

2021

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

FINANCIAL MANAGEMENT AMENDMENT BILL 2021

**EXPLANATORY STATEMENT
and
HUMAN RIGHTS COMPATIBILITY STATEMENT
(*Human Rights Act 2004, s 37*)**

**Presented by
Andrew Barr
Treasurer**

FINANCIAL MANAGEMENT AMENDMENT BILL 2021

The *Financial Management Amendment Bill 2021* is not a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

This explanatory statement relates to the *Financial Management Amendment Bill 2021* (the Bill) as presented to the ACT Legislative Assembly.

It has been prepared to assist the reader of the Bill. It does not form part of the Bill and has not been endorsed by the Assembly and is to be read in conjunction with the Bill.

BACKGROUND

The *Appropriation Bill 2021-2022* and *Appropriation (Office of the Legislative Assembly) Bill 2021-2022* (2021-22 appropriation bills) and 2021-22 Budget and were due to be introduced into the Legislative Assembly on 31 August 2021. Following a COVID-19 positive case identified in the Territory, on 12 August 2021, the Chief Health Officer introduced lockdown restrictions which were publicly announced by the Chief Minister. The Chief Minister and Minister for Health jointly announced a public health measure requiring the ACT to enter lockdown restrictions which are currently in place until midnight on 17 September 2021.

The Government will present an Assembly Motion in the Legislative Assembly on 16 September 2021 to seek agreement to delay the introduction of the 2021-22 Budget and 2021-22 appropriation bills until 6 October 2021. Due to the delayed 2021-22 Budget, the Assembly Motion will also seek to delay the presentation of the 2021-22 Budget Review.

OVERVIEW OF THE BILL

In light of the delay to the 2021-22 Budget, it is critical to ensure the ongoing operations of Government. The *Financial Management Act 1996* currently limits the amount of funding available during the supply period to 50 per cent of the amount appropriated by Appropriation Acts for the immediately previous financial year.

This amount is sufficient in normal years where the supply period is two to three months. Given the delay of the 2021-22 Budget and 2021-22 appropriation bills, the supply period is anticipated to be approximately six to seven months, and the normal supply period funding is therefore insufficient to ensure the ongoing operations of Government in 2021-22.

Similarly, the amount available for Treasurer's advance in 2021-22 is currently limited to 1 per cent of the total amount appropriated by all appropriation acts for 2021-22.

In response to the COVID-19 pandemic, in June 2020 the FMA was amended to allow Treasurer's advance funding of 5 per cent of total appropriations in 2019-20 and 2020-21.

In light of the current circumstances, a similar increase in 2021-22 is proposed. The proposed increase in Treasurer's advance funding for 2021-22 reflects the heightened risks and uncertainties associated with the current health and economic situations.

This year there will be a delay in the Under Treasurer providing the Auditor-General the 2020-21 consolidated annual financial statements of the Territory due to the overlap of the revised budget and standard annual consolidated financial statement processes. This would result in the Auditor-General being unable to provide the audit opinion on the 2020-21 annual financial statements of the Territory to the Treasurer within four months of the end of the financial year, as required under section 24(3) of the FMA.

As a result, the Bill proposes the following amendments:

- for the 2021-22 financial year, the payments made under [section 7(1)(c)] for any purpose must not exceed, in total, 75% of the amount appropriated by Appropriation Acts for the 2020-21 financial year for that purpose; and
- for the 2021-2022 financial year, to increase the amount that may be appropriated for Treasurer's advances [section 18(2)(a)] to 5 per cent of the total amount appropriated by all Appropriation Acts for the year; and
- to extend the timeframes for the 2020-21 annual financial statements of the Territory by one month [section 24(3A)] such that the Under Treasurer must give the Auditor-General the annual financial statements for the Territory for the 2020-21 year in sufficient time for the Auditor-General to give an audit opinion about the statements within 5 months after the end of the financial year.

The financial amendments are time-limited and required in response to the COVID-19 pandemic.

Other requirements relating to payments during the 2021-22 supply period and use of Treasurer's advance funding remain in place. This includes that on the commencement of the first Appropriation Act for 2021-22, the authority for the Treasurer to make payments under section 7(1)(c) ceases and all payments made under 7(1)(c) are taken for all purposes to have been paid out of money appropriated by that Act.

It also includes that the Treasurer can only authorise payments from the Treasurer's advance in accordance with the requirements outlined in section 18 of the FMA and the requirement under section 18C for the Treasurer to tell the Legislative Assembly about any authorisations given.

The one-month extension of timeframes for the 2020-21 consolidated annual financial statements of the Territory is required due to operational constraints arising from the

overlap of revised budget and audit process timeframes and will not affect the information contained in the audited financial statements.

CONSULTATION ON THE PROPOSED APPROACH

The Bill arises following consultation with the Chief Minister's Office, the Auditor-General's Office and on advice from the Government Solicitor's Office.

CONSISTENCY WITH HUMAN RIGHTS

This Bill does not engage human rights under the *Human Rights Act 2004*.

The financial amendments seek to increase the payments that can be made during the 2021-22 supply period to ensure the ongoing operations of Government and to increase the amount available for Treasurer's advance payments in response to heightened risks and uncertainties associated with the current health and economic situations.

The one-month extension of timeframes for the 2020-21 consolidated annual financial statements of the Territory is required due to operational constraints arising from the overlap of revised budget and audit process timeframes.

This Bill engages neither the rights in the *Human Rights Act 2004* nor the rights under the *Financial Management Act 1996*.

Financial Management Amendment Bill 2021

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the ***Financial Management Amendment Bill 2021***. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly **is** consistent with the *Human Rights Act 2004*.

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Shane Rattenbury MLA
Attorney-General

CLAUSE NOTES

Clause 1 Name of Act

This clause names the Act as the *Financial Management Amendment Act 2021*.

Clause 2 Commencement

This clause provides for the commencement of the Act. The Act commences on the day after its notification day.

Clause 3 Legislation amended

This clause provides that the Act amends the *Financial Management Act 1996*.

Clause 4 Payments authorised on lapse of appropriation

Section 7(1)(c)

This clause replaces current section 7(1)(c) to increase the payments that can be made during the 2021-22 supply period:

(c) for the 2021-22 financial year—the payments made under this section for any purpose must not exceed, in total, 75 per cent of the amount appropriated by Appropriation Acts for the 2020-21 financial year for that purpose.

Clause 5 Treasurer's advance

Section 18(2)(a)

This clause replaces current section 18(2)(a) to increase the maximum amount available for payments in the 2021-22 financial year from 1 per cent to 5 per cent:

(a) for the 2021-2022 financial year—5% of the total amount appropriated by all Appropriation Acts for the year.

Clause 6 Audit of annual financial statements

Section 24(3A)

This clause reflects a new section which is to extend the timeframes for the 2020-21 consolidated annual financial statements for the Territory from four to five months:

(3A) Also, despite subsections (1) and (2), for the 2020-21 financial year—

(a) the under treasurer must give the auditor-general the annual financial statements of the Territory for the financial year in sufficient time for the auditor-general to give an audit opinion about the statements within 5 months after the end of the financial year; and

(b) the auditor-general must give an audit opinion to the Treasurer within 5 months after the end of the financial year.