

1994

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

FINANCIAL MANAGEMENT AND ACCOUNTABILITY BILL 1994

EXPLANATORY MEMORANDUM

(Circulated by Authority of the Minister for Finance,
the Honourable Kim C. Beazley, MP)

FINANCIAL MANAGEMENT AND ACCOUNTABILITY BILL 1994

OUTLINE

1 This Bill is one of a package of three (the other two being the *Commonwealth Authorities and Companies Bill 1994* and the *Auditor-General Bill 1994*) that are intended to replace the *Audit Act 1901*.

2 This Bill is concerned with the regulatory/accounting/accountability framework for dealing with and managing the money and property of the Commonwealth. Its scope covers the underlying principles that are to govern the activities of persons in organisations that, financially, are agents of the Commonwealth - that is, Departments; those Statutory Authorities whose enabling legislation does not give them legal ownership of money or property separately from the Commonwealth; and any body, organisation or group of persons prescribed as an Agency on the basis of its dealing with and managing public money or public property on behalf of the Commonwealth.

3 In particular, this Bill specifies those responsibilities and powers of the Finance Minister, that underpin, and give context and meaning to, the traditional role of custodian of the 'Treasury of the Commonwealth' referred to in section 83 of the *Constitution*; as well as those responsibilities and powers of persons who are the Chief Executives of Agencies and, as such, responsible and accountable for much of the day-to-day management performance of the Commonwealth's financial affairs.

4 The fundamental principles of financial control contained in the *Audit Act 1901* have been incorporated into this Bill. Wherever possible, they have been simplified and clarified; and applied in ways that support not only the more recent reforms in public sector financial management, but also, relevant changes in emphasis that have been occurring over many years.

5 The Bill proposes a significant revision to the Commonwealth's Fund Accounting structure. The most obvious change is in the replacement of the (largely misnamed) Trust Fund with two new purpose-based Funds - the Reserved Money Fund and the Commercial Activities Fund. The purposes which these two Funds are intended to accommodate, and which have, up until now, represented the great bulk of the balance of the Trust Fund, actually involve receipts and payments that the Commonwealth transacts on its own account, rather than being money that is held 'in trust' for any other person. Moreover, the provisions of the *Audit Act 1901* for the establishment of Trust Accounts, within which those transactions occur, involve the appropriation of money for purposes that, to a large extent, Parliament has not had the opportunity to sanction before the event. They are the only form of appropriation where such pre-sanctioning by Parliament does not occur. Accordingly, this Bill, in proposing the establishment of the two new Funds to replace the Trust Fund, includes provisions that give Parliament the opportunity to disallow proposals by the Finance Minister to establish components of the Funds - with the Minister's determinations for receipts into and payments out of such components being of no effect until the period of disallowance has passed.

FINANCIAL IMPACT STATEMENT

6 The Bill contains a number of provisions that are expressed to be special or standing appropriations. However, these are generally of a 'machinery' nature whereby, for example, money is authorised to be debited and credited between Funds, as required, and, in that respect, are merely made more visible and clearer than the current arrangements, without adding to Commonwealth revenues or outlays. Certain other special appropriations that are currently in the *Audit Act 1901* (eg, for refunds of money) are to be replaced by provisions in the proposed law but, again, without additional financial impact.

7 This Bill is intended to improve the quality and clarity of understanding of the Commonwealth's financial management framework and to sharpen accountability for financial management performance. These, in turn, are expected to translate into more efficient, effective and ethical use of the Commonwealth's resources.

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1 - Short title

Clause 2 - Commencement

Clause 3 - This Act binds the Crown

Clause 4 - This Act extends to things outside of Australia

1. Clauses in this Part are largely self-explanatory. In relation to clause 4, it reverses the rule of construction in section 21 (b) of the *Acts Interpretation Act 1901* because of the need to cover the activities of Commonwealth officials and agencies operating overseas.

PART 2 - GENERAL DEFINITIONS

Clause 5 - General definitions

2. The scope and intent of the range of definitions are largely self-explanatory, but the following points should be noted:

the reference to "any other law" in the definition of "**appropriation**" is intended to cover the Constitution;

the definition of "**bank**" includes banking business conducted outside Australia to make it clear that agreements under clause 8 to open official bank accounts can be entered into overseas with overseas banks;

the definition of "**Chief Executive**" recognises that some prescribed Agencies (eg, the Australian National Audit Office, Office of Parliamentary Counsel etc.) will have a "Secretary" as defined in the *Public Service Act 1922*. The prescribed Agency regulations will usually identify that same person as the "Chief Executive" (but could identify another person if that were appropriate). Acting appointees are also to be covered in the prescribed Agency regulations;

for accounting and reporting purposes, "**public money**" includes money in a bank account;

Clause 6 - Notional payments and receipts by Agencies

3. This clause relates to inter and intra-Agency transactions where the payments and receipts are effected by accounting entries in the financial records of the Commonwealth, (rather than as genuine outflows and inflows of cash) because both 'parties' to the transactions are, financially, agents of the same entity - the Commonwealth. An illustration of this might be the Department of Finance's 'remitting' to the Australian Taxation Office the amounts deducted as employee PAYE tax instalments; the appropriation items covering such payments are able to be debited and the relevant Taxation Receipts (PAYE) revenue item credited, without alteration to the balance of the Consolidated Revenue Fund.

Clause 7 - Effect of maximum penalty at foot of section or subsection

4. This clause is self-explanatory.

PART 3 - COLLECTION, CUSTODY ETC. OF PUBLIC MONEY

Clause 8 - Agreements with banks about receipt, transmission etc. of public money

5. This clause draws together the effects of the current provisions in the *Audit Act 1901* contained in sections 18 (Minister's authority to arrange overdrafts) and 20 (Minister's authority to enter agreements with banks for the conduct of the banking business of the Commonwealth) of that Act. Sub-clause (3) - prohibiting an agreement with a bank that provides for overdraft drawings by the Commonwealth unless providing for each drawing to be repaid within 30 days - has no equivalent in the current law. Its inclusion is intended to limit and clarify the scope of overdraft use by the Commonwealth in ensuring that such use is confined to those overdrafts that arise merely as coincidental consequences of the localised day-to-day conduct of the Commonwealth's banking business and/or cash management arrangements, rather than as borrowings - namely, advances paid to the Commonwealth to finance its operations that involve a credit to the Consolidated Revenue Fund. Such financing is dealt with in clauses 38 and 39(1).

Clause 9 - Official bank accounts

Clause 10 - Public money must be promptly banked etc.

Clause 11 - Public money not to be paid into non-official account

Clause 12 - Finance Minister's authority needed for arrangements for receipt etc. of public money by outsiders

Clause 13 - Money not to be withdrawn from official account without authority

6. The establishment of a network of official bank accounts, opened under the exclusive authority of the Finance Minister and to which all money received by the Commonwealth must be promptly banked, is one of the fundamental disciplines underpinning the conduct of the Commonwealth's financial affairs. The Executive Government's capacity to implement its revenue and spending policies crucially depends on the integrity of its cash flows and its ability to properly identify, measure and account for such receipts and payments. Accordingly, in keeping with the significance of that principle, this group of provisions contain relevant powers, obligations and penalties:

the Finance Minister is obliged to open and maintain at least one official bank account and is given the exclusive power to establish a network of others and to issue Orders for dealing with deposits and withdrawals of public money;
 an official or Minister is liable to a penalty for failing to deal promptly and properly with receipts of public money;
 a penalty is imposed on an official or Minister who deposits public money into other than an official bank account;
 a penalty is imposed on an official or Minister who agrees or arranges without proper authority for a non-Commonwealth person to receive or have custody of public money;
 and
 an official who withdraws money from an official account without proper authority is liable to a penalty.

Clause 14 - Misapplication or improper use of public money

7. This clause for the imposition of a criminal penalty is based on the existing section 64(1)(a) of the *Audit Act 1901* so far as it relates to public money.

Clause 15 - Liability for loss of public money

8. This clause for a civil remedy against an official or Minister for a loss of public money that was in their nominal custody at the time of the loss; or which loss they caused or contributed to by their behaviour, is a simplified alternative to the relevant procedures set out in section 70AB of the *Audit Act 1901*. The provision in sub-clause (4) is intended to avoid the potential for a person who is considered to be liable to put themselves 'out of reach' of liability by resigning etc.

9. It should be noted that this clause relates only to circumstances of physical loss of public money; "loss" does not include the Commonwealth's deciding, or being compelled, to pay out money in response to some matter.

Clause 16 - Special Instructions by Finance Minister about handling etc. of special public money

10. The term "**special public money**" is intended to apply to money which the Commonwealth is holding in a trustee capacity. The provisions for dealing with such money, the authority of the Finance Minister to issue "**Special Instructions**" in that regard, the status of the terms of the trust over such Special Instructions and the penalty provision for contravening Special Instructions derive from the provisions of section 25 of the *Audit Act 1901*.

PART 4 - FUND ACCOUNTING, APPROPRIATIONS AND PAYMENTS

Division 1 - Fund accounting

Clause 17 - Accounting classifications of public money

11. The structure of the accounting classifications established by this clause is intended to ensure that all money in the Commonwealth's possession or control can be categorised. Sub-clause (2) is intended to refer to the status of money before it is able to be accounted for as receipts to the Consolidated Revenue Fund (CRF). Sub-clause (3) is intended to refer to money that has been drawn down against an appropriation, but is still in the Commonwealth's possession or control - typically comprising, for example, the balances (representing unrepresented cheques) held in Drawing Accounts; or amounts held as approved cash advances by Agencies for certain purposes (change floats, petty cash etc.).

Clause 18 - Public money must initially be credited to the Consolidated Revenue Fund

12. This clause reflects the terms of section 81 of the Constitution. The exclusion of certain trustee money from this requirement is in keeping with the intent of section 81. In relation to short-term overdraft drawings, it is neither sensible nor practicable to attempt to account for them as receipts of public money.

Clause 19 - The Loan Fund

13. This clause replaces the Loan Fund established by section 55 of the *Audit Act 1901*. A transitional provision will transfer the balance of the old Loan Fund into the new Loan Fund. The Finance Minister will be obliged to direct that borrowed money credited to the CRF be transferred into the Loan Fund. The exception applicable to credit card cash advances is to reflect the impracticability of seeking to coordinate an accounting, in this manner, for small, occasional and temporary amounts of decentralised borrowings that credit card cash advances represent.

Clause 20 - The Reserved Money Fund

Clause 21 - The Commercial Activities Fund

Clause 22 - Disallowance of determinations dealing with Fund components

14. These clauses will establish the Reserved Money Fund (RMF) and the Commercial Activities Fund (CAF) and set out certain principles for their operation. Together, they replace the Trust Fund that was established by section 60 of the *Audit Act 1901* and arrangements for Trust Accounts authorised by section 62A of that Act.

15. Each of these new Funds will be comprised of 'components' with each component being credited with receipts and debited with payments related to the specific purposes for which that component was established. For the RMF, components may, in some instances, be established by Acts that identify their purposes and require particular kinds of Commonwealth receipts to be transferred to them and particular kinds of payments to be made from them. In the remaining instances, in the case of the RMF, and in all cases in respect of the CAF, components would be established by Finance Minister's determinations. Sub-clauses 20(6) and 21(5) create special appropriation provisions to authorise the necessary payments out of the CRF or Loan Fund and into the RMF and CAF, and out of the RMF and CAF.

16. Having regard to the fact that components established/varied by the Finance Minister's determination will activate such appropriations for spending purposes that may not previously have been scrutinised and sanctioned by Parliament, the determinations for the establishment or variation (but not revocation) of such components are to be disallowable instruments of a kind that do not take effect until the period for disallowance has passed. Conversely, components of the RMF established by other Acts (and which have, therefore, been sanctioned before the event by Parliament) will not be required to undergo further scrutiny by Parliament through the disallowance procedures referred to in clause 22.

17. A transitional rule will provide for a "grandfather" arrangement, whereby the balances of existing Trust Accounts and Heads of the Trust Fund would be transferred to components of the RMF and CAF without application of the disallowance procedures - provided that their existing spending purposes, as directed by the Minister for Finance under the *Audit Act 1901*,

or as established under other Acts, are not broadened in the process. (Were any such broadening to occur, the extent of the broadening would be counted as a variation for the purposes of this proposed Act and the disallowable instrument provisions would be applied.)

Clause 23 - Set-offs ignored for Fund accounting purposes

18. This clause is intended to set out more clearly the arrangements described in section 2AA of the *Audit Act 1901*.

Clause 24 - Finance Minister must keep accounts and records of Fund transactions.

19. This clause is based on section 40 of the *Audit Act 1901*, but is narrower in scope, being confined to those matters (Fund transactions) for which the Finance Minister is in a position to control - and, hence, be held directly accountable for.

Clause 25 - References in other Acts etc. to payments into or out of Funds

20. The purpose of this clause is to remove any doubt on the question that the use in other legislation of the terms "pay into" and "pay out of" in relation to the transactions of a Fund, are to be construed as amounts being credited and debited to that particular Fund - in keeping with the concept that a Fund is an accounting classification of public money.

Division 2 - Drawing Rights

Clause 26 - Drawing rights required for payment etc. of public money

Clause 27 - Issue of drawing rights

21. The system of drawing rights proposed to be established under these clauses is intended to give operational substance to section 83 of the Constitution ("No money shall be drawn from the Treasury of the Commonwealth except under appropriation made by law"). The Finance Minister, having comprehensive powers, responsibilities and accountability obligations in relation to the Commonwealth's cash holdings (under the *Audit Act 1901*, as well under the proposed arrangements provided for in this Bill), is therefore, effectively, the custodian of that "Treasury" on behalf of the Executive Government in its stewardship to the Parliament and the people. Drawing rights - issued by the Finance Minister - are intended to be the key means in fulfilling that custodial role.

22. Clause 26, supported by a penalty and reflecting the effect of section 34 of the *Audit Act 1901*, prohibits an official or Minister from (intentionally or recklessly - see clause 7) disregarding the terms of a valid drawing right. The significance of this clause lies in the fact that valid drawing rights issued by the Finance Minister are those that are consistent with the terms of a law for the appropriation of money. Consequently, if an official or Minister acts in a way that improperly exceeds the authority conferred by a valid drawing right, the integrity of the appropriation laws, themselves, will have also been undermined.

23. Clause 27 sets out the proposed powers and responsibilities in relation to drawing rights. If the terms of a law for the appropriation of money - ie, from a specified Fund and for a specified purpose - are such as to compel the Executive Government to spend (eg, a particular amount, or in response to particular conditions), the Finance Minister is obliged to

issue drawing rights to enable the terms of that appropriation law to be complied with. Correspondingly, the official or Minister to whom the drawing rights are issued must exercise them in conformity with that law. If, however, the terms of a law for the appropriation of money merely permit (rather than compel) the Executive Government to spend, this clause intends that no legal constraints apply to the Finance Minister's issuing (in part or in full), revoking, amending or, indeed, placing conditions on, drawing rights - apart from the necessity that such a drawing right may not authorise the application of public money (including a debit from a Fund) in a way that is not authorised by the appropriation.

Division 3 - Appropriations

Clause 28 - Appropriation for repayments required or permitted by law

24. The intention of this clause is to establish a special appropriation of the relevant Funds as a general provision for making repayments of money previously received but that is subsequently found to be required or permitted by law to be refundable. "Law" is intended to include the common law. This clause parallels the effects of sections 37A, 57(3) and 62A(7) of the *Audit Act 1901*.

Clause 29 - Uncommitted advances lapse at the end of appropriation period

25. The purpose of the clause is to support the integrity of the appropriation process and the accountability of Agencies to the Executive Government and Parliament for their expenditures. It seeks to deter Agencies from unnecessarily holding as Drawn Money any amount that has been drawn against a time-limited appropriation at the time the appropriation lapses. Such practices, where they occur, frustrate the basis of both the appropriation and expenditure estimates processes. To illustrate the point using program grants as an example, expenditure showing against the appropriation in the year of draw down is overstated to the extent of the draw down that has not been applied to grants within the period of the appropriation's authorisation; and the amounts of money actually spent in the next year will, by the same margin, exceed what Parliament and the Executive Government think is being spent on such grants using the current (second) year's appropriation level as a basis.

26. The effect of this clause would be to render any unapproved 'advances' being held by Agencies in such circumstances to be treated as Received Money requiring payment into the CRF upon lapsing of the relevant appropriation. The clause would not apply to amounts held in official bank accounts in respect of un-presented cheque issues, or to money held as approved advances, for purposes prescribed by the regulations.

Clause 30 - Appropriation to be re-instated for amounts re-credited to Fund

27. The intention of this clause is to provide for the re-crediting of an amount to a Fund but not so as to re-activate an appropriation that has lapsed. That is, if an amount paid out of the CRF against an item in an annual Appropriation Act in one year, is re-credited to the CRF in the next year, it cannot be made available for re-issue against an Appropriation Act item of the same description in that next year because the previous year's appropriation against which it was originally drawn has lapsed. Such limitations would not apply to re-instatements of amounts to components in the Reserved Money Fund or the Commercial Activities Fund if those components are still current at the time of re-crediting.

Clause 31 - Agreements for "net appropriations"

28. The purpose of the clause is to facilitate administration of certain kinds of arrangements covered in Appropriation Acts. It seeks to permit such agreements (between the Finance Minister and other Ministers) that underpin those appropriation arrangements, to "outlive" the timeframes of the successive Appropriation Acts in which the arrangements are specified. At present, agreements are, as a matter of form (based on legal advice to that effect), executed for each new Appropriation and Supply Act - even though the content of the agreement may be identical with its predecessor. Note that for Agencies for which the Finance Minister is responsible, it is intended that the agreements be executed between the Finance Minister and Chief Executives of those Agencies.

Clause 32 - Adjustment of appropriations on change of Agency functions

29. This clause seeks to facilitate the orderly financing of functions that are transferred between Agencies (eg, 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). The clause derives from, but is a simplification of, section 35A of the *Audit Act 1901*. It proposes that the Finance Minister be empowered to give directions for the transfer from the losing to the gaining Agency of part or all of the available appropriations necessarily required for the performance of the particular function. It is often impracticable, until some time after the change of function has actually been effected, to identify the precise amount of the available appropriation that is to be the subject of the transfer direction. Directions, however, may not be made to have retrospective effect. Accordingly, this clause allows for more than one direction to be made (eg, to include an early, interim response). Whatever the timing of the direction(s), however, nothing in this clause precludes an Agency being required under other provisions proposed by this Bill to report in its Financial Statements the actual financial effects of losing/gaining the function in question from the date it occurred.

Division 4 - Miscellaneous

Clause 33 - Minister may approve act of grace payments

Clause 34 - Minister may waive debts etc.

Clause 35 - Finance Minister may approve payments pending probate etc.

30. These clauses derive from existing powers of the Finance Minister to be found in the *Audit Act 1901* - section 34A (act of grace payments); sub-section 70C(2) (waivers); and section 37B (payments pending probate). In translating them to this Bill, certain changes have been made to improve their functionality, but without any material broadening of the unique nature of the powers they confer.

31. For act of grace payments, it is proposed that the power be conferred on the Finance Minister in his/her own right so that if it were to be delegated to an official, the Minister could impose legal limits and issue binding directions on its use. As currently provided in the *Audit Act 1901*, the Minister is "an authorised person" with the power to appoint officers as "authorised persons" so that, at law, they have co-equal power. Also, the description of the kinds of payments that may be approved is to be clarified to permit indeterminate amounts, but

which can be calculated (eg, the Class B pension rate as varied from time to time as long as the recipient continues to satisfy the basic tests for that pension). For both act of grace payments and waiver approvals, the threshold amount beyond which the Finance Minister may not approve a proposal without first considering a report on the matter furnished by a committee of senior officials has been increased from \$50,000 to \$100,000 to take account of price movements that have occurred since the former amount was set some 9 years ago. It should be noted that, in keeping with the nature of the power, act of grace payments are reserved for special cases - they have not been applied as an alternative to other legal remedies nor to establish de facto payment schemes.

32. For waivers etc., there are three proposed changes (in addition to the increased threshold amount referred to above). First, sub-clause 34(1)(d) - a power to defer the time for payment of an amount owing to the Commonwealth - is new, but is entirely in context as a concession to a debtor (which is the conceptual thrust of the waiver etc. provisions). Secondly, it is proposed that waivers be able to be made conditionally in the limited circumstance that waiver could be applied to the balance of a debt if a person agreed to make a part payment. Thirdly, this clause is intended to make it clear that, in expressing waiver to be applicable to "an amount owing to the Commonwealth", it includes amounts that are owing, even if not yet payable.

33. In the matter of payments pending probate, the only change proposed is for the deletion of the prescribed limits imposed by regulations under the *Audit Act 1901* - and which, in practice, have been found to serve little useful purpose.

Clause 36 - Ministers may approve rewards to informants

34. This clause has no equivalent in the *Audit Act 1901*, but sections 105A and 106 of the *Postal Services Act 1975* authorise the payment of rewards for information as a result of which the Commission "learns the identity of" a person who has stolen, damaged etc. Commission property.

35. It is open to the Executive Government to pay rewards to any person for any matter - either through the act of grace mechanism or via appropriations that cover the purpose of the reward. The intention of this clause is to establish a special appropriation that would accommodate reward payments of a particular kind - those for furnishing information that led to a person being charged with an offence against the Commonwealth involving actual financial loss or detriment to the Commonwealth. Whether the informant would receive a reward would depend on a convergence of three factors: whether the person charged is convicted; whether the Commonwealth recovers any of the proceeds of the offence; and whether the relevant Minister authorises a payment in all the circumstances. In any event, the Minister may not authorise a reward from the special appropriation of an amount equal to more than 50% of what the Commonwealth had recovered as proceeds.

36. Sub-clause (2) refers to the person's providing information that "led to the convicted person being charged with the offence". This is intended to exclude payment of rewards to persons who contributed to the conviction (eg, by giving evidence) but did nothing to contribute to the discovery etc. of the offence. This clause is intended to serve as a deterrent to those who would commit such offences against the Commonwealth in that they would be

keenly aware that an incentive existed for their confidantes to inform the Commonwealth where to investigate.

Clause 37 - Presiding Officers may approve expenditure

37. The inherent source of power for Ministers to approve proposals to spend public money, in relation to the administration of their Departments, comes from sections 64 and 61 of the Constitution. There is no inherent Constitutional power available to the Presiding Officers for their administration of the Parliamentary Departments. To overcome this deficiency, Finance Regulations 44C under the *Audit Act 1901* was issued empowering the Presiding Officers to approve spending proposals and to authorise officials in their Parliamentary Departments to do so on their behalf.

38. The purpose of the clause is not to change the effect of Finance Regulation 44C, but to elevate that power for the Presiding Officers to the principal Act, rather than have it remain in subsidiary legislation.

PART 5 - BORROWING AND INVESTMENT

Clause 38 - Unauthorised borrowing agreements are invalid

Clause 39 - Finance Minister may borrow for short periods

39. The purpose of these clauses is to ensure continued Parliamentary control over Commonwealth borrowings. While the clause has no direct equivalent in the *Audit Act 1901*, sections 55 and 57 of that Act together produce the same effect - moneys raised by way of loan on the public credit of the Commonwealth being required to be accounted for into the Loan Fund and a prohibition on spending from that Fund except under the authority of an Act. However, section 55 specifically excluded from crediting to the Loan Fund money raised as advances made by banks under the Finance Minister's authority to enter into agreements with banks for the general conduct of the banking business of the Commonwealth.

40. These clauses - and those provisions at clause 8 (overdrafts on official bank accounts) - seek to make a clearer distinction between bank overdrafts that arise co-incidentally to the conduct of the Commonwealth's banking business; and borrowings that are arranged for the purpose of financing the maintenance of Fund balances. That distinction is still real enough, even though one form of borrowings may involve a bank advancing money to the Commonwealth, with the bank recording those advances against an "Overdraft" or "Loan" account opened by the Commonwealth for the purpose. The test is whether there is money received by the Commonwealth that would be credited to the CRF (and Loan Fund).

41. Sub-clause 39 (1) seeks to authorise the Finance Minister to borrow money, but with the nature of the borrowing being expressly limited to advances of money to the Commonwealth from a bank and which are to be repaid by the Commonwealth within 90 days. The purpose of this power is to enable the Minister to more effectively fulfil his responsibilities for the Commonwealth's day-to-day Fund management. It should be noted that authority to borrow does not equate to authority to spend: spending may only occur under an appropriation of a Fund as authorised by Parliament. However, since a borrowing under this

clause would result in a credit to the Loan Fund (via the CRF), clause 28 would provide the appropriation for repayment of money borrowed.

42. Clause 39(2) is intended to permit the Finance Minister to enter into certain kinds of credit arrangements for the purchase of goods and services with the regulations prescribing the kinds of arrangements. These are to be those which provide "third party" financing to the supplier of goods and services purchased by the Commonwealth, under credit arrangements that the Commonwealth has with the "third party". Examples include credit card and Cabcharge transactions. Such arrangements are, of course, a common method of payment in commercial dealings and, in practical terms, do not give rise to money being raised or received by the Commonwealth. The arrangements have the typical characteristics of being short-term, in accordance with the credit provider's billing cycle. The sub-clause reflects this by limiting such arrangements to those under which the Commonwealth must pay the account within 60 days.

Clause 40 - Finance Minister may invest public money

43. This clause seeks to continue the Finance Minister's power to invest public money. The existing provisions of the *Audit Act 1901* provide for the investment of the balances of the Trust Fund (section 62B) and the investment of money of the Commonwealth's main bank account (section 21A). The definition of "authorised investment" in sub-clause (8) accords with the provisions of section 62B of that Act, but are slightly more restrictive. Section 62B's catchall allows investment in "any other form of investment approved by the Minister", whereas this clause states "any other form prescribed by the regulations".

44. The clause takes account of the changed focus on the Fund accounting structure and the need to provide for the necessary standing appropriations to permit payments and receipts out of and into those Funds. In relation to sub-clause (3), any gain from the investment of the balance of a component of the RMF or CAF would be dealt within accordance with the Finance Minister's determination for the establishment of that component. In relation to sub-clause (4), the provisions seek to preserve the financial integrity of the balances of Drawn Money, so that it will not incur any deficiency.

PART 6 - CONTROL AND MANAGEMENT OF PUBLIC PROPERTY

Clause 41 - Custody etc. of securities

Clause 42 - Misapplication or improper use of public property

45. Both clauses have equivalents in the *Audit Act 1901*, except that the custody of securities provision in that Act does not have a penalty attached. Given the potential for loss to the Commonwealth, if the custody of securities was mishandled, a penalty has been incorporated. Clause 42 parallels clause 14 of this Bill.

Clause 43 - Liability for loss etc. of public property

46. This clause is synchronous with clause 15 (Liability for loss etc. of public money).

Clause 44 - Gifts of public property

47. The inclusion of the clause is to put beyond doubt the basis on which the Commonwealth may give away its property. No equivalent provision exists in the *Audit Act 1901*, although it has long been interpreted that the Finance Minister's act of grace and waiver powers under that Act served to make the Minister the source of authority to approve gifts of stores. Finance Direction 26F reflected this view and the clause is based on that Finance Direction. The penalty provision has been included to complement clause 42.

PART 7 - SPECIAL RESPONSIBILITIES OF CHIEF EXECUTIVES

Clause 45 - Promoting efficient, effective and ethical use of Commonwealth resources

48. Section 2AB of the *Audit Act 1901* requires Secretaries of Departments to make "appropriate arrangements for implementing the provisions of this Act, the regulations and any directions" - but is silent on the question of managing. Recognition of the need to manage to achieve qualitative outcomes has underpinned many of the public sector reforms of recent years and will continue to be a feature of future management focus. This clause seeks to reflect and reinforce that focus within the ambit of Commonwealth financial management.

Clause 46 - Fraud control plan

Clause 47 - Audit committee

49. Both clauses have no equivalent in the existing law, but are considered to be of sufficient fundamental significance to warrant inclusion in the Bill.

Clause 48 - Recovery of debts

50. Section 70C of the *Audit Act 1901* contains a head of statutory power for the Finance Minister to write-off losses and debts that are unable to be recovered. No equivalent provision has been included in this Bill on the grounds that writing-off is, and should be seen as, management's accounting response to a factual situation, rather than the exercise of a discretionary power. (That is, if the person with a statutory power to write off a loss declined to do so, the loss would still exist.) Nevertheless, having regard to the clause relating to the Finance Minister's power to grant concessions to debtors (see clause 34), it is complementary to that power to include a positive provision that requires recoverable debts to be pursued. The intention underlying sub-clause (2) is to specify which debts of the Commonwealth that a Chief Executive is held responsible for pursuing. It places no personal liability on a Chief Executive for such debts.

Clause 49 - Accounts and records

51. Sub-clause (1) is self-explanatory. Sub-clause (2) is based on Finance Regulation 127A and is considered to be of sufficient significance in relation to the processes of financial accountability to the Executive Government to warrant its elevation to the Act.

Section 50 - Annual financial statements

The requirement to prepare annual financial statements on the activities of an Agency and submit them for audit to the Auditor-General is a basic accountability requirement on the part of Executives. Section 50 of the *Audit Act 1901* contains a similar requirement to the proposed clause, except that section 50 refers expressly to Fund transactions. This clause, in proposing that the form of Agency financial statements should derive from Finance Minister's Orders, would allow the reporting requirements to be updated in the light of changing accounting standards and financial reporting practices, particularly in the context of agencies moving to full-cost-based financial reporting. Moreover, the clause should enable the form of the financial statements to be updated more easily and in a more timely manner. The opportunity for supplementary scrutiny will occur, as the Finance Minister's Orders are proposed to be issued by statutory instruments.

Section 51 - Additional financial statements and information

This clause for Agency financial statements and other financial information to be reported more frequently than annually, if required by the Finance Minister, parallels the requirements in the private corporate sector for more frequent reporting.

Section 52 - Reporting requirements on change of Agency functions

The intention of this clause is to ensure that, notwithstanding changes that may occur between Agencies' functions, all activities are reported on in annual financial statements.

Section 53 - Chief Executive's instructions

Section 54 - Chief Executive may delegate powers

The power of a Chief Executive of an Agency to issue instructions to officials in that capacity parallels section 72 of the *Audit Act 1901* and Finance Regulation 127A(2). Allowing a Chief Executive to delegate his/her powers or functions to officials who would undertake the tasks concerned is a normal administrative arrangement. However, this Act also allows for the delegation of any powers or functions of the Finance Minister that have been delegated to the Chief Executive, unless the Minister imposes a condition that restricts or prohibits such delegation. This is intended to achieve a major strengthening of accountability. Chief Executives are better placed than the Finance Minister, in relation to delegates in agencies, to monitor and to control the activities of those officials who perform the tasks. It is expected that the Chief Executives would be held accountable by the Finance Minister in that respect.

Part 8 - REPORTING AND AUDIT

Section 55 - Preparation and publication of monthly statement of Fund transactions

This clause is based on section 49 of the *Audit Act 1901*, but without the requirement that the statement be in the form prescribed by the regulations. Since the primary reason for a monthly statement is to provide accountability by Government for performance against its budget, it is sensible to link the two.

Clause 56 - Preparation of annual statements by Finance MinisterClause 57 - Audit of Finance Minister's annual financial statements

57. Both clauses derive from sections 50AB and 51 of the *Audit Act 1901*. The present requirement for the form of the statements and the audit certification to be in accordance with the regulations, rather than specified in this Bill, allows the information in the statements to be updated in the light of developments in financial reporting.

Clause 58 - Audit of annual financial statements of Agency

58. This clause prescribes the form of the certificate to be given by the Auditor-General for annual financial statements prepared by agencies.

PART 9 - MISCELLANEOUSClause 59 - Modification of Act for intelligence or security agency

59. This clause recognises the fact that, for certain aspects of the operations of the security organisations, it may neither be practicable nor desirable (from an operational viewpoint) to apply the procedures included in the range of requirements of the ordinary financial regulatory framework applicable to Commonwealth Agencies to be applied to those operations of security organisations. This clause allows the flexibility needed to ensure that such necessary 'exemptions' to the rule can be effected according to law and with the knowledge and sanction of the Parliament. Section 70D of the *Audit Act 1901* provided for "Exempt Accounts" arrangements for the security organisations.

Clause 60 - Advisory Committees for reporting on large waivers etc.

60. This clause reflects the existing law in sections 34A and 70C(2) of the *Audit Act 1901* with the exception that the Committee would, in the normal course, include the Chief Executive of the Agency involved in the matter, rather than the Secretary, Department of Administrative Services.

Clause 61 - Misuse of Commonwealth credit card

61. This clause is based on section 64A of the *Audit Act 1901*, but extended to cover use of a credit card number, as well as to the card itself. Sub-clause (2) is to respond to a present practical problem of where, for example, a person undertaking official travel is not entitled to use the Commonwealth credit card to pay for hotel accommodation, but is not entitled to use the card to pay for telephone calls etc, that may be included on the same account. By allowing a "controlled" extension of credit card use, it opens up the scope for greater utility and benefit to the Commonwealth in relation to cash management.

Clause 62 - Official must not falsify accounts etc.

62. This clause is self-explanatory; the extent of the penalty provision is a reflection of the potential significance that such an offence could have for the integrity of Commonwealth operations.

Clause 63 - Finance Minister may delegate powers

63. This clause is self-explanatory. It should be noted that clause 54 - delegation by Chief Executive - is intended to permit a Chief Executive to delegate a power delegated to that Chief Executive by the Finance Minister - unless the Minister directs (under this clause) that it is not to be sub-delegated.

Clause 64 - Finance Minister's Orders

64. Finance Minister's Orders are to replace Finance Directions and be afforded a higher status in being made subject to the disallowance provisions of section 46A of the *Acts Interpretation Act 1901*.

Clause 65 - Guidelines by Ministers

65. This clause is based on section 73 of the *Audit Act 1901*, but without the formality of having such guidelines made disallowable instruments, as at present. The reason for this change is in the light of experience, including that the provision is little used and that control by Parliament can be effectively exercised at the regulation making stage.

Clause 66 - Regulations

66. This clause is self-explanatory.

)

)

D

D



9 780644 315548