

2019

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

FINANCIAL MANAGEMENT AMENDMENT BILL 2019

EXPLANATORY STATEMENT

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Introduction

This explanatory statement (the Statement) relates to the *Financial Management Amendment Bill 2019* (the Bill) as presented to the Legislative Assembly. The Statement has been prepared to assist the reader of the Bill and to help inform debate on it. The Statement does not form part of the Bill and has not been endorsed by the Assembly.

The Statement must be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Overview

The Bill will amend the *Financial Management Act 1996* (the FMA).

The FMA provides for the financial management of the government of the Australian Capital Territory, including the appropriation and management of the Territory's budget.

The aim of the amendments is to improve the accuracy of budget estimates and performance of the capital works program. This is achieved by allowing entities which receive budget funding for their capital works to access future funding, through a capital works reserve in the budget year, should their capital works expenditure in the budget year exceed their capital budget appropriation.

The ability to access future funding through the Reserve eliminates the need for entities to allow for unexpected funding requirements in their capital budget estimates. This in turn would lead to more accurate budget estimates, and improved alignment of budget appropriation and program delivery outcome.

To maintain budget and program neutrality, when an entity accesses the Reserve, offsetting reductions would be made to that entity's future capital works budget so that there is no net budget or program impact over time.

In summary, the amendments propose to:

- establish an annual Capital Works Reserve (the Reserve) to a value of up to 20 per cent of the total amount appropriated for the capital works program by all Appropriation Acts for the financial year. Any amount undisbursed will lapse at the end of the financial year;
- allow entities to request a capital works advance for an approved capital works project from the Reserve should their capital works expenditure for the budget year exceed their capital budget appropriation;
- require that a capital works advance for a project cannot result in the total funding for the project exceeding the total amount budgeted for the project; and
- require the Treasurer to provide the Legislative Assembly with a reconciliation of the amounts authorised for payment from the Reserve in the quarterly financial statements required under section 26 of the FMA.

Human Rights Considerations

No provisions in this Bill engage rights under the *Financial Management Act 1996*.

As the Reserve will function as an operational mechanism for managing cash flow for the capital works program, the amendments will have a net neutral impact on both individual project funding and the budget over time.

Notes on Clauses

Clause 1. Name of Act

This clause is a formal provision that sets out the name of the proposed legislation, which is the *Financial Management Amendment Act 2019*.

Clause 2. Commencement

This clause provides that the Act commences on the day after the day the Act is notified on the Legislation Register.

Clause 3. Legislation amended

This is a technical provision identifying that the proposed legislation amends the *Financial Management Act 1996* (the FMA) and the *Administrative Decisions (Judicial Review) Act 1989* (the AD(JR) Act).

Clause 4. New subdivision 2.1.1 heading

This provision is a technical amendment to create a new subdivision 2.1.1 for the existing general provisions under *Division 2.1 Appropriations and budgets*.

The effect of this amendment is to allow insertion of a new subdivision 2.1.3 for the capital works reserve (the Reserve).

Clause 5. New subdivision 2.1.2 heading

This provision is a technical amendment to create a new subdivision 2.1.2 for the existing provisions for Treasurer's Advance under *Division 2.1 Appropriations and budgets*.

The effect of this amendment is to allow insertion of a new subdivision 2.1.3 for the Reserve.

Clause 6. New subdivision 2.1.3

This clause amends division 2.1 of the FMA by inserting a new subdivision 2.1.3 to provide for the:

- appropriation of the Reserve; and
- terms and conditions for the payment of capital works advance from the Reserve.

New subdivision 2.1.3 contains sections 18D, 18E, 18F and 18G.

Section 18D

New section 18D provides for an Appropriation Act to make an appropriation for the Reserve in a financial year.

- The Reserve must not exceed 20 per cent of the total amount appropriated for the capital works program by all Appropriation Acts for the financial year.
- Any amount remaining undisbursed at the end of the financial year would lapse and not be available for disbursement in the following financial year.

Section 18E

New section 18E empowers the Treasurer to authorise a capital works advance to an entity for an approved capital works project subject to the following conditions:

- there is an immediate requirement for the capital works advance to be made to the entity;
- the capital works advance is required in addition to the entity's capital works budget for the financial year;
- the capital works advance would not result in total funding for the project exceeding the total amount budgeted for the project:
 - this condition is satisfied through a corresponding reduction, in the same amount as the capital works advance, in future budget funding allocation for the project; and
- the total amount of capital works advances authorised in a financial year does not exceed the total amount appropriated for the Reserve in that year.

Section 18F

New section 18F provides that if an undisbursed amount in a capital works advance is no longer required by an entity, then the Treasurer may authorise that the undisbursed amount be returned to the Reserve.

Section 18G

New section 18G requires the Treasurer to provide the Legislative Assembly with:

- copies of the authorisations for capital works advances paid from the Reserve; and
- a reconciliation of the payments made from the Reserve in the quarterly financial statements required under section 26 of the FMA.

This reporting provision is in addition to the requirement under section 30F of the FMA for the Treasurer to provide the Legislative Assembly with a report on the capital works program at least every six months.

Note 1 refers to section 26 of the FMA which sets out the requirements for quarterly financial statements.

Note 2 refers to the requirement for the Treasurer to provide the Legislative Assembly with a capital works report at least every six months under section 30F of the FMA.

Subdivision 2.1.4 Appropriations and budgets – other matters

A new heading *Subdivision 2.1.4 Appropriations and budgets – other matters* is inserted after Section 18G and before the existing Section 19. The effect of this amendment is to create a new subdivision for the existing provisions for other matters under *Division 2.1 Appropriations and budgets*.

The effect of the above amendments under Clause 6 is to allow:

- the appropriation for a capital works reserve in each financial year to a value of up to 20 per cent of the total capital works appropriation in that year; and
- payments from the Reserve in the form of capital works advances for approved capital works projects to be authorised by the Treasurer, without altering the total approved budget for the projects.

The amendments also require the Treasurer to report to the Legislative Assembly on the payments from the Reserve in the quarterly financial statements under section 26 of the FMA.

Clause 7. Periodic financial statements

Section 26 (2) (b), note

This clause amends the Note to section 26 (2) (b) of the FMA to include the instruments made under Section 18G in the list of instruments which may be attached to the quarterly financial statements.

The effect of this amendment is to require that the quarterly financial statements include a summary of the instruments made under section 18G of the FMA and attached to the statements.

Clause 8. Dictionary, new definition of *capital works advance*

This clause amends the FMA Dictionary to include the definition of capital works advance.

Clause 9. Administrative Decisions (Judicial Review) Act 1989

Schedule 2, new section 2.3 (b) (iv) and (v)

This clause amends Schedule 2 of the *Administrative Decisions (Judicial Review) Act 1989* (AD(JR) Act), by inserting new sections 2.3 (b) (iv) and 2.3 (b) (v), to include the Treasurer's decisions under sections 18E and 18F of the FMA in the list of decisions which are excluded from the requirements under section 13 of the AD(JR) Act.

Section 13 of the AD(JR) Act requires the decision maker to provide a statement of reasons for the decision if requested by a person who is entitled to apply to the Supreme Court for the decision to be reviewed.

The effect of this amendment is that the Treasurer is not required to give reasons for his decisions to authorise capital works advance payments from the capital works reserve, or to reduce partially unused authorised payments from the Reserve. This is consistent with the equivalent provisions in Schedule 2 of the AD(JR) Act for Treasurer's Advance.