

GOVERNMENT RESPONSE TO THE JOINT AUDIT COMMITTEE – SECOND REVIEW OF THE *FINANCIAL MANAGEMENT ACT 2006*

Recommendation 1: The *Financial Management Act 2006* should be retained.

Supported

The Government considers that the *Financial Management Act 2006* (the FMA) is the cornerstone of the State's financial management and accountability framework.

The Committee's recommendation is consistent with Recommendation 1 of the Review of the Financial Management Act 2006 – December 2017 Report (the Second Treasury Report), prepared by the Department of Treasury.

Recommendation 2: The *Financial Management Act 2006* should be reviewed every ten years.

Supported

The Committee's recommendation is consistent with Recommendation 2 of the Second Treasury Report.

The Government notes the Committee's observation on the implications for how often the Office of the Auditor General (OAG) is subject to a performance audit. This is addressed further at the response to Recommendation 19 below.

Recommendation 3: The Treasurer not proceed with proposed amendments to the *Financial Management Act 2006* to provide for an automatic appropriation for spending authorised under section 27(1) and section 27(2) of the *Financial Management Act 2006*.

Not supported

The Government understands the Committee's concerns around the reduced opportunity for Parliament to approve the spending policies of Government, and the perception that it provides considerable scope for a government to fund any activity without Parliamentary approval.

However, the Government notes that under the current Treasurer's Advance arrangements in the FMA, Parliament has authorised payments to be charged to the Consolidated Account up to a statutory limit under a certain set of circumstances. This provides the required flexibility for Government to operate, within a determinate and constrained setting.

The Government acknowledges that Appropriation Supplementary Bills (the Supplementary Bills) do provide an opportunity for Parliament to scrutinise a Government's spending policies, activity and financial management. However, the passage of the Supplementary Bills through Parliament can be a very lengthy process, even though the expenditure has already occurred and been reported through the Annual Report on State Finances (ARSF).

Under the *Government Financial Responsibility Regulations 2006* (the GFR Regulations), the ARSF is required to include a statement of balances for the budget year and preceding year of the Treasurer's Advance Account (within the statutory limits). The GFR Regulations also require the ARSF to include a statement of the payments made with respect to extraordinary or unforeseen matters under the authority of the FMA section 27 in the budget year, or any Treasurer's Advance Authorisation Act for the budget year. The ARSF is required to be released within 90 days of the financial year end.

The Government is of the view that a standing appropriation of all expenditure authorised under section 27(1) and 27(2) of the FMA in a financial year is appropriate, provided that Parliament is properly notified of the expenditure already spent. The recommended amendments to the FMA in the Second Treasury Report are designed to overcome the deficiencies in the current provisions (i.e. address the build-up of Supplementary Bills relating to one or more past financial years).

The Government will explore the possibility of including information that mirrors the information currently contained in the Supplementary Bills to be reported in the ARSF to be tabled in Parliament within 90 days of the financial year end. In this regard, it is envisaged that the standing appropriation will only come into force upon the tabling of the ARSF. In other words, the standing appropriation will only take effect when Parliament has been notified of the expenditure already spent for the financial year in question.

The Government will consider whether the GFR Regulations currently provide the necessary scope for detailed reporting of the FMA section 27 expenditures in the ARSF.

Recommendation 4: The Treasurer amend the *Financial Management Act 2006* to require the Appropriation Supplementary Bills for the previous year be assented to before future Appropriation Bills are assented to.

Not supported

The Government is not convinced that the Committee's recommendation requiring the Supplementary Bills for the previous year to be assented to before a future Appropriation Bill is assented to will overcome the current concerns around emerging and competing priorities. If the FMA is amended as the Committee intends, it could present a risk to the smooth running of Government and its ability to efficiently fund Government activities and operations.

Refer also to Government response to Recommendation 3 above.

Recommendation 5: The Treasurer amend the *Financial Management Act 2006* to require an agency to disclose in its annual report when the responsible Minister has issued directions on draft estimates if agreement is not reached within the specified timeframe.

Noted

The underlying objective of the Committee's recommendation is supported.

In this regard, the Government is of the view that agencies are already obliged to disclose any written Ministerial directives in their annual reports.

Treasurer's instruction (TI) 903 Agency Annual Reports, requires agencies' annual reports to disclose any written Ministerial directives which are relevant to the setting of desired outcomes or operational objectives, the achievement of desired outcomes or operational objective, investment activities, and financing activities. The Government considers that Ministerial directives on draft estimates fall within the scope of TI 903.

Recommendation 6: The Treasurer amend the *Financial Management Act 2006* to require an agency to disclose in its annual report a breach of expense limits.

Noted

The underlying objective of the Committee's recommendation is supported.

The Government does not consider it necessary to amend the FMA to explicitly require a breach of an approved expense limit be disclosed in an agency's annual report.

The FMA already requires an agency to include in its annual report a report on the extent to which the agency achieved any objective described in its resource agreement. In addition, the FMA provides that an annual report must contain any information prescribed by the TIs. This includes TI 808 Resource Agreements which specifically requires an agency to include in its annual report details of actual performance relative to the targets specified in its resource agreement. This would include the agency's financial targets such as the approved expense limit.

Consideration will be given to strengthening application guidance contained in the model annual reports published by the Department of Treasury as part of the Financial Administration Bookcase.

Recommendation 7: The Treasurer include a complete list of agencies that breach their expense limit in the Annual Report on State Finances.

Supported

The *Government Financial Responsibility Act 2000* provides for the ARSF to include any matter prescribed in the regulations. Therefore, the Government will amend the GFR Regulations in this regard.

Any requirement for agencies to provide information on breaches of approved expense limits specifically for whole-of-government reporting purposes will be mandated through TIs.

Recommendation 8: The Treasurer amend the *Financial Management Act 2006* to require all agencies to prepare a resource agreement, unless subject to another accountability mechanism.

Supported

The Government recognises that requiring all FMA agencies, except those subject to another accountability mechanism, to prepare a resource agreement will improve the effectiveness of resource agreements as an accountability tool.

The Government will consider the Committee's comments with regard to exemptions for Parliamentary and integrity agencies when drafting the amendments to the FMA.

This approach will enable the Government to hold relevant agencies accountable for their approved targets.

Recommendation 9: The Treasurer amend the *Financial Management Act 2006* to require an agency to disclose in its annual report when the Treasurer has issued a direction on the contents of a draft resource agreement if concurrence is unable to be reached within the specified timeframe.

Noted

The underlying objective of the Committee's recommendation is supported.

In this regard, the Government is of the view that agencies are already obliged to disclose any written Ministerial directives in their annual report.

TI 903 *Agency Annual Reports* requires agencies' annual reports to include any written Ministerial directives which are relevant to the setting of desired outcomes or operational objectives, the achievement of desired outcomes or operational objectives, investment activities, and financing activities. The Government considers that the Treasurer's directives on resource agreements fall within the scope of TI 903.

Recommendation 10: The Treasurer amend section 82(2) of the *Financial Management Act 2006* to require Ministers to include the reasons for making a decision not to provide information to Parliament in the notice to Parliament and the Auditor General.

Noted

The underlying objective of the Committee's recommendation is supported.

The Government considers the current section 82(2) of the FMA already operates as intended. The Minister's reasons for making the decision are required to be tabled in each House of Parliament and is made publicly available. It is understood that the same notice provided to Parliament is also provided to the Auditor General.

Recommendation 11: The Treasurer amend the *Financial Management Act 2006* to require Ministers to advise Parliament of notices of financial difficulty and the proposed response to the issue.

Not supported

The Government acknowledges the Committee's comments regarding standardising the notices of financial difficulty provisions for all FMA agencies.

The Government considers that amending the FMA to require agencies to formally notify their Minister and the Treasurer in the event of financial difficulty is sufficient to improve financial management and accountability.

Also refer to Government response to Recommendation 15 below.

Recommendation 12: The Treasurer consider whether it is appropriate for the Governor to retain responsibility for approving act of grace payments under section 80(2) of the *Financial Management Act 2006*.

Supported

The Government supports making the Treasurer responsible for approving all act of grace payments, thereby removing the Governor's role in approving act of grace payments above \$250,000.

The Government notes that removing the Governor's role in act of grace payments is consistent with the recommendations in the Second Treasury Report in relation to transferring the Governor's responsibilities in approving high-value write-offs to the Treasurer.

Recommendation 13: The Treasurer should examine whether consolidating financial management legislation would improve the financial management framework of Western Australia.

Supported in-principle

The Government is currently implementing a suite of public sector reforms, including financial management reform and the Government Trading Enterprises (GTE) reform program.

The Government will consider whether there is merit in consolidating financial management legislation when these reforms have been implemented.

Recommendation 14: The Treasurer assess, as part of the review of the governance and accountability arrangements of Government Trading Enterprises, whether all Government Trading Enterprises should be subject to sections 81 and 82 of the *Financial Management Act 2006*.

Supported in-principle

As part of the GTE Reform Program, sections 81 and 82 of the FMA are being considered as part of the development of the governance framework to apply to GTEs.

Recommendation 15: The Treasurer assess, as part of the review of the governance and accountability arrangements of Government Trading Enterprises, whether Government Trading Enterprises should be subject to standardised provisions requiring them to notify the Minister in the event of financial difficulty.

Supported in-principle

Under the proposed new GTE governance framework, it is envisaged that GTEs will be subject to standardised provisions requiring them to notify the Minister and the Treasurer in the event of financial difficulty and that any directions given by a Minister to a GTE are tabled in Parliament.

Also refer to Government response to Recommendation 11 above.

Recommendation 16: The Government continues to explore an overarching risk management strategy for agencies.

Supported in-principle

The Government will continue to explore an overarching risk management strategy for agencies and the sector as a whole.

Recommendation 17: The Premier direct the Public Sector Commission to undertake a review of the categories of agencies and other organisations to establish key organisational principles to underpin future review and reform of the Western Australian public sector.

Supported in-principle

The Government agrees it would be worthwhile for the Public Sector Commission to undertake a review of the categories of agencies and other organisations to establish key organisational principles to underpin future review and reform of the Western Australian public sector.

As the categories of agencies and organisations are enshrined in the *Public Sector Management Act 1994* (the PSM Act), it is considered this review should be attached to any future review of the PSM Act.

Key organisational principles from other jurisdictions will be investigated as part of the review.

Recommendation 18: The Treasurer progress legislation to abolish inactive agencies.

Noted

The underlying objective of the Committee's recommendation is supported.

The Government notes the Committee's and the Auditor General's concerns that inactive agencies continue to exist.

The *State Supply Commission Act 1991* is being reviewed as part of broader public sector procurement reforms being led by the Department of Finance. The timing for the abolition of the Western Australian Building Management Authority and Landcare Trust will be considered in the context of other legislative priorities, and are being reviewed by the Department of Finance and Department of Primary Industries and Regional Development, respectively.

Recommendation 19: The Office of the Auditor General continues to be subject to a performance review every five years.

Not supported

The Government considers the review into the performance of the Auditor General's functions by the Auditor General and the OAG should be done concurrently with the review of the operation and effectiveness of the *Auditor General Act 2006* (the AG Act) because the factors that must be taken into account overlap to some extent. That is, performance is affected by the statutory powers, duties and obligations under the AG Act.

The Second Treasury Report recommended that the FMA and the AG Act be amended so that reviews occur every 10 years. Therefore, the Government considers that the performance review should also be undertaken every 10 years.

Recommendation 20: The Treasurer amend the *Auditor General Act 2006* to remove the requirement to have a Joint Standing Committee on Audit and transfer its prescribed functions to the Legislative Council Standing Committee on Estimates and Financial Operations.

Alternatively, the Treasurer should review and rationalise the functions allocated to each Committee under the *Auditor General Act 2006*.

Not supported

The Government is of the view that the existing arrangements are adequate and that a Joint Standing Committee representing both Houses of Parliament is appropriate.

The Government also notes that as the Committee is already established, it is not envisaged that there will be an additional impost in maintaining the existing arrangements.