

**Senate Finance and Public Administration Legislation Committee**  
**ANSWERS TO QUESTIONS ON NOTICE**  
**ADDITIONAL BUDGET ESTIMATES 2011-2012**

Finance and Deregulation Portfolio

**Department/Agency:** Department of Finance and Deregulation

**Outcome/Program:** 1/1.1

**Topic:** Breach of s44 FMA Act

**Senator:** Cormann

**Question reference number:** F4

**Type of question:** Hansard, F&PA Committee, pages 46 & 47, 14 February 2012

**Date set by the committee for the return of answer:** Friday, 30 March 2012

**Number of pages:** 2

**Question:**

So, if you administer the *Financial Management and Accountability Act 1997*, what I am interested in is: in your responsibility for administering that act, have there been any investigations by Finance into breaches of section 44 and, if so, how many investigations and into whom? And have there been any instances where anybody has been found formally guilty of breaching section 44 of the FMA Act and in what circumstances?

**Answer:**

There have been no investigations by Finance into breaches of section 44 of the FMA Act. Section 44 contains a general requirement for Chief Executives of FMA Act agencies to manage the affairs of the Agency in a way that promotes the proper use of the Commonwealth resources for which the Chief Executive is responsible. There are no criminal or civil penalties attached to this section and accordingly, prosecutions cannot be made under section 44.

Section 44 is an overarching requirement applying to all aspects of an agency's resource management, including the management of "public money" and "public property", the administration of programs, the provision of grants, and procurement. The specific requirements for the handling and spending of public money are laid out in sections of the FMA Act and Regulations. For example, Regulation 9 contains the requirements for approving expenditure, Regulation 12 requires expenditure approvers to document their decision, and Regulation 10 sets out approval requirements when considering entering into arrangements that may commit the Commonwealth to spending beyond amounts that have been appropriated.

Agencies are required to report non-compliance with the financial management framework, including the FMA Act and related Regulations, in their annual Certificate of Compliance. The overwhelming majority of breaches relate to the specific requirements of the Regulations like those mentioned above.

Of course, if a breach is identified by a Chief Executive that relates to fraud or a criminal matter, he/she is expected to undertake an internal investigation and, based on the results, refer the matter to the Australian Federal Police where appropriate. Employees of FMA Act agencies, subject to the *Public Service Act 1999*, must comply with the APS Code of Conduct which requires them to behave honestly and with integrity in the course of their employment, comply with applicable Australian laws and use Commonwealth resources in a proper manner. Under the Public Service Act, a Chief Executive is required to establish procedures for determining whether an agency employee has breached the Code of Conduct and has the power to sanction an employee found to be in breach. Available sanctions range from a reprimand to termination of employment. Similar provisions exist in other Commonwealth employment frameworks, such as the *Australian Federal Police Act 1979* and the *Defence Act 1903*.