



FINANCIAL MANAGEMENT ACT 1996 - EXPLAINED
PART 7 – TRUST MONEY

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Trust Money

Application to Territory Authorities

Part 7 of the FMA provides for how the Territory may operate trust accounts and deal with trust money. A reference to “the Territory” in Part 7 does not include territory authorities. This silence, however, does not have the effect of prohibiting a territory authority from operating a trust banking account.

Part 8 of the FMA deals specifically with the financial arrangements of territory authorities. Although there are no express provisions relating to trust money in Part 8, “territory authorities can operate a trust account, provided that:

- the trust banking account complies with section 57¹ of the FMA;
- the territory authority, under its establishing legislation, is not prohibited from holding trust money or operating a trust account, and complies with all relevant banking provisions; and
- the operation of a trust account and holding of trust money is “necessary and convenient” to exercise the territory authority’s functions under its establishing legislation: see section 196 of the *Legislation Act 2001*.²

Where a territory authority is acting as a trustee in the normal legal sense it may be bound by the terms of the *Trustee Act 1925*.

Section 49 Identity of trust money

All trust money held by the Territory must be accounted for separately from public money.

Explanatory Note:

Section 49 requires that all trust money is to be accounted for separately from public money.

Trust money held by the Territory is money belonging to other parties, which is held and administered by the government and must be handled in accordance with relevant

¹ Section 57 of the FMA deals with provisions for territory authorities’ banking accounts.

² Extract of advice received from the ACT Government Solicitor, 18 August 2004

legislation, general trust law and trust deeds. Trust money is not available for the general purposes of the government.

In general, receipts and payments will be regarded as trust moneys under the following conditions:

- when money is paid to an agency for possible repayment to the payee or a third party, for example, rental bonds; or
- when unclaimed money belonging to any person is deposited with the agency, for example, unclaimed gambling prize money.

In practice

Agencies must establish separate trust banking account(s) for managing trust money. Agencies should also ensure that financial information relating to trusts is disclosed separately to their departments financial reports. This information should at a minimum, be disclosed in a note to the financial statements (see model financial statement at <http://www.treasury.act.gov.au/accounting/html/statements.htm>).

Section 50 Administration of trust money

- (1) Trust money must be administered by the appropriate department on behalf of the Territory.
- (2) The Treasurer may, in writing, specify a department as the appropriate department in relation to an amount of trust money.
- (3) In this section:
appropriate department, in relation to an amount of trust money, means—
 - (a) except if paragraph (b) applies—the department responsible for matters or enactments that relate most closely to the purpose of the payment; or
 - (b) the department specified under subsection (2).

Explanatory Note:

Section 50(1)

This section provides that trust moneys are to be managed by the most relevant department on behalf of the Territory.

In administering trust money, departments must have regard to the type of trust relationship. For example, where there is a trust deed, trust moneys are to be managed in accordance with the deed.

In practice:

While the trust provisions under Part 7 of the FMA do not apply to territory authorities, section 50(1) does not in any way prevent a territory authority from operating a trust account where it is appropriate for it to do so.³

Section 50(2)

There may be circumstances where it is unclear which department should manage trust money on behalf of the Territory. Section 50(2) enables the Treasurer to nominate a department as the appropriate department to administer trust money.

Section 50(3)

This section defines appropriate department to be the most suitable department responsible for issues that most closely relate to the reason for the payment. For example, the most suitable department for the payment of rental bonds would be the Department of Justice and Community Safety as it has been allocated responsibility for the “Residential Tenancies Act 1997” under the current Administrative Arrangements Orders (AAOs).

³ See “Application to Territory Authorities” page 3.

Section 51 Departmental trust banking accounts

- (1) The responsible Minister or the responsible chief executive may open a trust banking account for the purposes of the relevant department.
- (2) A trust banking account must be maintained by the chief executive.
- (3) A trust banking account must not, without the Treasurer's written approval, be opened or maintained otherwise than with an authorised deposited-taking institution with which an agreement is in force under section 32 (Agreement for the conduct of banking for Territory).
- (4) No money may be held in a trust banking account other than trust money.
- (5) A Minister or a chief executive must not open or operate a trust banking account otherwise than in accordance with this Act.

Explanatory Note:

Section 51(1)

Section 51(1) allows a trust bank account to be opened by the responsible Minister or chief executive in circumstances where trust moneys are held by the relevant department. This assists with the separate identification of trust money from public money as required under [section 49](#) of the FMA.

Section 51(2)

This section provides that chief executives have the responsibility of maintaining the trust bank account. Financial management responsibilities for chief executives of departments are provided under section 31 of the FMA⁴.

In practice

The primary responsibilities and accountabilities in relation to administering bank accounts are generally delegated by the chief executive to the banking officer of the relevant department⁵. Nonetheless, the ultimate responsibility still rests with the chief executive.

⁴ For further information, see *Financial Management Act 1996 Explained Part 4 Financial Responsibilities of Chief Executives of Departments* available at www.treasury.act.gov.au/accounting

⁵ *Model Chief Executive Financial Instructions 3.1 Cash Management*

Section 51(3)

This section requires that a trust banking account be opened and maintained with the [authorised deposit-taking institution](#) with which an agreement is in force under section 32 of the FMA. This requirement gives the community and the Government a level of assurance that trust monies are protected as they are held with authorised institutions.

In practice

Agencies should contact the Central Financing Unit in Treasury to obtain the details of the authorised deposit-taking institution currently used by the ACT Government.

Section 51(4)

This section requires that only trust money can be held in a trust banking account. Public money may not be deposited in a trust banking account.

Section 51(5)

This section provides that a Minister or a chief executive can only open and operate a trust banking account in accordance with this Act.

Section 51A Transfer of departmental trust banking accounts

- (1) This section applies if the Treasurer believes that it is desirable, because of changes in departmental responsibilities, to transfer a departmental trust banking account from a department to another department.
- (2) The Treasurer may, in writing, direct the responsible chief executive of the department that holds the account to arrange for it to be transferred to the other department.
- (3) If a chief executive receives a direction under subsection (2), the chief executive must comply with it.
- (4) An account transferred in accordance with the direction becomes a trust banking account of the department to which it is transferred.

Explanatory Note:

This section allows the Treasurer, where there are related changes in departmental responsibilities, to direct the transfer of a trust bank account from one department to another.

In practice

Transferring a trust bank account from one department to another department usually results from a change in Administrative Arrangement Orders (AAOs). [Appendix A](#) provides an example of the instrument required.

Section 51B Transfers between trust banking accounts—changes in departmental responsibilities

- (1) This section applies if the Treasurer believes that it is necessary, because of changes in departmental responsibilities, to transfer an amount held in a departmental trust banking account (the *first account*) to a trust banking account of another department.
- (2) The Treasurer may, in writing, direct the responsible chief executive of the department that holds the first account to transfer the amount.
- (3) If a chief executive receives a direction under subsection (2), the chief executive must comply with it.

Explanatory Note:

This section allows the Treasurer, where there are related changes in departmental responsibilities, to direct the transfer an amount held in one department’s trust banking account to the trust banking account of another department.

In practice

Transferring amounts of trust monies from one department’s trust account to another department usually results from a change in Administrative Arrangement Orders (AAOs). [Appendix B](#) provides an example of the instrument required.

Section 51C Transfers between trust banking accounts—investment

Amounts may at any time be transferred between trust banking accounts to facilitate investment of trust money.

Explanatory Note:

This section allows amounts to be transferred at any time between trust banking accounts to facilitate the investment of trust money.

In practice

Government policy requires that where departments decide that amounts in a departmental trust account should be invested, they must be invested with the Public Trustee for the ACT to ensure the Territory meets its obligations under the “Trustee Act 1925” (see section 53 of the FMA). Section 51C provides the authority to transfer funds for investment under these arrangements.

Section 52 Transfers between trust banking account and territory banking account

Amounts may only be transferred between a trust banking account and the territory banking account—

- (a) to facilitate investment of the trust money; or
- (b) to make a payment required by section 53A (6) (Unclaimed trust money).

Explanatory Note:

Section 52

Section 52 provides that money can be transferred between a trust banking account and the Territory banking account for the purposes of investment. This section also allows amounts of unclaimed trust money to also be transferred between a trust banking account and the Territory banking account as required under [section 53A\(6\)](#).

In practice

Government's current policy is that where departmental trust moneys are to be invested, they may only be invested by the Public Trustee for the ACT in order to ensure the Territory meets its obligations under the "Trustee Act 1925" (see section 53 of the FMA). Consequently, for investment purposes, trust moneys should not be transferred between a trust banking account and the Territory banking account.

Section 53 Investment of trust money

The Treasurer may invest trust money as if the Treasurer were a trustee under the *Trustee Act 1925*.

Explanatory Note:

Section 53 allows the Treasurer (or delegate) to invest trust money as though he were a trustee under the *Trustee Act 1925*.

The Trustee Act requires a trustee investing money on behalf of other persons to "exercise the care and diligence and skill that a [prudent person](#) would exercise in managing the affairs of other persons."⁶ The intention of this section is to protect the "other persons" whose money is being invested.

In practice

The Treasurer has delegated responsibility for managing the investment of departmental trust monies to relevant officers within the Office of the Public Trustee (see also section 51C of the FMA).

⁶ Section 14A(2)(b) *Trustee Act 1925*

Section 53A Unclaimed trust money

- (1) For this section, money held in a trust banking account is unclaimed trust money if—
 - (a) not less than 6 years has elapsed since the date the money became payable; and
 - (b) during that period, no-one entitled to the money has requested that the money be paid to him or her or according to his or her direction.
- (2) If on 1 January in any year a trust banking account contains unclaimed trust money, the chief executive responsible for maintaining the account must, on or before 31 January in the year, give to the Treasurer a statement of all unclaimed trust money held in the account.
- (3) The statement must set out-
 - (a) the name, and last-known address, of each person entitled to unclaimed trust money held in the account; and
 - (b) the amount of the trust money to which each of those people is entitled; and
 - (c) the authorised deposit-taking institution, and the branch of the institution, with which the trust money is held.
- (4) The statement is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.
- (5) The chief executive must also publish the statement in a newspaper published in the ACT.
- (6) The total amount shown in the statement must be paid into the territory banking account when the statement is given to the Treasurer and, on being paid into that account, becomes public money of the Territory.
- (7) A person who claims to be entitled to any money paid into the territory banking account in accordance with subsection (6) may apply to the Treasurer for a payment of an amount equal to the money to which the

person is entitled.

- (8) The Treasurer must consider each application and either refuse it or approve it completely or partly.
- (9) The Treasurer must give the applicant written notice of his or her decision.
- (10) A payment approved by the Treasurer under subsection (8) may be made whether or not an appropriation is available for the purpose.

Explanatory Note:

Section 53A(1)

This section allows trust money that is unclaimed to be removed from departmental trust banking accounts to the Territory banking account after a period of six years has elapsed.

In general, unclaimed trust moneys are moneys that have been inactive for over six years and can include deposits, dividends, trust account funds, interest, refunds, overpayments, sale proceeds, and bonds and superannuation benefits and retirement savings accounts of persons over retirement age.

Section 53A(2)

Chief executives of departments are required to provide the Treasurer, on or before 31 January, with a statement, the content of which is prescribed in [subsection 53A\(3\)](#). Agencies are required to comply with this section in the following circumstances:

- where agencies hold trust funds that have been payable to a person for at least six years; and
- where agencies have not been requested to pay those moneys to the person entitled to the money.

This ensures unclaimed trust moneys are monitored by agencies, and appropriate records are maintained to identify such moneys.

Section 53A(3)

This section prescribes the information to be included in the statement required under [section 53A\(2\)](#). The information required includes:

- the name and last known address of each person entitled to unclaimed trust money;
- the amount of trust money to which each person is entitled; and
- the name and branch details of the authorised deposit-taking institution with which the trust money is held.

The purpose of this section is to ensure that sufficient information is available to assist in the prompt identification of each person who is entitled to unclaimed trust money.

Section 53A(4)

This section provides that the statement of unclaimed trust money held in the trust banking account is a [notifiable instrument](#). This is a transparent mechanism to enable unclaimed trust moneys to be identified and claimed by the rightful owners. Notifiable instruments are available through the ACT legislation website.⁷

Section 53A(5)

This section requires the chief executive of the relevant agency to publish the statement of unclaimed trust money held in the trust banking account under section 53A(2) in a newspaper published in the ACT. This provides greater exposure of the statement to the community and increases the probability that the persons entitled to the money will claim it.

Section 53A(6)

This section provides that once the statement of unclaimed trust money held in the trust banking account is given to the Treasurer, the total dollar amount listed in the statement is to be paid into the Territory banking account and will then become public money.

⁷ [Hwww.legislation.act.gov.au](http://www.legislation.act.gov.au)H

In practice:

Once the unclaimed trust money has been transferred to the Territory banking account, agencies are still responsible for maintaining the records for the unclaimed trust money transferred to the Territory banking account, so that they can assess the validity of any subsequent claims.

Section 53A(7)

This section provides that a person who believes they are the rightful owner of unclaimed money may apply to the Treasurer for payment of the amount they believe they are entitled to.

Such claims are usually made by lodging a written claim with the originals of any supporting documentary evidence to establish ownership. Where original documentation is not available the application should be in the form of a Statutory Declaration.⁸

Sections 53A(8) and (9)

The Treasurer (or delegate) must consider each claim and can either refuse the claim, or accept it completely or in part. The Treasurer's decision is then to be communicated in writing to the person making the claim.

Claims would not be accepted where the person who believes they are the rightful owner of unclaimed money, is unable to prove they have the legal right to the money.

Section 53A(10)

This section provides that approved payments made by the Treasurer to applicants of unclaimed money can be made regardless of whether an appropriation is available for that purpose. This has the effect of ensuring that any approved payment of unclaimed money can be made on a timely basis without having to wait until the passing of an appropriation act.

⁸ For further information go to [Hhttp://www.treasury.act.gov.au/unclaimedmoneys/index.shtml](http://www.treasury.act.gov.au/unclaimedmoneys/index.shtml)H

Section 53B Review of decisions

Application may be made to the administrative appeals tribunal for a review of a decision of the Treasurer under section 53A (8) refusing an application completely or partly.

Explanatory Note:

This section provides the ability for the Treasurer's decision under section 53A(8) to be reviewed in circumstances where persons who have made a claim are dissatisfied with the Treasurer's decision.

The Administrative Appeals Tribunal (AAT) is an independent body that provides an independent review of a wide range of administrative decisions made by Australian governments and some non-government bodies.⁹

Section 53C Notification of decisions

A notice given under section 53A (9) must be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

Explanatory Note:

This section provides that the Treasurer's written decision under section 53A(9) is to be in accordance with requirements of the code of practice in force under section of the *Administrative Appeals Tribunal Act 1989* (AATA). Section 25B (1) of the AATA provides that the Minister may, in writing, determine a code of practice to facilitate the operation of section 25A (1) of the AATA.

⁹ [Hwww.aat.gov.auH](http://www.aat.gov.au)

Appendices

**DIRECTION TO TRANSFER DEPARTMENTAL TRUST
BANKING ACCOUNT UNDER SECTION 51A OF THE
FINANCIAL MANAGEMENT ACT 1996**

| Department | Bank Account Name | Bank Account Number | Transfer Amount 2006-07 \$ |
|---|----------------------------------|------------------------------------|---|
| Transferred from: <i>[Enter name of agency]</i> | <i>[Enter trust name]</i> | <i>[Enter account number]</i> | <i>[Enter \$ amount]</i> |
| Transferred to: <i>[Enter name of agency]</i> | <i>[Enter trust name]</i> | <i>[Enter account number]</i> | <i>[Enter \$ amount]</i> |

Treasurer
Date:

**DIRECTION TO TRANSFER MONIES BETWEEN
DEPARTMENTAL TRUST BANKING ACCOUNTS
UNDER SECTION 51B OF THE FINANCIAL
MANAGEMENT ACT 1996**

| Department | Bank Account Name | Bank Account Number | Transfer Amount 2006-07 \$ |
|--|----------------------------------|------------------------------------|---|
| Transferred from: [Enter name of agency] | [Enter trust name] | [Enter account number] | [Enter \$ amount] |
| Transferred to: [Enter name of agency] | [Enter trust name] | [Enter account number] | [Enter \$ amount] |

Treasurer
Date:

Glossary

Authorised Deposit-Taking Institutions:

Authorised deposit-taking institutions are corporations that are authorised under the *Banking Act 1959* and include banks, building societies and credit unions.¹⁰

In relation to the Territory specifically, it is the institution that the Territory has a banking agreement with under section 32 of the FMA.

Notifiable Instrument:

Notifiable instruments are statutory instruments that must be notified on the ACT Legislation Register to allow access by all members of the community.

A notifiable instrument becomes enforceable when it is placed on to the ACT Legislation website, that is, www.legislation.act.gov.au.

Prudent Person:

A person who uses good judgment or common sense in handling practical matters. A person who does everything in moderation, follows the community ethic, and always exercises due care.

¹⁰ Australian Prudential Regulation Authority - website www.apra.gov.au/H