

2001

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

FINANCIAL MANAGEMENT AMENDMENT BILL 2001 (No. 3)

EXPLANATORY MEMORANDUM

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Financial Management Amendment Bill 2001 (No. 3)

Outline

The *Financial Management Act 1996* provides the regulatory framework for the Territory's fiscal operations. The object of this Bill is to propose a range of amendments to that Act designed to ensure that it remains strong and effective in regulating the conduct of those operations.

The Bill proposes changes aimed at:

- ◆ eliminating inconsistencies and ambiguities that have come to notice;
- ◆ supporting enhanced financial management practices and processes; and
- ◆ correcting previous drafting oversights.

The changes proposed in this Bill are, essentially, technical in their nature and reflect the continuing need to pursue optimal procedural and legislative standards.

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

- ◆ **Accountability and transparency –**
 - Relieving the Legislative Assembly Secretariat from the statutory requirement for Quarterly Reporting against delivery of outputs, and achievements against performance targets. While this requirement is properly aimed at departments of the Executive, it is not considered appropriate for application to the Legislative Assembly Secretariat.
 - Removing from the Act specific descriptions of what constitutes 'generally accepted accounting practice' and, consequently, the form of financial statements and reports. As these practices are subject to constant revision and refinement by the accounting profession, it is more practicable to use the Treasurer's Financial Management Guidelines, rather than the Act, itself, to articulate and implement such evolving changes (the Guidelines, themselves, being disallowable instruments pursuant to section 66A).
- ◆ **Appropriation and Treasurer's warrant procedures –**
 - Establish, or confirm, as the case requires, special (ie, standing or continuing) appropriations; and the requirement for the Treasurer's warrant procedure to be applied, to remove vagueness or uncertainties around –
 - (a) Territory receipts of associated GST input tax credits being credited to the votes of the annual appropriation class "Payments on behalf of the Territory", thereby allowing them to be expressed as "net cost" in the annual Appropriation Act. This would bring them into step with other classes of annual appropriations;

- (b) The provision of loans by the Territory to Territory authorities;
- (c) investments, and repayments of interest to departments and Territory authorities;
- (d) retention by the Central Financing Unit of the fees it earns in investing for departments and Territory authorities; and
- (e) payment of successful claims made in respect of Unclaimed Trust Money.

◆ Cash management and banking account protocols –

- Remove the requirement for Territory authorities' borrowing activities, which are not facilitated by the Territory, to flow through the Territory banking account. Territory authorities are legal entities in their own right separate from the Territory. It is unnecessary – either from a control or an accounting perspective – for authorities' own borrowing activities to have to flow through the Territory banking account.
- Establish a more practicable process to facilitate the Treasurer's formal transfer between departments of responsibility for particular banking accounts, or a portion of funds within an account, upon changes in Administrative Arrangements Orders.
- Remove the apparent inconsistency between sections of the Act regarding the transfer of Unclaimed Trust Money from trust banking accounts to the Territory banking account.

◆ Definitions –

- Clarify the definition of "public money".

Details of the Financial Management Amendment Bill 2001 (No. 3)

Formal Clauses

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.

Definitions

Clause 4 clarifies what is to be excluded from the definition of *public money*. The definition's exclusions are expanded by the addition of paragraphs (d) and (e) to provide that money in the Territory's possession arising from investments by Territory authorities, cannot count as public money. Territory authorities are separate legal entities to the Territory, and have legal ownership of such money in their own right. In facilitating authorities' investments, the Territory's role is more akin to that of an agent or broker.

Net appropriations

Clause 5 inserts a new section 9B (*Appropriations for payments on behalf of the Territory to be net appropriations*), to parallel and complement existing sections 9 (*Net appropriations for outputs*) and 9A (*Net appropriations for capital injections*). The wording of the proposed new section is of the same tenor as existing sections 9 and 9A, but is confined to allowing appropriations for payments on behalf of the Territory to be credited only with amounts of GST input tax credits that relate to payments under such appropriations.

Form of Budget financial statements

Clauses 6, 7 and 8 address a conflict between, on the one hand, the evolving concepts of generally accepted accounting practice and, on the other hand, the terms used in sections 11 (*Territory budgets*), 12 (*Departmental budgets*) and 12A (*Public trading enterprise budgets*). As they stand, these sections expressly require the respective budgets and financial reports to include "operating statements", "statements of assets and liabilities" and "statements of cashflows". The Australian Accounting Standards have recently been amended to rename the first two of these financial statements as "Statement of Financial Performance" and "Statement of Financial Position", respectively.

It is to be expected that generally accepted accounting practice and the names of particular kinds of financial statements will continue to evolve. Naming the financial statements in legislation will inevitably place the Act out of step with the Australian Accounting Standards, from time to time. To avoid any future conflicts of this kind, the three sections are to be amended to each declare Financial Management Guidelines, issued administratively by the Treasurer under section 66A of this Act, as

the vehicle for specifying the form and nomenclature of all relevant budget documentation. The Guidelines will be changed, whenever required, to ensure that they remain consistent with the Australian Accounting Standards . Financial Management Guidelines are disallowable instruments.

Note that, in Clause 7, the proposed paragraphs 12(1)(b) and (c) and subsection 12(2), continue provisions currently in the Act – existing paragraphs 12(1)(e) and (f) and subsection 12(3) – relating, respectively, to statements for classes of outputs; and capital injections; and exempting the Legislative Assembly Secretariat from furnishing statements for outputs.

Form of annual financial statements for the Territory

Clause 9 proposes the deletion of existing subsection 22(2) containing express references to specific kinds of financial statements and the insertion of a replacement subsection providing for reliance on Financial Management Guidelines – for the same reasons described, above, in relation to Clauses 6 to 8. In future, Financial Management Guidelines (which are disallowable instruments) will specify the form and nomenclature of annual financial statements of the Territory, in step with Australian Accounting Standards.

Legislative Assembly Secretariat

Clause 10 proposes an amendment to section 25A (*Quarterly departmental performance reports*), to release the Legislative Assembly Secretariat from compliance with Quarterly Performance reports prepared and tabled by Ministers in relation to their departments. The subsection, as it currently stands in its application to the Secretariat, is inconsistent with requirements for the form of budget preparation for the Secretariat – there is no statutory obligation for the Secretariat to present output classes and performance information in the Budget. Moreover, while the purpose of such performance reports is an important (and public) accountability mechanism between the Executive and the Legislative Assembly, the Secretariat's accountability to the Assembly is an internal matter.

Form of periodic (quarterly) financial statements of the Territory

Clause 11 proposes the replacement of existing section 26, containing express references to specific kinds of financial statements, with a new section providing for reliance on Financial Management Guidelines – for the same reasons described, above, in relation to Clauses 6 to 8. In future, Financial Management Guidelines (which are disallowable instruments) will specify the form and nomenclature of quarterly financial statements, in step with Australian Accounting.

Form of annual financial statements of departments

Clause 12 proposes the deletion of existing subsection 27(3) containing express references to specific kinds of financial statements, and the insertion of replacement subsections providing for reliance on Financial Management Guidelines – for the same reasons described, above, in relation to Clauses 6 to 8. In future, Financial

Management Guidelines (which are disallowable instruments) will specify the form and nomenclature of annual departmental financial statements, in step with Australian Accounting Standards and generally accepted accounting practice. The proposed paragraphs 27(3)(b) to (d) and subsection 27(4) merely relocate existing paragraphs 27(3)(d) to (f).

Departmental banking accounts – closure and transfer

Clauses 13 and 14 provide legislative certainty for aspects of managing departmental banking account operations. Clause 13 inserts two new subsections to section 34 (*Departmental banking accounts*). The power of relevant Ministers and departmental chief executives to close banking accounts is confirmed (new subsection 34(3A)). In the event of such a closure, that Minister or chief executive is obliged to transfer any balance of the closed account either to another departmental banking account or to the Territory banking account (new subsection 34(3B)). Clause 14 inserts a new section 34A (*Transfer of departmental banking account*) empowering the Treasurer to issue a direction compelling a departmental chief executive to transfer a banking account of that department to another department. Such a direction may be issued only if the Treasurer is satisfied that changes to departmental responsibilities make the transfer desirable.

Clause 15 is a consequential amendment renumbering the existing section 34A (*End of year balances of departmental bank accounts*) as section 34B.

Treasurer's warrant for the issue of public money

Clause 16 amends section 37 (*Authority to issue public money*). Subsection (1) stipulates, as a prerequisite for the withdrawal of money from the Territory banking account, the existence of a warrant, issued (in accordance with the terms of an appropriation) by the Treasurer. Subsection (3) 'excuses' certain specified transactions from the warrant procedure. Clause 16 adds two new categories to subsection (3) – payments of interest to departments from their investments, provided for under subsection 38(5) (*Investment of certain public money*); and payments of interest to Territory authorities from their investments, provided for under subsection 56(7) – *Investments*.

Appropriation not required for investments

Clause 17 amends section 38 (*Investment of certain public money*) by clarifying that, in any circumstance where the Territory's investments would be facilitated by the transfer of money, no appropriation is necessary to support such transfers. The existing subsection 38(2), which the amendment replaces, is impractically narrow in its terms, describing only transfers of money between the Territory banking account and departmental banking accounts as not requiring appropriation.

Approved borrowings by Territory authorities

Clause 18 clarifies section 42 (*Borrowings by Territory authorities to be approved*). That section specifies that borrowings by Territory authorities must be approved by the Treasurer. Clause 18 adds subsection 42(2) to confirm that the formal approval

from the Treasurer is unnecessary where the borrowing is a loan from the Territory, itself, under paragraph 57(1)(b). Proposed amendments (Clause 23) will require that loans approved under paragraph 57(1)(b) will require appropriation.

Loans to be paid into Territory banking account

Clause 19 removes the anomalous requirement for the proceeds of loans raised by Territory authorities, that are not facilitated by the Territory, to be paid into the Territory banking account. Authorities are separate legal entities from the Territory and, consequently, their money is not public money. It follows that any loans they raise should go directly to them, rather than as a cash flow-through of the Territory.

Trust money – transfers between banking account

Clause 20 removes an apparent, if unintended, constraint on the movement of money between trust banking accounts and between those banking accounts and the Territory banking account. Section 52 (*Transfers between banking accounts*), which currently permits transfers from trust banking accounts to the Territory banking account only for investment-related purposes, is amended by Clause 20 to confirm that amounts of unclaimed trust money may also be transferred; and that, where the investment of trust money would be facilitated, money may be transferred between trust banking accounts.

Payment of subsequently 'claimed' unclaimed trust money

Clause 21 adds a further subsection to section 53A (*Unclaimed trust money*) to formally declare that, where the Treasurer approves a person's claim to former trust money that had become 'unclaimed' and been transferred to the Territory banking account as public money, payment can be made to that person irrespective of the existence of an appropriation for that purpose.

Investment by Territory authorities

Clause 22 amends section 56 (*Investments*) by the addition of subsections to clarify the rights and obligations of the Territory and its departments involved in arranging investments on behalf of Territory authorities. In particular, any interest earned must be paid to the authority – subsection (3); but the department which arranged the investment is entitled to deduct its management fees – subsection (4); the interest can be paid direct to the authority or through the Territory banking account – subsection (5); and if the interest payment to the authority is effected via the Territory banking account, no appropriation is needed for the transaction – subsection (6).

Borrowing by Territory authorities

Clause 23 clarifies the Treasurer's powers under section 57 (*Borrowing*) to lend money to a Territory authority – paragraph 57(1)(b). Clause 23 adds subsection (4) to declare that such loans must be supported by an appropriation whose purpose encompasses lending money to authorities.

Form and completion of the statement of intent for Territory authorities

Clause 24 proposes the replacement of existing subsection 58(3), containing express references to the specific kinds of financial statements to be included in Territory authorities' statements of intent, and formally bringing the preparation of statements of intent under the Treasurer's Financial Management Guidelines (issued under section 66A of the Act) – for the same reasons described, above, in relation to **Clauses 6 to 8**. The paragraphs in existing subsection 58(3), requiring an authority's inclusion in the statement of intent matters relating to its objectives, activities, performance criteria and other information required by the Treasurer, have been included in the replacement subsection.

Form of annual financial statements of Territory authorities

Clause 25 proposes the replacement of existing subsections 59(3) containing express references to specific kinds of annual financial statements required of Territory authorities with a subsection providing for reliance on Financial Management Guidelines – for the same reasons described, above, in relation to **Clauses 6 to 8**. In future, Financial Management Guidelines (which are disallowable instruments) will specify the form and nomenclature of Territory authorities' annual financial statements, in step with Australian Accounting Standards and generally accepted accounting practice. The new subsection (and consequential amendments to subsection 59(4)) continue the requirement for the statements to include references to an authority's performance and other relevant information that reflects the authority's financial operations.

SCHEDULE 1 – Minor and Technical Amendments

Clauses 1.1 to 1.11 variously correct drafting oversights or make adjustments to the structure of the principal Act, to allow it to better reflect current drafting concepts. The reasons for most of the proposed changes are self-evident. However, by way of explanation for **Clause 1.2**, the definition *Territory activities* is not needed because the term is not used anywhere in the Act; and the definition of *Treasurer* is not needed because it duplicates the term in the dictionary of the *Interpretation Act 1967*.