

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.