

2002

**THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY**

FINANCIAL MANAGEMENT AMENDMENT BILL 2002

EXPLANATORY MEMORANDUM

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Financial Management Amendment Bill 2002

Outline

The *Financial Management Act 1996* (the Act) provides the regulatory framework for the Territory's fiscal operations. It is therefore important to ensure that the Act helps to provide a fundamentally sound financial management framework within which the Territory can operate and that the obligations imposed by the Act are clear and unambiguous.

The object of this Bill is to propose a range of amendments to the Act designed to ensure that it remains strong and effective in regulating the conduct of the Territory's fiscal operations.

The changes proposed in this Bill are a mixture of technical and policy changes, and reflects the continuing need to pursue optimal procedural and legislative standards.

The Bill provides for changes to be made in the following areas:

- ◆ Removing ambiguities or inconsistencies –
 - Clarifying the responsibilities of Chief Executives in relation to achieving financial targets. While this will, in the main, be achieved by changes to the budget papers format, this will be supported by amendments proposed in this Bill.
 - Allowing performance criteria for the delivery of outputs to be varied. This will allow the performance criteria to more accurately reflect the performance of departments where there have been changes to departmental appropriations or priorities.
 - Allowing Commonwealth payments provided to the Territory for specific purposes to be effectively on-passed. This amendment reflects the change in the way the Commonwealth accounts for particular Territorial payments as either specific purpose payments or general revenue grants.
- ◆ Removal of redundant requirements –
 - Remove the need for payments out of the Territory banking account to be authorised by a warrant. This recognises that the use of warrant is largely a ceremonial process which provides little effective additional value to the administrative controls that already exist for the disbursement of cash.
 - Remove the ability of departments to make payments in anticipation of supply under section 18A of the Act. This section is seen to undermine the integrity of the budget process and the Legislative Assembly's role in scrutinising appropriations.

- ◆ Strengthening financial management and accountability –
 - Requiring that, where the conditions of a repayable capital injection are varied over the term of the loan, these changes, as well as being reported in departmental annual reports, are made available for Legislative Assembly scrutiny as early as possible.
 - Allowing the Executive to direct the transfer of surplus cash from departmental banking accounts to the Territory banking account. This will ensure that the effectiveness for use of cash is maximised across the Territory.
 - Provide for the earlier presentation of Territory audited annual financial statements.

Details of the Financial Management Amendment Bill 2002

Clauses 1, 2 and 3 are formal requirements – respectively, citing the name of this Act; the commencement date of this Act; and declaring that it is the *Financial Management Act 1996* which is being amended by this Act.

Departmental budgets

Clause 4 facilitates the inclusion of a new section 12 (1) (d).

Clause 5 inserts a new section 12 (1) (d). This section, together with new section 31 (2) (b), provided under clause 15, sets in place the framework under the Act to clarify which financial targets, set out within the budget papers, chief executives will be responsible for achieving. Previously it was unclear which estimated financial targets contained in the budget papers chief executives were responsible for ensuring departments achieved under section 31 (2) (b) of the *Financial Management Act 1996*.

Variation of appropriations for Commonwealth grants

Clause 6, in essence, replaces the phrase ‘specific purpose payment’ with the phrase ‘for a nominated purpose’. This removes an unintended consequence caused by the previous wording whereby Commonwealth payments, although intended for a specific purpose, were paid to the Territory as general revenue grants and not as specific purpose payments. As such, section 17 (2) could not be used to pass these payments on to departments. The revised provision will allow for any payments from the Commonwealth received for a nominated purpose to be passed on to departments, under section 17, by increasing appropriations by the increase in the grants.

Payments in anticipation of appropriation of supply

Clause 7 proposes the deletion of existing section 18A. Section 18A allows departments to anticipate an approved appropriation and thereby meet contractual obligations that require payment in June to take advantage of any discounts. Section 18A is seen as undermining the integrity of the budget process, whereby expenditures are closely evaluated during the budget process, and the Legislative Assembly’s role in scrutinising appropriations. There are also more appropriate mechanisms, such as Treasurer’s Advance or supplementary appropriations, which allow departments to meet expenditure of the nature envisaged under 18A while at the same time maintaining the integrity of the budget process.

New sections 19C, 19D and 19E

Clause 8 inserts new section 19C. Section 19C provides, within the Act, a mechanism for the early reporting, to both the Legislative Assembly and the general public, of any changes to the conditions under which a repayable capital injection has been provided. This is achieved by firstly requiring the Treasurer to approve any changes in writing, including the reasons for the changes, and secondly by making the Treasurer's written statement a notifiable instrument.

Clause 8 also inserts new section 19D. Section 19D allows the responsible Minister to amend in writing, departmental performance criteria in relation to the delivery of departmental outputs. This recognises that in the time between the framing of departmental budgets and the reporting on the performance of the delivery of departmental outputs, there may have been changes to departmental appropriations and/or departmental priorities or better performance measurement indicators may have been identified. Where there have been such changes the original performance criteria may no longer be a useful indicator of departmental performance. To ensure there is appropriate and timely accountability, to both the Legislative Assembly and the general public, section 19D (4) provides that the instrument amending departmental performance criteria is a notifiable instrument.

Clause 8 further inserts new section 19E. It is recognised that there may be circumstances where Department's financial targets will legitimately change due to authorised variations under the *Financial Management Act 1996*. These changes or variations may have a material effect on the key financial targets for which Chief Executives will be held responsible for achieving under new section 31 (2) (b). To ensure these key financial targets remain relevant the new section 19E allows the Treasurer to amend during the year, by instrument, these key financial targets.

The new section 19E also provides that any amendment by the Treasurer to these key financial targets is a notifiable instrument. This ensures there will be appropriate and timely accountability to both the Legislative Assembly and the general public.

Audit of annual financial statements

Clause 9 reduces, from 4 to 3 months, the time within which the Treasurer must give the Auditor-General a copy of the annual financial statements of the Territory. This amendment, combined with the amendments proposed in clauses 14 and 25, will facilitate the earlier presentation of audited Territory annual financial statements.

Annual financial statements of departments

Clauses 10, 11, 12 and 13 provide for the reporting of any changes to the conditions of a repayable capital injection in the annual financial statements of departments. This, combined with the reporting requirements required under clause 8, ensures both the Legislative Assembly and community are constantly informed of any changes. Clauses 10, 12 and 13 also provide that annual financial statements will be presented in a form that facilitates comparison with the budget. If the budget is amended over

the year under any provisions of the Act then comparison with the budget as amended is required.

Audit of financial statements of departments

Clause 14 removes the 30-day timeframe within which the Auditor-General must provide the chief executive with an audit opinion. This amendment will allow the Auditor-General to complete auditing agencies' financial statements before commencing the audit of agencies' performance measures. This will allow the Department of Treasury to earlier undertake its consolidation tasks in respect of the Territory statements, based on agencies' audited financial results. This amendment, together with those amendments in clauses 9 and 25, will facilitate the early presentation of audited Territory annual financial statements.

By inserting new section 29(2), clause 14 clarifies that it is the financial statements prepared under section 28 of the Act that must be provided to the Auditor-General for audit.

Responsibility of chief executives of departments

Clause 15 substitutes new sections 31 (2) (a) and (b). New section 31 (2) (a) clarifies that chief executives remain responsible for ensuring that where the department has carried over from the previous year, appropriated funds, they are spent in accordance with appropriation.

Section 31(2) (b), together with new section 12 (1) (d), provided under clause 5, sets in place the framework under the Act to clarify which financial targets, specified in budget papers, chief executives are responsible for achieving.

The intention of this provision is to allow the identification in budget papers of the key financial targets for which chief executives will be held accountable. It is recognised that some financial impacts during the course of a financial year will largely be out of the control of the relevant chief executive. The intention in these instances will be to draw attention to such impacts and require chief executives to provide an explanation of material variations from targets. It is envisaged this explanation could be provided to Legislative Assembly Committee Inquiries or in the Annual Reports of departments. It is not intended that this information be included in the annual financial statements.

Departmental banking accounts

Clause 16 updates the language and clarifies that departmental bank accounts can only be established with those institutions with which the Treasurer has entered into an agreement under section 32 of the Act.

Clause 17 inserts new section 36A. There may be circumstances where departments have been appropriated funds for projects that were subsequently not undertaken or have achieved significant savings. Where departments cannot justify maintaining this surplus cash, new section 36A allows the Executive to direct the transfer of these

funds from departmental banking accounts to the Territory banking account. This will ensure that the effectiveness for use of cash is maximised across the Territory.

Clauses 18 and 19 renames section 37 and removes the need for payments from the Territory banking account to be authorised by warrant. The Territory imposes a number of strict administrative control procedures to ensure that cash is not paid from the Territory banking account unless it is in accordance with an appropriation, or for the purposes of investment. Warrant is largely a ceremonial process, providing little additional value to the administrative controls.

Clause 20 amends section 46 of the Act to clarify which type of payments can be made, without appropriation, in respect of Territory investment and borrowings, and includes interest payments, repayment of principal and payments for expenses incurred.

Departmental trust banking accounts

Clause 21 updates the language and clarifies that trust bank accounts can only be established with those institutions with which the Treasurer has entered into an agreement under section 32 of the Act.

Banking accounts

Clause 22 updates the language and clarifies that Territory Authority bank accounts can only be established with those institutions with which the Treasurer has entered into an agreement under section 32 of the Act.

Investment

Clauses 23 and 24 recognise that, under the Act, it is the Treasurer, and not a department, who is responsible for investing surplus Territory authority funds. Clause 23 recognises that, under the Act, it is the Treasurer and not the Territory that receives interest from investments.

Clause 24 amends section 56 (4) to reflect that departments are not responsible under the *Financial Management Act 1996* Act for investing surplus Territory authority funds but that departments merely assist the Treasurer to invest and manage these funds.

Audit of annual financial statements

Clause 25 removes the 30-day timeframe within which the Auditor-General must provide the chief executive with an audit opinion. This amendment will allow the Auditor-General to complete auditing Territory Authorities' financial statements before commencing the audit of Territory Authorities' performance measures. This will allow the Department of Treasury to undertake earlier consolidation tasks in respect of the Territory statements, based on agencies' audited financial results. This amendment, together with clauses 9 and 14, will allow for the early presentation of audited Territory annual financial statements.

By inserting new section 61 (2), clause 25 also clarifies that it is the financial statements prepared under section 60 of the Act that must be provided to the Auditor-General for audit.

SCHEDULE 1 – Minor amendments of the *Financial Management Act 1996*

Clauses 1.1 to 1.10 make adjustments to the structure of the principal Act to allow it to better reflect current drafting concepts, revise headings and renumber provisions.