

JCPAA Report 395: Inquiry into the Draft Financial Framework Legislation Amendment Bill

Government Response to the recommendations and conclusions in the report

Recommendation 1

The proposed amendments to subsection 20(1) of the *Financial Management and Accountability Act 1997* (FMA Act) contained in the draft Financial Framework Legislation Amendment Bill should include the following:

- A determination of the Minister for Finance and Administration (Finance Minister) establishing a Special Account should include a reference to amounts that are allowed or required to be debited from a Special Account and this reference should be linked to the reference to the purposes of the Special Account.
- A determination of the Finance Minister may specify that amounts debited from a Special Account may be or must be otherwise than for the making of real or notional payments.

Agree

The recommendation clarifies the amendment in the draft Financial Framework Legislation Amendment Bill (FFLA Bill) covering the information requirements of a determination of the Finance Minister that establishes a Special Account.

The Office of Parliamentary Counsel will be instructed to amend the FFLA Bill to reflect the recommendation.

Recommendation 2

The draft Financial Framework Legislation Amendment Bill should include amendments to the FMA Act and all other relevant Acts to replace references to 'Special Account' with references to 'Designated Purpose Account'.

Do not agree

A proposed name change is not supported. The Government sees it is as important to maintain stability and avoid frequent changes to the financial framework that do not significantly contribute to improving the financial framework.

While the Government supports clarifying the role and operation of Special Accounts, a change of name from 'Special Account' to 'Designated Purpose Account' would not necessarily contribute to this outcome.

Special Accounts originated from Trust Accounts under the *Audit Act 1901*, that were converted into components of legislative funds in 1998 and then converted to Special Accounts on 1 July 1999. Further change may add unnecessarily to the complexity of this important part of the financial framework.

The Government has agreed to greater disclosure about Special Accounts in the Budget papers and in Departmental financial statements. In addition, the Department of Finance and Administration produced, in October 2003, 'Guidelines for the Management of Special Accounts' to assist interested parties in understanding the role and function of Special Accounts.

Recommendation 3

The annual Appropriation Acts should not authorise the crediting of appropriated amounts (that is, amounts included in annual Appropriation Acts) to a Special Account if the Act or the Finance Minister's determination that establishes the Special Account does not specifically provide for appropriated amounts to be credited to the Special Account.

Agree in principle

Recommendation 3 follows from the Committee's observation, in paragraph 4.64 of the report, that annual Appropriation Acts appear to facilitate the crediting of appropriated amounts to Special Accounts whereas some Acts that establish particular Special Accounts do not specifically provide for appropriated amounts to be credited to those Accounts. The Committee concludes, in paragraph 4.65 of the report, that this anomaly should be addressed. The Government considers that the anomaly can be satisfactorily addressed by making changes to clarify the situation.

It would be appropriate to clarify this situation by including Notes in the FMA Act providing links to the authority which Parliament would normally provide in the Appropriation Acts. The FMA Act already contains provisions dealing with amounts credited to, and debited from Special Accounts, in particular:

- Subsections 20(4) and 21(1) of the FMA Act provide standing appropriations for expenditure of the balance of a Special Account on the purposes of the Account (covering those established by determinations of the Finance Minister and those established by Acts, respectively), and
- Subsection 21(1) is followed by a Note that states: ‘an Act that establishes a Special Account will identify the amounts that are to be credited to the Special Account’.

Accordingly, the Government considers that the most appropriate way to clarify the arrangements is for the Office of Parliamentary Counsel to be instructed to include, in the FFLA Bill, Notes attached to sections 20 and 21 of the FMA Act to provide cross-references to the authority provided by the annual Appropriation Acts for crediting appropriated amounts to Special Accounts.

Recommendation 4

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.

Agree

The recommendation will align the Act with the financial framework for establishing Special Accounts, recognised in the FMA Act, and rationalise the number of Special Accounts.

The Office of Parliamentary Counsel will be instructed to include in the FFLA Bill an amendment to the Act so that the Act establishes the Aboriginal Advancement Account.

Finance will work with the Department of Immigration and Multicultural and Indigenous Affairs to subsume the Lake Condah and Framlingham Forest Accounts into the Aboriginal Advancement Account.

Recommendation 5

The Government should introduce the Financial Framework Legislation Amendment Bill into Parliament as soon as is feasible.

Agree

Finance is working closely with the Office of Parliamentary Counsel and the Department of the Prime Minister and Cabinet to achieve introduction of the FFLA Bill in Parliament as soon as is feasible.

The Committee's conclusions and comments

In its report the Committee made a number of conclusions and comments which did not lead to recommendations. Comments on these conclusions and comments are made below.

The Committee's interest in the financial management and accountability legislation

The FFLA Bill contains amendments to many Acts that are part of, or affect, the financial framework of the Australian Government, including the FMA Act. The Government recognises the Committee's long term interest in the financial management and accountability legislation through the reports it has produced on this subject, including the following reports:

- Report 331, *An Advisory Report on the Financial Management and Accountability Bill 1994, the Commonwealth Authorities and Companies Bill 1994 and the Auditor-General Bill 1994, and on a Proposal to Establish an Audit Committee of Parliament* (1994); and
- Report 374, *Review of the Financial Management and Accountability Act 1997 and the Commonwealth Authorities and Companies Act 1997* (2000).

Constitutionality of Special Accounts

In paragraph 4.11 of the report the Committee notes that while some have raised doubts about the constitutionality of Special Accounts established by the Finance Minister, the Committee accepted the view of the Australian Government Solicitor that a court would find them constitutionally valid.

The Committee's conclusion supports the status of Special Accounts established by the Finance Minister. The authority provided in section 20 of the FMA Act for the Finance Minister to establish Special Accounts provides a useful vehicle for the delivery of some programs. To require all Special Accounts to be established and varied only by legislation would have an adverse impact on the efficient and effective delivery of some programs.

Parliamentary scrutiny of Special Accounts established by the Finance Minister

Parliamentary scrutiny of Special Accounts being established or varied by the Finance Minister is provided through the disallowance process established by section 22 of the FMA Act. To assist Parliament's consideration of a determination of the Finance Minister during the disallowance period, the Department of Finance and Administration will enhance the determination documentation by including more details about the Special Account in the explanatory statement. This initiative was foreshadowed in Finance's second submission to the inquiry (dated 23 May 2003).

Processes for establishing Special Accounts

The Government supports the conclusion, in paragraph 4.75 of the report, that establishing a Special Account by one process, for example by a determination of the Finance Minister, should not be altered by the other process - in this example, by legislation. Accordingly, Finance will in future advise against provisions in Bills and draft determinations that would lead to this outcome.

Acts that have established Special Accounts since the Special Accounts framework was established on 1 July 1999

The Government agrees with 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 the references contained in the FFLA Bill.

Proposed amendments to the *Child Support (Registration and Collection) Act 1988* and the *Safety, Rehabilitation and Compensation Act 1988*

Finance is working closely with the Department of Family and Community Services and the Department of Employment and Workplace Relations on proposed amendments to the *Child Support (Registration and Collection) Act 1988* and the *Safety, Rehabilitation and Compensation Act 1988*, respectively. These amendments, which were supported by the Committee in paragraphs 5.22 and 5.34 respectively of the report, will support the efficient and effective delivery of the programmes established by these Acts.

Retrospectivity issues

The Government supports the Committee's conclusion, at paragraph 5.17 of the report, that the Bill does not provide for any retrospective effect.

Finance will continue to work closely with the Office of Parliamentary Counsel and the Australian Government Solicitor to ensure that the Bill is not retrospective either in any specific instances or generally as a result of the amendments.

Keeping the Committee informed of further changes to the FFLA Bill

Further changes to the FFLA Bill will be required before it is ready for introduction in Parliament. Many of these changes will follow from the Government's acceptance of the Committee's recommendations and conclusions.

The Government is committed to notifying the Committee of all changes made to the Bill, following the Committee's inquiry, and before it is introduced in Parliament.

Reporting on Special Accounts

The Committee's intention, expressed in paragraph 4.57 of the report, to keep a watching brief on improved reporting on Special Accounts introduced from 2003-04 is noted. The Government will work with the Committee to address any outstanding issues that the Committee identifies in its review.

Reporting on the Consolidated Revenue Fund (CRF)

In paragraph 6.23 of the report the Committee expressed concern that the CRF was reported in audited aggregate financial statements but was not now so reported and commented that this change represented a substantial diminution in transparency.

The 2003-04 Budget papers contained the following information on the CRF:

- In Statement 10 of Budget Paper No.1 (page 10-7), Note 2A contains a discussion of the connection between the CRF and the cash balance reflected in the statement of financial position for the Commonwealth general government sector. The note also records the estimated and projected balance of the CRF for the period 2002-03 to 2006-07.
- In Budget Paper No. 4 the Introduction section contains a discussion of the connection between the Constitution, legislation that appropriates the CRF, and reporting on the allocation of resources to Government outcomes by agencies contained in annual appropriation bills, Portfolio Budget Statements and agency annual reports.

Finance is examining ways of obtaining additional information from Agencies about cash on hand to complement information available on the official public account and disclosing information on the CRF in the Consolidated Financial Statements for the Commonwealth.

Auditing the final budget outcome

The Committee's view that the final budget outcome should be audited is noted. The Government's response to JCPAA report 388, "Review of the Accrual Budget Documentation" did not agree with the recommendation that the final budget outcome be audited by the Australian National Audit Office.

In its response the Government made the following points:

- The Government notes that the Final Budget Outcome must be published by 30 September, in accordance with the *Charter of Budget Honesty Act 1998*. Under present arrangements this deadline is met with little time to spare. Therefore, the introduction of a complete audit process would compromise this legislative requirement. As the individual agency accounts that are consolidated into the FBO are audited, there is already an implicit audit process undertaken.
- The Consolidated Financial Statements (CFS) for the Commonwealth are already audited by the Australian National Audit Office. Under the *Financial*

Management and Accountability Act 1997 the CFS must be tabled within five months of the end of the financial year. Given that audit of the CFS already provides assurance on aggregate financial statements, the Government does not consider it necessary to add another layer of checking for the FBO with associated consequences for what is already a tight FBO timetable.