DEPARTMENT OF
FINANCE AND
ADMINISTRATION

Mr Bob Charles, MP
Chair
Joint Committee of Public Accounts and Audit
Parliament House
CANBERRA ACT 2600

Dear Mr Charles

SECOND SUBMISSION ON THE FINANCIAL FRAMEWORK LEGISLATION AMENDMENT BILL

Thank you for the opportunity to make a further submission to the Joint Committee of Public Accounts and Audit (the Committee) as part of the inquiry into the draft Financial Framework Legislation Amendment Bill (FFLA Bill).

Attached to this letter is the second submission from the Department Finance and Administration (Finance) which is provided to the Committee for consideration in preparing its report.

This submission addresses issues and questions raised at the public hearing, issues raised in other submissions, and developments that have occurred since the hearing, including those developments arising from a hearing of the Committee on 30 April 2003, relating to the Audit Report on the *Management of Trust Monies*.

Again, Finance appreciates the Committee scheduling its inquiry into the proposed FFLA Bill in its work program and looks forward to the Committee's report.

Yours sincerely

Ian McPhee
Deputy Secretary and
General Manager
Financial Management Group

May 2003

DEPARTMENT OF FINANCE AND ADMINISTRATION

Second submission from the

Department of Finance and Administration (Finance)

to the

Joint Committee of Public Accounts and Audit

for the

Inquiry into the draft

Financial Framework Legislation Amendment Bill

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Table of Acronyms – General

AGS	Australian Government Solicitor
ANAO	Australian National Audit Office
CAF	Commercial Activities Fund
Committee	Joint Committee of Public Accounts and Audit
CRF	Consolidated Revenue Fund
CSA	Child Support Agency
Finance	Department of Finance and Administration
Finance Minister	Minister for Finance and Administration
OPC	Office of Parliamentary Counsel
Treasury	Department of the Treasury
PAES	Portfolio Additional Estimates Statement
PBS	Portfolio Budget Statements
RMF	Reserved Money Fund
Transcript	The Hansard transcript of the hearing of the Joint Committee of Public Accounts and Audit, dated Friday 7 March 2003

Table of Acronyms – Legislation

ALTD Act	*Australian Land Transport Development Act 1988*
CAC Act	*Commonwealth Authorities and Companies Act 1997*
Draft Bill	Exposure draft of the *Financial Framework Legislation Amendment Bill 2003*, dated 18 February 2003
FFLA Bill	The proposed *Financial Framework Legislation Amendment Bill 2003*
FMA Act	*Financial Management and Accountability Act 1997*
FMLA Act 1999	*Financial Management Legislation Amendment Act 1999*
Registration and Collection Act	*Child Support (Registration and Collection) Act 1988*
SIS Act	*Superannuation Industry (Supervision) Act 1993*
SRC Act	*Safety, Rehabilitation and Compensation Act 1988*

1 – INTRODUCTION

(a) Purpose of this Second Finance Submission

This is a second submission from the Department of Finance and Administration (Finance) to the inquiry of the Joint Committee of Public Accounts and Audit (the Committee) into the exposure draft of the Financial Framework Legislation Amendment Bill (the draft Bill).

This submission addresses:

- issues and questions raised at the hearing held on 7 March 2003;
- issues raised in other submissions; and
- developments that have occurred since the public hearing.

The objective of the submission is to settle outstanding issues to assist the Committee to consider its report for tabling in Parliament, whereupon the Government can proceed to finalise further necessary changes to the proposed *Financial Framework Legislation Amendment Bill 2003* (FFLA Bill) and complete ministerial approval and consultation processes.

Following the completion of these processes Finance expects that the FFLA Bill will be ready for the Minister for Finance and Administration (Finance Minister) to consider agreeing to its introduction in Parliament. Finance will notify the Committee of changes made to the draft Bill that the Committee had considered for its inquiry.

(b) Overview of topics

Subjects addressed in this submission are as follows:

- concurring with a suggestion from the Committee of the merits of updating an aspect of the *Safety, Rehabilitation and Compensation Act 1988*;
- updating the proposed number of Acts to be repealed by the FFLA Bill;
- providing information on particular Special Accounts that were raised in the course of the inquiry, and proposing changes to the arrangements relating to Special Accounts (eg, changing their name and increasing the detail in determinations that establish them);
- discussing the details for the Finance Minister obtaining powers, in the place of the Treasurer, for approving money raising, investment of surplus money and giving guarantees (and noting issues regarding delegations to accompany those powers);
- identifying bodies that are legally separate from the Commonwealth that collect public money and are affected by the FFLA Bill; and

- providing information on general reporting issues, such as disclosure of rephasing of expenditure and the level of reporting on programs in the Budget papers.

2 – UPDATING COMCARE'S LEGISLATION

On 30 April 2003, during a hearing of the Committee on an Audit Report on the *Management of Trust Monies* by the Australian National Audit Office (ANAO), Finance was asked by the Chairman of the Committee, Mr Bob Charles, MP, to consider incorporating an update of an aspect of the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act).

Finance has considered this issue in consultation with both Comcare and the Department of Employment and Workplace Relations, and agrees with the merits of including an amendment to the FFLA Bill as set out below.

Issue to be addressed

A recent audit by the ANAO on the management of trust monies by Commonwealth agencies noted that practices had evolved over time to facilitate the efficient and effective use of Commonwealth resources regarding the handling of compensation money under the SRC Act.

It has been a longstanding practice for employing agencies to continue to pay wages and salary to incapacitated employees for their entire compensation period. This includes the time between when the employee lodges a claim and Comcare makes a determination to accept liability. An employee would typically be on sick leave at this time. The employing agency then receives the employee's compensation moneys from Comcare and considers those moneys to be reimbursement of the wage or salary payments. As well as being efficient, this practice is seen as protecting the rights of individuals.

However, the practice does not align with section 116 of the SRC Act which provides that an employee is not entitled to be granted any kind of leave of absence with pay (other than maternity leave with pay) in respect of any period when the employee is or was on compensation leave.

On the ANAO's recommendation, Comcare reviewed the process and advised that the current administrative practice has significant advantages to all parties. Comcare has advised that resolving the issue through administrative means would be problematic and accordingly has recommended legislative amendment. The Department of Employment and Workplace Relations supports this view.

Proposed Solution

At the Committee's inquiry on 30 April 2003, the Committee suggested that amendments to address this issue might be included in the FFLA Bill. Finance agrees with the merit of this approach. The proposed amendment appears not to require complex drafting, as it may be solved by the insertion of a new section to the SRC Act that would:

- provide that the payment of compensation made by the employer has been made by the employer as agent of Comcare;
- provide that the payment discharges the liability under Division 3 of Part II of the SRC Act;
- require Comcare to reimburse the employer the amount of the payment made;
- ensure that section 116 of the Act does not preclude the granting of sick leave before liability is accepted; and
- define ‘an employer’ for the purposes of the amendment.

Some minor consequential amendments may also be required. Subject to Ministerial agreement, Finance will propose amendments along these lines to be included in the FFLA Bill.

3 – PROPOSED REPEAL OF ACTS BY THE FFLA BILL

A key principle underpinning the development of the FFLA Bill, and the invitation by Finance Minister, Senator the Hon. Nick Minchin, for the Committee to conduct an inquiry on the draft Bill, has been to take the opportunity to clarify aspects of the financial framework generally.

This includes the repeal of governmental financial legislation that no longer serves an identified purpose and which, if it were not repealed, should be updated by Schedule 1 of the FFLA Bill to encompass consequential amendments arising from the *Financial Management Legislation Amendment Act 1999* (FMLA Act 1999).

Accordingly, Part 3 of Schedule 1 of the Bill lists 28 Acts for repeal, 21 of which are the total or partial responsibility of the Department of the Treasury (Treasury) under the Administrative Arrangements Order.

On 1 April 2003, the Parliamentary Secretary to the Treasurer wrote to the Finance Minister, copying to the Chair of the Committee:

- agreeing to the repeal of 14 of the Treasury-administered Acts;
- not agreeing to the repeal of 5 related Acts, but suggesting that they be included in the Bill for amendment, since the various States (Works and Housing Assistance) Acts include an outdated reference to the now-abolished 'Loan Fund'; and
- stating that 2 Acts should not be repealed at this time, as their status will be addressed by Treasury in the context of a separate policy review process. These Acts are the:
  - *Loan (Supplementary Borrowing) Act 1969*, and
  - *Loan (Temporary Revenue Deficits) Act 1953*.

After further discussion with Treasury, Finance has provided instructions to the Office of Parliamentary Counsel (OPC) to:

- amend the 5 State (Works and Housing Assistance) Acts, in Part 1 of Schedule 1 of the FFLA Bill, which removes references to the Loan Fund; and
- remove any reference in the FFLA Bill to the *Loan (Supplementary Borrowing) Act 1969*.

Finance and Treasury are discussing the case for making a minor amendment to the *Loan (Temporary Revenue Deficits) Act 1953* in the FFLA Bill. Although this Act is being considered separately by Treasury, and therefore may not be appropriate to repeal at this time, if not amended, it will retain a reference to the 'Loan Fund' that was abolished by the FMLA Act 1999.

4 – ISSUES RELATING TO PARTICULAR SPECIAL ACCOUNTS

(a) Child Support Account

The Child Support Account is established by the *Child Support (Registration and Collection) Act 1988* (the Registration and Collection Act), which is included for amendment in Part 2 of Schedule 1 of the draft Bill. This part of the draft Bill covers consequential changes arising from the FMLA Act 1999, by amending references to former components of the Reserved Money Fund (RMF), so that the provisions refer instead to the concept of a Special Account.

In February 2003, the Minister for Family and Community Services wrote to the Finance Minister, agreeing to the proposed amendments to the Registration and Collection Act contained in the draft Bill.

However, the Child Support Agency (CSA) and the Department of Family and Community Services made submissions to the inquiry proposing a further amendment to the Registration and Collection Act. The amendment would broaden the types of debits that may be made from the Child Support Account, to assist with some operational requirements of the Child Support Agency and clarify what may have been a minor unanticipated effect of the deeming provisions that were part of the FMLA Act 1999.

Finance notes that the amendment identified by CSA is not necessarily a direct consequence of the commencement of FMLA Act 1999, and therefore will not necessarily be appropriately placed in Schedule 1 of the FFLA Bill.

Finance is consulting with the CSA about the details of an appropriate amendment to the Registration and Collection Act, for the purpose of providing instructions to OPC.

(b) Australian Land Transport Development Account

The Australian Land Transport Development Account is established by the *Australian Land Transport Development Act 1988* (ALTD Act), which is included for amendment in Part 2 of Schedule 1 of the draft Bill. This part of the draft Bill covers consequential changes arising from the FMLA Act 1999. As with the Child Support Account above, the amendments update references to former components of the RMF, so that they will refer instead to a Special Account.

Marked-up wording: At the hearing, Finance was asked if there were any changes to the ALTD Act other than the consequential amendments arising

from the FMLA Act 1999. To help explain that no other changes are made to the ALTD Act, Finance undertook to provide a marked–up version of the ALTD Act specifically identifying which passages would be changed by the draft Bill. The intention of this is to demonstrate that the amendments are consequential only and do not affect policy issues.[1]

The marked-up version of the amendments to the ALTD Act is at **Attachment A**. The marked-up version shows that proposed amendments are textual only, in that they:

- replace references to the Australian Land Transport Development Reserve, as a component of the now abolished RMF, with references to the Australian Land Transport Development Account, which is a Special Account for the purposes of the *Financial Management and Accountability Act 1997* (FMA Act);
- replace references to transferring/paying/debiting an amount from the Consolidated Revenue Fund (CRF) to a component of the RMF with references to 'crediting the amount to' the Account;
- replace references to transferring/paying/debiting an amount from a component of the RMF to the CRF with references to 'debiting the amount from' the Account; and
- replace references to paying an amount out of the Reserve with references to 'debited from the Account and paid by the Commonwealth', where an amount debited from the Special Account is clearly for payment out of the Consolidated Revenue Fund. This text departs from the approach contained in paragraph 5(6)(c) of FMLA Act 1999, but is consistent with similar amendments to other Acts contained in Part 2 of Schedule 1 of the draft Bill.

Operational questions: At the hearing, the Committee also referred to the aspects of the draft Bill that cover sections 19, 20 and 21 of the ALTD Act. Regarding the operational aspects of these provisions, the Committee asked for the rationale for providing flexibility in switching expenditure between: arterial, national or local roads; States and organisations; road and rail projects; and arterial roads and urban public transport projects.[2] The Committee also asked about switching expenditure between projects and between organisations.[3]

As these were operational questions regarding provisions of the Act that are not being affected by the FFLA Bill, a response, provided by the Department of Transport and Regional Services, is provided at **Attachment B** to this Submission.

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[1] Hansard transcript of the hearing of the Joint Committee on Public Accounts and Audit, dated Friday 7 March 2003 (*Transcript*), page53.
[2] *Transcript*, page.51.
[3] *Transcript*, page.54.

(c) Superannuation Protection Account

The Superannuation Protection Account is established by the *Superannuation Industry (Supervision) Act 1993* (SIS Act), which is included in Part 2 of Schedule 1 of the draft Bill. The amendments cover consequential changes arising from the FMLA Act 1999.

At the hearing, Treasury noted a technical source of inconsistency in relation to section 237 of the SIS Act due to the *Superannuation Industry (Supervision) Amendment Bill 2002*, which was introduced to Parliament on 12 December 2002. Treasury noted that the potential drafting inconsistency is of a technical, rather than a policy, nature[4], arising from the question of precedence of which Bill might amend that section first.

Accordingly, Finance has provided instructions to OPC to make amendments regarding the reference to the SIS Act in the FFLA Bill, and the commencement provisions, to address the issue of precedence, depending on the progress of the *Superannuation Industry (Supervision) Amendment Bill 2002*.

(d) Business Services Trust Account

At the hearing, the Committee asked about the purposes of the Business Services Trust Account, which was established by a determination under the FMA Act. The Committee also indicated that it would be happy to look at evidence previously provided by Finance regarding this issue at a Senates estimates hearing.[5]

That evidence is provided at **Attachment C**.

[4] *Transcript*, page 4.
[5] *Transcript*, page 23.

5 – GENERAL ISSUES AFFECTING SPECIAL ACCOUNTS

(a) Clearer name for Special Accounts

At the hearing the Committee asked if Finance or Treasury had given any consideration to clarifying the name given to Special Accounts. The Committee noted that Special Accounts are not necessarily accounts in the sense of being bank accounts. The Committee also asked whether the term 'designated accounts' would be suitable.[6]

Finance has considered this issue and supports the notion that a name change would be useful to clarify the role and operation of Special Accounts, on the basis set out below.

Retain the word 'Account'

Finance prefers retention of the word 'Account' in any revised title.

First, the word 'Account' usefully links Special Accounts to their historical origins as 'Trust Accounts', which were established as a concept in 1906 and continued until the end of 1997, before being amended as component of the RMF or the Commercial Activities Fund (CAF), and then amended from July 1999 to incorporate the concept of 'Special Accounts'.

Second, the word 'Account' serves as an accurate description of what is represented by the legal concept that it describes. The word 'account' has, of course, a number of meanings. Even within the context of financial management, however, it has a broader meaning than merely a bank account. For example, the *Macquarie Dictionary* defines 'account' as:

> a formal record of the debits and credits relating to the person named (or caption placed) at the head of the ledger account.[7]

Third, the explanatory memorandum to clause 5 of the Financial Management Legislation Amendment Bill, which introduced the name 'Special Account' when they were converted from components of the RMF and CAF, stated:

> The renaming of components under subclause 5(5) is intended to reflect the fact that they are no longer part of a separate fund (represented by money set aside from the CRF) but are simply ledger *accounts* recording a right to draw money from the Consolidated Revenue Fund (which is appropriated for the purpose by sections 20(4) and 21(1)).[8]

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[6] *Transcript*, page 14.
[7] The Macquarie Dictionary, Federation Edition, (2001), Volume 1, page 12.
[8] Explanatory Memorandum at Note 9, commenting on clause 5 of the Financial Management Legislation Amendment Bill 1999.

Minimising any confusion with the concept of a bank account can, in Finance's view, be achieved through a more specific choice of wording to replace the term of 'Special'. This approach also has other benefits, as set out next.

Value in replacing the word 'Special'

Use of the word 'Special' in the title of Special Accounts does seem, in practice, to raise a number of issues that are worth reviewing.

For example, the word 'Special' may suggest some form of direct link with the term 'special public money', referred to in sections 5 and 16 of the FMA Act, and also a link with the term 'Special Instructions' that appears only in section 16 of the FMA Act. There is, however, no direct linkage between these terms.

Indeed, the need for improving clarity in this area was noted at the hearing of the Committee's inquiry into the management of trust money (which is a form of special public money).

Special public money: In fact, special public money is simply 'public money', under the FMA Act, that is held by the Commonwealth on behalf of another person (including, but not limited to, money that the Commonwealth holds on trust for a beneficiary). Special Accounts frequently, and legitimately, have amounts credited to them that is not special public money.

Special Instructions: Special Instructions arise under section 16 of the FMA Act alone, as they relate to the management of special public money. They do not, however, relate directly to Special Accounts.

The word 'special' also has the implication of something out of the ordinary. In most instances in relation to Special Accounts, that is not the case.

Next steps: Accordingly, there does appear to be a good case for replacing the word 'special' in the title of Special Accounts, to minimise any confusion that might arise with other concepts preceded by the word 'special' in the FMA Act and to remove any sense of uniqueness.

Proposed name: Designated Purpose Accounts

Finance considers that the term 'Designated Purpose Account' could be considered by the Committee as a possible term that could accurately reflect the legal concept that is currently described as a 'Special Account'. In particular, the term helps to convey the concept of an account that is used to record amounts received, and that are then available for designated expenditure purposes.

Implementing the term 'Designated Purpose Account' would, of course, require the FFLA Bill to reflect the term in all the Special Accounts that have been established in legislation, as well as in the FMA Act itself.

In the event that the change is supported by the Committee, ministerial agreement from all responsible Ministers will still need to be sought within the context of the FFLA Bill.

To assist the Committee with considering this response to the Committee's suggestion of changing the name of Special Accounts, a proposed redraft of the revised sections 20 and 21 of the FMA Act appears at **Attachment D** of this submission.

This Attachment contains redrafted sections that:

- insert new subsections 20(4A) and 21(1A);
- deletes the words 'or any' in subsection 20(1);
- inserts the words 'for which amounts are allowed or required to be debited from' in paragraph 20(1)(c);
- adopts the term 'Designated Purpose Account' in the place of the term 'Special Account'; and
- inserts new subsection 20(1A).

The first two amendments are currently included in the draft Bill. The last three amendments are proposals noted in this submission as other areas worth clarifying regarding Special Accounts and which potentially could be included in the FFLA Bill.

For the sake of clarity, however, in the remainder of this submission, the current term 'Special Account' is retained, instead of using the term 'Designated Purpose Account'.

(b) Non-retrospective effect of the Bill

Non-retrospective

At the hearing, the Committee asked if any parts of the draft Bill are expected to apply retrospectively.[9] This particularly arose in the context of the effect of Schedule 1 of the draft Bill, which updates the provisions in various statutes to align their wording with concepts already deemed to apply under the FMLA Act 1999.

It was stated at the hearing that it is the intention of Finance and OPC that the draft Bill would not apply retrospectively in any specific item, or in its effect overall. Finance has consulted with the AGS (and the OPC) and can confirm

[9] *Transcript*, pages 32, 41, 51 and 60.

that the draft Bill is not retrospective, either in any specific instances or generally as a result of the amendments.

Savings provisions

Particular discussion also occurred at the hearing regarding the meaning and application of the savings provisions that appear in the draft Bill. In short, three savings provisions provide that decisions or actions, made or done prior to commencement of the proposed Act will continue to apply.

However, these savings provisions do not provide the draft Bill with a retrospective effect. They are included to ensure that the wording of the Bill does not change the effect of any actions that had previously been taken under:

- existing Special Accounts established in legislation;
- existing determinations of the Finance Minister establishing Special Accounts; and
- approvals made by the Treasurer or the Treasurer's delegate.

In relation to further changes to the FFLA Bill, prior to its introduction in Parliament, Finance will instruct OPC to consider plain language wording to ensure that it is clear to readers of the Bill that the changes do not apply retrospectively. Finance will also carefully consider the wording of the explanatory memorandum to accompany the FFLA Bill on this issue.

Also, if the name, 'Special Account', is changed to 'Designated Purpose Account', then further consideration may be necessary for the drafting of the savings provisions (eg, regarding references to Special Accounts that may appear in legislative instruments other than Acts).

(c) Disallowance period for a Special Account determination

At the hearing there was discussion about the level of scrutiny by Parliament, provided under section 22 of the FMA Act, of a determination of the Finance Minister to establish a Special Account.

A former Finance official, Mr Maurice Kennedy, who was invited by the Committee to attend the hearing as a private individual, provided background, which included reference to his experience from providing instructions on the Financial Management and Accountability Bill, about the reason for making the Finance Minister's determinations a disallowable instrument:

> Previously under the Audit Act the Finance Minister could determine the purpose of the trust accounts. They were not disallowable instruments. In replacing the Audit Act with the FMA Act, we took the view that a determination was clearly an appropriation of the trust fund. In setting up the FMA Act, we said that parliament needs to be involved in this, and that is why we successfully argued that these determinations should be disallowable

> instruments. Because they are appropriations, and sometimes there is some urgency about the need to spend, we were also successful in arguing that it should have a five-day disallowance period rather than the norm of 15 days. The quid pro quo of that was that it was not able to be acted upon until after the period of disallowance.[10]

The Clerk of the Senate pointed out that the disallowance period is only 5 sitting days for parliamentary scrutiny, rather than the normal 15 days sitting days, and that there is no time limit on the tabling of instruments. However, he also acknowledged that the determination cannot take any legal effect until the disallowance period has passed.[11]

It is Finance's view that, if anything, the FMA Act creates an incentive for the Finance Minister to table any determination regarding a Special Account as soon as practicable, given that the determination cannot take effect until the disallowance period of 5 sitting days has elapsed.

Nevertheless, Finance consulted the Civil Law Division of the Attorney-General's Department (AGD) regarding the significance, if any, of the current 5 sitting days disallowance period before these determinations take effect.

The AGD advised Finance that disallowance provisions that are Act-specific, or that depart from the typical arrangements, are not unique. Indeed, the different types of arrangements that exist are set out publicly on the website of the Senate Committee on Regulations and Ordinances.[12]

Accordingly, there does not seem to be a strong case to propose any changes to the 5 sitting days' disallowance period before these determinations can take effect. However, as noted below, Finance does see value for the information provided in relation to those determinations, being even more comprehensive in terms of relevant aspects that might interest Parliament.

(d) Requirements for a determination establishing a Special Account

Specific reference to debits

At the hearing there was discussion about the details of the proposed amendment to subsection 20(1) of the FMA Act. The proposed amendment in the draft Bill is as follows:

> (1) The Finance Minister may make a written determination that does all of the following:
>
> (a) establishes a Special Account;

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[10] *Transcript*, page 42.
[11] *Transcript*, pages 41-42.
[12] Available at http://www.aph.gov.au/senate/committee/regord_ctte/unusualdis.pdf

(b) specifies the purposes of the Special Account;
(c) allows or requires amounts to be credited to and debited from the Special Account.

Finance undertook to seek legal advice on a proposal, made at the hearing, that it would be useful to link the concept of purposes in paragraph 20(1)(b) to the concept of debits stated in paragraph 20(1)(c). [13] A supporting rationale for this link is so that amounts are debited from a Special Account for expenditure on the purposes of the Account.

Proposed approach

Finance supports a proposal that the reference to debiting an amount from a Special Account be included in the same paragraph as the purpose of the Special Account.

However, Finance has taken advice that indicates that section 20 could also usefully recognise that, in relation to some Special Accounts, in certain circumstances, an amount may be debited for a purpose other than the making of a real or notional payment, such as a debit necessary for the efficient administration of the Special Account. These types of debits have the effect of reducing the amount standing to the credit of the Account. In relation to this type of debit, the amount remains in the CRF until expenditure of the amount is authorised by an appropriation, other than the standing appropriation provided in subsections 20(4) and 21(1) of the FMA Act. An example of this type of debit is a 'payment' to the Commonwealth of amounts due to an individual which are not claimed within a period of time as specified in the enabling Act or Finance Minister's determination.

In the light of this legal advice Finance proposes that Item 127A of Schedule 2 of the Bill adopt the following approach (with the addition of a new subsection 20(1A) below):

(1) The Finance Minister may make a written determination that does all of the following:

(a) establishes a Special Account
(b) allows or requires amounts to be credited to the Special Account
(c) specifies the purposes for which amounts are allowed or required to be debited from the Special Account.

(1A) A determination under subsection (1) may specify that an amount may or must be debited from a Special Account established under subsection (1) otherwise than in relation to the making of a real or notional payment.

The above proposal differs from the version in the draft Bill in that it:

[13] *Transcript*, page 43.

- returns to the approach, stated in the current subsection 20(1), of suggesting that a determination establishing a Special Account deal first, in paragraph (b), with how amounts are credited to the Special Account, before the determination deals with how amounts are debited from the Special Account (ie, for payments),
- makes the link in paragraph (c), between the issue of purposes of the Special Account and the issue of debits that may or must be made, and
- introduces a new subsection 20(1A) regarding debits that are not real or notional payments.

The amendment also promotes more consistency between the form of drafting of Special Accounts established by determinations with those Special Accounts established in primary legislation (Acts). Currently, many Acts specifically provide for a range of potential debits from a statutory Special Account. Practice has suggested that this is also a useful drafting approach for Special Accounts established by determinations. Accordingly, it is appropriate for these Special Accounts to expressly set out the potential debits that might be made, in accordance with the reference to 'debits' that is made in subsection 20(5) of the FMA Act.

Transfers

The Committee also asked if the proposal that determinations include references to amounts 'debited' from a Special Account would enable amounts to be 'transferred' between Special Accounts.[14]

However, inserting the word 'debited' into subsection 20(1) of the FMA Act does not create a new power. Rather, the effect of using the word 'debited' is, as intended, simply to provide a clearer capacity to describe payments that may be supported by a specific Special Account, within the constitutional purpose of that Special Account.

The word 'transfer' is not a technical term under the FMA Act. In general terms, however, amounts might be described as being 'transferred' between Special Accounts where it involves a 'debit' being made that is consistent with the purpose of the originating Special Account, where a corresponding credit is then made to another Special Account on the basis of a 'notional payment' that has been made.

If justifiable, within the purposes of the 'paying' Special Account, this could include amounts being debited from one Special Account and credited to another Special Account.

[14] *Transcript*, page 18.

Explanatory statements accompanying determinations

Finance has considered other means by which the Parliament could be informed of issues affecting Special Accounts, including standard reporting of the accounts in the Portfolio Budget Statements (PBS).

Finance will consider a practice of including details similar to the information that appears in PBS within the explanatory statement that accompanies the tabling of a determination to establish or vary a Special Account.

(e) Improved reporting on Special Accounts

Finance acknowledges the importance of transparency regarding the use of Special Accounts, such as occurs through reporting requirements.

Reporting by Agencies: The Finance Minister has introduced new reporting requirements in the *Financial Management and Accountability (Financial Statements 2002-03) Orders* that require all Commonwealth entities to separately disclose in their financial statements the total receipts, payments and balances for each Special Account for which they are responsible. This summary information is to be disclosed in a note to the Consolidated Financial Statements.

Portfolio Budget Statements: In the Budget papers new disclosure of information on Special Accounts was included in the PBS, in particular giving Parliament projected receipts and expenditure figures from Special Accounts, as well as opening and closing balances.

(f) Special Accounts and the Consolidated Revenue Fund (CRF)

Issues raised

A submission to the inquiry stated:

> On one view the [statutory] provisions which allow Special Accounts [to be established] amount to a scheme for money to by pass sections 81 and 83 of the Constitution.[15]

At the hearing, discussion arising from this raised the issue of the constitutionality of Special Accounts generally.

Finance has carefully considered the extent to which this broad criticism could have specific significance for Special Accounts, given that credits to Special Accounts involve money that is already within the CRF as established under section 81 of the Constitution. To consider this issue more directly, there is value in describing the Constitutional framework.

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[15] Submission, the Clerk of the Senate, 20 February 2003, page 1.

Overview of sections 81 and 83 of the Constitution

Section 81 of the Constitution provides that:

> All revenue and moneys raised or received by the Executive Government of the Commonwealth shall form one Consolidated Revenue Fund to be appropriated for the purposes of the Commonwealth …

The first sentence of section 83 stipulates that:

> No money shall be drawn out of the Treasury of the Commonwealth except under appropriation made by law.

Section 81 does not purport to deal with the manner in which the moneys forming the CRF shall be kept, nor does it purport to deal with the keeping and auditing of the public accounts.[16]

Also, it is worth noting that the contemporary interpretation of sections 81 and 83 means that the concepts of the CRF in section 81, and the 'Treasury', in section 83, are equivalent. Moreover, money in the CRF essentially equates to 'public money' in the FMA Act, which means that a consistent statutory regime applies to the custody, use and expenditure of that money (unless there is a statutory exception from the FMA Act, such as occurs with State Mirror Taxes).

The Solicitor-General issued an opinion in 1998 stating that the CRF is self-executing. That is, moneys paid to the Commonwealth (including taxes, charges and loans) form part of the CRF, whether or not the Commonwealth has credited those moneys to a fund or an account, which is designated as the CRF. This point has been made known in proceedings involving both Parliament and the High Court, as noted below.

Parliamentary statements: In 1999, the FMA Act and other Acts in the financial framework were amended by the FMLA Act 1999, which is the progenitor of the consequential amendments now being proposed for the FFLA Bill.

The explanatory memorandum to the FMLA Act 1999 noted the self-executing nature of the CRF, which supports the Commonwealth's accrual budgeting framework.[17]

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[16] This view was stated by Justice Brennan in the High Court decision, *Northern Suburbs General Cemetery Reserve Trust v Commonwealth of Australia* (1993) 176 CLR 555 at 580.

[17] Extract speech by Mr Peter Slipper MP available at http://parlinfoweb.aph.gov.au/piweb/view_document.aspx?ID=192437&TABLE=HANSARDR

> The primary change made by the Act is to repeal the provisions dealing with 'fund accounting' while retaining the essential features of the funds – the ability to hypothecate money for specified purposes – through provisions to establish 'Special Accounts' within the Consolidated Revenue Fund (CRF).
>
> … The purpose of clause 7 is to modify the effect of references to the CRF in other Acts, so they are consistent with the concept that the CRF is 'self-executing', ie that 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.

On 10 February 1999, in the Second Reading Speech to the *Financial Management Legislation Amendment Bill 1999*, the Parliamentary Secretary to the Minister for Finance and Administration, Mr Peter Slipper, MP, stated:

> I will now turn to the principal amendments in the bill, which are aimed at facilitating the reforms I have outlined. The primary change made by the act is to repeal the provisions dealing with 'fund accounting' while retaining the essential feature of the funds—the ability to hypothecate money for specified purposes—through provisions to establish 'Special Accounts' within the Consolidated Revenue Fund, or CRF.
>
> Fund accounting was introduced by the *Audit Act 1901* and is based on the notion that financial management and accountability can be supported by a simple system that requires the setting aside of separate pools of money designated for particular purposes. However, such accounting has been overtaken by more sophisticated financial management systems suited to the complexities of a modern businesslike environment.
>
> The modern systems, which are being implemented by agencies, are not designed to perform fund accounting, and its continuation would therefore require dual accounting systems to be kept. Clearly this would serve no useful purpose and be wasteful of resources. Further, the complexity of such an arrangement would frustrate the efficient and effective operation of the accrual framework that will operate from 1 July 1999.
>
> The current amendments will have the effect of merging the Loan Fund, Reserved Money Fund and Commercial Activities Fund with the Consolidated Revenue Fund. This will eliminate the need to maintain a multiple fund accounting system, including the inefficient legal requirement of daily transferring of moneys back and forth among the funds to keep them in positive balance. The current requirement does not assist financial management.
>
> The effect will be to give the CRF the central role envisaged by the founders of the constitution rather than the diluted role that has emerged with the creation of additional funds outside the CRF.

> The amendments will also remove present unnecessary requirements for debiting and crediting various transactions to the CRF. The fund is 'self-executing' under the constitution. That is, moneys paid to the Commonwealth form part of the CRF whether or not the Commonwealth has credited those moneys to a fund which is designated as the CRF. The finance minister will be required to cause proper accounts and records to be kept in relation to the receipt and expenditure of public money.
>
> … The repeal of the Reserved Money Fund also had to be tested against the new accrual appropriation regime which will require carryover of appropriations for unspent accrued costs. These appropriations will cover the full price of goods and services produced by agencies as well as the full cost of subsidies, benefits and grants—including accrued costs. Since some accrued costs may not need to be paid until future years—for example, long service leave payments and payments for the replacement of assets from depreciation provisions—appropriations will need to remain valid, without lapsing, until all such costs are fully met over time.
>
> The Solicitor-General has advised that the new accrual appropriation arrangements can operate exclusively within the CRF and do not require moneys for accrued costs to be paid into another fund to avoid lapsing. The appropriation bills will be amended to reflect these arrangements.

High Court: While the concept of the self-executing CRF has not been considered specifically by the High Court, the Solicitor-General did discuss the effect of the FMLA Act 1999 with their Honours in the hearing on a matter that related to the constitutionality of the legislation that underpins the Child Support Agency and the Child Support Account (referred to above in Part 4(a) of this Submission). As part of the hearing of the case of *Luton v Lessels*, the Solicitor-General informed the High Court that it is accepted by the Commonwealth 'that the Consolidated Revenue Fund referred to by the Constitution is something which is notional …'. [18]

The FMA Act expressly appropriates the CRF for the purposes of Special Accounts that have purposes established by Acts of Parliament or by determinations of the Finance Minister[19]. It largely continues the approach that had previously applied to Trust Accounts (under the *Audit Act 1901*, from 1906 – when first introduced – until the end of 1997) and that had applied to components of the RMF and the CAF under the FMA Act until 1 July 1999. Accordingly, the framework for the operation of Special Accounts (and their predecessors) is very long standing.

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[18] Transcript of Proceedings, *Luton v Lessels & Anor* C40/1995 (11 October 2001), at Canberra on Thursday, 11 October 2001, page 33.

[19] The Finance Minister's determinations are disallowable instruments and do not take effect until 5 sitting days have passed in each House of Parliament.

Indeed, the historical progression of the Special Account used by the Child Support Agency has been noted by the High Court, without any adverse comment.

In their judgement in 2002, Justices Gaudron and Hayne set out – without making any adverse comment – the change of the 'Child Support Trust Account' into a 'Child Support Reserve', and then finally into the current 'Child Support Account' [20] (being a Special Account, that is part of the CRF):

> 38. When the Registration and Collection Act was first enacted, payments were to be made from the Child Support Trust Account. That account, established under the Registration and Collection Act, was a trust account for the purposes of s 62A of the *Audit Act 1901*(Cth). To give effect to new Commonwealth financial management arrangements (made under the *Financial Management and Accountability Act 1997* (Cth)) the Child Support Trust Account was replaced, in 1998, by the Child Support Reserve, a component of the Reserved Money Fund. Provision was made in the Registration and Collection Act for transfers into and payments out of, that fund.
>
> 38. All of the amounts received by the Registrar (as payment of child support debts or deductions made by employees, as voluntary payments, or as refunds of amounts that should not have been paid) were 'public money' under the *Financial Management and Accountability Act* and therefore had to be credited to the Consolidated Revenue Fund. Transfers into the Reserve came from the Consolidated Revenue Fund. Section 74 of the Registration and Collection Act required the transfer to the Reserve, from the Consolidated Revenue Fund, of amounts equal to amounts that the Registrar received in payments of child support debts, whether by payers or employers of payers, together with amounts equalling payments made voluntarily by payers and refunds of amounts that should not have been paid out of the Reserve. Moneys standing to the credit of the Reserve were to be applied in making payments to payees of registered maintenance liabilities. (It is not necessary to notice other ways in which moneys standing to the credit of the Reserve could be applied.)
>
> 39. By the *Financial Management Legislation Amendment Act 1999* (Cth) …, the *Financial Management and Accountability Act* was amended in a number of ways. The definition of Reserved Money Fund was repealed. Components of the Reserved Money Fund became Special Accounts and each component was renamed as an 'Account' rather than a 'Reserve'. References to amounts being transferred from the Consolidated Revenue Fund to a Reserve were to be read as references to crediting the relevant account and references to amounts being transferred to the Consolidated Revenue Fund were to be read as debiting the relevant account.
>
> 40. For present purposes, however, the essence of the arrangements reflected in Pt VI of the Registration and Collection Act remained unaffected by these changes. …

[20] *Luton v Lessels* [2002] HCA 13, 11 April 2002.

> 41. … The total amounts credited to the Child Support Account equal the total amounts actually paid out to payees and they equal the total amounts paid or given up by payers. If employers' obligations to remit deductions made from salary or wages were all met, total payments into the Consolidated Revenue Fund would equal the total payments made out of the Child Support Account.

Also, the matters being decided in this case did have a bearing on the CRF in at least one regard of confirming that the CRF, which refers to 'revenue and moneys', is concerned with more than mere revenues, such as taxes. The decision confirmed the Commonwealth's view that a law requiring that an amount is paid into the CRF does not, of itself, characterise the law as one imposing taxation.

JCPAA: For completeness, it is worth recording the legal status of the CRF and the effect of the changes made by the FMLA Act 1999 have already been raised with the Committee.

In March 2000, in its Report 374, *Review of the Financial Management and Accountability Act 1997 and the Commonwealth Authorities and Companies Act 1997*, the Committee discussed the elimination of fund accounting (which was critical to the implementation of accrual budgeting) from the perspective of any risks that might affect the Commonwealth under section 94 of the Constitution regarding surplus revenue.[21] The Committee noted that Finance had given this issue 'very serious and comprehensive consideration' [22] and also taken legal advice on the change to the CRF. The report concluded that:

> The Committee is satisfied with [Finance's] response to … concerns about section 94 of the Constitution. However, there still remains a risk, albeit minimal according to [Finance's] advice, that the increased incidence of future Commonwealth surpluses will tempt the states to revisit the issue. [23]

What this means for Special Accounts

Finance has sought advice from the AGS, on the constitutional validity of Special Accounts.

The AGS noted that the precise basis upon which the statutory scheme for Special Accounts may be considered inconsistent with sections 81 and 83 of the Constitution is not entirely clear.

As noted above, a Special Account may either be established by legislation, as recognised by section 21 of the FMA Act, or by determination of the Finance Minister under subsection 20(1) of the FMA Act. A determination of the

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[21] pages 10 – 14.
[22] pages 12.
[23] pages 14.

Minister establishing a Special Account also ordinarily sets out, as authorised by section 20(1), the amounts which may or must be credited to the Special Account and the purposes for which amounts may be debited from the Special Account.

A Special Account established by legislation or under section 20 of the FMA Act is not an account or fund which is separate from the CRF. Instead, a Special Account is merely a notional division of the CRF. A Special Account serves to earmark money for the purposes for which the account is established and enables the appropriation in subsections 20(4) and 21(1) of the FMA Act to be relied upon for expenditure for those purposes.

These provisions appropriate the CRF for expenditure for the purposes of a Special Account up to the balance for the time being of the Special Account. A Special Account also generally facilitates keeping track of receipts and expenditure relating to the particular purpose, activity or business in respect of which the Special Account has been established.

Viewed in this way, it is not apparent why the scheme for the establishment of Special Accounts could be regarded as inconsistent with the Constitution. The provisions of the FMA Act do not purport to authorise the use of revenue or money raised or received by the Commonwealth in a way that is inconsistent with the requirement in section 81 that such money is to form 'one Consolidated Revenue Fund'.

Under the self-executing CRF, on which Commonwealth financial legislation is now based, all money upon being raised or received automatically forms part of the CRF. It follows that all money controlled by the Commonwealth becomes subject to the CRF and the legislative framework, and an appropriation is required before any amount in the CRF may be drawn out and expended.

The only issue in relation to the validity of the Special Account regime would relate to the standing appropriation provided by subsection 20(4) of amounts in relation to accounts established by the Finance Minister.

However, it must be stated at the outset that the issue also affected Trust Accounts made by a determination under the *Audit Act 1901*. Additionally, to the extent that this issue would have needed to have been addressed, this occurred through the FMA Act making those determinations disallowable and not to take effect until after 5 sitting days (as described above). Nevertheless, the basis of this issue is set out in detail below.

It is established that an appropriation has a twofold purpose. Not only does it authorise the Executive to withdraw moneys from the Treasury, it restricts

expenditure to a particular purpose. In this respect, a valid appropriation must specify the purpose for which amounts are being appropriated.

In its application to a Finance Minister's determination, the standing appropriation provided by section 20(4) would clearly appear to satisfy both these requirements, assuming that the determination stipulates with reasonable clarity the purposes of the account and the amounts to be credited to it.

The only issue that arises from this analysis is whether, in enacting section 20(4) of the FMA Act, Parliament itself could be said to be prescribing a sufficiently clear purpose for the appropriation.

This in turn raises the issue of whether sections 81 and 83 of the Constitution allow Parliament to delegate to a member of the Executive, in this case the Finance Minister, the power to determine the purposes and amount of an appropriation. As indicated, the purposes and amount of an appropriation are the essence of the Executive's authority to withdraw money from the Treasury – how much the Executive can spend and on what. Under section 20(1) of the FMA Act, the Finance Minister is empowered to determine both these questions subject to the fact that the determination does not take effect until time has been provided for Parliament to consider disallowing the Finance Minister's determination (as discussed above).

The argument that the Parliament cannot delegate to the Executive the power to determine the amount and purpose of appropriations places focus on the requirement in section 83 that any drawing of money from the Treasury must be done 'under appropriation made by law'. Textually, there is no difficulty in saying that the reference to 'law' can include a subordinate instrument, and is not confined to an Act of Parliament.

However, AGS considers that the Court would also take into account whether, in light of the structure of the Constitution and in particular the relationship between the Parliament and the Crown in relation to public finance, sections 81 and 83 manifest an intention that the Parliament may not 'delegate' to the Executive the power to determine the purpose and amount of an appropriation even where the exercise of the Executive's power is subject to parliamentary disallowance.

AGS advised that there are substantial grounds for arguing that there is no prohibition on the Parliament delegating to the Executive the power to determine the purposes for which money may be drawn out of the Treasury where the relevant legislation reserves to each House of Parliament the right to scrutinise and reject any purpose which is proposed by the Executive before it can take effect.

In this respect, not only does section 22 of the FMA Act allow each House of Parliament to disallow a determination by the Minister, the determination does not take effect until the period of parliamentary disallowance has passed (section 22(4)). It follows that a determination can have no effect until it has been subject to parliamentary scrutiny.

Indeed, given the terms of subsection 22(4) of the FMA Act, it could be maintained that the Parliament has not strictly delegated authority to the Executive to determine the purposes of an appropriation. Rather, the Parliament has prescribed a mechanism under which the Executive provisionally identifies purposes for authorised expenditure and then submits these purposes to each House of Parliament for approval.

In light of these considerations, AGS concludes that a court would find the appropriation provided by subsection 20(4) of the FMA Act to be constitutionally valid.

Similar issue related to Trust Accounts

Indeed, as noted above, the AGS considered that, to the extent the above issue arises for Special Accounts, it also existed for some Trust Accounts, which were a concept added to the *Audit Act 1901* by amendments made in 1906.

In short, some aspects of the Trust Account regime were themselves not supported by prior parliamentary approval. Specifically, in accordance with paragraph 62A(5)(c) of the *Audit Act 1901*, some Trust Accounts were funded principally by amounts paid by individuals or organisations for the purposes of the Account. These amounts were not the subject of an appropriation by Parliament from the CRF to the Trust Fund. Rather, the expenditure of these amounts appears to have been authorised by the establishment of the Trust Account by the Minister and the general standing appropriation conferred by subsection 62A(6).

The specific issue above (which does not even affect Special Accounts that are established in legislation) was not necessarily the constitutional question being raised in the Clerk of the Senate's submission or the hearing. However, Finance considers the foregoing advice a useful overview of the only issue that has been identified by the government's constitutional advisers.

6 – TRANSFER OF CERTAIN APPROVAL POWERS TO THE FINANCE MINISTER

(a) Delegation powers for the Finance Minister

The draft Bill includes amendments that implement the proposal to the transfer, from the Treasurer to the Finance Minister, powers to approve money raising, the investment of surplus money and the giving of guarantees by certain statutory authorities and bodies recognised in Commonwealth legislation.

In each of the provisions that transfer approval powers to the Finance Minister from the Treasurer, a further amendment allows the Finance Minister to delegate the approval powers to an FMA official (defined in section 5 of the FMA Act as a person who is in an Agency, or is part of an Agency).

Amendments to allow for delegations are included in the draft Bill in relation to two instances where approval powers already rest with the Finance Minister, rather than the Treasurer, under the *Health Insurance Commission Act 1973* and the *Sydney Harbour Federation Trust Act 2001*.

Rationale to delegate to an 'official' under the FMA Act

Submissions to the Committee's inquiry by the Australian Broadcasting Corporation and the Wheat Export Authority, which are both authorities subject to the *Commonwealth Authorities and Companies Act 1997* (CAC Act), queried the appropriateness of this delegation power in relation to Commonwealth authorities. It was suggested that the appropriate delegation power should be to an 'officer' as defined under the CAC Act.[24]

However, under the FMA Act the Finance Minister is able to delegate the Minister's powers or functions (other than the power to make Finance Minister Orders) only to an official, as defined for the purposes of the FMA Act. The Finance Minister does not have a power, under the CAC Act, to delegate the Finance Minister's existing powers or functions to an officer.

It would not be appropriate to provide the Finance Minister with a power to delegate the approval powers to an officer, as defined under the CAC Act, because:

- Delegation to an 'officer' under the CAC Act could place that person into a position where there is a conflict of interest; and
- CAC authorities have statutory independence from the Commonwealth. This independence might also be interpreted, or perceived, as giving an

[24] Section 5 of the CAC Act defines an officer, in relation to an authority as: (a) a director of the authority: or (b) any other person who is concerned in, or takes part in, the management of the authority.

officer independence in relation to the powers or functions delegated by the Finance Minister.

Scope of delegations

Finance has consulted the Civil Law Division of the Attorney-General's Department about the appropriateness of providing the Finance Minister with a delegation power under each of the relevant Acts in Schedule 2 of the draft Bill.

Following advice from the Civil Law Division, Finance has reviewed the appropriateness of including a delegation power under the *Co-operative Farmers and Graziers Direct Meat Supply Limited (Loan Guarantee) Act 1978*. Under section 5 of that Act, a guarantee to the company may only be given if the Treasurer of the State of Victoria gives a like guarantee. Under these arrangements where a State Minister is involved in giving the guarantee under this Act, it would be more appropriate for the power of the Finance Minister, and not a delegated official, to be used in deciding whether the Commonwealth should provide a guarantee to the company.

Accordingly, Finance has instructed OPC to remove from the draft Bill the delegation power provided under the *Co-operative Farmers and Graziers Direct Meat Supply Limited (Loan Guarantee) Act 1978*.

(b) Whether any non-CAC Act bodies affected

The Committee asked which entities that are not subject to the CAC Act are covered by the transfer of powers to approve money raising, investment of surplus money and giving guarantees from the Treasurer to the Finance Minister.

These entities are the:

- Albury-Wodonga Development Corporation;
- Co-operative Farmers and Graziers Direct Meat Supply Limited;
- High Court of Australia;
- Queensland Fisheries Management Authority;
- Administration of Norfolk Island; and
- Holders of a pastoral homestead lease, or an agricultural lease, granted under an Ordinance of the Northern Territory of Australia, relating to Crown lands, but not including a company (under section 3 of the *Northern Territory (Lessees' Loans Guarantee) Act 1954*).

7 – COLLECTION OF PUBLIC MONEY BY BODIES OUTSIDE THE COMMONWEALTH

At the hearing the Committee asked:

> Has any CAC agency or any other entity in the past collected public moneys that it has not in turn paid to the Commonwealth?[25]

This question arose in the context of the amendments included in Part 2 of Schedule 1 of the draft Bill that relate to the deeming provision contained in section 7 of the FMLA Act 1999.

Section 7 of the FMLA Act 1999 states:

> In any instrument, a reference to payment of an amount into the CRF is to be read as a reference to payment of the amount to the Commonwealth (unless the amount is already public money).

Schedule 1 of the Bill is consequential legislation and does not seek to rectify any identified problem associated with bodies not transferring public money back to the Commonwealth.

The FMA Act, the Financial Management and Accountability (Finance Minister to Chief Executives) Delegations and related Directions, and the Finance Minister's Orders impose requirements on Agencies to promptly deposit public money into official Commonwealth bank accounts and directs Agency Chief Executives to provide annual certification that they comply with the Finance Minister's Delegations.

No Agencies, since the commencement of the FMA Act, have certified to the Finance Minister that public money has not been transferred to official Commonwealth bank accounts.

[25] *Transcript*, page 29.

8 – GENERAL REPORTING ISSUES

(a) Disclosure of rephasing of expenditure

The Committee inquired about prospects for increased disclosure being provided on the rephasing of expenditure, from one year to a later year(s).[26]

Finance recently provided guidance to agencies in respect of 2003-04 Portfolio Budget Statements (PBS). In this guidance, Finance requested each agency identify what portion of the Outcome totals, amongst other things, is due to rephasing.

As indicated by the Senate Finance and Public Administration Legislation Committee – Additional Estimates 2002-03 in their report of the February estimates:

> The Committee welcomes Finance's initiative in improving the transparency of its own budget statements in this regard. It also notes Finance's evidence that there are no reasons for not adopting such an approach to reporting rephased items in the broad guidance Finance issues to agencies on preparing PAES [Portfolio Additional Estimates Statements] and PBS.

(b) Review of outcomes and outputs

The Committee asked for an update on the progress of the review of outputs and outcomes.[27]

A recommendation of the recently completed Budget Estimates and Framework Review was to progressively review outcomes over coming years. This review will involve Finance considering each agency's outcomes as to their appropriateness. This process has commenced.

In reviewing outcomes, Finance is mindful of those recommendations in the Committee's Report number 388, relating to the specificity of outcomes.

(c) Response to the Committee's report no.388

The Committee asked about progress in the Government's response to the Committee's recommendations in report no. 388, 'Review of the Accrual Budget Documentation'.[28]

The Finance Minister forwarded a response to those recommendations of an administrative nature to the Committee on 6 March 2003.

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[26] *Transcript*, page 65.
[27] *Transcript*, page 65.
[28] *Transcript*, page 67.

The Finance Minister forwarded a response to the recommendations of a policy nature to the Committee on 6 May 2003.

(d) Level of reporting on programs in the Budget papers

The Committee asked whether, following the Budget Estimates and Framework Review, Parliament would be provided with additional information on programs.[29]

The collection of program information is intended to assist with the refinement of estimates construction and monitoring of the Government's within-year financial position.

Detailed 'Total Resources for Planned Outcome' tables are provided in the current PBS, and in the PAES for instances of additional expenditures. This information will in many cases be at similar or lower levels of detail than the proposed program structures. PBS and PAES also include estimates of expenses from Special Appropriations and of administered revenue and revenue from other sources.

(e) Reconciliation of the CRF and the cash Budget balance

The Committee asked if there is any reason why the cash budget balance could not be reconciled to the CRF and its components.[30]

Revenues or moneys raised by the Executive Government automatically form part of the CRF by force of Section 81 of the Constitution. There is, however, no requirement for the CRF to be accounted for in any particular form.

However, for practical purposes, total Commonwealth general government sector cash, less cash controlled and administered by CAC Act entities, as reported under Australian Accounting Standard AAS 31 'Financial Reporting by Governments', represents the CRF referred to in section 81 of the Constitution. On this basis, the estimated and projected balance of the CRF is shown in the Budget Paper No.1 (page 10-7).

9 – CONCLUSION

To conclude, Finance welcomes the opportunity for consultation with the Committee in its decision to make an inquiry into a complex draft Bill that has provided the opportunity for clearer understanding and for canvassing appropriate solutions and options in various areas of the financial framework.

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[29] *Transcript*, page 65.
[30] Transcript, page 66.

10 – ATTACHMENTS

Attachment A – Marked up ALTD Act.
Attachment B – Answers to operational questions on the ALTD Act.
Attachment C – Evidence previously provided on the Business Services Trust Account.
Attachment D – 'Wording for consideration for amendments to sections 20 and 21 of the FMA Act'.