



AUSTRALIAN CAPITAL TERRITORY

Financial Management Act 1996

No. 22 of 1996

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AUSTRALIAN CAPITAL TERRITORY

Financial Management Act 1996

No. 22 of 1996

An Act to provide for the financial management of the government of the Territory, to provide for the scrutiny of that management by the Legislative Assembly, to specify financial reporting requirements for the government of the Territory and for related purposes

[Notified in ACT Gazette S101: 4 June 1996]

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

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Financial Management Act 1996*.

Commencement

2. This Act commences on 1 July 1996.

Interpretation

3. (1) In this Act, unless the contrary intention appears—
“appropriation” means an appropriation of public money by any Act including this Act;
“Appropriation Act” means an Act that makes appropriations in respect of a financial year for purposes referred to in section 8;

“appropriation unit” means a class of outputs, or a group of output classes, for which an appropriation is made by an Appropriation Act;

“bank” means a bank within the meaning of the *Banking Act 1959* of the Commonwealth or the Reserve Bank of Australia;

“borrowing” includes—

- (a) raising money or obtaining credit, whether by dealing in securities or otherwise; and
- (b) entering into a financing lease;

but does not include using a credit card or overdraft facility, or otherwise obtaining credit, in a transaction forming part of the day-to-day operations of the Territory or a Territory authority;

“budget papers” means documents laid before the Legislative Assembly under section 10 or subsection 13 (1);

“capital injection” means money provided, or to be provided, to a department for—

- (a) the purchase of assets to be held by the department or to be owned by a Territory authority or Territory owned corporation;
- (b) the development of assets held by the department or owned by a Territory authority or Territory owned corporation;
- (c) augmenting the assets held by the department or owned by a Territory authority or Territory owned corporation; or
- (d) reducing the liabilities of the department, a Territory authority or a Territory owned corporation;

but does not include money provided from an appropriation for a purpose referred to in paragraph 8 (a) or (c);

“chief executive officer”, in relation to a Territory authority, means the person who has responsibility for managing the affairs of the authority;

“class of outputs” means a group of outputs identified as a class by an Appropriation Act;

“department” means—

- (a) an administrative unit (excluding any part of an administrative unit prescribed for the purposes of paragraph (b) and any administrative unit forming part of a group of administrative units prescribed for the purposes of paragraph (c));

- (b) a part of an administrative unit prescribed for the purposes of this paragraph; or
- (c) a group of 2 or more administrative units prescribed for the purposes of this paragraph;

“departmental bank account” means a bank account referred to in subsection 34 (1);

“expenses”, in relation to an output, means the expenses incurred in providing the output quantified on an accrual accounting basis and includes the overhead expenses properly attributable to the output;

“financial management guidelines” means the guidelines issued under subsection 67 (2);

“generally accepted accounting practice” means accounting practices and procedures recognised by the accounting profession as appropriate for reporting financial information relating to government, a department or a Territory authority, being practices and procedures that are consistent with this Act and any relevant Appropriation Act;

“Legislative Assembly Secretariat” means the Clerk of the Legislative Assembly and the officers and employees of the Public Service who assist the Clerk in the exercise of his or her powers and the performance of his or her duties;

“outcomes” means the consequences for the community of outputs;

“outputs” means goods produced or services provided by a department or Territory authority or a person producing goods or providing services on behalf of a department or Territory authority;

“prescribed” means prescribed by the financial management guidelines;

“public money” means all moneys received by the Territory, including the proceeds of all loans raised on behalf of the Territory, but does not include—

- (a) money held by the Territory as trust money;
- (b) money received by a Territory owned corporation; or
- (c) money received by a Territory authority;

“responsible Chief Executive”, in relation to a department, means—

- (a) if the department is constituted by an administrative unit or a part of an administrative unit—the Chief Executive of that administrative unit; or
- (b) if the department is constituted by a group of 2 or more administrative units—the person prescribed as the responsible Chief Executive in relation to the department;

“responsible Minister” means—

- (a) in relation to a department that is constituted by an administrative unit or a part of an administrative unit—the Minister to whom responsibility for that administrative unit has been allocated under section 14 of the *Public Sector Management Act 1994*;
- (b) in relation to a department that is constituted by a group of 2 or more administrative units—the Minister prescribed as the responsible Minister in relation to the department; and
- (c) in relation to a Territory authority—the Minister administering the Act by which the authority was established;

“securities” includes stocks, debentures, notes, bonds, promissory notes, bills of exchange, and any other securities approved in writing by the Treasurer;

“statement of intent” means a statement of a Territory authority under section 58;

“Territory authority” means a body corporate established by an Act but does not include a body declared under subsection (2) not to be a Territory authority;

“Territory bank account” means the bank account referred to in section 33;

“Treasurer” means the Minister administering this Act and includes a Minister for the time being acting on behalf of that Minister;

“trust money” means—

- (a) money deposited with the Territory pending the completion of a transaction or the determination of a dispute and which may become repayable to the depositor or payable to the Territory or any other person;
- (b) all money that is paid into a Territory court for possible repayment to the payee or a third party by virtue of any Act, order, instruction or authority;
- (c) money that belongs to or is due to any person and is collected by the Territory as a result of an agreement between the Territory and that person;
- (d) unclaimed money that is due to or belongs to any person and is deposited with the Territory; or
- (e) money that is paid to the Territory in trust for any other lawful purpose including interest on trust money;

“warrant” means an instrument by which the Treasurer authorises payments from the Territory bank account.

(2) The Treasurer may, by notice in the *Gazette*, declare that a specified body is not a Territory authority for the purposes of this Act.

Application of Parts II, III and V to Legislative Assembly Secretariat

4. Unless the contrary intention appears, the provisions of Parts II, III and V apply to the Legislative Assembly Secretariat as if—

- (a) a reference in those provisions to a department included a reference to the Legislative Assembly Secretariat;
- (b) a reference in those provisions to the responsible Minister of a department were a reference to the Speaker of the Legislative Assembly; and
- (c) a reference in those provisions to the responsible Chief Executive of a department included a reference to the Clerk of the Legislative Assembly.

PART II—TERRITORY BUDGET AND APPROPRIATIONS

Timing of first Appropriation Bill for financial year

5. Except as otherwise provided by a resolution of the Legislative Assembly, the first Appropriation Bill relating to a financial year shall be introduced into the Legislative Assembly not later than 3 months after the commencement of the financial year.

Necessity for appropriation

6. No payment of public money shall be made otherwise than in accordance with an appropriation.

Payments authorised on lapse of appropriation

7. If, before the end of a financial year, no Act other than this Act has been passed appropriating public money to meet the requirements of the next financial year, the Treasurer may pay such sums as are necessary to meet those requirements subject to the following provisions:

- (a) the authority of the Treasurer under this section shall cease upon the commencement of the first Appropriation Act for the next financial year;
- (b) upon that commencement all payments made under this section for the next financial year shall be taken for all purposes to have been paid out of moneys appropriated by that Act; and

- (c) the payments made under this section for any purpose shall not exceed, in total, one half of the amount appropriated by Appropriation Acts for the immediately preceding financial year for that purpose.

Form of appropriation

8. An Appropriation Act shall make separate appropriations in respect of each department for—

- (a) the provision of outputs by the department;
- (b) any capital injection to be provided to the department; and
- (c) any payments to be made by the department on behalf of the Territory.

Net appropriations for outputs

9. (1) An appropriation for the provision of outputs may be expressed to be made for the net cost of providing the outputs.

(2) Notwithstanding section 6, where an appropriation for a department is expressed to be made for the net cost of providing outputs, the department may apply the revenue received by it from providing the outputs to paying the expenses and liabilities incurred in doing so.

Budget papers

10. The Treasurer shall, for each financial year, immediately after the presentation of the Bill for the first Appropriation Act relating to the year, cause to be laid before the Legislative Assembly—

- (a) the proposed budget for the Territory for the year; and
- (b) the proposed budget for each department for the year.

Territory budgets

11. A proposed budget for the Territory for a financial year that is laid before the Legislative Assembly pursuant to paragraph 10 (a) shall include—

- (a) an estimated operating statement for the Territory for the year;
- (b) a statement of the assets and liabilities of the Territory at the commencement of the year or, if the proposed budget is laid before the Legislative Assembly before the commencement of the year, a statement of the assets and liabilities that the Territory is expected to have at the commencement of the year;
- (c) a statement of the assets and liabilities that it is planned that the Territory will have at the end of the year; and
- (d) a statement of the estimated cash flows of the Territory for the year.

Departmental budgets

12. (1) A proposed budget for a department for a financial year that is laid before the Legislative Assembly pursuant to paragraph 10 (b) shall include—

- (a) an estimated operating statement for the department for the year;
- (b) a statement of the assets and liabilities of the department at the commencement of the year or, if the proposed budget is laid before the Legislative Assembly before the commencement of the year, a statement of the assets and liabilities that the department is expected to have at the commencement of the year;
- (c) a statement of the assets and liabilities that it is planned that the department will have at the end of the year;
- (d) a statement of the estimated cash flows of the department for the year; and
- (e) a statement of the classes of outputs that it is proposed that the department should provide during the year and the performance criteria to be met by the department in providing those outputs.

(2) An estimated operating statement for a department that is prepared for the purposes of paragraph (1) (a) shall include—

- (a) an estimated operating statement in respect of each appropriation unit proposed for the department; and
- (b) an estimated operating statement in respect of each class of outputs which it is proposed that the department should provide during the year.

(3) Paragraphs (1) (e) and (2) (b) do not apply in relation to the Legislative Assembly Secretariat.

Supplementary budget papers

13. (1) The Treasurer shall, on the presentation of a Bill for an Appropriation Act other than the first Appropriation Act relating to a financial year, cause to be laid before the Legislative Assembly supplementary budget papers.

(2) The supplementary budget papers shall provide details of the variations proposed to be made to the budget of each department for which an appropriation is provided for by the Bill.

(3) In subsection (2), a reference to the budget of a department is a reference to the budget for the department for the relevant financial year that was laid before the Legislative Assembly pursuant to paragraph 10 (b) or, if that budget has previously been varied as a consequence of the provision of additional appropriations for the department, that budget as so varied.

Transfer of funds between appropriations

14. (1) Notwithstanding section 6, the Executive may, by instrument, direct that appropriations made by an Appropriation Act be varied by transfers of funds between the appropriations.

(2) A transfer of funds between appropriations under this section may only be made between—

- (a) 2 or more appropriations for the provision of outputs;
- (b) 2 or more appropriations for capital injections; or
- (c) 2 or more appropriations for payments to be made on behalf of the Territory.

(3) A transfer of funds between appropriations under this section shall not cause any of the appropriations affected to be varied by more than 3%.

(4) Where the Executive gives a direction under subsection (1), the Treasurer shall cause—

- (a) a copy of the direction; and
- (b) a statement of the reasons for giving it;

to be laid before the Legislative Assembly within 3 sitting days after the direction is given.

Transfer of funds within appropriations

15. (1) The Executive may, by instrument, direct that funds within the same appropriation that are allocated for the provision of different classes of outputs be reallocated in respect of those classes of outputs.

(2) Where a reallocation of funds under subsection (1) involves an amount exceeding—

- (a) 3% of the appropriation within which the reallocation is made; or
- (b) \$50,000;

whichever is the greater, the Treasurer shall cause—

- (c) a copy of the direction under subsection (1); and
- (d) a statement of the reasons for the reallocation;

to be laid before the Legislative Assembly within 3 sitting days after the direction is given.

Transfer of functions between departments

16. (1) Where, after the passing of an Appropriation Act for a financial year, the responsibility for a service or function for which an appropriation is made in that Act is transferred from the department for which the appropriation was made to another department, the Treasurer may, by instrument, direct that the appropriation shall not lapse but may be issued to, or applied by, that other department, in accordance with the instrument, for that service or function.

(2) Where the Treasurer gives a direction under subsection (1), he or she shall cause a copy of the direction to be laid before the Legislative Assembly within 3 sitting days after it is given.

Variation of appropriations for Commonwealth grants

17. (1) This section applies to an appropriation that is declared by the Act by which it is made to be an appropriation to which this section applies.

(2) Where—

- (a) an appropriation to which this section applies is to be funded in whole or in part by a specific purpose payment made to the Territory by the Commonwealth;
- (b) an estimate of the level of the funding to be provided to the Territory by the Commonwealth for that purpose is contained in the budget papers laid before the Legislative Assembly in conjunction with the Bill for the Act by which the appropriation was made; and
- (c) the level of funding provided to the Territory by the Commonwealth for that purpose for the financial year for which the appropriation was made is greater than the level of funding specified in those budget papers;

the Treasurer may, by instrument, direct that the appropriation be increased by an amount not exceeding the difference between the level of funding specified in the budget papers and the level of funding provided by the Commonwealth.

Treasurer's advance

18. (1) Expenditure that is—

- (a) in excess of the amount specifically appropriated for expenditure of that kind; or
- (b) not provided for by any appropriation;

may be authorised by the Treasurer by instrument provided that—

- (c) the need for the expenditure could not reasonably have been foreseen at the time of the passing of any of the Appropriation Acts relating to the financial year in which the expenditure is to occur; and
- (d) the total expenditure authorised under this subsection in any financial year does not exceed the amount appropriated for that year for the purposes of this section.

(2) The amount appropriated for the purposes of this section for a financial year shall not exceed 1% of the total amount appropriated by all Appropriation Acts for that year.

(3) Where the Treasurer has authorised expenditure under subsection (1) during a financial year and expenditure has been incurred under that authorisation during the year, the Treasurer shall cause—

- (a) a copy of the authorisation; and
- (b) a statement of the reasons for giving it;

to be laid before the Legislative Assembly as soon as practicable after the end of the year.

Refunds of payments made without liability

19. (1) Where a payment is made to the Territory in purported discharge of a liability that does not exist, the amount paid may be refunded to the person by whom the payment was made whether or not there is an appropriation available for that purpose.

(2) Where a payment made to the Territory to discharge a liability exceeds the amount of the liability, the amount by which the payment exceeds the liability may be refunded to the person by whom the payment was made whether or not there is an appropriation available for that purpose.

(3) Where—

- (a) a person has paid an amount to the Territory for tax claimed by the Territory to be due from that person; and
- (b) a court or tribunal of competent jurisdiction subsequently finds that the person was not liable for that tax or was liable for an amount of tax less than the amount paid;

the amount paid, or the amount by which the payment exceeds the liability, as the case requires, may be refunded to the person who made the payment whether or not there is an appropriation available for that purpose.

Budgets for Legislative Assembly Secretariat

20. Before the commencement of a financial year, the Speaker of the Legislative Assembly may—

- (a) after consultation with an appropriate Committee of the Legislative Assembly, advise the Treasurer of the appropriations that the Speaker considers should be made for the Legislative Assembly Secretariat for the financial year; and
- (b) provide the Treasurer with a draft budget for the Legislative Assembly Secretariat for the financial year that contains the information referred to in section 12 other than that referred to in paragraphs 12 (1) (e) and (2) (b).

PART III—FINANCIAL REPORTS

Division 1—Financial reports of the Territory

Interpretation

21. In this Division, a reference to the Territory shall be read as including a reference to all Territory authorities and all Territory owned corporations.

Annual financial statements of the Territory

22. (1) The Treasurer shall, as soon as practicable after the end of a financial year, prepare annual financial statements for the Territory for that year.

(2) The annual financial statements shall be prepared in accordance with generally accepted accounting practice and shall include—

- (a) an operating statement for the Territory for the year;
- (b) a statement of the assets and liabilities of the Territory at the end of the year;
- (c) a statement of the cash flows of the Territory for the year;
- (d) a statement of the accounting policies adopted by the Territory; and
- (e) such other statements as are necessary to fairly reflect the financial operations of the Territory during the year and its financial position at the end of the year.

Responsibility for annual financial statements

23. (1) Annual financial statements of the Territory shall have endorsed on them, or attached to them, a statement of responsibility signed by—

- (a) the Treasurer; and

- (b) the Chief Executive of the administrative unit to which responsibility for the administration of this Act has been allocated under section 14 of the *Public Sector Management Act 1994*.
- (2) A statement of responsibility shall comprise—
 - (a) a statement by the Treasurer that in his or her opinion the financial statements fairly reflect the financial operations of the Territory during the year to which they relate and the financial position of the Territory at the end of the year; and
 - (b) a statement by the Chief Executive that the financial statements have been prepared in accordance with generally accepted accounting practice.

Audit of annual financial statements

24. (1) The Treasurer shall forward a copy of the annual financial statements relating to a financial year to the Auditor-General within 4 months after the end of the year.

(2) The Auditor-General shall, within 30 days after he or she receives a copy of annual financial statements under subsection (1), provide the Treasurer with an audit opinion concerning the statements.

Tabling of annual financial statements

25. Where the Treasurer receives, under subsection 24 (2), an audit opinion concerning annual financial statements, he or she shall cause to be laid before the Legislative Assembly, within 3 sitting days after receiving the opinion—

- (a) a copy of the annual financial statements; and
- (b) a copy of the audit opinion.

Monthly financial statements of the Territory

26. (1) The Treasurer shall, as soon as practicable after the end of each month of a financial year, prepare—

- (a) an operating statement for the Territory for the month;
- (b) a statement of the cash flows of the Territory for the month;
- (c) a statement of the assets and liabilities of the Territory at the end of the month;
- (d) an operating statement for the Territory for the period commencing at the beginning of the financial year and ending on the expiration of the month; and
- (e) a statement of the cash flows of the Territory for the period commencing at the beginning of the financial year and ending on the expiration of the month.

(2) The statements prepared pursuant to subsection (1) shall be prepared in a form that facilitates a comparison between the financial operations of the Territory during the periods to which the statements relate and the estimates of the financial operations of the Territory contained in the budget papers relating to the financial year that were laid before the Legislative Assembly pursuant to paragraph 10 (a).

(3) The Treasurer shall cause a copy of each set of statements prepared under subsection (1) to be laid before the Legislative Assembly within 3 sitting days after the preparation of the statements is completed.

Division 2—Financial reports of departments

Annual financial statements of departments

27. (1) A department shall, as soon as practicable after the end of each financial year, prepare annual financial statements relating to its operations during the year.

(2) The annual financial statements of a department shall be prepared in accordance with generally accepted accounting practice and in a form that facilitates a comparison between the financial operations of the department during the year and the estimates of those operations contained in the budget for the department for the financial year that was laid before the Legislative Assembly pursuant to paragraph 10 (b).

(3) The annual financial statements of a department shall include—

- (a) an operating statement for the department for the year;
- (b) a statement of the assets and liabilities of the department at the end of the year;
- (c) a statement of the cash flows of the department for the year;
- (d) a statement of the performance of the department in providing each class of outputs provided by it during the year, being a statement that—
 - (i) compares that performance with the forecast of the performance contained in the budget for the department for the year that was laid before the Legislative Assembly pursuant to paragraph 10 (b); and
 - (ii) gives particulars of the extent to which the performance criteria specified in that budget in relation to the provision of those outputs were satisfied;
- (e) a statement of the accounting policies adopted by the department;
and

- (f) such other statements as are necessary to fairly reflect the financial operations of the department during the year and its financial position at the end of the year.

Responsibility for departmental financial statements

28. (1) Annual financial statements of a department shall have endorsed on them, or attached to them, a statement of responsibility made by the responsible Chief Executive.

(2) A statement of responsibility shall—

- (a) state that, in the opinion of the responsible Chief Executive, the financial statements fairly reflect the financial operations and service performance of the department during the year to which they relate and the financial position of the department at the end of the year; and
- (b) be signed by the responsible Chief Executive.

Audit of financial statements of departments

29. (1) The responsible Chief Executive of a department shall forward a copy of the financial statements of the department for a financial year to the Auditor-General as soon as practicable after they are prepared.

(2) The Auditor-General shall, within 30 days after he or she receives a copy of financial statements of a department under subsection (1), provide the Chief Executive of the department with an audit opinion concerning the statements.

Tabling of departmental financial statements

30. Where, under subsection 29 (2), the responsible Chief Executive of a department receives an audit opinion concerning annual financial statements of the department, the responsible Minister of the department shall cause to be laid before the Legislative Assembly, within 6 sitting days after the Chief Executive receives the audit opinion—

- (a) a copy of the annual financial statements; and
- (b) a copy of the audit opinion.

PART IV—FINANCIAL MANAGEMENT RESPONSIBILITIES OF CHIEF EXECUTIVES OF DEPARTMENTS

Responsibilities of Chief Executives of departments

31. (1) The responsible Chief Executive of a department shall be accountable to the responsible Minister of the department for the efficient and effective financial management of the department.

- (2) The responsible Chief Executive of a department shall be responsible under the responsible Minister, for ensuring—
- (a) that the moneys spent by the department are within the appropriations made for the department;
 - (b) that the operations of the department during a financial year give a financial result at the end of the year that is in accordance with the estimates contained in the budget papers for that year relating to the department;
 - (c) that the officers and employees of the department comply with the requirements of this Act and the financial management guidelines;
 - (d) that proper accounts and records are kept of the transactions and affairs of the department in accordance with generally accepted accounting practice;
 - (e) that adequate control is maintained over the assets of the department and assets in the control of the department; and
 - (f) that adequate control is maintained over the incurring of liabilities by the department.

PART V—BANKING AND INVESTMENT

Agreement for the conduct of banking for the Territory

32. (1) The Treasurer may enter into an agreement with a bank relating to the conduct of banking for the Territory.

(2) An agreement shall not be entered into unless it contains a provision to the effect that it may be terminated by the Territory at any time subject to the giving of notice in writing which specifies the date on which the termination is to take effect.

Territory bank account

33. The Treasurer shall open and maintain a bank account for the purposes of the Territory.

Departmental bank accounts

34. (1) The responsible Minister or the responsible Chief Executive may open 1 or more bank accounts for the purposes of the relevant department.

(2) A departmental bank account shall be maintained by the Chief Executive.

(3) A departmental bank account shall not, without the approval in writing of the Treasurer, be opened or maintained except with the bank that is for the time being the bank with which the Territory bank account is maintained.

(4) The Treasurer may, at any time, after consultation with the responsible Minister, close or suspend the operation of a departmental bank account.

(5) A Minister or a Chief Executive shall not open or operate a departmental bank account otherwise than in accordance with this Act.

Payments into bank accounts

35. (1) All public money is the property of the Territory.

(2) Where public money is received by a person other than for the purpose of making a payment in the course of his or her duties, the person shall take reasonable steps to safeguard the money until it is paid into a bank account in accordance with this section.

(3) Money shall be paid into a departmental bank account of a department if the money is—

- (a) money that may be disbursed to the department as a consequence of an appropriation;
- (b) a receipt relating to the operations of the department; or
- (c) a receipt relating to the sale or disposal of assets of the Territory held by the department.

(4) All public money, except money payable into a departmental bank account, shall be paid into the Territory bank account.

(5) The Treasurer may issue financial management guidelines regarding the banking of public money.

Transfer following change in departmental responsibilities

36. (1) Where, in the opinion of the Treasurer, it is necessary as a consequence of changes in departmental responsibilities, to transfer to another account moneys held in the Territory bank account or a departmental bank account, the Treasurer shall determine the amount to be transferred and direct that the transfer be made.

(2) The Treasurer shall not exercise his or her powers under subsection (1) in relation to a departmental bank account except after consultation with the responsible Minister.

Authority to issue public money

37. (1) Subject to subsection 38 (2), money shall not be paid out of the Territory bank account except to a departmental bank account where authorised by a warrant signed by the Treasurer in accordance with an appropriation.

(2) A warrant shall specify the total amounts of public money to be paid to departmental bank accounts.

Investment of public money

38. (1) The Treasurer may invest any money held in the Territory bank account or departmental bank accounts for such period and on such terms and conditions as he or she thinks fit—

- (a) on deposit with a bank;
- (b) in the purchase of a bill of exchange that is drawn or accepted by a bank;
- (c) in a loan to a person who is a dealer in the short term money market;
- (d) in Territory, State or Commonwealth securities; or
- (e) in any prescribed investment.

(2) Transfers between the Territory bank account and departmental bank accounts to facilitate investments may be made without appropriation.

(3) Interest received from the investment of public money shall be paid to the Territory bank account.

(4) The Treasurer may determine the amount of interest to be credited to departmental bank accounts and such amounts may be paid without further appropriation from the Territory bank account subject to the total amount paid not exceeding the interest received in the Territory bank account.

PART VI—BORROWING, GUARANTEES AND FINANCIAL DERIVATIVES

Power of Territory to borrow

39. The Territory may only borrow in accordance with this Act or another law of the Territory.

Treasurer may borrow on behalf of Territory

40. The Treasurer may, on behalf of the Territory, if necessary or expedient in the public interest to do so—

- (a) borrow money;
- (b) give security for the repayment of an amount borrowed or the payment of interest on such an amount; or
- (c) enter into a financing lease.

Power of Territory authorities to borrow

41. Despite any other Act, a Territory authority may only borrow (other than from the Territory) in accordance with this Act.

Borrowings by Territory authorities to be approved

42. A Territory authority shall not borrow unless—
- (a) the borrowing is approved in writing by the Treasurer;
 - (b) the terms and conditions of the borrowing include the terms and conditions (if any) specified in the approval and are otherwise consistent with the approval; and
 - (c) the borrowing is within the borrowing limits (if any) of the authority for the financial year in which the borrowing is entered into, being limits approved in writing by the Treasurer.

Territory authorities may give security

43. Subject to the Treasurer's approval of the borrowing under paragraph 42 (a), a Territory authority may give security for the repayment of an amount borrowed, or for the payment of interest on that amount, by issuing securities.

Power to approve borrowings not delegable

44. The Treasurer shall not delegate to any person his or her power under paragraph 42 (a) to approve borrowings by Territory authorities.

Loans to be paid into Territory bank account

45. Subject to this Act and any other Act, the proceeds of a loan raised on behalf of the Territory or by a Territory authority shall be paid into the Territory bank account.

Payments by Treasurer

46. The Treasurer may make such payments as are required in respect of expenses incurred in borrowing on behalf of the Territory, and in respect of repayments of borrowings on behalf of the Territory, without further appropriation.

Guarantees by Territory

47. (1) The Territory may only give a guarantee for the payment of money or the performance of an obligation in accordance with this Act.

(2) The Treasurer may approve in writing a guarantee by the Territory for the payment of money or the performance by any person of an obligation under a contract, subject to such conditions as the Treasurer may specify in the approval.

(3) Where the Treasurer approves a guarantee under subsection (2), he or she shall cause a copy of the approval to be laid before the Legislative Assembly within 3 sitting days after the approval is given.

Financial derivatives

48. (1) This section applies to transactions known as financial derivatives, for example—

- (a) interest rate swaps;
- (b) currency swaps;
- (c) forward rate agreements; and
- (d) interest rate options.

(2) The Territory may only enter into a transaction to which this section applies if the Treasurer certifies in writing that the transaction relates to a borrowing by the Territory.

PART VII—TRUST MONEY

Identity of trust money

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

Administration of trust money

50. (1) Trust money shall be administered by the appropriate department on behalf of the Territory.

(2) The Treasurer may, by instrument, specify a department as the appropriate department in respect of an amount of trust money.

(3) In this section—

“appropriate department”, in relation to an amount of trust money, means—

- (a) except where paragraph (b) applies—the department responsible for matters or enactments which relate most closely to the purpose of the payment; or
- (b) the department specified under subsection (2).

Departmental trust bank accounts

51. (1) The responsible Minister or the responsible Chief Executive may open a trust bank account for the purposes of the relevant department.

(2) A trust bank account shall be maintained by the Chief Executive.

(3) A trust bank account shall not, without the approval in writing of the Treasurer, be opened or maintained except with the bank that is for the time being the bank with which the Territory bank account is maintained.

(4) No money may be held in a trust bank account other than trust money.

(5) A Minister or a Chief Executive shall not open or operate a trust bank account otherwise than in accordance with this Act.

Transfers between bank accounts

52. Money may be transferred between trust bank accounts and the Territory bank account only for purposes related to investment.

Investment of trust money

53. The Treasurer may invest trust money in any investment specified in section 14 of the Trustee Act, 1925 of the State of New South Wales in its application in the Territory.

PART VIII—FINANCIAL PROVISIONS RELATING TO TERRITORY AUTHORITIES

Responsibilities of chief executive officers

54. (1) The chief executive officer of a Territory authority is responsible, under the responsible Minister, for the efficient and effective financial management of the authority.

(2) Subsection (1) has effect in relation to the chief executive officer of a Territory authority subject to the Act by which the authority was established.

(3) The chief executive officer of a Territory authority shall be responsible, under the responsible Minister, for ensuring—

- (a) that the expenses incurred by the authority are properly authorised;
- (b) that the operations of the authority during a financial year give a financial result at the end of the year that is in accordance with the estimates contained in the statement of intent of the authority for that year;
- (c) that the payments made by the authority are properly authorised and correctly made;
- (d) that the officers and staff of the authority comply with the requirements of this Act and the financial management guidelines;
- (e) that proper accounts and records are kept of the transactions and affairs of the authority in accordance with generally accepted accounting practice;
- (f) that adequate control is maintained over the assets of the authority and assets in the control of the authority; and
- (g) that adequate control is maintained over the incurring of liabilities by the authority.

Bank accounts

55. (1) A Territory authority may open 1 or more bank accounts for the purposes of the authority.

(2) A Territory authority shall at all times maintain at least 1 bank account.

(3) Except with the approval of the Treasurer, a bank account of a Territory authority shall only be opened or maintained with the bank that is for the time being the bank with which the Territory bank account is maintained.

Investment

56. (1) Funds not immediately required for the purposes of a Territory authority may be invested—

- (a) on deposit with a bank;
- (b) in Territory, State or Commonwealth securities;
- (c) by the Treasurer on behalf of the Territory authority; or
- (d) in any other investment approved by the Treasurer.

(2) Transfers between the Territory bank account and the bank account of a Territory authority to facilitate investments may be made without appropriation.

(3) Interest received from the investment of the funds of a Territory authority remains funds of the authority.

Borrowing

57. (1) The Treasurer may—

- (a) borrow money on behalf of a Territory authority; or
- (b) lend public money to a Territory authority;

on such terms and conditions as the Treasurer thinks fit.

(2) Borrowing may be secured by the authority's assets approved by the Treasurer for the purposes of this section.

(3) A Territory authority may only arrange an overdraft or credit facility with the written approval of the Treasurer.

Statements of intent

58. (1) A Territory authority shall, in respect of each financial year, provide to the Treasurer a statement of intent.

(2) A statement of intent shall be in such form as the Treasurer requires and be provided to the Treasurer within such period as the Treasurer specifies.

- (3) A statement of intent shall include—
- (a) an estimated operating statement for the authority for the year;
 - (b) a statement of the assets and liabilities of the authority at the commencement of the year or, if the statement of intent is required to be provided before the commencement of the year, a statement of the assets and liabilities that the authority is expected to have at the commencement of the year;
 - (c) a statement of the assets and liabilities that it is planned that the authority will have at the end of the year;
 - (d) a statement of estimated cash flows of the authority for the year;
 - (e) a statement of the objectives of the authority for the year;
 - (f) a statement of the nature and scope of the activities to be undertaken by the authority during the year;
 - (g) the performance criteria and other measures by which the performance of the authority may be assessed in relation to its objectives for the year; and
 - (h) such other information as the Treasurer directs.

Annual financial statements

59. (1) A Territory authority shall, as soon as practicable after the end of each financial year, prepare annual financial statements relating to its operations during the year.

(2) The annual financial statements shall be prepared in accordance with generally accepted accounting practice and in a form that facilitates a comparison between the financial operations of the authority during the year and the estimates of those operations contained in the statement of intent for the year that was provided by the authority pursuant to section 58.

- (3)** The annual financial statements shall include—
- (a) an operating statement for the authority for the year;
 - (b) a statement of the assets and liabilities of the authority at the end of the year;
 - (c) a statement of the cash flows of the authority for the year;
 - (d) a statement of the performance of the authority in achieving the objectives specified in the statement of intent for the year that was provided by the authority pursuant to section 58; and
 - (e) such other statements as are necessary to fairly reflect the financial operations of the authority during the year and its financial position at the end of the year.

(4) The statement of performance under paragraph (3) (d) shall assess the performance of the authority in achieving the objectives specified in the statement of intent by reference to the performance criteria and other measures specified in that statement pursuant to paragraph 58 (3) (g).

Responsibility for annual financial statements

60. (1) Annual financial statements of a Territory authority shall have endorsed on them, or attached to them, a statement of responsibility signed by the chief executive officer of the authority.

(2) A statement of responsibility shall comprise—

- (a) a statement of the chief executive officer's responsibility for the preparation of the financial statements and the judgments exercised in preparing them; and
- (b) a statement that, in the opinion of the chief executive officer, the financial statements fairly reflect the financial operations and service performance of the authority during the year to which they relate and the financial position of the authority at the end of the year.

Audit of annual financial statements

61. (1) The chief executive officer of a Territory authority shall, within the prescribed period after the end of a financial year, forward a copy of the financial statements of the authority for the year to the Auditor-General.

(2) The Auditor-General shall, within 30 days after he or she receives a copy of financial statements of a Territory authority under subsection (1), provide the chief executive officer of the authority with an audit opinion concerning the statements.

Tabling of annual financial statements

62. (1) Where, under subsection 61 (2), the chief executive officer of a Territory authority receives an audit opinion concerning annual financial statements of the authority, he or she shall, within 7 days after receiving the opinion, forward to the responsible Minister of the authority—

- (a) a copy of the annual financial statements; and
- (b) a copy of the audit opinion.

(2) The responsible Minister shall, within 6 sitting days of the Legislative Assembly after he or she receives the documents referred to in paragraphs (1) (a) and (b), cause the documents to be laid before the Legislative Assembly.

Interim financial statements

63. (1) The Treasurer may, by instrument, direct the chief executive officer of a Territory authority to provide the responsible Minister of the authority with financial or other statements relating to the authority—

- (a) for each month of the year; or
- (b) for each period of 3 months ending on 30 September, 31 December, 31 March or 30 June.

(2) A chief executive officer of a Territory authority who receives a direction under subsection (1) shall prepare the statements specified in the direction and deliver them to the responsible Minister within such period as is specified in the direction.

PART IX—MISCELLANEOUS

Act of grace payments

64. (1) If the Treasurer considers it appropriate to do so because of special circumstances, he or she may authorise the payment by a department of an amount to a person (in this section called the “payee”) although the payment of that amount (in this section called the “relevant amount”) would not otherwise be authorised by law or required to meet a legal liability.

(2) The authorisation may provide for the relevant amount to be paid by—

- (a) more than 1 instalment and on the dates specified in the authorisation; or
- (b) periodical payments of an amount, and for the period, specified in the authorisation.

(3) An authorisation may be expressed to be subject to conditions to be complied with by the payee.

(4) Where a condition is contravened, the Treasurer may by notice in writing addressed to the last known address of the payee require the payee, within 30 days of receipt of the notice, to pay an amount equal to all or part of the relevant amount.

(5) Where the payee does not pay the amount specified in the notice under subsection (4), the amount may be recovered by the Territory as a debt.

(6) Where the payment of an amount by a department is authorised under this section, the Treasurer shall—

- (a) direct that the amount be paid from an appropriate appropriation for the department specified by the Treasurer;

- (b) authorise payment of the amount under section 19; or
- (c) authorise payment of the amount out of the public money of the Territory.

(7) The public money of the Territory is appropriated for the purposes of paragraph (6) (c).

(8) A payment made by a department under this section shall be reported in notes to the financial statements of the department that relate to the financial year during which the payment was made.

(9) The notes shall indicate in relation to each payment under this section the amount and grounds for the payment.

(10) The notes relating to a payment under this section shall not disclose the identity of the payee unless disclosure was agreed to by the payee as a condition of authorising the payment.

Waiver of debts etc.

65. (1) The Treasurer may, by instrument, on behalf of the Territory—

- (a) waive the Territory's right to payment of an amount payable to the Territory;
- (b) postpone any right of the Territory to be paid a debt in priority to another debt;
- (c) allow the payment by instalments of an amount payable to the Territory; or
- (d) defer the time for payment of an amount payable to the Territory.

(2) A waiver relating to an amount payable to the Territory by a person may be expressed to be subject to a condition that the person agrees to pay an amount to the Territory in circumstances specified in the waiver.

(3) A waiver relating to an amount payable to the Territory shall be reported in the notes to the financial statements of the relevant department that relate to the year in which the right to payment was waived.

Payments in respect of deceased estates

66. (1) If, at the time of a person's death (whether before or after the commencement of this section), the Territory owed an amount to the person, the Treasurer may pay that amount to the person who the Treasurer considers should receive the payment.

(2) In deciding who should be paid, the Treasurer shall have regard to—

- (a) the provisions of any will of the deceased person which identify the persons entitled to property under the will; and

(b) the law relating to the disposition of the property of deceased persons.

(3) Before making a payment to a person, the Treasurer may require the person to produce any documents and other evidence relating to—

(a) the disposition of the deceased person's estate; or

(b) the family of the deceased person and any other persons apparently entitled to share in the estate of the deceased person.

(4) Subject to subsection (3), the Treasurer may make the payment without requiring production of probate of the will, or letters of administration of the estate, of the deceased person.

(5) Where a payment is made in relation to an amount owing to a deceased person, the Territory is discharged from any further liability in respect of that amount.

(6) This section does not relieve the recipient of a payment from liability to deal with the money in accordance with law.

Regulations and guidelines

67. (1) The Executive may make regulations for the purposes of this Act.

(2) The Treasurer may issue financial management guidelines, not inconsistent with this Act or the regulations, for the purposes of this Act or the regulations.

[Presentation speech made in Assembly on 18 April 1996]