



Financial Framework Legislation Amendment Bill 2008

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Law and Bills Digest Section

Contents

Purpose.	3
Background.	3
Financial implications	4
Main provisions.	4
Schedule 1, Part 1	4
Amendments to the <i>Albury-Wodonga Development Act 1973</i> (Cth)	4
Amendments to the <i>Financial Management and Accountability Act 1997</i> (Cth).	6
Notional payments and notional receipts	6
Criminal Code	6
Finance Minister's Orders	7
Special Instructions to become legislative instruments.	8
Authorisation of acts of grace payments/waiver of amounts owing to the Commonwealth	8
Investment of public money.	9
The power of the Chief Executive to enter into a contract	10

Provision of financial documents and information.	11
Audit committee	11
Other provisions	12
Amendments to the <i>Public Service Act 1999</i> (Cth)	12
Amendments to the <i>Reserve Bank Act 1959</i> (Cth)	13
Schedule 1, Part 2	13
Australian Water Fund Account	13
Schedule 2	14
Amendments to the <i>Defence Home Ownership Assistance Scheme Act 2008</i> (Cth)	14
Concluding comments	15

Financial Framework Legislation Amendment Bill 2008

Date introduced: 26 June 2008

House: House of Representatives

Portfolio: Finance and Deregulation

Commencement: The formal provisions commence on Royal Assent. Most items in Schedule 1 commence on 1 July 2009, although some items commence on a date to be fixed by Proclamation or six months and one day after Royal Assent (whichever occurs first).

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

The Bill amends the *Financial Management and Accountability Act 1997* (Cth) (the FMA Act) to 'clarify the operation of the law, rather than change it substantively, and allow for more efficient processes'.¹ The Bill also amends the *Albury-Wodonga Development Act 1973* (Cth), the *Public Service Act 1999* (Cth), the *Reserve Bank Act 1959* (Cth) and the *Defence Home Ownership Assistance Scheme Act 2008* (Cth) to correct typographical (and similar) errors and to make provisions in those Acts consistent with the *Commonwealth Authorities and Companies Act 1997* (the CAC Act).²

Background

There are two main Acts which govern the Commonwealth's financial framework: the FMA Act (which applies to Government Departments and Agencies) and the CAC Act (which applies to Commonwealth statutory authorities and Commonwealth companies). The purpose of the FMA Act is 'to provide for the proper use and management of public

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1. The Hon Lindsay Tanner MP, Minister for Finance and Deregulation, 'Second reading speech: Financial Framework legislation Amendment Bill 2008', House of Representatives, *Debates*, 26 June 2008, p. 6023. An electronic copy is available at <http://www.aph.gov.au/hansard/reps/dailys/dr260608.pdf> (accessed on 2 August 2008).
 2. The *Defence Home Ownership Assistance Scheme Act 2008* (Cth) received Royal Assent on 23 June 2008. All provisions in that Act commenced on or before 1 July 2008: section 2. See http://www.austlii.edu.au/au/legis/cth/num_act/dhoasa2008358/ (accessed on 2 August 2008).

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money, public property and other Commonwealth resources, and for related purposes'.³ It deals with matters such as the receipt and custody of public money, and accounting requirements for public money and appropriations (being a legal authority to draw money from the Consolidated Revenue Fund).⁴ It also contains rules for borrowing and investing public moneys, and for the control and management of public property. The CAC Act provides for 'reporting, accountability and other rules for Commonwealth authorities and Commonwealth companies, and for related purposes'.⁵ Both Acts are designed to ensure the accountable and transparent administration of the Australian Government. However, the CAC Act is not a direct subject of the Bill.

Financial implications

According to the Explanatory Memorandum, the Bill 'would have no financial impact'.⁶ The provision of the Bill which deals with (but does not amend) the *National Water Commission Act 2004* (Cth) and which relates to the Water Smart Special Account is 'budget-neutral'.⁷

Main provisions

Schedule 1, Part 1

Given the nature of the majority of the proposed amendments contained in **Schedule 1** to the Bill, it is unnecessary to discuss them all in detail. As mentioned above, many of the proposed amendments correct typographical errors or clarify existing provisions. Where a proposed amendment makes a substantive change to the law, some explanation and analysis of the cause and/or effect of the proposed change is given below.

Amendments to the *Albury-Wodonga Development Act 1973* (Cth)

Items 1 to 14 of **Schedule 1** to the Bill propose to repeal the following provisions of the *Albury-Wodonga Development Act 1973* (Cth): sections 9A, 16, 27, 30, 32 and 33, subsection 28(2) and paragraph 31A(1)(b). Currently those provisions state that:

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3. FMA Act, Long Title.
 4. FMA Act, section 5.
 5. CAC Act, Long Title.
 6. Financial Framework Legislation Amendment Bill 2008, Explanatory Memorandum, p. 1 at [4].
 7. *ibid.*

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- the CAC Act does not apply to the Albury-Wodonga Development Corporation (the AWDC)⁸ (section 9A)
- members of the AWDC who fail to disclose any interest they have in a contract made or proposed to be made by the Corporation; land in the Albury-Wodonga region; or an existing or proposed project of the Corporation, commit an offence which is punishable, upon conviction, by a fine not exceeding \$500 (section 16)
- the AWDC must maintain at least one account with an approved bank and pay all moneys, including moneys borrowed by the AWDC, into that account (section 27)
- the AWDC may only invest moneys on fixed deposit with an approved bank, in Commonwealth securities or in another manner approved by the Finance Minister (subsection 28(2))
- the Auditor-General has certain rights and duties in auditing the financial accounts and asset management records of the AWDC (section 30)
- the Minister may by writing delegate to a person holding or performing the duties of a Senior Executive Service office (within the meaning of the *Public Service Act 1922* (Cth) ‘all or any of the Minister’s powers under this Act (other than section 5A)’ (paragraph 31A(1)(b))
- the AWDC must prepare and submit an annual report and financial statements to the Minister for presentation to the Parliament (section 32), and
- before presenting the financial statements to the Minister, the AWDC must submit the statements to the Auditor-General, who reviews them and reports to the Minister (section 33).

The Finance Minister is currently the Minister responsible for the AWDC.⁹ However, as at 30 June 2007, the responsible Minister was the Parliamentary Secretary to the Minister for Finance and Administration (then Senator the Hon Richard Colbeck). The fact that the responsible Minister may not necessarily be the Finance Minister is reflected in the use of the distinct terms ‘Minister’ and ‘Finance Minister’ in the *Albury-Wodonga Development Act 1973* (Cth).

The main effect of the repeal of these provisions is that the CAC Act will apply to the AWDC. As stated in the note which **item 3** proposes to insert into the *Albury-Wodonga Development Act 1973* (Cth) after existing subsection 9(1) (which provision is not

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8. The Albury-Wodonga Development Corporation (which trades as the Albury-Wodonga Corporation) is currently administered by the Department of Finance and Deregulation. A copy of its 2006–2007 Annual report is available at http://www.awc.gov.au/download/2006_2007_AnRep.pdf (accessed on 2 August 2008).
 9. Administrative Arrangements Order, 25 January 2008, Part 9, p. 22. See http://www.naa.gov.au/Images/ao_1may2008_tcm2-11345.pdf (accessed on 4 August 2008).

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otherwise affected by the Bill), the CAC Act ‘deals with matters relating to Commonwealth authorities, including reporting and accountability, banking and investment, and the conduct of officers’.¹⁰ Particularly, Part 3 of the CAC Act deals with reporting and other obligations for Commonwealth authorities. The AWDC meets the definition of a ‘Commonwealth authority’ in paragraph 7(1)(a) of the CAC Act because it holds money on its own account and is ‘a body corporate that is incorporated for a public purpose by an Act’ (namely the *Albury-Wodonga Development Act 1973* (Cth)).

Amendments to the *Financial Management and Accountability Act 1997* (Cth)

Notional payments and notional receipts

Item 15 of **Schedule 1** amends section 6 of the FMA Act by repealing the present section and substituting a differently worded provision. Currently, section 6 of the FMA Act provides:

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

The proposed revision makes no real improvement to the existing provision. While revised section 6 is more specific and technical in its language, this is perhaps unnecessary given the subject of the provision. In some ways, the existing provision is clearer in so far as it draws and maintains a distinction between notional payments and notional receipts. Such distinction is drawn elsewhere in the FMA Act (such as section 8, which deals with agreements with banks about receipt, transmission etc of public money).

Criminal Code

Item 16 repeals section 7 of the FMA Act, which states that Chapter 2 of the *Criminal Code* (which sets out the general principles of criminal responsibility) applies to all offences against the FMA Act, and deals with maximum penalties. Section 7 is redundant, given subsection 2.2(2) of the *Criminal Code*, which provides that subject to provisions in the Criminal Code dealing with self-induced intoxication, Chapter 2 of the Code ‘applies on and after 15 December 2001 to all other offences’.

10. Subsection 9(1) of the *Albury-Wodonga Development Act 1973* (Cth) states that the AWDC (or ‘the Corporation’) (a) is a body corporate with perpetual succession; (b) shall have a common seal; (c) may acquire, hold and dispose of real and personal property; and (d) may sue and be sued in its corporate name’.

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Finance Minister's Orders

Items 17, 26, 45 and 57 of Schedule 1 replace references in sections 10, 13, 40 and paragraphs 60(2)(a) and (b) of the FMA Act to the 'Finance Minister's Orders' with references to 'regulations' (being the shorthand term for the Financial Management and Accountability Regulations 1997). Sections 10, 13, 40 and 60 deal respectively with prompt banking of public money; withdrawal of money from official accounts without authority; dealing with bonds, debentures or other securities; and misusing a Commonwealth credit card.

The term 'Finance Minister's Orders' is defined in section 5 of the FMA Act to mean 'Orders made under section 63'. Section 63 currently provides:

- (1) The Finance Minister may make Orders:
 - (a) on any matter on which this Act requires or permits Finance Minister's Orders to be made; and
 - (b) on any matter on which regulations may be made.
- (2) An Order cannot create offences or impose penalties.
- (3) An Order is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Section 63 is itself the subject of amendments proposed in the Bill: see **item 58**, which seeks to amend subsection 63(1) (quoted immediately above) by inserting the phrase 'by legislative instrument' after the words 'Minister may', and **item 59** which repeals subsection 63(3) (again quoted immediately above). Following the revision of subsection 63(1), the *Legislative Instruments Act 2003* (Cth) (the Legislative Instruments Act) will apply to Finance Minister's Orders. Subsection 63(3) has been meaningless since the commencement of the *Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003* (Cth), which among other things repealed section 46A of the *Acts Interpretation Act 1901* (Cth).¹¹

In practical terms, Finance Minister's Orders (or FMOs):

... are produced each year and have the force of law under the *Financial Management and Accountability Act 1997* (FMA Act) and the *Commonwealth Authorities and Companies Act 1997* (CAC Act). The FMOs outline the requirements for the preparation of Financial Reports of Australian Government Entities. One of the main purposes of the FMOs and supporting Policies and Guidance is to ensure consistency of accounting policy choices across Government Entities where Australian Accounting Standards allow choices. Consistency is important to ensure

11. See *Acts Interpretation Act 1901* (Cth), Table of Amendments, p. 63.

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comparability of Financial Reports across Entities and to facilitate the consolidation of individual Entity Financial Reports when preparing the Australian Government's Consolidated Financial Statements. The FMOs aim to enhance the usefulness of information presented in Financial Reports to Government and major external users.¹²

There are presently two separate sets of Finance Minister's Orders: both sets are made under subsection 63(1) of the FMA Act. They can deal with any matter on which the FMA Act 'requires or permits Finance Minister's Orders to be made', and any matter 'on which regulations may be made'. The difficulty with such an arrangement is that the same subject matter may be the subject of Finance Minister's Orders and regulations, resulting in possible discrepancy and confusion for those agencies which are required to comply with the financial framework. Following the proposed amendments, matters will either be the subject of regulations, or (in the case of matters relating to agencies' financial statements and financial reporting) they will be the subject of Finance Minister's Orders.

Special Instructions to become legislative instruments

Similarly, **items 28 and 29** amend subsection 16(1), which provides that the 'Finance Minister may issue Special Instructions in writing about special public money'. **Item 29** removes the phrase 'in writing'. **Item 28** inserts the phrase 'by legislative instrument' after the words 'Minister may'. The amendments clarify the legal status of the form of the Special Instructions, particularly the fact that the Legislative Instruments Act applies to any Special Instructions issued under section 16. This outcome is particularly warranted in light of subsection 16(2) of the FMA Act which provides: 'In case of inconsistency, Special Instructions override this Act, the regulations and the Finance Minister's Orders'. As designated 'Legislative Instruments', Special Instructions will become subject to the tabling and disallowance procedures set out in the Legislative Instruments Act. Further, subsection 16(3) states that 'an official or Minister must not contravene any Special Instruction'. Such an offence is punishable by 2 years' imprisonment.

Authorisation of acts of grace payments/waiver of amounts owing to the Commonwealth

Section 33 of the FMA Act deals generally with the Finance Minister's power to approve act of grace payments. **Item 35** repeals subsection 33(2), which provides: 'If a proposed authorisation would involve, or be likely to involve, a total amount of more than \$100,000, the Finance Minister must first consider a report of an Advisory Committee set up under section 59'.

Similarly, section 34 of the FMA Act deals with the Finance Minister's power to waive debts owing to the Commonwealth. **Item 38** repeals subsection 34(2), which provides:

12. See <http://www.finance.gov.au/publications/finance-ministers-orders/index.html> (accessed on 4 August 2008).

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If a proposed waiver under paragraph (1)(a) [of the Commonwealth's right to payment of an amount owing to the Commonwealth] involves, or is likely to involve, a total amount of more than \$100,000, the Finance Minister must consider a report of an Advisory Committee set up under section 59 before taking action on the waiver.

Likewise, **item 55** repeals section 59, which provides:

- (1) An Advisory Committee for the purposes of this Act consists of:
 - (a) the Chief Executive Officer of Customs; and
 - (b) the Secretary to the Department of Finance and Administration; and
 - (c) the Chief Executive of the Agency that is responsible for the matter on which the Committee has to report.
- (2) If there is no Agency responsible for the matter, or if the responsible Agency is the Department of Finance and Administration or the Australian Customs Service, then the third member of the Committee is to be a Chief Executive nominated by the Finance Minister.
- (3) A member of an Advisory Committee may appoint a deputy to act in his or her place.
- (4) An Advisory Committee may prepare its report without having a meeting.

In place of these provisions, **item 61** inserts **proposed subparagraphs 65(2)(a)(ia) and (ib)** into section 65, which is the regulation-making power in the FMA Act. Following the making of these proposed amendments, the regulations may make provision for the Finance Minister to consider a report from a specified person before authorising an act of grace payment or waiving an amount owed to the Commonwealth where the amount to be authorised or waived is 'more than a specified amount'. The amendments also provide that the regulations can make provision for the Finance Minister to authorise a payment of an amount if at the time of a person's death, the Commonwealth owed that amount to the person. The regulations may also provide that in such a case, production of probate of the will (or letters of administration) is not required. This latter issue is currently contained in section 35 of the FMA Act, but **item 39** of the Bill proposes to repeal that section. The amendments do not actually refer to the amount of \$100,000, but they do refer to 'a total amount that is more than a specified amount'. Presumably the 'specified amount' will be included in the regulations; the amount can then be readily increased or decreased, subject of course to the disallowance procedures contained in the Legislative Instruments Act.

Investment of public money

Items 40–44 amend section 39, which empowers the Finance Minister and the Treasurer to invest public money in 'any authorised investment'. **Item 40** (which amends subsections 39(1) and (2)) makes clear that the Finance Minister and the Treasurer may

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make such investments ‘on behalf of the Commonwealth’. **Item 44**, which repeals subsections 39(7) and (8), is consequential upon the amendment in **item 40**. The amendments are also necessary because those subsections refer to obsolete legislation. Subsection 39(7) refers to the *Audit Act 1901* (Cth) and subsection 39(8) refers to the *Loan Consolidation and Investment Reserve Act 1955* (Cth). The former Act was repealed by the *Audit (Transitional and Miscellaneous) Amendment Act 1997* (Cth) and the latter Act by the *Financial Management Legislation Amendment Act 1999* (Cth).

The power of the Chief Executive to enter into a contract

Items 47, 48 and 49 amend section 44, which deals with promoting efficient, effective and ethical use of Commonwealth resources. It currently provides:

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

“proper use” means efficient, effective and ethical use.

In summary, section 44 states that the Chief Executive of a Government Agency that is subject to the FMA Act must manage the affairs of the Agency in a way that promotes ‘efficient, effective and ethical use’ of the Commonwealth resources for which the Chief Executive is responsible. **Item 47** adds a note at the end of subsection 44(1) to make clear that the Chief Executive ‘has the power to enter into contracts, on behalf of the Commonwealth, in relation to the affairs of the Agency’. It is not clear why this note is necessary, given the long-standing decision of the High Court of Australia in *New South Wales v Bardolph* (1934) 52 CLR 455, which was quoted with approval by Glass JA in *Coogee Esplanade Surf Motel Pty Ltd v Commonwealth of Australia* (1976) 50 ALR 363 at 383:

The authority of a particular officer to bind the Crown by a contract made in the ordinary course of government business may be inferred from the nature of his office ... and requires no statutory foundation.

The decision in *Coogee Esplanade* is a decision of the New South Wales Court of Appeal, not the High Court of Australia, and thereby may be of persuasive but not binding authority on future courts deciding similar issues. Importantly, there appears to be a

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subtlety in the *Bardolph* decision which is missing from the statement of law in *Coogee Esplanade*, and that is as follows:

In each case, the character of the transaction, and also constitutional practice, must be considered. The question of authority, in the case of contracts providing for the carrying on of the ordinary activities or functions of government, presents, as a rule, but little difficulty; other contracts, however, must be considered each in relation to its own facts.¹³

In other words, each instance of government contracting must be decided upon its own facts.

Item 48 substitutes a revised requirement in subsection 44(2) that in managing the affairs of the Agency in a way that promotes the proper use of Commonwealth resources, the Chief Executive must comply with the FMA Act, the regulations, Finance Minister's Orders, Special Instructions and any other law. The revised provision is substantially the same as the present provision but is much clearer. Finally, **item 49** amends the definition of the phrase 'proper use' in subsection 44(3) to state that the 'efficient, effective and ethical use' of Commonwealth resources must not be 'inconsistent with the policies of the Commonwealth'. Some difficulties may arise where a policy simply offers *guidance*, as opposed to another policy (such as the Commonwealth Procurement Guidelines) which is mandatory. In such a case, Chief Executives must use their discretion as to the applicability of particular guidelines or non-binding policies.

Provision of financial documents and information

Item 50 inserts **proposed new section 44A** which provides that a Chief Executive of a FMA Agency must provide the Minister responsible for the Agency and the Finance Minister with documents and information about the operations and financial affairs as required by the Minister concerned and within such time limits set by the Minister concerned. Such a provision would seem to aid public accountability of agencies by obliging Chief Executives to provide vital information in a timely manner.

Audit committee

Item 51 repeals section 46 of the FMA Act and replaces it with a revised version. Currently, section 46 provides: 'A Chief Executive must establish and maintain an audit committee for the Agency, with the functions and responsibilities required by the Finance Minister's Orders'. The revised provision is more detailed, referring to the functions of the audit committee that include (a) helping the Agency comply with obligations under the FMA Act, the regulations and Finance Minister's Orders; and (b) providing 'a forum for communication' between the Chief Executive, senior managers of the Agency, and

13. *New South Wales v Bardolph* (1934) 52 CLR 455 per Starke J at 502–503. See <http://www.austlii.edu.au/au/cases/cth/HCA/1934/74.html> (accessed on 5 August 2008).

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internal and external auditors. The more detailed provision is almost identical to section 32 of the CAC Act, which provides that the directors of a CAC Agency must establish and maintain an audit committee with certain functions.

Other provisions

Items 18, 24, 27, 30, 31, 46 and 56 replace the reference to ‘Maximum penalty’ in various provisions in the FMA Act with the term ‘Penalty’. This change accords with legislative drafting practice and principles of criminal law.

Items 52 and 53 amend section 50, which deals with the provision of additional financial information by a Chief Executive to the Finance Minister. The requirements in subsection 50(2) are now covered by **proposed section 44A** (see **item 50** above) in a more detailed form. Thus subsection 50(2) is no longer required.

Item 54 repeals existing section 51 and substitutes a new form of words in its place. Section 51 deals with reporting requirements on change of Agency functions where an Agency ceases to exist, or a function of an Agency is transferred to another Agency (or Agencies). The revised provision is not particularly different to the existing provision, but includes the terms ‘the old Agency’ and ‘the transferring Agency’ to make clear which Agency is being mentioned.

Item 60 amends section 64, which deals with a Minister’s power to make guidelines on any matter on which regulations may be made under the FMA Act. **Item 60** inserts **proposed subsection 64(3)** to state that ‘a guideline is a legislative instrument’. As noted above in relation to Finance Minister’s Orders, the effect of this amendment will be that the Legislative Instruments Act (including the disallowance procedures) will apply to any guidelines made by a Minister under the FMA Act.

Amendments to the *Public Service Act 1999* (Cth)

Item 62 amends the note to section 73 of the *Public Service Act 1999* (Cth) by deleting the words ‘or otherwise relates to the Agency’s outcomes’. Section 73 deals with the power of the Public Service Minister to authorise the making of payments in special circumstances. The note (which relates to the section as a whole, and not just subsection 73(5) as appears in the Bill) currently reads as follows:

Payments under this section must be made from money appropriated by the Parliament. Generally, a payment can be debited against an Agency’s annual appropriation, providing that it relates to some matter that has arisen in the course of its administration or otherwise relates to the Agency’s outcomes.

The amendment is the result of the decision of the High Court of Australia in *Combet v Commonwealth of Australia* (2005) 224 CLR 494, where the majority of the Court

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(McHugh and Kirby JJ dissenting) held that it is not necessary to link departmental expenditure to particular Agency outcomes.¹⁴

Amendments to the *Reserve Bank Act 1959* (Cth)

The Bill contains four amendments to the *Reserve Bank Act 1959* (Cth). **Item 63** corrects a reference in subsection 7A(3) to section 27 of the CAC Act. The correct reference is to section 27P of the CAC Act, thus reflecting numerous amendments to the CAC Act since section 7A was inserted into the *Reserve Bank Act 1959* by the *Financial Sector Reform (Amendments And Transitional Provisions) Act 1998* (Cth). Subsection 7A(3) provides:

However, sections 21 to 27 of the *Commonwealth Authorities and Companies Act 1997*, and Schedule 2 to that Act, apply to the members of the Payments System Board as though they were directors of the Bank.

Items 64–66 make minor amendments to paragraphs 25L(4)(c) and (d) of the *Reserve Bank Act 1959* (Cth) to correct drafting omissions and to correct references to obsolete legislative provisions.

Schedule 1, Part 2

Most of **Part 2** of **Schedule 1** to the Bill contains saving, application and transitional provisions in relation to amendments proposed in **Part 1**. It is unnecessary to comment further on these provisions, except to say that none has retrospective operation.

Australian Water Fund Account

Item 76 of **Schedule 1** is an unusual provision, particularly given its inclusion in Part 2. Unlike the other provisions in **Part 2**, **item 76** is not a saving, application or transition provision.

According to the Explanatory Memorandum for the Bill, **item 76**:

reflects the change in administrative arrangements for the Water Smart Australia program, which from 1 July 2008 is administered by the Department of the Environment, Water, Heritage and the Arts. That Department will be funded for the Water Smart Australia program by a means other than the Australian Water Fund Account (such as general *Appropriation Acts*).¹⁵

14. See <http://www.austlii.edu.au/au/cases/cth/HCA/2005/61.html> (accessed on 5 August 2008).

15. Financial Framework Legislation Amendment Bill 2008, Explanatory Memorandum, p. 12.

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Item 76 deals with the Australian Water Fund Account, which is a Special Account established under the *National Water Commission Act 2004* (Cth).¹⁶ At the commencement of **item 76**, the Chief Executive Officer of the National Water Commission ceases ‘to have the function of administering financial assistance, awarded by the Minister administering [the *National Water Commission Act 2004* (Cth)] to particular projects relating to Australia’s water resources, from the Australian Water Fund Account ... to the extent that assistance was provided from that Account before the commencement of this item and related to the Water Smart Australia Program’. In other words, this sub-item says that the Chief Executive will cease on the commencement of **item 76** to administer financial assistance from the Australian Water Fund Account which related to the Water Smart Australia Program.

Specifically, **sub-item 76(1)** states that the Australian Water Fund Account is to be debited by \$320,000,000 if the balance of the account is at least that amount on commencement of **item 76**. However, where the balance of the account is less than \$320,000,000 then the whole of the balance is to be debited. Presumably, according to general accounting principles, a credit must appear in another account, but the item does not state where the debited moneys go. They may be returned to the Consolidated Revenue Fund, but equally validly, they could be retained by the National Water Commission—or perhaps credited to another Agency or Department(s). For example, it is not clear why the moneys cannot be dealt with by administrative arrangements between the National Water Commission and the Department of the Environment, Water, Heritage and the Arts, as the former and current administrators of the Water Smart Australia program respectively. It is also not clear what happens to any money in excess of \$320,000,000 should the balance of the Australian Water Fund Account be greater than that amount at the commencement of **item 76**. For example, is it simply retained by the National Water Commission for purposes other than the Water Smart Australia program?

Schedule 2

Amendments to the *Defence Home Ownership Assistance Scheme Act 2008* (Cth)

Item 1 of **Schedule 2** amends section 83 of the *Defence Home Ownership Assistance Scheme Act 2008* (Cth), which deals with receipt and custody of public money by contractor. The amendment is consequential upon the amendments to section 12 of the FMA Act contained in **Schedule 1** to the Bill.

16. ‘Special Accounts Register’, Budget Agency Resourcing, Budget Paper No. 4, 2008–09, p. 109.

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Concluding comments

The vast majority of the amendments contained in the Bill are uncontroversial. They largely clarify and/or simplify expression, correct minor typographical errors, remove references to obsolete legislation, and bring provisions in line with the CAC Act. Many of the amendments make the legislation in question more readable, with obvious benefits for efficient and transparent administration because administrators should have a clearer understanding of their functions and duties.

The only possibly problematic provision seems to be **item 76**, which not only appears in an odd location at the end of saving and transitional provisions in **Part 2** of **Schedule 1**, but seems to contain inadequate detail about the fate of a large sum of money that is to be debited from the Australian Water Fund Account but not apparently credited to another account or used for any identifiable purpose.

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