



Express law *fast track information for clients*

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Important recent FMA Act amendments

On 1 January 2008, a series of amendments to the [Financial Management and Accountability Act 1997](#) (FMA Act) contained in the [Financial Framework Legislation Amendment Act \(No 1\) 2007](#) commenced. These amendments, together with some others which commenced on assent (25 September 2007), made some important changes to the FMA Act.

In particular, the amendments replace the existing bilateral net appropriation agreements scheme with a new regulations-based scheme, clarify the Minister's capacity to make determinations regarding the transfer of appropriations with agency functions during machinery of government changes and simplify other existing administrative processes.

A summary of the more significant amendments follows. Unless otherwise indicated, the changes commenced on 1 January 2008.

Most significant changes

Section 31: New scheme for relevant agency receipts

Section 31 of the FMA Act, when read with s 10 of the annual Appropriation Acts, permits certain amounts which are received by an agency (such as receipts from the sale of goods, or from the provision of services) to be added to the agency's annual appropriation, and then spent by the agency, without the further authorisation of Parliament.

Previously, s 31 required the Finance Minister (or delegate) and the Minister responsible for each agency to reach agreement about the receipts ('eligible receipts') which could be covered by this arrangement. This has resulted in administrative difficulties and variation across agencies.

The current bilateral net appropriation agreements scheme is being replaced with a new scheme. The new scheme will rely on regulations rather than agreements to give agencies authority to spend amounts equivalent to prescribed receipts they may collect. It is anticipated that a standard set of regulations will set out the eligible receipts for all agencies, with the possibility that specific regulations may be made in relation to particular agencies where this is necessary.

It should be noted that net appropriation agreements entered into prior to commencement remain in effect until ended by the Finance Minister.

Section 32: Transfer of appropriations with agency functions

Section 32 facilitates the orderly financing of functions that are transferred between agencies (for example, as a result of changes to the Administrative Arrangements Orders or, in the case of the parliamentary departments, in accordance with recommendations of the Presiding Officers). It empowers the Finance Minister to give directions for the transfer, from the losing agency to the gaining agency, of part or all of the available appropriations necessarily required for the performance of the particular function.

Section 32 has been redrafted to make it clear that the minister may amend Appropriation Acts by determination to transfer the actual appropriation from the losing agency to the gaining agency, and not to simply provide the gaining agency with access to the losing agency's appropriation.

This provision commenced on 25 September 2007, and has already been extensively used to transfer appropriations to new departments established under the recent changes to the Administrative Arrangement Orders.

Other changes to FMA Act administrative processes

Sections 28 and 30: Repayments by or to the Commonwealth

Section 28 provides an appropriation for the repayment of an amount received by the Commonwealth in circumstances where the repayment is required or permitted by an Act or other law, but where there would not be, but for s 28, an appropriation for the repayment.

Section 30 allows for the converse situation, where an amount is repaid to the Commonwealth after having been paid out of the Consolidated Revenue Fund under the authority of an appropriation. In these circumstances, s 30 operates so that the appropriation has effect as if the amount had not been paid out; that is, the amount repaid will be available to be paid out again (subject to relevant time limits applying to the appropriation).

Sections 28 and 30 have been redrafted to clarify how the provisions apply to repayments by or to the Commonwealth. In particular, the headings have been amended to more clearly distinguish each provision. The amendment to s 30 also makes it clear that the section applies to notional payments within and between agencies.

Section 30A: Appropriations to take account of recoverable GST

Section 30A essentially operates so that additional funds are appropriated to account for GST if an agency makes a creditable acquisition (within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999*) and pays for that acquisition out of an appropriation which is limited in amount (as opposed to, for example, a standing appropriation which is not subject to any monetary limitation).

Section 30A has been amended to simplify and clarify when GST liability arises in s 30A and when the adjustment to an appropriation takes place.

Section 32A: Timing of adjustments to appropriations

Section 32A has been inserted to clarify the timing of adjustments to appropriations subject to ss 20, 21, 30, 30A and 31 of the FMA Act. Adjustments subject to these sections take effect when the adjustment is recorded in the agency's accounts and records.

Section 53: Chief Executive may delegate powers

Section 53 is a delegation provision, enabling the Chief Executive to delegate powers conferred on the Chief Executive by the FMA Act, or powers delegated to the Chief Executive by the Finance Minister. It has been amended to provide that a Chief Executive may issue binding directions to any official in relation to a power delegated or subdelegated to that official by the Chief Executive. This provision commenced on 25 September 2007.

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