



AUSTRALIAN CAPITAL TERRITORY

Audit (Amendment) Act 1991

No. 119 of 1991

An Act to amend the *Audit Act 1989*

[Notified in ACT Gazette S162: 10 January 1992]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Short title

1. This Act may be cited as the *Audit (Amendment) Act 1991*.

Principal Act

2. In this Act, “Principal Act” means the *Audit Act 1989*.¹

Insertion

3. After section 23 of the Principal Act the following section is inserted in Division 3 of Part II:

Freedom from ministerial direction

“23A In the exercise of powers or the performance of functions under this Act or the regulations, the Auditor-General is not subject to direction by the Executive or any Minister.”

Heading

4. The heading to Part IIIA of the Principal Act is omitted and the following heading substituted:

**“PART IIIA—BORROWINGS, FINANCIAL EXPOSURES AND
GUARANTEES”.**

Substitution

5. Section 33A of the Principal Act is repealed and the following section substituted:

Interpretation

“33A. In this Part—

‘borrowing’, in relation to the Territory or a Territory body, includes raising money or obtaining credit—

- (a) by dealing in securities;
- (b) by obtaining financial accommodation by way of overdraft or short term bill facilities; or
- (c) in any other manner approved by the Treasurer for the purposes of this paragraph;

but does not include obtaining credit in any other transaction that forms part of the day-to-day operations of the Territory or Territory body;

‘Territory body’ means—

- (a) a Territory authority;
- (b) a Territory owned corporation within the meaning of the *Territory Owned Corporations Act 1990*; and
- (c) a subsidiary of such a corporation.”.

Power of Territory to borrow money

6. Section 33B of the Principal Act is amended by omitting from subsections (1) and (3) “or a Territory authority”.

Insertion

7. After section 33C of the Principal Act the following sections are inserted in Part IIIA:

Power of Territory bodies to borrow money

“33D. (1) Notwithstanding the provisions of any other Act, a Territory body that has, under another Act, power to borrow money from a person other than the Territory, shall not exercise that power except in accordance with this Part.

“(2) A Territory body other than one referred to in subsection (1) has, by virtue of this subsection, power to borrow money in accordance with this Part.

Limit of power of Territory bodies to borrow money

“33E. (1) A Territory body shall not borrow money except—

- (a) with the written approval of the Treasurer;
- (b) within borrowing limits (if any) approved in writing by the Treasurer in respect of a financial year; and
- (c) on terms and conditions specified in, or not inconsistent with, the approval of the Treasurer.

“(2) A Territory body may give security for the repayment of amounts borrowed and the payment of interest on those amounts by the issue of securities, including stocks, debentures, debenture stocks, notes, bonds, promissory notes, bills of exchange and such other securities as are approved by the Treasurer for the purposes of this subsection.

Financial exposure management

“33F. (1) This section applies to—

- (a) a transaction known as—
 - (i) an interest rate swap;
 - (ii) a currency swap;
 - (iii) an interest rate cap;
 - (iv) an interest rate collar;
 - (v) an interest rate floor;
 - (vi) a swap option;
 - (vii) a currency option;
 - (viii) an interest rate futures contract; or

- (ix) a bond futures contract;
- (b) any other prescribed transaction; and
- (c) any other transaction declared by the Treasurer for the purposes of this section.

“(2) The Territory may enter into a transaction to which this section applies only if—

- (a) the Territory has invested moneys standing to the credit of the Territory Public Account (not being moneys standing to the credit of the Trust Fund) or has borrowed moneys; and
- (b) the Treasurer certifies in writing that the transaction is related to the investment or the borrowing, as the case may be.

“(3) The Games Wagers and Betting-houses Act 1901 of the State of New South Wales in its application in the Territory does not apply to a transaction to which this section applies that is entered into in accordance with this section .”.

Insertion

8. (1) After section 33F of the Principal Act the following section is inserted in Part IIIA:

Guarantees by Territory

“33G. (1) The Territory shall not give a guarantee for the payment of money or the performance of an obligation except in accordance with this section.

“(2) The Treasurer may, subject to such conditions as he or she determines, approve in writing that the Territory guarantee the payment of money or the performance by any person of his or her obligations under a contract, or of such of those payments or obligations as are specified in the instrument of approval.

“(3) Where the Treasurer approves a guarantee, the payment of the money or the discharge of an obligation to which the instrument relates is, by force of this subsection, guaranteed by the Territory.”.

(2) The amendment effected by subsection (1) has no application unless section 64 of the *Australian Capital Territory (Self-Government) Act 1988* of the Commonwealth is repealed.

Variation of annual appropriation—3%

9. Section 49 of the Principal Act is amended—

(a) by omitting subsection (1) and substituting the following subsections:

“(1) The Executive may direct in writing that the sum of money appropriated to a division, a subdivision or an item in the Schedule to an Appropriation Act for a financial year be increased and that the sum of money appropriated to another division, subdivision or item be decreased.

“(1A) A direction by the Executive has no effect if it purports to vary—

- (a) directly or by implication, the sum that the Minister is empowered by the Appropriation Act to issue out of the Consolidated Fund; or
- (b) the sum appropriated to a division (other than the division to which the Minister’s Advance is appropriated) by an amount that would exceed 3% of the sum appropriated to that division by the Appropriation Act.”;

(b) by adding at the end of subsection (3) “by an Act other than an Appropriation Act”; and

(c) by adding at the end the following subsection:

“(4) An Appropriation Act to which a direction under this section applies has effect subject to the direction.”.

Insertion

10. After section 49 of the Principal Act the following sections are inserted:

Increase of annual appropriation—Commonwealth payments

“49A. (1) Where the Minister certifies in writing that—

- (a) the amount appropriated to a division, subdivision or an item in the Schedule to an Appropriation Act for a financial year reflects, or includes an amount that reflects, an amount that has been or is expected to be paid by the Commonwealth to the Territory for expenditure for a specified purpose or in a specified manner (in this section called a ‘specific purpose’); and

- (b) the amount paid to the Territory during the financial year for that specific purpose, or the total of such amounts, exceeds the amount reflected in that division, subdivision or item;

the Executive may direct in writing that the amount appropriated to the division, subdivision or item be augmented by the extent of the excess and the Consolidated Fund is appropriated accordingly.

“(2) The Chief Minister shall, within 7 days after a direction under subsection (1) has been given, forward to the Auditor-General a copy of—

- (a) the certificate of the Minister; and
- (b) the direction.

Tabling of direction

“49B. Where the Executive gives a direction under section 49 or 49A the Minister shall lay before the Assembly within 6 sitting days a copy of the direction and, in the case of a direction under section 49A, a statement of the reasons that have led to the giving of the direction.”.

NOTE

1. Ordinance No. 37, 1989 as amended by Nos. 21 and 38, 1989; Acts Nos. 10 and 25, 1990.

[Presentation speech made in Assembly on 5 December 1991]

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