

1991

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

AUDIT (AMENDMENT) BILL (NO. 2) 1991

EXPLANATORY MEMORANDUM

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Explanatory Memorandum

Outline

The Audit (Amendment) Bill (No. 2) 1991 ("the Bill") amends provisions of Part IIIA and Part IV of the *Audit Act 1989* ("the Principal Act").

Part IIIA of the Principal Act, dealing with borrowings, is amended to expand its application to financial exposures and guarantees. The definition of "borrowing" is broadened to include transactions such as bank overdrafts, bill facilities and other debt raising instruments and the application of the borrowing provisions are extended to cover Territory owned corporations and their subsidiaries.

The Bill provides for guarantees to be given by the Territory, with the Treasurer's approval. This provision will be of no effect until section 64 of the *Australian Capital Territory (Self-Government) Act 1988*, prohibiting the giving of certain guarantees by the Territory, except with the approval of the Federal Treasurer, is repealed.

Provisions for financial exposure management are inserted in the Principal Act enabling the Territory to enter into certain transactions, where approved by the Treasurer, to manage borrowing and investment exposures. The Bill lists the types of transactions to which these provisions apply. They include transactions such as currency options, currency swaps, interest rates swaps and interest rate caps.

Part IV of the Principal Act, dealing with payment of moneys, is amended to allow the Executive to direct that appropriated funds be increased where Specific Purpose Payments from the Commonwealth are increased above the amounts estimated at the time of preparation of the Appropriation Bill.

The amendments to this Part also enable the Executive to direct the transfer of appropriated funds between items, subdivisions and divisions in the Schedule to the Appropriation Bill provided that no division (other than the division to which the Minister's Advance is appropriated) is varied by more than five per cent of the sum originally appropriated for that division. The provision does not authorise a variation of the sum appropriated by the Appropriation Act.

Details of variations of, or increases in, the annual appropriation are required to be reported to the Legislative Assembly within six sitting days of the giving of the Executive's direction.

Financial implications

Nil.

Details of the Bill are provided in the Attachment.

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Formal clauses

Clause 1 is a formal clause providing for the short title of the Bill.

Clause 2 provides that references in the Bill to the "Principal Act" are to be read as references to the *Audit Act 1989*.

Heading

Clause 3 changes the heading of Part IIIA of the Principal Act from -

"PART IIIA - BORROWINGS"

to -

"PART IIIA - BORROWINGS , FINANCIAL EXPOSURES
AND GUARANTEES"

to reflect the broadened scope of this Part.

Interpretation

Clause 4 repeals section 33A of the Act which provides for the interpretation of the term "borrowing", in relation to the Territory or a Territory authority, and substitutes a new section 33A providing for the interpretation for the term "borrowing" in relation to a "Territory body" which is defined in this clause to include a Territory authority, a Territory owned corporation or a subsidiary of such a corporation.

The substituted section provides an expanded definition of the term "borrowing", in relation to the Territory or a Territory body. In addition to including raising money or obtaining credit by dealing in securities, the

definition now includes raising money or obtaining credit by obtaining financial accommodation by way of overdraft or short term bill facilities or in any other manner approved by the Treasurer, 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.

Power of Territory to borrow money

Clause 5 amends section 33B of the Principal Act, dealing with the power of the Territory and Territory authorities to borrow money, by omitting "or a Territory authority" where those words occur. A new provision, governing the power of Territory bodies, which includes Territory authorities, to borrow money is provided in new section 33D.

Clause 6 provides for the insertion in the Principal Act of new sections 33D, 33E and 33F dealing with borrowing powers and the limitations which apply in respect of borrowings by the Territory and Territory bodies.

Power of Territory bodies to borrow money

New section 33D deals with the power of Territory bodies to borrow money.

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

New subsection 33D (2) confers a power on Territory bodies to borrow money in accordance with the provisions of this Part, where those bodies are not authorised by any other Act to borrow money .

Limit of power of Territory bodies to borrow money

New section 33E limits the power of Territory bodies to borrow money.

New subsection 33E (1) prohibits a Territory body from borrowing money except where it has the written approval of the Treasurer, the borrowings are within any borrowing limits approved by the Treasurer in respect of a financial year and the money is borrowed on terms and conditions approved by the Treasurer or not inconsistent with the Treasurer's approval of the borrowing.

New subsection 33E (2) provides that a Territory body may give security for the repayment of borrowings and interest on borrowings by the issue of certain specified securities or other such securities as the Treasurer approves for the purposes of this subsection.

Financial exposure management

New section 33F deals with financial exposure management and limits the Territory's capacity to enter into certain types of transactions.

New subsection 33F (1) identifies the transactions to which this section applies.

New subsection 33F (2) prohibits the Territory from entering into a transaction to which this section applies unless the Territory has invested moneys standing to the credit of the Territory Public Account, or has borrowed moneys and the Treasurer certifies in writing that the transaction is related to the investment or borrowing.

New section 33F (3) excludes the *Games Wagers and Betting Houses Act 1901* of New South Wales, in its application in the Territory, from application to a transaction to which this section applies, where the transaction is entered into in accordance with this section.

Guarantees by the Territory

Clause 7 provides for the insertion in Part IIIA of new subsection 33G dealing with guarantees by the Territory.

New subsection 33G (1) prohibits the giving of a guarantee by the Territory except in accordance this section.

New subsection 33G (2) empowers the Treasurer to approve, in writing, the giving by the Territory of guarantees relating to the performance by any person of that person's obligations under a contract or such of those obligations as the Treasurer may specify in the instrument of approval. The Treasurer's approval of the giving of such a guarantee may be subject to such conditions as the Treasurer determines.

New subsection 33G (3) provides that where the Treasurer executes an instrument approving the giving, by the Territory, of a guarantee, the discharge of the obligations referred to in the instrument of approval is guaranteed by the Territory.

This amendment will be of no effect unless section 64 of the *Australian Capital Territory (Self-Government) Act 1988*, prohibiting the giving of certain guarantees by the Territory, except with the approval of the Federal Treasurer, is repealed.

Variation of annual appropriation

Clause 8 of the Bill amends section 49 of the Principal Act dealing with the power of the Executive to vary the annual appropriation by repealing subsection (1) and substituting a new subsection (1), amending subsection (3) and adding new subsections (1A) and (4).

Substituted subsection 49 (1) enables the Executive to direct, in writing, that moneys appropriated to a division, subdivision or item in the Schedule to an Appropriation Act be increased or decreased where that increase or decrease is offset by a decrease or increase to the moneys appropriated to another division, subdivision or item. The provision allows for the transfer of moneys between items, subdivisions and divisions in the Schedule to an Appropriation Act. The Principal Act, presently, contains a far more limited power to transfer moneys between items, restricting transfers to transfers between items within the same subdivision.

New subsection 49 (1A) provides that a direction by the Executive under subsection 49 (1) will be of no effect if it purports to vary:

- (a) the sum appropriated by the Appropriation Act; or
- (b) the sum appropriated to a division (other than the Minister's Advance) by more than 5 per cent.

Subsection 49 (3) which excludes certain salary appropriations from items in respect of which the Executive may direct that an amount in augmentation of that appropriation, be applied, is amended to limit the application of this subsection to salaries specifically appropriated by the Assembly by Acts other than the Appropriation Act.

New subsection 49 (4) provides that an Appropriation Act to which a direction under this section applies shall have effect subject to the direction.

Clause 9 inserts into the Principal Act new sections dealing with increases of annual appropriations and tabling of Executive directions.

Increase of annual appropriation - Commonwealth payments

New section 49A provides the Executive with a power to increase an annual appropriation where a Specific Purpose Payment or Payments from the Commonwealth to the Territory exceeds the Specific Purpose Payment amount paid or expected to be paid at the time at which the Appropriation Bill is prepared.

New subsection 49A (1) provides that where the Minister certifies, in writing, that an amount assigned to a division, subdivision or an item in the Schedule to an Appropriation Act for a financial year reflects an amount paid or expected to be paid by the Commonwealth to the Territory for expenditure for a specified purpose or in a specified manner and the amount paid to the Territory during that financial year exceeds that amount, the Executive may direct, in writing, that the amount assigned

to the division, subdivision or item be increased by the extent of the excess and be appropriated from the Consolidated Fund accordingly.

New subsection 49A (2) requires that where such a direction is made by the Executive the Chief Minister shall, within seven days, provide the Auditor-General with a copy of the certificate of the Minister and a copy of the direction.

Tabling of direction

New section 49B requires that where the Executive gives a direction under section 49 or section 49A that the Minister must lay before the Assembly, within six sitting days of the giving of the direction, a copy of the direction and, in the case of a direction under section 49A, a statement of the reasons for the giving of the direction.