

1993-94

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

(As read a third time)

Financial Management and Accountability Bill 1994

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 establishes an accounting system for public money that is based on the Consolidated Revenue Fund and 3 other funds established by this Act. The diagram in Appendix A illustrates the accounting system.

The Act also has rules about how public money and property are to be dealt with. Many of the detailed rules are in Finance Minister's Orders made under section 64 and regulations made under section 66.

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.

READER'S GUIDE—continued**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 definitions*: This Part contains definitions of terms that are frequently used throughout this Act.
- 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 *Fund accounting, appropriations and payments*: This Part establishes an accounting system for public money that involves the Consolidated Revenue Fund and the following funds established by this Act: a Loan Fund, a Reserved Money Fund and a Commercial Activities Fund. This Part has a number of rules that apply to Parliamentary appropriations. 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 and investment*: 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.
- 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 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 transactions of the Funds. 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 *Auditor-General Act 1994* 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.

READER'S GUIDE—continued

- 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 *Crimes Act 1914* contains many general rules that apply to offences. It also creates offences for conduct related to Commonwealth Acts.

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

Another related Act is the *Commonwealth Authorities and Companies Act 1994*. It contains reporting rules, accountability rules and other rules that apply to Commonwealth authorities and Commonwealth companies.

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FUND ACCOUNTING SYSTEM (diagram)

THIS Bill originated in the House of Representatives;
and, having this day passed, is now ready for
presentation to the Senate for its concurrence.

L. M. BARLIN
Clerk of the House of Representatives

House of Representatives,
Canberra, 8 December 1994

A BILL

FOR

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

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

5 1. This Act may be cited as the *Financial Management and
Accountability Act 1994*.

Commencement

2. This Act commences on a day to be fixed by Proclamation. However,
if this Act does not commence by Proclamation before 1 July 1995 then it
commences on 1 July 1995.

This Act binds the Crown

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

This Act extends to things outside Australia

4. This Act extends to acts, omissions, matters and things outside Australia (unless the contrary intention appears). 5

PART 2—GENERAL DEFINITIONS

General definitions

5. In this Act, unless the contrary intention appears:

- “Agency”** means: 10
- (a) a Department of State, including persons who are allocated to the Department (for the purposes of this Act) by regulations made for the purposes of this paragraph;
 - (b) a Department of the Parliament, including persons who are allocated to the Department (for the purposes of this Act) by regulations made for the purposes of this paragraph; 15
 - (c) a prescribed Agency;
- “appropriation”** means an authority under this Act or any other law to debit an amount from a particular Fund, whether or not the law concerned uses the word “appropriation” or “appropriated”; 20
- “bank”** means a person who carries on the business of banking, either in Australia or outside Australia;
- “Chief Executive”** means:
- (a) for a prescribed Agency—the person identified by the regulations as the Chief Executive of the Agency; or 25
 - (b) for any other Agency—the person who is the Secretary of the Agency for the purposes of the *Public Service Act 1922*;
- “Commercial Activities Fund”** means the fund established by section 21;
- “Consolidated Revenue Fund”** means the Consolidated Revenue Fund referred to in section 81 of the Constitution; 30
- “Drawn Money”** has the meaning given by section 17;
- “Finance Minister”** means the Minister who administers this Act;
- “Finance Minister’s Orders”** means Orders made under section 64;
- “Fund”** means:
- (a) the Consolidated Revenue Fund; 35
 - (b) the Loan Fund;
 - (c) the Commercial Activities Fund;
 - (d) the Reserved Money Fund;

“Loan Fund” means the fund established by section 19;

“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;

5 **“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;

“public money” means:

10 (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;

15 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

20 (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;

“Received Money” has the meaning given by section 17;

25 **“Reserved Money Fund”** means the fund established by section 20;

“Special Instruction” means an instruction by the Finance Minister under section 16;

“special public money” has the meaning given by section 16.

Notional payments and receipts by Agencies

30 **6.(1)** This Act applies to a notional payment by an Agency (or part of an Agency) as if it were a real payment by the Commonwealth.

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

35 **Note:** This section applies to transactions that do not actually involve payments or receipts, because both parties to the transaction are merely acting as agents for the Commonwealth. For example, Agency 1 pays Agency 2 for services provided by Agency 2 to Agency 1. The effect of this section is that the payment by Agency 1 can be regarded as authorised by an appropriation for Agency 1, while the receipt by Agency 2 must be credited to the Consolidated Revenue Fund.

Effect of maximum penalty at foot of section or subsection

7. A maximum penalty that is specified:

- (a) at the foot of a section of this Act (other than a section that is divided into subsections); or
- (b) at the foot of a subsection of this Act;

5

indicates that a person who intentionally or recklessly contravenes the section or subsection is guilty of an offence against the section or subsection that is punishable, on conviction, by a penalty up to that maximum.

Note: If the specified penalty is imprisonment only, section 4B of the *Crimes Act 1914* allows the court to impose a fine instead of imprisonment or in addition to imprisonment.

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PART 3—COLLECTION, CUSTODY ETC. OF PUBLIC MONEY

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

8.(1) The Finance Minister may, on behalf of the Commonwealth, enter into an agreement with any bank:

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- (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 may provide for the payment of interest and other charges by the Commonwealth.

20

(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 39 deals with overdrafts that arise in respect of *advances* that are paid to the Commonwealth.

25

(4) An agreement for an overdraft on an official account must not be made except under this section.

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(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.

Official bank accounts

9.(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.

35

(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.

Public money must be promptly banked etc.

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

Maximum penalty: Imprisonment for 2 years.

10 **Public money not to be paid into non-official account**

11. 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.

Maximum penalty: Imprisonment for 7 years.

15 **Finance Minister's authority needed for arrangements for receipt etc. of public money by outsiders**

12. An official or Minister must not enter into an agreement or arrangement for the receipt or custody of public money by an outsider unless:

20 (a) the Finance Minister has first given a written authorisation for the arrangement; or

(b) the arrangement is expressly authorised by this Act or by another Act. For this purpose, "**outsider**" means any person other than the Commonwealth, an official or a Minister.

Maximum penalty: Imprisonment for 7 years.

25 **Money not to be withdrawn from official account without authority**

13. An official must not withdraw money from an official account except as authorised by the Finance Minister's Orders.

Maximum penalty: Imprisonment for 2 years.

Misapplication or improper use of public money

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

Maximum penalty: Imprisonment for 7 years.

Liability for loss of public money

15.(1) If:

35 (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 5
 - (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 10
 - (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. 15

(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. 20

(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. 25

(7) In this section:
“loss” includes a deficiency.

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

16.(1) The Finance Minister may issue Special Instructions in writing about special public money, including instructions about: 30

- (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; 35
- (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.

5 (3) An official or Minister must not contravene any Special Instruction. Maximum penalty: Imprisonment for 2 years.

(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.

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

PART 4—FUND ACCOUNTING, APPROPRIATIONS AND PAYMENTS

Division 1—Fund accounting

15 **Accounting classifications of public money**

17.(1) All public money falls into one of the following classes:

- (a) Received Money;
- (b) money in the Consolidated Revenue Fund;
- (c) money in the Loan Fund established by section 19;
- 20 (d) money in the Reserved Money Fund established by section 20;
- (e) money in the Commercial Activities Fund established by section 21;
- (f) Drawn Money;
- (g) special public money that is subject to a Special Instruction.

Note: The diagram in Appendix A illustrates the Fund accounting system.

25 (2) All public money is Received Money from the time it becomes public money until the time it is either credited to the Consolidated Revenue Fund or becomes subject to a Special Instruction.

30 (3) Drawn Money is public money that has been debited from a Fund without being credited to another Fund. It does not include money that is subject to a Special Instruction.

Note: Examples of Drawn Money are petty cash advances and amounts held in drawing accounts to meet the payment of cheques.

(4) In this section:

35 “public money” does not include overdraft drawings under an agreement under section 8.

Public money must initially be credited to the Consolidated Revenue Fund

40 18.(1) All public money must be credited to the Consolidated Revenue Fund as soon as practicable after it becomes public money. This requirement does not apply to public money that is subject to a Special Instruction.

(2) In this section:

“public money” does not include overdraft drawings under an agreement under section 8.

The Loan Fund

19.(1) A fund called the Loan Fund is hereby established. 5

(2) The Finance Minister, if satisfied that particular money in the Consolidated Revenue Fund is borrowed money, must direct that the money be transferred from the Consolidated Revenue Fund to the Loan Fund. This requirement does not apply to credit card cash advances.

(3) The Consolidated Revenue Fund is appropriated for the purposes of subsection (2). 10

(4) If another Act (either expressly or by implication) requires or permits an amount to be transferred from the Consolidated Revenue Fund to the Loan Fund, then the Consolidated Revenue Fund is appropriated for the transfer by force of this subsection (unless the contrary intention appears in that other Act). 15

The Reserved Money Fund

20.(1) A fund called the Reserved Money Fund is hereby established.

(2) The Finance Minister may make a written determination that:

- (a) establishes a component of the Reserved Money Fund; 20
- (b) allows or requires amounts to be transferred from the Consolidated Revenue Fund or Loan Fund to that component;
- (c) allows or requires amounts to be debited from that component for specified purposes.

(3) The Finance Minister may make a determination that revokes or varies a determination made under subsection (2). 25

(4) The Finance Minister may at any time make a determination that abolishes a component established under subsection (2). Any amount in the component at the time of abolition must be transferred to the Consolidated Revenue Fund. 30

(5) If another Act establishes a component of the Reserved Money Fund and identifies the purposes of the component, the component may be debited for those purposes.

(6) The Funds are appropriated as necessary for the purposes of this section. 35

(7) If another Act (either expressly or by implication) requires or permits an amount to be transferred from the Consolidated Revenue Fund to a component of the Reserved Money Fund, then the Consolidated Revenue Fund is appropriated for the transfer by force of this subsection (unless the contrary intention appears in that other Act).

Note: Determinations made under subsections (2) and (3) of this section are subject to the commencement and disallowance rules in section 22.

The Commercial Activities Fund

21.(1) A fund called the Commercial Activities Fund is hereby established.

(2) The Finance Minister may make a written determination that:

(a) establishes a component of the Commercial Activities Fund for an activity of an Agency that the Finance Minister considers should be accounted for as if it were a commercial activity;

(b) allows amounts that are derived directly or indirectly from the activity to be transferred from the Consolidated Revenue Fund or Loan Fund to that component;

(c) allows amounts to be debited from that component for specified purposes connected with the activity.

(3) The Finance Minister may make a determination that revokes or varies a determination made under subsection (2).

(4) The Finance Minister may at any time make a determination that abolishes a component of the Commercial Activities Fund. Any amount in the component at the time of abolition must be transferred to the Consolidated Revenue Fund.

(5) The Funds are appropriated as necessary for the purposes of this section.

Note: Determinations made under subsections (2) and (3) of this section are subject to the commencement and disallowance rules in section 22.

Disallowance of determinations dealing with Fund components

22.(1) This section applies to a determination made by the Finance Minister under subsection 20(2) or (3) or 21(2) or (3).

(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 on the day immediately after the last day upon which such a resolution could have been passed.

Set-offs ignored for Fund accounting purposes

23.(1) If a receipt has been reduced by a lawful set-off, a credit to a Fund for the receipt must nevertheless show the full amount of the receipt, unreduced by the set-off.

(2) If a payment has been reduced by a lawful set-off, a debit from a Fund for the payment must nevertheless show the full amount of the payment, unreduced by the set-off. 5

(3) In this section:

“reduced” includes reduced to nil.

Finance Minister must keep accounts and records of Fund transactions 10

24. The Finance Minister must cause proper accounts and records to be kept of the transactions of the Funds.

References in other Acts etc. to payments into or out of Funds

25.(1) In any Act or any instrument made under an Act: 15

- (a) a reference to paying an amount into a Fund is a reference to crediting the amount to that Fund;
- (b) a reference to paying an amount out of a Fund is a reference to debiting the amount from the Fund.

(2) In this section: 20

“Fund” means:

- (a) the Consolidated Revenue Fund, the Loan Fund, the Reserved Money Fund or the Commercial Activities Fund; or
- (b) a component of the Reserved Money Fund or of the Commercial Activities Fund. 25

Division 2—Drawing rights

Drawing rights required for payment etc. of public money

26. 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; 30
- (b) request that an amount be debited from a Fund;
- (c) debit an amount from a Fund.

Maximum penalty: Imprisonment for 2 years.

Issue of drawing rights

27.(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: 35

- (a) make a payment of public money for a specified purpose;
- (b) request the debiting of an amount from a Fund against a particular appropriation;
- (c) debit an amount from a Fund against a particular appropriation.

5

- (2) If a law requires an amount to be debited from a Fund:
 - (a) the Finance Minister must issue sufficient drawing rights to allow the full amount to be debited from the Fund; and
 - (b) the recipient of any of those drawing rights must exercise the right in full.

10

(3) If a law permits an amount to be debited from a Fund, but does not require the amount to be debited, 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.

15

(5) A drawing right has no effect to the extent that it claims to authorise the application of public money in a way that is not authorised by an appropriation.

Division 3—Appropriations

Appropriation for repayments required or permitted by law

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28.(1) This section applies if:

- (a) an Act or other law requires or permits the repayment of an amount received by the Commonwealth; and
- (b) apart from this section, there is no appropriation of any Fund for the repayment.

25

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) If the amount received by the Commonwealth:

- (a) has been credited to the Consolidated Revenue Fund; and
- (b) then transferred from the Consolidated Revenue Fund to another Fund or a component of another Fund;

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then the Fund or component to which the amount was transferred is appropriated for the repayment.

(3) In all other cases, the Consolidated Revenue Fund is appropriated for the repayment.

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Uncommitted advances lapse at end of appropriation period

29.(1) This section applies to money that:

- (a) was debited from a Fund, or a component of a Fund, under an appropriation that authorised the debiting of an amount from the Fund or component before a particular time (the “lapsing time”); and

40

(b) is Drawn Money at the lapsing time, but is not held in an official account to meet the payment of cheques that have already been issued; and

(c) is not excepted from the operation of this section by regulations made for the purposes of this section. 5

(2) After the lapsing time, the money is no longer covered by the appropriation, and must be dealt with as if it had become Received Money at the lapsing time.

Appropriation to be re-instated for amounts re-credited to Fund

30. If an amount is re-credited to a Fund after having been debited from that Fund under the authority of an appropriation, then the appropriation has effect as if the amount had not been debited. 10

Note: The amount re-credited to the Fund will be available to be debited again, subject to any time limits that apply to the appropriation. In the case of an annual appropriation that authorised debits to the Fund during a financial year, the re-credited amount would not be available after the end of the financial year. 15

Agreements for “net appropriations”

31.(1) The Finance Minister may enter into agreements for the purposes of items in Appropriation Acts that are marked “net appropriation”.

(2) In the case of items for which the Finance Minister is responsible, the agreement is to be made with the Chief Executive of the Agency for which the appropriation is made. In all other cases, the agreement is to be made with the Minister who is responsible for the item. 20

(3) An agreement need not relate to a particular Appropriation Act or Acts and may be made for any period, including a period longer than a financial year. 25

(4) The Finance Minister may at any time cancel or vary an agreement, without the consent of the other party.

(5) In this section:

“Appropriation Act” includes a Supply Act; 30

“item” means an item, subdivision or division in a Schedule to an Appropriation Act.

Adjustment of appropriations on change of Agency functions

32.(1) This section applies if a function of an Agency (the “old Agency”) becomes a function of another Agency (the “new Agency”), either because the old Agency is abolished or for any other reason. 35

(2) The Finance Minister may:

(a) issue one or more directions to transfer from the old Agency to the new Agency some or all of an amount that has been appropriated for the performance of that function by the old Agency; and 40

(b) issue one or more directions to transfer from the new Agency back to the old Agency the whole or a part of an amount that was transferred to the new Agency by a direction under paragraph (a).

5 (3) The Finance Minister may not issue a direction that transfers an amount between Departments of the Parliament except in accordance with a written recommendation of the Presiding Officers.

(4) A direction has effect from the time it is issued.

(5) A direction does not have the effect of extending any time limit that applies to the appropriation concerned.

10 *Division 4—Miscellaneous*

Finance Minister may approve act of grace payments

15 **33.(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);

20 (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).

25 (2) If a proposed authorisation would involve, or be likely to involve, a total amount of more than \$100,000, the Finance Minister must first consider a report of an Advisory Committee set up under section 60.

(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.

30 (4) Payments under this section are to be made out of money appropriated by the Parliament for the purposes of this section.

Finance Minister may waive debts etc.

34.(1) The Finance Minister may, on behalf of the Commonwealth:

35 (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;

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

(2) If a proposed waiver under paragraph (1)(a) involves, or is likely to involve, a total amount of more than \$100,000, the Finance Minister must consider a report of an Advisory Committee set up under section 60 before taking action on the waiver. 5

(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: 10
“**amount owing to the Commonwealth**” includes an amount that is owing but not yet due for payment.

Finance Minister may approve payments pending probate etc.

35.(1) If, at the time of a person’s death, the Commonwealth owed an amount to the person, the Finance Minister may authorise payment of that amount to the person who the Minister considers should receive the payment. 15

(2) The Minister may authorise the payment without requiring production of probate of the will of the deceased person or letters of administration of the estate of the deceased person.

(3) In deciding who should be paid, the Finance Minister must have regard to the persons who are entitled to the property of the deceased person under the deceased person’s will or under the law relating to the disposition of the property of deceased persons. 20

(4) After the payment is made, the Commonwealth has no further liability in respect of the payment. However, this section does not relieve the recipient from a liability to deal with the money in accordance with law. 25

(5) This section does not have the effect of appropriating a Fund for the purposes of payments under this section.

(6) This section extends to cases where the deceased person died before the commencement of this section. 30

Ministers may approve rewards to informants

36.(1) A Minister may authorise the payment of rewards in cases where:

(a) a person has been convicted of an offence against a law of the Commonwealth that involved actual financial loss or actual financial detriment to the Commonwealth; and 35

(b) the Commonwealth has recovered some or all of the proceeds of the offence, either before or after the conviction.

Note: Theft of public money or public property are examples of offences involving financial loss or financial detriment to the Commonwealth. Fraudulently obtaining money from the Commonwealth is another example. 40

(2) A reward may be paid to any person who provided information that led to the convicted person being charged with the offence.

(3) The total amount that may be authorised cannot be more than 50% of the amount or value of the proceeds recovered by the Commonwealth.

5 (4) The Consolidated Revenue Fund is appropriated for the purpose of payments under this section.

Presiding Officers may approve expenditure

10 **37.(1)** The following persons have authority to approve a proposal to spend public money under an appropriation for a Department of the Parliament:

(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.

15 (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 AND INVESTMENT

20 Unauthorised borrowing agreements are invalid

38. 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.

Finance Minister may borrow for short periods

25 **39.(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.

30 (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.

Finance Minister may invest public money

35 **40.(1)** The Finance Minister may invest Fund balances, or Drawn Money, in any authorised investment.

(2) Expenses of investment of money from a Fund or component of a Fund may be debited from the Fund or component. Expenses of investment of Drawn Money may be paid out of Drawn Money.

(3) Upon realisation of an investment of an amount debited from the Loan Fund or from a component of the Reserved Money Fund or Commercial Activities Fund, the proceeds of the investment must be transferred from the Consolidated Revenue Fund to the Fund or component concerned, up to the amount debited from the Fund or component for the investment (including amounts debited for expenses). 5

(4) Upon realisation of an investment of Drawn Money, there must be transferred from the Consolidated Revenue Fund to Drawn Money an amount equal to the full amount paid from Drawn Money for the investment (including amounts debited for expenses). This requirement applies even if the proceeds of investment are less than the amount required to be transferred. 10

(5) At any time before an investment matures, the Finance Minister may authorise the re-investment of the proceeds upon maturity in an authorised investment with the same bank or institution. 15

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. 20

(6) The corporation established by section 62B of the *Audit Act 1901* is continued in existence for the purposes of this section with the name "The Minister for Finance of the Commonwealth". Investments by the Finance Minister under this section must be made in that corporate name.

(7) The Funds are appropriated as necessary for the purposes of this section. Drawn Money may be applied in accordance with this section without further appropriation. 25

(8) In this section:

"authorised investment" means:

- (a) securities of the Commonwealth or of a State or Territory; 30
- (b) securities guaranteed by the Commonwealth, a State or a Territory;
- (c) a deposit with a bank, including a deposit evidenced by a certificate of deposit;
- (d) any other form of investment prescribed by the regulations.

PART 6—CONTROL AND MANAGEMENT OF PUBLIC PROPERTY 35

Custody etc. of securities

41. 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 Finance Minister's Orders. 40

Maximum penalty: Imprisonment for 2 years.

Misapplication or improper use of public property

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

Maximum penalty: Imprisonment for 7 years.

5 **Liability for loss etc. of public property**

43.(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);

10 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:

- 15 (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;
- (b) when the custodian took delivery of the property the custodian signed a written acknowledgment that the property was delivered on the
20 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
- 25 (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
30 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.

35 (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;

5

“loss” includes destruction or damage.

Gifts of public property

44. 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.

10

Maximum penalty: Imprisonment for 7 years.

PART 7—SPECIAL RESPONSIBILITIES OF CHIEF EXECUTIVES

15

Promoting efficient, effective and ethical use of Commonwealth resources

45.(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.

20

(2) If compliance with the requirements of the regulations, Finance Minister’s Orders, Special Instructions or any other law would hinder or prevent the proper use of those resources, the Chief Executive must manage so as to promote proper use of those resources to the greatest extent practicable while complying with those requirements.

25

(3) In this section:

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

Fraud control plan

46. 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.

30

Audit committee

47. A Chief Executive must establish and maintain an audit committee for the Agency, with the functions and responsibilities required by the Finance Minister’s Orders.

35

Recovery of debts

48.(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.

5 (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
- 10 (b) debts owing to the Commonwealth that the Finance Minister has allocated to the Chief Executive.

Accounts and records

49.(1) A Chief Executive must ensure that accounts and records of the Agency are kept as required by the Finance Minister's Orders.

15 (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.

Annual financial statements

20 50.(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.

25 (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.

30 (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.

Additional financial statements and information

35 51.(1) 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.

(2) A Chief Executive must give the Finance Minister any information that the Finance Minister requires about the financial affairs of the Agency. However, a Chief Executive is not required to give information whose disclosure is prohibited by any law.

Reporting requirements on change of Agency functions 5

52.(1) If an Agency ceases to exist, the financial statements that would have been required to be prepared under section 50 by the Chief Executive of that Agency must be prepared instead by another Chief Executive nominated by the Finance Minister. However, the statements need not deal with any functions that were transferred from the Agency that ceased to exist to another Agency. 10

(2) If a function is transferred between 2 or more Agencies in a financial year, the financial statements under section 50 for that function must be prepared by the Chief Executive of one of those Agencies, or by the Chief Executives of 2 or more of those Agencies, as directed by the Finance Minister. 15

Chief Executive's instructions

53.(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. 20

(2) An instruction cannot create offences or impose penalties.

Chief Executive may delegate powers

54.(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 63); 25
- (b) the Chief Executive's power to give instructions under regulations referred to in section 53.

(2) In exercising powers or functions under the delegation, the official must comply with any directions of the Chief Executive. 30

PART 8—REPORTING AND AUDIT

Preparation and publication of monthly statement of Fund transactions

55.(1) As soon as practicable after the end of each month of a financial year, the Finance Minister must publish a Statement of Commonwealth Financial Transactions for the purpose of reporting comparisons between: 35

- (a) the transactions of the Funds for the month, and for the financial year up to the end of the month; and
- (b) the Budget Estimates for the financial year.

5 (2) The Statement must be in a form that reflects the main headings of the Budget Estimates (by function and type, as appropriate), for the financial year.

(3) The Statement must contain details of the transactions of the Funds for the month, and for the current financial year up to the end of the month. It must also show:

- 10 (a) the way in which the surplus for the month was applied, or the deficit for the month was financed; and
- (b) the way in which the surplus for the current financial year up to the end of that month was applied, or the deficit for the current financial year up to the end of that month was financed.

15 (4) The Statement may include any other information that the Finance Minister considers relevant.

(5) In this section:

“**Budget estimates**” means the estimates of revenue and outlays tabled in Parliament as part of the annual Budget.

20 **Preparation of annual statements by Finance Minister**

56.(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.

25 (2) The Finance Minister must give the statements to the Auditor-General as soon as practicable after they are prepared.

30 (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.

Audit of Finance Minister’s annual financial statements

57.(1) As soon as practicable after receiving financial statements under section 56, the Auditor-General must examine the statements and prepare an audit report in accordance with the regulations.

35 (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.

Audit of annual financial statements of Agency

5

58.(1) As soon as practicable after receiving financial statements under subsection 50(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:

10

(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.

15

(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.

20

(4) If the Auditor-General is of the opinion that the Chief Executive has contravened section 49, 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.

25

(6) Instead of preparing a single report, the Auditor-General may prepare an initial report and one or more later supplementary reports.

(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.

30

PART 9—MISCELLANEOUS

Modifications of Act for intelligence or security agency

59.(1) The application of this Act to an intelligence or security agency is subject to any modifications that are prescribed by the regulations.

35

(2) In this section:

“**intelligence or security agency**” has the meaning given by section 85ZL of the *Crimes Act 1914*;

“**modifications**” include additions, omissions and substitutions.

Advisory Committees for reporting on large waivers etc.

60.(1) An Advisory Committee for the purposes of this Act consists of:

- (a) the Comptroller-General of Customs; and
- (b) the Secretary to the Department of Finance; and
- (c) the Chief Executive of the Agency that is responsible for the matter on which the Committee has to report.

(2) If there is no Agency responsible for the matter, or if the responsible Agency is the Department of Finance or the Australian Customs Service, then the Chief Executive of the Department of Administrative Services is to be the third member of the Committee.

(3) A member of an Advisory Committee may appoint a deputy to act in his or her place.

(4) An Advisory Committee may prepare its report without having a meeting.

Misuse of Commonwealth credit card

61.(1) An official or Minister must not use a Commonwealth credit card, or a Commonwealth credit card number, with the intention of obtaining cash, goods or services otherwise than for the Commonwealth.

Maximum penalty: Imprisonment for 7 years.

(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 Finance Minister's Orders; and
- (b) the Commonwealth is reimbursed in accordance with the Finance Minister's Orders.

(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.

Official must not falsify accounts etc.

62. An official must not falsify any account, statement, receipt or record kept or issued for the purposes of this Act or for the purposes of regulations or other instruments made under this Act.

Maximum penalty: Imprisonment for 7 years.

Finance Minister may delegate powers

63.(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 the power to make Orders.

(2) In exercising powers or functions under a delegation, the official must comply with any directions of the Finance Minister.

Finance Minister's Orders

64.(1) The Finance Minister may make Orders:

- (a) on any matter on which this Act requires or permits Finance Minister's Orders to be made; and
- (b) on any matter on which regulations may be made.

(2) An Order cannot create offences or impose penalties.

(3) An Order is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*. 10

Guidelines by Ministers

65.(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. 15

Regulations

66.(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. 20

(2) In particular, the regulations may make provision:

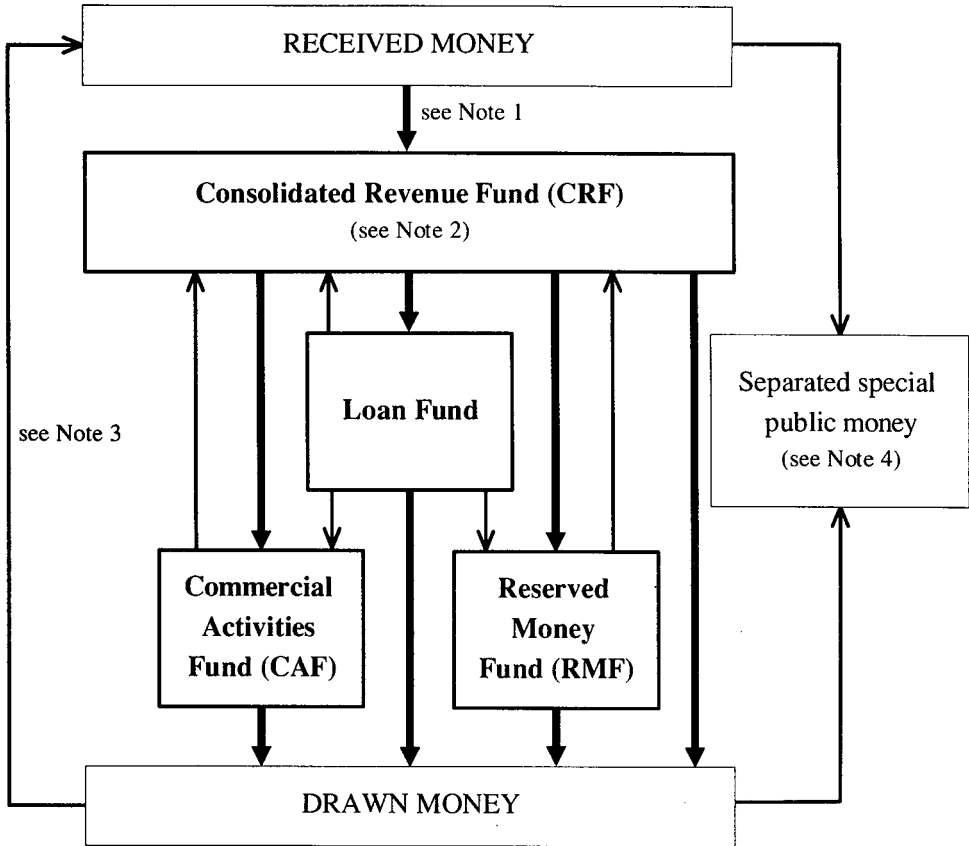
- (a) relating to any of the following matters:
 - (i) handling, spending and accounting for public money;
 - (ii) commitments to spend public money;
 - (iii) recovering amounts owing to the Commonwealth; 25
 - (iv) using or disposing of public property, or acquiring property that is to be public property;
- (b) generally for ensuring or promoting:
 - (i) the proper use and management of public money, public property and other resources of the Commonwealth; 30
 - (ii) proper accountability for the use and management of public money, public property and other resources of the Commonwealth;
- (c) for penalties for offences against the regulations by way of fines of up to 10 penalty units. 35

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

APPENDIX A

Section 17

FUND ACCOUNTING SYSTEM
(Simplified model showing typical transfers)



NOTES

➔ Indicates a common type of transfer.

➞ Indicates a less common type of transfer.

1. All Received Money must be credited to the CRF as soon as practicable after receipt (unless a Special Instruction applies).
2. The following transfers pass through the CRF: transfers between components of the CAF or the RMF; transfers between the CAF and the RMF; transfers from the CAF or RMF to the Loan Fund.
3. An example of this transfer is an unused advance on expiry of the relevant appropriation.
4. Separated special public money is special public money that is subject to a Special Instruction.