THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

FINANCIAL FRAMEWORK
LEGISLATION AMENDMENT BILL (No. 2) 2005

EXPLANATORY MEMORANDUM

(Circulated by authority for the Minister for Finance and Administration, Senator the Honourable Nick Minchin)
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<td>RMF</td>
<td>Reserved Money Fund</td>
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Financial Framework Legislation Amendment Bill (No.2) 2005

I. GENERAL OUTLINE

2. The main purposes of the proposed amendments are to:
   - update, clarify, align or integrate financial management provisions relating to the following Special Accounts established in various Acts: the Aboriginal and Torres Strait Islander Land Account, the Aboriginal Advancement Account, the ARC Research Endowment Account, the Child Support Account, the Gene Technology Account, the Industrial Chemicals Account, the National Blood Account, the Medical Research Endowment Account and the Natural Resources Management Account;
   - align the Safety, Rehabilitation and Compensation Act 1988 with the existing administrative practice of compensation due to eligible employees being paid either through Commonwealth employers or direct to employees;
   - clarify that the Appropriation Acts provide the appropriation authority for an act of grace payment approved under the Financial Management and Accountability Act 1997 (FMA Act), or a payment in special circumstances to a person employed by the Commonwealth authorised under the Public Service Act 1999, where the purpose of the payment is covered by the purpose of the appropriation;
   - extend the existing authority for the modified application of the FMA Act to an intelligence or security agency to also cover sensitive activities of a law enforcement agency specified in the regulations for that purpose;
   - correct, update and more clearly express provisions in the Public Accounts and Audit Committee Act 1951; and
   - update, clarify and align other financial management provisions in Acts.

3. The Employment Services Act 1994 and the Loan Act 1977 are proposed for repeal because they are redundant.

4. The amendments and repeals of Acts are contained in four Schedules:
   - Schedule 1 covers amendments relating to Special Accounts;
   - Schedule 2 covers amendments to the Safety, Rehabilitation and Compensation Act 1988;
   - Schedule 3 covers other amendments; and
   - Schedule 4 covers the repeal of Acts.

5. Passage of the FFLA Bill is required to facilitate the adoption of appropriate administrative practices through clearer legislative provisions generally.

Financial Impact Statement
6. The proposed amendments and repeals have no net financial impact.
II. NOTES ON CLAUSES

7. The structure of the FFLA Bill comprises three clauses that then refer to four schedules containing their substantive amendments to other Acts. These notes explain the three clauses.

Clause 1: Short Title

8. This clause provides that when the FFLA Bill is passed it may be cited as the *Financial Framework Legislation Amendment Act (No.2) 2005*.

Clause 2: Commencement

9. This clause provides that most of the items in the schedules in the FFLA Bill will, if passed, commence on the day after the *Financial Framework Legislation Amendment Act (No.2) 2005* (FFLA Act No.2 2005) receives Royal Assent. Exceptions are:

   - The amendments to the *Safety, Rehabilitation and Compensation Act 1988* will commence on the later of: 1 July 2006, or the day after the FFLA Act No.2 2005 receives Royal Assent.
   - The amendment to subsection 206(2) of the *Native Title Act 1993* will commence on 24 March 2005. The *Aboriginal and Torres Strait Islander Commission Amendment Act 2005*, which commenced on that date, changed the name of the *Aboriginal and Torres Strait Islander Commission Act 1989* to the *Aboriginal and Torres Strait Islander Act 2005*.

Clause 3: Schedules

10. This clause provides that the amendments and repeals of Acts are contained in four schedules:

   - Schedule 1 comprises amendments relating to certain Special Accounts established in Acts to update, clarify, align or integrate financial management provisions.\(^1\) The schedule is divided into nine parts.
     - Part 1 covers the Aboriginal and Torres Strait Islander Land Account established in the *Aboriginal and Torres Strait Islander Act 2005*.
     - Part 2 covers the Condah Land Account, the Framlingham Forest Account and the Aboriginal Advancement Account, all established in the *Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987*.
     - Part 3 covers the ARC Research Endowment Account, established in the *Australian Research Council Act 2001*.
     - Part 4 covers the *Child Support (Registration and Collection) Act 1988*.
     - Part 5 covers the Gene Technology Account, established in the *Gene Technology Act 2000*.

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\(^1\) A Special Account is a ledger that records amounts in the Consolidated Revenue Fund set aside for expenditure on particular purposes specified in an Act or in a determination of the Minister for Finance and Administration made under s.20 of the FMA Act.
− Part 6 covers the Industrial Chemicals Account, established in the *Industrial Chemicals (Notification and Assessment) Act 1989*.
− Part 7 covers the National Blood Account, established in the *National Blood Authority Act 2003*.
− Part 8 covers the Medical Research Endowment Account, established in the *National Health and Medical Research Council Act 1992*.
− Part 9 covers the Natural Resources Management Account, established in the *Natural Resources Management (Financial Assistance) Act 1992*.

• Schedule 2 comprises amendments to the *Safety, Rehabilitation and Compensation Act 1988* to align it with the existing administrative practice of compensation due to eligible employees being paid either through Commonwealth employers or direct to employees.

• Schedule 3 comprises amendments to other Acts to update, clarify and align other financial management provisions. The schedule is divided into seven parts.
  − Part 1 covers the *Aboriginal and Torres Strait Islander Act 2005*.
  − Part 2 covers the *Australian Institute of Marine Science Act 1972*.
  − Part 3 covers the FMA Act.
  − Part 4 covers the *Native Title Act 1993*.
  − Part 5 covers the *Public Accounts and Audit Committee Act 1951*.
  − Part 6 covers the *Public Service Act 1999*.
  − Part 7 covers the *Superannuation Act 1976*. 
III. NOTES ON SCHEDULE 1 – AMENDMENTS RELATING TO SPECIAL ACCOUNTS

Part 1 - Aboriginal and Torres Strait Islander Act 2005

Background

11. Items 1 to 19 amend numerous sections of the *Aboriginal and Torres Strait Islander Act 2005* (ATSI Act) to align the ATSI Act with the amendments made to the FMA Act by the *Financial Management Legislation Amendment Act 1999* (FMLA Act 99). The amendments to the FMA Act were part of the adoption, by the Commonwealth, of the accrual budgeting and reporting framework on 1 July 1999.

12. The key change made by the FMLA Act 99 affecting the Aboriginal and Torres Strait Islander Land Account (Land Account) was the abolition of fund accounting, for example the Reserved Money Fund (RMF), and the establishment of the concept of a Special Account.

13. The FMLA Act 99 specifies that references in instruments to financial management that do not reflect the amendments made by the FMLA Act 99 are deemed amended from the commencement of the FMLA Act 99 on 1 July 1999. These deeming provisions include:

• changing references to “Reserve” or “Fund” to “Account”;
• changing references to “paying” an amount to or from an accounting fund, and similar references, to “crediting” an amount to, or “debiting” an amount from an Account.
  − This change reflects the fact that a Special Account is a ledger recording amounts in the Consolidated Revenue Fund (CRF) set aside for specific purposes; it is not a repository for money;
• changing references to payment of an amount “into the Consolidated Revenue Fund” to payment of the amount “to the Commonwealth” unless the amount is already public money.2
  − This change reflects the adoption, in the FMLA Act 99, of the concept of a self-executing CRF, that is money raised or received by the Executive Government automatically forms part of the CRF, without the need to credit a ledger account designated CRF or make a payment into a bank account so designated.

14. The amendments to the ATSI Act proposed in the FFLA Bill would make redundant the application of the deeming provisions in the FMLA Act 99, because

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2 “Public money” is defined in section 5 of the FMA Act as:
(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.
they would replace text in the ATSI Act that was deemed to be changed by those deeming provisions.

Details of the amendments

15. Items 1 and 2 amend subsection 4(1) by replacing the definition of the Land Fund with a definition of Land Account. The “Land Account means the ATSI Land Account continued in existence by section 192W”. Section 192W is amended in Item 5.

16. Items 3 and 4 amend the headings of Part 4A and Division 10 of Part 4A by replacing “Fund” with “Account”. The amended headings are, respectively, the “Indigenous Land Corporation and Aboriginal and Torres Strait Islander Land Account” and “Aboriginal and Torres Strait Islander Land Account”.

17. Item 5 amends section 192W by:
   • replacing, in subsections (1) and (2), the references to the establishment of the “Aboriginal and Torres Strait Islander Land Fund”, as a “component of the Reserved Money Fund” with the continued existence of the “Aboriginal and Torres Strait Islander Land Account” as a “Special Account for the purposes of the Financial Management and Accountability Act 1997”;
   • replacing the heading of the section with “Aboriginal and Torres Strait Islander Land Account”;
   • replacing the reference, in subsection (3), to “money in the Land Fund that is not required for the purpose of making payments out of the Land Fund” with “an amount standing to the credit of the Land Account that is not required for the purpose of making payments”;
   • replacing subsection (4). The provision in the Act is:
     – If income is received by the Commonwealth from the investment of money from the Land Fund, an amount equal to the income must be transferred to the Land Fund from the CRF.
   The replacement provision is:
     – If income is received by the Commonwealth from the investment of an amount standing to the credit of the Land Account, an amount equal to the income must be credited to the Land Account.

18. Item 6, 7 and 8 amend section 192X, subsection 192Z(2), and subsections 193(1) and (2) respectively by replacing references to “Fund” with “Account”. Items 6 and 8 also amend, by means of Notes, the headings of section 192X and section 193, respectively, by replacing references to “Fund” with “Account”. In each case the amended reference is “Land Account”.

19. Item 9 repeals subsections 193(4) and (5). These subsections are:
   – Subsection 193(4): The Consolidated Revenue Fund is to be debited for the purposes of making a credit under this section.
   – Subsection 193(5): The Consolidated Revenue Fund is appropriated for the purposes of this section. (This subsection is headed “Standing Appropriation”.)
The provisions are redundant because the RMF, of which the Land Fund was a component, was abolished by the FMLA Act 99 and the components of the RMF
were replaced with Special Accounts. A Special Account records amounts in the CRF. Hence there is no requirement for the CRF to be debited or appropriated for the purpose of crediting specified amounts to a Special Account.

20. Item 10 amends subsection 193AA(1) by replacing the references to “Fund” with “Account”. Item 10 also amends, by means of a Note, the heading of the section by replacing the reference to “Fund” with “Account”. In each case the amended reference is “Land Account”.

21. Item 11 repeals subsections 193AA(4) and (5). These subsections are:
   - Subsection 193AA(4): The Consolidated Revenue Fund is to be debited for the purposes of making a credit under this section.
   - Subsection 193AA(5): The Consolidated Revenue Fund is to be appropriated by the Parliament for the purposes. (This subsection is headed “Moneys to be appropriated by another Act”.)

The provisions are redundant because the RMF, of which the Land Fund was a component, was abolished by the FMLA Act 99 and the components of the RMF were replaced with Special Accounts. A Special Account records amounts in the CRF. Hence there is no requirement for the CRF to be debited or appropriated for the purpose of crediting specified amounts to a Special Account.

22. Items 12 and 13 amend subsections 193A(1) and (2) and 193C(1) and (3), respectively, by replacing the references to “Fund” with “Account”. Items 12 and 13 also amend, by means of Notes, the headings of section 193A and 193C, respectively, by replacing the references to “Fund” with “Account”. In each case the amended reference is “Land Account”.

23. Item 14 replaces subsection 193E(2). The subsection is:
   - Advance to be paid out of the Land Fund (heading)
     (2) An advance is to be paid out of the Land Fund

The replacement provision is:
   - Advance to be paid out of an amount standing to the credit of the Land Account (heading)
     (2) An advance is to be debited and paid by the Commonwealth out of the amount standing to the credit of the Land Account.

The amended provision includes text which reflects the fact that the Land Account is now a Special Account recording amounts in the CRF set aside for specific purposes.

24. Item 15 repeals the note under subsection 193E(3). The Note is:
   - Under section 81 of the Constitution, amounts paid by the Indigenous Land Corporation under subsection (3) of this section must be paid into the Consolidated Revenue Fund.

Subsection (3) requires the Indigenous Land Corporation (a Commonwealth authority which is subject to the Commonwealth Authority and Companies Act 1997 (CAC Act)) to repay excess advances to the Commonwealth. The Note is redundant because the concept of a self-executing CRF was adopted with the FMLA Act 99. This is explained further in “Background” above.
25. Item 16 replaces subsection 193E(4). The subsection is:
   - Credits to Land Fund (heading)
     (4) If the Indigenous Land Corporation pays an amount under subsection (3), an amount equal to that amount is to be: (a) debited to the Consolidated Revenue Fund; and (b) credited to the Land Fund.

The replacement provision is:
   - Credits to Land Account (heading)
     (4) If the Indigenous Land Corporation pays an amount under subsection (3), an amount equal to that amount is to be credited to the Land Account.

The replacement provision reflects the fact that the Land Account is now a Special Account recording amounts in the CRF.

26. Item 16 also repeals subsection 193E(5). The subsection is:
   - Standing appropriation (heading)
     (5) The Consolidated Revenue Fund is appropriated for the purposes of subsection (4).

The provision is redundant because the Land Account is now a Special Account recording amounts in the CRF. Therefore there is no requirement for the CRF to be appropriated for the purpose of crediting specified amounts to a Special Account.

27. Items 17, 18 and 19 amend subsections 193G(1) and (2A), subsection 193H(1) and section 193I, respectively, by replacing the references to “Fund” with “Account”. Items 17 and 19 also amend, by means of Notes, the headings of sections 193G and 193I. In each case the amended reference is “Land Account”.

**Part 2 – Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987**

**Background**


The recommendation is:
- The Financial Framework Legislation Amendment Bill should include an amendment to establish the Aboriginal Advancement Account under section 38 of the **Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987**.

The Condah Land Account and the Framlingham Forest Account should be subsumed into the Aboriginal Advancement Account.

29. The first sentence of the recommendation was implemented in the **Financial Framework Legislation Amendment Act 2005** (FFLA Act). Item 20 of the FFLA Bill gives effect to the second sentence of the recommendation.
Details of the amendments

30. Item 20 replaces section 38 of the *Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987* as follows:

- The heading of section 38, “Credit of amounts to and debits from Accounts”, is replaced with “Aboriginal Advancement Account”.
- The provisions dealing with the Condah Land Account and the Framlingham Forest Account (subsections 38(2), (3), (4), (5), (7), (8), (9), (10) and (12)) are repealed.
- Subsection 38(6) of the Act is renumbered as subsection 38(1). The provision is:
  - The Aboriginal Advancement Account is established for the purpose of furthering the social and economic advancement of Aboriginal people living in Victoria.
- Subsection 38(1) of the Act is replaced with subsection 38(2). The subsection in the Act is:
  - The Accounts referred to in subsections (2), (4) and (6) are Special Accounts for the purposes of the *Financial Management and Accountability Act 1997*. The replacement provision is:
    - The [Aboriginal Advancement] Account is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*.
- Subsection 38(3) is inserted in the Act. The provision is:
  - There must be credited to the [Aboriginal Advancement] Account amounts determined by the regulations.
- Subsection 38(11) of the Act is replaced by subsection 38(4). The subsection in the Act is:
  - The Minister may debit the Aboriginal Advancement Account for the purpose mentioned in subsection (6). Amounts equal to the amounts debited are paid by the Commonwealth. The replacement provision is:
    - Amounts standing to the credit of the [Aboriginal Advancement] Account must be debited from the Account for the purposes of the making by the Commonwealth of payments to further the social and economic advancement of Aboriginal people living in Victoria.
- Subsection 38(13) of the Act is replaced by subsection 38(5). The replacement provision omits the reference, in the existing subsection, to “an Account continued in existence or established by or under this section”. The full text of the replacement provision is:
  - If interest is received by the Commonwealth from the investment of an amount standing to the credit of the [Aboriginal Advancement] Account, an amount equal to the interest must be credited to the Account.

31. Item 20 also inserts section 38A as a replacement for the arrangements spelt out in section 38 of the Act dealing with the Condah Land Account and the Framlingham Forest Account. Section 38A provides for:

- the regulations to create notional accounts within the Aboriginal Advancement Account in the name of particular Aboriginal groups living in Victoria (subsection 38A(1));
• amounts determined in accordance with the regulations must be credited to the notional accounts (subsection 38A(2));
• amounts standing to the credit of a notional account must be debited for the purposes of making payments to further the social and economic advancement of the Aboriginal group in whose name the notional account was created (subsection 38A(3)).

Part 3 – Australian Research Council Act 2001

Background

32. The FFLA Act amended Acts that established Special Accounts before 1 July 1999 to replace, with Notes, provisions that authorised the crediting of amounts to an Account that are appropriated by Parliament for the purposes of the Account. In each case the Note contains a cross-reference to the general authority provided in the Appropriation Acts. These amendments were made because the provisions were not aligned with Appropriation Acts in that Appropriation Acts no longer appropriate amounts for the purpose of specific Special Accounts.

33. In its response to JCPAA report 395 the Government agreed to the Committee’s conclusion, in paragraph 4.69 of the report, that there is merit in ensuring complete alignment of references in Acts that have established Special Accounts, since the Special Account framework was introduced on 1 July 1999, with references contained in the Financial Framework Legislation Amendment Bill 2004 (FFLA Bill 04).

34. The FFLA Bill proposes the same type of amendments to Acts that have established Special Accounts after 1 July 1999.

Details of the amendments

35. Item 21 amends section 63 of the Australian Research Council Act 2001. The section is:

− There must be credited to the Account:
  (a) amounts that are given or bequeathed for the purposes of the [ARC Research Endowment] Account; and
  (b) amounts (if any) from time to time appropriated by the Parliament for the Account.

The replacement provision is:

− Amounts that are given or bequeathed for the purposes of the Account must be credited to the 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.

3 Special Accounts were preceded by components of the Reserved Money Fund prior to 1 July 1999, when the FMA Act was amended by the FMLA Act 99.
Part 4 – Child Support (Registration and Collection) Act 1988

Background

36. The FFLA Act made amendments to the Child Support (Registration and Collection) Act 1988 (Child Support Act) that were a direct consequence of the changes made to the FMA Act by the FMLA Act 99 on 1 July 1999. In its submissions to the inquiry of the JCPAA into FFLA Bill 04, the Department of Family and Community Services (FaCS) advised that:

- the amendments to the Child Support Act proposed in FFLA Bill 04 do not change the effect of the existing provisions and the operation of the Child Support Account;
- the Department had sought legal advice as to the comprehensiveness of the financial framework provisions of the Child Support Act generally;
- the Child Support Agency (CSA) would seek the assistance of the Department of Finance and Administration (Finance Department) in making amendments as part of the legislative process for finalising the Financial Management and Accountability framework.4

37. In its second submission to the JCPAA inquiry into FFLA Bill 04 Finance advised that:

- the further amendments proposed by FaCS would broaden the types of debits that may be made from the Child Support Account, to assist with some operational requirements of the CSA and clarify what may have been a minor unanticipated effect of the deeming provisions that were part of the FMLA Act 99;
- consultations with the CSA concerning an appropriate amendment were continuing for the purposes of instructing the Office of Parliamentary Counsel.5

38. In the conclusions of JCPAA report 395 the Committee supported an appropriate amendment to the Child Support Act “to address the concerns raised by FaCS in its submissions to the inquiry”6. The Government supported the Committee’s conclusion in its response to the report.7

39. The FFLA Bill 04 was already long and the Government agreed with recommendation 5 of JCPAA report 395 that the Bill should be introduced into Parliament “as soon as is feasible”.8 Given these circumstances it was decided to introduce FFLA Bill 04 in Parliament without the above-mentioned amendments to the Child Support Act and to include the amendments in this FFLA Bill.

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4 JCPAA report 395, paragraph 5.19.
5 JCPAA report 395, paragraphs 5.20 and 5.21.
6 JCPAA report 395, paragraph 5.22.
Credit of amounts to Child Support Account

40. Item 22 replaces paragraph 74(1)(c) of the Child Support Act. The provision in the Act is:
   − (1) The following amounts must be credited to the [Child Support] Account:
     … (c ) amounts equal to amounts received by the Registrar in relation to
     amounts that persons were not entitled to have been paid in respect of a
debiting from the Account.
The replacement provision is:
   − (1) The following amounts must be credited to the [Child Support] Account:
     … (c ) amounts equal to amounts that are to be debited from the Account in
     making payments mentioned in paragraph 75(1)(c).

41. Item 22 would allow the Registrar to credit amounts to the Account where there is
   a corresponding amount payable under proposed paragraph 75(1)(c ).9 This
   amendment would broaden the range of amounts that may be credited to the Account
to include, for example, an amount that a payee of child support is required to repay to
the Registrar due to an overpayment of child support. Cases do arise where the payee
was entitled, at the time of payment, to receive the amount, but after a variation to the
payee’s entitlement, it has been found that the payee has been overpaid and is now
required to repay the amount that has been overpaid.

42. Item 23 adds a new subsection to section 74 as follows:
   − (3) If an amount would be credited to the [Child Support] Account under both
     section 30 of the Financial Management and Accountability Act 1997 and
     paragraph (1)(c) of this section, the amount is to be credited to the Account
     under whichever of those provisions first applies.

43. The objective of Item 23 is to prevent the crediting of the same amount twice to
   the Child Support Account. Double-crediting of amounts to the Account could occur
when an amount is due to be repaid by a payee of child support to a payer of child
support. Subsection 74(3) would have the following effect:
   • If the amount is repaid by the payee before the payer is repaid by the Registrar,
then section 30 of the FMA Act would apply first and therefore that same amount
would not also be credited under proposed paragraph 74(1)(c ).
   • Section 30 of the FMA Act provides that “if an amount is repaid to the
Commonwealth after having been paid out of the CRF under the authority of an
appropriation, then the appropriation has effect as if the amount had not been paid
out”.
   • If the Registrar repays the payer before the payee has repaid the amount to the
Registrar, then paragraph 74(1)(c ) would apply first. Section 30 of the FMA Act
would not apply first because the payee has not yet repaid the amount. Therefore
the same amount would not also be credited under section 30 of the FMA Act
when the payee repays the amount.

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9 Item 24, explained below, amends paragraph 75(1)(c ) to provide for the debiting of amounts from
the Child Support Account for making other payments to persons in respect of child support.
Purposes of the Child Support Account

44. Item 24 replaces paragraph 75(1)(c). The provision in the Act is:
   − (1) The purposes of the [Child Support] Account are: … (c) to repay amounts paid to the Commonwealth and credited to the Account that the Registrar was not entitled to have received under this Act.
   The replacement provision is:
   − (1) The purposes of the Account are: … (c) to make other payments that the Registrar has determined for the purposes of this Act are payable to persons in respect of child support.

45. Item 24 expands the range of amounts that may be debited from the Account for the purposes of making payments in respect of child support under the Act that are not specifically covered by paragraphs 75(1)(a) and (b). Item 24 is equivalent to Item 22 which covers amounts credited to the Account. Item 24 would broaden the range of amounts that may be debited from the Account to include, for example, an amount repayable by the Registrar to a payer of child support that was an overpayment of child support by the payer.

Part 5 – Gene Technology Act 2000

46. Item 25 repeals paragraph 130(1)(a) of the Gene Technology Act 2000 and Item 28 replaces the paragraph with a note at the end of subsection 130(1). Paragraph 130(1)(a) is:
   − (1) There must be credited to the [Gene Technology] Account the following: (a) all money appropriated by the Parliament for the purposes of the Account.
   The replacement note is:
   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.

47. An explanation for the amendments in Items 25 and 28 is contained in the background to “Part 3 – Australian Research Council Act 2001”.

48. Item 26 amends paragraphs 130(1)(e) and (f) by replacing the reference to “money from the Account” with “amounts standing to the credit of the Account”.

49. Item 27 amends paragraph 130(1)(g) by replacing the reference to “amounts paid out of the Account” with “amounts debited from the Account”.

50. An explanation for the amendments in Items 26 and 27 is contained in the background to “Part 1 – Aboriginal and Torres Strait Islander Act 2005”.

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Part 6 – *Industrial Chemicals (Notification and Assessment) Act 1989*

51. Item 29 repeals paragraph 100B(1)(a) of the *Industrial Chemicals (Notification and Assessment Act 1989* and Item 30 replaces the provision with a note at the end of subsection 100B(1). The paragraph is:
   - (1) There must be credited to the [Industrial Chemicals] Account the following:
     (a) all money appropriated by the Parliament for the purposes of the Account.

   The replacement note is:

   **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.

52. An explanation for the amendments in Items 29 and 30 is contained in the background to “Part 3 – *Australian Research Council Act 2001*”.

Part 7 – *National Blood Authority Act 2003*

53. Item 31 repeals paragraph 41(a) of the *National Blood Authority Act 2003* and Item 32 replaces the provision with a note at the end of section 31. The paragraph is:
   - There must be credited to the [National Blood] Account the following:  (a) all money appropriated by the Parliament for the purposes of the Account.

   The replacement note is:

   **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.

54. An explanation for the amendments in Items 29 and 30 is contained in the background to “Part 3 – *Australian Research Council Act 2001*”.

Part 8 – *National Health and Medical Research Council Act 1992*

**Background**

55. Section 52 of the *National Health and Medical Research Council Act 1992* provides that the Finance Minister, when holding money on trust for the purposes of the Medical Research Endowment Account (MRE Account), a Special Account, or when accepting money subject to a condition for the purposes of the MRE Account, must deal with the money in accordance with the obligations as trustee of the trust, or in accordance with the condition on which the money was accepted.

**Details of the amendments**

56. Item 33 amends subsection 52(1) by replacing references to “Minister for Finance” with “Minister”, that is the Minister responsible for the Act.
57. Items 34 and 35 insert subsections 82(1A), 82(1B) and 82(4A) which provide, respectively, that:
- the (responsible) Minister may delegate his/her power under section 52 to the Chief Executive Officer of the National Health and Medical Research Council (the Council) or to an APS employee in the Department;
- the Minister must not delegate the power if doing so would be inconsistent with the terms of the trust or with the condition; and
- the Minister must not issue a direction relating to the delegation that would be inconsistent with the terms of the trust, or with the condition.

58. Under the devolved financial management framework that now applies in the Commonwealth public sector it is appropriate that the power outlined in section 52 be exercised by the Minister responsible for the Act rather than the Finance Minister. ¹⁰

59. Given the narrow range of functions that section 52 of the Act covers (holding or accepting gifts or bequests for the purposes of the MRE Account), it is appropriate to provide a delegation power for the Minister that includes APS employees in the Minister’s Department as well as the Chief Executive Officer of the Council.

60. Item 36 provides a transitional rule that money held on trust or accepted subject to a condition for the purposes of the MRE Account by the Finance Minister, prior to the commencement of this item, is instead money held on trust or accepted subject to a condition for the same purposes by the responsible Minister.

Part 9 – Natural Resources Management (Financial Assistance) Act 1992

Background

61. Section 12 of the Natural Resources Management (Financial Assistance) Act 1992 provides that the Finance Minister, when holding money on trust for the purposes of the Natural Resources Management Account (NRM Account), a Special Account, and when accepting money subject to a condition for the purposes of the NRM Account, must deal with the money in accordance with the obligations as trustee of the trust, or in accordance with the condition on which the money was accepted.

Details of the amendments

62. Items 37 and 38 amend paragraphs 12(1)(a) and (b) as follows:
- Item 37 replaces references to “Minister for Finance” with “Minister”, that is the Minister responsible for the Act.
- Item 38 replaces references to “that Minister” with “the Minister”.

¹⁰ Under the current Administrative Arrangement Order the Minister for Health and Ageing is responsible for the Act.
63. Item 39 inserts section 12A which provides that:

- the (responsible) Minister may delegate his/her power under section 12 to the Secretary of the Department or to an APS employee in the Department;
- the delegate must exercise the power in accordance with any directions of the Minister;
- the Minister must not delegate the power if doing so would be inconsistent with the terms of the trust or with the condition; and
- the Minister must not issue a direction relating to the delegation that would be inconsistent with the terms of the trust or with the condition.

64. Under the devolved financial management framework that now applies in the Commonwealth public sector it is appropriate that the power outlined in section 12 be exercised by the Minister responsible for the Act rather than the Finance Minister.\(^\text{11}\)

65. Given the narrow range of functions that section 12 of the Act covers (holding and accepting gifts or bequests for the purposes of the NRM Account), it is appropriate to provide a delegation power for the Minister that includes APS employees in the Minister’s Department as well as the Secretary of the Minister’s Department.

66. Item 40 provides a transitional rule that money held on trust or accepted subject to a condition for the purposes of the NRM Account by the Finance Minister, prior to the commencement of this item, is instead money held on trust or accepted subject to a condition for the same purposes by the responsible Minister.

\(^{11}\) Under the current Administrative Arrangement Order the Minister for Agriculture, Fisheries and Forestry is responsible for the Act.
IV. NOTES ON SCHEDULE 2 – AMENDMENTS OF THE SAFETY, REHABILITATION AND COMPENSATION ACT 1988

Background

67. Schedule 2 amends the Safety, Rehabilitation and Compensation Act 1988 (SRC Act) to give legislative underpinning to the current practice whereby workers’ compensation benefits payable by Comcare\textsuperscript{12} are in fact paid by the employer.

68. Under the SRC Act, Comcare is liable to pay compensation to employees in respect of work-related injuries. Until a claim is lodged and determined by Comcare, the employee does not receive compensation and the SRC Act prohibits an employer from granting the employee paid leave in respect of a compensable injury. A strict application of these provisions would produce the odd result that an injured employee could not be granted paid leave or otherwise remunerated until after a claim is determined. Moreover, after a determination is made, section 116 would retrospectively prohibit any leave granted (and therefore any payments of salary, wages or pay (salary etc) in respect of that leave) to an employee in the period before the determination.

69. From commencement of the SRC Act in 1988 the practice developed whereby an incapacitated employee is granted leave if the employee has a leave entitlement. This leave may be paid or unpaid leave including sick leave, recreational leave, long service leave or leave without pay etc. Once a claim is determined in favour of the employee, Comcare makes compensation payments to the employer who then pays compensation on behalf of Comcare after reimbursing itself for any payments of salary etc it has made to the employee in respect of any period of leave relating to the compensable injury. The employer also recredits the leave taken by the employee because, following a favourable determination, this period of leave becomes compensation leave.

70. The Australian National Audit Office (ANAO) indicated that while this practice is an efficient and effective use of Australian Government resources, it is not authorised by the SRC Act. The ANAO recommended that the SRC Act be amended to reflect the current practice. JCPAA report 395 also supported amendments to the SRC Act and the Government supported the JCPAA’s consultation in its response to the report.\textsuperscript{13}

71. The amendments give effect to this recommendation by:

\begin{itemize}
  \item removing the prohibition on an employer granting paid leave to an employee in respect of a compensable injury before the compensation claim is determined;
\end{itemize}

\textsuperscript{12} Comcare is a Commonwealth authority that provides workers’ compensation insurance to the Commonwealth public sector and certain non-Commonwealth entities.

\textsuperscript{13} Explanatory Memorandum for Financial Framework Legislation Amendment Bill 2004, page 123.
• requiring any payments of salary etc in respect of a compensable injury to be set-off against any compensation payable and the restoration of any leave credits;  
• providing that Comcare can, instead of paying compensation direct to an employee, make those payments through the employee’s employer; and  
• enabling an employer to make compensation payments in anticipation of receiving funds from Comcare.

72. These amendments to the SRC Act reflect the current practice and ensure there is a seamless transition for the employee between payment of salary etc to payment of compensation. It is not the Government’s intention that the amendments remove existing rights or otherwise have a negative monetary effect on incapacitated employees.

**Definitions – “pre-determination period” and “public money”**

73. Item 1 inserts a definition of “pre-determination period”. The term relates to a claim by an employee for compensation with respect to an incapacity under Division 3 of Part II of the SRC Act. This Division covers injuries resulting from incapacity for work. The term means the period which starts at the commencement of the employee’s normal work day on which the employee is injured and ends at the conclusion of the day Comcare determines the claim for that injury.

74. Item 2 inserts a definition of “public money” as having the same meaning as in the FMA Act. The term is introduced to provide to an employer who spends public money to pay salary etc with an appropriation authority for reimbursing itself for amounts paid to an employee before it receives compensation payments from Comcare.

**Adjustments to salary etc paid and leave granted to employee in the pre-determination period following a successful compensation claim by the employee**

75. Item 3 inserts section 23A which applies where a compensation claim has been lodged with Comcare and determined in favour of the employee and where, prior to the determination of the claim (the pre-determination period), the employer has granted paid leave to the employee as a consequence of the compensable injury.

76. In these circumstances, salary etc paid to the employee in the pre-determination period must be set-off against compensation payable to the employee in respect of that period and the employee’s leave credits must be restored.

77. If an employer makes payments by way of salary etc to the claimant in respect of leave it grants to the employee in the pre-determination period, subsection 23A(2)

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14 “Public money” is defined in section 5 of the FMA Act as:
(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.
requires the employee to repay the salary etc. However, rather than requiring repayment of the full amount, paragraph 23A(3)(b) allows the salary etc to be set-off against the amount of compensation payable to the employee. The amount can be set-off by Comcare where Comcare makes compensation payments direct to an employee, or if the employee has changed employers. The employer can also set-off where the employer elects to make the compensation payments on behalf of Comcare.

78. Where the compensation amount exceeds the salary etc received by the employee, the note following subsection 23A(3) explains that Comcare would pay the difference either directly to the employee or to the current employer who would then pay the employee.

79. Subsection 23A(4) makes it clear that the effect of a set-off under subsection 23A(3) is to discharge Comcare’s statutory liability to pay compensation.

80. For the purpose of the SRC Act, the term “Commonwealth” includes Entities and Commonwealth authorities. These amendments are intended to ensure that all amounts to which an employee is entitled are received by the employee – either via salary etc or compensation.

81. Where Comcare pays compensation directly to an employee, and therefore sets-off any payments of salary etc made by an employer to the employee, subsection 23A(5) requires Comcare to make a payment to the employer of an amount equal to the salary etc set-off by the compensation payment. Where the employee has moved from one employer to another since the incapacity, Comcare would reimburse any previous employer(s), to the extent that any compensation is payable, for the salary etc paid by that employer in the pre-determination period.

82. Subsection 23A(6) deals with employers who pay salary etc out of public money, that is, employers who are Agencies for the purposes of the FMA Act. Subsection 23A(6) provides that, to the extent that salary etc is set-off against compensation, the set-off amounts are taken to be a repayment of salary etc for the purposes of section 30 of the FMA Act. The appropriation authority provided by section 30 of the FMA Act means that the set-off amount is available to be spent again.

83. Subsection 23A(7) clarifies that a reimbursement from Comcare for payments of salary etc that an employer paid out of public money to the employee in the pre-determination period becomes public money upon receipt by the employer.

84. Subsection 23A(8) provides that if the amount of salary etc paid to an employee in the pre-determination period exceeds the amount of compensation payable to the employee, the excess is recoverable by the employer as a debt due to the

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15 The terms “Entities” and “Commonwealth authority” are defined in section 4 of the SRC Act. The term “Entity” includes most FMA Act Agencies. The term “Commonwealth authority” comprises a wider group than bodies subject to the Commonwealth Authorities and Companies Act 1997 (CAC Act). For example, it includes some entities that are FMA Act Agencies.

16 To the extent that an FMA Act Agency pays salary etc out of money that is not public money the Agency would not be subject subsection 23A(6).

17 Section 30 of the FMA Act provides that “if an amount is repaid to the Commonwealth after having been paid out of the CRF under the authority of an appropriation, then the appropriation has effect as if the amount had not been paid out.”
Commonwealth. An employer could not use this provision if the employee was not entitled to compensation or where the employer had otherwise been reimbursed for the amount of salary etc it paid to the employee in the pre-determination period.

85. Subsection 23A(9) requires an employer to adjust the employee’s leave balances to acknowledge that, following a determination in favour of the employee, any leave granted to the employee in the pre-determination period becomes compensation leave. This may be achieved by recrediting the equivalent amount of leave credits to the employee.

Additional exception to reduction of compensation in certain cases

86. Item 4 adds a new subparagraph 33(2)(e) to subsection 33(2). Section 33 requires an employee’s compensation to be reduced by an amount of salary etc paid under sections 19, 20, 21, 21A, 22 or 31 of the SRC Act. There are a number of exceptions to this provision. New paragraph 33(2)(e) would prevent an employee’s compensation being reduced by salary etc received in the pre-determination period because proposed section 23A provides an alternative mechanism (set-off) by which this is achieved.

Making compensation payments through employers of employees

87. Item 5 inserts new sections 112A and 112B which provide Comcare with a choice to either pay compensation directly to the employee or to have compensation paid by the employee’s employer.

88. Currently the SRC Act requires that compensation be paid by Comcare directly to the employee after a determination is made. Moreover, section 116 currently prevents an employer granting leave, for example sick leave, to an employee where compensation is payable. A strict application of these provisions would produce the odd result that an injured employee could not be granted paid leave or otherwise remunerated until after a claim is determined. In most cases it is both administratively efficient and fair for the employee to be granted paid leave until the employee’s claim is determined and, once a claim has been determined in favour of the employee, for the employer to make compensation payments on behalf of Comcare. In this way the employer can ensure continuity of payment to the employee and provide a seamless transition from salary etc to compensation through its payroll. New sections 112A and 112B authorise this.

89. The drafting of sections 112A and 112B reflect the different spending authorities that apply to employers who pay salary etc from public money and employers who pay salary etc from money held in their own account.18

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18 This type of employers is a separate legal entity from the Commonwealth and has the authority to own money in its own name.
Making of compensation payments through employers of employees paid out of public money

90. New section 112A applies to employers who pay salary etc to employees out of public money. 19

91. If Comcare is liable to pay compensation under Division 3, Part II of the SRC Act, subsection 112A(2) allows Comcare to make a payment in respect of the compensation to the employer for the purposes of enabling the employer to make a compensation payment to the employee. This would be an alternative to Comcare paying compensation directly to the employer. Subsection 112A(3) provides that if Comcare decides to pay the employer, it must advise the employer that it intends to do so.

92. Where Comcare advises the employer of its intention to make a payment to the employer (called an advised payment, when paid) in respect of the compensation payable to an employee, subsection 112A(4) allows the employer to make the compensation payment to the employee before or after receipt of the advised payment. A payment of compensation by an employer to the employee before it receives the advised payment from Comcare is called an anticipatory payment. An anticipatory payment to an employee must be an amount equal to the amount of compensation payable to the employee. If the employer pays the employee after it receives the advised payment from Comcare, the employer holds the money on behalf of the employee until it makes the payment to the employee.

93. Subsection 112A(4) is expressed to be subject to section 23A. Section 23A requires that any compensation payment be set-off against any payment of salary etc made in the pre-determination period. The note following subsection 112A(4) notes the interaction between section 112A and section 23A.

94. Subsection 112A(5) makes it clear that payment of a compensation amount by an employer discharges Comcare’s statutory liability to pay compensation.

95. Subsection 112A(6) ensures that relevant authority exists to make compensation payments to the employee prior to receiving the payment or the advised payments from Comcare (an anticipatory payment).

- Paragraph 112A(6)(a) provides that the appropriation authority used to make payments of salary etc, in the pre-determination period may also be relied on by the employer to make anticipatory compensation payments to the employee. This paragraph also makes it clear that section 116 does not prevent an employer from making payments to an employee in the post-determination period. 20

19 The terms “Entities” and “Commonwealth authority” are used in the SRC Act and are defined in section 4 of the SRC Act. The term “Entity” includes most FMA Act Agencies. The term “Commonwealth authority” comprises a wider group than bodies subject to the CAC Act. For example, it includes some entities that are FMA Act Agencies.

20 Section 116 would normally prevent an employer from granting leave to an employee in the post-determination period when compensation is payable.
• Paragraph 112A(6)(b) provides that the payment received by the employer represents a repayment for the purposes of section 30 of the FMA Act. This provides the appropriation authority for the employer to reimburse itself for the anticipatory payment. 21

96. Subsection 112A(7) provides that when an advised payment is received by an employer it becomes public money.

97. Section 112A does not cover the appropriation authority for the employer to reimburse itself in the cases where the employer makes compensation payments to the employee after having received advised payments from Comcare. This is because the appropriation authority would be provided by commonly used provisions of the FMA Act. For example, subsection 20(4) of the FMA Act appropriates the CRF for expenditure for the purposes of a Special Account established by the Finance Minister under subsection 20(1) of the FMA Act.

Making of compensation payments through employers of employees not paid out of public money

98. New section 112B applies to employers that do not pay salary etc out of public money. These are separate legal entities from the Commonwealth and have the authority to own money in their own name. The group includes bodies subject to the CAC Act, a number of subsidiaries of CAC Act bodies, as well as the Australian Capital Territory Government.

99. If Comcare is liable to pay compensation under Division 3, Part II of the SRC Act, subsection 112B(2) allows Comcare to make a payment in respect of the compensation to the employer for the purposes of enabling the employer to make compensation payments to the employee. This would be an alternative to Comcare paying compensation directly to the employer. Subsection 112B(3) provides that if Comcare decides to pay the employer, it must advise the employer that it intends to do so.

100. Where Comcare advises the employer of its intention to make a payment to the employer in respect of the compensation payable to an employee, subsection 112B(4) requires the employer to make a payment of an equal amount to the employee. The employer can make the compensation payment to the employee before or after receipt of the advised payment.

101. Subsection 112B(4) is expressed to be subject to section 23A. Section 23A requires that any compensation payments be set-off against any payments of salary etc made in the pre-determination period. The note following subsection 112B(4) alerts readers to the interaction between section 112B and section 23A.

102. Subsection 112B(5) makes it clear that payment of a compensation amount by an employer discharges Comcare’s statutory liability to pay compensation.

21 Section 30 of the FMA Act provides that “if an amount is repaid to the Commonwealth after having been paid out of the CRF under the authority of an appropriation, then the appropriation has effect as if the amount had not been paid out.”
Subsection 112B(6) provides that, upon receipt of the advised payment from Comcare, the compensation amount is not public money but held on the employer’s own account.

Nothing proposed in section 112B is intended to interfere with, or direct how the Australian Capital Territory Government should account for payments and receipts made under Division 3 of Part II of the SRC Act.

Employees on compensation leave

Section 116 currently prevents an employer granting leave, for example sick leave, to an employee where compensation is payable. A strict application of these provisions would produce the odd result that an injured employee could not be granted paid leave or otherwise remunerated until after a claim is determined. Moreover, after a determination is made, section 116 would retrospectively prohibit any leave granted (and therefore any payments of salary etc in respect of that leave) to an employee in respect of the pre-determination period.

Items 6, 7 and 8 address this anomaly by amending section 116 to allow leave to be granted in the pre-determination period, subject to adjustments (that is crediting) being made under new section 23A if a determination is subsequently made that the employee is eligible for compensation.  

Application

Item 9 specifies that:

* the insertion of the definition of pre-determination period, section 23A and paragraph 33(2)(e), contained in items 1, 3 and 4 applies to injuries occurring after the amendments commence;  
* items 2 and 5, which insert new sections 112A and 112B and the definition of public money, apply to all liabilities under the SRC Act that exist at, or arise after, the commencement of the amendments;  
* items 6 to 8, which modify the granting of leave under section 116, apply to grants of leave following commencement of the amendments.

The amendments introduce the concept of “post-determination compensation leave” and therefore make the prohibition on the granting of leave, other than compensation leave, only apply after a determination has been made that compensation is payable.

Section 2 of the FFLA Bill provides for the amendments to the SRC Act to commence on the later of 1 July 2006 and the day after the Bill receives Royal Assent as an Act.
V. NOTES ON SCHEDULE 3 – OTHER AMENDMENTS

Part 1 – Aboriginal and Torres Strait Islander Act 2005

108. The ATSI Act contains two sections numbered 200B. Item 1 renumbers the section headed “Delegations” as section 200C. This section, numbered as 200B, was inserted by Item 162 of Schedule 1 to the Aboriginal and Torres Strait Islander Commission Amendment Act 2005 (ATSIC Amendment Act) which commenced on 24 March 2005. The section which is to remain number 200B is headed “Delegation by Finance Minister” was inserted by Item 10 of Schedule 2 of the FFLA Act and commenced immediately after Schedule 1 to the ATSIC Amendment Act commenced.

Part 2 – Australian Institute of Marine Science Act 1972

109. Item 2 inserts section 50A of the Australian Institute of Marine Science Act 1972 to provide the Finance Minister with powers to “delegate to an official (within the meaning of the Financial Management and Accountability Act 1997)” the Minister’s powers under the Act. These powers are:
- approval for the Australian Institute of Marine Science (the Institute) to provide guarantees for the benefit of associated companies of the Institute (paragraph 10(2)(hb) of the Act);
- approval of the borrowing of money by the Institute “from persons other than the Commonwealth” (subsection 42B(1) of the Act); and
- guaranteeing obligations incurred by the Institute by borrowing under subsection 42B(1) (section 42C of the Act).

110. Item 2 also includes subsection 50A(2) which provides that “in exercising power under a delegation, the official must comply with any directions of the Finance Minister”.

111. Providing delegation powers for the Finance Minister will facilitate more efficient public administration and will align the Act with other Acts that contain similar approval and delegation powers for the Finance Minister. The FFLA Act amended these other Acts to transfer the approval powers from the Treasurer and provided powers for the Finance Minister to delegate the Minister’s approval powers to an official within the meaning of the FMA Act.

24 An official is defined in section 5 of the FMA Act as “a person who is in an Agency or is part of an Agency”. “Agency”, for the purposes of the FMA Act, comprises a Department of State, a Parliamentary Department and or a prescribed Agency (section 5 of the FMA Act).

Section 33 – Act of grace payments

112. Section 33 of the FMA Act provides that the Finance Minister may authorise the making of an act of grace payment to a person.

113. Item 3 repeals subsection 33(4) and Item 4 replaces the subsection with a note. Subsection 33(4) is:
   - Payments under this section are to be made out of money appropriated by the Parliament for the purposes of this section.

The replacement note is:
   - 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 or otherwise relates to the Agency’s outcomes.

114. The intention of the amendment is to clarify that the appropriation authority for making the act of grace payment is provided in an item that relates to an agency’s outcomes in an Appropriation Act and not by subsection 33(4) of the FMA Act.

Section 58 – Modifications of FMA Act to certain agencies

115. Section 58 of the FMA Act provides that FMA Act Agencies that are intelligence or security agencies, as defined in section 85ZL of the Crimes Act 1914 (Crimes Act), are able to access modifications to the FMA Act as set out in the Financial Management and Accountability Regulations 1997 (FMA Regulations). The modifications are outlined in subregulation 9(2) of the FMA Regulations and Schedule 2 of the FMA Regulations.
   - These modifications provide an exemption to the requirement for the approval of spending proposals affecting operational money; allow the banking of public money that is operational money in an account that is not an official account; and provide for the preparation of financial statements other than in accordance with the Finance Minister’s Orders.

Access to the modifications is administered through Ministerial approval processes.

116. Some law enforcement agencies need to undertake sensitive activities that are similar in nature to those of intelligence and security agencies. It is therefore appropriate that they be able to access the same modified application of the FMA Act for those sensitive activities, subject to appropriate Ministerial agreement.

117. The amendments contained in Items 5 and 6 would allow for these modified requirements to also be accessible to FMA Act Agencies that are law enforcement agencies that are prescribed for that purpose in the FMA Regulations. Access to the modifications would be administered through Ministerial approval processes.

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25 Subsection 58(2) of the FMA Act provides that “modifications” includes additions, omissions and substitutions.
118. Item 5 amends subsection 58(1) by adding the reference to “or to a prescribed law enforcement agency”. The complete amended subsection is:
   - 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.

119. Item 6 inserts, under subsection 58(2), a definition of “prescribed law enforcement agency” as a law enforcement agency, within the meaning of section 85ZL of the Crimes Act that is prescribed by the FMA Regulations for the purposes of the definition.

120. A list of intelligence and security agencies and law enforcement agencies, as defined in section 85ZL of the Crimes Act, is in Attachment A of this Explanatory Memorandum.

121. A number of consequential amendments to the FMA Regulations will be made to give effect to the proposed changes to section 58 of the FMA Act when they commence as law. In addition, to be able to access the modified requirements, a law enforcement agency will need to be prescribed for this purpose in a new schedule to the FMA Regulations.

**Part 4 – Native Title Act 1993**

**Investment approval power**

122. Item 7 amends paragraph 203CB(2)(d) of the *Native Title Act 1993* by transferring from the Treasurer to the Finance Minister the power to approve investments of surplus money by a representative body\(^{26}\) other than the following types of investments:
   - (a) on deposit with a bank;
   - (b) in securities of the Commonwealth or of a State or Territory; or
   - (c) in securities guaranteed by the Commonwealth, a State or a Territory.

123. Item 8 inserts subsection 203CB(2A) to provide the Finance Minister with a power to delegate “to an official (within the meaning of the *Financial Management and Accountability Act 1997*)” any of the Finance Minister’s powers or functions under section 203.\(^{27}\) The subsection also provides that “in exercising powers or functions under a delegation, the official must comply with any directions of the Finance Minister”.

124. The amendments in Items 7 and 8 will align the Act with the same amendments made to the CAC Act in Items 73 and 74 of Schedule 2 of the FFLA Act. The amendments co-locate in one central portfolio the powers relating to the financial

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\(^{26}\) A representative body is defined in sections 253 and 203AD of the Act as an Aboriginal and Torres Strait Islander body recognised by the Minister as the representative body for an area.

\(^{27}\) An official is defined in section 5 of the FMA Act as “a person who is in an Agency or is part of an Agency”, “Agency”, for the purposes of the FMA Act, comprises a Department of State, a Parliamentary Department and or a prescribed Agency (section 5 of the FMA Act).
oversight of Commonwealth and other entities and therefore facilitate more efficient and effective public administration.

125. Item 9 inserts subsection 203CB(4) which provides a definition of the Finance Minister as “the Minister who administers the Financial Management and Accountability Act 1997”.

126. Item 11 is a transitional rule that an approval by the Treasurer that was in force under paragraph 203CB(2)(d) of the Act has effect after the commencement of this Part as if it had been given under that paragraph as amended by this Part.

Reference to the Aboriginal and Torres Strait Islander Commission Act 1989

127. Item 10 amends subsection 206(2) to replace the reference to “Aboriginal and Torres Strait Islander Commission Act 1989” with “Aboriginal and Torres Strait Islander Act 2005”. The Act was amended and its name changed to the ATSI Act by the ATSIC Amendment Act. The name-change commenced on 24 March 2005.

Part 5 – Public Accounts and Audit Committee Act 1951

Background

128. The amendments to the Public Accounts and Audit Committee Act 1951 (Public Accounts Act) correct, update and express provisions more clearly without altering the intent of the existing provisions.

Non-gender specific language

129. Items 13, 14, 15, 16, 20, 21, 22, 23, 24, 25, 26, 31 and 32 amend subsection 5(3), 5(6), 6(2), 6(2A), 6A(2) 13(3) and 14(1), paragraph 14(3)(c), subsection 14(4), paragraphs 17(1)(b) and 17(1)(c), subsection 19(2), and The Schedule (Form D), respectively, to make the following types of changes:

− after “he”, insert “or she”;
− after “his”, insert “or her”; and
− after “him”, insert “or her”.

130. The amendments modernise the Public Accounts Act by including gender-neutral language.

131. The Statute Law Revision Bill (No.2) 2005 (SLR Bill) proposes amendments to the Public Accounts Act to replace references to “Chairman” and “Vice-Chairman” with “Chair” and “Deputy Chair”, respectively, and for these amendments to apply retroactively from 1 January 1998.28

28 Item 22 of Schedule 1 of the SLR Bill amends subsection 5(6) of the Public Accounts Act. Items 3 to 6 of Schedule 2 of the SLR Bill make corrections to the amendments to section 4, and the Schedule-Forms of the Public Accounts Act that are recorded in Schedule 2 of the Audit (Transitional and Miscellaneous) Amendment Act 1997. Schedule 2 of that Act commenced on 1 January 1998.
Sectional Committees

132. Item 17 replaces subsection 9(3) with two subsections that provide for arrangements for Sectional Committees. The current subsection 9(3) is:

− The provisions of this Act (other than this section and section 5, subsection 7(1) and sections 8, 8A, 8B and 12) apply in relation to a Sectional Committee in like manner as they apply in relation to the Committee and, for the purposes of those provisions as so applying, a reference to the Chair or the Deputy Chair of the Committee (except the references in section 22) shall be read as a reference to the Chair or the Deputy Chair of the Sectional Committee.

133. The replacement provisions contain clearer language but do not alter the intent of the existing subsection. The replacement provisions are:

(3) The provisions of this Act (other than this section and section 5, subsection 7(1) and sections 8, 8A, 8B and 12) apply in relation to a Sectional Committee in the same way as they apply in relation to the Committee.

(3AA) In applying any of the provisions, a reference to the Chair or the Deputy Chair of the Committee (except the references in section 22) is instead a reference to the Chair or the Deputy Chair of the Sectional Committee.

134. Item 18 amends paragraph 9(3A)(c) to provide for a quorum of 4 members when membership of a Sectional Committee is 8 or more in number. The provision currently specifies a quorum of 4 members when there are 8 or 9 members of a Sectional Committee, but does not cover Sectional Committees with more than 9 members for the purpose of specifying a quorum.

Evidence taken in public or in private

135. Item 19 replaces section 11 with two sections that provide arrangements for the taking of evidence by the Committee and the disclosure of the evidence.

136. The current section is headed “Sittings to be public except in certain cases” and is:

(1) Subject to this section, the Committee shall take all evidence in public.

(2) The Committee may, and at the request of the witness giving the evidence shall, take in private evidence, whether oral or documentary, which, in the opinion of the Committee, relates to a secret or confidential matter.

(3) Where, at the request of a witness, evidence is taken by the Committee in private:

(a) the Committee or a member shall not, without the consent in writing of the witness; and

(b) a person other than a member shall not, without the consent in writing of the witness and the authority of the Committee under subsection (5);

disclose or publish the whole or a part of the evidence (other than evidence which has already been lawfully published).
(4) Where evidence is taken by the Committee in private otherwise than at the request of a witness, a person (including a member of the Committee) shall not, without the authority (in writing signed by the Chair) of the Committee under the next succeeding subsection, disclose or publish the whole or a part of that evidence (other than evidence which has already been lawfully published).

(5) The Committee may, in its discretion, disclose or publish, or authorize the disclosure or publication of, evidence taken in private, but this subsection does not operate so as to affect the necessity for the consent of a witness under subsection (3).

(6) This section has effect notwithstanding the provisions of section 2 of the Parliamentary Papers Act 1908-1946.

137. The proposed section 11 is headed “Sittings to be public except in certain cases” and replaces subsections 11(1) and (2) of the Act to express them in clearer language without altering the intent. The replacement provisions are:

1 (1) Subject to subsection (2), the Committee must take all evidence in public.

2 (2) If, in the Committee’s opinion, evidence relates to a secret or confidential matter:

(a) if the witness giving the evidence requests the Committee to do so – the Committee must take the evidence in private; or

(b) in any other case – the Committee may take the evidence in private.

138. The proposed section 11A in Item 19 is headed “Disclosure of publishing of evidence taken in private” and replaces subsections 11(3), (4), (5) and (6) of the Act to express them in clearer language without altering the intent. The replacement provisions are:

1 (1) Subject to subsections (2) and (3), the Committee may publish or disclose any evidence taken in private.

2 (2) If evidence is taken in private at the request of a witness and has not already been published:

(a) the Committee or a member of the Committee must not disclose or publish any of the evidence without the consent of the witness who gave it; and

(b) any other person must not disclose or publish any of the evidence without the consent of the witness who gave it and without the authorisation of the Committee.

3 (3) If evidence is taken in private other than at the request of a witness and has not already been published, a member of the Committee or any other person must not disclose or publish any of the evidence without the authorisation of the Committee.

4 (4) The Committee, may in writing signed by the Chair, give an authorisation for the purposes of paragraph (2)(b) or subsection (3).

5 (5) This section has effect in spite of section 2 of the Parliamentary Papers Act 1908.29

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29 Subsection 2(2) of the Parliamentary Papers Act 1908 provides that “it shall be lawful for a Committee to authorize the publication of any document laid before it or of any evidence given before it.”
Payment of allowances

139. Item 27 replaces subsection 22(2) with two subsections. Section 22 provides arrangements for the payment of allowances to the Chair and members of the Committee. Subsection 22(1), which is not proposed for amendment, provides that “the Chair and other members of the Committee shall be paid such allowances as are prescribed”.

140. The current subsection 22(2) is:
   − The prescribed allowances are payable, upon the certificate of the Chair or of the Deputy Chair, out of the Consolidated Revenue Fund, which is appropriated accordingly.

141. The proposed subsections 22(2) and (3) contain clearer language but do not alter the intent of the existing subsection. The provisions are:
   (2) However, the prescribed allowances are not payable unless the Chair or Deputy Chair certifies in writing that they are payable.
   (3) Prescribed allowances in respect of which such certification has been given are payable out of the Consolidated Revenue Fund, which is appropriated accordingly.

Limitation on payment of allowances and reference to the Finance Minister

142. Section 23 limits the amount of allowances that may be paid to Committee members in any financial year to twenty thousand dollars. Subsection 23(2) authorises the Minister for Finance to determine an abatement for the purpose of limiting annual expenditure on allowances to twenty thousand dollars in any financial year.

143. Items 28 and 29 insert more up-to-date text in section 23 as follows:
   • Item 28 replaces references in subsection 23(1) and (2) to “Twenty thousand dollars” with “$20,000”.
   • Item 29 replaces the reference, in subsection 23(2), to “Minister for Finance with “Finance Minister”.

144. Item 12 inserts in section 4 a definition of Finance Minister as “the Minister who administers the Financial Management and Accountability Act 1997”.

Other amendments

145. Item 13 amends, by means of a note, the heading to section 5 by adding “and Audit” to make the heading “Joint Committee of Public Accounts and Audit”.

146. Items 30 and 33 amend The Schedule (Form C) and The Schedule (Form D), respectively, to replace “19” with “20” to update the reference to the first two numbers of the year in which the form is signed. Form C is the format for a summons to a person to appear before the Committee to give evidence and produce documents. Form D is the format for a warrant for the apprehension of a witness who has disobeyed a summons.
147. Item 34 provides that the amendments in Item 30 to Form C and the amendments in Items 31 to 33 to Form D apply to summonses and warrants, respectively, issued after the commencement of the amendments to the Public Accounts Act.

**Part 6 – Public Service Act 1999**

148. Section 73 of the *Public Service Act 1999* (Public Service Act) provides the Public Service Minister with the power to authorise the making of a payment to a person because of special circumstances that relate to, or arise out of, the employment of a person (the payee or another person) by the Commonwealth.

149. Item 36 repeals subsection 73(6) and Item 37 replaces the subsection with a note. Subsection 73(6) is:

− Payments under this section are to be made out of money appropriated by the Parliament for the purposes of this section.

The replacement note is:

− Note: Payments under this section must be made from money appropriated by the Parliament. Generally, a 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 or otherwise relates to the Agency’s outcomes.

150. The intention of the amendment is to clarify that the appropriation authority for making the payment is provided in an item that relates to an agency’s outcomes in an Appropriation Act and not by subsection 73(6) of the Public Service Act.

**Part 7 – Superannuation Act 1976**

151. Item 37 amends subsection 160(2) of the *Superannuation Act 1976* by replacing the reference to “Public Account” with “Consolidated Revenue Fund”. The complete subsection, as amended by Item 37, is:

− Moneys received and paid under this section [cost of administration of, and of medical examinations under, Act etc], and the accounts in connexion therewith, shall be kept, as part of the Consolidated Revenue Fund, separately from the moneys and accounts of the [CSS] Fund.

152. The amendment aligns the provision with the FMA Act. The term “Public Account” refers to the “Commonwealth Public Account”, which was a term used in the *Audit Act 1901* (Audit Act) to cover separate accounting funds of the Commonwealth. These funds did not include the CSS Fund. The FMA Act, which replaced the Audit Act on 1 January 1998, does not use the term “Commonwealth Public Account”.

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VI  NOTES ON SCHEDULE 4 – REPEAL OF ACTS

**Employment Services Act 1994**

153. Item 1 repeals the *Employment Services Act 1994*. The Act was passed to establish Employment Assistance Australia, to set up and regulate a case management system to administer the employment programme and to establish the Employment Services Regulatory Authority. With the commencement of the Employment Services market in 1998, Employment Assistance Australia was unnecessary, the case management system was no longer required and the Employment Services Regulatory Authority became non-operational. The Act is, therefore, now redundant.

**Loan Act 1977**

154. Item 2 repeals the *Loan Act 1977*. The Act authorises the Treasurer to borrow a specified amount of money during the financial year ended 30 June 1978 and for the money borrowed to be applied for certain expenses and services specified in Acts appropriating amounts for services of the year ending 30 June 1978. The Act is redundant and can therefore be repealed. This repeal would follow the repeal of nine similar Loan Acts in the FFLA Act.
Attachment A

Extract of section 85ZL of the *Crimes Act 1914*

intelligence or security agency means:
(a) the Australian Security Intelligence Organisation*; or
(b) the Australian Secret Intelligence Service*; or
(c) the Office of National Assessments*; or
(d) that part of the Department of Defence known as the Defence Signals Directorate*; or
(e) that part of the Department of Defence known as the Defence Intelligence Organisation*. or
(f) that part of the Department of Defence known as the Defence Imagery and Geospatial Organisation*;

law enforcement agency means:
(a) the Australian Federal Police*;
(b) the police force of a State or Territory;
(ba) the Australian Customs Service*;
(c) the ACC*#;
(e) the CrimTrac Agency*;
(f) the Independent Commission Against Corruption established under the Independent Commission Against Corruption Act 1988, of the State of New South Wales, or a similar body established under a law of another State;
(g) the New South Wales Crime Commission established under the New South Wales Crime Commission Act 1985 of New South Wales, or a similar body established under a law of another State;
(h) the Office of the Director of Public Prosecutions*, or a similar body established under a State law;
(j) a Director of Public Prosecutions, or a person performing a similar function, appointed under a law of a State;
(k) staff appointed to assist a Director or person referred to in paragraph (j); or
(m) officers or members of the Attorney-General's Department of a State or a similar State Department, or of a body administered by such a Department, being officers or members whose primary function is the institution or conduct of proceedings for State offences.

* subject to the FMA Act
# the Australian Crime Commission