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

FINANCIAL MANAGEMENT AMENDMENT BILL 2015

EXPLANATORY STATEMENT

**Presented by
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Treasurer**

FINANCIAL MANAGEMENT AMENDMENT BILL 2015

INTRODUCTION

This Explanatory Statement relates to the Financial Management Amendment Bill 2015 as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the bill and to help inform debate on it. It does not form part of the bill and has not been endorsed by the Assembly.

The Statement must to 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 OF THE BILL

The *Financial Management Act 1996* (the Act) provides the financial management framework for the Territory's fiscal operations. The objective of the FMA is to provide an efficient, effective and robust framework for the financial management of the Territory.

The Bill proposes a range of amendments to improve and modernise the Act, mainly to the appropriation and budget management provisions. The recent economic challenges have made it apparent that a number of existing provisions are too rigid and constrain the Government's ability to quickly respond to emerging priorities and community expectations.

The object of this Bill is to propose amendments to the Act to:

- a. provide flexibility to the Government to respond to emerging priorities;
- b. reduce red tape by streamlining the administrative requirements;
- c. reduce ambiguity by making the provisions simpler and clearer; and
- d. increase transparency and accountability to the Legislative Assembly and the community.

HUMAN RIGHTS IMPLICATIONS

The Bill is considered to be consistent with the *Human Rights Act 2004*. It does not engage or limit the human rights specified in that Act.

OUTLINE OF THE PROVISIONS

Clause 1 Name of Act

This clause sets out the name of the Act as the *Financial Management Amendment Act 2015*.

Clause 2 Commencement

This clause sets out the commencement date for the various sections of the Act. Provisions associated with the first Appropriation Act for a financial year and its associated budget papers, as well as any supply period for the financial year, commence from 1 July 2016 to align with the start of the financial year. The capital works reporting also commences 1 July due to its timing requirements.

The remaining provisions, including the appropriation variations commence on the beginning of the next quarter after the Act is notified. The commencement of these provisions at the start of a quarter is to provide a seamless transition for the change to the new presentation requirements for appropriation instruments.

Clause 3 Legislation amended

This clause specifies that the Act being amended by this bill is the *Financial Management Act 1996*.

Clause 4 Payments authorised on lapse of appropriation – New Section 7(2)

This clause amends section 7 to define the term ‘purpose’. The inclusion of this definition provides clarity on the type of payments which can be made during the period from the commencement of the financial year until such time as the first Appropriation Act for the financial year is passed.

This clause clarifies that Territory entities can make payments during this period that could reasonably be considered within their usual responsibility and part of their ordinary business. Examples would include an expansion of existing services. This definition provides the necessary certainty for entities to be able to proactively and in a more timely manner progress Government priorities that clearly fall within their remit, commencing from the start of a financial year. This results in a more effective, efficient and timely delivery of government outputs through-out the entire financial year.

Entities will of course need to manage their payments within the appropriation amount authorised to them under this section and will need to risk manage what payments they choose to approve during this period. As a result, entities are not expected to use this amendment to enter into contracts or commitments relating to new initiatives that involve significant amounts.

Clause 5 Temporary advance for new purpose or new entity – New Section 7A

This clause inserts new section 7A to allow the Treasurer to authorise temporary advances for up to half of the amount appropriated to the Treasurer’s Advance during the supply period under section 7, for expenditure for a new purpose or a new entity, provided in the first Appropriation Bill where there is an immediate requirement for expenditure.

This amendment will allow some initial expenditure on those new initiatives reasonably considered outside the usual responsibilities and ordinary business of an entity, to be progressed pending the passing of the Appropriation Bill for the financial year. The amendment will also cover circumstances where a new entity is created and included in the Appropriation Bill and it is reasonably considered that the entity has a purpose not previously included within the usual responsibilities and ordinary business of another entity.

Similar to clause 4, this will allow some initial work to commence on new initiatives in a risk managed manner which will allow government priorities to be delivered in a more timely way. The financial limitations placed on this mechanism ensure payments under this section are likely to be preparatory in nature.

There is no risk to the budget associated with making these payments prior to the passing of the Appropriation, as these payments will either be taken to be paid from the money appropriated by the Appropriation Act and the Treasurer's Advance used to authorise the temporary advance will be taken to have been restored, or the payments will be taken to be paid out of Treasurer's Advance.

Clause 6 Form of appropriations – Section 8(1)(a)

This clause replaces the existing sub section words 'the provision of outputs by the directorate' with the words 'any controlled recurrent payments to be provided to the directorate'.

This change in terminology is to better reflect the nature of this type of appropriation. Appropriations no longer represent the price for the purchase of outputs by the government, as was originally intended when the Act was first enacted. Instead, it represents the funding provided to the entity to enable it to deliver certain services. The existing appropriation terminology is currently misleading.

This name change also emphasises that appropriation controls will be at entity level, to align with director-general responsibilities under the Act which are at entity level, thus increasing funding flexibility within an entity.

The Appropriation Act currently provides appropriation at the entity level and also lists the output classes for each entity. The Appropriation Act will be simplified to remove the output class listing. There will be no loss of information as output class information will continue to be included in the budget papers and then reported against, to inform the quantum of funding an entity uses to deliver certain services. This will maintain transparency and accountability of output class information.

Clause 7 Form of appropriations – Section 8(2)(a)

This amendment changes the term ‘appropriation for the net cost of outputs’ to ‘controlled recurrent payments’ for authorities and corporations. The reasons for this change are discussed under clause 6.

Clause 8 Net controlled recurrent payments – Section 9

This amendment is associated with clause 6 and also addresses existing ambiguity about how directorates can use own source revenue earned from providing outputs.

Consistent with appropriation controls being at entity level, if an entity’s appropriation is specified as ‘net controlled recurrent payments’, this amendment will allow an entity to use revenue it is entitled to receive from the delivery of goods and services to pay for expenses and liabilities related to the provision of those goods and services or any other goods and services provided by the directorate. It clarifies that an entity is able to flexibly use its controlled own source revenue within the entity. Such flexibility at entity level is consistent with appropriations being at entity level and the director-general being responsible for the financial management of the entity.

As this section is specifically for controlled revenue, it does not apply to revenue which is Territorial in nature, such as taxes.

Clause 9 Net appropriations for capital injections – Section 9A(3)

This amendment replaces the words ‘directorate, authority or corporation’ with the words ‘territory entity’. A new definition of the term ‘territory entity’ has been inserted in the dictionary (refer clause 115). The amendment is to simplify and improve the readability of the Act. Similar amendments occur through-out the Act.

Clause 10 Appropriations for payments on behalf of the Territory to be net appropriations – Section 9B

This amendment is technical and corrects the reference to the heading descriptor for section 6 which is referred to in this section.

Clause 11 Territory budgets – New Section 11(1)(g)

This clause inserts a new sub section to require the Territory’s budget to include a statement about the Government’s spending intentions for the financial year and any significant change from the previous financial year.

Although, it is practice to include statements on new initiatives for revenue, expenses, infrastructure and capital in the budget papers, these statements are currently not a specific requirement of the Act. Inclusion of information on new initiatives will increase accountability, reflect current practice and remove the Government’s discretion in providing this information.

Clause 12 Territory budgets – New Section 11(1A)

This clause inserts a new section to allow the Treasurer to include in the Territory budget any other matter the Treasurer considers relevant. This amendment provides flexibility and encourages accountability of other potential relevant budget matters to be included, if required.

Clause 13 Territory budgets – Sections 11(2) and 11(3)

This clause removes the term ‘appropriation unit’ in sections 11(2) and 11(3). The term ‘appropriation unit’ is currently used in the Act only under section 11. Long standing current practice is that the appropriation units specified in the Appropriation Act are the same as the specified entities. As a result the term is redundant and no longer relevant in a modern version of the Act.

No reference is required to entities in Section 11 as this section relates to the Territory budget. The requirements for directorates, territory authorities and corporations are covered in the subsequent sections of the Act.

Clause 14 Territory budgets – Section 11(6)

This clause removes the definition of the term ‘appropriation unit’ as it is no longer necessary, given the amendments under clause 13 remove the term ‘appropriation unit’ from section 11.

Clause 15 Directorate budgets – Section 12(1)(b)

This clause amends section 12(1)(b) by inserting additional requirements for directorate budget statements. Directorates are to include a statement that sets out for each output and class of outputs:

- the proposed budget expense and proposed appropriation for the financial year; and
- the estimated expense and appropriation for the previous financial year.

This amendment is associated with the removal of the list of output class names from the Appropriation Act and the change in the term ‘appropriation for the net cost of outputs’ to ‘controlled recurrent payments’, as discussed under clause 6. However, to ensure there is no loss of transparency and accountability, appropriation and expense information associated with each output and class of outputs will continue to be included in the budget papers of directorates. This amendment mandates the provision of this information in directorate budget papers as this disclosure, while current practice, is not currently a requirement of the Act. Entities will continue to report against this information as part of half yearly and annual reports.

The appropriation disclosed for outputs and output classes can either be for controlled recurrent payment or appropriation for expenses on behalf of the Territory (although, not all appropriation for expenses on behalf of the Territory has a designated class of outputs).

Clause 16 Territory authority budgets – New Section 12AA

This clause inserts a new section specific to territory authority budgets and states that a proposed budget presented to the Legislative Assembly for a territory authority for a financial year is the statement of intent for the authority for the financial year prepared under section 61.

The requirements of existing section 12A (Territory authority and territory-owned corporation budgets) have been split by inserting a new section 12AA that relates specifically to territory authority budgets (this clause) and making the existing section 12A to relate only to territory-owned corporation budgets (clauses 17-20).

The requirements for territory authority budgets previously contained in section 12A are now incorporated into the Statement of Intent requirements. This provides for a single more streamlined budget document for territory authorities and removes the duplication that currently exists between authority budget statements and statements of intent.

Clause 17 Territory-owned corporation budgets – Section 12A

This clause changes the heading for section 12A from ‘Territory authority and territory-owned corporation budgets’ to ‘Territory-owned corporation budgets’.

This amendment is associated with the streamlining of budget requirements for territory authorities, discussed under clause 16. The requirements of existing section 12A (Territory authority and territory-owned corporation budgets) have been split by inserting a new section 12AA that relates specifically to territory authority budgets (clause 16) and making the existing section 12A relate only to territory-owned corporation budgets (this clause).

Clause 18 Territory-owned corporation budgets – Section 12A(1)

This clause deletes the term ‘territory authority or’ from section 12A(1) given the amendment discussed under clause 17 to make the existing section 12A relate only to territory-owned corporation budgets.

Clause 19 Territory-owned corporation budgets – Section 12A(1)(b)

This clause amends section 12A(1)(b) by inserting additional requirements for prescribed territory-owned corporations budget statements to include a statement that sets out for each output and class of outputs:

- the proposed budget expense and proposed appropriation for the financial year; and
- the estimated expense and appropriation for the previous financial year.

This amendment is associated with the removal of the list of output class names from the Appropriation Act and the change in the term ‘appropriation for the net cost of outputs’ to ‘controlled recurrent payments’, as discussed under clause 6.

However, to ensure there is no loss of transparency and accountability, appropriation and expense information associated with each output and class of outputs will continue to be included in the budget papers of prescribed territory-owned corporations. This amendment mandates the provision of this information in corporation budget papers as this disclosure, while current practice, is not currently a requirement of the Act.

Clause 20 Territory-owned corporation budgets – Section 12A(2)

This clause replaces the term ‘authority or’ with ‘territory-owned’ in section 12A(2) given the amendment discussed under clause 17 to make the existing section 12A relate only to territory-owned corporation budgets.

Clause 21 Supplementary budget papers – Section 13(3)

This clause replaces the words ‘directorate, territory authority and territory-owned corporation’ with the words ‘territory entity’ in section 13(3). Refer to clause 9.

Clause 22 Supplementary budget papers – Section 13(3)(b)

This clause replaces the existing requirements of sub section 3(b) with the existing requirements of sub section 6. It also clarifies the existing requirements about what variations are to be included in the budgeted financial statements. All variations to the appropriation that happened until the last day when it was practicable to provide for it in the relevant supplementary appropriation bill, before the bill was introduced, need to be reflected in the budget financial statements of each affected entity.

The amendment is aimed at streamlining and strengthening the section 13 requirements. As the existing requirements allowed revised budgeted financial statements to be provided after the Supplementary Appropriation Bill passed, the section included a requirement for the supplementary budget papers to indicate the impact of the proposed variation.

This amendment requires revised budgeted financial statements, including details of the impact on the budget of the affected entity, to be provided in the supplementary budget papers. As a result of this stronger requirement, the separate requirement to indicate the impact of the proposed variation is no longer required as this information is reflected in the revised budgeted financial statements.

Clause 23 Supplementary budget papers – Sections 13(4) to (6) and example and note

This clause omits sub sections 4 to 6 and the example and note under section 13. It is noted that the requirements of sub section 6 are incorporated into sub section 3(b) discussed under clause 22.

Sub section 4 omitted under this clause states that supplementary budget papers need not include an original or final budgeted financial statement for an affected entity. Retaining this provision would be contrary to the amendment discussed under clause 22 requiring revised financial statements to be included in the supplementary budget papers.

Sub section 5 omitted under this clause states that if the supplementary budget papers do not include the budgeted statement for an affected entity, then the supplementary budget papers must state the reasons why the budgeted statement for the entity is not included and requires the Treasurer to present the budgeted statement for the entity to the Legislative Assembly as soon as practicable after the passing of the bill. Under clause 22 revised budgeted financial statements must now be included in the supplementary budget papers hence this sub section is no longer required.

This amendment is associated with the amendments aimed at streamlining and strengthening the section 13 requirements, as discussed under clause 22.

Clause 24 Amendment of budgets for supplementary appropriation – Sections 13A(1)

This clause amends section 13A(1) to replace the words ‘directorate, territory authority or territory-owned corporation’ and ‘directorate, authority or corporation’ with the term ‘territory entity’. Refer to clause 9.

Clause 25 Amendment of budgets for supplementary appropriation – Sections 13A(2)

This clause amends section 13A(2) to replace the words ‘directorate, territory authority or territory-owned corporation’ and ‘directorate, authority or corporation’ with the term ‘territory entity’. Refer to clause 9.

Clause 26 Transfer of funds between appropriations – Section 14

This clause amends the existing provisions of section 14 as follows:

- replaces the term ‘Executive’ with the term ‘Treasurer’ to address the current inconsistency in the requirement for the Executive to sign some instruments, when the Treasurer alone can authorise other instruments. This will result in administrative efficiencies especially towards the end of the financial year when a large number of instruments are being signed. A similar amendment is made in clause 83.
- clarifies that the threshold applies to an amount appropriated in an Appropriation Act for that year and if the appropriation has been amended by any instruments under the Act, signed during that year to date, then the threshold applies to the appropriation as amended. By calculating the threshold based on instruments signed during the year, it will be based on the most updated budget amount and will also take into consideration any appropriation amendments as a result of administrative arrangement changes.

- replaces the existing presentation requirements from ‘within 3 sitting days after the direction is given’ to ‘on the next financial statement presentation day’. This amendment is associated with streamlining and efficiency changes to section 26, discussed under clause 68.

Clause 27 Transfer of funds between appropriations – New Sections 14A and 14B

This clause inserts new sections 14A and 14B that provide necessary greater flexibility to transfer funds between appropriations for the same entity.

The amendment addresses issues encountered in relation to specific projects where either the nature of expenditure or the accounting for the expenditure is subsequently identified to be different to what was anticipated in the budget. This requires the appropriation to be reclassified from what it was in the budget. In these instances the 3% threshold in the current section 14 can be unnecessarily restrictive given the nature of these transfers.

Section 14A allows transfer from capital injection appropriation to either appropriation for the provision of outputs or expenditure on behalf of the territory in a financial year:

- for up to 5% of the amount appropriated to the entity for capital injection for that year or \$500,000 whichever is the larger, via an instrument signed by the Treasurer; or
- for more than 5% of the amount appropriated to the entity for capital injection for that year or \$500,000 whichever is the larger, via a disallowable instrument.

The threshold of 5% is higher than the threshold of 3% in section 14. The increased threshold under this provision recognises that the provision is limited to appropriation transfers for the same entity, as opposed to transfers across entities, and also recognises that the 3% threshold in the current section 14 was established at the time of the introduction of the Act in 1996. Current accounting practices regard variance amounts of 5% or less as immaterial.

The threshold is subject to an additional restriction of \$500,000 (there is currently no \$ restriction imposed by section 14). This will ensure that the 5% threshold does not unnecessarily constrain small entities and ensures that the provision can operate as it is intended.

By permitting transfers from capital injection above the threshold via a disallowable instrument, the section provides the Legislative Assembly the ability to debate the transfer instrument, if it so chooses, while still providing an efficient and timely mechanism to address the need for these types of transfers without having to resort to a supplementary appropriation.

Under section 14B transfers from appropriation for the provision of outputs or expenditure on behalf of the territory to capital injection appropriation for the same entity in a financial year are permitted without any restrictions, via an instrument signed by the Treasurer. There is no limit on these type of transfers given there is no resultant negative impact on the Government's net operating balance.

This clause also clarifies that the threshold applies to the appropriation as amended, as discussed under clause 26.

These new sections use existing terminology 'appropriation for the provision of outputs' as these sections will be effective before the new terminology contained in clauses 6 and 7. Consequential amendments in Part 1.2 updates these sections for the new terminology when clauses 6 and 7 commence.

Clause 28 Transfer of funds within appropriations – Section 15

This clause deletes section 15 as appropriation transfers within an entity between output classes will no longer exist due to the removal of the list of output class names from the Appropriation Act, as discussed under clause 6.

While the change to having appropriation controls at entity level provides an entity increased flexibility to better respond to changing needs, this flexibility is balanced by amendments increasing responsibilities of directors-general to, among other things, manage their directorate to promote the achievement of the purpose of the entity (clause 78). It is envisaged that Directors-General would discuss within their entity the need and implications of any movements before authorising the movement, particularly where statutory bodies are impacted.

Further as output and output class appropriation and total cost are to continue to be reported (clause 15), transparency and accountability controls remain and any material movements of appropriation within the entity from that budgeted will still need to be explained in the statement of performance.

Clause 29 Reclassification of certain appropriations – Sections 15A(1) and 15A(2)

This clause deletes the term 'the provision of outputs by' and replaces it with the words 'controlled recurrent payments to be provided to'. This amendment is due to the renaming of the appropriation, as discussed under clause 6, and becomes effective at the same time as clause 6.

Clause 30 Reclassification of certain appropriations – Sections 15A(3)

This clause replaces the existing presentation requirements in relation to a direction under section 15A from ‘within 3 sitting days after the direction is given’ to ‘on the next financial statement presentation day’. This amendment is associated with streamlining and efficiency changes to section 26, discussed under clause 68.

Clause 31 Transfer of functions to another entity – Section 16 heading

This clause replaces the existing heading for section 16 from ‘Transfer of functions after Appropriation Act passes’ to ‘Transfer of functions to another entity’. This amendment is associated with the amendments to section 16 as discussed under clause 32.

Clause 32 Transfer of functions to another entity – Section 16(1)

This clause removes the temporal element of the existing section so that section 16 no longer refers to ‘after an Appropriation Act for a financial year is passed’. The amendment clarifies that this section can apply anytime a change to service or function responsibilities occurs in a financial year. This amendment addresses a potential gap in the application of the current section in situations where transfers of existing functions are made during the supply period.

This clause also inserts the word ‘territory’ before the word ‘entity’ in sub section 1, thereby changing references to the term ‘entity’ to ‘territory entity’. Refer to clause 9.

Clause 33 Transfer of functions to another entity – Section 16(2)

This clause inserts the word ‘territory’ before the word ‘entity’ in sub section 2, thereby changing references to the term ‘entity’ to ‘territory entity’. Refer to clause 9.

Clause 34 Transfer of functions to another entity – Section 16(3)

This clause replaces the existing presentation requirements in relation to the direction under section 16 from ‘within 3 sitting days after the direction is given’ to ‘the next financial statement presentation day’. This amendment is associated with changes to section 26, discussed under clause 68.

Clause 35 Transfer of functions to another entity – Section 16(5)

This clause removes the definition of the term ‘entity’ in sub section 5 due to the replacement of the term ‘entity’ with the term ‘territory entity’ in section 16 (refer clauses 32 and 33). Refer to clause 9.

Clause 36 Appropriation for accrued employee entitlements – Section 16A(1)(a)

This clause replaces the term ‘an entity’ with the term ‘a territory entity’ in sub section 1(a). Refer to clause 9.

Clause 37 Appropriation for accrued employee entitlements – Section 16A(1)(b) and (2)

This clause replaces the term ‘the entity’ with the term ‘the territory entity’ in sections 16A(1)(b) and 16A(2). Refer to clause 9.

Clause 38 Appropriation for accrued employee entitlements – Section 16A(3) and (4)

This clause replaces the existing presentation requirements in sub section 3 in relation to the authorisation under section 16A from ‘within 3 sitting days after the day the appropriation is authorised’ to ‘on the next financial statement presentation day’. This amendment is associated with changes to section 26, discussed under clause 68.

This clause also removes the definition of the term ‘entity’ in sub section 4 due to the replacement of the term ‘entity’ with the term ‘territory entity’ in section 16A (refer clauses 36 and 37). Refer to clause 9.

Clause 39 Rollover of undisbursed appropriation – Section 16B

This clause changes the heading for section 16B by replacing the existing incorrect term ‘dispersed’ with the correct term ‘disbursed’. The word ‘dispersed’ means ‘to distribute or spread over a wide area, cause to thin out and eventually disappear (gas, smoke etc), distribute uniformly in a medium (small particles). The word ‘disbursed’ means to pay out money.

Clause 40 Rollover of undisbursed appropriation – Section 16B

This clause replaces the existing incorrect term ‘dispersed’ with the correct term ‘disbursed’. This change is associated with the amendment discussed under clause 39.

Clause 41 Rollover of undisbursed appropriation – Section 16B(1)

This clause inserts the word ‘territory’ before the word ‘entity’ in sub section 1, thereby changing references to the term ‘entity’ to ‘territory entity’. Refer to clause 9.

Clause 42 Rollover of undisbursed appropriation – Section 16B(2)

This clause allows the rollover of undisbursed appropriation to an entity gaining the function relevant to the appropriation, where the responsibility for the service or function for which the appropriation was made in the previous financial year is transferred to another entity.

This amendment addresses an existing deficiency associated with the rollover of undisbursed appropriation where the entity to which the appropriation was made subsequently ceases. In these circumstances the current wording of the section does not permit the rollover of the appropriation even though the appropriation is still required by the entity gaining the function.

The clause also provides a more efficient administrative process where the responsibility for the relevant function is transferred from the entity to which the appropriation was made, to another entity. In these circumstances two instruments are currently required to provide the appropriation to the relevant entity. This amendment will allow the rollover to occur in a single instrument.

Clause 43 Rollover of undisbursed appropriation – Section 16B(4) and (5)

This clause inserts the word ‘territory’ before the word ‘entity’ in sub section 1, thereby changing references to the term ‘entity’ to ‘territory entity’. Refer to clause 9.

Clause 44 Rollover of undisbursed appropriation – Section 16B(6) and (7)

This clause replaces the existing presentation requirements in sub section 6 in relation to the authorisation under section 16B from ‘within 3 sitting days after the day the appropriation is authorised’ to ‘on the next financial statement presentation day’. This amendment is associated with changes to section 26, discussed under clause 68.

This clause also removes the reference to section 16B(7) for the meaning of the term ‘entity’ due to the replacement of the term ‘entity’ with the term ‘territory entity’ in section 16B (refer clauses 41 and 43). Refer to clause 9.

Clause 45 Variation of appropriations for Commonwealth grants – Section 17(3)

This clause inserts additional provisions into the section to improve the usability of the section. The clause allows for the additional appropriation associated with funds received from the Commonwealth for a nominated purpose, to be authorised either in the current financial year or the next financial year (sub section (3)). If the authorisation is given in the financial year the funding is provided, the Treasurer may also specify the financial year in which the appropriation may be disbursed to the entity (sub section (4)).

This provides a mechanism to address situations where the additional Commonwealth funding is received late in the financial year and either it is not possible to action the instrument by 30 June or the quantum of the additional Commonwealth funding is not identified until the next financial year.

This amendment also provides an efficient, more streamlined process, to address those situations where the additional Commonwealth funding is received late in the financial year and even though an instrument authorising the additional appropriation is able to be actioned in that same financial year, the entity receiving the additional appropriation is not able to expend the appropriation until the next financial year. This amendment allows the appropriation to be authorised directly to the next financial year rather than requiring a second instrument to roll over the appropriation.

As with the amendment to section 16(B) under clause 42, this clause also allows for additional appropriation associated with Commonwealth funding, to be authorised to an entity gaining the function relevant to the appropriation, where the responsibility for the service or function for which the appropriation was made is transferred to another entity (sub section (5)). This amendment addresses current deficiencies and streamlines processes associated with the authorisation of additional appropriation where the entity to which the appropriation was made subsequently ceases or where the responsibility for the relevant function is transferred from the entity to which the appropriation was made, to another entity.

This clause replaces the existing presentation requirements in relation to the direction under section 17 from ‘within 3 sitting days after the day the appropriation is authorised’ to ‘on the next financial statement presentation day’ (sub section 7)). This amendment is associated with the changes to section 26 proposed under clause 68.

Clause 46 Variation of appropriations for certain payments to Commonwealth – Sections 17A(3)

This clause replaces the existing presentation requirements in relation to the direction under section 17 from ‘within 3 sitting days after the day the appropriation is authorised’ to ‘on the next financial statement presentation day’. This amendment is associated with changes to section 26, discussed under clause 68.

Clause 47 Treasurer’s advance – Sections 18 and 18A

This clause replaces the existing provisions with more streamlined and clearer requirements associated with Treasurer’s advance in the current 18 and 18A sections. This clause also inserts two new sections associated with payments pending supplementary appropriation and reduction of authorised Treasurer’s advance.

Treasurer’s advance – Section 18

The changes to section 18 are aimed at streamlining the sub-sections as the current wording is lengthy and prescriptive with a number of definitions and associated Guidelines. The amendments also align the legislative requirements with the current practice of authorising payments of Treasurer’s Advance based on cash requirements.

The amendment removes the existing requirement associated with ‘urgent need for expenditure’ and replaces it with the requirement ‘immediate requirement for the payment’. Current sub section (5) associated with the Guidelines that prescribe when there is an urgent need for expenditure, has been deleted. This change addresses the lack of clarity in the existing terminology and brings the provisions in line with current practice of authorising payments based on cash requirements, usually towards the end of the financial year. The term ‘expenditure’ has been replaced with the term ‘payment’ in line with the

cash requirement and the definition for 'expenditure' under the current sub section (6) has also been deleted.

The amendment also clarifies that an amount authorised under this section that remains undisbursed at the end of the financial year lapses (i.e. section 16B may not be applied). This is in line with Treasurer's Advance authorisations being for immediate payment requirements.

The definition for 'prescribed circumstance' under the existing sub section (6) has also been deleted as the provisions have been incorporated within sub section (1)(a)(ii). This ensures the requirements are placed together rather than being contained in a separate sub sections.

Treasurer's advance - payment pending supplementary appropriation – Section 18A

This amendment allows the Treasurer to specify in the instrument authorising payment under section 18, that the payment may be provided for in an Appropriation Act (not being the first Appropriation Act) for the financial year. This allows, where feasible depending on quantum and timing, for these items to be subject to greater visibility and more scrutiny via a Supplementary Appropriation process, while providing a funding mechanism for expenditure pending the passing of the supplementary appropriation bill.

If the payment is included in a Supplementary Appropriation Act, the Treasurer's advance authorisation under this section ceases on the commencement of that Appropriation Act, and on commencement all payments made under this section for the financial year are to be taken for all purposes to have been paid out of money appropriated by that Act. As all payments incurred from the Treasurer's Advance authorisation are taken to be paid out of the appropriation in the Supplementary Appropriation, the amount authorised from Treasurer's Advance is taken to be restored.

If the Supplementary Appropriation Act which includes the appropriation for the payment is not passed, the payment will continue to be authorised from the Treasurer's advance under section 18. As this section utilises a discretion that the Treasurer already has under the Act, it does not fundamentally increase the powers of the Treasurer while providing for more effective and timely delivery of government initiatives. Further, the limited nature of the Treasurer's Advance funding ensures payments under this mechanism are likely to be preparatory in nature.

Treasurer's advance - reduction of payments – Section 18B

This new section addresses an existing deficiency in existing section 18 that occurs when an amount authorised from the Treasurer's advance is no longer required by the relevant entity and hence remains undrawn. These situations arise when the circumstances

surrounding the payment change after the authorisation for Treasurer's Advance is provided, usually due to outside factors.

The amendment provides transparency to Treasurer's Advance authorisations by allowing the Treasurer to reduce an amount previously authorised from the Treasurer's advance in a financial year if the Treasurer is satisfied that the amount has not been fully disbursed to the entity and the undisbursed amount is no longer required by the entity. It is expected that use of this section will be rare.

If the Treasurer authorises a reduction, the Treasurer's advance is taken to be restored by the amount of the reduction and the Treasurer may apply this amount towards another payment that meets the criteria under section 18. This amendment will apply to an authorisation which has not been disbursed to the entity at all or where part of the authorisation has not been disbursed.

Treasurer's advance - Assembly to be told about Treasurer's advance – Section 18C

This clause replaces the existing provisions under section 18A associated with the provision of information about the Treasurer's advance to the Legislative Assembly. The amendment streamlines and improves the administrative efficiency of the reporting requirement.

The amendment removes the requirement to present to the Assembly a summary of the total expenditure after the end of the financial year, given this requirement duplicates information contained in the individual Treasurer's Advance instruments tabled through-out the year. In order to ensure there is no loss of transparency, the amendment requires a complete reconciliation of the Treasurer's Advance to be attached to each authorisation instrument. The amendment specifies what information is to be included in the reconciliation.

This clause also replaces the existing presentation requirement for each authorisation from 'within 3 sitting days after the day when the authorisation is given' to 'on the next financial statement presentation day' (refer changes to section 26 proposed under clause 68). This change means that Treasurer's Advance instruments will be provided to the Assembly each quarter and will be presented together with a summary of the instruments. The new requirement to provide a quarterly summary also mitigates the need for a summary to be provided after the end of the financial year.

Clause 48 Authorisation of appropriation for certain Commonwealth grants – Section 19B

This clause substitutes the existing provisions under section 19B with amended provisions to clarify and improve the usability of the section. These new provisions are in line with the new provisions inserted under section 17, as discussed under clause 45.

The amendment clarifies a technical point that the section relates to the authorisation of appropriation by the Treasurer to an entity, rather than the authorisation of the payments made by the entity when actioning the Agreement for which Commonwealth funding was provided to the Territory.

The clause allows for the additional appropriation associated with the new funds received from the Commonwealth for a nominated purpose, to be authorised either in the current financial year or the next financial year (sub section (3)). If the authorisation is given in the financial year the funding is provided, the Treasurer may also specify the financial year in which the appropriation may be disbursed to the entity (sub section (3)). The amount is taken to be appropriation for the financial year in which appropriation is authorised to be disbursed. The amount is in addition to the appropriation to the entity for that financial year.

This provides a mechanism to efficiently address situations where the new Commonwealth funding is received late in the financial year and either it is not possible to action the instrument by 30 June or the quantum of the appropriation required in relation to the new Commonwealth funding is not identified until the next financial year.

This amendment also provides an efficient, more streamlined process, to address those situations where the new Commonwealth funding is received late in the financial year and even though an instrument authorising the appropriation is able to be actioned in that same financial year, the entity receiving the appropriation is not able to expend the appropriation until the next financial year. This amendment allows the appropriation to be authorised directly to the next financial year rather than requiring a second instrument to roll over the appropriation.

This clause replaces the existing presentation requirements in relation to the direction under section 19B from 'within 3 sitting days after the day the appropriation is authorised' to 'on the next financial statement presentation day' (sub section (5)). This amendment is associated with the changes to section 26 proposed under clause 68.

Clause 49 Amendment of capital injection conditions – Section 19C(1)

This clause corrects references for territory authorities associated with the conditions of capital injection set out in the proposed budgets. This is as a consequence of the consolidation for territory authorities of budget requirements and the statement of intent under clause 97.

Clause 50 Amendment of performance criteria – Section 19D(1)

This clause corrects references for territory authorities to sections associated with the performance criteria set out in a statement included in a proposed budget. This is as a consequence of the consolidation for territory authorities of budget requirements and the statement of intent under clause 97.

Clause 51 Amendment of performance criteria – Section 19D(2)(a)

This clause replaces the words ‘directorate, territory authority or territory-owned corporation’ with the term ‘territory entity’ in Section 19D(2)(a). Refer to clause 9.

Clause 52 Amendment of performance criteria – Section 19D(3)

This clause replaces the words ‘directorate, authority or corporation’ with the term ‘territory entity’ in Section 19D(3). Refer to clause 9.

Clause 53 Amendment of performance criteria – Section 19D(3)(a)

This is a technical amendment and amends the references to the appropriation instruments listed in section 19D(3)(a) consistent with the amendments to those sections. This clause also replaces the words ‘directorate, authority or corporation’ with the words ‘territory entity’. Refer to clause 9.

Clause 54 Amendment of performance criteria – Section 19D(3)(b)

This clause deletes sub section 3(b) associated with the amendment of performance criteria if funds are transferred within appropriation under section 15. This is due to the removal of section 15 under clause 28 given output classes will no longer be relevant in the context of appropriation controls, as discussed under clause 6.

Clause 55 Amendment of performance criteria – Section 19D(3)(c)

This amendment is technical and corrects the reference to the section 16 heading, as discussed under clause 31.

Clause 56 Amendment of performance criteria – Section 19D(3)(d)

This amendment is technical and amends the references to the Treasurer’s advance, consistent with the amendments to those sections, as discussed under clause 47.

Clause 57 Amendment of performance criteria – Section 19D(3)(e)

This amendment is technical and corrects the reference to the section 19B heading, as discussed under clause 48.

Clause 58 Amendment of performance criteria – Section 19D(3)(g)

This clause replaces the term ‘the provision of outputs by’ with the term ‘controlled recurrent payments to be provided to’ and is consistent the change in the term ‘appropriation for the net cost of outputs’ to ‘controlled recurrent payments’, as discussed under clause 6.

Clause 59 Amendment of performance criteria – Section 19D(4)(b)

This clause replaces the words ‘territory authority or’ with the words ‘prescribed’ in section 19D(4)(b) which currently requires that an amendment of the performance criteria must be made in a way that for a territory authority or territory-owned corporation the amended budget will comply with section 12A(2). As a result of this amendment sub section 4(b) relates only to prescribed territory-owned corporations and the requirements for prescribed territory authorities are provided in new sub section 4(c) discussed under clause 60.

This amendment is associated with the splitting of the requirements of existing section 12A (Territory authority and territory-owned corporation budgets) by inserting a new section 12AA that relates specifically to territory authority budgets (clause 16) and making the existing section 12A to relate only to territory-owned corporation budgets (clauses 17 to 20).

Clause 60 Amendment of performance criteria – New Section 19D(4)(c)

This clause inserts a new sub section specifically relating to prescribed territory authorities as discussed under clause 59.

Clause 61 Amendment of performance criteria – Section 19D(6)

This clause replaces the words ‘directorate, territory authority or territory-owned corporation, means the budget for the directorate, territory authority or territory-owned corporation’ with the words ‘territory entity means the budget for the territory entity’, in the definition of the term budget under sub section (6). Refer to clause 9.

Clause 62 Amendment of performance criteria – Section 19D(6)

This amendment is technical and corrects the reference to the section associated with prescribed territory authorities as discussed under clause 97.

Clause 63 Pre-election budget update – Section 20C

This clause changes the responsibility for the pre-election budget update in section 20C from the ‘director-general’ to the ‘under treasurer’. Given the nature of this document it is considered more appropriate for the under treasurer to issue the pre-election budget update, rather than the director-general, when administrative structures are such that these two roles are different positions. Although the function can be delegated, it is preferable for the Act to be amended to align the legal responsibility to the position undertaking the task.

The director-general position is provided for in the *Public Sector Management Act 1994* (sections 14 and 27). The Under Treasurer's position however is not currently established under that Act or the FMA. This clause therefore requires a consequential amendment to the dictionary to establish the position of the under treasurer.

Clause 64 Annual financial statements of the Territory – Section 22(1)

This clause changes the responsibility to prepare annual financial statements for the territory in section 22(1) from the 'treasurer' to the 'under treasurer'. The amendment is associated with the amendment to have the Territory's annual financial statements certified by the treasurer only once - after the audit has been finalised and any necessary changes are made and just prior to the signing of the report by the auditor-general, as discussed under clause 65. Given this change, as the financial statements don't need to be certified by the treasurer at the time of their provision to the auditor-general, it is more efficient to have the under treasurer prepare and provide the statements.

Clause 65 Responsibility for annual financial statements of the Territory – Section 23

This clause amends the existing provisions under section 23 associated with the statement of responsibility for the Territory's annual financial statements.

The amendment requires the statement of responsibility to include a statement signed by the under treasurer, rather than the director-general. Given the nature of this document it is considered more appropriate for the under treasurer to sign the statement, rather than the director-general, when administrative structures are such that these two roles are different positions. Although the function can be delegated, it is preferable for the Act to be amended to align the legal responsibility to the position undertaking the task.

The amendment also allows the statement of responsibility to be signed anytime before the audit opinion is provided by the auditor-general, rather than at the time of provision of the financial statements to the auditor-general, as often the financial information in these financial statements needs to be re-visited during the course of the audit. This currently requires the statements to be re-certified prior to the signing of the report by the auditor-general. It is better practice to certify the Territory's annual financial statements only once, after the audit has been finalised and any necessary changes are made, and just prior to the signing of the report by the auditor-general.

To ensure that the Treasurer is still informed of the financial performance of the Territory, administrative procedures will be put in place such that the financial statements are still provided to the Treasurer once they have been prepared for his information and scrutiny.

Clause 66 Audit of annual financial statements – Section 24(1) and 24(2)

This clause amends the existing provisions under sections 24(1) and 24(2) associated with the timing of the provision of the Territory’s financial statements to the auditor-general and the subsequent provision of the audit opinion.

Under the existing provisions, the Treasurer must give the auditor-general the annual financial statements of the Territory within 3 months after the end of the financial year and the auditor-general must, within 30 days after the auditor-general receives the annual financial statements, give the Treasurer an audit opinion. However, the financial statements are often revised during the course of the audit and the current wording of the section does not adequately provide for this circumstance.

As a result, the amendment requires the under treasurer to give the auditor-general the annual financial statements of the Territory for a financial year in sufficient time for the auditor-general to give an audit opinion about the statements. The auditor-general is required to give the Treasurer an audit opinion about the statements within 4 months after the end of the financial year. This is a similar principle to that used during an election year under section 24(3), albeit with different timing.

In an election year financial statements must be provided in sufficient time for the auditor-general to give an audit opinion within three months. The timing for an election year remains unchanged.

This clause requires the under treasurer, rather than the Treasurer, to provide the Territory’s annual financial to the auditor-general. This change in responsibility is as a consequence of clauses 64 and 65. The auditor-general will continue to provide the audit opinion on the Territory’s annual financial statements to the Treasurer.

Clause 67 Audit of annual financial statement – Section 24(3)(a)

This clause amends section 24(3)(a) to require the under treasurer, rather than the Treasurer, to provide the Territory’s annual financial statements to the auditor-general in an election year. This amendment is associated with the amendments discussed under clauses 64 and 65. The use of the word ‘Treasurer’ in sub section 3(b) is unaffected by the amendments under this clause and the auditor-general will continue to provide the audit opinion on the Territory’s annual financial statements to the Treasurer.

Clause 68 Periodic financial statements – Section 26(2)

This clause inserts a new provision under sub section (2) to replace the existing presentation requirement (within 3 sitting days) for non-disallowable appropriation instruments. The amendment requires territory periodic financial statements to include a summary of all the appropriation instruments authorised during the quarter, along with individual instruments.

The amendment replaces the existing presentation process that results in disjointed, as required provision of individual instruments to the Assembly throughout the year, with a more integrated and coordinated process of scheduled quarterly reporting. As well as being administratively more efficient, this amendment enhances transparency by providing Assembly members a quarterly summary of appropriation instruments. As the Government follows an administrative practice of making the financial statements available on a website, this will make the instruments readily available to the public as well.

This change will only apply to appropriation instruments under Part 2 of the Act which are not disallowable instruments. The provision will also not capture any other statements or reports prescribed in Part 2 of the Act, including notifiable instruments required under section 19D.

Clause 69 Responsibility for annual financial statements of directorates – Section 28

This clause amends the existing provisions of section 28 to allow for the statement of responsibility to be signed by the director-general anytime before the audit opinion is provided by the auditor-general.

Sometimes financial statements provided by directorates to the auditor-general need to be revised during the course of the audit. This then requires the statements to be re-certified by the director-general prior to the signing of the audit report by the auditor-general. It is better practice for the annual financial statements to be certified by the relevant director-general only once, after the audit has been finalised and any necessary changes are made, and just prior to the signing of the report by the auditor-general.

Processes will be implemented to ensure that there is no loss of quality in the financial statements being provided to the auditor-general. Audit committees will continue to scrutinise the statements and Directors-general will review the financial statements prior to provision to the auditor-general.

Clause 70 Audit of financial statements of directorates – Section 29(2)

This clause deletes section 29(2) to remove the requirement for the financial statements of directorates to have endorsed on them, or attached to them, the statement of responsibility at the time of their provision to the auditor-general. This amendment is associated with the amendment to section 28 under clause 69.

Clause 71 Statement of performance of directorates– Section 30A(1)

This clause amends section 30A(1) by inserting the words ‘set out in the directorate’s budget for the financial year’ to clarify that the directorate’s statement of performance, which must be prepared after the end of each financial year, is in relation to the classes of outputs specified in the directorate’s budget.

Clause 72 Responsibility for directorate statements of performance – Section 30B

This clause allows for the statement of responsibility signed by the director-general to be able to be provided anytime before the audit opinion is provided by the auditor-general.

Similar to the amendments to section 28 associated with the statement of responsibility for annual financial statements discussed under clause 69, it is better practice to have the statements of performance certified by the relevant director-general only once, just prior to the signing of the report by the auditor-general.

Clause 73 Scrutiny of directorate statements of performance – Section 30C(2)

This clause deletes section 30C(2) to remove the requirement for the statements of performance of directorates to have endorsed on them, or attached to them, the statement of responsibility at the time of their provision to the auditor-general.

This amendment is associated with the changes proposed in section 30B discussed under clause 72, for the statement of responsibility to be certified by the relevant director-general only once, just prior to the signing of the report by the auditor-general.

Clause 74 Half-yearly directorate performance reports – Section 30E(1)

This clause amends the existing provisions of section 30E(1) by replacing the timing for the provision of the half yearly directorate performance reports from within ‘30 days’ to within ‘45 days’ after 31 December in each financial year. The current timing is administratively onerous due to the holiday period and changing the requirement to ‘45 days’ aligns with the provision of the Territory’s period financial statements.

This amendment also clarifies that the report is to be provided to the Assembly members within the 45 days, as some entities consider the current wording of the section unclear.

Clause 75 Half-yearly directorate performance reports – Section 30E(3) and 30E(4)

This clause amends the existing provisions of section 30E by replacing the timing for the provision of the half yearly directorate performance reports from within ‘30 days’ to within ‘45 days’ after 31 December in each financial year. It also aims to clarify that the report is to be provided to the Assembly members within the 45 days.

This amendment is associated with the changes proposed to the timing for the provision of the half yearly directorate performance reports, discussed under clause 74.

Clause 76 Capital works report of the Territory – New Division 3.3

This clause inserts a new section requiring the Treasurer to prepare at least once every 6 months a capital works report. The report is to be presented within 60 days after the end of the period to which it relates.

While the Government currently presents a capital works report to the Assembly, there is no requirement under the Act for this to occur. This amendment strengthens the accountability requirements of the Act by legislating the requirement to provide a report on capital works performance. This requirement recognises the importance of capital works in the financial management of the Territory.

The new section specifies that the report must be provided at least once every six months, thus providing the Government the option to report more frequently if it considers it is warranted, given the size and breadth of the capital works program.

The new section specifies what detail is to be included in the report and includes progress, budget and expenditure information at Territory, entity and major project levels. Due to capital works terminology evolving over time, the types of capital works to be included in the report will be specified by regulation. This allows the terminology to be updated as required.

The term ‘expenditure’ in the section includes expenditure funded by capital injection appropriation and feasibility expenditure funded by controlled recurrent payment appropriation. This definition is in line with the contents of the existing capital works report and allows the report to focus on appropriation funded capital works, excluding the associated recurrent expenditure.

This clause further allows for the issue of regulations to prescribe ‘major capital works projects’ for the purpose of inclusion in the report. This provides the Government the required flexibility to specify which major capital works of the current program are to be included in the report, taking into consideration the specifics and breadth of the capital works program at any given time.

Clause 77 Responsibilities of directors-general of directorates – Section 31(1)

This clause amends section 31(1) to change the existing responsibilities of directors-general from the ‘financial management of the directorate’ to the ‘financial management of the public resources for which the directorate is responsible’. This amendment is to provide appropriate emphasis that the resources a director-general is managing are public resources.

This amendment is part of a suit of amendments to director-general responsibilities to modernise their responsibilities beyond the efficient and effective financial management of

their directorate to recognise their wider responsibilities to produce required outputs and to operate effectively as part of one government.

Clause 78 Responsibilities of directors-general of directorates – New Section 31(1A) and (1B)

This clause inserts new sub section (1A) to expand the existing responsibilities of directors-general. This amendment places responsibility on directors-general beyond just efficient and effective financial management. It recognises the wider responsibilities of directors-general to use their financial resources to promote the achievement of their directorate's purpose, to take into consideration the longer-term financial sustainability of their directorate when making decisions and to manage their directorate in a way not inconsistent with the policies of the Government.

Further, it also specifies in new sub section (1B) that when performing their responsibilities under sub sections (1) and (1A), the directors-general should take into account the effect of their decisions on the Territory's resources generally. This requires directors-general to consider the impact of their decisions from a whole-of-government perspective, not just from the perspective of their directorate in isolation.

Clause 79 Responsibilities of directors-general of directorates – Sections 31(2)

This clause incorporates reference to the new sub sections (1A) and (1B) discussed under clause 78, into section 31(2) which lists the responsibilities of the directors-general to the responsible minister.

Clause 80 Responsibilities of directors-general of directorates – New Section 31(4) – definition for public property and public resources

This clause inserts definitions for the terms 'public property' and 'public resources'. 'Public resources' means public money or public property. 'Public property' means all property, other than public money, that is owned or held by the Territory or held by a person for or on behalf of the Territory. 'Public money' is defined in the dictionary of the Act.

Clause 81 Directors-general may enter into contracts etc – New Section 31A

This clause inserts a new section to provide directors-general the specific power to enter into and vary a contract or memorandum of understanding relating to the operations of the directorate. The dictionary includes an amended definition of the term 'contract' to include an agreement or arrangement, whether or not its term extends for 1 or more years (refer clause 114) and a new definition of the term 'memorandum of understanding' to include a memorandum of understanding, whether or not its term extends for 1 or more years (refer clause 115). Directors-general may only exercise this power consistent with their responsibilities listed in section 31 and any requirements that may be prescribed by any regulations.

This amendment clarifies the ability of directors-general to enter into contracts, particularly multi-year contracts, given these contracts involve a commitment to pay public funds beyond the single year of appropriation which has been authorised by the Assembly. Funding requirements in future years are included in the forward estimates (and sometimes beyond) but are not yet appropriated to the directorate. Some procurement necessitates the entering into such contracts either due to the nature of the procurement such as capital works, value for money reasons or administrative efficiency. This amendment recognises the need to enter into multi-year contracts but provides this power in a risk managed way. The inclusion of new sections 31(1A) and (1B) assist in providing the necessary principles surrounding the use of contracts and memorandums of understanding, particularly when they span multi-years.

This new section only permits the commitment of public money. An appropriation will still be required before any payments can be made under the contract or memorandum of understanding.

Clause 82 Transfer following a change in directorate responsibilities – Section 36(2)

This clause deletes sub section (2) which requires the Treasurer to consult with the responsible Minister prior to transferring money between accounts. Although the Treasurer will consult with the relevant Minister prior to issuing the direction, it is considered that this is an administrative process and is not required to be specified in the Act.

This amendment also addresses technical issues which have arisen in the past about identifying the responsible Minister for the purpose of this section, when the money transfer in question relates to a function subject to a change in administrative arrangements and / or when there has been a change in Minister. Further, this change provides consistency with similar sections, such as section 34A in relation to transfers of directorate banking accounts, which do not include the same requirement.

Clause 83 Transfers from directorate banking accounts to territory banking account – Section 36A

This clause replaces the term ‘Executive’s’ with the term ‘Treasurer’s’ in section 36A. This amendment allows the Treasurer, rather than the Executive, to approve instruments associated with transfers from directorate bank accounts to the territory banking account, if in the Treasurer’s opinion this is desirable for the management of public money of the Territory.

This amendment addresses the current inconsistency in the requirement for the Executive to sign some instruments, when the Treasurer alone can authorise other instruments. A similar amendment was made in clause 26.

It is noted that the following sections are not being amended and will continue to require approval of two ministers:

- a. section 19D requiring the responsible Minister and Treasurer to approve amendment of performance criteria, as accountability indicators are the responsibility of the responsible Minister; and
- b. section 134 requiring the Executive to approve any regulations under the Act, as this is standard practice in other Territory legislation.

Clause 84 Transfers from directorate banking accounts to territory banking account – Section 36A

This clause replaces the term ‘Executive’ with the term ‘Treasurer’ in section 36A and is associated with the amendment discussed under clause 83.

Clause 85 Payments from territory banking account –Section 37(1)

This clause amends section 37(1) by substituting the words ‘directorate banking account, a territory authority banking account or a territory-owned corporation banking account’ with the words ‘banking account of a territory entity’. Refer to clause 9.

Clause 86 Payments from territory banking account – New Section 37(4)

This clause allows the territory banking account to repay excess amounts paid into its account by a directorate, territory authority or a territory-owned corporation. As the funds have been previously appropriated and are not ‘new monies’ an additional appropriation is unnecessary. These repayments will not require an authorisation from the Treasurer as this is an administrative process.

Clause 87 Payments into territory banking account – New Section 37A

This clause explicitly allows a territory entity to repay into the territory banking account an appropriation amount or part of an appropriation amount, paid in excess from the territory banking account into its banking account. If a repayment occurs, the appropriation from which the payment was made is taken to be restored by the amount of appropriation repaid, and the balance of the appropriation (including the repaid amount) will be available for future payments from the territory banking account. As this is an administrative in nature these repayments will not require an authorisation from the Treasurer.

This amendment promotes efficient cash management as it allows the return of appropriation to the territory banking account hence enabling the territory to better manage its cash and maximise its investment returns. As these returns relate to the timing of the cash needs of a territory entity, the provision expressly provides for the returned appropriation to be provided to the entity at a later date when it is required.

Clause 88 Responsibilities of chief executive officers of territory authorities – Section 55(2)

This clause amends section 55(2) to expand the existing responsibilities of chief executive officers of territory authorities from the ‘financial management of the authority’ to the ‘financial management of the resources for which the authority is responsible’. This amendment is to provide appropriate emphasis on the resources the chief executive is managing.

This amendment is part of a suit of amendments to chief executive responsibilities to modernise their responsibilities beyond the efficient and effective financial management to recognise their wider responsibilities. This amendment is similar to the changes to director-general responsibilities in section 31, as discussed in clause 77.

Clause 89 Responsibilities of chief executive officers of territory authorities – New Section 55(2A)

This clause inserts a new section to further expand the responsibilities of chief executive officers under sections 55. This new section recognises the wider responsibilities of chief executives to use their financial resources to promote the achievement of their authority’s purpose as contained in its legislation and to take into consideration the longer-term financial sustainability of their authority when making decisions.

This wording is different to the amendments to section 31 associated with the expansion of responsibilities of directors-general (discussed under clause 78), to take into consideration the independence, separate funding sources and enacting legislation of territory authorities.

Clause 90 Responsibilities of chief executive officers of territory authorities – Section 55(3)

This clause incorporates reference to the new sub section 2A discussed under clause 89, into section 55(3) which lists the responsibilities of a chief executive officer of a territory authority to the responsible minister.

Clause 91 Responsibilities of chief executive officers of territory authorities – New Section 55(5)

This clause inserts definitions of the terms ‘property’ and ‘resources’. Property means property other than money that is owned or held by the territory authority or held by a person behalf of the authority and resources means money or property.

Clause 92 Responsibilities of governing boards of territory authorities – Section 56(2)

This clause amends section 56(2) to expand the existing responsibilities of governing boards of territory authorities from the ‘financial management of the authority’ to the ‘financial management of the resources for which the authority is responsible’. This amendment is to provide appropriate emphasis on the resources the governing board is managing.

This amendment is consistent with the expansion of existing responsibilities of chief executive officers of territory authorities under section 55(2), as discussed under clause 88.

Clause 93 Responsibilities of governing boards of territory authorities – Section 56(2A)

This clause inserts a new section to further expand the responsibilities of governing boards under sections 56, such that they manage the authority in a way that promotes the achievement of the purpose of the authority and promotes the financial sustainability of the authority.

This wording is consistent with the amendments to section 55 associated with the expansion of responsibilities of chief executive officers of territory authorities (discussed under clause 89).

Clause 94 Responsibilities of governing boards of territory authorities – Section 56(3)

This clause incorporates reference to the new sub section 2A discussed under clause 93, in section 56(3) which lists the responsibilities of the governing board of a territory authority to the responsible minister.

Clause 95 Responsibilities of governing boards of territory authorities – Section 56(5)

This clause inserts definitions of the terms ‘property’ and ‘resources’. Property means property other than money that is owned or held by the territory authority or held by a person behalf of the authority and resources means money or property.

These definitions are consistent with the definitions inserted under section 55(5) associated with the responsibilities of chief executives of territory authorities (refer clause 91).

Clause 96 Territory authority statements of intent – New Section 61(4)(aa)

This clause incorporates the existing requirements of section 12A(2) into section 61(4)(aa) and requires that the statement of intent of a territory authority be in a form that facilitates a comparison between—

- the proposed statement of intent for the authority; and
- the statement of intent for the authority for the previous financial year; and
- the estimated results for the authority for the previous financial year.

This amendment is associated with providing a single more streamlined budget document for territory authorities that removes the duplication that currently exists between authority budget statements and the statement of intent, as discussed in clause 16.

Clause 97 Territory authority statements of intent – Section 61(5)

This clause replaces the existing provisions of section 61(5) associated with the information required to be included in a statement of intent.

This clause inserts the requirement associated with budget estimates for each of the next 3 financial years from the existing section 12A(3) and the existing provisions under section 12A(1)(c) associated with capital injections and requirements attached to the injection, into section 61(5). The sub section has then been reordered into a logical sequence.

The current provisions of section 61(5)(d) and (e) associated with the performance criteria and the assessment of the performance of the authority have been moved to new section 61(5B).

This clause also inserts a new section 61(5A) for the performance criteria of the statement of intent for a prescribed territory authority. This new section contains the existing requirements in s12A(1)(b) that are being moved into the statement of intent, as well as a new requirement associated with appropriation and expense information for outputs and classes of outputs. This additional requirement is in relation to the removal of the list of output class names from the Appropriation Act, as discussed under clause 6, and is consistent with the amendment to section 12(1)(b) requiring directorate budgets to include appropriation and expense information associated with each class of outputs, as discussed under clause 15.

Further, for prescribed territory authorities, this clause removes the requirement associated with performance criteria for each of the next 3 financial years and requires this information for the budget financial year only. This is due to prescribed territory authorities receiving the majority of their funding in the form of appropriation and hence aligns with directorate performance requirements.

This clause inserts another new section 61(5B) to list the existing requirements for the statement of intent for a territory authority that is not a prescribed territory authority. These are the current sections 61(5)(d) and (e) as discussed above. Territory authorities that are not prescribed authorities will continue to provide performance criteria for the budget financial year and each of the next three financial years.

The above changes are associated with combining the content requirements for the Budget Papers for territory authorities (refer new section 12AA, discussed under clause 16) and statements of intent for territory authorities in section 61.

Clause 98 Presentation of statements of intent of territory authorities – New Section 62(1A)

This clause inserts a new section to specify that section 62 only applies to territory authorities whose statement of intent is not presented as part of the Budget Papers under section 10(c). Effectively these are the authorities that are not consolidated into the whole of government budget and as such not presented as part of the Budget Papers.

For those territory authorities that are consolidated into the whole of government budget, the statement of intent is presented as part of the budget papers as per section 10(c) and section 12AA, as discussed in clause 16.

Clause 99 Annual financial statements of territory authorities – Section 63(3)(b)

This is a technical amendment and corrects references to sections relevant to territory authority budgets under section 63(3)(b), associated with the reporting of changes to the conditions of a capital injection that are to be included in the annual financial statements of territory authorities. The reference changes are consequential to the amendments proposed under clause 97.

Clause 100 Responsibility for annual financial statements of territory authorities – Section 64 (1) and (2)

This clause amends the existing provisions of section 64 to allow for the statement of responsibility signed by the relevant person (chief executive officer/ chair of the governing board) for the territory authority, to be able to be provided anytime before the audit opinion is provided by the auditor-general.

This amendment is consistent with the amendment to section 28 associated with the responsibility for annual financial statements of directorates, discussed under clause 69. It is better practice to certify the annual financial statements by the relevant person only once, after the audit has been finalised and any changes made, and just prior to the signing of the report by the auditor-general.

Clause 101 Audit of annual financial statements of territory authorities – Section 65(2)

This clause deletes section 65(2) to remove the requirement for the financial statements of territory authorities to have endorsed on them, or attached to them, the statement of responsibility at the time of their provision to the auditor-general. This change is in line with the amendment to section 64 under clause 100. This is also consistent with the amendment to section 29 associated with the audit of financial statements of directorates, discussed under clause 70.

Clause 102 Statement of performance of territory authorities – Section 68(2)

This clause clarifies that the provisions of this sub section only relate to territory authorities that are not prescribed. The section specifies that the statement of performance must assess the performance of the territory authority by reference to the performance criteria and other measures included in the statement of intent under section 61(5B) (rather than existing section 61(5)(d)).

The statement of performance requirements for prescribed territory authorities are contained in a different sub section – section 68(3). This amendment removes the

duplication of performance reporting that currently exists for prescribed territory authorities and aligns their reporting with the new streamlined statements of performance requirements in section 61.

Clause 103 Statement of performance of territory authorities – Section 68(3)

This clause clarifies that section 68(2) is no longer relevant to prescribed territory authorities, as discussed under clause 102. The section also specifies that the statement of performance must assess the performance of the prescribed territory authority by reference to the authority's budget.

Clause 104 Statement of performance of territory authorities – Section 68(4)

This clause corrects the section reference for territory authority budgets from section 12A(1)(b) to section 61(5A) in the definition for 'prescribed territory authority'. This is consequential to the amendments proposed under clauses 17 to 20 and clause 97.

Clause 105 Responsibility for territory authority statements of performance – Section 69 (1) and (2)

This clause amends the existing provisions of section 69 to allow for the statement of responsibility signed by the relevant person (chief executive officer/ chair of the governing board) for the territory authority to be able to be provided anytime before the report is provided by the auditor-general.

This amendment is consistent with the amendment to section 30B associated with the responsibility for the statement of performance of directorates (discussed under clause 72) and the amendment to section 64 associated with the responsibility for annual financial statements of territory authorities (discussed under clause 100).

Clause 106 Scrutiny of territory authority statements of performance – Section 70(2)

This clause deletes section 70(2) to remove the requirement for the statements of performance of territory authorities to have endorsed on them, or attached to them, the statement of responsibility at the time of their provision to the auditor-general, in line with the amendment to section 69 discussed under clause 105.

This amendment is consistent with the amendment to section 30C(2) associated with the scrutiny of directorate statements of performance (refer clause 73) and amendment to section 65(2) associated with the audit of annual financial statements of territory authorities (refer clause 101).

Clause 107 Act of grace payments – Section 130 (1)

This clause inserts the words 'or territory authority' after the word 'directorate' in section 130(1). This allows section 130(1) to apply to directorates and territory authorities, rather

than only directorates. This amendment will allow the most appropriate entity to make authorised act of grace payments.

Clause 108 Act of grace payments – Section 130 (6)

This amendment addresses the existing lack of clarity about which sub section should be used when the payment is funded from the existing resources of the entity and when it is funded from additional appropriation provided to the entity. Where additional appropriation is to be provided to make the payment, it also explicitly states that the amount needs to be appropriated to the most relevant entity to make the payment. No act of grace payment should be made directly from the territory banking account.

This clause clarifies the provisions associated with act of grace payments as follows:

- a. sub section 6(a) –this section applies when entities fund act of grace payments from their existing appropriation.
- b. sub section 6(b) –this section applies when entities fund act of grace payments from additional appropriation as specified by the Treasurer under section 18 associated with the Treasurer’s Advance.
- c. sub section 6(c) –this section applies when entities fund act of grace payments from additional funding received out of public money, with the amount appropriated to the most relevant entity to make the payment.

Clause 109 Act of grace payments – Section 130 (8)

This clause specifies that section 130(8) applies to directorates and territory authorities, rather than only directorates. This amendment is associated with clause 107.

Clause 110 Guideline making power – Section 133(1) – New note

This clause inserts a new note under section 133 specifying that financial management guidelines are able to be made in relation to any matter that is required or permitted to be prescribed by the Act, or is necessary or convenient to be prescribed for carrying out or giving effect to the Act. The note is a reminder of the powers under section 44 of the *Legislation Act 2001* that allows the Treasurer to make guidelines under any section of the Act whether or not explicitly provided in that section.

Clause 111 Dictionary, Note 2

This is a technical amendment and inserts the term ‘treasurer’ on the list of terms defined in the *Legislation Act 2001*, dict, pt 1.

Clause 112 Dictionary, definition of capital injection

This clause amends the definition of the term ‘capital injection’ to replace the words ‘directorate, authority or corporation’ with ‘territory entity’. A new definition of the term ‘territory entity’ has been inserted in the dictionary (refer clause 115).

Clause 113 Dictionary, definition of class of outputs

This clause amends the existing definition of the term ‘class of outputs’ in the dictionary by removing the reference to the Appropriation Act. This amendment is associated with the removal of the schedule listing output class names in the Appropriation Act, discussed under clause 6.

Clause 114 Dictionary, definition of contract

This clause amends the existing definition of the term ‘contract’ in the dictionary by inserting the words ‘whether or not its term extends for 1 or more years’. This amendment is associated with providing directors-general the specific power to enter into and vary a contract, particularly multi-year contracts, as discussed under clause 81.

Clause 115 Dictionary, new definitions

This clause inserts the following new definitions in the dictionary:

Controlled recurrent payment - to mean an amount provided or to be provided to a territory entity for the delivery of goods and services by the territory entity or a person providing goods or services on behalf of the entity. This definition aims to include all the expenses funded from the appropriation for controlled recurrent payments that are reflected in the Controlled Operating Statement of the entity.

This amendment is associated with the change in the term ‘appropriation for the net cost of outputs’ to ‘controlled recurrent payments’, as discussed under clause 6.

Memorandum of understanding – to include a memorandum of understanding whether or not its term extends for 1 or more years. This amendment is associated with providing directors-general the specific power to enter into and vary a memorandum, particularly multi-year memorandums, as discussed under clause 81. This definition is also associated with the amendment to the definition of the term ‘contract’ as discussed under clause 114.

Territory entity - to mean a directorate, territory authority or territory-owned corporation. This definition is to assist with simplifying the Act and to improve readability.

Treasurer’s advance – to refer to section 18 of the Act.

The amendments to the sections associated with the Treasurer’s advance are discussed under clause 47.

Under Treasurer – to mean the person performing the duties of the under treasurer in the public service. This definition establishes the position of the ‘under treasurer’ in the Act and is associated with the change in the responsibility for the pre-election budget update in section 20C (refer clause 63), the annual financial statements of the Territory in section 22

(refer clause 64) and the statement of responsibility for the Territory's financial statements in section 23 (refer clause 65).

**Clause 116 Repeal – Financial Management (Treasurer's Advance) Guidelines 2005
(DI2005-274)**

This clause repeals the financial management guidelines that provide the meaning of 'urgent need for expenditure' as used in current section 18 associated with the Treasurer's Advance. This clause is associated with the removal of the existing requirement associated with 'urgent need for expenditure' and the consolidation of all requirements for Treasurer's Advance within section 18, as discussed under clause 47.

Schedule 1 : Consequential Amendments

Part 1.1 *Administrative Decisions (Judicial Review) Act 1989*

Clause 1.1 to 1.2 **Schedule 2, section 2.3(b) and new section 2.3(b)(ia)**

These are technical amendments to incorporate references to new section 7A associated with temporary advances during the supply period (clause 5) and new section 18B associated with the reduction of the Treasurer's advance, as discussed under clause 47. The amendment is in two clauses to cater for the later commencement of section 7A on 1 July 2016.

Part 1.2 *Financial Management Act 1996*

Clause 1.3 to 1.6 **Various**

These clauses update appropriation for the provision of outputs terminology to controlled recurrent payments, effective 1 July 2016, in line with the appropriation terminology change to section 8 (clause 6) which is effective on this date.

Clause 1.7 to 1.8 **Various**

These clauses update sections 18C(2)(b) and 19D(3)(d) to refer to new section 7A that commences 1 July 2016.

Clause 1.9 **Section 26(2), note**

This clause amends the note in s26 which lists the relevant instrument sections which may be attached to the period financial statements. The amendment is to include section 7A which takes effect on 1 July 2016, later than the other sections listed.

Part 1.3 *University of Canberra Act 1989*

Clause 1.10 **Application of Financial Management Act, pt 6 and pt 8 - Section 35**

This clause amends the heading of the section to include reference to part 10 of the Act and is associated with the exception to section 130 associated with act of grace payments under the *Financial Management Act 1996* (FMA).

Clause 1.11 **Application of Financial Management Act, pt 6 and pt 8 – New Section 35(3)**

This clause inserts a new section 35(3) that specifies that part 10 of the FMA associated with miscellaneous provisions applies to the University of Canberra with the exception to section 130 associated with act of grace payments. This is because the University of Canberra does not undertake functions that are appropriate for act of grace payments as contemplated by that section (for instance, it does not make decisions, take actions or administer regulatory legislation on behalf of the ACT government).

Clause 1.12 Schedule 1, modification 1.1, section 56(2)

This clause amends section 56 to expand the existing responsibilities of the governing board of the University of Canberra from the ‘financial management of the authority’ to the ‘financial management of the resources for which the authority is responsible’. This amendment is consistent with the proposed expansion of existing responsibilities of governing boards of territory authorities under section 56 of the FMA, discussed under clause 92.

Clause 1.13 Schedule 1, modification 1.1, new section 56(2A)

This clause inserts a new section to further expand the responsibilities of the governing board of the University of Canberra under sections 56, such that they manage the authority in a way that promotes the achievement of the purpose of the authority and promotes the financial sustainability of the authority. This wording is consistent with the proposed expansion of existing responsibilities of governing boards of territory authorities under section 56 of the FMA, discussed under clause 93.

Clause 1.14 Schedule 1, modification 1.1, section 56(3)

This clause incorporates reference to the new sub section 2A discussed under clause 1.10, in section 56(3) which lists the responsibilities of the governing board of the University of Canberra to the responsible minister. This is consistent with the changes under section 56 of the FMA, discussed under clause 94.

Clause 1.15 Schedule 1, modification 1.1, new section 56(4)

This clause inserts definitions of the terms property and resources under section 56(4). Property means property other than money that is owned or held by the territory authority or held by a person behalf of the authority, and resources means money or property. These definitions are consistent with the definitions inserted under section 56(5) associated with responsibilities of governing boards of territory authorities, in the FMA, discussed under clause 95.

Clause 1.16 Schedule 1, modification 1.7, section 65(2)

This clause removes section 65(2) requiring the signed statement of responsibility to be attached to the annual financial statements of the University of Canberra at the time of their provision to the auditor-general. This is consistent with clause 101.