



## Finance Circular No. 2010/01

To all agencies subject to the *Financial Management and Accountability Act 1997* (FMA Act)

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### Section 32 of the FMA Act – Transfer of Agency Functions

#### Purpose

This Circular provides advice to agencies subject to the *Financial Management and Accountability Act 1997* (FMA Act) on how annual appropriations can be transferred between agencies following a transfer of functions arising from machinery of government (MOG) changes, for example, changes to the Administrative Arrangements Order (AAO).<sup>1</sup>

This circular replaces FC2007/03. It has been updated to improve readability and to make agencies' responsibilities clearer. Chief Financial Officers should particularly take note that:

- The date of effect of section 32 determinations will generally be the date of signature of the determination. The date of effect will be made retrospective only in limited circumstances.
- If agencies cannot agree on the amounts to be transferred within the timeframes set out in this Circular, Finance will intervene and may escalate the issue to a formal resolution process.
- For major MOG changes, further advice will be provided via an Estimates Memorandum.

#### Target Audience

This Circular is relevant to Chief Financial Officers of agencies subject to the FMA Act, and officials responsible for the management of agency appropriations.

#### Key Points

1. Section 32 of the FMA Act applies if a function of an agency (the 'transferring' agency) is transferred to another agency (the 'gaining' agency) due, for example, to a change to the AAO. Section 32 provides a process by which the Minister for Finance and Deregulation (Finance Minister), or the Minister's delegate, may issue a determination to transfer annual appropriations between the transferring and gaining agencies.
2. Section 32 determinations can only transfer annual appropriations between agencies subject to the FMA Act.<sup>2</sup> If a body subject to the *Commonwealth Authorities and Companies Act 1997*

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<sup>1</sup> If agencies are unsure of what constitutes a transfer of function they should contact the Appropriations Bills and Management Team, Cash Management Branch on (02) 6215 3738 or [amtmail@finance.gov.au](mailto:amtmail@finance.gov.au).

<sup>2</sup> This includes annual appropriations for departmental and administered operating costs and capital budgets, CAC Act body payments, payments to States, ACT, NT and local government, new administered outcomes, equity injections and administered assets and liabilities.

(CAC Act) is affected by a transfer of function, the relevant Agency Advice Unit (AAU) in Finance should be contacted to discuss the circumstances. Legal advice may be required. Where this is expected to take time to resolve, the affected agency, in conjunction with Finance, will need to implement interim measures to ensure continuity of service delivery.

3. Section 32 does not apply to special appropriations. Responsibility for administering special appropriation Acts, including the making of payments, changes on the date the related function moves between agencies (e.g. the date of an AAO). This includes the management of any Special Accounts related to a function that has been transferred.
4. The transfer of appropriations under section 32 can only be determined if it relates to the transfer of a function. A function can be, for example, an entire program or a single project. The key distinguishing feature of transfers of functions is that they are decided by the government of the day, in, for example, a Ministerial decision consistent with government policy or a formal change to the AAO. In transferring the function, the government is also transferring full executive responsibility and accountability for the function. Thus, for example, the gaining agency will be responsible for performance reporting on the function to government and Parliament.
5. A section 32 determination may amend one or more schedules to one or more annual appropriation Acts, as circumstances require. The amendment transfers the appropriation to the gaining agency by amending the appropriation Act(s) concerned. Further, amounts can be reclassified by being transferred between:
  - annual appropriation Acts (e.g. Act 1 to Act 2);
  - financial years (e.g. 2006-07 to 2009-10);
  - outcomes (e.g. Outcome 1 to Outcome 2); and
  - types of appropriations (e.g. operating to non-operating).
6. Reclassifications made via section 32 determinations must be consistent with the Budget Process Operational Rules.
7. When function changes affect agency outcomes, gaining agencies will need to consider whether the wording of their existing outcomes is sufficiently broad to cover the transferred functions. Agencies losing functions will also need to consider whether their outcomes should be narrowed to reflect loss of the function. When agencies consider changes to outcome statements or new outcome statement(s) are necessary, they must, as is usual, consult their AAU and Budget Framework Branch in Finance.<sup>3</sup> Legal advice should also be sought to ensure that proposed new outcomes form valid appropriations under sections 81 and 83 of the Constitution. Following in-principle agreement at the officer level, the Finance Minister will be asked to approve changes to outcome statements.
8. Agencies must also consider any necessary changes to agency programs and key performance indicators occurring as a result of the MOG change.<sup>4</sup>

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<sup>3</sup> For further information please refer to *Outcome Statements Policy and Approval Process* available at <http://www.finance.gov.au/financial-framework/financial-management-policy-guidance/outcomes-arrangements.html>.

<sup>4</sup> For further information please refer to *Commonwealth Programs Policy and Approval Process* available at <http://www.finance.gov.au/financial-framework/financial-management-policy-guidance/commonwealth-programs-policy.html>

9. If the need for the appropriation is urgent and there is insufficient time to alter the gaining agency's outcomes, a section 32 determination can include the original transferring agency's outcome.
10. A section 32 determination cannot change the total amount appropriated. The amount appropriated is the amount in the relevant original annual appropriation Act(s) as adjusted by reductions and increases provided for in the appropriation Acts and FMA Act.
11. Generally, for some time after the formal transfer of a function, the transferring agency continues to make payments relating to the programs that have been transferred. That expenditure is made on behalf of the gaining agency (which has Executive responsibility for the function). The date of effect for section 32 determinations will generally be the date of signature. Thus, for the period between the transfer of a function and the section 32 determination, the transferring agency must continue to account fully for its expenditure of amounts on behalf of the gaining agency. After the determination is signed, the gaining agency may need to issue drawing rights for the transferred appropriation to officials in the transferring agency, so that payments can continue until systems, staff and processes have been transferred.
12. The date of effect of a section 32 determination will be made retrospective in only very limited circumstances. A retrospective date of effect is necessary, however, when the transferring agency has been abolished. This is because only the gaining agency will be able to make payments from the date the transferring agency is abolished.

## **Processing a Section 32 Request**

### *CFO Agreement*

13. Following the decision to transfer a function, an assessment of amounts to be transferred should be made by the agencies concerned. Those agencies should then agree on the amounts, complete and sign the "Transfer of Appropriations – Chief Financial Officers Agreement" (CFO Agreement) form within 15 working days of the transfer of the function.<sup>5</sup> The form should then be sent immediately to the transferring agency's AAU in Finance for actioning. The CFO Agreement form is provided at Attachment A and is available for download from the Finance web site.<sup>6</sup> Attachment B provides guidance to agencies on how to complete the CFO Agreement form. Once cleared by the AAU, the AAU will provide the form to the Appropriations Bills and Management Team (ABMT), who will prepare the determination. ABMT will advise agencies when the determination has been signed.
14. Agencies may provide a draft of the CFO Agreement form to their AAUs to ensure that it has been completed correctly and that all requirements for the transfer have been met. However, that must be arranged so that the signed form may be sent to Finance within the 15 working day period.
15. The short time frame is necessary to ensure timely implementation of the government's decision to transfer the function.

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<sup>5</sup> The CFO Agreement form is available separately on the Finance web site at: <http://www.finance.gov.au/publications/finance-circulars/2010/01.html>.

<sup>6</sup> A separate CFO Agreement form is required for each function being transferred.

16. If agreement on a final amount cannot be reached, agreement must be reached on an interim amount by the 15 working days deadline. The details of the interim agreement and the reasons why a final agreement cannot be reached, must be completed on the CFO Agreement form which should be signed and sent to the Finance AAU.
  - If an interim transfer amount is required, agencies must agree on a final amount and provide the final CFO Agreement form within 30 working days of the function transfer.
17. If agreement between agencies on at least an interim transfer amount cannot be reached within 15 working days or a final amount within 30 working days, Finance will intervene and may escalate the issue to a formal resolution process. If agencies anticipate delays, for example because of the complexity involved in identifying the exact amounts, they must advise their AAU of the reason for the delay and the proposed timetable for resolution.

### *Calculating the amount and updating CBMS*

18. When calculating the amount to be transferred, agencies need to consider all available appropriations, including appropriations made in previous years. These are likely to include unspent appropriations relating to accrued expenses such as the accrued employee entitlements of staff transferring with the function.
19. To assist in calculating amounts to be transferred Finance will, on request, provide affected agencies with relevant data from the Appropriations and Cash Management (ACM) module of Central Budget Management System (CBMS). Requests should be made to the Appropriations Bills and Management Team in Cash Management Branch ([amtmail@finance.gov.au](mailto:amtmail@finance.gov.au)). Finance has also published advice on calculating and accounting for transfers in appropriations in *FinanceBrief 6 (Revised) Accounting for the transfer of appropriations under section 32 of the FMA Act* which is available at: <http://www.finance.gov.au/publications/financebriefs/finance-brief-6.html>.
20. While the transferring agency may need to retain some appropriations to pay for invoices after the section 32 determination is signed, gaining agencies would normally pay for invoices received after that date.
21. The amounts determined and any forward year impacts must be entered into the Annual Estimates module of CBMS for the current and forward years by both the transferring and gaining agency at the first available opportunity. This will include Annual Estimates and Monthly Estimates profiles. However, Annual Estimates adjustments will only be Finance validated after the section 32 determination has been signed and only if the adjustments are fully balanced in all dimensions (i.e. appropriation, program, function, accounts, fiscal balance and underlying cash). Agencies must ensure that the reason code they select for the Annual Estimates adjustments is “Section 32 Transfer” and that the fiscal and underlying cash balance impacts are zero.<sup>7</sup> Agencies must also ensure that they correctly record spending in the Monthly and Annual Actuals modules of CBMS. Where changes to outcome and program structures are required, such adjustments will only be possible once the structures within CBMS have been updated. Estimates Memoranda issued following major MOG changes provide further advice relating to these adjustments.

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<sup>7</sup> If the gaining agency needs to change the estimates that are transferred (e.g. re-state balance sheet because the new agency may have a slightly different capitalisation policy/threshold, etc) those changes should be discussed and agreed with the Finance AAU for a later, separate set of estimate update adjustments.

22. The amount determined for the gaining agency is not included in the Additional Estimates or Supplementary Additional Estimates Appropriation Bills for that financial year. To do so would be to provide a double appropriation for the transferred functions.
23. Access to transferred appropriations will be made available via the ACM module of CBMS as soon as possible, normally within 1 to 2 days of the determination. However, that time frame will depend on the CBMS changes required as a result of any outcome and program changes. Agencies must ensure that their bank account details have been updated as necessary and take steps to reflect section 32 transfers in all future Portfolio Budget Statements.

### *Drawing rights*

24. Gaining agencies must ensure they issue drawing rights to staff for the appropriation provided via the section 32 determination. They must also ensure that, if necessary, the transferring agency has drawing rights to spend amounts from the transferred appropriation until the gaining agency is able to make payments directly. In that case, the gaining agency must also arrange for the transferring agency to have third party drawdown access in ACM.

### *Further transfers*

25. Further information can come to hand some time after a transfer of appropriations is finalised. For example, agencies can find that actual spending profiles are different to forecasts, that there are errors in the calculations used at the time or that some details used were out of date. A further determination can be arranged in such cases. Agencies should contact their Finance AAU to discuss any need for a further section 32 determination.

## **Background**

26. A determination made under section 32 may specify that one or more schedules to one or more annual appropriation Acts are amended in a specified way. For the relevant appropriation Acts, this has effect as if the schedules concerned were amended in accordance with the determination.
27. A section 32 determination immediately increases the appropriations available to the gaining agency and reduces the appropriations available to the transferring agency.
28. A section 32 determination to transfer amounts between Parliamentary Departments cannot be issued except in accordance with a written recommendation of the Presiding Officers.
29. A determination does not affect any time limit that applies to an appropriation. Thus, for example, the timing of processes under section 11 of Appropriation Act (No. 1) does not change.
30. For purposes of the Certificate of Compliance, Chief Executives are required to report on the affected functions for the period those functions were actually under their control. When a new agency is created as result of a MOG change, the new Chief Executive must report from the date the agency was created.

## **Further Information and Contacts**

31. Queries on the financial aspects of the transfer of functions should be directed to the relevant Finance AAU in the first instance.

- For further advice as to what constitutes a transfer of function for the purposes of section 32, agencies should email ABMT, Cash Management Branch at [amtmail@finance.gov.au](mailto:amtmail@finance.gov.au).
32. For guidance on outcome statement changes, new outcome statement(s), Portfolio Budget Statements and administered/departmental capital budgets, agencies should contact Budget Framework Branch in Finance by email to [budget\\_framework@finance.gov.au](mailto:budget_framework@finance.gov.au). Further information is also available in Estimates Memorandum 2010/09 – *Outcome and Program Reporting Arrangements: Creating or Amending Outcome Statements or Programs*.
  33. Further guidance on determining and accounting for adjustments in appropriations associated with a transfer of functions is available in Finance *Brief 6* (revised) on the Finance website ([www.finance.gov.au/publications/financebriefs/finance-brief-6.html](http://www.finance.gov.au/publications/financebriefs/finance-brief-6.html)). The Finance Minister's Orders, which are available on the Finance website ([www.finance.gov.au/publications/finance-ministers-orders/docs/FMOs-Financial-Reporting.pdf](http://www.finance.gov.au/publications/finance-ministers-orders/docs/FMOs-Financial-Reporting.pdf)) provide guidelines on the recognition and reporting requirements of appropriations.
    - For queries on the disclosure of appropriation transfers in agency financial statements, please contact the Accounting Policy Branch at [AccountingPolicy@finance.gov.au](mailto:AccountingPolicy@finance.gov.au).
  34. For assistance in updating their bank account details or accessing transferred appropriations in ACM, agencies should contact the OPA Administration Team, Cash Management Branch on (02) 6215 3660 or send an email to <mailto:OPAAAdmin@finance.gov.au>
  35. For more advice on drawing rights, please refer to Finance Circular 2009/07 – *Issuing and Exercising Drawing Rights*, available on the Finance website (<http://www.finance.gov.au/publications/finance-circulars/2009/07.html>), or contact the Financial Framework Policy Branch at [finframework@finance.gov.au](mailto:finframework@finance.gov.au).
  36. More general advice on MOG changes is available on the Australian Public Service Commission web site (<http://www.apsc.gov.au/publications/index.html>).

Tim Youngberry  
First Assistant Secretary  
Financial Reporting and Cash Management Division  
Financial Management Group  
30 August 2010