



# **Financial Framework Legislation Amendment Act 2008**

**No. 90, 2008**

**An Act to amend the *Financial Management and  
Accountability Act 1997* and other legislation, and  
for other purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# Financial Framework Legislation Amendment Act 2008

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## **An Act to amend the *Financial Management and Accountability Act 1997* and other legislation, and for other purposes**

[Assented to 20 September 2008]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Financial Framework Legislation  
Amendment Act 2008*.

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	20 September 2008
2. Schedule 1, items 1 to 14	1 July 2009.	1 July 2009
3. Schedule 1, items 15 to 66	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	20 March 2009
4. Schedule 1, item 67	1 July 2009.	1 July 2009
5. Schedule 1, items 68 to 76	At the same time as the provision(s) covered by table item 3.	20 March 2009
6. Schedule 2	The later of: (a) the start of the day on which item 20 of Schedule 1 to this Act commences; and (b) immediately after the commencement of section 83 of the <i>Defence Home Ownership Assistance Scheme Act 2008</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	20 March 2009 (paragraph (a) applies)
Note:	This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.	

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- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

### **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## Schedule 1—Main amendments

### Part 1—Amendments

#### *Albury-Wodonga Development Act 1973*

##### **1 Subsection 3(1) (definition of *chief executive officer*)**

Omit “highest ranked member of the staff of the Corporation, however designated”, substitute “person appointed under section 10A”.

##### **2 Paragraph 5A(5)(b)**

Omit “*Legislative Instruments Act 2000*”, substitute “*Legislative Instruments Act 2003*”.

##### **3 At the end of subsection 9(1)**

Add:

Note: The *Commonwealth Authorities and Companies Act 1997* applies to the Corporation. That Act deals with matters relating to Commonwealth authorities, including reporting and accountability, banking and investment, and the conduct of officers.

##### **4 Section 9A**

Repeal the section.

##### **5 Paragraph 15(2)(g)**

Repeal the paragraph, substitute:

(g) fails, without reasonable excuse, to comply with his or her obligations under section 27F or 27J of the *Commonwealth Authorities and Companies Act 1997*;

##### **6 Section 16**

Repeal the section.

##### **7 Subsection 21(3)**

After “*Public Service Act 1999*”, insert “)”.

##### **8 Section 27**

Repeal the section.



**9 Subsection 28(1)**

Omit “(1)”.

**10 Subsection 28(2)**

Repeal the subsection.

**11 Section 30**

Repeal the section.

**12 Paragraph 31A(1)(b)**

Repeal the paragraph.

**13 Subsection 31B(1)**

Omit “, 26 or 28”, substitute “or 26”.

**14 Sections 32 and 33**

Repeal the sections.

***Financial Management and Accountability Act 1997***

**15 Section 6**

Repeal the section, substitute:

**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.

## Schedule 1 Main amendments

### Part 1 Amendments

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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.

#### **16 Section 7**

Repeal the section.

#### **17 Section 10**

Omit “Finance Minister’s Orders” (wherever occurring), substitute “regulations”.

#### **18 Sections 10 and 11 (penalty)**

Omit “Maximum penalty”, substitute “Penalty”.

#### **19 Section 12**

Before “An”, insert “(1)”.

Note: The heading to section 12 is replaced by the heading “**Receipt and spending of public money by outsiders**”.

#### **20 Section 12**

Omit “or custody”, substitute “, custody or payment”.

#### **21 Paragraph 12(a)**

After “for the”, insert “agreement or”.

#### **22 Paragraph 12(b)**

After “the”, insert “agreement or”.

#### **23 Section 12**

Omit “For this purpose, *outsider* means any person other than the Commonwealth, an official or a Minister.”.

#### **24 Section 12 (penalty)**

Omit “Maximum penalty”, substitute “Penalty”.

#### **25 At the end of section 12**

Add:

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- (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.

Note: Section 27 allows a drawing right to be issued to an official or a Minister to debit an amount against an appropriation (as a result of a payment of public money by an outsider).

- (3) In this section:

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

**26 Section 13**

Omit “Finance Minister’s Orders”, substitute “regulations”.

**27 Sections 13 and 14 (penalty)**

Omit “Maximum penalty”, substitute “Penalty”.

**28 Subsection 16(1)**

After “Minister may”, insert “, by legislative instrument,”.

**29 Subsection 16(1)**

Omit “in writing”.

**30 Subsection 16(3) (penalty)**

Omit “Maximum penalty”, substitute “Penalty”.

**31 Section 26 (penalty)**

Omit “Maximum penalty”, substitute “Penalty”.

**32 Paragraph 27(1)(a)**

Omit “for a specified purpose”.

**33 Paragraphs 27(1)(b) and (c)**

Omit “a particular”, substitute “an”.

**34 At the end of subsection 33(1)**

Add:

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).

**35 Subsection 33(2)**

Repeal the subsection.

**36 Subsection 33(3) (note)**

Omit “or otherwise relates to the Agency’s outcomes”.

**37 At the end of subsection 34(1)**

Add:

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).

**38 Subsection 34(2)**

Repeal the subsection.

**39 Section 35**

Repeal the section.

**40 Subsections 39(1) and (2)**

After “may”, insert “, on behalf of the Commonwealth,”.

**41 After subsection 39(2)**

Insert:

(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.

**42 Subsection 39(6)**

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After “may”, insert “, on behalf of the Commonwealth,”.

**43 Subsection 39(6) (at the end of the note)**

Add “before the proceeds are re-invested”.

**44 Subsections 39(7) and (8)**

Repeal the subsections.

**45 Section 40**

Omit “Finance Minister’s Orders”, substitute “regulations”.

**46 Sections 40, 41 and 43 (penalty)**

Omit “Maximum penalty”, substitute “Penalty”.

**47 At the end of subsection 44(1)**

Add:

Note: A Chief Executive has the power to enter into contracts, on behalf of the Commonwealth, in relation to the affairs of the Agency. Some Chief Executives have delegated this power under section 53.

Note: The heading to section 44 is altered by inserting “**etc.**” after “**use**”.

**48 Subsection 44(2)**

Repeal the subsection, substitute:

(2) In doing so, the Chief Executive must comply with this Act, the regulations, Finance Minister’s Orders, Special Instructions and any other law.

**49 Subsection 44(3) (at the end of the definition of *proper use*)**

Add “that is not inconsistent with the policies of the Commonwealth”.

**50 After section 44**

Insert:

**44A Keeping responsible Minister and Finance Minister informed**

(1) A Chief Executive must:

## Schedule 1 Main amendments

### Part 1 Amendments

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- (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.

#### **51 Section 46**

Repeal the section, substitute:

#### **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 and the internal and external auditors of the Agency.
- (2) The committee must be constituted in accordance with the regulations (if any).

#### **52 Subsection 50(1)**

Omit "(1)".

Note: The heading to section 50 is altered by omitting "**and information**".

#### **53 Subsection 50(2)**

Repeal the subsection.

#### **54 Section 51**

Repeal the section, substitute:

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## **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.

## **55 Section 59**

Repeal the section.

## **56 Subsection 60(1) (penalty)**

Omit “Maximum penalty”, substitute “Penalty”.

## **57 Paragraphs 60(2)(a) and (b)**

Omit “Finance Minister’s Orders”, substitute “regulations”.

## **58 Subsection 63(1)**

After “Minister may”, insert “, by legislative instrument,”.

## **59 Subsection 63(3)**

Repeal the subsection.

## **60 At the end of section 64**

Add:

- (3) A guideline is a legislative instrument.

**61 After subparagraph 65(2)(a)(i)**

Insert:

- (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;
- (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);

***Public Service Act 1999***

**62 Subsection 73(5) (note)**

Omit "or otherwise relates to the Agency's outcomes".

***Reserve Bank Act 1959***

**63 Subsection 7A(3)**

Omit "27", substitute "27P".

**64 Paragraph 25L(4)(c)**

Before "is absent", insert "the member".

**65 Paragraph 25L(4)(d)**

Before "fails", insert "the member".

**66 Paragraph 25L(4)(d)**

Omit "21", substitute "27F or 27J".



## **Part 2—Other provisions**

### **67 Saving—annual report by Albury-Wodonga Development Corporation**

Despite the repeal of sections 32 and 33 of the *Albury-Wodonga Development Act 1973* made by this Schedule, those sections (as in force immediately before the commencement of item 14) continue to apply on and after that commencement in relation to the financial year ending on 30 June 2009.

### **68 Application—receipt and spending of public money by outsiders**

- (1) The amendment made by item 20 applies in relation to agreements or arrangements entered into on or after the commencement of that item.
- (2) Subsection 12(2) of the *Financial Management and Accountability Act 1997* (as inserted by this Act) applies in relation to agreements or arrangements entered into on or after the commencement of this item.

### **69 Application—drawing rights**

The amendments made by items 32 and 33 apply in relation to drawing rights issued on or after the commencement of those items.

### **70 Saving—payments pending probate etc.**

Despite the repeal of section 35 of the *Financial Management and Accountability Act 1997* made by this Schedule, that section (as in force immediately before the commencement of item 39) continues to apply on and after that commencement in relation to payments that were authorised before that commencement.

### **71 Transitional—investment of public money**

- (1) If the corporation referred to in subsection 39(7) of the *Financial Management and Accountability Act 1997* (as in force immediately before the commencement of item 44) held an investment under section 39 of that Act immediately before the commencement of that item, the investment is taken, on and after the commencement of that item, to be held by the Finance Minister on behalf of the Commonwealth.

- (2) If the corporation referred to in subsection 39(8) of the *Financial Management and Accountability Act 1997* (as in force immediately before the commencement of item 44) held an investment under section 39 of that Act immediately before the commencement of that item, the investment is taken, on and after the commencement of that item, to be held by the Treasurer on behalf of the Commonwealth.

## 72 Transitional—audit committees

- (1) This item applies to an audit committee established in accordance with section 46 of the *Financial Management and Accountability Act 1997* before the commencement of this item and in existence immediately before that commencement.
- (2) The audit committee continues in existence on and after that commencement for the purposes of section 46 of that Act, as amended by this Act.
- (3) However, if the audit committee does not comply with section 46 of that Act, as amended by this Act, the Chief Executive concerned must take whatever steps are necessary to ensure that the committee does so comply.

## 73 Saving—provision of information

Despite the repeal of subsection 50(2) of the *Financial Management and Accountability Act 1997* made by this Schedule, that subsection (as in force immediately before the commencement of this item) continues to apply on and after that commencement in relation to a requirement made before that commencement.

## 74 Application—change of Agency functions

The amendment made by item 54 applies in relation to:

- (a) Agencies that cease to exist on or after the commencement of that item; and
- (b) functions of an Agency that are transferred on or after the commencement of that item.

## 75 Transitional regulations

The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments made by this Schedule.

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## **76 Australian Water Fund Account**

- (1) At the commencement of this item, the Australian Water Fund Account established by the *National Water Commission Act 2004* is debited by:
  - (a) if at that commencement the balance of the Account is at least \$320,000,000—\$320,000,000; or
  - (b) if at that commencement the balance of the Account is less than \$320,000,000—an amount equal to that balance.
  
- (2) At the commencement of this item, the Chief Executive Officer of the National Water Commission established by the *National Water Commission Act 2004* ceases to have the function of administering financial assistance, awarded by the Minister administering that Act to particular projects relating to Australia's water resources, from the Australian Water Fund Account established by that Act to the extent that assistance was provided from that Account before the commencement of this item and related to the Water Smart Australia Program.

## Schedule 2—Consequential amendments

### *Defence Home Ownership Assistance Scheme Act 2008*

#### **1 Subsection 83(1)**

Omit “or custody”, substitute “, custody or payment”.

#### **2 Application**

The amendment made by item 1 applies in relation to agreements covered by subsection 83(2) of the *Defence Home Ownership Assistance Scheme Act 2008* entered into on or after the commencement of that item.

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*[Minister’s second reading speech made in—  
House of Representatives on 26 June 2008  
Senate on 27 August 2008]*

(146/08)

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