



Financial Framework Legislation Amendment Act (No. 1) 2012

No. 25, 2012

**An Act to amend the law relating to the
Commonwealth's financial framework and
governance arrangements, and for other purposes**

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

Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedule(s).....	3
Schedule 1—Auditor-General Act 1997		4
Schedule 2—Commonwealth Authorities and Companies Act 1997		5
Part 1—Estimates		5
Part 2—Requirement to notify of significant events		6
Schedule 3—Financial Framework Legislation Amendment Act 2010		9
Schedule 4—Financial Management and Accountability Act 1997		10
Schedule 5—Repeal of Acts		14
<i>Appropriation (Development Bank) Act 1975</i>		14
<i>Car Dealership Financing Guarantee Appropriation Act 2009</i>		14



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No. 25, 2012

An Act to amend the law relating to the Commonwealth's financial framework and governance arrangements, and for other purposes

[Assented to 4 April 2012]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Financial Framework Legislation
Amendment Act (No. 1) 2012*.

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.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	4 April 2012
2. Schedule 1	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	4 October 2012
3. Schedule 2, Part 1	The day after this Act receives the Royal Assent.	5 April 2012
4. Schedule 2, Part 2	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	4 October 2012
5. Schedule 3, item 1	Immediately after the time specified in the <i>Financial Framework Legislation Amendment Act 2010</i> for the commencement of item 7 of Schedule 5 to that Act.	1 March 2011
6. Schedule 3, item 2	Immediately after the time specified in the <i>Financial Framework Legislation Amendment Act 2010</i> for the commencement of item 8 of Schedule 5 to that Act.	1 March 2011
7. Schedule 4	The day after this Act receives the Royal Assent.	5 April 2012
8. Schedule 5	The day this Act receives the Royal Assent.	4 April 2012

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be 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—Auditor-General Act 1997

1 Paragraph 21(1)(c)

Repeal the paragraph, substitute:

- (c) any other company that the Commonwealth controls (as defined in section 34 of the *Commonwealth Authorities and Companies Act 1997*).

2 Application

The amendment made by item 1 of this Schedule applies in respect of appointments accepted on or after the commencement of that item.

Schedule 2—Commonwealth Authorities and Companies Act 1997

Part 1—Estimates

1 Subsection 14(1)

Omit “responsible Minister”, substitute “Finance Minister”.

2 Paragraph 14(2)(a)

Omit “responsible Minister”, substitute “Finance Minister”.

3 Paragraph 14(2)(b)

Omit “responsible Minister” (wherever occurring), substitute “Finance Minister”.

4 Subsection 39(1)

Omit “responsible Minister”, substitute “Finance Minister”.

5 Paragraph 39(2)(a)

Omit “responsible Minister”, substitute “Finance Minister”.

6 Paragraph 39(2)(b)

Omit “responsible Minister” (wherever occurring), substitute “Finance Minister”.

7 Application

The amendments made by this Part apply in relation to the following:

- (a) budget estimates for a financial year starting on or after 1 July 2012;
- (b) budget estimates for any other period starting after 1 July 2012 in respect of which a direction is given on or after the commencement of this Part.

Part 2—Requirement to notify of significant events

8 Section 15

Repeal the section, substitute:

15 Responsible Minister to be notified of significant events

- (1) If a Commonwealth authority, or any of its subsidiaries, decides to do any of the following things, the directors of the Commonwealth authority must immediately give the responsible Minister written particulars of the decision:
 - (a) form a company or participate in the formation of a company;
 - (b) participate in a significant partnership, trust, unincorporated joint venture or similar arrangement;
 - (c) acquire or dispose of a significant shareholding in a company;
 - (d) acquire or dispose of a significant business;
 - (e) commence or cease a significant business activity;
 - (f) make a significant change in the nature or extent of its interest in a significant partnership, trust, unincorporated joint venture or similar arrangement.
- (2) The responsible Minister may give written guidelines to the directors that are to be used by the directors in deciding whether particulars are required to be given under subsection (1).

9 Paragraph 33A(2)(b)

Omit “of a proposal mentioned in subsection 15(1)”, substitute “under subsection 15(1)”.

10 Section 40

Repeal the section, substitute:

40 Responsible Minister to be notified of significant events

- (1) If a wholly-owned Commonwealth company, or any of its subsidiaries, decides to do any of the following things, the directors

of the Commonwealth company must immediately give the responsible Minister written particulars of the decision:

- (a) form a company or participate in the formation of a company;
 - (b) participate in a significant partnership, trust, unincorporated joint venture or similar arrangement;
 - (c) acquire or dispose of a significant shareholding in a company;
 - (d) acquire or dispose of a significant business;
 - (e) commence or cease a significant business activity;
 - (f) make a significant change in the nature or extent of its interest in a significant partnership, trust, unincorporated joint venture or similar arrangement.
- (2) The responsible Minister may give written guidelines to the directors that are to be used by the directors in deciding whether particulars are required to be given under subsection (1).

11 Application

The amendments made by this Part apply in respect of decisions made on or after 1 July 2012.

12 Transitional—guidelines under section 15

- (1) This item applies to guidelines if:
 - (a) the guidelines were made under section 15 of the *Commonwealth Authorities and Companies Act 1997*; and
 - (b) the guidelines were in force immediately before the commencement of this Part.
- (2) The guidelines have effect, after the commencement of this Part, as if they had been made under section 15 of the *Commonwealth Authorities and Companies Act 1997* as amended by this Part.

13 Transitional—regulations under section 33A

- (1) This item applies to regulations if:
 - (a) the regulations were made under section 33A of the *Commonwealth Authorities and Companies Act 1997*; and
 - (b) the regulations were in force immediately before the commencement of this Part.

- (2) The regulations continue in force, after the commencement of this Part, as if they had been made under section 33A of the *Commonwealth Authorities and Companies Act 1997* as amended by this Part.

14 Transitional—guidelines under section 40

- (1) This item applies to guidelines if:
- (a) the guidelines were made under section 40 of the *Commonwealth Authorities and Companies Act 1997*; and
 - (b) the guidelines were in force immediately before the commencement of this Part.
- (2) The guidelines have effect, after the commencement of this Part, as if they had been made under section 40 of the *Commonwealth Authorities and Companies Act 1997* as amended by this Part.

Schedule 3—Financial Framework Legislation Amendment Act 2010

1 Item 7 of Schedule 5

Omit “or”, substitute “and”.

Note: This item fixes a misdescribed amendment.

2 Item 8 of Schedule 5

Omit “and”, substitute “or”.

Note: This item fixes a misdescribed amendment.

Schedule 4—Financial Management and Accountability Act 1997

1 Section 5

Insert:

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*.

2 Subsection 12(2) (note)

Repeal the note.

3 Subsection 22(4)

Repeal the subsection, substitute:

- (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.

4 Paragraphs 26(b) and (c)

Omit “an appropriation”, substitute “a designated Special Account appropriation”.

5 Section 26 (penalty)

Repeal the penalty.

6 Section 26 (note)

Repeal the note.

7 Paragraphs 27(1)(b) and (c)

Omit “an appropriation”, substitute “a designated Special Account appropriation”.

8 Subsection 27(5)

Repeal the subsection, substitute:

- (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.

9 Subsection 32A(4) (heading)

Repeal the heading, substitute:

Retaining prescribed receipts

10 After section 34

Insert:

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).

11 Section 44 (heading)

Repeal the heading, substitute:

44 Promoting proper use of Commonwealth resources

12 Subsection 62(1)

Repeal the subsection, substitute:

(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.

13 After subparagraph 65(2)(a)(ia)

Insert:

- (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;

14 Application—item 3

The amendment made by item 3 of this Schedule applies to determinations made on or after the commencement of that item.

15 Transitional—delegations under section 62

- (1) This item applies to a delegation if:
 - (a) the delegation was made under subsection 62(1) of the *Financial Management and Accountability Act 1997*; and
 - (b) the delegation was in force immediately before the commencement of item 12 of this Schedule.
- (2) The delegation has effect, after the commencement of this item, as if it had been made under subsection 62(1) of the *Financial Management and Accountability Act 1997* as amended by item 12 of this Schedule.

Schedule 5—Repeal of Acts

Appropriation (Development Bank) Act 1975

1 The whole of the Act

Repeal the Act.

Car Dealership Financing Guarantee Appropriation Act 2009

2 The whole of the Act

Repeal the Act.

*[Minister's second reading speech made in—
House of Representatives on 16 February 2012
Senate on 13 March 2012]*

(20/12)

14 *Financial Framework Legislation Amendment Act (No. 1) 2012* No. 25, 2012