



Financial Management and Accountability Act 1997

No. 154, 1997 as amended

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Includes amendments up to: Act No. 53, 2013

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About this compilation

The compiled Act

This is a compilation of the *Financial Management and Accountability Act 1997* as amended and in force on 29 May 2013. It includes any amendment affecting the compiled Act to that date.

This compilation was prepared on 18 June 2013.

The notes at the end of this compilation (the *endnotes*) include information about amending Acts and instruments and the amendment history of each amended provision.

Uncommenced provisions and amendments

If a provision of the compiled Act is affected by an uncommenced amendment, the text of the uncommenced amendment is set out in the endnotes.

Application, saving and transitional provisions for amendments

If the operation of an amendment is affected by an application, saving or transitional provision, the provision is identified in the endnotes.

Modifications

If a provision of the compiled Act is affected by a textual modification that is in force, the text of the modifying provision is set out in the endnotes.

Provisions ceasing to have effect

If a provision of the compiled Act has expired or otherwise ceased to have effect in accordance with a provision of the Act, details of the provision are set out in the endnotes.

Reader's guide

This Guide aims to give you a general overview of the matters covered by this Act. It also gives you some information about the way this Act is organised.

Overview of this Act

The main purpose of this Act is to provide a framework for the proper management of public money and public property. **Public money** and **public property** are defined in section 5. Broadly, those terms refer to money or property that is owned or held by the Commonwealth, including money or property held on trust.

This Act contains rules about how public money and property are to be dealt with. Many of the detailed rules are in regulations made under section 65.

Many of the rules in this Act apply to officials of Agencies and to Chief Executives of Agencies. **Agency, official** and **Chief Executive** are defined in section 5.

Summary of this Act

- Part 1 **Preliminary**: This Part deals with the commencement of this Act, its application to things outside Australia and its application to the Crown.
- Part 2 **General provisions about definitions**: This Part contains definitions of terms that are frequently used throughout this Act and general provisions about notional payments and receipts by Agencies.
- Part 3 **Collection, custody etc. of public money**: This Part deals with the collection and custody of public money. It deals with matters such as banking and liability for loss of public money.
- Part 4 **Accounting, appropriations and payments**: This Part establishes an accounting framework for public money that involves the Consolidated Revenue Fund and Special Accounts. This Part has a

number of rules that apply to the adjustment of appropriations in certain circumstances. It also deals with miscellaneous matters such as act of grace payments by the Commonwealth and waiver of debts owing to the Commonwealth.

- Part 5 ***Borrowing, investment and involvement in companies***: This Part gives the Finance Minister limited powers to borrow money on behalf of the Commonwealth. It also deals with the investment of public money, and a Minister's obligation to inform the Parliament of the Commonwealth or a prescribed body's involvement in a company.
- Part 6 ***Control and management of public property***: This Part has rules about the control and management of public property. It deals with matters such as misapplication of public property and liability for loss of public property.
- Part 6A ***Interjurisdictional agencies***: This Part sets out that the regulations may prescribe a Commonwealth agency as an interjurisdictional agency. An interjurisdictional agency involves, jointly, the Commonwealth and participating State and/or Territory jurisdictions in the governance of that agency. This Part also provides that the regulations may set out the obligations on Chief Executives of interjurisdictional agencies.
- Part 7 ***Special responsibilities of Chief Executives***: The rules in this Part apply to Chief Executives of Agencies. The rules deal generally with the control and management of public money and public property for which Chief Executives have a management responsibility.
- Part 8 ***Reporting and audit***: This Part deals with the preparation and audit of financial statements of the Commonwealth. It also deals with the audit of annual financial statements of Agencies.
- Part 9 ***Miscellaneous***: This Part deals with miscellaneous matters such as Finance Minister's Orders, regulations and delegations.

Related legislation

The following Acts are directly relevant to the operation or interpretation of this Act:

The Annual Appropriation Acts appropriate money out of the Consolidated Revenue Fund.

The *Auditor-General Act 1997* establishes the office of Auditor-General and sets out the functions of the Auditor-General. It also provides for the appointment of an Independent Auditor to audit the Australian National Audit Office.

The *Acts Interpretation Act 1901* contains many general rules about the meaning or effect of many terms and provisions that are commonly used in Commonwealth Acts.

The *Commonwealth Authorities and Companies Act 1997* contains reporting, accountability and other rules that apply to Commonwealth authorities and Commonwealth companies (which are separate legal entities to the Commonwealth).

This list is not exhaustive. Acts other than those listed above might also affect the operation or interpretation of this Act.

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An Act to provide for the proper use and management of public money, public property and other Commonwealth resources, and for related purposes

Part 1—Preliminary

1 Short title

This Act may be cited as the *Financial Management and Accountability Act 1997*.

2 Commencement

- (1) Subject to subsection (2), this Act commences on a day to be fixed by Proclamation.
- (2) If this Act does not commence under subsection (1) by 1 July in the next calendar year after the calendar year in which this Act receives the Royal Assent, it commences on that 1 July.

3 This Act binds the Crown

This Act binds the Crown in right of the Commonwealth, but does not make the Crown liable to be prosecuted for an offence.

4 This Act extends to things outside Australia

This Act extends to acts, omissions, matters and things outside Australia (unless the contrary intention appears).

Part 2—General provisions about definitions

5 Definitions

In this Act, unless the contrary intention appears:

Agency means:

- (a) a Department of State:
 - (i) including persons who are allocated to the Department (for the purposes of this Act) by regulations made for the purposes of this paragraph; but
 - (ii) not including any part of the Department that is a prescribed Agency;
- (b) a Parliamentary Department, including persons who are allocated to the Department (for the purposes of this Act) by regulations made for the purposes of this paragraph;
- (c) a prescribed Agency.

appropriation means an authority under this Act or any other law to draw money from the Consolidated Revenue Fund, whether or not the law concerned uses the word “appropriation” or “appropriated”.

bank means:

- (a) a person who carries on the business of banking, either in Australia or outside Australia; or
- (b) any other institution:
 - (i) that carries on a business in Australia that consists of or includes taking money on deposit; and
 - (ii) the operations of which are subject to prudential supervision or regulation under a law of the Commonwealth, a State or a Territory.

Chief Executive means:

- (a) for a prescribed Agency—the person identified by the regulations as the Chief Executive of the Agency; or

- (b) for any other Agency—the person who is the Secretary of the Agency for the purposes of the *Public Service Act 1999* or the *Parliamentary Service Act 1999*.

CRF or **Consolidated Revenue Fund** means the Consolidated Revenue Fund referred to in section 81 of the Constitution.

Department of the Treasury means the Department administered by the Treasurer and includes:

- (a) persons who are allocated to the Department (for the purposes of this Act) by regulations made for the purposes of subparagraph (a)(i) of the definition of **Agency** in this section; or
- (b) any part of the Department that is a prescribed Agency.

designated Special Account appropriation means an appropriation under section 21 of this Act that relates to:

- (a) the COAG Reform Fund established by the *COAG Reform Fund Act 2008*; or
- (b) a Special Account established by the *Nation-building Funds Act 2008*.

Finance Minister means the Minister who administers this Act.

Finance Minister's Orders means Orders made under section 63.

Minister includes a Presiding Officer.

official means a person who is in an Agency or is part of an Agency.

official account means a bank account referred to in section 9.

Parliamentary Department means a Department of the Parliament established under the *Parliamentary Service Act 1999*.

prescribed Agency means a body, organisation or group of persons prescribed by the regulations for the purposes of this definition.

Presiding Officer means the President of the Senate or the Speaker of the House of Representatives.

Section 6

public money means:

- (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.

public property means:

- (a) property in the custody or under the control of the Commonwealth; or
- (b) property 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 property;

including such property that is held on trust for, or otherwise for the benefit of, a person other than the Commonwealth.

Special Account means:

- (a) a Special Account that is established by the Finance Minister under section 20; or
- (b) a Special Account that is established by an Act other than this Act.

Special Instruction means an instruction by the Finance Minister under section 16.

special public money has the meaning given by section 16.

6 Notional payments and receipts by Agencies

If:

- (a) either:
 - (i) an Agency makes a notional payment to another Agency; or
 - (ii) one part of an Agency makes a notional payment to another part of that Agency; and
- (b) the transaction would involve the debiting of an appropriation if the notional payment were a real payment;

then:

- (c) this Act applies in relation to the notional payment as if it were a real payment; and
- (d) this Act applies in relation to the notional receipt of the notional payment as if it were a real receipt.

Note: This section applies to transactions that do not actually involve payments or receipts, because the parties to the transaction are merely parts of the Commonwealth, or acting as agents for the Commonwealth. For example, Agency 1 “pays” Agency 2 for services provided by Agency 2. One of the effects of this section is that a drawing right under section 27 will be required for the transaction.

Part 3—Collection, custody etc. of public money

8 Agreements with banks about receipt, transmission etc. of public money

- (1) The Finance Minister may, on behalf of the Commonwealth, enter into an agreement with any bank:
 - (a) for the receipt, custody, payment or transmission of public money, either inside or outside Australia; or
 - (b) for any other matter relating to the conduct of the banking business of the Commonwealth.
- (2) An agreement under this section may provide for the payment of interest and other charges by the Commonwealth.
- (3) An agreement under this section may not provide for overdraft drawings by the Commonwealth unless it provides for each drawing to be repaid within 30 days.

Note: An overdraft drawing consists of the bank meeting the payment of a cheque, or making an “electronic payment” to another account, and in each case debiting the payment against an account that has an insufficient balance. Section 38 deals with overdrafts that arise in respect of *advances* that are paid to the Commonwealth.
- (4) An agreement for an overdraft on an official account must not be made except under this section.
- (5) An agreement under this section may not be made for a period of more than one year unless the agreement can be terminated by the Commonwealth at any time after giving notice of not more than 6 months.

9 Official bank accounts

- (1) The Finance Minister may open and maintain bank accounts in accordance with agreements under section 8, and must open and maintain at least one such bank account.

- (2) A bank account must have a name that includes the word “Official”.
- (3) An account for the receipt, custody, payment or transmission of public money must not be opened except in accordance with this section.

10 Public money must be promptly banked etc.

An official or Minister who receives public money (including money that becomes public money upon receipt) must bank it as required by the regulations or otherwise deal with it as required by the regulations. For this purpose, *money* includes cheques and similar instruments.

Penalty: Imprisonment for 2 years.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

11 Public money not to be paid into non-official account

An official or Minister must not deposit public money in any account other than an official account. For this purpose, *money* includes cheques and similar instruments.

Penalty: Imprisonment for 7 years.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

12 Receipt and spending of public money by outsiders

- (1) An official or Minister must not enter into an agreement or arrangement for the receipt, custody or payment of public money by an outsider unless:
 - (a) the Finance Minister has first given a written authorisation for the agreement or arrangement; or
 - (b) the agreement or arrangement is expressly authorised by this Act or by another Act.

Section 13

Penalty: Imprisonment for 7 years.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (2) An outsider commits an offence if:
- (a) the outsider receives or has custody of public money under an agreement or arrangement mentioned in subsection (1); and
 - (b) the outsider makes a payment of the public money; and
 - (c) that payment is not authorised by the agreement or arrangement.

Penalty: Imprisonment for 2 years.

- (3) In this section:

outsider means any person other than the Commonwealth, an official or a Minister.

13 Money not to be withdrawn from official account without authority

An official must not withdraw money from an official account except as authorised by the regulations.

Penalty: Imprisonment for 2 years.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

14 Misapplication or improper use of public money

An official or Minister must not misapply public money or improperly dispose of, or improperly use, public money.

Penalty: Imprisonment for 7 years.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

15 Liability for loss of public money

- (1) If:
-

- (a) a loss of public money occurs; and
 - (b) at the time of the loss, an official or Minister had nominal custody of the money as described in subsection (2);
- the official or Minister is liable to pay to the Commonwealth an amount equal to the loss. However, it is a defence if the person proves that he or she took reasonable steps in all the circumstances to prevent the loss.
- (2) A person has nominal custody of public money if:
 - (a) the person holds the money by way of a petty cash advance, “change float” or other advance; or
 - (b) the person has received the money, but has not yet dealt with it as required by section 10.
 - (3) If:
 - (a) a loss of public money occurs; and
 - (b) an official or Minister caused or contributed to the loss by misconduct, or by a deliberate or serious disregard of reasonable standards of care;the official or Minister is liable to pay to the Commonwealth an amount equal to the loss. However, if the person’s misconduct or disregard was not the sole cause of the loss, the person is liable to pay only so much of the loss as is just and equitable having regard to the person’s share of the responsibility for the loss.
 - (4) A person’s liability under this section that arises when the person is an official or Minister is not avoided merely because the person ceases to be an official or Minister.
 - (5) An amount payable to the Commonwealth under this section is recoverable as a debt in a court of competent jurisdiction.
 - (6) The Commonwealth is not entitled to recover amounts from the same person under both subsections (1) and (3) for the same loss.
 - (7) In this section:
loss includes a deficiency.
-

Section 16

16 Special Instructions by Finance Minister about handling etc. of special public money

- (1) The Finance Minister may, by legislative instrument, issue Special Instructions about special public money, including instructions about:
 - (a) the custody of special public money;
 - (b) the investment of special public money;
 - (c) the application of interest or other amounts derived from the investment of special public money;
 - (d) the application of special public money in paying the expenses involved in dealing with special public money.
- (2) In case of inconsistency, Special Instructions override this Act, the regulations and the Finance Minister's Orders. However, Special Instructions cannot be inconsistent with the terms of any trust that applies to the money concerned.
- (3) An official or Minister must not contravene any Special Instruction.

Penalty: Imprisonment for 2 years.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (4) In this section:

special public money means public money that is not held on account of the Commonwealth or for the use or benefit of the Commonwealth.

Note: Money held by the Commonwealth on trust for another person is an example of special public money.

Part 4—Accounting, appropriations and payments

Division 1—Accounts and records in relation to public money

19 Accounts and records in relation to public money

The Finance Minister must cause proper accounts and records to be kept in relation to the receipt and expenditure of public money.

Note: Section 48 requires Chief Executives of Agencies to keep accounts and records in accordance with the Finance Minister's Orders.

Division 1A—Special Accounts

20 Establishment of Special Accounts by Finance Minister

- (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.

Note: See section 32A for when the crediting or debiting of an amount takes effect.

- (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.
- (2) The Finance Minister may make a determination that revokes or varies a determination made under subsection (1).
- (3) The Finance Minister may make a determination that abolishes a Special Account established under subsection (1).
- (4) The CRF is hereby appropriated for expenditure for the purposes of a Special Account established under subsection (1), up to the balance for the time being of the Special Account.

Note: 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.

- (4A) If the Finance Minister makes a determination that allows an amount standing to the credit of a Special Account to be expended in making payments for a particular purpose, then, unless the contrary intention appears, the amount may also be applied in making notional payments for that purpose.

Note: This subsection applies to transactions that do not actually involve payments because the parties to the transaction are merely parts of the Commonwealth or acting as agents for the Commonwealth. For

example, Agency 1 “pays” Agency 2 for services provided by Agency 2.

- (5) Whenever an amount is debited against the appropriation in subsection (4), the amount is taken to be also debited from the Special Account.

Sunsetting and disallowance

- (6) A determination made under subsection (1) or (2) is a legislative instrument, but Part 6 (sunsetting) of the *Legislative Instruments Act 2003* does not apply to the determination.

Note: See section 22 for tabling and disallowance of a determination made under subsection (1) or (2).

- (7) A determination made under subsection (3) is a legislative instrument, but neither section 42 (disallowance) nor Part 6 (sunsetting) of the *Legislative Instruments Act 2003* applies to the determination.

21 Special Accounts established by other Acts

- (1) If another Act establishes a Special Account and identifies the purposes of the Special Account, then the CRF is hereby appropriated for expenditure for those purposes, up to the balance for the time being of the Special Account.

Note 1: An Act that establishes a Special Account will identify the amounts that are to be credited to the Special Account.

Note 2: 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.

Note 3: See section 32A for when the crediting or debiting of an amount takes effect.

- (1A) If an Act allows an amount standing to the credit of a Special Account to be applied, debited, paid or otherwise used for a particular purpose, then, unless the contrary intention appears, the amount may also be applied, paid or otherwise used in making a notional payment for that purpose.

Note: This subsection applies to transactions that do not actually involve payments because the parties to the transaction are merely parts of the Commonwealth or acting as agents for the Commonwealth. For

Part 4 Accounting, appropriations and payments

Division 1A Special Accounts

Section 22

example, Agency 1 “pays” Agency 2 for services provided by Agency 2.

- (2) Whenever an amount is debited against the appropriation in subsection (1), the amount is taken to be also debited from the Special Account.

22 Disallowance of determinations relating to Special Accounts

- (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.
- (4) If neither House passes such a resolution, the determination takes effect:
 - (a) on the day immediately after the last day upon which such a resolution could have been passed; or
 - (b) if a later day is specified in the determination—on that later day.

Division 2—Drawing rights

26 Drawing rights required for payment etc. of public money

An official or Minister must not do any of the following except as authorised by a valid drawing right:

- (a) make a payment of public money;
- (b) request that an amount be debited against a designated Special Account appropriation;
- (c) debit an amount against a designated Special Account appropriation.

27 Issue of drawing rights

- (1) The Finance Minister may issue a drawing right to an official or Minister that authorises the official or Minister to do one or more of the following:
 - (a) make a payment of public money;
 - (b) request the debiting of an amount against a designated Special Account appropriation;
 - (c) debit an amount against a designated Special Account appropriation.
- (2) If a law requires the payment of an amount of public money and there is an available appropriation for that payment:
 - (a) the Finance Minister must issue sufficient drawing rights to allow the amount to be paid in full; and
 - (b) the recipient of any of those drawing rights must exercise the rights in full.
- (3) If a law permits the payment of an amount of public money, but does not require the payment of that amount, there is no obligation to issue or exercise drawing rights for that amount.
- (4) The Finance Minister may at any time revoke or amend a drawing right.

Part 4 Accounting, appropriations and payments

Division 2 Drawing rights

Section 27

- (5) A drawing right has no effect to the extent to which it purports to authorise the making of a payment of public money for which there is no available appropriation.

Division 3—Appropriations

28 Repayments by the Commonwealth

- (1) This section applies if:
- (a) an amount is received by the Commonwealth; and
 - (b) some or all of the amount is required or permitted to be repaid; and
 - (c) apart from this section there is no appropriation for the repayment.

Note: For example, this section would apply to a law that requires an application fee to be refunded to an unsuccessful applicant. It would also apply to a contractual obligation to repay a loan.

- (2) The CRF is appropriated for the repayment.

30 Repayments to the Commonwealth

If:

- (a) an amount is paid by the Commonwealth; and
 - (b) an appropriation is debited as a result of the payment; and
 - (c) some or all of the amount is repaid to the Commonwealth;
- the appropriation is increased by an amount equal to the amount repaid.

Note: See section 32A for when the increase takes effect.

30A Appropriations to take account of recoverable GST

Recoverable GST on acquisitions

- (1) If:
- (a) a payment in respect of an acquisition is made in reliance on a limited appropriation; and
 - (b) a GST qualifying amount has arisen or does arise for that acquisition;
- then the appropriation is increased by the amount of the GST qualifying amount.

Section 31

Note: See section 32A for when the increase takes effect.

Recoverable GST on importations

- (2) If:
- (a) a payment of GST on an importation is made in reliance on a limited appropriation; and
 - (b) a GST qualifying amount has arisen or does arise for that importation;
- then the appropriation is increased by the amount of the GST qualifying amount.

Note: See section 32A for when the increase takes effect.

Definitions

- (7) In this section:

acquisition has the same meaning as in the GST Act.

GST has the same meaning as in the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999*, as it applies because of Division 177 of that Act.

Note: Under Division 177 of the GST Act, that Act applies notionally to the Commonwealth and Commonwealth entities. They are therefore notionally liable to pay GST, are notionally entitled to input tax credits and notionally have adjustments.

GST qualifying amount means:

- (a) an input tax credit (within the meaning of the GST Act); or
- (b) a decreasing adjustment (within the meaning of the GST Act).

importation has the same meaning as in the GST Act.

limited appropriation means an appropriation that is limited as to amount.

31 Retaining prescribed receipts

- (1) This section applies if an Agency receives an amount of a kind prescribed by the regulations for the purposes of this section.

- (2) The amount specified in the most recent departmental item for the Agency is taken to be increased by an amount equal to the amount received by the Agency.

Note: See section 32A for when the increase takes effect.

- (3) In this section:

departmental item means a departmental item in an Appropriation Act.

32 Transfer of Agency functions

- (1) This section applies if a function of an Agency (the ***transferring Agency***) is transferred to another Agency, either because the transferring Agency is abolished or for any other reason.

Adjustments to appropriations

- (2) The Finance Minister may determine that one or more Schedules to one or more Appropriation Acts are amended in a specified way. The amendment must be related to the transfer of function.
- (3) Each Appropriation Act concerned has effect as if the Schedule concerned were amended in accordance with the determination.

No change in overall appropriation

- (4) A determination under subsection (2) cannot result in a change in the total amount appropriated.

Transfer of function between Parliamentary Departments

- (5) If the transfer of function is between Parliamentary Departments, the Finance Minister must not make a determination under subsection (2) unless it is in accordance with a written recommendation of the Presiding Officers.

No extension of time limits

- (6) A determination under subsection (2) does not have the effect of extending any time limit that applies to an appropriation.

Section 32

Legislative Instruments Act

- (7) A determination under subsection (2) is a legislative instrument, but neither section 42 (disallowance) nor Part 6 (sunsetting) of the *Legislative Instruments Act 2003* applies to the determination.
- (8) Despite subsection 12(2) of the *Legislative Instruments Act 2003*, a determination under subsection (2) of this section may be expressed to take effect before the day it is registered under that Act (including before the day on which it is made).
- (9) Nothing in subsection (8) authorises expenditure under an appropriation that did not exist at the time of the expenditure.

Division 3A—Recording of amounts in accounts and records

32A Recording of amounts in accounts and records

Special Accounts

- (1) The crediting of an amount to a Special Account, or the debiting of an amount from a Special Account, takes effect at the time an entry connected with the crediting or debiting is made in the accounts and records of the Agency concerned.

Repayments to the Commonwealth

- (2) The increase to an appropriation in accordance with section 30 takes effect at the time an entry recording the repayment concerned is made in the accounts and records of the Agency concerned.

Recoverable GST

- (3) The increase to an appropriation in accordance with subsection 30A(1) or (2) takes effect at the time an entry recording the GST qualifying amount is made in the accounts and records of the Agency concerned.

Retaining prescribed receipts

- (4) The increase to an amount in accordance with subsection 31(2) takes effect at the time an entry recording the receipt of the amount mentioned in subsection 31(1) is made in the accounts and records of the Agency concerned.

Section 32B

Division 3B—Supplementary powers to make commitments to spend public money etc.

32B Supplementary powers to make commitments to spend public money etc.

- (1) If:
- (a) apart from this subsection, the Commonwealth does not have power to make, vary or administer:
 - (i) an arrangement under which public money is, or may become, payable by the Commonwealth; or
 - (ii) a grant of financial assistance to a State or Territory; or
 - (iii) a grant of financial assistance to a person other than a State or Territory; and
 - (b) the arrangement or grant, as the case may be:
 - (i) is specified in the regulations; or
 - (ii) is included in a class of arrangements or grants, as the case may be, specified in the regulations; or
 - (iii) is for the purposes of a program specified in the regulations;

the Commonwealth has power to make, vary or administer the arrangement or grant, as the case may be, subject to compliance with this Act, the regulations, Finance Minister's Orders, Special Instructions and any other law.

- (2) A power conferred on the Commonwealth by subsection (1) may be exercised on behalf of the Commonwealth by a Minister or a Chief Executive.

Note 1: For delegation by a Minister, see section 32D.

Note 2: For delegation by a Chief Executive, see section 53.

- (3) In this section:

administer:

- (a) in relation to an arrangement—includes give effect to; or
- (b) in relation to a grant—includes make, vary or administer an arrangement that relates to the grant.

arrangement includes contract, agreement or deed.

make, in relation to an arrangement, includes enter into.

vary, in relation to an arrangement or grant, means:

- (a) vary in accordance with the terms or conditions of the arrangement or grant; or
- (b) vary with the consent of the non-Commonwealth party or parties to the arrangement or grant.

32C Terms and conditions for grants

Scope

- (1) This section applies to a grant of financial assistance under section 32B.

Terms and conditions

- (2) If the recipient of the grant is a State or Territory, the terms and conditions on which that financial assistance is granted are to be set out in a written agreement between the Commonwealth and the recipient.
- (3) An agreement under subsection (2) may be entered into on behalf of the Commonwealth by a Minister or a Chief Executive.

Note 1: For delegation by a Minister, see section 32D.

Note 2: For delegation by a Chief Executive, see section 53.

- (4) If the recipient of the grant is a person other than a State or Territory, subsection (2) does not, by implication, prevent the grant from being made subject to terms and conditions.

32D Delegation by a Minister

- (1) A Minister may, by writing, delegate any or all of his or her powers under this Division to an official in any Agency.
- (2) In exercising powers under a delegation, the delegate must comply with any directions of the Minister concerned.

Part 4 Accounting, appropriations and payments

Division 3B Supplementary powers to make commitments to spend public money etc.

Section 32E

32E Executive power of the Commonwealth

This Division does not, by implication, limit the executive power of the Commonwealth.

Division 4—Miscellaneous

33 Finance Minister may approve act of grace payments

- (1) If the Finance Minister considers it appropriate to do so because of special circumstances, he or she may authorise the making of any of the following payments to a person (even though the payment or payments would not otherwise be authorised by law or required to meet a legal liability):
- (a) one or more payments of an amount or amounts specified in the authorisation (or worked out in accordance with the authorisation);
 - (b) periodical payments of an amount specified in the authorisation (or worked out in accordance with the authorisation), during a period specified in the authorisation (or worked out in accordance with the authorisation).

Note: See also subparagraph 65(2)(a)(ia) (which allows regulations to be made about the Finance Minister considering a report from specified persons before authorising a total amount that is more than a specified amount).

- (3) Conditions may be attached to payments under this section. If a condition is breached, the payment may be recovered by the Commonwealth as a debt in a court of competent jurisdiction.

Note: Act of grace payments under this section must be made from money appropriated by the Parliament. Generally, an act of grace 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.

34 Finance Minister may waive debts etc.

- (1) The Finance Minister may, on behalf of the Commonwealth:
- (a) waive the Commonwealth's right to payment of an amount owing to the Commonwealth;
 - (b) postpone any right of the Commonwealth to be paid a debt in priority to another debt or debts;
 - (c) allow the payment by instalments of an amount owing to the Commonwealth;

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- (d) defer the time for payment of an amount owing to the Commonwealth.

Note: See also subparagraph 65(2)(a)(ia) (which allows regulations to be made about the Finance Minister considering a report from specified persons before waiving a total amount that is more than a specified amount).

- (3) A waiver may be made either unconditionally or on the condition that a person agrees to pay an amount to the Commonwealth in specified circumstances.

- (4) In this section:

amount owing to the Commonwealth includes an amount that is owing but not yet due for payment.

35 Set off

- (1) If:

- (a) an amount (the *first amount*) is owing to the Commonwealth by a person; and
(b) an amount (the *second amount*) is owing by the Commonwealth to the person;

the Finance Minister may, on behalf of the Commonwealth, set off the whole or a part of the first amount against the whole or a part of the second amount.

Exceptions

- (2) Paragraph (1)(b) does not apply in relation to a payment if:

- (a) a law of the Commonwealth provides that the payment is absolutely inalienable; or
(b) a law of the Commonwealth provides that the payment is inalienable; or
(c) a law of the Commonwealth provides that the right to the payment cannot be assigned; or
(d) a law of the Commonwealth provides that the payment cannot be assigned.

Definitions

- (3) In this section:

amount owing by the Commonwealth includes an amount that is owing but not yet due for payment.

amount owing to the Commonwealth includes an amount that is owing but not yet due for payment.

Note: See also subparagraph 65(2)(a)(iaa) (which allows regulations to be made about the Finance Minister considering a report from specified persons before setting off under this section, in a case where the amount of the set-off is more than a specified amount).

36 Presiding Officers may approve expenditure

- (1) The following persons have authority to approve a proposal to spend public money under an appropriation for a Parliamentary Department:
- (a) a Presiding Officer, for expenditure under an appropriation for which he or she alone is responsible;
 - (b) the Presiding Officers jointly, for expenditure under an appropriation for which they are jointly responsible.
- (2) A Presiding Officer may by written instrument delegate his or her powers under this section to an official. In exercising powers under the delegation, the official must comply with any directions of the Presiding Officer.

Part 5—Borrowing, investment and involvement in companies

37 Unauthorised borrowing agreements are invalid

An agreement for the borrowing of money by the Commonwealth is of no effect unless the borrowing is authorised by an Act. For this purpose, *borrowing* includes obtaining an advance on overdraft.

38 Finance Minister may borrow for short periods

- (1) The Finance Minister, on behalf of the Commonwealth, may enter into an agreement with any bank for borrowing money from the bank by way of advances (including advances on overdraft) that are to be paid to the Commonwealth and repaid by the Commonwealth within 90 days.
- (2) The Finance Minister, on behalf of the Commonwealth, may enter into agreements in accordance with the regulations for borrowing money from banks or other persons. Such an agreement must require the money to be repaid within 60 days after the Commonwealth is notified by the lender of the amount borrowed.

39 Investment of public money

- (1) The Finance Minister may, on behalf of the Commonwealth, invest public money in any authorised investment.
- (2) The Treasurer may, on behalf of the Commonwealth, invest public money in any authorised investment.
- (2A) For the purposes of investing public money under this section in securities of the Commonwealth, the Commonwealth is to be treated as if it were a separate legal entity to the entity issuing the securities.

- (3) An investment of public money under this section must not be inconsistent with the terms of any trust that applies to the money concerned.
- (4) If an amount invested under this section was debited from a Special Account, then expenses of the investment may be debited from that Special Account.
- (5) Upon realisation of an investment of an amount debited from a Special Account, the proceeds of the investment must be credited to that Special Account.
- (6) At any time before an investment matures, the Finance Minister or Treasurer, as the case requires, may, on behalf of the Commonwealth, authorise the re-investment of the proceeds upon maturity in an authorised investment with the same entity.
- Note: The proceeds of investment of the original investment will not become public money when the investment matures because the proceeds will not be received by or on behalf of the Commonwealth before the proceeds are re-invested.
- (9) The CRF is appropriated as necessary for the purposes of this section.
- (10) In this section:

authorised investment means:

- (a) in relation to the Finance Minister—any of the following investments:
- (i) securities of the Commonwealth or of a State or Territory;
 - (ii) securities guaranteed by the Commonwealth, a State or a Territory;
 - (iii) a deposit with a bank, including a deposit evidenced by a certificate of deposit;
 - (iv) any other form of investment prescribed by the regulations; and
- (b) in relation to the Treasurer—any of the following investments:
- (i) securities of the Commonwealth or of a State or Territory;

Section 39A

- (ii) securities guaranteed by the Commonwealth, a State or a Territory;
- (iii) a deposit with a bank, including a deposit evidenced by a certificate of deposit;
- (iv) debt instruments issued or guaranteed by the government of a foreign country being debt instruments with an investment grade credit rating;
- (iva) debt instruments issued or guaranteed by a financial institution whose members consist of foreign countries, or of Australia and foreign countries, being debt instruments with an investment grade credit rating;
- (ivb) debt instruments denominated in Australian currency with an investment grade credit rating;
- (v) any other form of investment prescribed by the regulations.

39A Minister must inform Parliament of involvement in a company by the Commonwealth or a prescribed body

- (1) The Minister who has the responsibility for any of the following events must table a notice of the event in each House of the Parliament as soon as practicable after the event occurs:
 - (a) the Commonwealth or a prescribed body forms, or participates in forming, a company;
 - (b) the Commonwealth or a prescribed body acquires shares in a company (either by purchase or subscription) or disposes of shares in a company;
 - (c) the Commonwealth or a prescribed body becomes a member of a company;
 - (d) a variation occurs in the rights attaching to company shares held by the Commonwealth or a prescribed body;
 - (e) a variation occurs in rights of the Commonwealth or a prescribed body as a member of a company;
 - (f) the Commonwealth or a prescribed body ceases to be a member of a company.
- (2) The notice must be in the form, and contain the particulars, set out in the regulations.

- (3) This section does not apply to:
- (a) an event mentioned in paragraphs (1)(a) to (f) that occurs in relation to:
 - (i) an authorised investment made under section 39; or
 - (ii) an investment made under the *Future Fund Act 2006*; or
 - (b) anything that results from the transfer to a Minister of any property that is to be dealt with as unclaimed property under Part 9.7 of the *Corporations Act 2001*; or
 - (c) a company that is conducted for the purposes of an intelligence or security agency (within the meaning given by section 85ZL of the *Crimes Act 1914*).

- (4) In this section:

company includes a body of a kind prescribed by the regulations for the purposes of this section.

prescribed body means a body corporate that is, or is included in, an Agency.

39B Supplementary powers to form companies etc.

Formation of company etc.

- (1) If:
- (a) apart from this subsection, the Commonwealth does not have power to:
 - (i) form a company; or
 - (ii) participate in the formation of a company; and
 - (b) if the company were to come into existence, the company would be a company:
 - (i) that is specified in the regulations; and
 - (ii) whose objects or proposed activities are specified in the regulations;
- the Commonwealth has power to:
- (c) form the company; or
 - (d) participate in the formation of the company;
- as the case may be.

Section 39B

Acquisition of shares in company etc.

- (2) If:
- (a) apart from this subsection, the Commonwealth does not have power to:
 - (i) acquire shares in a company; or
 - (ii) become a member of a company;in circumstances that would result in the company becoming a Commonwealth company; and
 - (b) both:
 - (i) the company is specified in the regulations; and
 - (ii) the company's objects or proposed activities are specified in the regulations;the Commonwealth has power to:
 - (c) acquire shares in the company; or
 - (d) become a member of the company;as the case may be, in circumstances that would result in the company becoming a Commonwealth company.

Finance Minister's power

- (3) A power conferred on the Commonwealth by subsection (1) or (2) may be exercised on behalf of the Commonwealth by the Finance Minister.

Note: For delegation by the Finance Minister, see section 62.

Executive power of the Commonwealth

- (4) This section does not, by implication, limit the executive power of the Commonwealth.

Definitions

- (5) In this section:

acquire includes acquire by subscription.

Commonwealth company has the same meaning as in the *Commonwealth Authorities and Companies Act 1997*.

Part 6—Control and management of public property

40 Custody etc. of securities

An official who receives any bonds, debentures or other securities in the course of carrying out duties as an official must deal with them in accordance with the regulations.

Penalty: Imprisonment for 2 years.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

41 Misapplication or improper use of public property

An official or Minister must not misapply public property or improperly dispose of, or improperly use, public property.

Penalty: Imprisonment for 7 years.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

42 Liability for loss etc. of public property

- (1) If:
 - (a) a loss of public property occurs; and
 - (b) at the time of the loss, an official or Minister had nominal custody of the property as described in subsection (2);the official or Minister is liable to pay to the Commonwealth the amount of the loss. However, it is a defence if the person proves that he or she took reasonable steps in all the circumstances to prevent the loss.
- (2) A person (the *custodian*) has nominal custody of public property if both of the following conditions are satisfied:
 - (a) the custodian has taken delivery of the property and has not returned it to the person entitled to receive the property on behalf of the Commonwealth;

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- (b) when the custodian took delivery of the property the custodian signed a written acknowledgment that the property was delivered on the express condition that the custodian would at all times take strict care of the property.
- (3) If:
- (a) a loss of public property occurs; and
 - (b) an official or Minister caused or contributed to the loss by misconduct, or by a deliberate or serious disregard of reasonable standards of care;
- the official or Minister is liable to pay to the Commonwealth the amount of the loss. However, if the person's misconduct or disregard was not the sole cause of the loss, the person is liable to pay only so much of the amount of the loss as is just and equitable having regard to the person's share of the responsibility for the loss.
- (4) A person's liability under this section that arises when the person is an official or Minister is not avoided merely because the person ceases to be an official or Minister.
- (5) An amount payable to the Commonwealth under this section is recoverable as a debt in a court of competent jurisdiction.
- (6) The Commonwealth is not entitled to recover amounts from the same person under both subsections (1) and (3) for the same loss.
- (7) In this section:

amount of the loss means:

- (a) if the property is damaged—the value of the property or the cost of repairing the property, whichever is less;
- (b) in all other cases—the value of the property.

loss includes destruction or damage.

43 Gifts of public property

An official or Minister must not make a gift of public property unless:

- (a) the making of the gift is expressly authorised by law; or

- (b) the Finance Minister has given written approval to the gift being made; or
- (c) the Commonwealth acquired the property to use it as a gift.

Penalty: Imprisonment for 7 years.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Part 6A—Interjurisdictional agencies

43A Interjurisdictional agencies

- (1) The regulations may prescribe:
 - (a) an Agency to be an interjurisdictional agency for the purposes of this section; and
 - (b) the persons who comprise an interjurisdictional agency (including employees of a State, for example); and
 - (c) a Minister of a State, the Australian Capital Territory, or the Northern Territory to be a State/Territory Minister for an interjurisdictional agency.
- (2) The regulations may provide for the following:
 - (a) a Chief Executive of an interjurisdictional agency to give to a State/Territory Minister the reports, documents and information in relation to the operations of an interjurisdictional agency that the State/Territory Minister requires, within the time limits set by the State/Territory Minister;
 - (b) the types of reports, documents and information that a State/Territory Minister may require under paragraph (a);
 - (c) the circumstances in which a State/Territory Minister may require a Chief Executive to give to the State/Territory Minister the reports, documents and information mentioned in paragraph (b);
 - (d) anything that is necessary or convenient to be prescribed to give effect to paragraphs (a) to (c).

Part 7—Special responsibilities of Chief Executives**44 Promoting proper use of Commonwealth resources**

- (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.
- (1A) The responsibility conferred on the Chief Executive by subsection (1) includes, and is taken to have included, the power to:
- (a) make arrangements, on behalf of the Commonwealth, in relation to the affairs of the Agency; and
 - (b) vary those arrangements on behalf of the Commonwealth; and
 - (c) administer those arrangements on behalf of the Commonwealth.

Note: Some Chief Executives have delegated this power under section 53.

- (1B) Subsection (1A) does not authorise the Chief Executive to exercise, on behalf of the Commonwealth, a power conferred on the Commonwealth by section 32B.
- (2) In discharging the responsibility, and exercising the power, conferred by this section, the Chief Executive must comply with this Act, the regulations, Finance Minister's Orders, Special Instructions and any other law.
- (3) In this section:
- administer***, in relation to an arrangement, includes give effect to.
- arrangement*** includes contract, agreement or deed.
- make***, in relation to an arrangement, includes enter into.
- proper use*** means efficient, effective, economical and ethical use that is not inconsistent with the policies of the Commonwealth.

Section 44A

44A Keeping responsible Minister and Finance Minister informed

- (1) A Chief Executive must:
 - (a) give the Minister responsible for the Agency such reports, documents and information in relation to the operations of the Agency as that Minister requires; and
 - (b) give the Finance Minister such reports, documents and information in relation to the financial affairs of the Agency as that Minister requires.
- (2) A Chief Executive must comply with a requirement under paragraph (1)(a) or (b) within the time limits set by the Minister concerned.
- (3) This section does not limit any other power that a Minister has to require information from an Agency.

45 Fraud control plan

A Chief Executive must implement a fraud control plan for the Agency. For this purpose, *fraud* includes fraud by persons outside the Agency in relation to activities of the Agency.

46 Audit committee

- (1) A Chief Executive must establish and maintain an audit committee with functions that include:
 - (a) helping the Agency to comply with obligations under this Act, the regulations and Finance Minister's Orders; and
 - (b) providing a forum for communication between the Chief Executive, the senior managers of the Agency, the internal auditors of the Agency and the Auditor-General.
- (2) The committee must be constituted in accordance with the regulations (if any).

47 Recovery of debts

- (1) A Chief Executive must pursue recovery of each debt for which the Chief Executive is responsible unless:

- (a) the debt has been written off as authorised by an Act; or
 - (b) the Chief Executive is satisfied that the debt is not legally recoverable; or
 - (c) the Chief Executive considers that it is not economical to pursue recovery of the debt.
- (2) For the purposes of subsection (1), a Chief Executive is responsible for:
- (a) debts owing to the Commonwealth in respect of the operations of the Agency; and
 - (b) debts owing to the Commonwealth that the Finance Minister has allocated to the Chief Executive.

48 Accounts and records

- (1) A Chief Executive must ensure that accounts and records of the Agency are kept as required by the Finance Minister's Orders.
- (2) The Finance Minister is entitled to full and free access to the accounts and records kept under subsection (1). However, the Finance Minister's access is subject to any law that prohibits disclosure of particular information.

49 Annual financial statements

- (1) A Chief Executive must give to the Auditor-General the annual financial statements required by the Finance Minister's Orders.
 - (2) The financial statements must be prepared in accordance with the Finance Minister's Orders and must give a true and fair view of the matters that those Orders require to be included in the statements.
 - (3) If financial statements prepared in accordance with the Finance Minister's Orders would not otherwise give a true and fair view of the matters required by those Orders, the Chief Executive must add such information and explanations as will give a true and fair view of those matters.
 - (4) In the financial statements, the Chief Executive must state whether, in his or her opinion, the financial statements give a true and fair view of the matters required by Finance Minister's Orders.
-

Section 50

50 Additional financial statements

A Chief Executive must, when required by the Finance Minister, give the Finance Minister financial statements covering a period of less than a financial year. The Finance Minister may require the statements to include some or all of the details that are required to be included in the annual financial statements.

51 Reporting requirements if Agency ceases to exist or Agency functions are transferred

Agency ceases to exist

- (1) If an Agency (the *old Agency*) ceases to exist, then, to the extent that its functions are not transferred to one or more other Agencies, the financial statements that would have been required to be prepared under section 49 by the Chief Executive of the old Agency must be prepared by another Chief Executive nominated by the Finance Minister.

Transfer of Agency functions

- (2) If a function of an Agency (the *transferring Agency*) is transferred to one or more other Agencies, either because the transferring Agency ceases to exist or for any other reason, the financial statements under section 49 for that function must be prepared by the Chief Executive or Chief Executives nominated by the Finance Minister.

52 Chief Executive's instructions

- (1) The regulations may authorise Chief Executives to give instructions to officials in their Agencies on any matter on which regulations may be made under this Act.
- (2) An instruction cannot create offences or impose penalties.
- (3) An instruction is not a legislative instrument.

53 Chief Executive may delegate powers

- (1) A Chief Executive may, by written instrument, delegate any of the following powers and functions to an official in any Agency:
 - (a) the Chief Executive's powers or functions under this Act (including powers or functions that have been delegated to the Chief Executive under section 62 or 62A);
 - (b) the Chief Executive's power to give instructions under regulations referred to in section 52.

- (1AA) If:
 - (a) the Chief Executive delegates a power or function to a person; and
 - (b) the power or function is not one that has been delegated to the Chief Executive under section 62 or 62A;the Chief Executive may give directions to the person in relation to the exercise of that power or the performance of that function. The person must comply with any such directions.

- (1A) If the Chief Executive delegates to a person (the *second delegate*) a power or function that has been delegated to the Chief Executive under section 62 or 62A, then that power or function, when exercised or performed by the second delegate, is taken for the purposes of this Act to have been exercised or performed by the Finance Minister or Treasurer.

- (2) If the Chief Executive is subject to directions in relation to the exercise of a power, or the performance of a function, delegated to the Chief Executive under section 62 or 62A, then:
 - (a) the Chief Executive must give corresponding directions to the second delegate; and
 - (b) the Chief Executive may give other directions (not inconsistent with those corresponding directions) to the second delegate in relation to the exercise of that power or the performance of that function.

- (3) The second delegate must comply with any directions of the Chief Executive.

Part 8—Reporting and audit

54 Finance Minister must publish monthly financial statements

- (1) As soon as practicable after the end of each month of a financial year, the Finance Minister must publish financial statements in relation to that month.
- (2) The statements must be in a form that is consistent with the budget estimates for the financial year.
- (3) The statements may include any additional information that the Finance Minister considers relevant.

55 Preparation of annual statements by Finance Minister

- (1) As soon as practicable after the end of each financial year, the Finance Minister must prepare the annual financial statements required by the regulations.
- (2) The Finance Minister must give the statements to the Auditor-General as soon as practicable after they are prepared.
- (3) If the Finance Minister has not given the statements to the Auditor-General within 5 months after the end of the financial year, the Finance Minister must cause to be tabled in each House of the Parliament a statement of the reasons why the statements were not given to the Auditor-General within that period.

56 Audit of Finance Minister's annual financial statements

- (1) As soon as practicable after receiving financial statements under section 55, the Auditor-General must examine the statements and prepare an audit report in accordance with the regulations.
- (2) Instead of preparing a single report, the Auditor-General may prepare an initial report and one or more later supplementary reports.

- (3) The Auditor-General must give a copy of each report to the Finance Minister.
- (4) The Finance Minister must cause a copy of each report to be tabled in each House of the Parliament as soon as practicable after receipt. Except in the case of a supplementary report, the copy that is tabled must be accompanied by a copy of the annual financial statements.

57 Audit of annual financial statements of Agency

- (1) As soon as practicable after receiving financial statements under subsection 49(1) for an Agency, the Auditor-General must examine the statements and report in accordance with this section to the Minister responsible for the Agency.
- (2) In the report, the Auditor-General must state whether, in the Auditor-General's opinion, the financial statements:
 - (a) have been prepared in accordance with the Finance Minister's Orders; and
 - (b) give a true and fair view of the matters required by those Orders.

If the Auditor-General is not of that opinion, the Auditor-General must state the reasons.

- (3) If the Auditor-General is of the opinion that failing to prepare the financial statements in accordance with the Finance Minister's Orders has a quantifiable financial effect, the Auditor-General must quantify that financial effect and state the amount.
- (4) If the Auditor-General is of the opinion that the Chief Executive has contravened section 48, the Auditor-General must state particulars of the contravention.
- (5) If the Auditor-General is of the opinion that the Auditor-General did not obtain all necessary information and explanations, the Auditor-General must state particulars of the shortcomings.
- (6) Instead of preparing a single report, the Auditor-General may prepare an initial report and one or more later supplementary reports.

Section 57

- (7) A copy of the financial statements and the Auditor-General's report or reports must be included in the Agency's annual report that is tabled in the Parliament.

Part 9—Miscellaneous

58 Modifications of Act for intelligence or security agency or prescribed law enforcement agency

- (1) The application of this Act to an intelligence or security agency, or to a prescribed law enforcement 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*.

prescribed law enforcement agency means a law enforcement agency, within the meaning of section 85ZL of the *Crimes Act 1914*, that is prescribed by the regulations for the purposes of this definition.

60 Misuse of Commonwealth credit card

- (1) An official or Minister must not use a Commonwealth credit card, or a Commonwealth credit card number, to obtain cash, goods or services otherwise than for the Commonwealth.

Penalty: Imprisonment for 7 years.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (2) Subsection (1) does not apply to a particular use of a Commonwealth credit card or Commonwealth credit card number if:
 - (a) the use is authorised by the regulations; and
 - (b) the Commonwealth is reimbursed in accordance with the regulations.

Section 62

(3) In this section:

Commonwealth credit card means a credit card issued to the Commonwealth to enable the Commonwealth to obtain cash, goods or services on credit.

62 Finance Minister may delegate powers

- (1) The Finance Minister may, by written instrument, delegate to an official any of the Finance Minister's powers or functions under this Act, except:
 - (a) the power to issue Special Instructions under section 16; or
 - (b) the power to make a determination under section 20; or
 - (c) a function under subsection 39A(1); or
 - (d) the power to make Orders under section 63.
- (2) In exercising powers or functions under a delegation, the official must comply with any directions of the Finance Minister.
- (3) The Finance Minister must not delegate any of the Finance Minister's powers under section 39B to an official unless the official is a Chief Executive.

62A Treasurer may delegate powers

- (1) The Treasurer may, by signed instrument, delegate to any of the following officials of the Department of the Treasury any of the Treasurer's powers or functions under this Act, except a function under subsection 39A(1):
 - (a) an official who is an SES employee;
 - (b) an official who is an APS employee who holds or performs the duties of an Executive Level 2, or equivalent, position;
 - (c) an official who occupies an office or position at an equivalent level to that of an SES employee, or an Executive Level 2.
- (2) The Treasurer may, by signed instrument, give directions in relation to either or both of the following:
 - (a) the class or classes of authorised investment in which public money may be invested;
 - (b) matters of risk and return.

Section 63

- (3) The Treasurer must not give a direction under subsection (2) that has the purpose, or has or is likely to have the effect, of directly or indirectly requiring a delegate or delegates to allocate financial assets to a particular company, partnership, trust, body politic or business.
- (4) If, at any time, a delegation is in force under subsection (1), there must be at least one direction in force under subsection (2).
- (5) In exercising powers or functions under a delegation, a delegate must comply with:
 - (a) a direction in force under subsection (2); and
 - (b) any other direction given, by signed instrument, to the delegate by the Treasurer.
- (6) The Treasurer must table a direction given under subsection (2) or paragraph (5)(b) in each House of the Parliament no later than 15 sitting days of that House after it is given.
- (7) In this section:

authorised investment has the same meaning as in paragraph (b) of the definition of *authorised investment* in subsection 39(10).

63 Finance Minister's Orders

- (1) The Finance Minister may, by legislative instrument, 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.

64 Guidelines by Ministers

- (1) The regulations may authorise a Minister to issue guidelines to officials on matters within the Minister's responsibility. The matters must be ones about which regulations may be made under this Act.
- (2) A guideline cannot create offences or impose penalties.

Section 65

- (3) A guideline is a legislative instrument, but neither section 42 (disallowance) nor Part 6 (sunsetting) of the *Legislative Instruments Act 2003* applies to the guideline.

65 Regulations

- (1) The Governor-General may make regulations prescribing matters:
- (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may make provision:
- (a) relating to any of the following matters:
 - (i) handling, spending and accounting for public money;
 - (ia) the Finance Minister considering a report from specified persons before authorising under subsection 33(1), or waiving under subsection 34(1), a total amount that is more than a specified amount;
 - (iaa) the Finance Minister considering a report from specified persons before setting off under section 35, in a case where the amount of the set-off is more than a specified amount;
 - (ib) the Finance Minister authorising payment of an amount if, at the time of a person's death, the Commonwealth owed that amount to the person (including authorising without requiring production of probate of the will of the person or letters of administration of the estate of the person);
 - (ii) commitments to spend public money;
 - (iii) recovering amounts owing to the Commonwealth;
 - (iv) using or disposing of public property, or acquiring property that is to be public property;
 - (b) generally for ensuring or promoting:
 - (i) the proper use and management of public money, public property and other resources of the Commonwealth;
 - (ii) proper accountability for the use and management of public money, public property and other resources of the Commonwealth;

Section 65

- (c) for penalties for offences against the regulations by way of fines of up to 10 penalty units

Note: Section 4AA of the *Crimes Act 1914* sets the current value of a penalty unit.

Endnotes

Endnote 1—Legislation history

Endnotes

Endnote 1—Legislation history

This endnote sets out details of the legislation history of the *Financial Management and Accountability Act 1997*.

Act	Number and year	Assent date	Commencement date	Application, saving and transitional provisions
Financial Management and Accountability Act 1997	154, 1997	24 Oct 1997	1 Jan 1998 (<i>see Gazette</i> 1997, No. GN49)	
Financial Management Legislation Amendment Act 1999	20, 1999	19 Apr 1999	ss. 5–9 and Schedule 1 (items 1–33): 1 July 1999 (<i>a</i>)	ss. 5–9
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Schedule 1 (item 481): 5 Dec 1999 (<i>see Gazette</i> 1999, No. S584) (<i>b</i>)	—
Financial Management and Accountability Amendment Act 2000	80, 2000	30 June 2000	30 June 2000	—
Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000	137, 2000	24 Nov 2000	ss. 1–3 and Schedule 1 (items 1, 4, 6, 7, 9–11, 32): Royal Assent Remainder: 24 May 2001	Sch. 2 (items 418, 419)
Financial Framework Legislation Amendment Act 2005	8, 2005	22 Feb 2005	s. 4, Schedule 1 (items 139–144, 496) and Schedule 2 (items 113–118, 174): Royal Assent	s. 4, Sch. 1 (item 496) and Sch. 2 (item 174)
Financial Framework Legislation Amendment Act (No. 1) 2006	30, 2006	6 Apr 2006	Schedule 2: 1 July 2006 Schedule 3 (item 10): 24 Mar 2005 Remainder: 7 Apr 2006	—

Endnote 1—Legislation history

Act	Number and year	Assent date	Commencement date	Application, saving and transitional provisions
Financial Framework Legislation Amendment Act (No. 1) 2007	166, 2007	25 Sept 2007	Schedule 1 (items 1–8, 10, 13–16, 19, 21): 1 Jan 2008 (<i>see</i> F2007L04788) Remainder: Royal Assent	Sch. 1 (items 13(2), 14–18)
Commonwealth Securities and Investment Legislation Amendment Act 2008	78, 2008	12 July 2008	Schedule 1 (items 6–9, 15): 13 July 2008	Sch. 1 (item 15)
Financial Framework Legislation Amendment Act 2008	90, 2008	20 Sept 2008	Schedule 1 (items 15–61, 68–74): 20 Mar 2009	Sch. 1 (items 68–74)
Financial Framework Legislation Amendment Act 2010	148, 2010	17 Dec 2010	Schedule 8: 1 Mar 2011	—
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Schedule 6 (items 125–128): 19 Apr 2011	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Schedule 2 (items 604, 605) and Schedule 3 (items 10, 11): 27 Dec 2011	Sch. 2 (item 605) and Sch. 3 (items 10, 11)
Financial Framework Legislation Amendment Act (No. 1) 2011	89, 2011	4 Aug 2011	Schedule 2: 1 Sept 2011 (<i>see</i> F2011L01793)	—
Financial Framework Legislation Amendment Act (No. 1) 2012	25, 2012	4 Apr 2012	Schedule 4: 5 Apr 2012	Sch. 4 (items 14, 15)
Financial Framework Legislation Amendment Act (No. 3) 2012	77, 2012	28 June 2012	Schedule 1 (items 2–9): Royal Assent	Sch. 1 (item 9)
Financial Framework Legislation Amendment Act (No. 2) 2013	53, 2013	28 May 2013	Schedule 1 (items 2–4): 29 May 2013	Sch. 1 (item 4)

Endnotes

Endnote 1—Legislation history

Title	Gazettal or FRLI registration date	Commencement date	Application, saving and transitional provisions
Parliamentary Service (Consequential and Transitional) Determination 2000/1	31 Aug 2000	c. 2.1: 5 Dec 1999 (<i>see</i> c. 1.2)	—

- (a) The *Financial Management and Accountability Act 1997* was amended by Schedule 1 (items 1–33) only of the *Financial Management Legislation Amendment Act 1999*, subsection 2(1) of which provides as follows:
- (1) If this Act receives the Royal Assent before 1 May 1999, then this Act commences on 1 July 1999.
- (b) The *Financial Management and Accountability Act 1997* was amended by Schedule 1 (item 481) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:
- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
 - (2) Subject to this section, this Act commences at the commencing time.

Endnote 2—Amendment history

Endnote 2—Amendment history

This endnote sets out the amendment history of the *Financial Management and Accountability Act 1997*.

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
Reader's Guide.....	am. No. 20, 1999
Part 2	
Heading to Part 2.....	rs. No. 148, 2010
s. 5.....	am. Nos. 20 and 146, 1999; Determination No. 1 of 2000; No. 78, 2008; No. 148, 2010; No. 5, 2011; No. 25, 2012
s. 6.....	rs. No. 90, 2008
Note to s. 6.....	rs. No. 20, 1999; No. 90, 2008
s. 7.....	rep. No. 90, 2008
Part 3	
ss. 10, 11.....	am. No. 90, 2008
Heading to s. 12.....	rs. No. 90, 2008
s. 12.....	am. No. 90, 2008
Note to s. 12(2).....	rep. No. 25, 2012
ss. 13, 14.....	am. No. 90, 2008
s. 16.....	am. No. 90, 2008
Part 4	
Heading to Part 4.....	rs. No. 20, 1999
Division 1	
Div. 1 of Part 4.....	rs. No. 20, 1999
ss. 17, 18.....	rep. No. 20, 1999
s. 19.....	rs. No. 20, 1999
Division 1A	
Div. 1A of Part 4.....	ad. No. 20, 1999
s. 20.....	rs. No. 20, 1999 am. No. 8, 2005; No. 89, 2011
Note to s. 20(1).....	ad. No. 166, 2007

Endnotes

Endnote 2—Amendment history

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
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Note to s. 20(4).....	ad. No. 8, 2005
s. 21	rs. No. 20, 1999 am. No. 8, 2005
Note to s. 21(1).....	rep. No. 8, 2005
Notes 1, 2 to s. 21(1)	ad. No. 8, 2005
Note 3 to s. 21(1).....	ad. No. 166, 2007
s. 22	rs. No. 20, 1999 am. No. 25, 2012
ss. 23–25.....	rep. No. 20, 1999

Division 2

s. 26	am. No. 20, 1999; No. 90, 2008; No. 25, 2012
Note to s. 26	rep. No. 25, 2012
s. 27	am. No. 20, 1999; No. 90, 2008; No. 25, 2012

Division 3

Heading to s. 28.....	rs. No. 166, 2007
s. 28	am. No. 20, 1999; No. 166, 2007
s. 29.....	rep. No. 20, 1999
s. 30.....	rs. No. 20, 1999; No. 166, 2007
s. 30A	ad. No. 80, 2000 am. No. 166, 2007
Heading to s. 31.....	rs. No. 148, 2010
s. 31	am. No. 20, 1999 rs. No. 166, 2007
Subhead. to s. 32(5).....	am. No. 5, 2011
s. 32	rs. No. 166, 2007 am. No. 5, 2011

Division 3A

Div. 3A of Part 4	ad. No. 166, 2007
Subhead. to s. 32A(4)	rs. No. 25, 2012
s. 32A	ad. No. 166, 2007

Endnote 2—Amendment history

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
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Division 3B

Div. 3B of Part 4.....	ad. No. 77, 2012
s. 32B	ad. No. 77, 2012
s. 32C	ad. No. 77, 2012
s. 32D.....	ad. No. 77, 2012
s. 32E.....	ad. No. 77, 2012

Division 4

s. 33	am. No. 30, 2006; No. 90, 2008
Note to s. 33(1).....	ad. No. 90, 2008
Note to s. 33(3).....	ad. No. 30, 2006 am. No. 90, 2008
s. 34	am. No. 90, 2008
Note to s. 34(1).....	ad. No. 90, 2008
s. 35	am. No. 20, 1999 rep. No. 90, 2008 ad. No. 25, 2012
s. 36.....	am. No. 5, 2011

Part 5

Heading to Part 5	rs. No. 148, 2010
s. 39	rs. No. 20, 1999 am. Nos. 78 and 90, 2008
Note to s. 39(6).....	am. No. 90, 2008
s. 39A	ad. No. 148, 2010
s. 39B	ad. No. 53, 2013

Part 6

ss. 40, 41	am. No. 90, 2008
s. 43	am. No. 90, 2008

Part 6A

Part 6A	ad. No. 148, 2010
s. 43A	ad. No. 148, 2010

Endnotes

Endnote 2—Amendment history

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
Part 7	
Heading to s. 44.....	am. No. 90, 2008; No. 148, 2010 rs. No. 25, 2012
s. 44.....	am. No. 90, 2008; No. 148, 2010; No. 77, 2012
Note to s. 44(1).....	ad. No. 90, 2008 rep. No. 77, 2012
s. 44A.....	ad. No. 90, 2008
s. 46.....	rs. No. 90, 2008 am. No. 89, 2011
Heading to s. 50.....	am. No. 90, 2008
s. 50.....	am. No. 90, 2008
s. 51.....	rs. No. 90, 2008
s. 52.....	am. No. 89, 2011
s. 53.....	am. No. 20, 1999; No. 8, 2005; No. 166, 2007
Part 8	
s. 54.....	rs. No. 20, 1999
Part 9	
Heading to s. 58.....	am. No. 30, 2006
s. 58.....	am. No. 30, 2006; No. 46, 2011
s. 59.....	am. No. 8, 2005 rep. No. 90, 2008
s. 60.....	am. No. 90, 2008
s. 61.....	rep. No. 137, 2000
s. 62.....	am. No. 148, 2010; No. 25, 2012; No. 53, 2013
s. 62A.....	ad. No. 20, 1999 rs. No. 78, 2008 am. No. 148, 2010
s. 63.....	am. No. 90, 2008
s. 64.....	am. No. 90, 2008; No. 89, 2011
s. 65.....	am. No. 90, 2008; No. 25, 2012

Endnote 2—Amendment history

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
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Appendix A	rep. No. 20, 1999
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Endnotes

Endnote 3—Uncommenced amendments [none]

Endnote 3—Uncommenced amendments [none]

There are no uncommenced amendments.

Endnote 4—Misdescribed amendments [none]

Endnote 4—Misdescribed amendments [none]

There are no misdescribed amendments.