



## Financial Framework Legislation Amendment Bill (No. 2) 2005

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## Glossary

<b>Abbreviation</b>	<b>Full term</b>
2003 JCPAA Report	Inquiry into the Draft Financial Framework Legislation Amendment Bill
ANAO	Australian National Audit Office
ARC Act	<i>Australian Research Council Act 2001</i>
ATSI Act	<i>Aboriginal and Torres Strait Islander Act 2005</i>
CRF	Consolidated Revenue Fund
FFLA Act	<i>Financial Framework Legislation Amendment Act 2005.</i>
FFLA Bill No. 2	Financial Framework Legislation Amendment Bill (No.2) 2005
Finance Minister	Minister for Finance and Administration
FMA Act	<i>Financial Management and Accountability Act 1997</i>
FMA Act Agencies	Agencies that are subject to the FMA Act. These Agencies are Departments of State, Departments of the Parliament, and prescribed Agencies.
FMA Regulations	<i>Financial Management and Accountability Regulations 1997</i>
FMLA Act 99	<i>Financial Management Legislation Amendment Act 1999</i>
JCPAA	Joint Committee of Public Accounts and Audit
NHMRC Act	<i>National Health and Medical Research Council Act 1992</i>
SRC Act	<i>Safety, Rehabilitation and Compensation Act 1988</i>

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## Financial Framework Legislation Amendment Bill (No. 2) 2005

**Date introduced:** 8 December 2005

**House:** House of Representatives

**Portfolio:** Finance and Administration

**Commencement:** Various (see below)

### Purpose

The purpose of the Financial Framework Legislation Amendment Bill (No. 2) 2005 (FFLA Bill No. 2) includes:

- to amend provisions in nine Acts pertaining to Special Accounts (Schedule 1)
- to amend the *Safety, Rehabilitation and Compensation Act 1988* to authorise a practice whereby Comcare can make compensation payments to employees through employers (Schedule 2)
  - the SRC Act now requires that Comcare make payments directly to employees
- to clarify that the annual Appropriation Acts are the authority for:
  - act of grace payments made under the *Financial Management and Accountability Act 1997* (FMA Act) and
  - special circumstances payments, authorised under the *Public Service Act 1999*, when the purpose of the payment is covered by the purpose of the appropriation (Schedule 3)
- to extend to law enforcement agencies the modified application of the FMA Act that now applies to intelligence and security agencies (Schedule 3)
- to clarify certain provisions in the *Public Accounts and Audit Committee Act 1951* (Schedule 3), and
- to clarify and update financial management provisions in other Acts (Schedule 3).

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## Background

The FFLA Bill No. 2 is similar, in some respects, to the [Financial Framework Legislation Amendment Act 2005](#) (FFLA Act), which commenced on 22 February 2005.<sup>1</sup> The main purpose of the FFLA Act was to amend the wording in a number of Acts to replace deeming provisions (see below) in the FMA Act and align their wording with the FMA Act. Features common to both the FFLA Bill No. 2 and the FFLA Act include:

- the FFLA Act made redundant, for specified Acts, the deeming provisions of the [Financial Management Legislation Amendment Act 1999](#) (FMLA Act 99)
  - the FFLA Bill No. 2 proposes to make the deeming provisions redundant for the *Aboriginal and Torres Strait Islander Act 2005*
- the FFLA Bill No. 2 proposes to implement some recommendations of the 2003 Joint Committee of Public Accounts and Audit (JCPAA) report, [Inquiry into the Draft Financial Framework Legislation Amendment Bill](#).<sup>2</sup>
  - the FFLA Act also implemented some of the Committee’s recommendations
- the FFLA Bill No. 2 proposes additional consolidating of powers to make decisions about certain financial matters in the Finance Minister by transferring these powers from the Treasurer
- aligning the provisions in certain Acts with the financial management provisions in other Acts, and
- repealing redundant Acts.

Additional background can be found in the [Bills Digest for the Financial Framework Legislation Bill 2004](#) (FFLA Bill 04). FFLA Bill 04 became the FFLA Act.

The FFLA Bill No. 2 also contains amendments that are unrelated to the FFLA Act. They are discussed below under ‘Main Provisions’.

### Financial Management Legislation Amendment Act 1999 and deeming provisions

The FMA Act is the main Act governing the financial activities of Commonwealth agencies. The FMLA Act 99—which came into effect on 1 July 1999—amended the FMA Act as part of the adoption of accrual budgeting. The FMLA Act 99 applied to dozens of other Acts. This, in turn, required replacing the wording of these other Acts. To sidestep the problem of having to replace the wording immediately, the FMLA Act 99 contained deeming provisions. (The deeming provisions are summarised in paragraph 13 of the Explanatory Memorandum for the FFLA Bill No. 2). The deeming provisions were thus an interim measure pending replacement of the wording of these other Acts. The FFLA Act replaced the wording for a number of Acts thereby rendering the deeming provisions redundant for those Acts.

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## Special Accounts

As noted, one of the purposes of the FFLA Bill No. 2 is to amend the Special Accounts provisions of nine Acts. A Special Account is, in essence, an accounting/administrative convenience whereby all receipts and payments related to a particular purpose/matter are recorded. A Special Account also allows money to be earmarked (credited) for the purpose for which the Account is established. Special Accounts are components of the Consolidated Revenue Fund (CRF), that is, Special Accounts record amounts that are already in the CRF. Special Accounts can be established by either a Determination of the Finance Minister made under the FMA Act or by separate legislation.

## Main provisions

### Schedule 1—Amendments relating to Special Accounts

Commencement: The day after Royal Assent.

#### Part 1—Aboriginal and Torres Strait Islander Act 2005

Paragraph 14 of the Explanatory Memorandum states that the FFLA Bill No. 2 would make redundant the application of the deeming provisions of the FMLA Act 99 to the [Aboriginal and Torres Strait Islander Act 2005](#) (ATSI Act). **Items 6 to 8, 10, 12, 13, and 17 to 19** do this by substituting ‘Account’ for ‘Fund’ (as in the FFLA Act).

**Items 1 and 2** convert the Land Fund into the Land Account, while **Item 5** confirms that the Land Account is a Special Account. Item 5 also requires any unspent money in the Land Account to be invested, and for any income from that investment to be credited to the Land Account.

One of the deeming provisions relates to the concept of a ‘self-executing CRF’ whereby any money the Executive Government receives automatically forms part of the CRF, that is, the money does not have to be credited to an account in the CRF or deposited in a bank account before it becomes part of the CRF. **Item 15** repeals the note in subsection 193E(3) of the ATSI Act because it is redundant under this concept.

#### Part 2—Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987

The JCPAA considered that a review was warranted of the effectiveness of the FMA Act following the adoption of accrual budgeting. As part of this process, the JCPAA tabled its 2003 report, [Inquiry into the Draft Financial Framework Legislation Amendment Bill](#). Recommendation 4 of the 2003 JCPAA Report was that the draft Financial Framework Legislation Amendment Bill (which was the basis of the FFLA Act) should include an amendment to establish the Aboriginal Advancement Account and, secondly, that the

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Condah Land Account and the Framlingham Forest Account should be subsumed into the Aboriginal Advancement Account. The FFLA Act implemented the first part of Recommendation 4; **Part 2** implements the second part. **Item 20** establishes the Aboriginal Advancement Account as a Special Account, and states that the purpose of the Account is to make payments to ‘further the social and economic advancement of Aboriginal people living in Victoria’. Item 20 also allows the Special Account to be notionally divided into sub-accounts, and for payments from a sub-account to be made to particular Aboriginal groups living in Victoria.

### **Part 3—Australian Research Council Act 2001**

The FFLA Act amended Acts that established Special Accounts before 1 July 1999. The FFLA Act replaced, with Notes, provisions in these Acts that authorised the crediting of amounts to an Account that are appropriated by Parliament for the purposes of the Account. The Notes refer to the general authority provided in the Appropriation Acts to credit amounts to Special Accounts and take the following form:

An Appropriation Act provides for amounts to be credited to a Special Account if any of the purposes of the Account is a purpose that is covered by an item in the Appropriation Act.

Put another way, whereas the Appropriation Acts previously appropriated amounts to specific Special Accounts, the authority referred to in the Note is more general in that any amount in the Appropriation Act that covers the purpose of a Special Account must be credited to that Special Account.

Paragraph 4.69 of the 2003 JCPAA Report concluded that there is merit in ensuring complete alignment of references in all Acts that establish Special Accounts. As noted, the FFLA Act amended Acts that established Special Accounts *before* 1 July 1999. Paragraph 34 of the Explanatory Memorandum states that:

The FFLA Bill proposes the same type of amendments to Acts that have established Special Accounts after 1 July 1999.

The [\*Australian Research Council Act 2001\*](#) (ARC Act) established the ARC Research Endowment (Special) Account after 1 July 1999. **Item 21** aligns the provisions in the ARC Act, with respect to bequeaths, by inserting the Note relating to the general authority quoted above. The consequence is that any amounts bequeathed for the purpose of undertaking research must be credited to the ARC Research Endowment Account.

### **Part 4—Child Support (Registration and Collection) Act 1988**

According to the Explanatory Memorandum, **Part 4** introduces amendments to the [\*Child Support \(Registration and Collection\) Act 1988\*](#) that the Department of Family and Community Services (FaCS) sought but which were not incorporated into the FFLA Act.

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The 2003 JCPAA Report supported FaCS's proposals and the Government in turn supported the JCPAA's conclusion. According to the Explanatory Memorandum, the amendments in Part 4 would:

- broaden the types of amounts that can be credited to the Child Support Account (**Item 22**)
- prevent the crediting of the same amount twice to the Child Support Account (**Item 23**), and
- broaden the types of payments that can be made from the Child Support Account (**Item 24**).

The Explanatory Memorandum contains examples of the sorts of matters the amendments would address.

#### **Part 5—Gene Technology Act 2000**

#### **Part 6—Industrial Chemicals (Notification and Assessment) Act 1989**

#### **Part 7—National Blood Authority Act 2003**

**Parts 5, 6 and 7** contain similar provisions.

**Item 25** of **Part 5** repeals paragraph 130(1)(a) of the [Gene Technology Act 2000](#). This paragraph provides that all money appropriated by the Parliament for the purposes of the Gene Technology Account must be credited to that Account. As noted, the FFLA Act replaced such provisions (in the Acts to which it applied) with a Note that refers to the general authority provided in the Appropriation Acts to credit amounts to Special Accounts. **Item 28** inserts this Note into subsection 130(1).

Similar to the *Gene Technology Act 2000*, paragraph 100B(1)(a) of the [Industrial Chemicals \(Notification and Assessment\) Act 1989](#) provides that all money appropriated by the Parliament for the purposes of the Industrial Chemicals Account must be credited to that Account. **Item 29** similarly repeals paragraph 100B(1)(a) while **Item 30** adds the Note that refers to the general authority provided in the Appropriation Acts to credit amounts to Special Accounts.

Similarly, **Items 31 and 32** respectively apply in the case of the [National Blood Authority Act 2003](#).

#### **Part 8—National Health and Medical Research Council Act 1992**

The Minister's second reading speech notes that the proposed amendments relating to the Medical Research Endowment Account and the Natural Resources Management Account

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differ from the FFLA Act in that they transfer power to receive money on trust from the Finance Minister to relevant portfolio Ministers.

**Item 33** transfers responsibility for dealing with money held on trust (or subject to conditions) from the Minister for Finance to the Minister responsible for administering the [National Health and Medical Research Council Act 1992](#) (NHMRC Act).

**Item 34** allows the Minister to delegate responsibility for money held on trust to the Chief Executive Officer of the NHMRC or to an Australian Public Service employee of the Department responsible for administering the NHMRC Act.

### **Part 9—Natural Resources Management (Financial Assistance) Act 1992**

As in Part 8, **Item 37** transfers responsibility for dealing with money held on trust (or subject to conditions) from the Minister for Finance to the Minister responsible for administering the Act, in this case the [Natural Resources Management \(Financial Assistance\) Act 1992](#). Similar to Item 34 in Part 8, **Item 39** allows the Minister to delegate trust obligations to the Secretary of the Department or to an employee of the Department that administers the Act.

### **Schedule 2—Amendment of the Safety, Rehabilitation and Compensation Act 1988**

Commencement: The later of 1 July 2006 and the day after Royal Assent.

Schedule 2 amends the [Safety, Rehabilitation and Compensation Act 1988](#) (SRC Act) in several respects. First, the amendments seek to ensure that the Act authorises administrative practices that agencies have adopted with respect to Comcare payments. By way of background, the Australian National Audit Office (ANAO), in its report titled [Management of Trust Monies](#), found:

Some organisations have developed processes to make their administration of Comcare monies less onerous. The ANAO found that many organisations continue to make salary payments to incapacitated employees, through normal payroll mechanisms, both while a claim is being determined by Comcare, and on an on-going basis if a claim is successful. To support this practice, Comcare makes payments to organisations, rather than to individual employees, effectively reimbursing organisations for the salary payments already made.

The ANAO also noted that:

... organisations, including Comcare, consider the current practice to be administratively more efficient than the practice of administering Comcare receipts as prescribed in the SRC Act and the F[inance] M[inister's] O[rders].

However:

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... this practice does not align with requirements of the SRC Act.<sup>3</sup>

In particular, the SRC Act requires Comcare to make compensation payments directly to employees; it does not permit the practice whereby Comcare makes payments indirectly through employers.

Because the SRC Act does not support current practice, the ANAO recommended that:

... Comcare Australia initiates a review of the process for administering compensation payments under the *Safety, Rehabilitation and Compensation Act 1988* to ensure that the process represents the efficient, effective and ethical use of Commonwealth resources while protecting the rights and entitlements of individuals concerned.<sup>4</sup>

The JCPAA also supported amendments to the SRC Act being included in the FFLA Act to align the SRC Act with the practice whereby Comcare makes compensation payments to agencies.<sup>5</sup>

A second reason for the amendments is to eliminate anomalies in the Act. Paragraphs 68, 88 and 105 of the Explanatory Memorandum describe these anomalies.

**Item 1** defines the ‘pre-determination period’. This is the time starting on the day when the employee was injured and ending on the day when Comcare makes a determination on the employee’s claim for compensation.

**Item 3** inserts a **new clause 23A** into the SRC Act. It deals with situations where an employee is injured, makes a compensation claim, goes on leave while awaiting Comcare to make a determination on the claim, the agency pays the employee’s salary when he or she is on leave, and then Comcare makes a determination favourable to the employee. In these circumstances, the employee must repay the salary received during the pre-determination period [**subclause 23A(2)**]. This must be done by means of a set-off of the salary etc. paid against the amount of compensation [**subclause 23A(3)**]; a set-off is necessary to prevent the employee from being over-compensated. Either Comcare [**paragraph 23A(3)(a)**] or the employer [**paragraph 23A(3)(b)**] must make the set-off. Comcare can make the set-off where Comcare pays compensation to the employee; the employer must make the set-off where Comcare tells the employer that Comcare intends to make the compensation payment to the employer who then pays the employee [**paragraph 23A(3)(b)**]. The Note at the end of paragraph 23A(3)(b) explains that where the compensation exceeds the salary paid, the employee will receive the excess. The making of a set-off discharges Comcare of liability to pay the compensation [**subclause 23A(4)**]. If Comcare makes the set-off, it must pay the set-off to the employer [**subclause 23A(5)**]; in effect, this reimburses the employer for the costs the employer incurred while the employee was on leave. If the salary paid is less than the compensation, the difference is recoverable from the employee [**subclause 23A(8)**]. If the salary the employer paid was

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for leave of absence, the employer must restore the employee's leave credit so that the employee is not disadvantaged by losing his or her leave entitlement [**subclause 23A(9)**].

As noted, the SRC Act now requires Comcare to make compensation payments directly to the employee. **Item 5** inserts **clauses 112A** and **112B**. Both clauses allow compensation payments to be made to employees through employers. The main difference between the two clauses is that Clause 112A relates to payments made from public money—essentially money that the Commonwealth controls or is controlled on the Commonwealth's behalf—and so applies, for example, to government departments; clause 112B, on the other hand, applies to payments that are not paid from public money and so apply, for example, to companies registered under the *Commonwealth Authorities and Companies Act 1997*, that are separate legal entities from the Commonwealth. **Subclause 112A(2)** allows Comcare to make payments to the employer, who must then pass on the payments to the employee subject to any set-off [**subclause 112A(4)**]. Passing on Comcare payments relieves the employer of the liability to pay the compensation [**subclause 112A(5)**].

**Note:** there seems to be an error in the wording of paragraphs 91 and 99 of the Explanatory Memorandum. Both paragraphs contain the sentence:

This would be an alternative to Comcare paying compensation directly to the employer.

In the context of the paragraphs, replacing 'employer' with 'employee' makes sense.

### Schedule 3—Other amendments

Commencement: Items 1 to 9 and 11 to 37 commence on the day after Royal Assent; Item 10 commences on 24 March 2005.

#### **Part 2—Australian Institute of Marine Science Act 1972**

As noted, the FFLA Act transferred from the Treasurer to the Finance Minister approval power related to matters such as the borrowing and money raising by entities that are legally separate from the Commonwealth (for example, the Australian Broadcasting Corporation). The FFLA Act also transferred from the Treasurer to the Finance Minister the power to delegate responsibility to an official. **Item 2** gives the Finance Minister power to delegate to an official in the case of the [\*Australian Institute of Marine Science Act 1972\*](#).

#### **Part 3—Financial Management and Accountability Act 1997**

Section 33 of the FMA Act relates to act of grace payments and authorises the Finance Minister to make such payments. Subsection 33(4) provides that payments under subsection 33(4) are to be made out of money appropriated by the Parliament for the

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purposes of this section. **Item 3** repeals subsection 33(4) while **Item 4** substitutes a Note. The Note retains the essence of subsection 33(4) and adds that an act of grace payment can be debited against an Agency's annual appropriation, provided that it relates to some matter that has arisen in the course of its administration or otherwise relates to the Agency's outcomes. In short, if the payment falls within the purpose for which an annual appropriation is made, the payment can be debited against that purpose.

Section 58 of the FMA Act is titled 'Modifications of Act for intelligence or security agency'. Section 58 provides:

(1) The application of this Act to an intelligence or security agency is subject to any modifications that are prescribed by the regulations.

(2) In this section:

*intelligence or security agency* has the meaning given by section 85ZL of the *Crimes Act 1914*.

*modifications* includes additions, omissions and substitutions.

**Item 5 of Part 3** adds 'or to a prescribed law enforcement agency' to subsection 58(1) of the FMA Act while **Item 6** adds the definition of a 'prescribed law enforcement agency' to subsection 58(2), i.e. 'a law enforcement agency within the meaning of section 85ZL of the *Crimes Act 1914* ... prescribed by the FMA Regulations for the purposes of the definition.' **Item 5** thus extends to law enforcement agencies the modifications to the FMA Act that now apply to intelligence and security agencies. In the Second Reading Speech, the Minister gave the following reason for the amendment:

Some law enforcement agencies need to undertake sensitive activities that are similar in nature to those of intelligence and security agencies. It is therefore appropriate that they be able to access the same modified application of the FMA Act for those sensitive activities, subject to ministerial agreement and consideration by parliament through an amendment to the FMA Regulations that would prescribe a law enforcement agency for this purpose.<sup>6</sup>

The funding of and payments by intelligence and security agencies require special processes and authorisations and so are necessarily not subject to the usual provisions of the FMA Act. This is achieved through the modified application of the FMA Act. The extension of the modifications to the law enforcement agencies would place these agencies on the same basis as the intelligence and security agencies. Attachment A of the Explanatory memorandum lists the law enforcement agencies to which the amendment would apply.

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#### **Part 4—Native Title Act 1993**

As noted, the FFLA Bill No. 2 proposes further consolidating powers to make decisions about investment, money raisings and other financial matters in the Finance Minister, by transferring these powers from the Treasurer. This transfer of approval powers was also an aspect of the FFLA Act. **Item 7** does this for the [Native Title Act 1993](#).

#### **Part 6—Public Service Act 1999**

The [Public Service Act 1999](#) empowers the Public Service Minister to make special circumstances payments where the circumstances arose in the course of employment by the Commonwealth. **Item 36** inserts a Note whose purpose is to clarify that the authority for such payments derives from the agency's annual appropriation when the purpose of the payment is covered by the purpose of the appropriation.

#### **Schedule 4—Repeal of Acts**

Commencement: The day after Royal Assent.

**Item 1** repeals the [Employment Services Act 1994](#) and **Item 2** repeals the [Loan Act 1977](#). The reasons for the repeal of the former Act are contained in paragraph 153 of the Explanatory Memorandum. The FFLA Act repealed redundant Loan Acts. **Item 2** repeals the [Loan Act 1977](#) because it relates to the financial year ended 30 June 1978 and therefore is no longer applicable.

### **Concluding comments**

The FFLA Bill No. 2 contains some notable features. They include extending some of the measures contained in the FFLA Act to other Acts thus increasing consistency in the financial provisions across different Acts. The amendments to the SRC Act have the support of the JCPAA, Comcare and agencies, and enshrine an efficient practice.

The reason for some amendments is not clear. In particular, the Minister's second reading speech notes that the proposed amendments relating to the Medical Research Endowment Account and the Natural Resources Management Account differ from the FFLA Act in that they transfer power to receive money on trust from the Finance Minister to relevant portfolio Ministers. The reason the Minister gives is that:

Under the devolved financial management framework that now applies in the Commonwealth public sector, it is appropriate that these powers be exercised by the minister responsible for the acts that establish these special accounts.<sup>7</sup>

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It could be argued that if a Minister administers an Act containing a Special Account, in general, responsibility for that Special Account should rest with the Minister and not the Finance Minister.

## Endnotes

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1. The Bill for the FFLA Act—the Financial Framework Legislation Amendment Bill 2004—was introduced into the House of Representatives on 1 December 2004.
2. [http://www.aph.gov.au/house/committee/jpaa/financial\\_bill/contents.htm](http://www.aph.gov.au/house/committee/jpaa/financial_bill/contents.htm).
3. ANAO, Report 18, *Management of Trust monies*, 2002-03, pp. 37–38.
4. *ibid.*
5. JCPAA, *Inquiry into the Draft Financial Framework Legislation Amendment Bill*, paragraph 5.34, p. 59.
6. House of Representatives, *Debates*, 8 December 2005, p. 17.
7. *ibid.*

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