

**FINANCIAL LEGISLATION AMENDMENT AND
REPEAL BILL 2006**

EXPLANATORY MEMORANDUM

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OUTLINE

1. The purpose of the Financial Legislation Amendment and Repeal Bill 2006 (the Bill) is to effect consequential amendments and transitional provisions to the financial and audit provisions of various affected statutes to give effect to the enactment of the Financial Management Bill 2006 (FMB) and Auditor General Bill 2006 (AGB), and the concurrent repeal of the *Financial Administration and Audit Act 1985* (FAAA). The Bill also introduces amendments that will better align government business enterprises' internal business processes with the Government's budget process.
2. Changes to the financial management and audit frameworks affected by the FMB and the AGB are dealt with in detail in the respective Explanatory Memoranda.
3. The more significant of the consequential amendments contained in this Bill are as follows:
 - (i) change of name from "Consolidated Fund" to "Consolidated Account";
 - (ii) references to the FAAA are replaced by reference to the *Financial Management Act 2006* (FMA) and/or the *Auditor General Act 2006* (AGA) as appropriate;
 - (iii) change of title from "accountable officer" to "accountable authority" for department heads;
 - (iv) a number of government business enterprises prepare Statements of Corporate Intent and Strategic Development Plans. The Treasurer is given discretion to require timing of these to coincide with the budget process;
 - (v) references to "trust accounts" established in enabling legislation will be changed to "agency special purpose accounts";
 - (vi) where Acts make reference to specific sections of the FAAA, these are amended to reference the relevant sections of the FMA or the AGA; and
 - (vii) section 15 of the *Government Financial Responsibility Act 2000* will be amended to require the Under Treasurer, rather than the Treasurer, to release the Pre-election Financial Projections Statement.

4. Transitional and savings provisions are also required, to allow existing determinations and authorisations made under the FAAA to continue under the FMA. Examples of these are:
 - (i) trust accounts and departmental operating accounts will continue as special purpose accounts;
 - (ii) the trust statements relating to trust accounts will continue to be effective where they are required under the FMA;
 - (iii) bank accounts opened by agencies under the authority of the FAAA will be continued;
 - (iv) the Treasurer's authority under the FAAA for agencies to retain revenue (net appropriations) will be continued under the FMA;
 - (v) approvals for trust accounts to receive interest are continued;
 - (vi) the Treasurer's Instructions and any exemptions issued under the FAAA will continue in effect under the FMA; and
 - (vii) advances authorised under the Treasurer's Advance Authorisation Act will be deemed to have been made under the authority of the FMA, thus avoiding any double counting.

PART 1 – Preliminary

Clause 1: Short title

5. When enacted, the Act will be titled the *Financial Legislation Amendment and Repeal Act 2006*.

Clause 2: Commencement

6. The Act will come into operation on a day to be fixed by proclamation. Apart from clause 20 (dealing with amendment of the short title of the Act), the Bill will be proclaimed to come into effect on the same day as the FMA and AGA.

PART 2 – Repeal and amendment of legislation

Division 1 - *Financial Administration and Audit Act 1985* repealed

Clause 3

7. Repeals the FAAA.

Division 2 - Amendments relating to the Consolidated Account

Clauses 4 to 7

8. The Bill amends the title of the Consolidated Fund to Consolidated Account by amending the *Constitution Act 1889*. Clauses 4 to 7 replace references to the “Consolidated Fund” or “that Fund” with “Consolidated Account” or “that Account” in relevant legislation. Where a number of Western Australian statutes make reference to the Commonwealth’s “Consolidated Revenue Fund” these have not been amended. The change in name from Consolidated Fund to Consolidated Account reflects the move away from the strictly fund accounting basis of the past to an accrual basis of appropriation.

Division 3 – Amendments relating to the accountable authority

Clauses 8 to 11

9. Under the FMB the term “accountable officer” has been discontinued and the term “accountable authority” applied in respect of both departments and statutory authorities. Clauses 8 to 11 amend relevant legislation where there is reference to “accountable officer” by referring to “accountable authority”.
10. A number of Acts make reference to the FAAA definition of “accountable officer”. Where these occur they are amended to refer to the definition of “accountable authority” in the FMA.

Division 4 – Amendments relating to policy instruments

Clauses 12 to 18

11. A number of corporatised entities prepare Strategic Development Plans (SDPs) and Statements of Corporate Intent (SCIs). The timing for presentation and approval of these by the relevant Minister is established in the respective entities’ enabling legislation or prescribed in regulations. In most instances the legislation provides for SDPs and SCIs to be submitted after the commencement of the financial year to which they relate, often resulting in a disparity with the figures agreed to during the budget process. To better align these documents with the budget process, the Bill amends the entities’ legislation by giving the Treasurer the power to determine when SDPs and SCIs are to be prepared and brings forward the statutory deadline in the event the Treasurer does not make a determination.

12. The Acts that are amended are:

Clause 12 *Forest Products Act 2000*

Clause 13 *Port Authorities Act 1999*

Clause 14 *Public Transport Authority Act 2003*

Clause 15 *Racing and Wagering Western Australia Act 2003*

Clause 16 *Water Corporation Act 1995*

Clause 17 *Western Australian Land Authority Act 1992*

Clause 18 *Western Australian Treasury Corporation Act 1986*

The four Western Power successor entities are also required to prepare SDPs and SCIs, although their enabling legislation already allows the Treasurer to determine the timing of their SDPs and SCIs.

Division 5 – Miscellaneous amendments

Clause 19 - Various Acts amended

13. Clause 19 gives effect to Schedule 1 of the Bill, that sets out amendments to various Acts.

Clause 20 – Short title of Act amended

14. Clause 20 has been included at the recommendation of the Parliamentary Counsel's Office. Acts Amendment Acts are considered to be spent after the amendments have been effected and are not maintained on the legal database. This Bill contains transitional provisions that need to remain in force and continue to be accessible. To give effect to this, clause 20 is to be proclaimed after the remainder of the Act whereupon the title of the Act will be changed to the *Financial Management (Transitional Provisions) Act 2006*, which will enable the Act to be retained on the database.

Division 6 – Transitional provisions

Clause 21 – Transitional provisions

15. Clause 21 gives effect to Schedule 2 that specifies certain arrangements that are required to facilitate the transition from the FAAA to the FMA.

SCHEDULE 1 – Amendments to Various Acts

This schedule sets out amendments to various Acts. These amendments mainly consist of:

- (i) references to the FAAA being replaced with the FMA and/or the AGA, as appropriate;
- (ii) references to trust accounts established under section 9 of the FAAA being replaced with agency special purpose accounts established under section 16 of the FMA;
- (iii) a number of trust accounts have the word “fund” in their title. In most instances this is amended to “account” and references to the “the fund” are correspondingly amended to “the account”. Exceptions to this amendment are where the name of the Act dictates that the name of the account should contain the word “fund”, in which instance it is retained. An example is the *Hospital Fund Act 1930*;
- (iv) where in relation to annual reports, reference is made to section 66 of the FAAA, this is amended to “Part 5 of the *Financial Management Act 2006*”;
- (v) where Acts, such as the *Curtin University of Technology Act 1966*, exclude certain sections of the FAAA from application, these references are replaced by reference to corresponding sections of the FMA;
- (vi) the enabling legislation of government business enterprises, such as the Water Corporation and port authorities, apply certain sections of the FAAA in relation to audit of those entities. These references are amended to the equivalent provisions of the AGA; and
- (vii) section 15(1) of the *Government Financial Responsibility Act 2000* is amended to require the Under Treasurer, rather than the Treasurer, to release the Pre-election Financial Projections Statement.

SCHEDULE 2 – Transitional Provisions

This schedule specifies certain arrangements that are required to facilitate the transition from the FAAA to the FMA. These are:

Clause 1 Interpretation

Defines “commencement day” and provides for the words and expressions defined in the FAAA and AGA to have the same meaning in this Act unless specifically stated otherwise.

Clause 2 Application of *Interpretation Act 1984*

Applies sections of that Act to the repeal of the FAAA and replacement with the FMA.

Clause 3 *Financial Administration and Audit Act 1985* section 6 (Consolidated Fund)

Provides for determinations by the Treasurer as to moneys that may be credited to the Consolidated Fund to continue under the FMA as moneys that may be credited to the Consolidated Account.

Clause 4 *Financial Administration and Audit Act 1985* section 9 (trust accounts)

Provides for trust accounts established under the FAAA to continue as Treasurer’s special purpose accounts or agency special purpose accounts.

Clause 5 *Financial Administration and Audit Act 1985* section 10 (trust statements)

Provides that approved trust statements continue in effect for Treasurer’s special purpose accounts and agency special purpose accounts where these are required by the FMA.

There is a special provision relating to the Hospital Fund as this trust account has special circumstances and the trust statement needs to be continued, although not required by the FMA.

Under the FMA the Hospital Fund Account would not require a special purpose statement as the account is established by the *Hospital Fund Act 1930* (HFA). Owing to the arcane provisions of the HFA the operations of the account were formalised through a trust statement authorised under the transitional provisions of the FAAA. This provision will continue the application of the existing trust statement and ensure the continued operation of the account in its current mode.

Clause 6 *Financial Administration and Audit Act 1985* section 15B (operating accounts)

Provides that departmental operating accounts continue as agency special purpose accounts.

Clause 7 *Financial Administration and Audit Act 1985* section 21 (bank accounts)

Provides that bank accounts opened by agencies at banks under authorisation by the Treasurer, continue as if they were authorised under the FMA and shall remain outside the Public Bank Account.

Clause 8 *Financial Administration and Audit Act 1985* section 23A (prescribed receipts)

Provides that revenues retained by agencies under a determination by the Treasurer pursuant to section 23A of the FAAA (i.e. net appropriations) will continue to be retained by those agencies under the FMA.

Clause 9 *Financial Administration and Audit Act 1985* section 39 (investment income)

Provides that where the Treasurer has made a determination under the FAAA that interest should be paid to a trust account it shall continue to be paid to the corresponding agency special purpose account under the FMA.

Clause 10 *Financial Administration and Audit Act 1985* section 58 (Treasurer's Instructions)

Provides that Treasurer's Instructions and any exemptions granted shall continue in effect under the FMA other than where there may be any inconsistency with the FMA.

Clause 11 References to the *Financial Administration and Audit Act 1985*

Where there is a reference to the FAAA in a document or instrument, then this shall be taken as a reference to the FMA or AGA according to the context.

Clause 12 *Treasurer's Advance Authorisation Act* payments and advances

Provides that upon the FMA being enacted any advances made under a *Treasurer's Advance Authorisation Act* in respect of the financial year in which the FMA comes into effect shall be included within the total advance authorised under the FMA.

Clause 13 References to the Consolidated Fund

Any reference to the Consolidated Fund is, after the FMA becomes operative, to be taken as a reference to the Consolidated Account.

Clause 14 Transitional regulations

If there are any matters of a transitional nature that are not provided for in this Schedule, then regulations may be promulgated to deal with those matters.

Clause 15 Power to amend subsidiary legislation

Regulations may be promulgated to amend subsidiary legislation of any Act, if such amendment is in consequence of the enactment of the FMA and AGA.