

Financial Legislation Amendment Bill 2021

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Western Australia

LEGISLATIVE ASSEMBLY

Financial Legislation Amendment Bill 2021

A Bill for

An Act to amend —

- **the *Financial Management Act 2006*; and**
- **the *Government Financial Responsibility Act 2000*; and**
- **the *Loan Act 2017*.**

The Parliament of Western Australia enacts as follows:

1

Part 1 — Preliminary

2

1. Short title

3

This is the *Financial Legislation Amendment Act 2021*.

4

2. Commencement

5

This Act comes into operation as follows —

6

(a) Part 1 — on the day on which this Act receives the
Royal Assent;

7

8

(b) the rest of the Act — on the 28th day after that day.

1 **Part 2 — *Financial Management Act 2006* amended**

2 **3. Act amended**

3 This Part amends the *Financial Management Act 2006*.

4 **4. Section 3 amended**

5 In section 3 insert in alphabetical order:

6
7 *annual estimates*, of an agency for a financial year,
8 means the annual estimates of the financial operations
9 of the agency for the whole of the financial year under
10 section 41(3);

11 *draft annual estimates* has the meaning given in
12 section 40(1)(a);

13 *draft resource agreement* has the meaning given in
14 section 42(1)(a);

15 *expense limit* has the meaning given in
16 section 42(2)(b)(iii);

17 *submission date* —

18 (a) in relation to draft annual estimates — means
19 the date designated under section 40(2)(a) by
20 which the draft annual estimates must be
21 submitted to the Minister; and

22 (b) in relation to a draft resource agreement —
23 means the date designated under
24 section 42(3)(a) by which the draft resource
25 agreement must be submitted to the Treasurer;

26

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1 **5. Section 24 amended**

2 (1) Delete section 24(1) and insert:

3

4 (1A) In this section —

5 *election year* means a year in which a general election,
6 as defined in the *Electoral Act 1907* section 4, for the
7 Legislative Assembly is held.

8 (1) If, before the end of a financial year (the *previous*
9 *year*), no supply is granted to meet the requirements of
10 the next financial year (the *current year*), the Treasurer
11 may make and charge to the Consolidated Account any
12 payments and advances to meet those requirements at
13 and after the start of the current year that do not exceed
14 in total an amount equal to —

15 (a) if the end of the previous year is in an election
16 year — 35% of the total amount appropriated
17 for the previous year by the Appropriation
18 Acts; or

19 (b) otherwise — 20% of the total amount
20 appropriated for the previous year by the
21 Appropriation Acts.

22

23 (2) Delete section 24(3) and insert:

24

25 (3) The authority conferred on the Treasurer by
26 subsection (1) ceases to have effect when the first of
27 the following occurs —

28 (a) if the end of the previous year —

29 (i) is in an election year — at the end of the
30 first 4 months of the current year;

31 (ii) is not in an election year — at the end of
32 the first 2 months of the current year;

- 1 (b) on the commencement of an Act granting
2 supply for the current year.
3

4 **6. Section 26 amended**

5 (1) In section 26(1) delete the definition of *relevant commitment*.

6 (2) In section 26(1) insert in alphabetical order:

7
8 *relevant commitment* means —

9 (a) a commitment relating to salaries, wages,
10 superannuation, leave or depreciation that is
11 relevant to the financial year referred to in
12 subsection (2); or

13 (b) any other commitment prescribed by the
14 Treasurer’s instructions that is relevant to the
15 financial year referred to in subsection (2).
16

17 (3) After section 26(3) insert:

18
19 (4) Despite subsection (3), the Treasurer may at any time
20 direct that all or part of the money standing to the
21 credit of a suspense account under subsection (2) be
22 credited to the Consolidated Account.
23

24 **7. Section 27 amended**

25 Delete section 27(3) and (4) and insert:

26
27 (3) Payments made under subsection (1) or (2) in a
28 financial year must be charged to the Consolidated
29 Account, and the Consolidated Account is appropriated
30 accordingly by this section.

s. 8

- 1 (4) Payments made under subsection (1) or (2) in a
2 financial year must be included in the Annual Report
3 on State Finances relating to that financial year
4 released under the *Government Financial*
5 *Responsibility Act 2000* section 14A.
6

7 Note: The heading to amended section 27 is to read:
8 **Expenditure not provided for in, or in excess of amount**
9 **appropriated by, Appropriation Acts**

10 **8. Section 27A inserted**

11 After section 27 insert:
12

13 **27A. Transitional provision for *Financial Legislation***
14 ***Amendment Act 2021***

- 15 (1) In this section —
16 ***commencement day*** means the day on which the
17 *Financial Legislation Amendment Act 2021* section 8
18 comes into operation;
19 ***former section 27*** means section 27 as in force
20 immediately before commencement day;
21 ***relevant payment*** means a payment made under former
22 section 27 before commencement day that —
23 (a) had been charged to the Consolidated Account;
24 but
25 (b) had not been provided for in an Appropriation
26 Act in accordance with former section 27.
27 (2) On commencement day, the amount of a relevant
28 payment is, by this section, appropriated from the
29 Consolidated Account for the purpose for which the
30 relevant payment was made.
31

1 **9. Section 29 amended**

2 In section 29(3) delete “in respect of extraordinary or
3 unforeseen matters” and insert:

4

5 under section 27(1) or (2)

6

7 **10. Part 3 Division 4 replaced**

8 Delete Part 3 Division 4 and insert:

9

10 **Division 4 — Annual estimates of agencies**

11 **40. Preparation of draft annual estimates**

12 (1) Unless otherwise directed in writing by the Treasurer,
13 the accountable authority of an agency must, in each
14 financial year —

15 (a) prepare draft annual estimates of the financial
16 operations of the agency for the next financial
17 year (*draft annual estimates*) in the manner
18 prescribed by the Treasurer’s instructions; and

19 (b) submit the draft annual estimates to the
20 Minister on or before the date designated by the
21 Treasurer under subsection (2).

22 (2) For the purposes of subsection (1)(b), the Treasurer
23 must —

24 (a) for each financial year, designate the date by
25 which the accountable authority must submit
26 the draft annual estimates to the Minister; and

27 (b) make the date known to the accountable
28 authority in a manner that the Treasurer
29 considers appropriate.

- 1 **41. Approval of annual estimates**
- 2 (1) After receiving draft annual estimates submitted by an
- 3 accountable authority under section 40(1), the Minister
- 4 must, within the period of 1 month after the submission
- 5 date for the draft annual estimates or such other period
- 6 as is specified in a determination under subsection (2),
- 7 either —
- 8 (a) approve the draft annual estimates; or
- 9 (b) present the accountable authority of the agency
- 10 with annual estimates of the financial
- 11 operations of the agency for the financial year
- 12 to which the draft annual estimates relate, and
- 13 direct that they are to be the annual estimates of
- 14 the financial operations of the agency for the
- 15 financial year.
- 16 (2) The Treasurer may, in writing, determine the period
- 17 that applies for the purposes of subsection (1) in a
- 18 particular case.
- 19 (3) When the Minister approves draft annual estimates
- 20 under subsection (1)(a), or gives a direction under
- 21 subsection (1)(b) in relation to annual estimates, they
- 22 become the annual estimates of the financial operations
- 23 of the agency to which they relate for the whole of the
- 24 financial year to which they relate.
- 25 (4) Subsection (3) has effect even if the approval or
- 26 direction was given after the start of the financial year.
- 27 (5) The accountable authority of an agency must make the
- 28 annual estimates of the financial operations of the
- 29 agency for a financial year available to the public —
- 30 (a) as soon as is practicable after they become the
- 31 annual estimates of the financial operations of
- 32 the agency for the financial year; and

- 1 (b) in the manner prescribed by the Treasurer's
2 instructions.
3

4 **11. Part 3 Division 5 replaced**

5 Delete Part 3 Division 5 and insert:
6

7 **Division 5 — Resource agreements**

8 **42. Preparation of draft resource agreements**

- 9 (1) Unless otherwise directed in writing by the Treasurer,
10 the accountable authority of an agency must, in each
11 financial year —
- 12 (a) prepare a draft resource agreement for the
13 agency for the next financial year (a *draft*
14 *resource agreement*) in accordance with
15 subsection (2); and
- 16 (b) submit the draft resource agreement to the
17 Treasurer on or before the date designated by
18 the Treasurer under subsection (3).
- 19 (2) The draft resource agreement must —
- 20 (a) be in a form prescribed by the Treasurer's
21 instructions; and
- 22 (b) contain —
- 23 (i) the total amount of resources that are
24 expected to be made available to the
25 agency for the financial year to which it
26 relates; and
- 27 (ii) the services proposed to be provided by
28 the agency during the financial year;
29 and

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- 1 (iii) the estimated total cost of services for
2 the agency for the financial year (the
3 *expense limit*); and
4 (iv) any other matters required by the
5 Treasurer's instructions to be specified
6 in the resource agreement.
- 7 (3) For the purposes of subsection (1)(b), the Treasurer
8 must —
9 (a) for each financial year, designate the date by
10 which the accountable authority must submit
11 the draft resource agreement to the Treasurer;
12 and
13 (b) make the date known to the accountable
14 authority in a manner that the Treasurer
15 considers appropriate.

16 **43. Agreeing on resource agreements**

- 17 (1) After receiving a draft resource agreement submitted
18 by an accountable authority of an agency under
19 section 42(1), the Treasurer must, within the period of
20 1 month after the submission date for the draft resource
21 agreement, either —
22 (a) agree on the draft resource agreement with the
23 accountable authority; or
24 (b) present the accountable authority with a
25 resource agreement for the agency for the
26 financial year to which the draft resource
27 agreement relates, and direct that it is to be the
28 resource agreement for the agency for the
29 financial year.
- 30 (2) The accountable authority of an agency must obtain the
31 Minister's approval before agreeing with the Treasurer
32 on a draft resource agreement for the agency.

- 1 (3) When the Treasurer and an accountable authority of an
2 agency agree on a draft resource agreement under
3 subsection (1)(a), it becomes the resource agreement
4 for the agency for the whole of the financial year to
5 which it relates, unless it is superseded by a modified
6 resource agreement under section 44(3).
- 7 (4) When the Treasurer gives a direction to the
8 accountable authority of an agency under
9 subsection (1)(b) in relation to a resource agreement
10 for the agency, it becomes the resource agreement for
11 the agency for the whole of the financial year to which
12 it relates, unless it is superseded by a modified resource
13 agreement under section 44(3).
- 14 (5) Subsections (3) and (4) have effect even if the draft
15 resource agreement was agreed on, or the direction was
16 given, after the start of the financial year.

17 **44. Modifying resource agreements**

- 18 (1) The Treasurer may, at any time in a financial year,
19 modify an agency's resource agreement by giving
20 written notice to the accountable authority of the
21 agency —
- 22 (a) specifying the modification; and
23 (b) directing that the resource agreement, with that
24 modification, is to be the resource agreement
25 for the agency for the remainder of the financial
26 year.
- 27 (2) Without limiting subsection (1), a modification to a
28 resource agreement may relate to the expense limit
29 contained in the resource agreement.
- 30 (3) When the Treasurer gives the accountable authority of
31 an agency a notice under subsection (1) in relation to
32 the agency's resource agreement, the resource

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1 agreement, with the modification specified in the
2 notice, becomes the resource agreement for the agency
3 for the remainder of the financial year to which it
4 relates.
5

6 **12. Section 48 amended**

7 In section 48(4) delete “Governor,” and insert:

8

9 Treasurer,
10

11 **13. Part 3 Division 7 inserted**

12 At the end of Part 3 insert:

13

14 **Division 7 — Financial difficulty**

15 **51A. Notices of financial difficulty**

16 (1) The accountable authority of an agency must notify the
17 Minister if the accountable authority forms the opinion
18 that the agency is unable to, or will be unlikely to be
19 able to, satisfy any of its financial obligations from the
20 financial resources available, or likely to be available,
21 to it at the time a financial obligation is due.

22 (2) Subsection (1) does not apply if the accountable
23 authority is required to give notice to the Minister
24 under another written law that corresponds to
25 subsection (1).

26 (3) The notice under subsection (1) must be in writing,
27 giving reasons for the accountable authority’s opinion.

- 1 (4) Within 7 days after receipt of the notice, the Minister
2 must confer with the Treasurer and the accountable
3 authority of the agency for the purpose of determining
4 what action is required to ensure that the agency is able
5 to satisfy the relevant financial obligation when it is
6 due.
7

8 **14. Section 53 amended**

9 After section 53(1)(c) insert:

- 10
- 11 (ca) ensuring that the agency's total cost of services
12 in a financial year does not exceed the expense
13 limit for the agency contained in the resource
14 agreement, as modified from time to time, for
15 the agency for the financial year; and
- 16 (cb) ensuring that —
- 17 (i) the agency complies with any State
18 government policy prescribed by the
19 Treasurer's instructions; and
- 20 (ii) in particular, officers of the agency who
21 commit and incur expenditure on behalf
22 of the agency do so in a manner that is
23 not inconsistent with any State
24 government policy prescribed by the
25 Treasurer's instructions;
- 26 and
- 27 (cc) ensuring that the agency has documented
28 policies and procedures relating to —
- 29 (i) making delegations, or giving
30 authorisations, to officers of the agency
31 that authorise them to enter into
32 financial obligations on behalf of the
33 agency or the State; and

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- 1 (ii) how officers of the agency exercise the
2 authority to enter into such financial
3 obligations;
4 and
5 (cd) establishing and maintaining records relating
6 to, and a register of, all delegations made, and
7 authorisations given, to officers of the agency
8 that authorise them to enter into financial
9 obligations on behalf of the agency or the State;
10 and
11

12 **15. Section 61 amended**

- 13 (1) In section 61(1)(b) delete “key” and insert:
14

15 unless otherwise directed in writing by the Treasurer, key
16

- 17 (2) In section 61(2) delete “objectives” and insert:
18

19 targets
20

21 **16. Section 80 amended**

22 Delete section 80(2) and (4).

23 **17. Section 85 amended**

24 Delete section 85(1)(b) and insert:
25

- 26 (b) the expiry of 10 years after the tabling of each
27 subsequent report on a review under
28 subsection (5).
29

1 **18. Schedule 2 amended**

2 In Schedule 2:

3 (a) in the item for section 48 in column 2 delete “Governor,”
4 and insert:

5
6 Treasurer,

7
8 (b) in the item for section 61 in column 2 delete “key” and
9 insert:

10
11 unless otherwise directed in writing by the Treasurer, key

12
13 (c) delete the item for section 64 and insert:

14
64 64. (1) The accountable authority of an agency is to
transmit to both Houses of Parliament within the
prescribed period after the end of a financial year
of the agency —

(a) a copy of the annual report for the financial
year prepared by the accountable authority
under section 61(1); and

(b) unless the audit of the agency’s accounts in
respect of the financial year has been
dispensed with under the *Auditor General
Act 2006* section 14(2) — a copy of the
opinion of the Auditor General prepared
and signed under section 15 of that Act.

64. (1A) A copy of an annual report or opinion
transmitted to a House of Parliament is to be
regarded as having been laid before that House.

64. (1B) The laying of a copy of an annual report or
opinion that is regarded as having occurred
under subsection (1A) is to be recorded in the
Minutes, or Votes and Proceedings, of the House

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on the first sitting day of the House after it is transmitted to the House.

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(d) in the item for section 65 in column 2 delete “copies” and insert:

a copy

(e) delete “Part 3 Division 5” and insert:

section 43(2)

19. Schedule 3 amended

In Schedule 3:

(a) in the item for section 48 in column 2 delete “Governor,” and insert:

Treasurer,

(b) in the item for section 61 in column 2 delete “key” and insert:

unless otherwise directed in writing by the Treasurer, key

(c) delete the item for section 63 and insert:

63. (2) After receiving the opinion of the independent auditor appointed in accordance with the *Auditor General Act 2006* section 38, the Auditor General is to transmit a copy of the annual report for a financial year prepared by the accountable authority under section 61(1) together with a copy of the opinion of the independent auditor to

both Houses of Parliament within 90 days after
the end of the financial year.

- 63. (2A) A copy of an annual report or opinion transmitted to a House of Parliament is to be regarded as having been laid before that House.
- 63. (2B) The laying of a copy of an annual report or opinion that is regarded as having occurred under subsection (2A) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after it is transmitted to the House.

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(d) in the item for section 65 in column 2 delete “copies”
and insert:

a copy

(e) delete “Part 3 Division 5 and section 64” and insert:

sections 43(2) and 64

1 **Part 3 — *Government Financial Responsibility Act 2000***
2 **amended**

3 **20. Act amended**

4 This Part amends the *Government Financial Responsibility*
5 *Act 2000*.

6 **21. Section 14A amended**

7 After section 14A(3)(bb) insert:

8

9 (bc) include payments made under the *Financial*
10 *Management Act 2006* section 27(1) or (2) in
11 the budget year; and
12

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Part 4 — *Loan Act 2017* amended

22. Act amended

This Part amends the *Loan Act 2017*.

23. Section 3A inserted

After section 3 insert:

3A. Re-borrowings not to be counted for purposes of determining aggregate sum borrowed

- (1) This section applies if —
 - (a) a sum of money is borrowed from a lender under the authority of this Act; and
 - (b) all or part of the sum of money is repaid to the lender; and
 - (c) an additional sum of money not exceeding the sum of money repaid is borrowed from the lender under the authority of this Act.
- (2) For the purposes of determining the aggregate sum of money borrowed under the authority of this Act, the additional sum of money borrowed from the lender is to be disregarded.

