finance Minister for money raising, investments and guarantees by or for specific entities that are legally separate from the Commonwealth.
- 1.8 The need for most of the amendments contained in Schedule 2 have become apparent in recent years, independently of the commencement of the FMLA Act on 1 July 1999.

The Committee's interest

- 1.9 The Committee has had a long term interest in the financial management and accountability legislation.
- 1.10 In June 1994 both the *Financial Management and Accountability* and the *Commonwealth Authorities and Companies* Bills were referred to the then Joint Committee of Public Accounts. The Committee's review was tabled as *Report 331* in September 1994¹. The Bills, however, lapsed when Parliament was prorogued for the 1996 Federal election.

1 JCPA, *Report 331, An Advisory Report on the Financial Management and Accountability Bill 1994, the Commonwealth Authorities and Companies Bill 1994 and the Auditor-General Bill 1994, and on a Proposal to Establish an Audit Committee of Parliament*, AGPS, Canberra, 1994.

- 1.11 Subsequently re-introduced to Parliament in December 1996, the legislation came into effect on 1 January 1998.² The Acts which received the Royal Assent, however, were essentially the same as the Bills introduced some three and a half years earlier.
- 1.12 In the interval between drafting and enactment, and since, the Commonwealth has introduced full accrual reporting and accrual budgeting, which commenced for the 1999-2000 financial year.
- 1.13 Because the legislation was drafted before the current accruals framework was complete, the Committee considered, in July 1999, that a review of the legislation's effectiveness was timely. Accordingly the Committee commenced a review of both the FMA Act and the *Commonwealth Authorities and Companies Act 1997* (CAC Act). The Committee's *Report 374* was tabled in March 2000.³

The Committee's inquiry

- 1.14 The terms of reference for the inquiry were advertised in the national press on 14 February 2003, at which time submissions were invited from the public. In addition, Commonwealth entities which are subject to the FMA Act or the CAC Act were invited to contribute to the inquiry.
- 1.15 The Committee received 17 submissions and 2 exhibits. A list of the submissions received by the Committee can be found at Appendix A and a list of exhibits can be found at Appendix B.
- 1.16 Evidence was taken at a public hearing in Canberra, using a round table format, on 7 March 2003. A list of participants at the hearing can be found at Appendix C.

2 The Bills passed the House of Representatives in March 1997, and were amended in the Senate in September 1997. The amendments were accepted and the three Acts received Royal Assent in October 1997.

3 JCPAA, *Report 374, Review of the Financial Management and Accountability Act 1997 and the Commonwealth Authorities and Companies Act 1997*, AGPS, Canberra, 2000.

Structure of this report

- 1.17 Chapter 2 discusses the proposed amendments included in the Bill which are a consequence of the FMLA Act. These amendments form Schedule 1 of the Bill and cover:
- the removal of references to the Loan Fund;
 - the replacement of references to amounts paid to the Consolidated Revenue Fund (CRF) with references to amounts paid to the Commonwealth;
 - the replacement of references to components of the Reserved Money Fund (RMF) with references to Special Accounts and related text; and
 - the repeal of Acts which are redundant and which therefore can be repealed, rather than be amended as a consequence of the FMLA Act.
- 1.18 Appendices D, E and F list most of the provisions included in the Bill for amendment, according to the above types of amendment and Appendix G lists the Acts proposed for repeal.
- 1.19 Chapter 3 discusses the proposed amendments to transfer certain approval powers from the Treasurer to the Finance Minister. These amendments are included in Schedule 2 of the Bill and relate to:
- borrowing and other money raising activities from financial markets by entities that are legally separate from the Commonwealth;
 - the investment of surplus money by statutory authorities that are subject to the CAC Act (Authorities) other than Government Business Enterprises and Statutory Marketing Authorities; and
 - the provision of guarantees either by the Commonwealth or by an entity that is legally separate from the Commonwealth.
- 1.20 Chapter 3 also discusses the proposed amendments to provide the Finance Minister with powers to delegate the approval powers which the Bill proposes to transfer from the Treasurer. These amendments are also contained in Schedule 2 of the Bill.
- 1.21 Appendix H lists the provisions included in the Bill to transfer approval powers from the Treasurer to the Finance Minister. Appendix I lists provisions to give the Finance Minister delegation

powers and the existing provisions which give the Treasurer delegation powers.

- 1.22 Chapter 4 discusses Special Accounts. The discussion includes proposed amendments to the FMA Act covering Special Accounts included in Schedule 2 of the Bill. As well, the chapter covers issues raised in submissions and at the hearing, for example reporting on Special Accounts.
- 1.23 Appendix J reproduces Exhibit 1 which shows diagrammatically the relationship of the CRF to other Funds, now abolished, and Special Accounts. Appendix K lists all Special Accounts established by Acts.
- 1.24 Chapter 5 discusses other proposed amendments and issues relating to the Bill. These cover:
- preparation of budget estimates on an accrual basis by the Aboriginal and Torres Strait Islander Commission (ATSIC) (section 61 of the *Aboriginal and Torres Strait Islander Commission Act 1989* (ATSIC Act));
 - membership of Advisory Committees that report on large waivers (section 59 of the FMA Act);
 - delegations by the Treasurer and directions applying to delegations made by the Treasurer and the Finance Minister (section 53 of the FMA Act);
 - harmonisation, with the *Criminal Code Act 1995* (Criminal Code), of offence provisions relating to the conduct of officers in the CAC Act;
 - examination of the annual report of the Indigenous Land Corporation, prepared under section 9 of the CAC Act, by the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund (required under the *Native Title Act 1993*);
 - retrospectivity issues;
 - the *Child Support (Registration and Collection) Act 1988* (Child Support Act);
 - the *Australian Land Transport Development Act 1988* (ALTD Act); and
 - the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act).
- 1.25 Appendix L contains information relating to the ALTD Act.

- 1.26 Chapter 6 discusses the matters raised by the Committee which relate to Parliament's need for improved reporting on matters relating to the CRF and the Budget, other than increased reporting on Special Accounts, (covered in Chapter 4).
- 1.27 Chapter 7 contains concluding comments about the significance of the Bill in the financial framework of the Commonwealth and about the introduction of the Bill in Parliament.

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.

Proposed transfer of approval powers from the Treasurer to the Finance Minister

Approval powers proposed for transfer

Background

3.1 Schedule 2 of the Bill includes amendments to 27 Acts to transfer approval powers of the Treasurer to the Finance Minister. These Acts are listed in Appendix H. The approval powers relate to:

- borrowing and other money raising from financial markets by entities that are legally separate from the Commonwealth, for example:
 - ⇒ the Australian Broadcasting Corporation;
 - ⇒ the Australian Nuclear Science and Technology Organisation; and
 - ⇒ the Defence Housing Authority;
- the investment of surplus money by Authorities that are not Government Business Enterprises or Statutory Marketing Authorities, other than for investment on deposit with a bank or in securities of, or guaranteed by, the Commonwealth, a State or a Territory;¹ and
- the provision of Commonwealth guarantees, including a guarantee to an entity, placing limits on a guarantee given by an entity to a third party, and providing a guarantee to a subsidiary of an entity. The guarantees are usually in relation to the repayment of borrowing and interest due on the borrowing.

1 This approval power is contained in paragraph 18(3)(d) of the CAC Act.

- 3.2 The Committee asked which entities, other than CAC bodies, were covered by the proposal to transfer approval powers from the Treasurer to the Finance Minister.²
- 3.3 Finance advised the entities were the:
- Albury-Wodonga Development Corporation;
 - Co-operative Farmers and Graziers Direct Meat Supply Limited;
 - High Court of Australia;
 - Queensland Fisheries Management Authority;
 - Administration of Norfolk Island; and
 - Holders of a pastoral homestead lease or an agricultural lease, granted under an Ordinance of the Northern Territory of Australia relating to Crown lands, but not including a company (under section 3 of the *Northern Territory (Lessees' Loans Guarantee) Act 1954*).³

Discussion

- 3.4 Finance identified the following benefits from the transfer of approval powers from the Treasurer to the Finance Minister:

It will co-locate in one central portfolio financial oversight powers of Commonwealth entities, particularly Budget-dependent entities. In particular, more efficient and effective decision-making will be possible about whether an entity should borrow, or otherwise raise money for investment purposes, from the Commonwealth or from financial markets.

It will align guarantee powers with Regulation 14 of the *Financial Management and Accountability Regulations 1997*. This regulation gives the Finance Minister the power to authorise loan guarantees on behalf of the Commonwealth.

It will align the borrowing approval powers with the powers already given to the Finance Minister in section 36 of the *Health Insurance Commission Act 1973* (as amended on 4 September 2002) and in section 62 of the *Sydney Harbour Federation Trust Act 2001* (commenced on 21 September 2001).⁴

2 Transcript, p.36.

3 Finance, *Submission No.17*, p.67. The Acts covering these entities are separately identified in Appendix H.

4 Finance, *Submission No.9*, pp.2–21.

3.5 Treasury stated:

Treasury is supportive of the proposals to transfer the powers of approval over borrowing, provision of borrowing guarantees and money raising from the Treasurer to the Minister for Finance and Administration. Such a transfer of responsibilities would be consistent with the Minister for Finance and Administration's financial oversight role of these entities.

It should be noted that the Treasurer's power to provide guarantees for borrowings undertaken by Commonwealth entities is subject to the Government's clear policy of not issuing further formal Commonwealth guarantees for commercial entities. This policy reflects the implementation of competitive neutrality principles to government business arrangements and these principles need to continue to be observed.⁵

3.6 The Committee asked why Treasury had raised the issue of competitive neutrality in the context of the transfer of guarantee powers. Treasury responded:

It is simply to reinforce the notion of the current policy, and to be alert to the fact that these foreign guarantees probably are not used very often. While they may be on the statute book, in practice they have not been used; they have to be used consistent with the competitive neutrality principles.⁶

3.7 The Committee asked if guarantees had been granted in the past without the approval of the Treasurer.⁷ Treasury replied:

Schedule 2 of the Financial Framework Legislation Amendment Bill 2003 currently lists 20 Acts that are not the administrative responsibility of Treasury, but for which the Treasurer has the power to guarantee borrowing by Commonwealth entities. Ten of these 20 Acts provide for the Treasurer to delegate this power to officials. In practice, delegations are exercised only rarely. For the one instance among these Acts where a delegation to officials has been observed there has not been any subsequent action by officials to grant or provide a borrowing guarantee.⁸

⁵ Treasury, *Submission No.7*, p.14.

⁶ Mr Robert Sturgiss, Treasury, *Transcript*, p.37.

⁷ *Transcript*, p.37.

⁸ Treasury, *Submission No.16*, p.38.

3.8 The Committee asked if any consideration had been given during the drafting of the Bill to establish accountability requirements for the approval of guarantees to clients and reporting such guarantees to the Committee and to Parliament, or was it considered sufficient to report them in annual reports.

3.9 Finance responded:

The question was: has any consideration been given to separately reporting them to this Committee? The answer is no. They are, of course, picked up in the contingent liabilities, the consolidated financial statements [CFS] and the statement of risks which is published.⁹

Delegation powers proposed for the Finance Minister

Background

3.10 Under the current legislation the Treasurer has delegation powers in 10 out of the 27 Acts in which the Treasurer has approval powers. Details are provided in Appendix I. In all of the Acts, except one, in which the Treasurer has a delegation power, the power is to a person performing the duties of an office in Treasury.¹⁰

3.11 The Bill provides the Finance Minister with delegation powers both in relation to all of the powers transferred from the Treasurer, and in relation to the Finance Minister's existing powers under the *Health Insurance Commission Act 1973* and the *Sydney Harbour Federation Trust Act 2001*.

3.12 The Bill provides a delegation power in each Act to an official within the meaning of the FMA Act. Section 5 of the FMA Act defines an official as a person who is in an Agency or is part of an Agency.

Discussion

3.13 Finance explained the reasons for providing the delegation powers:

The case for providing a delegations power is that it can make for more efficient public administration, for example where the

9 Mr Jonathan Hutson, Finance, *Transcript*, p.37.

10 The one exception is the *Northern Territory (Lessees' Loans Guarantee) Act 1954*. Under section 5 of that Act the Treasurer may delegate to 'a person'.

approval sought is of the same type as an earlier approval given, or where the approval represents a continuation of a previous approval. ... Delegations made by the Finance Minister would typically be made to an official of the Department of Finance and Administration.¹¹

Not all Acts currently have a delegation capacity for the Treasurer. Our view was that there was no strong rationale for that inconsistency. Accordingly, now that we are co-locating the powers to the Finance Minister, there will also always be a delegation capacity for the Finance Minister.¹²

3.14 Mr Kennedy pointed out:

As a matter of law it would probably have been open to the Treasurer to authorise officers of his department to exercise this power on his behalf. In exercising that power, they would be doing it for and on behalf of the Treasurer. The delegation power, which is included now with the substitution of the Finance Minister, allows the conferral of power to be done more formally and to include specific conditions.¹³

3.15 The Committee asked the ANAO whether it had a view about the additional delegation of powers for the Finance Minister proposed in the Bill.¹⁴

3.16 ANAO responded:

Delegations are formal mechanisms which provide convenience and practicalities in the exercise of a power but which should also address the risks and responsibilities inherent in that power. Delegations should be made to persons or positions at an appropriate level of responsibility. As a matter of sound risk management, these factors should be considered in making delegations.¹⁵

3.17 The Committee asked ATSIC if it had a view about relying on a delegate in Finance or in the Department of Immigration and Multicultural and

11 Finance, *Submission No.9*, p.21.

12 Mr Marc Mowbray-d'Arbela, Finance, *Transcript*, p.38.

13 Mr Maurice Kennedy, *Transcript*, p.39.

14 *Transcript*, p.39.

15 ANAO, *Submission No.13*, p 32.

Indigenous Affairs for placing financial limits on ATSIC providing guarantees to third parties under section 15 of the ATSIC Act.¹⁶

3.18 ATSIC responded:

The transfer of approval power from the Treasurer to the Minister of Finance and Administration, and the subsequent sub delegation to an official, in relation to the setting of a monetary limit on the Commission's power to give guarantees as outlined in Section 15(2) of the ATSIC Act, should not adversely impact on the Commission's operations, assuming the delegate is agreeable to maintaining at least the current limit of \$5 million set by the Treasurer.¹⁷

3.19 The Wheat Export Authority, which is a statutory authority subject to the CAC Act (Authority), stated that the delegation provided under the CAC Act should be to 'officers' rather than to 'officials' because only the former term was used in the CAC Act.¹⁸

3.20 This view was supported by the Australian Broadcasting Corporation, which is also an Authority. It stated that under the CAC Act there was a definition of 'officer' but no definition of 'official'. The Corporation pointed out that the term 'official' refers to the FMA Act. The Corporation requested that the Committee consider the proposed reference to the FMA Act in the *Australian Broadcasting Corporation Act 1983*.¹⁹

3.21 Finance advised:

...under the FMA Act the Finance Minister is able to delegate the Minister's powers or functions (other than the power to make Finance Minister Orders) only to an official, as defined for the purposes of the FMA Act. The Finance Minister does not have a power, under the CAC Act, to delegate the Finance Minister's existing powers or functions to an officer.²⁰

It would not be appropriate to provide the Finance Minister with a power to delegate the approval powers to an officer, as defined under the CAC Act, for the following reasons:

16 Transcript, p.40.

17 ATSIC, *Submission No.14*, p.33.

18 Wheat Export Authority, *Submission No.2*, p.3.

19 Australian Broadcasting Corporation, *Submission No. 5*, p.9.

20 In section 5 of the CAC Act an officer of an Authority is defined as a director of the Authority, or any other person who is concerned in, or takes part in, the management of the Authority.

- Delegation to an ‘officer’ under the CAC Act could place that person into a position where there is a conflict of interest.
- [Authorities] have statutory independence from the Commonwealth. This independence might be interpreted, or perceived, as giving an officer independence in relation to the powers or functions delegated by the Finance Minister.²¹

3.22 After the hearing, Finance consulted the Attorney-General’s Department (AGD) about the appropriateness of providing the Finance Minister with a delegation power under each of the relevant Acts in Schedule 2 of the Bill. Finance subsequently advised:

Finance has reviewed the appropriateness of including a delegation power under the *Co-operative Farmers and Graziers Direct Meat Supply Limited (Loan Guarantee) Act 1978*. Under section 5 of that Act, a guarantee to the company may only be given if the Treasurer of the State of Victoria gives a like guarantee. Under these arrangements where a State Minister is involved in giving the guarantee under this Act, it would be more appropriate for the power of the Finance Minister, and not a delegated official, to be used in deciding whether the Commonwealth should provide a guarantee to the company.

Accordingly, Finance has instructed OPC to remove from the ...Bill the delegation power provided under the *Co-operative Farmers and Graziers Direct Meat Supply Limited (Loan Guarantee) Act 1978*.²²

3.23 The Committee would be notified of the amendment prior to introduction of the Bill in Parliament.

Definition of the ‘Finance Minister’

3.24 Many items in Schedule 2 of the Bill replace references to the ‘Minister for Finance’, in several Acts, with references to the ‘Finance Minister’. These amendments complement the amendments being made in the same Acts to transfer approval powers from the Treasurer to the Finance Minister. In each Act a definition of the Finance Minister is inserted as the Minister who administers the FMA Act.

²¹ Finance, *Submission No.17*, p.66.

²² Finance, *Submission No.17*, p.67.

Conclusion

- 3.25 The Committee considers that the proposed amendments to transfer approval powers from the Treasurer to the Finance Minister and to provide the Finance Minister with powers to delegate to officials, within the meaning of the FMA Act, would improve the financial framework by providing more uniform, and therefore more efficient, approval processes.
- 3.26 The Committee accepts Finance's argument that the delegation should not be to an 'officer' as defined under the CAC Act.
- 3.27 The Committee also agrees with Finance's proposal that the Finance Minister not be given a delegation power in relation to the Minister's powers and functions under the *Co-operative Farmers and Graziers Direct Meat Supply Limited (Loan Guarantee) Act 1978*.
- 3.28 The proposed replacement of references to 'Minister for Finance' with references to 'Finance Minister' would improve consistency of terminology across a number of Acts.

Special Accounts

Introduction

- 4.1 This chapter discusses proposed amendments to the FMA Act covering Special Accounts as well as issues raised in submissions, and at the hearing, relating to Special Accounts. There are some 260 Special Accounts of which about half record trustee type moneys.¹

Constitutional status of Special Accounts

Background

- 4.2 A Special Account is an account (established by the Finance Minister under the FMA Act, or by another Act) used to record moneys received for a designated purpose and expenditure of those moneys.²

1 Mr Ian McPhee, Finance, *Transcript*, p.15.

2 Source: Explanatory Memorandum for the *Financial Management Legislation Amendment Bill 1999*.

- 4.3 The framework for Special Accounts includes the following provisions in the Constitution:
- section 81 – ‘all revenue and moneys raised or received by the Executive Government of the Commonwealth shall form one CRF, to be appropriated for the purposes of the Commonwealth ...’
 - the first sentence of section 83 - ‘no money shall be drawn from the Treasury of the Commonwealth except under appropriation made by law’.
- 4.4 Finance provided an exhibit to the inquiry which depicts the CRF during the following three time periods since federation in 1901:
- prior to 1 January 1998, when the Trust Fund existed separately from the CRF;
 - from 1 January 1998 to 30 June 1999, when the RMF existed separately from the CRF; and
 - from 1 July 1999, when Special Accounts have applied, recording amounts **in** the CRF.³
- 4.5 The exhibit also includes a one page description of the connection between the CRF and Special Accounts. This exhibit is reproduced at Appendix J.

Discussion

- 4.6 The Clerk of the Senate stated:

...the assurances of the Department of Finance and Administration that the statutory provisions about Special Accounts, and the manner in which they are created and managed, are in accordance with 81 and 83 of the Constitution are not entirely convincing to some senators. On one view the provisions which allow the creation of Special Accounts amount to a scheme for money to bypass sections 81 and 83.⁴

The system of Special Accounts and the whole financial framework that we have been led into by this legislation is unconstitutional in the broad sense at least.⁵

3 *Exhibit No.1: The Consolidated Revenue Fund.*

4 The Clerk of the Senate, *Submission No.1*, p.1.

5 The Clerk of the Senate, *Transcript*, p.10.

- 4.7 Finance responded, in a submission, that section 81 did not address how moneys forming the CRF should be kept, or how public moneys should be audited. Legal support for this view was provided by a High Court decision, *Northern Suburbs General Cemetery Reserve Trust v Commonwealth of Australia* (1993) 176 CLR 555 at 580.⁶ Finance added that the appropriation of CRF for the purposes of Special Accounts under the FMA Act ‘largely continues the approach that had previously applied to Trust Accounts ... under the *Audit Act 1901* [Audit Act], from 1906 ... and that had applied to components of the RMF and the CAF under the FMA Act until 1 July 1999. Accordingly, the framework for the operation of Special Accounts (and their predecessors) [was] very long standing’.⁷
- 4.8 Finance further advised it had sought the advice of the Australian Government Solicitor (AGS) on the constitutionality of Special Accounts. Finance stated that:

AGS noted that the precise basis upon which the statutory scheme for Special Accounts may be considered inconsistent with sections 81 and 83 of the Constitution is not entirely clear.⁸

The only issue in relation to the validity of the Special Account regime would relate to the standing appropriation provided by subsection 20(4) of amounts in relation to Accounts established by the Finance Minister.⁹

AGS advised that there are substantial grounds for arguing that there is no prohibition on the Parliament delegating to the Executive the power to determine the purposes for which money may be drawn out of the Treasury where the relevant legislation reserves to each House of Parliament the right to scrutinise and reject any purpose which is proposed by the Executive before it can take effect.¹⁰

6 Finance, *Submission No.17*, p.58.

7 Finance, *Submission No.17*, p.61.

8 Finance, *Submission No.17*, p.62.

9 Finance, *Submission No.17*, p.63. Subsection 20(4) of the FMA Act is: The CRF is hereby appropriated for expenditure for the purposes of a Special Account established under section (1), up to the balance for the time being of the Special Account.

10 Finance, *Submission No.17*, p.64.

...AGS concludes that a court would find the appropriation provided by subsection 20(4) of the FMA Act to be constitutionally valid.¹¹

- 4.9 Mr Kennedy provided his view of the underlying reasons for the establishment of a Fund additional to the CRF:

... the Consolidated Revenue Fund was intended to result in an identifiable balance of surplus revenue that would be returned to the States. That is under a number of sections of the Constitution. It means that the Consolidated Revenue Fund is in fact an accounting construct which is there so that you can identify from the accounting the level of surplus revenue.

...at least one other fund other than the CRF is necessary because the Constitution leads us towards it.¹²

- 4.10 Finance did not agree:

... advice [taken by the Department] indicates that the existence of a current appropriation of moneys standing to the credit of the CRF will be sufficient to prevent those moneys from being characterised as surplus revenue, irrespective of whether or not such moneys are transferred to another fund outside the CRF.¹³

Committee comment

- 4.11 The Committee notes that while some have raised doubts about the constitutionality of Special Accounts established by the Finance Minister it also notes the conclusion of the AGS that a court would find them constitutionally valid. The Committee accepts this view.

Usefulness of the Special Account mechanism

- 4.12 The Committee questioned whether the Special Accounts established in the legislation being amended by the Bill were necessary.

- 4.13 Finance responded:

11 Finance, *Submission No.17*, p.65.

12 Mr Maurice Kennedy, *Transcript*, p.9.

13 Mr Ian McPhee, Finance, *Transcript*, p.10.

...[Special Accounts] provide a useful method of delivering some government programs, particularly ones funded by, say, indirect taxes or other compulsory imposts, contributions by other governments or discretionary contributions by members of the community. Special Accounts allow money in the CRF to be set aside for particular spending purposes, and moneys in a Special Account can only be spent for the purposes nominated.¹⁴

...Special Accounts may be used for proper trustee type moneys, where the Commonwealth is holding money on behalf of other parties, so genuine trustees' moneys can fit into the Special Account definition. There is a range of purposes for which they are used. I have mentioned business operations and trustee type moneys. Also, where we are holding moneys on behalf of the States and for other similar uses, Special Accounts are an appropriate vehicle as well.¹⁵

- 4.14 Finance continued that it was trying to improve the reporting of Special Accounts and was developing guidelines concerning Special Accounts. It believed that better communication was part of the solution to the issues surrounding Special Accounts.¹⁶

The establishment of Special Accounts by the Finance Minister

Background

- 4.15 The Bill contains an amendment to the provision in the FMA Act covering the establishment of a Special Account by the Finance Minister. Subsection 20(1) authorises the Finance Minister to 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.

14 Mr Ian McPhee, Finance, *Transcript*, pp.7–8.

15 Mr Ian McPhee, Finance, *Transcript*, p.8.

16 Mr Ian McPhee, Finance, *Transcript*, p.8.

- 4.16 Item 127A of Schedule 2 of the Bill proposes that section 20(1) of the FMA Act be amended to require the Finance Minister's determination to include all of the matters already specified in subsection 20(1) as well as specifying amounts that are allowed or required to be debited from the Special Account. The complete proposed amendment to subsection 20(1) contained in the Bill is:

The Finance Minister may make a written determination that does all of the following:

- (a) establishes a Special Account;
- (b) specifies the purposes of the Special Account;
- (c) allows or requires amounts to be credited to and debited from the Special Account.

Discussion

- 4.17 In explaining why the additional provision 'allows or requires amounts to be debited from the Special Account' had been included in subsection 20(1) Finance commented that it saw no compelling reason why all the requirements should not be stated and that there would be the capacity in the determination to describe some debits in detail.¹⁷ Finance added that the addition was recognizing current practice as it was unaware of any determination which did not include **all** of the new provisions.¹⁸
- 4.18 Various other operating procedures were explored by the Committee. The responses from witnesses were:
- The Finance Minister had the power to specify debits from a Special Account which related to the purpose of the Special Account. The specification might allow, or require debits to be made. However any debit must relate to the purpose of the Special Account.¹⁹
 - Inserting the word 'debited' into subsection 20(1) did not create a new power. It was intended to provide 'a clearer capacity to describe payments that may be supported by a specific Special Account'.²⁰

17 Mr Marc Mowbray-d'Arbela, Finance, *Transcript*, pp.40, 51.

18 Mr Jonathan Hutson, *Transcript*, p.40.

19 Mr Marc Mowbray-d'Arbela, Finance, *Transcript*, pp.44–5.

20 Finance, *Submission No.17*, p.57.

- It was possible for amounts to be debited from one Special Account and credited to another Special Account consistent with the purpose of the ‘paying’ Special Account.²¹
 - The transfer of amounts from one Special Account to another could be ongoing, for example from Finance’s Property Account to the Comcover Account to cover insurance purchases.²²
- 4.19 The Committee noted that the proposed paragraph 20(1)(c) allows or requires amounts to be credited to and debited from the Special Account. The Committee sought clarification of the relationship between budget appropriations, the setting up of Accounts and moving money in and out of them.²³
- 4.20 Mr Kennedy commented that while the draft provision specifies the **purpose** of a Special Account, it should specify ‘the purposes for which the Special Account can be debited’. He added that this ensured spending from the Special Account was only for the purpose endorsed by the Parliament.²⁴
- 4.21 Finance advised, after the hearing, that it had obtained legal advice that supported the draft provision linking the reference to ‘debiting an amount’ with the purposes of the Account. The advice also stated that it would be useful if section 20 also recognized that:
- in certain circumstances an amount may be debited for a purpose other than the making of a real or notional payment. ... In relation to this type of debit, the amount remains in the CRF until expenditure of the amount is authorised by an appropriation, other than the standing appropriation provided in subsections 20(4) and 21(1) of the FMA Act. An example of this type of debit is a ‘payment’ to the Commonwealth of amounts due to an individual which are not claimed [by the individual] within a period of time as specified in the enabling Act or Finance Minister’s determination.²⁵
- 4.22 Accordingly Finance proposed that the amendment to subsection 20(1) of the FMA Act should be:

21 Finance, *Submission No.17*, p.57.

22 Mr Jonathan Hutson, *Transcript*, p.49.

23 *Transcript*, p.41.

24 Mr Maurice Kennedy, *Transcript*, p.42.

25 Finance, *Submission No.17*, p.56.

(1) The Finance Minister may make a written determination that does all of the following:

- (a) establishes a Special Account;
- (b) allows or requires amounts to be credited to the Special Account;
- (c) specifies the purposes for which amounts are allowed or required to be debited from the Special Account.

(1A) A determination under subsection (1) may specify that an amount may or must be debited from a Special Account established under subsection (1) otherwise than in relation to the making of a real or notional payment.²⁶

4.23 Finance also advised that it will:

consider a practice of including details similar to the information that appears in PBS [Portfolio Budget Statements] within the explanatory statement that accompanies the tabling of a determination to establish or vary a Special Account.²⁷

Conclusion

4.24 The Committee supports Finance's proposed amendment to subsection 20(1) of the FMA Act outlined above. It notes that the Committee would be notified of the amendment prior to introduction of the Bill in Parliament.

4.25 Finance's proposal that the explanatory statement that accompanies the tabling of a determination to establish or vary a Special Account include details about the Special Account similar to that contained in PBS would assist Parliament's consideration of the determination during the disallowance period.

²⁶ Finance, *Submission No.17*, p.56.

²⁷ Finance, *Submission No.17*, p.57.

Recommendation 1

4.26 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 reference 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.**

Notional payments and expenditure of amounts credited to a Special Account

Background

- 4.27** The Bill contains new provisions in the FMA Act concerning notional payments and expenditure of amounts credited to Special Accounts.
- 4.28** Items 128 and 129 of Schedule 2 of the Bill propose the insertion of new subsections 20(4A) and 21(1A) in the FMA Act. Subsection 20(4) applies to a Special Account established by a determination of the Finance Minister. Subsection 21(1A) applies to a Special Account established by an Act.
- 4.29** Both of the proposed subsections are intended to have the same effect. That is, they clarify that if a determination or an Act allows an amount standing to the credit of a Special Account to be expended or applied for a particular purpose, the amount may be applied in making notional payments for that purpose, unless the contrary intention appears.²⁸

²⁸ Notional receipts and payments are also discussed in Chapter 2, from paragraph 2.23.

Discussion

4.30 Finance explained that the reason for the amendment was to ‘ensure consistency between the legal fraternity and the accounting fraternity’ so that if a debit from a Special Account was a notional payment it would be treated in accounting terms as a real payment.²⁹ Because money of all Agencies forms part of the CRF, receipts and payments between Agencies did not affect the CRF; hence legally they were notional receipts and payments. However for accounting and appropriation purposes, they are treated as real receipts and payments.³⁰

4.31 Finance continued by explaining:

The intention is to treat notional payments and receipts as real payments and receipts to allow them to be recorded against appropriations as expenditure and receipts.

It is really about the application of this concept to the specifics of Special Accounts. It is really nothing new or significant. It is just to tighten up the control and make it very clear that notional payments should be treated as real payments.³¹

4.32 Finance explained why the amendments were proposed for sections 20 and 21 of the FMA Act, rather than being covered by section 6 of the FMA Act.³² Special Accounts were not part of an Agency, rather an ‘hypothecated amount of the CRF’. To ensure this technical point was clear, transactions involving Special Accounts were to be treated as transactions in accounting terms. Consequently the amendments were to the section of FMA Act dealing with Special Accounts.³³

Conclusion

4.33 The Committee notes that the proposed new subsections 20(4A) and 21(1A) of the FMA Act covering notional payments and expenditure of amounts credited to a Special Account will clarify the relevance of

29 Mr Marc Mowbray-d’Arbela, Finance, *Transcript*, p.60.

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

31 Mr Ian McPhee, Finance, *Transcript*, p.62.

32 This question was raised by Mr Maurice Kennedy, *Transcript*, p.61. Section 6 of the FMA Act provides for the Act to apply to a notional receipt or a notional payment of an Agency (or part of an Agency) as if it were a real receipt or a real payment by the Commonwealth.

33 Mr Marc Mowbray-d’Arbela, Finance, *Transcript*, p.61.

the concepts of the notional payments and notional receipts to transactions involving Special Accounts.

- 4.34 The Committee also notes that the proposed new subsection 20(1A) of the FMA Act, outlined in paragraph 4.22 of this chapter, will complement the reference to notional payments in the proposed new subsection 20(4A).

Use of the name 'Special Account'

- 4.35 The Committee asked whether Finance or Treasury had given any consideration to changing the name of Special Accounts since they are not necessarily accounts. Finance replied that it had and that it was open to helpful suggestions. The Committee suggested the term 'designated accounts'.³⁴

- 4.36 Finance responded:

Finance considers that the term 'Designated Purpose Account' could be considered by the Committee as a possible term that could accurately reflect the legal concept that is currently described as a 'Special Account'. In particular, the term helps to convey the concept of an account that is used to record amounts received, and that are then available for designated expenditure purposes.³⁵

- 4.37 Finance supported the retention of the word 'Account'. First, it provides a useful link to the historical origin of a Special Account as a 'Trust Account'. Second, within the context of financial management the word has a broader meaning than 'bank account', for example a 'ledger account'. Third, the term 'ledger account', was used in the Explanatory Memorandum of the *Financial Management Legislation Amendment Bill 1999*, which introduced the term 'Special Account'.³⁶

- 4.38 Finance considered it appropriate to discard the word 'Special' because it appeared to suggest some form of direct link with the terms 'special public money' and 'Special Instructions' both of which are used in the FMA Act. Special Accounts frequently have amounts

34 Transcript, p.14.

35 Finance, *Submission No.17*, p.52.

36 Finance, *Submission No.17*, p.51.

credited to them that are not special public money. Special Instructions do not relate directly to Special Accounts.³⁷

Conclusion

- 4.39 The Committee agrees that the adoption of the name ‘Designated Purpose Account’ to replace the name ‘Special Account’ would contribute to a greater understanding and recognition of the unique characteristics of the Special Account mechanism.
- 4.40 The Committee notes that amendments to the Bill to change the name of Special Accounts would be notified to the Committee prior to introduction of the Bill in Parliament.

Recommendation 2

- 4.41 **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’.**

Disallowance period for Special Accounts

Background

- 4.42 Parliamentary oversight of a determination of the Finance Minister to establish a Special Account is provided by the determination being disallowable by Parliament. Section 22 of the FMA Act provides that:
- (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.

37 Finance, *Submission No.17*, p.52.

(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.

4.43 The arrangement provided for in section 22 of the FMA Act differs from that which generally applies to regulations. The disallowance arrangement for regulations is as follows:

- A regulation must be tabled in each House of the Parliament within 15 sitting days of that House after the making of the regulation. It is void and of no effect if not tabled within that period.
- Within 15 sitting days of the regulation being tabled, any Member may give notice of a motion to disallow it. If the motion has not been withdrawn or otherwise disposed of – that is, passed or rejected – at the end of the 15 sitting days after the notice was given, the regulation is deemed to have been disallowed.³⁸

Discussion

4.44 Mr Kennedy explained the reasoning for making the Finance Minister's determination that establishes a Special Account a disallowable instrument:

Previously, under the Audit Act the Finance Minister could determine the purpose of Trust Accounts. They were not disallowable instruments. In replacing the Audit Act with the FMA Act, we took the view that a determination was clearly an appropriation of the Trust Fund. In setting up the FMA Act, we said that Parliament needs to be involved in this, and that is why we successfully argued that these determinations should be disallowable instruments. Because they are appropriations, and sometimes there is some urgency about the need to spend, we were also successful in arguing that it should have a five-day disallowance period rather than the norm of 15 days.³⁹

4.45 The Committee sought views on the level of scrutiny involved in a disallowable instrument compared with the level of scrutiny associated with a budgetary appropriation.

38 House of Representatives: *Guide to Procedures*, Chapter 14.

39 Mr Maurice Kennedy, *Transcript*, p.42.

4.46 Finance responded:

These instruments do not actually take effect until the five sitting days have passed. Most disallowable instruments take effect on signature, on tabling or on gazettal, and then a disallowance period applies. The Parliament, in either the House or the Senate, may disallow the instrument, and it is no longer effective from that date of disallowance. The FMA Act enshrines a very rigorous situation for these significant delegated instruments because of the appropriation aspect that is within them. They do not take effect until that time has passed.⁴⁰

4.47 The Clerk of the Senate responded:

...these disallowance provisions are different from the normal disallowance provisions. In some respects they are weaker than the normal disallowance provisions ... Admittedly, the instrument does not come into operation until after the time for disallowance has passed. On one hand, that is a stronger provision.

[On the other hand] there is no time limit on tabling of the instruments. There is no sanction on non-tabling of instruments ... the normal disallowance provisions have a sanction on non-tabling and a time limit for tabling. They also give a much longer period for giving notice and for resolving a notice of motion for disallowance.⁴¹

In the disallowance provisions in the Acts Interpretation Act all sorts of safeguards are built in. There is a safeguard, for instance, under the provisions against a notice of disallowance motion being given and then stalled until the five sitting days are up. All sorts of safeguards are built into the normal disallowance provisions. This is lacking some of those safeguards. In any case as you have pointed out, having a chance to disallow something is not the same as positively affirming an appropriation.⁴²

4.48 Finance commented:

It is Finance's view that, if anything, the FMA Act creates an incentive for the Finance Minister to table any determination

40 Mr Marc Mowbray-d'Arbela, Finance, *Transcript*, p.41

41 The Clerk of the Senate, *Transcript*, p.41.

42 The Clerk of the Senate, *Transcript*, p.42.

regarding a Special Account as soon as practicable, given that the determination cannot take effect until the disallowance period of 5 sitting days has elapsed.

Nevertheless, Finance consulted the AGD regarding the significance, if any, of the current 5 sitting days disallowance period before these determinations take effect.

The AGD advised Finance that disallowance provisions that are Act-specific, or that depart from the typical arrangements, are not unique. Indeed, the different types of arrangements that exist are set out on the website of the Senate Committee on Regulations and Ordinances.⁴³

Accordingly, there does not seem to be a strong case to propose any changes to the 5 sitting days' disallowance period before these determinations can take effect.

However...Finance does see value for the information provided in relation to those determinations being even more comprehensive in terms of relevant aspects that might interest Parliament.⁴⁴

Conclusion

- 4.49 The Committee considers that, on the information before it, the existing disallowance arrangements for a determination of the Finance Minister to establish a Special Account, contained in section 22 of the FMA Act, are appropriate.

Reporting on Special Accounts⁴⁵

Background

- 4.50 In 2001-02 details of individual Special Accounts were required to be reported in the Portfolio Budget Statements (PBS) and in audited financial statements of Agencies.

43 The address is:
http://www.aph.gov.au/senate/committee/regord_ctte/unusualdis.pdf.

44 Finance, *Submission No.17*, p.55. The additional information is mentioned in paragraph 4.23 of this chapter.

45 A discussion of reporting on matters wider than Special Accounts is contained in Chapter 6.

Discussion

- 4.51 Concern was expressed by the Clerk of the Senate, at this level of reporting. He stated:

The way in which trust accounts have been dissolved into special accounts and have disappeared into the general budgets of departments and agencies, apparently in the process shedding all or some of the restrictions on their application, and the diffused way in which special accounts are reported in budget documentation, also worries senators who are concerned to follow where the money has gone and what it is used for.⁴⁶

- 4.52 Concerns raised by the Committee during the hearing elicited the following responses.

- Special Accounts were not currently reported in the Budget papers, but Finance was examining ways to enhance information in the PBS. Guidance advice was being considered.⁴⁷
- The issue of enhanced reporting at the aggregate level depended on whether readers were interested in such information or whether more detailed information in agency financial statements was of more interest.⁴⁸
- New Finance Minister's Orders for the preparation of financial statements by Agencies and Authorities would require that 'all appropriations accredited to Special Accounts be disclosed in the notes to the financial statements'. Transparency would be enhanced because credits to Special Accounts through appropriations could be tracked.⁴⁹
- While receipts and expenditures of each Special Account would be disclosed, there was no special requirement for information on transfers between Special Accounts. To provide detailed information about particular money flows within Special Accounts was not seen by Finance to be of benefit.⁵⁰

46 The Clerk of the Senate, *Submission No.1*, p.2.

47 Mr Ian McPhee, Finance, *Transcript*, p.11.

48 Mr Ian McPhee, Finance, *Transcript*, p.11.

49 Mr Ian McPhee, Finance, *Transcript*, p.47.

50 Mr Ian McPhee, Finance, *Transcript*, p.49.

- To obtain information about specific payments from a particular Special Account, a direct inquiry to the Agency in question should be made.⁵¹
- There was consistency between Agencies in the reporting of Special Accounts because of financial reporting guidance issued by the Finance Minister. The guidance suggests a minimum standard—Agencies could disclose more information.⁵²

Details of improved reporting on Special Accounts

- 4.53 Requirements for reporting on Special Accounts are contained in the following documents prepared by Finance:
- Guidelines for the Preparation of Portfolio Budget Statements (PBS Guidelines) for 2003-04;⁵³ and
 - the Finance Ministers Orders for the preparation of annual financial statements (FMOs) for reporting periods ending on or after 30 June 2003.⁵⁴
- 4.54 All appropriation flows into Special Accounts have always been reported in the PBS in the context of general appropriation reporting. Increased reporting on Special Accounts contained in the PBS Guidelines⁵⁵ for 2003-04 includes:
- a new table dedicated to Special Accounts recording, for each Special Account, estimated and actual financial flows (that is,

51 Mr Michael Culhane, Finance, *Transcript*, p.15.

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

53 All Agencies and Authorities that are classified in the general government sector are required to contribute to a PBS. The primary function of the general government sector is to provide public services that are mainly non-government in nature, and for the collective consumption of the community, or involve the transfer or redistribution of income. These services are largely financed through taxes and other compulsory levies, although user charging and external funding have increased in recent years. (Source: *Consolidated Financial Statements of the Commonwealth for year ended 30 June 2002*, glossary.)

54 The FMOs cover the preparation of annual financial statements required under section 49 of the FMA Act and clause 2 of Schedule 1 of the CAC Act. The Orders made under both Acts are the same. This means that they apply to all Agencies and all Authorities. The FMOs for reporting periods ending on or after 30 June 2003 are being considered by Parliament. The disallowance period ends on 25 June 2003.

55 In previous years and currently, the PBS Guidelines encourage Agencies and Authorities to provide information relevant to the needs and requirements of their Senate Legislation Committee. Some Agencies specifically included increased Special Account disclosures where these were a prominent feature of their funding (for example: the Department of Communications, Information Technology and the Arts, the Department of Environment and Heritage and the Department of Transport and Regional Services).

opening balance, total receipts, total payments, adjustments and closing balance);

- additional information to be included in the existing Total Resources for Outcome tables. The main additional disclosures on Special Accounts in the PBS Guidelines for 2003-04 are:
 - ⇒ transfers from administered appropriations to a Special Account;
 - ⇒ transfers from departmental appropriations to a Special Account (by output);
 - ⇒ transfers of revenue from other sources to a Special Account (by output);
 - ⇒ payments from the balance of a Special Account (by outcome).

4.55 The Requirements for Annual Reports of Departments, Executive Agencies and FMA Agencies are aligned, as a matter of principle, with requirements for the PBS. The Requirements for Annual Reports are prepared by the Department of the Prime Minister and Cabinet and are approved by the Committee under subsections 63(2) and 70(2) of the *Public Service Act 1999*.

4.56 Increased reporting on Special Accounts contained in the FMOs for reporting periods ending on or after 30 June 2003 includes:

- disclosures of appropriations are to include separate information in appropriations credited to Special Accounts;
- disclosures of amounts credited to Special Accounts, other than appropriated amounts, are to be disaggregated into costs recovered and the major classes identified in the FMOs;
- disclosures of amount paid from Special Accounts are to be disaggregated into the major classes recorded in the FMOs; and
- the inclusion of additional explanatory notes and guidance. These include the requirement that entities with Special Accounts state the purpose of each Special Account.

Conclusion

4.57 The Committee notes the improvements in reporting on Special Accounts which have been introduced. The Committee will keep a watching brief on the implementation of these new requirements to ascertain whether concerns about adequate disclosure are being satisfactorily addressed.

Appropriated amounts and Special Accounts

Background

- 4.58 Appropriated amounts apply to Special Accounts in the following ways:
- The FMA Act provides standing appropriations for **expenditure** for the purposes of a Special Account up to the balance for the time being of the Special Account.⁵⁶
 - Other Acts (mainly annual Appropriation Acts) provide for appropriated amounts to be **credited** to a Special Account. Section 13 of both the *Appropriation Act (No. 1) 2002-2003* and the *Appropriation Act (No. 2) 2002-2003* contain the following provision:

If any of the purposes of a Special Account is a purpose that is covered by an item (whether or not the item expressly refers to the Special Account), then amounts may be debited against the appropriation for that item and credited to that Special Account.
- 4.59 There are 42 Special Accounts established by Acts. The Acts which establish 15 of those Accounts each contain a provision that all money appropriated by the Parliament for the purposes of the Account must be, or may be, credited to the Account.⁵⁷
- 4.60 A determination of the Finance Minister that establishes a Special Account typically provides for appropriated amounts to be credited to the Special Account.

Discussion

- 4.61 Mr Kennedy suggested that the Committee consider the provisions in the annual Appropriation Acts that allow amounts to be credited to a Special Account from an (appropriation) item, so long as the purpose of the Account is covered by that item.⁵⁸
- 4.62 Finance pointed out where an appropriated amount is credited to a Special Account:

56 For a Special Account established by the Finance Minister the standing appropriation is provided in subsection 20(4) of the FMA Act; for a Special Account established by an Act the standing appropriation is provided in subsection 21(1) of the FMA Act.

57 Details are provided in Appendix K, footnote (1).

58 Mr Maurice Kennedy, *Transcript*, p.47.

...there has actually been a narrowing of the purpose for which the money could ultimately leave the CRF. The outcome of that Agency is quite broad and it must be more than the outcome of the Special Account to which a notional payment would be made ... the Agency would actually reduce their capacity to ultimately make a payment that leaves the CRF, because the broad outcome must be broader than the specific purposes of the Special Account.⁵⁹

Conclusion

- 4.63 The Committee notes that items in annual Appropriation Acts normally have broad outcomes and that these Acts contain sections which provide that an appropriated amount may be credited to a Special Account for expenditure on the purposes of the Account as long as any of the purposes of the Account are covered by an outcome.
- 4.64 The annual Appropriation Acts appear to facilitate the crediting of appropriated amounts to Special Accounts whereas some Acts that establish particular Special Accounts do not specifically provide for appropriated amounts to be credited to those Accounts.
- 4.65 The Committee believes this anomaly should be addressed.

Recommendation 3

- 4.66 **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.**

Acts that establish Special Accounts

Background

- 4.67 Forty two Special Accounts have been established by Acts, 34 of which were established before the commencement of the FMLA Act.

59 Mr Marc Mowbray-d'Arbela, Finance, *Transcript*, p.47.

Eight Special Accounts have been established since the commencement of the FMLA Act on 1 July 1999. These are the:

- Alcohol Education and Rehabilitation Account
- ARC Research Endowment Account
- Confiscated Assets Account
- Gene Technology Account
- Industrial Chemicals Account
- National Blood Account
- National Cultural Heritage Account; and the
- Universal Service Account.⁶⁰

4.68 The provisions in these Acts relating to the Special Accounts are generally well aligned with the amendments contained in the Bill. An exception is the use of the reference ‘money’ in or from an Account. The Bill contains amendments to replace references to ‘money’ with references to ‘amounts’ because Special Accounts are only accounts recording amounts in the CRF, not separate Funds nor always separate bank accounts containing money.

Conclusion

- 4.69 The Committee believes there is merit in ensuring complete alignment of the eight Special Accounts with the provisions contained within the Bill. Consequently any of those eight Special Accounts which are not aligned should be included in the Bill for amendment.
- 4.70 The Committee notes that this could be done, in the event of the Government agreeing to change the name ‘Special Account’ to ‘Designated Purpose Account’, in the context of implementing Recommendation 2.⁶¹
- 4.71 The Committee notes it would be notified of amendments to the Bill prior to its introduction in Parliament.

60 Appendix K includes more detail. The Regional Telecommunications Infrastructure Account is not included. It was originally established by a determination of the Finance Minister and the purposes of the Account were expanded in the *Telstra Corporation Act 1991*.

61 This is contained in paragraph 4.41 of this chapter.

Regional Telecommunications Infrastructure Account

Background

- 4.72 Item 477 of Schedule 1 of the Bill inserts, in the *Telstra Corporation Act 1991* (Telstra Corporation Act), a new section 57A that provides for the continued existence of the Regional Telecommunications Infrastructure Account (RTIA) as a Special Account for the purposes of the FMA Act.

Discussion

- 4.73 The Committee asked for details about the RTIA. The Department of Communications, Information Technology and the Arts (CITA) advised:

There is an instrument which was made at the time of the commencement of the FMA Act, that determined the purpose of ...[the RTIA]... to be for expenditure on financial assistance for telecommunications related projects in regional areas.⁶² That has been enhanced in some respects under Division 4 of Part 9 of the Telstra Corporation Act. It is dealt with in sections 58, 59 and 60.⁶³

- 4.74 CITA advised further:

The legal authority for the RTIA should remain the determination of the Finance Minister.⁶⁴

....amounts standing to the credit of the RTIA which are provided under the supplementation effected by the Telstra Corporation Act can no longer be debited from the RTIA after 30 June 2003 (ie the date specified by the Minister for the purposes of ss.58(4)(b), 59(4)(b) and 60(4)(b)).

...FMA (Act) section 21 requires that an Act which establishes a Special Account must also identify the purposes of that Account. The Telstra Corporation Act does not identify the purposes of the RTIA, except in relation to the statutory supplements which will soon cease to be of ongoing

62 A determination of the Finance Minister, made under section 20 of the FMA Act, established the RTIA.

63 Mr Don Markus, CITA, *Transcript*, p.17.

64 CITA, *Submission No. 12*, p.27.

relevance. Accordingly, it is not clear whether the proposed section 57A would be effective for the purposes of FMA section 21 even if that result had been intended.⁶⁵

Conclusion

- 4.75 The Committee is of the view that establishing a Special Account by one process (in this case a determination of the Finance Minister) and adding to the purposes of the same Account by another process (legislation) can lead to confusion and does not represent good practice.
- 4.76 **Any Special Account established by one process – by determination or legislation— should not be altered by the other process.**
- 4.77 The Committee notes that Finance will need to consult with OPC to ensure that the proposed amendments in the Bill to the Telstra Corporation Act that relate to the RTIA, do not provide for the RTIA to be established by the Telstra Corporation Act.

Aboriginal Advancement Account

Background

- 4.78 Subsection 38(6) of the *Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987* (Condah Framlingham Act) provides that:

The [responsible] Minister shall establish and administer an Aboriginal Advancement Reserve for the purpose of furthering the social and economic advancement of Aboriginal people living in the State of Victoria.

- 4.79 Item 48 of Schedule 1 of the Bill replaces the above provision with:

The Aboriginal Advancement Account may be established for the purpose of furthering the social and economic advancement of Aboriginal people living in Victoria.

Note: The Account was established by subsection 5(3) of the *Financial Management Legislation Amendment Act 1999*.

- 4.80 The Condah Framlingham Act also provides the establishment of:

⁶⁵ CITA, *Submission No. 15*, p.35.

- the Condah Land Reserve (subsection 38(1); and
 - the Framlingham Forest Reserve (subsection 38(3)).
- 4.81 The deeming provisions in section 5 of the FMLA Act converted the Condah Land Reserve and the Framlingham Forest Reserve to Special Accounts and this is recognised in the amendments to the Condah Framlingham Act contained in Item 48 of Schedule 1 of the Bill.
- 4.82 The FMA Act does not recognise Special Accounts established other than by the Finance Minister or by Acts. Subsections 20(4) and 21(1) of the FMA Act provide a standing appropriation for expenditure for the purposes of a Special Account, established by one of these processes, up to the balance of the Account.

Discussion

- 4.83 The Committee asked for advice about whether the Aboriginal Advancement Account had been established.

- 4.84 ATSIC replied:

To the best of my knowledge, the Account was established by section 5(3) of the FMLA Act.⁶⁶

- 4.85 The Committee asked about the usefulness of the Condah Land Account, the Framlingham Forest Account and the Aboriginal Advancement Account.

- 4.86 ATSIC replied:

None of those Accounts have been used. It is the Condah [Land] Account and the Framlingham Forest Account. They have never been used and are not used for the delivery of Commonwealth programs.

These Accounts ... were established on the same basis as the Aboriginals Benefit Account was established under the Northern Territory Land Rights Act, and their purpose was to receive and distribute the equivalent of any mining royalties that might flow from mining interests on the relevant land that was granted under those Acts. As it turns out, there have not been any mining projects on that land.⁶⁷

⁶⁶ ATSIC, *Submission No.11*, p.25.

⁶⁷ Mr Brian Stacey, ATSIC, *Transcript*, p.23.

4.87 The Committee also asked what material difficulties would be encountered if it were proposed that section 38 of the Condah Framlingham Act be amended to establish only one Special Account, called say, the Aboriginal Advancement Account.

4.88 ATSIC advised:

That there are three Accounts created under the Act is a result I believe of negotiations that the Commonwealth entered into with the two Aboriginal groups who benefit from this legislation in Western Victoria. Those groups have significant cultural, historical and political differences and thus I believe the Commonwealth ultimately agreed that to the extent there is any mining activity on their land and royalties are paid, the CRF should be debited for equivalent amounts to be paid into separate Accounts for each group. The other policy consideration that led to the establishment of 3 Accounts was the view of the Commonwealth at that time (and I am not aware of any change) that a proportion of mining royalty equivalents paid to Aboriginals affected by mining should be available for the general benefit of other Aboriginals in a State or Territory. Thus, the reason for creating the Aboriginal Advancement Account.

If the Accounts were to be merged into one Account, the material difficulties would include the need, from our point of view, to seek to negotiate and reach agreement with the Aboriginal groups about the new Account, and also finding a means of distributing any moneys which are received in the future in a way that is fair and practical to all of the beneficiaries. These problems are not insurmountable but will take time and resources of the Commonwealth to resolve.⁶⁸

Conclusion

4.89 The Committee notes that subsection 5(3) of the FMLA Act established Special Accounts only in respect of components of the RMF and the CAF which were in existence prior to the commencement of the FMLA Act on 1 July 1999. There appears to be doubt about whether the Aboriginal Advancement Account was originally established by the responsible Minister under subsection 38(6) of the Condah Framlingham Act.

68 ATSIC, *Submission No.11*, p.25.

- 4.90 The Committee also notes that the FMA Act does not recognise Special Accounts established other than by Acts or a determination of the Finance Minister. There therefore appears to be doubt about whether amounts credited to a Special Account established by a portfolio Minister would be covered by the standing appropriations provided in subsection 20(4) and 21(1) of the FMA Act for expenditure for the purposes of the Account up to the balance for the time being of the Special Account. This could be clarified by the Bill specifically establishing the Aboriginal Advancement Account.
- 4.91 It appears unnecessary for the Condah Framlingham Act to establish more than one Special Account. The allocation of any mining royalties credited to the Account to different aboriginal groups could be achieved by the Act providing for separate notional accounts to be established within the Special Account in the names of particular aboriginal groups or geographical areas.
- 4.92 The Committee notes that it would take time to negotiate and reach agreement on the Condah Framlingham Act establishing only one Special Account. However, since none of the Accounts have been used and seem unlikely to be used in the near future, the time needed for negotiation should not be regarded as an impediment.

Recommendation 4

- 4.93 **The Financial Framework Legislation Amendment Bill should include an amendment to establish the Aboriginal Advancement Account under the 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.

Other amendments and issues relating to the Bill

Proposed amendments to the *Aboriginal and Torres Strait Islander Commission Act 1989* ¹

- 5.1 Section 61 of the ATSIC Act requires ATSIC to prepare budget estimates on a cash basis. Items 4 to 9 of Schedule 2 contain amendments to section 61 to require ATSIC to prepare budget estimates on an accrual basis. The proposed amendments will align the ATSIC Act with the requirements under the FMOs made under the FMA and CAC Acts.
- 5.2 The Committee asked ATSIC how it will be affected by the proposed amendment. ATSIC replied:
- That will affect us positively, because we have been under a regime where it has been a cash based ministerial estimates

1 The Bill also includes amendments to the ATSIC Act that are a consequence of the FMLA Act (discussed generally in Chapter 2) and for the purpose of transferring approval powers from the Treasurer to the Finance Minister (discussed generally in Chapter 3).

system with our Minister. We have sought this change in order to go to our Minister on an accrual basis so as to show expenditure incurred rather than money spent.²

Other proposed amendments to the *Financial Management and Accountability Act 1997* ³

Membership of Advisory Committees that report on large waivers, etc

- 5.3 Items 134 and 135 of Schedule 2 amend section 59 of the FMA Act. The section specifies the membership of Advisory Committees that are required, under subsections 33(2) and 34(2) of the FMA Act, to report to the Finance Minister on proposals for an act of grace payment or the waiving of a debt, each in excess of \$100,000.
- 5.4 Paragraph 59(1)(b) and subsection 59(2) are dated because they refer the departments which existed prior to the amalgamation of the Department of Finance and the Department of Administrative Services in 1997.
- 5.5 The proposed amendment to paragraph 59(1)(b) replaces the reference to ‘the Secretary of the Department of Finance’ with a reference to ‘the Secretary of the Department of Finance and Administration’.
- 5.6 Subsection 59(2) currently specifies that the third member of an Advisory Committee is the Chief Executive of the Department of Administrative Services in circumstances where there is no Agency responsible for the matter, or the responsible Agency is one of the other two permanent members of the Committee (that is, the Australian Customs Service and the Department of Finance and Administration).
- 5.7 The proposed amendment to subsection 59(2) replaces the reference to ‘the Chief Executive of the Department of Administrative Services’ with a reference to ‘a Chief Executive nominated by the Finance Minister’.

2 Mr Paul Barrett, ATSIIC, *Transcript*, p.63.

3 The Bill also includes amendments to the FMA Act relating to Special Accounts. These are discussed in Chapter 4.

Delegations by the Treasurer and directions applying to delegations made by the Treasurer or the Finance Minister

- 5.8 Items 130, 131, 132 and 133 of Schedule 2 amend section 53 of the FMA Act to:
- clarify that a Chief Executive may delegate to an official in any Agency, powers or functions that have been delegated to the Chief Executive by the Treasurer; and
 - require a Chief Executive, when subject to directions relating to the exercise of a power or function delegated by the Treasurer or the Finance Minister, to give the corresponding directions to a second delegate. This amendment will align the FMA Act with the subsection 78(9) of the *Public Service Act 1999*.

Other proposed amendments to the *Commonwealth Authorities and Companies Act 1997* ⁴

- 5.9 The Bill provides amendments to the CAC Act to harmonise offence provisions relating to the conduct of officers (Division 4 of Part 3 of the CAC Act) with the Criminal Code. The conduct of officers provisions in the CAC Act are aligned with the *Corporations Act 2001* (Corporations Act). The proposed amendments to the CAC Act follow the alignment of the Corporations Act with the Criminal Code.
- 5.10 The main amendment is contained in Item 87 of Schedule 2 of the Bill. This item restructures subsection 27C(4) of the CAC Act to separate the physical element of the offence (a person being a director of an Authority while a disqualification order is in force against the person) from the defence to the offence (the leave of the Court for the person to be a director). The amendments include a note under subsection 27C(4A) that the defendant bears an evidential burden of proof.

⁴ Chapter 3 contains a discussion of the proposed amendment to the CAC Act to transfer from the Treasurer to the Finance Minister the power to approve certain types of investments of surplus money by certain types of Authorities.

Proposed amendment to the *Native Title Act 1993*

- 5.11 Item 149A inserts a new subsection 206(2) of the *Native Title Act 1993* to clarify that the duties of the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund include examination of the annual report of the Indigenous Land Corporation prepared under section 9 of the CAC Act. This amendment reinstates the arrangement that applied prior to the amendments to the ATSIC Act that were a consequence of the commencement of the CAC Act on 1 January 1998.

Conclusion

- 5.12 The Committee is of the view that the proposed amendments to section 61 of the ASTIC Act, sections 53 and 59 of the FMA Act, section 27C of the CAC Act and to section 206 of the *Native Title Act 1993* would improve the financial framework by updating and clarifying, and aligning provisions with budget estimates requirements and the Criminal Code.

Retrospectivity issues

Discussion

- 5.13 The Committee asked if any parts of the Bill apply retrospectively.⁵

- 5.14 Finance replied:

I understand that for legislation to apply retrospectively there needs to be an express statement to that effect ...There is no express statement in this Bill that it applies retrospectively.⁶

- 5.15 The Clerk of the Senate commented:

That refers to explicit retrospectivity, where something in a Bill is explicitly backdated to a date before the commencement of the Bill. But I think [the question] is using the term 'retrospectivity' in a broader sense – namely,

5 *Transcript*, pp.32, 51 and 60.

6 Mr Marc Mowbray-d'Arbela, Finance, *Transcript*, p.32.

something that in some sense affects the way something operated before. When an explanatory memorandum says, ‘We’re clarifying something’ ...you immediately think that is a form of retrospectivity, because it is affecting the way things operated before the Act came into effect ...Some of the provisions of the Bill appear to do that – and I say ‘appear’ because that is subject to explanations such as we have just had as to what they actually mean.⁷

5.16 After the hearing Finance advised:

It was stated at the hearing that it is the intention of Finance and OPC that the draft Bill would not apply retrospectively in any specific item, or in its effect overall. Finance has consulted with the AGS (and the OPC) and can confirm that the ... Bill is not retrospective, either in any specific instances or generally as a result of the amendments.

[The Bill contains] three savings provisions [that] provide that decisions or actions, made or done prior to commencement of the proposed Act will continue to apply.

However, these savings provisions do not provide the ...Bill with a retrospective effect. They are included to ensure that the wording of the Bill does not change the effect of any actions that had previously been taken under:

- existing Special Accounts established in legislation;
- existing determinations of the Finance Minister establishing Special Accounts; and
- approvals made by the Treasurer or the Treasurer’s delegate.^{8 9}

Conclusion

5.17 The Committee is satisfied that the Bill does not provide for any retrospective effect.

7 The Clerk of the Senate, *Transcript*, p.32.

8 Finance, *Submission No.17*, p.54.

9 The three savings provisions are at the following places in the Bill:

- section 4 covers matters in Part 2 of Schedule 1 (Special Accounts and references to the CRF);
- Item 187 of Schedule 2 covers provisions that formerly referred to the Treasurer that are being amended to refer to the Finance Minister;
- Item 188 of Schedule 2 covers determinations made by the Finance Minister that establish Special Accounts under subsection 20(1) of the FMA Act.

Proposed amendments to the *Child Support (Registration and Collection) Act 1988*

Background

- 5.18 Items 139 to 144 of Schedule 1 of the Bill include amendments to the Child Support Act to replace references to ‘Reserve’, ‘transferred to the Reserve’, and ‘paying to the Consolidated Revenue Fund’ with references to ‘Account’, ‘credited to the Account’ and ‘debited from the Account’ respectively.¹⁰

Discussion

- 5.19 The Department of Family and Community Services (FACS) made the following comments about the Child Support Act:¹¹

CSA [the Child Support Agency] has sought the advice from OPC and is satisfied that the amendments proposed to the Child Support Act by the Bill do not change the effect of the existing provisions, and the operation of the Special Account created by the Child Support Act.

However, as part of considering these amendments, the CSA has sought legal advice as to the comprehensiveness of the financial framework provisions of the Child Support Act generally.

This advice has raised the need for an amendment to the existing framework...[as]... no general provision exists to enable the repayment to Consolidated Revenue of amounts drawn under an appropriation for other purposes, eg repayment of payer overpayments, where the payment has already been disbursed to the payee of a liability. An amendment enabling such debiting of the Account generally is required.

The legal advice indicates that the legislative difficulty may have arisen from amendments made by the FMLA Act.¹²

CSA will seek the assistance of the Department of Finance in making any such amendment as part of the legislative process

10 These types of amendments are discussed generally in Chapter 2.

11 Under the AAO, FACS is responsible for the Child Support Act. The Child Support Agency (CSA) is part of FACS.

12 FACS, *Submission No.10*, p.23.

for finalising the Financial Management and Accountability framework.¹³

- 5.20 Finance responded that, in the context of in consultation with portfolio Ministers about the Bill, the Minister for Family and Community Services had agreed to the proposed amendments to the Child Support Act in the Bill. The further amendment proposed by FACS would:

... broaden the types of debits that may be made from the Child Support Account, to assist with some operational requirements of the [CSA] and clarify what may have been a minor unanticipated effect of the deeming provisions that were part of the FMLA Act ...¹⁴

- 5.21 Finance added that the proposed amendment was not necessarily a direct consequence of the FMLA Act so it will not necessarily be appropriately placed in Schedule 1 of the Bill. Consultations with the CSA concerning an appropriate amendment were continuing for the purpose of providing instructions to OPC.¹⁵

Conclusion

- 5.22 The Committee supports an appropriate amendment to the Child Support Act being included in the Bill to address the concerns raised by FACS in its submissions to the inquiry.
- 5.23 The Committee notes that it would be notified of the amendment prior to introduction of the Bill in Parliament.

Proposed amendments to the *Australian Land Transport Development Act 1988*

- 5.24 Items 80 to 118 of Schedule 1 of the Bill includes amendments to the ALTD Act to replace references to 'Reserve', 'paid into the Reserve' and 'paid out of the Reserve', with references to 'Account', 'credited to the Account' and 'debited from the Account and paid by the Commonwealth' respectively.¹⁶

13 FACS, *Submission No.8*, p.15.

14 Finance, *Submission No.17*, p.48.

15 Finance, *Submission No.17*, p.48.

16 These types of amendments are discussed generally in Chapter 2.

- 5.25 The Committee asked whether the Bill contains amendments to the ALTD Act which will change the way the Act operates. The Committee noted that the Bill contained provisions that allows expenditure to be switched between:
- national, arterial and local roads;
 - states and organisations;
 - road and rail projects; and between
 - roads and urban land transport.¹⁷
- 5.26 To help explain that no changes are made to the ALTD Act in the Bill, other than the consequential amendments arising from the FMLA Act, Finance produced a marked-up version of the ALTD Act which highlighted the references that would be changed by the Bill.¹⁸
- 5.27 Finance also provided details, obtained from the Department of Transport and Regional Services, of the operational arrangements for expenditure on projects under the ALTD Act.¹⁹
- 5.28 Appendix L contains a copy of the marked-up version of the ALTD Act and the operational arrangements applying under the ALTD Act.

Conclusion

- 5.29 The Committee notes that proposed amendments to the ALTD Act in the Bill do not alter the operations of the ALTD Act.

Proposed amendments to the *Safety, Rehabilitation and Compensation Act 1988*

- 5.30 In Audit Report No.18, 2002-03, ANAO noted that current practice of Comcare Australia (Comcare) for making compensation payments to Commonwealth employees was not aligned with the requirements of the SRC Act. ANAO recommended that Comcare review the process for administering compensation payments under the SRC Act.²⁰

17 *Transcript*, pp.51–2.

18 Finance, *Submission No.17*, pp.72–119.

19 Finance, *Submission No.17*, pp.120–2.

20 ANAO, Report 18, *Management of Trust Monies*, 2002-03, pp.37-38, recommendation 2.

- 5.31 At the hearing of the Committee's inquiry on *Review of Auditor-General's reports, second and third quarters 2002-03*, Comcare commented that there were significant advantages to both employees and employers in maintaining the existing process.²¹
- 5.32 At the hearing Finance agreed to consider the Committee's proposal that the Bill include an amendment to the SRC Act.²²
- 5.33 In a later submission, Finance advised that it will propose amendments to the SRC Act be included in the Bill to:
- provide that the payment of compensation made by the employer has been made by the employer as agent of Comcare;
 - provide that the payment discharges the liability under Division 3 of Part II of the SRC Act;
 - require Comcare to reimburse the employer the amount of the payment made;
 - ensure that section 116 of the [SRC] Act does not preclude the granting of sick leave before liability is accepted; and
 - define 'an employer' for the purposes of the amendment.²³

Conclusion

- 5.34 The Committee supports amendments to the SRC Act being included in the Bill to align the SRC Act with current good practice whereby Comcare makes compensation payments to agencies.
- 5.35 The Committee notes it would be notified of the amendments prior to introduction of the Bill in Parliament.

21 Auditor-General's Reports Review, *Transcript*, 30 April 2003, p.3.

22 Auditor-General's Reports Review, *Transcript*, 30 April 2003, p.4.

23 Finance, *Submission No.17*, pp.45–6.

Other reporting matters

Introduction

- 6.1 This chapter discusses issues raised by the Committee which relate to Parliament's need for improved reporting on matters relating to the CRF and the Budget. Details of increased reporting on Special Accounts being introduced are contained in Chapter 4.

Government response to JCPAA *Report 388 Review of the Accrual Budget Documentation*

- 6.2 The Committee raised the issue contained in Recommendation 11 in its *Report 388* that the Final Budget Outcome Report (FBO Report) should be audited by the ANAO. The Committee noted that the ANAO has indicated that it was willing to audit the FBO.¹
- 6.3 The Auditor-General addressed this issue in Audit Report No. 25, 2002-03, *Audits of the Financial Statements of Commonwealth Entities for the Period Ended 30 June 2002*. The audit report confirmed ANAO's willingness to audit the FBO Report if requested, but noted this was a policy issue.

1 Transcript, pp.66–7.

Which accounting standards to use would also be an issue. The Audit Report continued:

An audit of the FBO Report would, in the first instance, entail a review of the general government sector component of the CFS [Consolidated Financial Statements for the Commonwealth], to ensure consistency of input to, and presentation of, the FBO Report. Secondly, a component of such an audit would include a review of the Commonwealth financial statements to determine adherence with the relevant Government Finance Statistics ... framework.²

- 6.4 The Auditor-General also drew attention to the timing of providing financial statements to Parliament:

The *Charter of Budget Honesty Act 1998* [Charter of Budget Honesty Act] requires the FBO Report to be tabled by 30 September of each year. To meet this deadline, all material entities forming part of the CFS are currently required to produce audit cleared material financial statement balances by 15 August of each year. This timetable continues to present significant challenges to most entities involved, including the ANAO.³

- 6.5 The Government, in its response to the Committee's *Report 388*, did not agree to the recommendation that the FBO be audited:

... the FBO must be published by 30 September, in accordance with the Charter of Budget Honesty Act. Under present arrangements this deadline is met with little time to spare. Therefore, the introduction of a complete audit process would compromise this legislative requirement. As the individual agency accounts that are consolidated into the FBO are audited, there is already an implicit audit process undertaken.

The CFS are already audited by the ANAO. Under the FMA Act the CFS must be tabled within five months of the end of the financial year. Given that audit of the CFS already provides assurance on aggregate financial statements, the Government does not consider it necessary to add another layer of checking for the

2 ANAO, *Audit Report No.25, 2002–03, Audits of the Financial Statements of Commonwealth Entities for the Period Ended 30 June 2002*, December 2002, p.19.

3 ANAO, *Audit Report No.25, 2002–03*, p.19.

FBO with associated consequences for what is already a tight FBO timetable.⁴

6.6 Other issues raised were:

- whether auditing the FBO would require an amendment to the *Auditor-General Act 1997*⁵—Finance commented that if the FBO were to be audited it would be prudent to legislate for it.⁶
- whether the FMA Act should be amended to require the FBO to be audited—Finance commented that the FBO Report was required under the Charter of Budget Honesty Act. Accounts under the FMA Act were already required to be audited.⁷

Conclusion

- 6.7 The Committee notes that the Charter of Budget Honesty Act requires the release of the FBO Report by 30 September. Prior to the commencement of that Act, the audit of the Aggregate Financial Statement, prepared by the Finance Minister, included an audit of the budget outcome. (The budget outcome contained some but not all of the information now contained in the FBO, and was expressed in cash accounting terms.) The audit was typically completed in November after the end of the financial year.
- 6.8 The Committee notes that the major impediment to auditing the FBO at this time is one of timeliness. The Committee believes that advances in accounting systems may in future overcome this problem. In the event that the FBO is audited in the future it would be prudent if the task were written into an appropriate Act.
- 6.9 The Committee notes, however, that the New Zealand Treasury is required to forward the annual consolidated financial statements of the Crown to the Audit Office no later than 31 August.⁸ The Audit Office is then required to issue an audit opinion within 30 days of receipt of the annual financial statements.⁹ The audit of the annual financial statements

4 JCPAA, *Report No. 388: Review of the Accrual Budget Documentation, Government Response to recommendations of a policy nature*.

5 Mr Maurice Kennedy, *Transcript*, p.68.

6 Mr Ian McPhee, Finance, *Transcript*, p.68.

7 Mr Marc Mowbray-d'Arbela, Finance, *Transcript*, p.69.

8 New Zealand's *Public Finance Act 1989*, section 27.

9 New Zealand's *Public Finance Act 1989*, section 30.

of the Crown for the year ended 30 June 2002 was completed on 13 September 2002.¹⁰

- 6.10 Under the Constitution Parliament is the guardian of public money. In this capacity, Parliament needs to have confidence that the budget which reports on the receipt and expenditure of public money is prepared according to relevant accounting standards and provides a true and fair reflection of the Government's financial position.
- 6.11 Until 1997, Parliament received independent expert verification of this from the Auditor-General who audited the budget outcome as prepared under the International Money Fund Government Finance Statistics framework and reported in the Aggregate Financial Statements. The requirement to audit the budget outcome disappeared when the Audit Act was repealed in 1997 when the new financial framework was introduced.
- 6.12 This requirement should, in the future, be reinstated through an amendment to the Financial Framework Legislation Amendment Bill. In order for the Auditor-General to perform an audit the harmonised accounting rules under which the budget is prepared in Australia need to be published as does any subsequent amendment to these rules.

Disclosure of rephasing of expenditure

- 6.13 The Committee inquired about prospects for increased disclosure being provided on the rephasing of expenditure, from one year to a later year(s).¹¹
- 6.14 Finance advised:
- Finance recently provided guidance to agencies in respect of 2003-04... PBS. In this guidance, Finance requested each agency identify what portion of the Outcome totals, amongst other things, is due to rephasing.¹²

10 Report of the Audit Office, *Crown Financial Statements of the Government of New Zealand for the Year Ended 30 June 2002*.

11 *Transcript*, pp.64–5

12 Finance, *Submission No.17*, p.69.

Review of outcomes and outputs

6.15 The Committee asked for an update on the progress of the review of outputs and outcomes.¹³

6.16 Finance responded:

A recommendation of the recently completed Budget Estimates and Framework Review was to progressively review outcomes over coming years. This review will involve Finance considering each agency's outcomes as to their appropriateness. This process has commenced.

In reviewing outcomes, Finance is mindful of those recommendations in the Committee's Report 388, relating to the specificity of outcomes.¹⁴

Improved reporting following from the recommendations of the Budget Estimates and Framework Review

6.17 The Committee noted that Finance distributed a memorandum in November 2002 introducing 20 substantial changes to the financial framework and its operation, including the quality of the flow of information to Finance, reviewing the outcomes of agencies, abolishing agency banking and many other changes. The Committee asked whether Parliament will be provided with any additional information as a result of the additional information that Finance will receive under those changes.¹⁵

6.18 Finance advised that:

...the Minister publishes monthly statements on the Budget. The intention is to get that reporting in a more timely fashion, as well as the end-of-year results. The intention is also to collect information by programs, under the outcomes levels.¹⁶

13 *Transcript*, p.65

14 Finance, *Submission No.17*, p.69.

15 *Transcript*, p.65. The changes referred to by the Committee relate to implementation of the Government's Budget Estimates and Framework Review. The PBS Guidelines for 2003-04 and the FMOs for reporting periods ending on or after 30 June 2003 take into account the recommendations of the Review.

16 Mr Ian McPhee, Finance, *Transcript*, p.65.

The collection of program information is intended to assist with the refinement of estimates construction and monitoring of the Government's within-year financial position.

Detailed 'Total Resources for Planned Outcome' tables are provided in the current PBS, and in the PAES [Portfolio Additional Estimates Statements] for instances of additional expenditures. This information will in many cases be at similar or lower levels of detail than the proposed program structures. PBS and PAES also include estimates of expenses from Special Appropriations and of administered revenue and revenue from other sources.¹⁷

- 6.19 The Committee asked if any legislative change is required from any of those changes.
- 6.20 Finance advised that the changes were all done administratively. If legislative change were required Finance would have tried to include them in the Bill.¹⁸

Reconciliation of the Consolidated Revenue Fund with the cash budget balance

- 6.21 The Committee asked if there was any reason why the cash budget balance could not be reconciled to the CRF and its components.¹⁹
- 6.22 Finance responded:

Revenues or moneys raised by the Executive Government automatically form part of the CRF by force of section 81 of the Constitution. There is, however, no requirement for the CRF to be accounted for in any particular form.

However, for practical purposes, total Commonwealth general government sector²⁰ cash, less cash controlled and administered by CAC ... [bodies], as reported under Australian Accounting Standards AAS 31 'Financial Reporting by Governments', represents the CRF referred to in section 81 of the Constitution. On

17 Finance, *Submission No.17*, p.70.

18 Mr Ian McPhee, Finance, *Transcript*, p.66.

19 *Transcript*, p.66.

20 The definition of the general government sector is contained in a footnote attached to paragraph 4.53 of Chapter 4.

this basis, the estimated and projected balance of the CRF is shown in the Budget Paper No. 1 (page 10-7).²¹

Reporting on the Consolidated Revenue Fund

6.23 The Committee noted that the CRF was reported in the aggregate financial statements that were audited and that the CRF was not now so reported. The Committee expressed concern that this change was a substantial diminution of transparency.²²

6.24 Finance advised:

- It was looking at a possible disclosure note in the CFS in future years to address concerns raised about reporting on the CRF.²³
- The CRF comprised revenues and moneys raised or received by the Commonwealth. Money in official bank accounts of the Commonwealth (the official public account) was easy to account, but other money (for example, money received by officials, but not yet banked in an official account of the Commonwealth) was more difficult to account. This had always been the situation.²⁴
- Finance was exploring ways of obtaining information from Agencies about cash on hand to complement information available on the official public account.²⁵

Conclusion

6.25 The Committee welcomes the proposed improvements in reporting for 2003-04. On behalf of Parliament it will keep a watching brief on actual improvements to ensure the changes result in greater transparency and accountability in reporting for the 2003-04 year, and to ascertain whether its requests for improved reporting are being satisfactorily addressed.

21 Finance, *Submission No.17*, p.70.

22 *Transcript*, p.12.

23 Mr Ian McPhee, Finance, *Transcript*, p.12.

24 Mr Ian McPhee, Finance, *Transcript*, p.12.

25 Mr Ian McPhee, Finance, *Transcript*, p.64.

Concluding comments

Significance of the Financial Framework Legislation Amendment Bill

- 7.1 The Committee is of the view that the legislation that provides the financial framework of the Commonwealth underpins the efficient and effective management of Commonwealth resources funded by appropriations by Parliament and should promote good practice.
- 7.2 The maintenance of, and improvements to this legislation is an important ongoing task.
- 7.3 The financial framework of the Commonwealth includes not only the framework legislation (mainly the FMA and CAC Acts), but also many enabling Acts that establish separate entities, Special Accounts, provide special appropriations and other financial management matters.
- 7.4 The Committee notes that the deeming provisions of the FMLA Act were always intended as an interim measure, pending amendments to the enabling Acts themselves being passed. Unfortunately there has been an element of confusion about the status and concept of Special Accounts which the FMLA Act introduced on 1 July 1999.
- 7.5 It is therefore becoming increasingly important that the deeming provisions be replaced with the amendments proposed in Schedule 1 of the Bill.

- 7.6 It is also becoming increasingly important that the amendments proposed in Schedule 2 of the Bill be passed so that the legislation leads, and keeps abreast of, good practice in financial administration.

Further amendments to the Financial Framework Legislation Amendment Bill

- 7.7 The Committee is aware that further changes to the Bill will be required and it notes the Finance Minister's undertaking that Finance will keep the Committee informed of further changes to the Bill.
- 7.8 The Committee notes that the Bill is already very large. The Committee would not want to see introduction of the Bill in Parliament held up because of a material expansion in the scope of the Bill. The scope of Schedule 2 of the Bill should not be expanded except in cases identified in this report or in other exceptional circumstances.

Final recommendation

Recommendation 5

- 7.9 **The Government should introduce the Financial Framework Legislation Amendment Bill into Parliament as soon as is feasible.**

Bob Charles MP
Chairman
13 August 2003



Appendix A—List of Submissions

1. Mr Harry Evans, Clerk of the Senate
2. Wheat Export Authority
3. Insolvency & Trustee Service Australia
4. Australian National Audit Office
5. Australian Broadcasting Corporation
6. Grains Research & Development Corporation
7. Department of the Treasury
8. Department of Family & Community Services
9. Department of Finance & Administration
10. Department of Family & Community Services
11. Aboriginal & Torres Strait Islander Commission
12. Department of Communication, Information Technology & the Arts
13. Australian National Audit Office
14. Aboriginal & Torres Strait Islander Commission
15. Department of Communication, Information Technology & the Arts
16. Department of the Treasury
17. Department of Finance & Administration



Appendix B—List of Exhibits

1. Department of Finance & Administration
The Consolidated Revenue Fund and CRF and Special Accounts
2. Senator the Hon Ian Campbell, Parliamentary Secretary to the Treasurer
Correspondence from the parliamentary secretary to the Treasurer, Senator the Hon Ian Campbell, to the Minister for finance and Administration, Senator the Hon Nick Minchin



Appendix C — Witnesses appearing at the public hearing

Canberra, Friday 7 March 2003

Aboriginal and Torres Strait Islander Commission

Mr Paul Barrett, Chief Financial Officer

Mr Brian Stacey, Group Manager, Land and Development

Australian National Audit Office

Mr David Crossley, Executive Director, Audit Assurance Services

Mr Kevin Caruana, Senior Director, Research and Development

Australian Office of Financial Management

Mr Mike Allen, Chief Executive Officer

Department of Agriculture, Fisheries and Forestry

Mr Troy Counsins, Business Manager, Product Integrity, Animal and Plant Health

Mr Allan Gaukroger, Chief Financial Officer

Mr Robert Gehrig, Manager, Corporate Treasury

Mr David Perrott, Corporate Accountant, Australian Quarantine and Inspection Service

Department of Communications, Information Technology and the Arts

Mr Christopher Cheah, Chief General Manager, Telecommunications

Mr James Barr, General Manager, Networking the Nation

Mr Don Markus, General Counsel

Ms Jennifer Gale, Chief Financial Officer

Mr Jeff Hurst, Senior Budgets Officer, Corporate Budgets Section

Department of Finance and Administration

Mr Ian McPhee, General Manager, Financial Management Group

Mr Jonathan Hutson, Division Manager, Financial Framework Division, Financial Management Group

Mr Marc Mowbray-d'Arbela, Branch Manager, Legislative Review

Mr Michael Culhane, Branch Manager, Finance and Banking

Department of the Senate

Mr Harry Evans, Clerk of the Senate

Department of the Treasury

Ms Jan Harris, General Manager, Commonwealth-State Relations Division

Mr Scott Rogers, Analyst, Governance and Insolvency Unit, Corporate Governance Division

Mr Rob Sturgiss, Manager, State Finances and Reporting Unit

Mr Christopher Timotheou, Analyst, Superannuation, Retirement and Savings Division

Mr Marcus Wu, Policy Analyst

Insolvency and Trustee Services Australia

Ms Kerry Hunting, Chief Finance Officer

Private Capacity

Mr Maurice Kennedy



Appendix D — Proposed amendments that delete references to the Loan Fund

Name of Act	Item Number in Schedule 1 of the Bill *	Sections in Act to be amended or repealed*
<i>Acts Interpretation Act 1901</i>	1	17(ka)
<i>Higher Education Funding Act 1988</i>	2, 3	114, 117, 118(1)
<i>Housing Assistance Act 1978</i>	4, 5, 6	8, 9, 10
<i>Housing Assistance Act 1981</i>	7, 8, 9	12, 13, 14
<i>Housing Assistance Act 1984</i>	10, 11, 12,	13, 14, 15
<i>Loan (Income Equalisation Deposits) Act 1976</i>	13	8
<i>Loans (Australian Industry Development Corporation) Act 1974</i>	14	7(4)
<i>Loans (Qantas Airways Limited Act (No.2) 1971</i>	15	7(2)
<i>Loan (Qantas Airways Limited) Act 1972</i>	16, 17	7(2), 7(3)

<i>Loan (Qantas Airways Limited) Act 1974</i>	18	8(2)
<i>Loan (Qantas Airways Limited) Act 1976</i>	19	8(2)
<i>Sewage Agreements Act 1973</i>	19A, 19B, 19C, 19D	4, 6, 7, 8
<i>Sewage Agreements Act 1974</i>	19E, 19F, 19G, 19H	6, 8, 9, 10
<i>States Grants (Primary and Secondary Education Assistance) Act 1992</i>	20, 21	112, 115, 116
<i>State Grants (Primary and Secondary Education Assistance) Act 1996</i>	22, 23	84, 87, 88
<i>Vocational Education and Training Funding Act 1992</i>	26, 27	10, 13, 14

* An item, recorded in the second column, might contain amendments to more than one section recorded in the third column . The third column records sections, subsections, paragraphs or sub-paragraphs. A provision recorded in the third column might be amended by more than one item recorded in the second column.



Appendix E — Proposed amendments that replace references to paid the Consolidated Revenue Fund with references to paid to the Commonwealth, and related amendments *

Name of Act	Item Number in Schedule 1 of the Bill **	Sections in the Act to be amended or repealed **
<i>AeroSpace Technologies of Australia Limited Sale Act 1994</i>	62	14(4)
<i>Agricultural and Veterinary Chemicals (Administration) Act 1992</i>	63, 64	58(2)(aa), 58(2)(ab)
<i>Agricultural and Veterinary Chemical Products (Collection of Interim Levy) Act 1994</i>	65	16***
<i>Agricultural and Veterinary Chemical Products (Collection of Levy) Act 1994</i>	66	19***
<i>Australian Federal Police Act 1979</i>	78, 79	54(2), 54(4)

Name of Act	Item Number in Schedule 1 of the Bill **	Sections in the Act to be amended or repealed **
<i>Australian Meat and Live-stock Industry (Repeals and Consequential Provisions) Act 1997</i>	119, 120, 122	11(2), 12(4)(a)(i) and 13(3) of Schedule 5
<i>Australian Securities and Investments Commission Act 2001</i>	124	135(7), 161(7)
<i>Bankruptcy Act 1966</i>	127, 130, 131, 132, 133, 134, 135, 136	20H(1), 20H(2), 20H(2A), 153A(5), 163(2), 163A(3), 252A(5), 254(2)***, 254(2A)***, 254(3)***
<i>Broadcasting Services Act 1992</i>	137	51(8) of Schedule 4***
<i>CFM Sale Act 1996</i>	138	48(4)
<i>Coal Mining Industry (Long Service Leave) Payroll Levy Collection Act 1992</i>	145	9(4)***
<i>Commonwealth Places (Mirror Taxes) Act 1998</i>	146	23(1) and (2)
<i>Corporations Act 2001</i>	148 ,149	1341(1)***, 1341(2)(d)***
<i>Crimes Act 1914</i>	151	9B(2)
<i>Crimes (Superannuation Benefits) Act 1989</i>	152, 153	41(2), 41(4)
<i>CSL Sale Act 1993</i>	154	41(4)
<i>Customs Act 1901</i>	156	243P(2)
<i>Defence Forces Retirement Benefits Fund (Distribution of Surplus to Pensioners) Act 1976</i>	157	Title

Name of Act	Item Number in Schedule 1 of the Bill **	Sections in the Act to be amended or repealed **
<i>Financial Institutions Supervisory Levies Collection Act 1998</i>	160	11(2)***
<i>Great Barrier Reef Marine Park Act 1975</i>	163, 164	39I(1)***, 39I(2)***
<i>International Monetary Agreements Act 1947</i>	177	9
<i>Moomba-Sydney Pipeline System Sale Act 1994</i>	193	50(3)
<i>Navigation Act 1912</i>	283, 284, 285, 286	148D(3), 159, 309, 407(1)***
<i>Proceeds of Crime Act 1987</i>	328	55(2)
<i>Protection of the Sea (Oil Pollution Compensation Fund) Act 1993</i>	333, 334	40(1), 40(2)
<i>Snowy Hydro Corporatisation Act 1997</i>	384	42(4)
<i>Snowy Mountains Engineering Corporation Limited Sale Act 1993</i>	385	33(4)
<i>Superannuation Act 1922</i>	393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405	52(10), 88(10), 100D(a)(ii), 100D(b), 100E(a), 100L(3)(a)(ii), 100L(3)(b), 100L(6), 107E(b), 107F(a), 107M(4)(b), 107M(9), 119T(6)(ii)

Name of Act	Item Number in Schedule 1 of the Bill **	Sections in the Act to be amended or repealed **
<i>Superannuation Act 1976</i>	406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431	14A(6)(b), 27CA(c)(ii), 110TG(2), 110TG(2), 112(1) and (1A), 112(5), 112(6), 112(9), 112(10), 112(10AAA), 112(10B), 112(10BA) and (10C), 124(1)(b) and (c), 124(2), 128(2)(b), 128(4), 128(4AA), 140(3), 140(3)(b), 145(6), 145(7)(d)(iii), 145(8)(a)(iii), 145(9)(a)(iii), 153AN(2), 166(2)(c), 166(4)
<i>Sydney Airport Demand Management Act 1997</i>	439, 440	27(1)***, 27(2)***
<i>Taxation Administration Act 1953</i>	441	16(2)(a)(ii)
<i>Telecommunications Act 1997</i>	442, 443	73(9)***, 489(9)***
<i>Telecommunications (Consumer Protection and Service Standards) Act 1999</i>	448, 449	23D(5)***, 101A(5)***
<i>Workplace Relations Act 1996</i>	510	356(a)

* The related amendments mainly cover the repeal of provisions which state that amounts paid to the Commonwealth form part of the CRF or that amounts paid to the Commonwealth must be paid into the CRF.

** An item, recorded in the second column, might contain amendments to more than one section recorded in the third column . The third column records sections, subsections, paragraphs or sub-paragraphs. A provision recorded in the third column might be amended by more than one item recorded in the second column.

*** These provisions relate to public money received by an entity which is legally separate from the Commonwealth. This issue is discussed in Chapter 2, paragraph 2.12.



Appendix F — Proposed amendments that replace references to components of the Reserved Money Fund with references to Special Accounts and related amendments *

Name of Act	Item Number in Schedule 1 of the Bill **	Sections in the Act to be amended or repealed **
<i>Aboriginal and Torres Strait Islander Commission Act 1989</i>	28, 29, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 44, 45, 46, 47	4(1), 192W, 192X, 192Z(2), 193(1) and (2), 193(4), 193AA(1), 193AA(4), 193A(1) and (2), 193B(1) 193C(1) and (3), 193E(2)***, 193E(4) and (5), 193G(1) and (2A), 193H, 193I

Name of Act	Item Number in Schedule 1 of the Bill **	Sections in the Act to be amended or repealed **
<i>Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987</i>	48	38***
<i>Aboriginal Land Rights (Northern Territory) Act 1976</i>	49, 50, 53, 55, 56, 57, 58, 59	3(1), 62, 62A, 63, 64***, 64A***, 64B(1), 65(1), 65(2) and (3)
<i>Acts Interpretation Act 1901</i>	61	17(kb)
<i>Australia-Japan Foundation Act 1976</i>	67, 68, 69, 71, 72	3, 5(1)(d), 17, 18, 19(1)
<i>Australian Centre for International Agricultural Research Act 1982</i>	73, 74, 75, 76, 77	3, 33, 34, 35, 36(1), 36(2)
<i>Australian Land Transport Development Act 1988</i>	81, 82, 83, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118	3(1), 3(6)(a), 11, 12(1), 12(2), 12(3A), 12(4), 15(1)***, 15(2)***, 15(3), 17(1)***, 17(2)***, 18(1) and (2)***, 19***, 20***, 21***, 22, 23***, 24***, 26(4) and (5)***, 26(6)(a), 26(6)(b), 27***, 28A(1), 28A(2), 29(1), 30(1), 31, 32(1), 31(1)(f), 32(1)(m), 32(1)(n)(i), 33***, 34(1), 37(1)(a)***, 41(1), 41(1)(a) and (b)

Name of Act	Item Number in Schedule 1 of the Bill **	Sections in the Act to be amended or repealed **
<i>Australian Radiation Protection and Nuclear Safety Act 1988</i>	123	56
<i>Bankruptcy Act 1966</i>	125, 126, 127, 128	20A, 20G, 20H(2A), (3), (4) and (5), 139L
<i>Child Support (Registration and Collection) Act 1988</i>	139, 140, 141, 142, 143, 144	4(1), 53(c), 73, 74, 75, 77, 78(3)(d)
<i>Crimes Act 1914</i>	150	9A(1)(c)
<i>Customs Act 1901</i>	155	243G(8)
<i>Defence Service Homes Act 1918</i>	158	40, 40A
<i>Financial Agreement Act 1994</i>	159	6
<i>Financial Institutions Supervisory Levies Collection Act 1998</i>	161	24
<i>Forestry and Timber Bureau Act 1930</i>	162	5
<i>Higher Education Funding Act 1988</i>	167, 168, 170, 171	34(1), 59, 60, 60(1)
<i>Income Tax Assessment Act 1936</i>	174, 174A, 175	128U(1)***
<i>Industrial Chemicals (Notification and Assessment) Act 1989</i>	176	100B(1)(f),(g),(h) and (j)
<i>Interstate Road Transport Act 1985</i>	178, 179, 181, 182, 183	3(1), 21, 22, 23(1)***, 23(4)
<i>Land Acquisition Act 1989</i>	184, 185, 186, 187, 188	6, 89A, 90(2) to (5)***, 114(2) to (4)***

Name of Act	Item Number in Schedule 1 of the Bill **	Sections in the Act to be amended or repealed **
<i>Loan (Income Equalisation Deposits) Act 1976</i>	189, 190, 191, 192	4B(3), 7, 15A(9)(c), 25B(1)
<i>National Cattle Disease Eradication Reserve Act 1991</i>	194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209	Title, 1, 3, 4, 4A, 4B, 5(1), 5(1)(aaa) and (aab), 5(1)(c), 5(1)(d), 6
<i>National Health and Medical Research Council Act 1992</i>	210, 211, 212, 213, 214, 216, 217, 218, 219, 220	4, 7(1)(c), 11A, 35(2)(a) and (b), 49, 50, 51(1), 52(1)(a) and (b), 52(2), 53
<i>National Residue Survey Administration Act 1992</i>	221, 222, 223, 224, 225, 226	Title, 4, 6, 7, 8, 10, 11(1)
<i>Native Title Act 1993</i>	228, 229,	204(1), 206(d)(vii)
<i>Natural Heritage Trust of Australia Act 1997</i>	230, 231, 232, 233, 234, 235, 237, 238, 239, 240, 242, 243, 244, 245, 246, 247, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 269, 270, 271, 273, 274	Title, Preamble, 3, 4, 5, 6(1) and (2), 6(4),(5) and (6), 7, 8, 9(1), 9(2), 18(b) and (c), 19(1), 20(1), 21(1), 22(1), 22(2), 22A(1), 22A(2), 23(1) and (2), 24, 25***, 26***, 27***, 28***, 29***, 31(b), 40(2)(a), 40(3), 41(1), 41(3)(a), 41(4), 42(2), 43(1)(a),

Name of Act	Item Number in Schedule 1 of the Bill **	Sections in the Act to be amended or repealed **
<i>Natural Heritage Trust of Australia Act 1997</i> (continued)		45(1)(e), 46(1)(d), 47(1), 47(2)(a), 49(1), 49(2) and (3), 49(4) and (5), 54
<i>Natural Resources Management (Financial Assistance) Act 1992</i>	275, 276, 277, 278, 280, 281, 282	Title, 4(1), 6(5), 11, 12(1)(a) and (b), 12(2)
<i>Primary Industries (Customs) Charges Act 1999</i>	294, 295, 296, 297, 298, 299	clause 2 of Schedule 1 (note 2), subclause 3(1) of Schedule 3 (note 3), subclause 3(2) of Schedule 3 (note 3)
<i>Primary Industries (Excise) Levies Act 1999</i>	300, 301, 302, 303, 304, 305, 306, 307	clause 2 of Schedule 2 (note 2), subclause 6(1) of Schedule 3 (note 3), subclause 6(2) of Schedule 3 (note 3), subclause 6(3) of Schedule 3 (note 3)
<i>Proceeds of Crime Act 1987</i>	308, 309, 310, 311, 312, 313, 314, 315, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326,	4(1), 20(3)(b)(i), 20(3)(b)(ii), 30(4)(b)(i), 30(4)(b)(ii), 34A, 34B(1), 34B(1)(d), 34B(2)

Name of Act	Item Number in Schedule 1 of the Bill **	Sections in the Act to be amended or repealed **
<i>Proceeds of Crime Act 1987</i> (continued)	327, 329, 330, 331, 332	and (3), 34C(1), 34D(2), 34E(1), 49(6)(a)(ii), 49(6)(b)(iii), 49(7)(a), 49(8), 63(4)(a)(ii), 63(4)(b)(iii), 63(5)(a), 63(6)
<i>Sea Installations Act 1987</i>	335	38***
<i>Small Superannuation Accounts Act 1995</i>	336, 337, 338, 339, 341, 342, 343, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 380, 382, 383	3, 4, 7, 8, 9(1), 11, 12(1), 14***, 16(e), 17(2)(d), 34, 35, 36, 38(a), 38(b), 39(5), 40, 41, 42, 43(3), 44(3), 46(1), 50(2)(e), 61(5), 61A(3), 63(4), 64(4), 65(4), 66(6), 67(4), 67A(4), 68(4), 72(3), 73(4), 75, 76(4), (5), (6) and (7), 76(7), 77(a), 91D(2), 91D(3)
<i>Student Assistance Act 1973</i>	388, 389, 390, 391, 392	3(1), 12M, 12N(2) and (3)***, 56(1)(f)***
<i>Superannuation (Government Co-contribution for Low Income Earners) Act 2002</i>	432, 433, 434, 435	15(1)(e), 18(1), 19(4)(e), 24(3)
<i>Superannuation Guarantee (Administration) Act 1992</i>	436, 437	65(5), 69A(3)
<i>Superannuation Industry (Supervision) Act 1993</i>	438	234, 235, 236, 237

Name of Act	Item Number in Schedule 1 of the Bill **	Sections in the Act to be amended or repealed **
<i>Telecommunications (Consumer Protection and Service Standards) Act 1999</i>	444, 445, 446, 447, 450	21B(1)(c), 21B(3), 21C***, 21D(1)***, 102
<i>Telstra Corporation Act 1991</i>	451, 452, 453, 454, 455, 456, 457, 458, 460, 461, 462, 463, 464, 465, 466, 467, 469, 470, 471, 472, 473, 474, 475, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 501, 502, 503, 504, 505, 506, 507	44, 46, 47, 48(1), 48(2), 49(1), 49(2), 50(1), 51(1), 52, 53, 54(1), 54(2), 55(1), 55(2), 56(1), 57(1), 58, 58(1), 58(2)***, 58(3), 58(4)***, 58(5), 58(6), 58(7), 59(1), 59(1), 59(2)***, 59(3), 59(4)***, 59(5), 59(6), 59(7), 60(1), 60(2)***, 60(3), 60(4)***, 60(5), 60(6), 60(7), 61(1)(a), 62(1)(a), 63, 64, 65(1), 65(2) 66(1), 66(2), 67(1), 68(1)
<i>Therapeutic Goods Act 1989</i>	508	45

* The related amendments mainly cover the types of amounts that may be credited to, and debited from a Special Account.

** An item, recorded in the second column, might contain amendments to more than one section recorded in the third column . The third column records sections, subsections, paragraphs or sub-paragraphs. A provision recorded in the third column might be amended by more than one item recorded in the second column.

*** The amendments to each of these sections include one or more references to 'debited from the Account and paid by the Commonwealth' or similar words. This matter is discussed in Chapter 2, paragraph 2.26.



Appendix G — Acts proposed for repeal

Name of Act	Portfolio responsible under the Administrative Arrangements Order
<i>Australian Development Assistance Agency (Repeal) Act 1977</i>	Foreign Affairs and Trade
<i>Loan Act (No.2) 1983</i>	Finance, except insofar as the Acts give authority to borrow. Provisions giving authority to borrow are the responsibility of Treasury
<i>Loan Act 1984</i>	
<i>Loan Act 1985</i>	
<i>Loan Act 1986</i>	
<i>Loan Act 1992</i>	
<i>Loan Act 1993</i>	
<i>Loan Act 1994</i>	
<i>Loan Act 1995</i>	
<i>Loan Act 1996</i>	
<i>Loan (International Bank for Reconstruction and Development) Act 1950</i>	Treasury
<i>Loan (Supplementary Borrowing) Act 1969</i>	Treasury

<i>Loan (Temporary Revenue Deficits) Act 1953</i>	Treasury, except for section 3. Section 3 provides for Loan Fund moneys to be expended for CRF purposes and is the responsibility of Finance.
<i>Railway Standardization (South Australia) Agreement Act 1949</i>	Transport and Regional Services
<i>Roads Grants Act 1980</i>	Transport and Regional Services
<i>Roads Grants Act 1981</i>	Transport and Regional Services
<i>State Grants (Capital Assistance) Act (No.3) 1972</i>	Treasury
<i>State Grants (Capital Assistance) Act 1979</i>	Treasury
<i>State Grants (Capital Assistance) Act 1980</i>	Treasury
<i>State Grants (Capital Assistance) Act 1981</i>	Treasury
<i>State Grants (Roads) Act 1977</i>	Transport and Regional Services
<i>State Grants (Urban Public Transport) Act 1978</i>	Transport and Regional Services
<i>States (Works and Housing) Assistance Act 1982</i>	Treasury
<i>States (Works and Housing) Assistance Act 1983</i>	Treasury
<i>States (Works and Housing) Assistance Act 1984</i>	Treasury
<i>States (Works and Housing) Assistance Act 1985</i>	Treasury
<i>States (Works and Housing) Assistance Act 1988</i>	Treasury
<i>War Gratuity Appropriation Act 1948</i>	Finance



Appendix H — Proposed amendments that transfer approval powers from the Treasurer to the Finance Minister

Name of Act	Item Number in Schedule 2 of the Bill *	Sections in the Act to be amended or repealed *
<i>Aboriginal and Torres Strait Islander Commission Act 1989</i>	2, 10, 12, 14, 15, 16	15(2)***, 69(2), 142G(2)***, 144X(2), 153(2)***, 183(2)
<i>Aboriginal Land Rights (Northern Territory) Act 1976</i>	23	33
<i>Agricultural and Veterinary Chemicals (Administration) Act 1992</i>	28, 29, 30	63(2), 64(1)***, 64(2)***
<i>Albury-Wodonga Development Act 1973 **</i>	33, 36, 37, 38	3, 26(1)(b), 26(3)***, 28(2)(c)****

Name of Act	Item Number in Schedule 2 of the Bill *	Sections in the Act to be amended or repealed *
<i>Australian Broadcasting Corporation Act 1983</i>	42, 46, 47, 48, 49	25B(5), 70B(1), 70B(6), 70C(1)***, 70C(2)***
<i>Australian Film Commission Act 1975</i>	52, 53	6(2)***, 6(4)(b)***
<i>Australian Hearing Service Act 1991</i>	58, 59, 60	55(1), 56(1)***, 56(2)***
<i>Australian Maritime Safety Authority Act 1990</i>	63, 64, 65	41(1)***, 41(2)***, 41(5)***
<i>Australian National University Act 1991</i>	68	44(2)
<i>Australian Nuclear Science and Technology Organisation Act 1987</i>	73, 74, 75, 76, 77	33(1), 33(3)***, 34(1), 34(2), 34(3)
<i>Australian Prudential Regulation Authority Act 1998</i>	80	53(2)***
<i>Australian Trade Commission Act 1985</i>	82	79(1)
<i>Commonwealth Authorities and Companies Act 1997</i>	85	18(3)(d)****
<i>Co-operative Farmers and Graziers Direct Meat Supply Limited (Loan Guarantee) Act 1978 **</i>	91, 92, 93, 94, 95	4(1)***, 5***, 5(b)***, 5(c)***, 5(d)***
<i>Dairy Produce Act 1986</i>	97, 98	76(1)***, 76(2)***
<i>Defence Housing Authority Act 1976</i>	101, 104, 105, 106, 107, 108, 109, 110	8(5)(c), 37(1), 38(1)***, 38(2)***, 41(2)***, 41(3)***, 41(4)***, 41(7)***

Name of Act	Item Number in Schedule 2 of the Bill *	Sections in the Act to be amended or repealed *
<i>Export Finance and Insurance Corporation Act 1991</i>	117, 120, 123, 125	59(1), 65(8)***, 66(8)***, 66A(4)(b)***
<i>Fisheries Administration Act 1991</i>	138, 139, 140	83(2), 84(1)***, 84(2)***,
<i>High Court of Australia Act 1979 **</i>	143	39(2)(c)****
<i>Maritime College Act 1978</i>	146, 147, 148	36(1), 37(1)***, 37(2)***
<i>Norfolk Island Act 1979 **</i>	152, 153, 154	50(1), 50A(1)***, 50A(2)***
<i>Northern Prawn Fishery Voluntary Adjustment Scheme Loan Guarantee Act 1985 **</i>	157, 158	5(1)***, 6***
<i>Northern Territory (Lessees' Loans Guarantee) Act 1954 **</i>	160, 161, 162	4(1)***, 4(2)***, 4(3)***
<i>Primary Industries and Energy Research and Development Act 1989</i>	167, 168, 169	42(1), 43(1)***, 43(2)***
<i>Safety Rehabilitation and Compensation Act 1988</i>	172, 173	95(1), 95(3)***
<i>Special Broadcasting Service Act 1991</i>	178, 179, 180	60(1), 61(1)***, 61(2)***
<i>Stevedoring Industry Finance Committee Act 1977</i>	182, 183	20(1), 20(3)***

* An item, recorded in the second column, might contain amendments to more than one section recorded in the third column . The third column records sections, subsections, paragraphs or sub-paragraphs. A provision recorded in the third column might be amended by more than one item recorded in the second column.

** The approval powers in these Acts relate to the activities of entities that are not subject to the CAC Act. Acts not marked with asterisks relate to activities of entities that are subject to the CAC Act.

*** These sections relate to guarantees.

**** These sections relate to the investment of surplus money.

In the third column, references to sections not marked with asterisks relate to borrowing and other money-raising from financial markets.



Appendix I — Proposed amendments to provide the Finance Minister with delegation powers and existing delegation powers of the Treasurer *

Name of Act	Proposed Finance Minister's powers		Treasurer's powers	
	Item Number in Schedule 2 of the Bill **	Sections in the Act to be amended or repealed **	Item Number in Schedule 2 of the Bill **	Sections in the Act to be amended or repealed **
<i>Aboriginal and Torres Strait Islander Commission Act 1989</i>	20	200A	nil	nil
<i>Aboriginal Land Rights (Northern Territory) Act 1976</i>	24	33	nil	nil
<i>Agricultural and Veterinary Chemicals (Administration) Act 1992</i>	31	69AA	32	72

Name of Act	Proposed Finance Minister's powers		Treasurer's powers	
	Item Number in Schedule 2 of the Bill **	Sections in the Act to be amended or repealed **	Item Number in Schedule 2 of the Bill **	Sections in the Act to be amended or repealed **
<i>Albury-Wodonga Development Act 1973 **</i>	39	31A	nil	nil
<i>Australian Broadcasting Corporation Act 1983</i>	51	71A	50	70F
<i>Australian Film Commission Act 1975</i>	54	6	nil	nil
<i>Australian Hearing Service Act 1991</i>	62	63B	61	58
<i>Australian Maritime Safety Authority Act 1990</i>	66	41	67	43
<i>Australian National University Act 1991</i>	69	44	nil	nil
<i>Australian Nuclear Science and Technology Organisation Act 1987</i>	78	36A	79	43
<i>Australian Prudential Regulation Authority Act 1998</i>	81	53	nil	nil
<i>Australian Trade Commission Act 1985</i>	83	79	nil	nil
<i>Commonwealth Authorities and Companies Act 1997</i>	86	18(4)	nil	nil
<i>Co-operative Farmers and Graziers Direct Meat Supply Limited (Loan Guarantee) Act 1978 **</i>	96	6	nil	nil
<i>Dairy Produce Act 1986</i>	99	76	nil	nil
<i>Defence Housing Authority Act 1976</i>	112	66A	111	42

Name of Act	Proposed Finance Minister's powers		Treasurer's powers	
	Item Number in Schedule 2 of the Bill **	Sections in the Act to be amended or repealed **	Item Number in Schedule 2 of the Bill **	Sections in the Act to be amended or repealed **
<i>Export Finance and Insurance Corporation Act 1991</i>	118	59	nil	nil
<i>Fisheries Administration Act 1991</i>	141	88A	nil	nil
<i>Health Insurance Commission Act 1973</i>	142	36	na	na
<i>High Court of Australia Act 1979 **</i>	144	39	nil	nil
<i>Maritime College Act 1978</i>	149	37C	149	37C
<i>Norfolk Island Act 1979 **</i>	155	50D	155	50D
<i>Northern Prawn Fishery Voluntary Adjustment Scheme Loan Guarantee Act 1985 **</i>	159	7	nil	nil
<i>Northern Territory (Lessees' Loans Guarantee) Act 1954 **</i>	163	4	164	5
<i>Primary Industries and Energy Research and Development Act 1989</i>	170	46A	nil	nil
<i>Safety Rehabilitation and Compensation Act 1988</i>	174	95	nil	nil
<i>Special Broadcasting Service Act 1991</i>	181	64	181	64
<i>Stevedoring Industry Finance Committee Act 1977</i>	184	20	nil	nil
<i>Sydney Harbour Federation Trust Act 2001</i>	186	62	na	na

* These delegation powers relate to one or more of the following activities of entities that are legally separate from the Commonwealth:

- borrowing and other money raising from financial markets;
- investment of surplus money; and
- providing guarantees. These powers include providing a guarantee to an entity, placing limits on a guarantee given by an entity to a third party, or providing a guarantee to a subsidiary of an entity. The guarantees are usually in relation to the repayment of borrowing and interest due on the borrowing.

** An item, recorded in the second column, might contain amendments to more than one section recorded in the third column . The third column records sections, subsections, paragraphs or sub-paragraphs. A provision recorded in the third column might be amended by more than one item recorded in the second column.

‘na’ means not applicable



Appendix K — Special Accounts established by Acts

Portfolio	Name of Act	Name of Special Account
Agriculture, Fisheries and Forestry	<i>Forestry and Timber Bureau Act 1930</i>	Forestry Account (1)
	<i>Loan (Income Equalisation Deposits) Act 1976</i>	Income Equalisation Deposits Account
	<i>National Cattle Disease Eradication Reserve Act 1991</i>	National Cattle Disease Eradication Account (1)
	<i>National Residue Survey Administration Act 1992</i>	National Residue Survey Account (1)
	<i>Natural Resources Management (Financial Assistance) Act 1992</i>	Natural Resources Management Account (1)
Attorney-General's	<i>Bankruptcy Act 1966</i>	Common Investment Fund Equalisation Account
	<i>Proceeds of Crime Act 1987</i>	Confiscated Assets Account (2)
	<i>Proceeds of Crime Act 2002</i>	Confiscated Assets Account (3)

Portfolio	Name of Act	Name of Special Account
Communications, Information Technology and the Arts	<i>Telecommunications (Consumer Protection and Service Standards) Act 1999</i>	National Relay Service Account
		Universal Service Account (1) (3)
	<i>Telstra Corporation Act 1991</i> (4)	Television Fund Account
		Untimed Local Call Access Account
Education, Science and Training	<i>Australian Research Council Act 2001</i>	ARC Research Endowment Account (1) (3)
	<i>Higher Education Funding Act 1988</i>	Higher Education (HECS) Account
	<i>Student Assistance Act 1973</i>	Students (Financial Supplement) Account
Environment and Heritage	<i>Natural Heritage Trust of Australia Act 1997</i>	Natural Heritage Trust of Australia Account
	<i>Ozone Protection Act 1989</i> (5)	Ozone Protection Account
	<i>Protection of Movable Cultural Heritage Act 1986</i>	National Cultural Heritage Account (1) (3)
	<i>Sea Installations Act 1987</i>	Sea Installations Account
Family and Community Services	<i>Child Support (Registration and Collection) Act 1988</i>	Child Support Account
Finance and Administration	<i>Lands Acquisition Act 1989</i>	Lands Acquisition Account
Foreign Affairs and Trade	<i>Australia-Japan Foundation Act 1976</i>	Australia-Japan Account (1)
	<i>Australian Centre for International Agricultural Research Act 1982</i>	Australian Centre for International Agricultural Research Account (1)

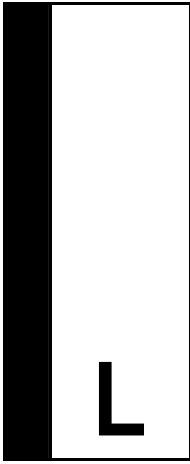
Portfolio	Name of Act	Name of Special Account
Health and Ageing	<i>Alcohol Education And Rehabilitation Account Act 2001</i>	Alcohol Education and Rehabilitation Account (3)
	<i>Australian Radiation Protection and Nuclear Safety Act 1998</i>	ARPANSA Account (1)
	<i>Gene Technology Act 2000</i>	Gene Technology Account (1) (3)
	<i>Industrial Chemicals (Notification and Assessment) Act 1989</i>	Industrial Chemicals Account (1) (3)
	<i>National Blood Authority Act 2003</i>	National Blood Account (1) (3) (6)
	<i>National Health and Medical Research Council Act 1992</i>	Medical Research Endowment Account (1)
	<i>Therapeutic Goods Act 1989</i>	Therapeutic Goods Administration Account (1)
Immigration and Multicultural and Indigenous Affairs	<i>Aboriginal and Torres Strait Islander Commission Act 1989</i>	Aboriginal and Torres Strait Islander Land Account
	<i>Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987</i>	Aboriginal Advancement Account (7)
		Condah Land Account
		Framlingham Forest Account
	<i>Aboriginal Land Rights (Northern Territory) Act 1976</i>	Aboriginal Benefits Account
Transport and Regional Services	<i>Australian Land Transport Development Act 1988</i>	Australian Land Transport Development Account
	<i>Interstate Road Transport Act 1985</i>	Interstate Road Transport Account
	<i>Telstra Corporation Act 1991</i>	Rural Transactions Centres Account

Portfolio	Name of Act	Name of Special Account
Treasury	<i>Financial Agreement Act 1994</i>	Debt Retirement Reserve Trust Account
	<i>Small Superannuation Accounts Act 1995</i>	Superannuation Holding Accounts Special Account
	<i>Superannuation Industry (Supervision) Act 1993</i>	Superannuation Protection Account
Veterans' Affairs	<i>Defence Service Homes Act 1918</i>	Defence Service Homes Insurance Account

Footnotes:

- (1) The Acts establishing these Accounts provide that amounts appropriated by Parliament for the purposes of the Account must be, or may be, credited to the Account. 15 out of the 42 Special Accounts established by Acts are subject to such provisions.
- (2) Item 308 of Schedule 1 of the Bill amends the name of this Account to 'Confiscated Assets Special Account' to distinguish the Account from the Confiscated Assets Account established by the *Proceeds of Crime Act 2002*.
- (3) These Accounts were established after the commencement of the FMLA Act on 1 July 1999. The enabling Acts do not therefore include references to components of the RMF and therefore do not require amendment to include references to Special Account.
- (4) The *Telstra Corporation Act 1991* expands the purposes of the Regional Telecommunications Infrastructure Account, but does not establish the Account. The Account was originally established by a determination of the Finance Minister. The Account is therefore not listed in this table.
- (5) Amendments to the *Ozone Protection Act 1989* (the Act) are not included in the Bill because appropriate amendments to the Act are included in the *Ozone Protection and Synthetic Greenhouse Gas Legislation Amendment Bill 2003* (Amendment Bill). The Amendment Bill changes the name of the Account to the Ozone Protection and SGG Account.
- (6) The provision in the *National Blood Authority Act 2003* that establishes the National Blood Account commences on 1 July 2003.

- (7) Subsection 38(6) of the *Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987* provides for the responsible Minister to establish the Aboriginal Advancement Account.



Appendix L — Australian Land Transport Development Act 1988

(A) Mark-up of the ALTD Act to reflect proposed changes to the Act contained in the draft Financial Framework Legislation Amendment Bill ¹

Australian Land Transport Development Act 1988

An Act to establish a ~~reserve~~ Special Account for the purposes of the development and maintenance of land transport systems, and for related purposes

Part I — Preliminary

1 Short title [see Note 1]

This Act may be cited as the *Australian Land Transport Development Act 1988*.

2 Commencement

This Act commences on 1 January 1989.

3 Interpretation

¹ The text under this subheading is a shortened version of Attachment A to Finance's *Submission No.17*, from page 75. It records all proposed changes to the Act.

(1) In this Act, unless the contrary intention appears:

Account means the Australian Land Transport Development Account continued in existence by section 11.

approved organisation means:

- (a) an approved research organisation; or
- (b) an approved road safety organisation.

approved railway authority means an authority in respect of which a declaration under subsection 7(3) is in force.

approved research organisation means an organisation in respect of which a declaration under subsection 8(1) is in force.

approved road safety organisation means an organisation in respect of which a declaration under subsection 8(2) is in force.

capital railway project means a project by way of capital expenditure in relation to an interstate mainline railway, and includes:

- (a) the construction of an interstate mainline railway; or
- (b) the acquisition of rolling stock for use on an interstate mainline railway.

charge rate means:

- (a) if paragraph (b) does not apply—4.95 cents per litre; or
- (b) if a determination under section 10 is in force—the rate specified in that determination.

construction in relation to a railway or road, includes:

- (a) the reconstruction or realignment of the railway or road;
 - (b) the bringing of the railway or road to a higher standard;
 - (c) investigation and associated engineering studies in connection with:
 - (i) the construction, reconstruction or realignment of the railway or road;
 - (ii) the bringing of the railway or road to a higher standard; or
 - (iii) the planning of alternative routes for the railway or road;
 - (d) the acquisition of land for the purpose of:
 - (i) constructing, reconstructing or realigning the railway or road; or
 - (ii) bringing the railway or road to a higher standard; and
 - (e) the doing of any other thing in relation to a matter specified in paragraph (a) or (b) approved by the Minister, in writing, for the purposes of this definition;
- but does not include the maintenance of the railway or road.

existing Fund means:

- (a) the Australian Bicentennial Road Development Trust Fund established by section 7 of the *Australian Bicentennial Road Development Trust Fund Act 1982*; or
- (b) the Australian Land Transport Trust Fund established by section 11 of the *Australian Land Transport (Financial Assistance) Act 1985*.

government authority means:

- (a) a local government body;

- (b) an authority of a State, being an incorporated body but not being a local government body, that is responsible for:
 - (i) the construction or maintenance of roads in, or in an area of, the State; or
 - (ii) the provision of railway services over a railway in the State.

indexation factor means an indexation factor ascertained under subsection 9(4) or (5);

interstate mainline railway means a railway, or a proposed railway, in respect of which a declaration under subsection 7(1) is in force.

local road means:

- (a) a road that is not a national highway, a national arterial road or a State arterial road; or
- (b) a path for the use of persons riding bicycles, being a path that is not associated with a road.

maintenance, in relation to a road, includes works and repairs to keep the road in a safe and trafficable condition.

national arterial road means a road or proposed road in respect of which a declaration under subsection 5(1) is in force.

national highway means a road or proposed road in respect of which a declaration under subsection 4(1) or (2) is in force.

organisation includes an association, authority, body or institution, whether incorporated or unincorporated, and whether or not constituting or forming part of a Department of State of the Commonwealth or of a State.

provincial cities and rural highways road means a road or a proposed road in respect of which a declaration under subsection 7A(1) is in force.

railway includes:

- (a) railway signs;
- (b) railway control equipment;
- (c) railway lighting equipment;
- (d) a bridge or tunnel associated with a railway, including a bridge or tunnel for the use of pedestrians; and
- (e) any other thing associated with a railway approved by the Minister in writing for the purposes of this definition.

~~***Reserve*** means the Australian Land Transport Reserve established by section 11.~~

road includes:

- (a) a traffic sign;
- (b) traffic control equipment;
- (c) street lighting equipment;
- (d) a vehicular ferry;
- (e) a bridge or tunnel, including a bridge or tunnel for the use of pedestrians;
- (f) a path for the use of persons riding bicycles;
- (g) a ramp provided to facilitate the launching of boats;
- (h) vehicular access from a road to a ramp referred to in paragraph (g); and
- (j) any other thing approved by the Minister in writing for the purposes of this definition;

associated with a road.

road user charge means so much of each amount paid to the Commonwealth as duty of Excise, or duty of Customs, in respect of motor spirit, or diesel fuel, entered for home consumption as is ascertained by multiplying that amount by the amount represented by the formula:

$$\frac{CR}{RD}$$

where:

CR is the charge rate; and

RD is the rate of duty, expressed in cents per litre, by reference to which the amount paid to the Commonwealth was ascertained.

State includes the Northern Territory or the Australian Capital Territory.

State arterial road means a road, or proposed road, in respect of which a declaration under subsection 6(1) is in force.

urban area means an area designated for the purposes of the Census taken in the year 1986 as:

- (a) the Sydney Statistical Division;
- (b) the Melbourne Statistical Division;
- (c) the Brisbane Statistical Division;
- (d) the Adelaide Statistical Division;
- (e) the Perth Statistical Division;
- (f) the Greater Hobart Statistical Division;
- (g) the Darwin Statistical Division;
- (h) the Newcastle Statistical District;
- (j) the Wollongong Statistical District;
- (k) the Bathurst-Orange Statistical District;

- (m) the Albury-Wodonga Statistical District;
- (n) the Geelong Statistical District;
- (p) the Ballarat Statistical District;
- (q) the Bendigo Statistical District;
- (r) the Sunshine Coast Statistical District;
- (s) the Bundaberg Statistical District;
- (t) the Rockhampton Statistical District;
- (u) the Mackay Statistical District;
- (w) the Townsville Statistical District;
- (y) the Cairns Statistical District;
- (z) the Gold Coast-Tweed Statistical District;
- (za) the Launceston Statistical District;
- (zb) the Burnie-Devonport Statistical District;
- (zc) the Canberra-Queanbeyan Statistical District;
- (zd) the Maitland Urban Centre; or
- (ze) the Toowoomba Urban Centre.

urban public transport project means a project in respect of which a declaration under subsection 7C(1) is in force.

- (2) An amount paid by a State to a government authority for a particular purpose and expended by that authority for that purpose shall, for the purposes of this Act, be taken to have been expended by the State for that purpose.
- (3) For the purposes of this Act, where an amount is expended by a State or a government authority by way of the payment of wages and an amount of tax is paid by the State or the authority (whether by way of a payment of moneys, the crediting of an account or otherwise) on those wages, being a tax imposed by a law of the State upon employers on wages paid by

them, the amount of tax shall be taken to be a part of those wages.

- (4) In subsection (3), **wages** includes payments in the nature of wages.
- (5) Subject to subsection (3), for the purposes of this Act, money paid or credited by a State to a trust account or other account in the Treasury of the State shall not, merely because of its having been so paid or credited, be taken to have been expended by the State.
- (6) Where an approved organisation is, or is part of, a Department of State of a State:
 - (a) a reference in this Act to the payment of an amount ~~out of the Reserve~~ to the approved organisation after a debiting from the Account, is a reference to the payment of the amount, ~~out of the Reserve~~ after such a debiting, to the State by way of the grant of financial assistance;
 - (b) a reference in this Act to expenditure by the approved organisation is a reference to expenditure by the State; and
 - (c) a reference in this Act to an act or thing done or to be done by the organisation arising out of such a payment or expenditure is a reference to an act or thing done or to be done by the State arising out of such a payment or expenditure.
- (7) For the purposes of this Act, a notification or request shall be taken to have been given to a State if it is given to the appropriate Minister of the State.
- (8) Unless the contrary intention appears:
 - (a) a reference in this Act to a road includes a reference to a part of a road; and

- (b) a reference in this Act to a railway includes a reference to a part of a railway.

4 Declaration of national highways

- (1) The Minister may declare a road in a State that constitutes, or a proposed road in a State that would, if constructed, constitute, a part of the road that, in the opinion of the Minister, is or will be the principal road linking:
 - (a) 2 or more State capital cities;
 - (b) Brisbane and Cairns; or
 - (c) Hobart and Burnie;to be a national highway for the purposes of this Act.
- (2) The Minister may declare a road in a State that constitutes, or a proposed road in a State that would, if constructed, constitute, a road that should, in the opinion of the Minister, be treated, by reason of its national importance, as a national highway for the purposes of this Act to be, for those purposes, a national highway.
- (3) A declaration under subsection 4(1) or (2) of the *Australian Land Transport (Financial Assistance) Act 1985* in respect of a road, or a proposed road, in a State, being a declaration that was in force immediately before the commencement of this Act, shall, for the purposes of this Act, be taken to be a declaration made, on the commencement of this Act, under subsection (1) or (2) of this section, whichever is appropriate.
- (4) The Minister may, by declaration, revoke or vary a declaration made, or taken to have been made, under subsection (1) or (2).

- (5) The Minister shall cause a copy of a declaration made under this section in respect of a road, or a proposed road, in a State to be given to the appropriate Minister of the State.

5 Declaration of national arterial roads

- (1) Where the Minister is satisfied:
 - (a) that the construction of a road or of a proposed road in a State will:
 - (i) increase the competitiveness of industries producing:
 - (A) goods for export; or
 - (B) goods that compete with imports on the Australian market; or
 - (ii) facilitate, to a significant extent, travel for tourist purposes; and
 - (b) that the benefits likely to flow from the construction of the road or proposed road justify the incurring of the costs of construction;the Minister may declare the road or proposed road to be a national arterial road for the purposes of this Act.
- (2) The Minister may, by declaration, revoke or vary a declaration made under subsection (1).
- (3) The Minister shall cause a copy of the declaration made under this section in respect of a road, or a proposed road, in a State to be given to the appropriate Minister of the State.

6 Declaration of State arterial roads

- (1) The Minister may declare:
 - (a) a road, or a proposed road, in a State:

- (i) that is predominantly associated with an urban area; and
 - (ii) that forms part of a network of roads the main function of which is to carry traffic into or across an urban area or between the localities within an urban area; or
 - (b) a road, or a proposed road, in a State:
 - (i) that is not in an urban area; and
 - (ii) the main function of which is to carry traffic between or through major regions, closely settled areas, cities or towns;
- to be a State arterial road for the purposes of this Act.

- (2) A declaration under subsection 5(1) or (2) of the *Australian Land Transport (Financial Assistance) Act 1985* in respect of a road, or a proposed road, in a State, being a declaration that was in force immediately before the commencement of this Act, shall, for the purposes of this Act, be taken to be a declaration, made, on the commencement of this Act, under subsection (1) of this section, that the road or proposed road is a State arterial road.
- (3) The Minister may, by declaration, revoke or vary a declaration made, or taken to have been made, under subsection (1).
- (4) The Minister shall cause a copy of a declaration made under this section in respect of a road, or a proposed road, in a State to be given to the appropriate Minister of the State.

7 Declaration of interstate mainline railways and approved railway authorities

- (1) The Minister may declare a railway in a State that constitutes, or a proposed railway in a State that would, if constructed, constitute, a part of:
 - (a) the railway that, in the opinion of the Minister, is or will be the principal railway linking 2 State capital cities; or
 - (b) any other railway that, in the opinion of the Minister, is of national significance in relation to trade or commerce between the States;to be an interstate mainline railway for the purposes of this Act.
- (2) A declaration under subsection 6(1) of the *Australian Land Transport (Financial Assistance) Act 1985* in respect of a railway, or a proposed railway, in a State, being a declaration that was in force immediately before the commencement of this Act, shall, for the purposes of this Act, be taken to be a declaration made, on the commencement of this Act, under subsection (1) of this section.
- (3) The Minister may declare an authority that provides, or proposes to provide, whether jointly with another authority or otherwise, railway services over an interstate mainline railway to be an approved railway authority for the purposes of this Act.
- (4) A declaration under subsection 7(1) of the *Australian Land Transport (Financial Assistance) Act 1985* in respect of an authority, being a declaration that was in force immediately before the commencement of this Act, shall, for the purposes of this Act, be taken to be a declaration made, on the commencement of this Act, under subsection (3) of this section.

- (5) The Minister may, by declaration, revoke or vary a declaration made, or taken to have been made, under subsection (1) or (3).
- (6) The Minister shall cause a copy of a declaration made under this section in respect of a railway in a State to be given to:
 - (a) the appropriate Minister of the State; or
 - (b) the appropriate approved railway authority.
- (7) A declaration under subsection (3) and a declaration under subsection (5) relating to an approved railway authority shall be published in the *Gazette*.

7A Provincial cities and rural highways projects

- (1) Where the Minister is satisfied:
 - (a) that the construction of a road or a proposed road will yield sufficient economic return to justify the incurring of the costs of construction; and
 - (b) that the road or proposed road is not in a State capital city;the Minister may declare the road or proposed road to be a provincial cities and rural highways road for the purposes of this Act.
- (2) The Minister may, by declaration, revoke or vary a declaration made under subsection (1).
- (3) The Minister must cause a copy of a declaration made under this section in respect of a road, or a proposed road, in a State to be given to the appropriate Minister of the State.

7B Black spot projects and road safety measures

- (1) If the Minister is satisfied that a part of a road that is not a part of a national highway is a site the nature of which has contributed to serious motor vehicle crashes involving death or personal injury, the Minister may declare the location to be a black spot for the purposes of this Act.
- (2) The Minister may declare a measure to be a road safety measure for the purposes of this Act if the Minister is satisfied that the implementation of the measure is likely to reduce the incidence of motor vehicle crashes involving death or personal injury.
- (3) The Minister may, by declaration, revoke or vary a declaration made under subsection (1) or (2).
- (4) The Minister must cause a copy of a declaration made under this section in respect of a part of a road in a State or a measure that relates to a State to be given to the appropriate Minister of the State.

7C Urban public transport projects

- (1) If the Minister is satisfied that a project by way of capital expenditure in a State is likely to result in the reduction of the traffic on, or the wear and tear affecting, any road (including a national arterial road or a State arterial road) in an urban area, or is likely to provide environmentally or socially innovative measures to facilitate public transport, the Minister may declare the project to be an urban public transport project for the purposes of this Act.
- (2) The Minister may, by declaration, revoke or vary a declaration made under subsection (1).

- (3) The Minister must cause a copy of a declaration made under this section in respect of a project in a State to be given to the appropriate Minister of the State.

8 Declaration of approved research organisations and approved road safety organisations

- (1) The Minister may declare an organisation that arranges, assists or carries out, or that proposes to arrange, assist or carry out, research in relation to land transport to be an approved research organisation for the purposes of this Act.
- (2) The Minister may declare an organisation that arranges, assists or carries out, or that proposes to arrange, assist or carry out, activities in relation to road safety, to be an approved road safety organisation for the purposes of this Act.
- (3) A declaration under subsection 8(1) or (2) of the *Australian Land Transport (Financial Assistance) Act 1985* in respect of an organisation, being a declaration that was in force immediately before the commencement of this Act, shall, for the purposes of this Act, be taken to be a declaration made, on the commencement of this Act, under subsection (1) or (2) of this section, whichever is appropriate.
- (4) The Minister may, by declaration, revoke a declaration made, or taken to have been made, under this section.
- (5) A declaration under this section shall be published in the *Gazette*.

9 Indexation factor

- (1) In this section:

index number, in relation to a quarter, means the implicit price deflator for gross non-farm product published by the Statistician in respect of that quarter.

Statistician means the Australian Statistician.

- (2) Subject to subsection (3), if at any time whether before or after the commencement of this Act, the Statistician has published or publishes an index number in respect of a quarter in substitution for an index number previously published by the Statistician in respect of that quarter, the publication of the later index number shall be disregarded for the purposes of this section.
- (3) If at any time, whether before or after the commencement of this Act, the Statistician has changed or changes the reference base for the implicit price deflator for gross non-farm product, then, for the purposes of the application of this section after the change, regard shall be had only to index numbers published in terms of the new reference base.
- (4) The indexation factor in relation to a financial year referred to in the definition of ***guaranteed amount*** in subsection 10(1) is:
 - (a) the number, calculated to 3 decimal places, ascertained by dividing:
 - (i) in the case of the financial year commencing on 1 July 1989—the index number for the December quarter in the year 1988 by the index number for the December quarter in the year 1987; or
 - (ii) in the case of the financial year commencing on 1 July 1990—the index number for the December quarter in the year 1989 by whichever is the higher of the index numbers

for the December quarters in the years 1987 and 1988; or

- (b) if the number so ascertained would, if it were calculated to 4 decimal places, end in a number greater than 4—the number so ascertained increased by 0.001.
- (5) The indexation factor in relation to a period of 6 months referred to in the definition of ***relevant period*** in subsection 14(1) is:
- (a) the number, calculated to 3 decimal places, ascertained by dividing:
 - (i) if the relevant period commences on 1 April—the index number for the last preceding December quarter; or
 - (ii) if the relevant period commences on 1 October—the index number for the last preceding June quarter;by the highest index number in respect of a December or June quarter that preceded that quarter, not being a December or June quarter that occurred before the December quarter in the year 1987; or
 - (b) if the number so ascertained would, if it were calculated to 4 decimal places, end in a number greater than 4—the number so ascertained increased by 0.001.

10 Determination in relation to charge rate

- (1) In this section:

guaranteed amount means:

- (a) in relation to the financial year commencing on 1 July 1989:

- (i) if subparagraph (ii) does not apply—
\$1,226,000,000; or
 - (ii) if the indexation factor in relation to that financial year is greater than 1—the amount ascertained by multiplying \$1,226,000,000 by that factor; and
 - (b) in relation to the financial year commencing on 1 July 1990:
 - (i) if subparagraph (ii) does not apply—the amount equal to the guaranteed amount in relation to the financial year commencing on 1 July 1989; or
 - (ii) if the indexation factor in relation to the financial year commencing on 1 July 1990 is greater than 1—the amount ascertained by multiplying the amount referred to in subparagraph (i) by that factor.
- (2) Subject to subsections (3) and (4), the Minister may, after consultation with the Treasurer, determine in writing, in respect of a financial year, a rate, expressed in cents per litre, for the purposes of the definition of **charge rate** in subsection 3(1).
- (5) A determination under this section:
- (a) shall be expressed to come, or to have come, into force on the first day of the financial year to which it relates; and
 - (b) subject to subsection (6), is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (6) Paragraph 48(1)(b) of the *Acts Interpretation Act 1901* does not apply in relation to a determination under this section.

Part II — Australian Land Transport Development Reserve Account

11 ~~Establishment of Reserve~~ Australian Land Transport Development Account

- (1) There is ~~established a reserve to be known as~~ continued in existence the Australian Land Transport Development Reserve Account.

Note: The Account was established by subsection 5(3) of the *Financial Management Legislation Amendment Act 1999*.

- (2) The Reserve Account is a ~~component of the Reserved Money Fund~~ Special Account for the purposes of the *Financial Management and Accountability Act 1997*.

12 ~~Money to be paid into Reserve~~ Amounts to be credited to Account

- (1) Subject to subsection (2), there ~~shall be paid into the Reserve out of the Consolidated Revenue Fund~~ must be credited to the Account amounts equal to the amounts of road user charge received by the Commonwealth after the commencement of this Act.
- (2) Where the whole or a part of an amount (which whole or part in this subsection is called the **refunded amount**) paid as duty of Excise, or duty of Customs, in respect of motor spirit, or diesel fuel, entered for home consumption is, after the commencement of this Act, repaid to a person by the Commonwealth by way of rebate or otherwise, there shall be deducted from the

sum of the amounts that would, but for this subsection, be paid into the Reserve credited to the Account under subsection (1) an amount ascertained in accordance with the formula:

$$\frac{CR}{RD} \times RA$$

where:

CR is the charge rate;

RD is the rate of duty, expressed in cents per litre, by reference to which the refunded amount was ascertained; and

RA is the refunded amount.

(3) In ascertaining:

- (a) an amount of road user charge for the purposes of subsection (1); or
- (b) a refunded amount for the purposes of subsection (2);

if 2 or more parts of an amount paid as duty were ascertained by reference to different rates of duty, each of those parts shall be taken to be a separate amount so paid.

(3A) In addition to payments made under subsection (1), ~~the Commonwealth is to pay the following amounts into the Fund~~ the following amounts must be credited to the Account:

- (a) in relation to the financial year beginning on 1 July 1990—\$178,300,000;
- (b) in relation to the financial year beginning on 1 July 1991—\$168,300,000;
- (c) in relation to the financial year beginning on 1 July 1992—\$158,400,000.

- (4) If interest is received by the Commonwealth from the investment of ~~money from the Reserve, an amount equal to the interest must be transferred to the Reserve from the Consolidated Revenue Fund~~ an amount standing to the credit of the Account, an amount equal to the amount of the interest must be credited to the Account.

14 Indexation of charge rate

- (1) In this section, unless the contrary intention appears:

base rate, in relation to a relevant period, means:

- (a) if paragraph (b) does not apply—the charge rate; or
- (b) if, by virtue of an application or applications of this section, this Act has effect immediately before the commencement of the relevant period as if another rate has been substituted for the charge rate—that other rate.

relevant period means:

- (a) the period of 6 months commencing on 1 October 1989;
 - (b) each subsequent period of 6 months, being a period earlier than the period commencing on 1 October 1991; and
 - (c) each subsequent period of 6 months, being a period after the period commencing on 1 April 1991, that the Minister determines in writing to be a relevant period for the purposes of this section.
- (2) If the indexation factor in relation to a relevant period is greater than 1, this Act has effect, from and including the first day of that period and to and including:
- (a) the last day of that period; or

(b) the day immediately preceding the day on which a determination under section 10 next comes into force;

whichever is the earlier, as if for the base rate in relation to that period there were substituted a rate calculated by multiplying the base rate by that factor.

- (3) Where, by virtue of the application of this section, another rate (in this subsection called the ***substituted rate***) is substituted for a rate on a particular day, the Minister shall, on or as soon as practicable after that day, publish a notice in the *Gazette* specifying the substituted rate.

15 Application of ~~Reserve~~ Account

- (1) Subject to subsection (2) and sections 16, 17, 18 and 19, amounts standing to the credit of the ~~Reserve may be paid out of the Reserve~~ Account may be debited from the Account and paid by the Commonwealth:

(a) to a State, by way of the grant of financial assistance to the State, for expenditure by the State on:

(i) projects for the construction of:

(A) national highways; or

(B) national arterial roads;

and programs for the maintenance of national highways, being projects or programs approved under subsection 26(3);

(ii) the construction or maintenance of:

(A) State arterial roads; or

(B) local roads;

(iii) capital railway projects and urban public transport projects approved under subsection 26(3);

- (iv) projects for the construction of provincial cities and rural highways roads approved under subsection 26(3); and
- (v) a project, or program of projects, for:
 - (A) the road safety improvement of black spots; or
 - (B) the implementation of road safety measures;
- (b) to an approved railway authority for expenditure by the authority on capital railway projects approved under subsection 26(3);
- (ba) to an approved railway authority for payment as an additional capital contribution in respect of a capital railway project to be undertaken by the authority;
- (c) to an approved research organisation for expenditure by the organisation in arranging, assisting or carrying out programs of research relating to land transport approved under subsection 26(3); and
- (d) to an approved road safety organisation for expenditure by the organisation in arranging, assisting or carrying out programs of activities relating to road safety approved under subsection 26(3).

- (2) An amount may not be ~~paid out of the Reserve~~debited from the Account and paid by the Commonwealth to a State in relation to a project or program referred to in subparagraph (1)(a)(v) unless the State has given to the Minister an undertaking that it will implement road safety initiatives identified by the Minister.
- (3) An amount is not to be paid ~~out of the Reserve~~ to an approved railway authority as an additional capital

contribution in respect of a capital railway project to be undertaken by the authority unless:

- (a) in response to an invitation from the Minister under paragraph 26(1)(c), the authority has submitted to the Minister particulars of the project; and
- (b) if the authority has a corporate plan—the Minister is satisfied that the undertaking of the project by the authority is consistent with the plan; and
- (c) it has been agreed:
 - (i) if the authority is incorporated under the *Corporations Act 2001* and the Commonwealth is a shareholder in the authority—between the other shareholders and the Commonwealth; or
 - (ii) in any other case—between the authority and the Commonwealth;
that shares in the authority having an equivalent nominal value to the ~~payment from the Reserve~~amount debited from the Account will be issued to the Commonwealth;
 - (iii) on ~~payment from the Reserve~~by the Commonwealth to the authority of all of the additional capital contributions proposed in respect of that project; or
 - (iv) at such later time as is agreed.

17 Limitation of allocations made after 30 June 1989

- (1) The sum of the amounts ~~paid out of the Reserve~~debited from the Account and paid by the Commonwealth, after 30 June 1989, to the State specified in an item in Schedule 2 by way of the grant of financial assistance for expenditure by the State on the construction and

maintenance of State arterial roads shall not exceed the amount specified in column 3 of that item.

- (2) The sum of the amounts ~~paid out of the Reserve~~ debited from the Account and paid by the Commonwealth, after 30 June 1989, to the State specified in an item in Schedule 2 by way of the grant of financial assistance for expenditure by the State on the construction and maintenance of local roads shall not exceed an amount equal to the percentage specified in column 4 of that item of the sum of the amounts ~~paid into the Reserve~~ credited to the Account under subsection 12(1) after that date.

18 Use of funds allocated to projects etc. commenced before the commencement of Act

- (1) Where a project or program approved under subsection 26(3) was commenced before the commencement of this Act, ~~any money paid out of the Reserve~~ an amount debited from the Account and paid by the Commonwealth:
- (a) to a State by way of the grant of financial assistance for expenditure by the State on the project or program; or
 - (b) to an authority or organisation for expenditure on the project or program;
- may, with the approval of the Minister, be used for the reimbursement of amounts expended before the commencement of this Act by the State, authority or organisation on the project or program.
- (2) Where a project or program of a kind referred to in paragraph 26(1)(ba) or (bb) and approved under subsection 26(3) was commenced before the commencement of the *Australian Centennial Roads*

Development Amendment Act 1990, any money paid out of the Reserve:

- (a) to a State by way of the grant of financial assistance for expenditure by the State on the project or program; or
- (b) to an organisation for expenditure on the project or program;

may, with the approval of the Minister, be used for the reimbursement of amounts expended before the commencement of that Act by the State or organisation on the project or program.

19 Reallocation of funds

- (1) The Minister may, upon being so requested by a State and being satisfied, having regard to the policies of the Commonwealth in relation to land transport, that it would be desirable to do so, authorise that:

- (a) ~~money paid out of the Reserve~~ an amount debited from the Account and paid by the Commonwealth to the State for expenditure by the State on the construction or maintenance of State arterial roads, not exceeding such amount as is specified by the Minister, be expended by the State on:
 - (i) the construction or maintenance of local roads; or
 - (ii) projects or programs in respect of national highways, or projects in respect of national arterial roads, approved under subsection 26(3); or
- (b) ~~money paid out of the Reserve~~ an amount debited from the account and paid by the Commonwealth to a State for expenditure by the State on the construction or maintenance of local roads, not exceeding such amount as is specified by the

Minister, be expended by the State on the construction or maintenance of State arterial roads.

(2) The Minister may, on his or her own ~~motion~~initiative, authorise that:

(a) ~~money paid out of the Reserve~~an amount debited from the Account and paid by the Commonwealth to a State or an approved organisation for expenditure on a particular project or program, not exceeding such amount as is specified by the Minister, be expended by any State or organisation specified by the Minister on another project or program; or

(b) ~~money paid out of the Reserve~~an amount debited from the Account and paid by the Commonwealth to a State for expenditure by the State on projects for the construction of national highways or national arterial roads or programs for the maintenance of national highways, not exceeding such amount as is specified by the Minister, be expended by the State on the construction or maintenance of State arterial roads.

(3) ~~Money paid out of the Reserve~~An amount debited from the Account and paid by the Commonwealth to a State or an approved organisation, being ~~money~~an amount to which an authorisation under subsection (1) or (2) relates, may be spent in accordance with the authorisation but, for the purposes of section 16 or 17 (whichever is applicable), the ~~money~~amount shallis to be taken to have been expended by the State or organisation to which it was originally paid ~~out of the Reserve~~ on the purpose for which it was so paid.

20 Funds for State arterial roads reallocated for expenditure on capital railway projects

(1) ~~Where~~If:

- (a) a State or an approved railway authority in a State has, in accordance with an invitation under subsection 26(1), submitted particulars of a capital railway project to the Minister; and
- (b) the appropriate Minister for the State satisfies the Minister that it would be desirable, having regard to the policies of the Commonwealth in relation to land transport, that a specified amount standing to the credit of the Reserve Account should be expended on that project instead of being expended on the construction or maintenance by the State of State arterial roads;

the Minister may, on or after approving the project under subsection 26(3), determine that ~~money~~an amount standing to the credit of the Reserve Account and earmarked for expenditure on the construction or maintenance of State arterial roads, ~~not exceeding such amount as is specified in the determination,~~ may be ~~paid out of the Reserve debited from the Account and paid by the Commonwealth~~ debited from the Account and paid by the Commonwealth to the State or approved railway authority for expenditure by the State or authority on the project.

- (2) ~~Where~~If the Minister makes a determination in relation to a capital railway project, the amounts ~~paid out of the Reserve debited from the Account~~ paid out of the Reserve debited from the Account in accordance with the determination ~~shall~~must, for the purposes of section 16 or 17, whichever is applicable, be taken to be amounts ~~paid out of the Reserve debited from the Account and paid by the Commonwealth~~ debited from the Account and paid by the Commonwealth to the States by way of a grant of financial assistance for expenditure by the State on the construction of a State arterial road.

21 Funds for State arterial roads reallocated for expenditure on urban public transport projects

(1) ~~Where~~If:

- (a) a State has, in accordance with an invitation under subsection 26(1), submitted particulars of an urban public transport project to the Minister; and
- (b) the appropriate Minister for the State satisfies the Minister that it would be desirable, having regard to the policies of the Commonwealth in relation to land transport, that a specified amount standing to the credit of the Reserve Account should be expended on that project instead of being expended on the construction or maintenance by the State of State arterial roads;

the Minister may, on or after approving the project under subsection 26(3), determine that ~~money~~an amount standing to the credit of the Reserve Account and earmarked for expenditure on the construction or maintenance of State arterial roads, ~~not exceeding such amount as is specified in the determination,~~ may be paid out of the Reserve debited from the Account and paid by the Commonwealth to the State for expenditure by the State on the project.

- (2) ~~Where~~If the Minister makes a determination in relation to an urban public transport project, the amounts ~~paid out of the Reserve debited from the Account~~ in accordance with the determination ~~shall~~must, for the purposes of section 16 or 17, whichever is applicable, be taken to be amounts paid out of the Reserve debited from the Account and paid by the Commonwealth to the States by way of a grant of financial assistance for expenditure by the State on the construction of a State arterial road.

22 Time for payments

~~Payments out of the Reserve shall~~ Payments under this Act must be made at such times, and in such amounts, as the Minister approves.

23 Statement accompanying payment

~~Where a payment is made out of the Reserve, the payment shall by the Commonwealth in respect of a debit of the Account the payment must~~ be accompanied by a statement requiring that the payment, or a specified part of the payment, be expended in arranging, assisting or carrying out:

- (a) a specified project or program approved under subsection 26(3) or of projects or programs of a specified class approved under that subsection; or
- (b) the construction or maintenance of State arterial roads or local roads.

24 Condition of payment

~~A payment of an amount out of the Reserve~~ A debiting of the Account and a payment by the Commonwealth to a State, authority or approved organisation is subject to the condition that the State, authority or organisation will expend the amount as required by the statement under section 23 that accompanied the payment.

Part III — Approval of projects and programs

26 Approval of projects and programs

- (1) The Minister may, from time to time:
 - (a) direct a State to submit particulars of:

- (i) projects for the construction of national highways; or
 - (ii) programs for the maintenance of national highways;to be undertaken by the State;
- (b) invite a State to submit particulars of:
 - (i) projects for the construction of national highways or of national arterial roads; or
 - (ii) programs for the maintenance of national highways;to be undertaken by the State;
- (ba) invite or direct a State to submit particulars of projects for the construction of provincial cities and rural highways roads;
- (bb) invite or direct a State to submit particulars of projects or programs commenced, or to be commenced, on or after 1 July 1990, for:
 - (i) the road safety improvement of black spots; or
 - (ii) the implementation of road safety measures;
- (c) invite a State or an approved railway authority to submit particulars of capital railway projects to be undertaken in the State or by the authority, as the case may be;
- (d) invite or direct a State to submit particulars of urban public transport projects or programs to be undertaken in the State;
- (e) invite an approved research organisation to submit particulars of programs of research relating to land transport to be arranged, assisted or carried out by the organisation; and
- (f) invite an approved road safety organisation to submit particulars of programs of activities relating to road safety to be arranged, assisted or carried out by the organisation.

- (2) The Minister may, in a direction or invitation given to a State, authority or organisation under subsection (1), inform the State, authority or organisation that the Minister considers that particulars of a project or program specified in the direction or invitation should be submitted to the Minister in accordance with the direction or invitation.
- (3) The Minister may approve a project or program of a kind referred to in subsection (1) where the Minister is satisfied that it is appropriate to do so, whether or not the project or program is one in relation to which particulars have been submitted under subsection (1).
- (4) A project or program referred to in subsection (1), (2) or (3) may be:
 - (a) a project or program that was commenced, but not completed, before the commencement of this Act; or
 - (b) a project or program part of the cost of which it is proposed to meet out of funds obtained otherwise than out of the Reserve from the Commonwealth in respect of a debiting of the Account.
- (5) Where a State, authority or organisation submits particulars of a project or program in accordance with a direction or invitation under subsection (1), those particulars shall include an estimate of the cost of the project or program and particulars of any part of that cost proposed to be met out of funds obtained otherwise than out of the Reserve from the Commonwealth in respect of a debiting of the Account.
- (6) The Minister shall not approve a project or program under subsection (3) unless the Minister is satisfied:

- (a) that the undertaking of the project or program is consistent with the purposes for which the ~~Reserve Account~~ was established; and
 - (b) that, having regard to the costs of projects and programs, and other expenditure to be met by payments (Account payments) in respect of the debiting of the Account, ~~out of the Reserve,~~ the costs in relation to the project or program that are proposed to be met by ~~payments out of the Reserve~~ Account payments could be met by ~~such payments~~ Account payments made in accordance with section 15.
- (7) The Minister shall not approve, under subsection (3), a project or program for the construction or maintenance of national highways submitted by a State unless the Minister is satisfied that the project or program complies with the requirements set out in any notification given to the State under paragraph 38(1)(b), (c) or (d) that are applicable in relation to the State.
- (8) The Minister shall not approve, under subsection (3), a capital railway project submitted by a State or an approved railway authority unless the Minister is satisfied that:
 - (a) the project is likely to result in improvements to the capacity of, or the quality or efficiency of operations in relation to, interstate mainline railways;
 - (b) the State or authority has taken such steps to improve its operational or commercial practices as will, in the Minister's opinion, be likely to ensure the early achievement of the benefits of those improvements; and

- (c) in the case of a project submitted by the State—the undertaking of the project will be given priority by the State.

27 Variation of projects etc.

- (1) Subject to subsection (2), the Minister may, in accordance with procedures determined by the Minister:
 - (a) approve a variation of a project or program approved under subsection 26(3); or
 - (b) approve a variation of the estimated cost of a project or program approved under subsection 26(3); or
 - (c) approve a variation of the costs in relation to a project or program approved under subsection 26(3) that are to be met by payments ~~out of the Reserve~~ by the Commonwealth in respect of a debiting of the Account.
- (2) The Minister ~~shall~~ must not approve a variation under subsection (1) if the Minister considers:
 - (a) that the approval of the variation would not be consistent with the purposes for which the ~~Reserve Account~~ Account was established; or
 - (b) that, having regard to the cost of projects and programs, and other expenditure to be met by payments ~~out of the Reserve~~, (Account payments) in respect of a debiting of the Account, the approval of the variation would result in the costs in relation to a project or program that are to be met by ~~payments out of the Reserve being Account payments~~ such that they could not be met by Account payments made in accordance with section 15.

28 Allocations of Reserve to local government bodies

- (1) Money expended by a State by way of funding government authorities to carry out the construction or maintenance of local roads shall not be taken to have been expended in accordance with this Act unless the money is allocated by the State between local government bodies and government authorities that are not local government bodies in accordance with:
 - (a) where the State has formulated principles for the purposes of this subsection and the Minister has approved those principles—those principles; or
 - (b) in any other case—principles determined by the Minister.
- (2) The Minister shall not determine principles for the purposes of subsection (1) in relation to a State unless and until:
 - (a) the appropriate Minister of the State has informed the Minister that the State does not propose to formulate principles for the purposes of that subsection; or
 - (b) the Minister has, by notice in writing, requested the appropriate Minister of the State to arrange for the formulation of such principles within a specified time and, within that time, the State has not formulated such principles or has not formulated such principles that the Minister is prepared to approve.
- (3) A State may, with the approval of the Minister, vary principles formulated by the State for the purposes of subsection (1).
- (4) The Minister may vary principles determined by the Minister for the purposes of subsection (1).

Part IV — Conditions of payments

28A Manner of application of this Part to different payments ~~from Reserve~~ debits from Account

- (1) The provisions of this Part apply to all payments ~~from the Reserve~~ under paragraph 15(1)(a), (b), (c) or (d).
- (2) Subject to subsection (3), the provisions of this Part apply in respect of payments ~~from the Reserve~~ under paragraph 15(1)(ba) in respect of projects of approved railway authorities:
 - (a) as if, so far as assets acquired under those projects are concerned, paragraph 32(1)(n) were omitted; and
 - (b) as if section 31 and paragraph 32(1)(p) were omitted.
- (3) If an approved railway authority to which payment is made under paragraph 15(1)(ba) is a company incorporated under the *Corporations Act 2001*, the obligations of the authority and of its directors and of officers under subsection (2) apply only to the extent that those obligations are consistent with obligations of the authority and of its directors and officers under that Act.

29 Minister may require information to be furnished

- (1) In addition to the conditions specified in any other provision of this Act, a payment of an amount to a State, approved railway authority or approved organisation ~~out of the Reserve~~ in respect of a debit

| from the Account is subject to the condition that the appropriate Minister of the State, the authority or the organisation, as the case may be, will comply with any requirement made in accordance with subsection (2).

- (2) The Minister may, by notice in writing, require the appropriate Minister of a State, an approved railway authority or an approved organisation to furnish to the Minister, within the time specified in the notice, such information relevant to the operation of, or to a matter arising under, this Act as is specified in the notice.

30 Statements of expenditure etc. to be furnished

- (1) In addition to the conditions specified in any other provision of this Act, payment of an amount to a State, approved railway authority or approved organisation ~~out of the Reserve in respect of a debit from the~~ Account is subject to the following conditions:

(a) that the State, authority or organisation will give to the Minister:

- (i) as soon as practicable after 30 June in each year, a statement, in accordance with a form approved by the Minister, as to:

(A) the expenditure by the State, authority or organisation during that year out of that amount; and

(B) any sum set aside during that year out of that amount for expenditure by the State, authority or organisation but not expended during that year; and

- (ii) a report by the appropriate person stating:

(A) whether the statement is in the form approved by the Minister;

- (B) whether, in the person's opinion, the statement is based on proper accounts and records;
 - (C) whether the statement is in agreement with the accounts and records; and
 - (D) whether, in the person's opinion, the expenditure of money has been in accordance with this Act;
- (b) that, if the Minister informs the Treasurer of the State or, in the case of an authority or organisation, a responsible officer of the authority or organisation, that the Minister is satisfied that the State, authority or organisation has failed, with respect to that amount, to fulfil the condition specified in paragraph (a), the State, authority or organisation, as the case may be, will repay that amount, or such part of that amount as the Minister specifies, to the Commonwealth.

(2) In this section:

appropriate person means:

- (a) in relation to a State or to an authority or organisation whose accounts are required by law to be audited by the Auditor-General of a State—the Auditor-General of the State;
- (b) in relation to an authority or organisation whose accounts are required by law to be audited by the Auditor-General of the Commonwealth—the Auditor-General of the Commonwealth; or
- (c) in any other case—a qualified accountant.

qualified accountant means:

- (a) a person who is registered as a company auditor or a public accountant under a law in force in a State;
- or

- (b) a member of the Institute of Chartered Accountants in Australia or of the Australian Society of Accountants.

31 Condition relating to expenditure of ~~moneys paid out of Reserve~~ amount debited from Account

- (1) In addition to the conditions specified in any other provision of this Act, a payment to a State, approved railway authority or approved organisation ~~out of the Reserve~~ in respect of a debit from the Account is subject to the condition specified in subsection (2).
- (2) The condition is that, if any amount or amounts paid to the State, authority or organisation ~~out of the Reserve~~ has not or have not been wholly expended or otherwise dealt with in accordance with this Act, the State, authority or organisation, as the case may be, will, on demand by the Minister, pay to the Commonwealth an amount specified by the Minister, being an amount not exceeding so much of the sum of the amount or amounts so paid to the State, authority or organisation as has not been so expended or otherwise dealt with.

32 Additional conditions with respect to approved projects and programs

- (1) In addition to the conditions specified in any other provision of this Act, a payment of an amount to a State or approved railway authority ~~out of the Reserve~~ in respect of a debit from the Account (*Account payment*) is subject to the following conditions:
- (a) in the case of a State—that, where amounts paid to the State are required by virtue of this Act to be expended on the carrying out of:
- (i) a project for the construction of a national highway, or of a national arterial road (other

than a national arterial road the construction of which was commenced before the commencement of this Act) or of a provincial cities and rural highways road (other than a provincial cities and rural highways road the construction of which was commenced before the commencement of the *Australian Centennial Roads Development Amendment Act 1990*), being a project that will involve:

- (A) the construction, reconstruction or realignment of the road; or
- (B) the bringing of the road to a higher standard; or
- (ii) a program for the maintenance of a national highway, being a program involving works the estimated cost of which exceeds \$2,000,000 and that have been declared, in writing, by the Minister to be works in relation to which tenders are to be called;

the State will invite, and deal with, tenders for particular works involved in the activities referred to in sub-subparagraph (i)(A) or (B) or in the works referred to in subparagraph (ii), other than exempt works of the State, in accordance with procedures approved by the Minister;

- (b) that, where amounts paid to the State or authority are required by virtue of this Act to be expended in relation to a capital railway project or an urban public transport project, being a project that will involve the performance of works, or the purchase of goods, for which it is appropriate to invite tenders, the State or authority will invite, and deal with, tenders for those works or goods in accordance with procedures approved by the Minister;

- (c) in the case of a State—that the State will, if requested by the Minister to do so, enter into an arrangement with the Minister for the setting up of a committee of persons representing both the Minister and the appropriate Minister of the State to carry out planning and give advice to both Ministers in connection with this Act in so far as it relates to the State;
- (d) that the State or authority will ensure that signs are displayed and maintained in accordance with requirements notified to the State or authority from time to time by the Minister, being signs that indicate that a project or program or the construction or maintenance of a road is being or has been funded by the Commonwealth;
- (e) that the State or authority will ensure that such other recognition of the extent to which a project or program or the construction or maintenance of a road is being or has been funded by the Commonwealth will be given by the State or authority in accordance with requirements notified to the State or authority from time to time by the Minister;
- (f) in the case of a State—that the State will comply with such requirements as are notified to the State from time to time by the Minister prohibiting (either unconditionally or subject to a condition requiring the Minister's approval to be given) the display of signs (other than traffic signs) near national highways, or national arterial roads, in respect of which any ~~payment has been made out of the Reserve~~ Account payment has been made;
- (g) in the case of a State—that, where the amounts paid to the State are required by virtue of this Act to be expended on projects for the construction of

national highways, the State will give to the Minister as soon as practicable after 30 June in each year, a certificate by a person approved by the Minister for the purposes of this paragraph certifying that, in the opinion of the person, work that has been carried out during that year on those projects has been carried out in accordance with the standards (if any) applicable to that work in accordance with section 38;

(h) in the case of a State—that the State will:

(i) develop and implement quality systems for the purposes of projects and programs relating to national highways (including pavement management systems), national arterial roads, or provincial cities and rural highways roads; and

(ii) permit, at all reasonable times, a person authorised by the Minister to assess or monitor those systems and inspect any records, documents or other information that the person may reasonably request to inspect for that purpose;

(j) that the State or authority will, at all reasonable times, permit a person authorised by the Minister:

(i) to inspect any work involved in the carrying out of a project or program approved under subsection 26(3); and

(ii) to inspect and make copies of, or take extracts from, any plans, designs, tenders, records or other documents relating to a project or program approved under subsection 26(3);

(k) in the case of a State—that the State will make satisfactory provision for:

- (i) the maintenance of the national arterial roads in the State; and
 - (ii) the provision and maintenance of roads connecting the national highways and national arterial roads in the State with other roads in the State;
- (m) in the case of a State—that the State will not, without the written consent of the Minister, cause or permit a toll or fee to be charged for the right to travel in a vehicle on or over a road that is, or any part of which is, a national highway, or a national arterial road, or a provincial cities and rural highways road, in respect of which ~~any payment has been made out of the Reserve Account~~ payment has been made;
- (n) if an asset acquired by the State or approved railway authority or by a government authority that is not a local government body for a purpose in respect of which an amount was paid to the State or approved railway authority:
 - (i) ~~out of the Reserve~~ as an Account payment; or
 - (ii) out of an existing Fund; or
 - (iii) under the *States Grants (Roads) Act 1977*, the *Roads Grants Act 1980* or the *Roads Grants Act 1981*;

or any interest in such an asset, is sold or otherwise disposed of after the commencement of this Act, the State or approved railway authority will either pay to the Commonwealth an amount equal to the proceeds of the sale or disposal or to the market value of the asset, whichever is the higher, or ensure that those proceeds are expended:

- (iv) in the case of a State—on the construction or maintenance of roads or on capital railway projects; or
- (v) in the case of an approved railway authority—on capital railway projects;
- (na) in the case of a State—that, where amounts paid to the State are required by virtue of this Act to be expended on the carrying out of a project or program for:
 - (i) the road safety improvement of black spots; or
 - (ii) road safety measures;

the State will give to the Minister an undertaking that it will implement road safety initiatives identified by the Minister;

- (p) that, if the Minister informs the Treasurer of the State or, in the case of an authority, a responsible officer of the authority, that the Minister is satisfied that the State or authority has failed to fulfil a condition specified in a preceding paragraph of this subsection or in section 29, the State or authority will repay to the Commonwealth the amount paid to it, or such part of that amount as the Minister specifies.

(2) In this section ***exempt works***, in relation to a State, means:

- (a) works determined by the Minister to be works the whole of which:
 - (i) are urgently required by reason of an emergency;
 - (ii) are of such a minor nature that the invitation of tenders for those works would involve undue additional cost;
 - (iii) are of a kind for which it is not practicable to prepare adequate tender specifications; or

- (iv) are of a kind for which competitive tenders are unlikely to be received; or
 - (b) works carried out by a public utility.
- (3) Paragraph 32(1)(n) does not apply:
- (a) to the sale or other disposal to the National Rail Corporation Limited of an asset; or
 - (b) to the granting to the National Rail Corporation Limited of a lease of an asset having a term of at least 20 years;
- in accordance with subclause 5(5) of the Agreement set out in the Schedule to the *National Rail Corporation Agreement Act 1992*.

Part V — Miscellaneous

33 Deduction of amounts repayable

The Minister may deduct from an amount payable ~~out of the Reserve by the Commonwealth under this Act~~ to a State, authority or organisation any amount repayable by the State, authority or organisation under this Act.

34 Money repaid to Commonwealth

- (1) Whenever an amount is repaid to the Commonwealth by a State, approved railway authority or approved organisation under this Act, an equal amount must be ~~transferred to the Reserve from the Consolidated Revenue Fund~~ credited to the Account.
- (2) Any money paid to the Commonwealth pursuant to paragraph 32(1)(n) shall be taken to be money repaid to the Commonwealth for the purposes of subsection (1).

36 Money deemed to have been expended on national highway projects

- (1) Subject to subsection (2), a State may, for the purposes of this Act, treat money expended by the State, in a financial year, for the purpose of meeting administrative costs incurred directly in connection with the construction or maintenance of national highways in the State, not being administrative costs incurred in respect of particular works involved in the carrying out of any project or program approved under subsection 26(3), as having been expended in that year by the State on such a project or program.
- (2) Money treated as having been expended on a project or program in a year by virtue of subsection (1):
 - (a) shall not include any money treated, by virtue of that subsection, as having been expended on any other project or program; and
 - (b) shall not exceed, in the aggregate, 4% of the money otherwise expended on that project or program since its commencement.

37 Minister may issue guidelines

- (1) The Minister may:
 - (a) after consultation with each of the States, determine guidelines for the distribution by each State to government authorities in the State of money paid ~~out of the Reserve~~ by the Commonwealth in accordance with this Act for expenditure by the State on the construction or maintenance of State arterial roads; and
 - (b) determine guidelines for the administration of programs or projects approved under subsection 26(3).

- (2) The States must comply with those guidelines.

38 Standards for national highways

- (1) For the purpose of ensuring that this Act is conducive to the construction and maintenance of national highways that are of an adequate standard, the Minister may, from time to time:
- (a) request a State to furnish such information as the Minister specifies relating to the use or likely use of national highways, including the effect on the likely use of national highways of works that the State is carrying out or proposes to carry by way of the construction or maintenance of other roads in the State;
 - (b) after consultation with a State, notify to the State works, or classes of works, by way of the construction or maintenance of the national highways in the State that the Minister considers necessary to be carried out;
 - (c) notify to a State the order in which the Minister considers that works in connection with national highways in the State should be carried out; and
 - (d) notify to a State standards, applicable either generally or otherwise as specified in the notification, that the Minister considers necessary to be observed in connection with the construction or maintenance of national highways.
- (2) The Minister may revoke or vary a request or notification given under subsection (1).

39 Delegations

The Minister may, by signed instrument, delegate to a person appointed or engaged under the *Public Service*

Act 1999 all or any of his or her powers or functions under sections 22, 26, 27 and 29, paragraphs 32(1)(d), (e), (h) and (j), subsection 32(2) and section 38.

41 Report by Minister

- (1) The Minister shall, as soon as practicable after 30 June in each year, cause a report to be laid before each House of the Parliament setting out details of the operation of the Land Transport ~~Reserve~~-Account including:
 - (a) ~~the moneys paid into the Reserve~~amounts credited to the Account;
 - (b) ~~the moneys paid out of the Reserve~~amounts debited from the Account;
 - (c) a description of the progress made on all programs during the year under report;
 - (d) a description of the progress made on all approved national highways, national arterial roads, urban public transport and provincial cities and rural highways projects during the year under report; and
 - (e) the principles on which the allocation of funds for local roads were made.
- (2) The report referred to in subsection (1) is to provide details of all payments made during each year in respect of each land transport project and the total cumulative amount of payments made in respect of each land transport project irrespective of when such payments were made.

[Schedule 2 of the ALTD Act, the Notes to the Act and the Table of Amendments are not included in this Appendix because no changes to these parts are contained in the Bill.]

(B) Operational arrangements under the Australian Land Transport Development Act 1988 ²

Question

Have moneys been switched between national, arterial or local roads projects in the past? (Relates to section 20 of the ALTD.)³

Response

- The ALTD Act, in sections 19, 20 and 21, enables the Minister to authorise that money paid from the Reserve for a specified purpose may be expended on another purpose. The scheme established under these sections is related to the restriction, in schedule 2 of the ALTD Act, on the amounts that can be paid to the States for State arterial roads and local roads.
- In short, the Minister may, on request of a State, authorise that money paid to a State for State arterial roads may be expended on local roads, national highways, national arterial roads, capital railway projects or urban public transport projects notwithstanding the limitation imposed by schedule 2. Money paid for local roads may also be expended on State arterial roads.
- Under subsection 19(2) the Minister also has the power, without a request from a State, to “authorise the transfer of funds [paid to a State or an approved organisation] (a) between the categories of research and road safety, national highways or national arterial roads, or (b) from national highways or national roads to State arterial roads” (the Explanatory Memorandum to the Bill p.20).
- No money has been paid to a State under the ALTD Act for State arterial roads since 1992-93 so the power to switch State arterial funding has not been utilised at least since that time. No funding for local roads has been paid to a State under the ALTD Act since 1990-91.

² Responses, under this subheading, to the questions asked at the hearing were prepared by the Department of Transport and Regional Services and forwarded to Finance. The responses were included as Attachment B in Finance’s *Submission No.17*, pp. 120-122.

³ *Transcript*, p. 52.

- Since 1996-97 the only funding paid to States under the ALTD Act has been for the categories of National Highways, national arterial roads (the category used for the Roads of National Importance programme) and Black Spots. The practice employed since at least 1996-97 in making payments under the Act is to reimburse the States for expenditure incurred in carrying out an approved project plus an advance on estimated expenditure on that project to the date of the next payment. Moneys already paid to a State are not switched between categories of road.

Question

Will the Bill change the way the ALTD Act operates?

Have moneys been switched between national, arterial or local roads in the past? If so, how much and between which projects? Was this transfer ultra vires if there was not a legal underpinning for it previously? How was Parliament informed that these transfers had taken place? Have moneys been switched between states and organisations? If so, how much, and which states and organisations?⁴

Response

- The powers to transfer funds paid to a State from State arterial roads to other categories of road have not been utilised since at least 1992-93. The powers set out in sections 19, 20 and 21 relate to moneys paid to a State. It is not current practice to transfer funding between categories once money has been paid to a State.....
- It is the view of the Department of Transport and Regional Services that any exercise of these powers which has taken place was authorised by the ALTD Act and was not ultra vires.
- The Minister administering the ALTD Act is required to report to Parliament each year on the operation of the Act and reports have been tabled covering each year up to 2000-2001.
- The Department of Transport and Regional Services understands, on the advice of the Department of Finance and Administration and the Australian Government Solicitor, that the changes to the ALTD Act

⁴ *Transcript*, p 54.

proposed by the Financial Framework Legislation Amendment Bill do not alter the effect of the Act.