

FINANCIAL ADMINISTRATION AND AUDIT AMENDMENT BILL 1990

EXPLANATORY MEMORANDUM

(Circulated by Authority of the Hon. Premier and
Treasurer, Dr. Carmen Lawrence, M.L.A.)

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OUTLINE

The Financial Administration and Audit Amendment Bill 1990 amends the Financial Administration and Audit (FA&A) Act 1985 and, through consequential amendments, the Financial Agreement Act 1928, The Rural and Industries Bank of Western Australia Act 1987, the Murdoch University Act 1973 and the University of Western Australia Act 1911.

2. The purpose of the Bill is to update and revise the FA&A Act to reflect the experience of four years of operation, to give effect to recommendations of the Burt Commission on Accountability and to provide for "global" appropriations.

3. In summary the Bill:

- (i) gives effect to the Burt Commission's recommendations in respect of secrecy (i.e. contractual confidentiality), and reporting on related bodies;
- (ii) provides for global appropriations;
- (iii) establishes criteria for final reporting by departments which have been abolished;
- (iv) adjusts the timeframes imposed in respect of the preparation, audit and tabling of annual reports;
- (v) streamlines and devolves certain practices;
- (vi) revises definitions, terminology and schedules to the Act; and
- (vii) makes consequential amendments, in respect of annual reporting, to the Acts referred to in paragraph 1, except for the Financial Agreement Act 1928 which is amended by the repeal of a redundant section.

PART I - PRELIMINARY

Clause 1 : Short Title

4. When enacted, the Bill will be cited as the Financial Administration and Audit Amendment Act 1990.

Clause 2 : Commencement

5. The Bill will come into operation on a day or days to be fixed by the Governor by proclamation.

Clause 3 : Principal Act

6. Self explanatory.

Clause 4 : Section 3 amended

7. Clause 4(a)(i) amends the definition of accountable officer by replacing the reference to permanent head with chief executive officer, to reflect the amendments effected by clauses 4(a)(iii) and 4(a)(vii).

8. To implement the Burt Commission's recommendations on related bodies, sub-clauses 4(a)(ii) and 4(a)(ix) respectively introduce definitions for "affiliated" and "related" bodies, and empower the Treasurer to determine that a body shall be an affiliated or related body.

9. To establish the relationship between affiliated and related bodies, and departments and statutory authorities, definitions of "financially dependent" and "operational control" have also been introduced, by sub-clauses 4(a)(iv) and 4(a)(vi) respectively.

10. Sub-clause 4(a)(iii) provides a definition of "chief executive officer" to reflect an amendment to the Public Service Act 1978 which replaced permanent head with chief executive officer.

11. The definition of "officer" is amended by sub-clause 4(a)(v) to include not only those employees who are charged with the particular duties referred to in the definition, but any employee who meets the criteria and performs those duties.

12. Sub-clause 4(a)(vii) deletes the definition of permanent head to reflect the amendment to the Public Service Act 1978 which replaced permanent head with chief executive officer.

13. Sub-clause 4(a)(viii) alters the definition of public property to exclude moneys of a statutory authority. This will remove statutory authorities that have the power to write-off losses of property and moneys within their own enabling legislation from the write-off provisions of the FA&A Act, as was originally intended.

14. The definition of "subsidiary body" is amended by sub-clause 4(x) to include those bodies which are stipulated in other Acts as being subsidiaries of departments or statutory authorities.

15. Sub-clause 4(a)(xi) introduces the definition of "Under Treasurer".

16. Sub-clause 4(b) empowers the Treasurer to determine that a body shall not be an affiliated or related body.

PART II - FINANCIAL ADMINISTRATION

DIVISION 1 : TREASURER'S ACCOUNTS

Clause 5 : Section 6 amended

17. This clause clarifies the wording of section 6(2)(c) by removing the potential for confusion with "other moneys" as defined in the Act.

Clause 6 : Section 7 amended

18. Clause 6(a)(i) corrects a typographical error in section 7(2)(a).

19. The deletion of the reference to section 4(2) of the Financial Agreement Act by sub-clause 6(a)(iii), which is repealed by clause 36(1) of this Bill, will enable repayments of loan principal, under the Financial Agreement Act, to be taken directly to the General Loan and Capital Works Fund.

20. Clause 6(b) will broaden the revenue sources which can be credited to the General Loan and Capital Works Fund to include proceeds from the sale of property purchased originally out of loan funds.

Clause 7 : Section 8 amended

21. For clarity, the reference to the Treasurer's Advance Account in section 8 has been linked to section 5 of the Act which establishes the Account.

Clause 8 : Section 9 amended

22. Sub-clause 8(a) amends the wording of section 9(2)(c)(iii) to provide added flexibility in the timing of transfers of money from a suspense account established under this section, to the fund against which expenditure is to be met.

23. Sub-clause 8(b) - self explanatory.

24. Sub-clause 8(c) amends section 9(2)(c)(iv) to allow for the holding of money in a suspense account pending identification of where that money is required to be credited or paid.

25. Sub-clause 8(d) provides for the creation of a suspense account specifically to hold interest earned from Public Bank Account balances invested under section 38 or 40(a), pending identification and payment to the Consolidated Revenue Fund or the General Loan and Capital Works Fund.

Clause 9 : Section 10 amended

26. Section 10(1) is amended by sub-clause 9(a) to clarify the trust statement approval process.

27. Sub-clause 9(b) will repeal section 10(2) with the level of detail required in trust statements to be specified in the Treasurer's Instructions.

DIVISION 2 : DEPARTMENTAL ACCOUNTS

Clause 10 : Section 18 amended

28. The amendments to section 18 recognise that the obligation rests with an accountable officer to cause an accounting manual to be prepared, rather than the accountable officer being required personally to prepare and issue the accounting manual.

DIVISION 3 : BANK ACCOUNTS

Clause 11 : Section 21 amended

29. Section 21 of the Act has been amended to clarify that the Treasurer may authorize a department or statutory authority to open a bank account, where such authority is not provided for by other legislative authority.

DIVISION 4 : SUPPLY AND APPROPRIATION

Clause 12 : Section 25A inserted

30. This clause provides the mechanism for "global" or central appropriations, which the Treasurer may transfer to another appropriation item, but only for the purpose of actual or estimated expenditure that accords with the purpose of both the global appropriation and the item to which the transfer is made. It also provides for the recording of expenditures against the appropriation item to which a transfer has been made.

Clause 13 : Section 27 amended

31. This clause improves the wording of section 27(2) to accord with the practice of allowing an amount to be set aside to provide for the incidence of an additional pay period that occurs approximately every eleven years.

DIVISION 5 : PAYMENT OR TRANSFER OF MONEYS

Clause 14 : Section 33 amended

32. The requirement that payments cannot be made from the Public Bank Account, without being certified as to their correctness, is extended by sub-clause 14(a) to apply to bank accounts operated by statutory authorities. However, the certification will not apply to disbursements from cash advances held in bank accounts, unless the accountable officer or authority directs otherwise.

33. Sub-clause 14(b) deletes sub-section 33(2)(b), as sub-section 33(2)(a) already stipulates that money must be lawfully available for payment, and improves the wording of sub-section 33(2)(c).

DIVISION 6 : RECEIPT OF MONEYS

Clause 15 : Section 34 amended

34. The amendments provide that the banking provisions of section 34 do not apply to cash advances received by officers of departments or statutory authorities.

Clause 16 : Section 36 amended

35. Sub-clause 16(a) amends section 36(2) to enable departments to hold other moneys, such as private moneys, in bank accounts.

36. Sub-clause 16(b) imposes the requirement for a trust statement to be prepared and approved for each bank account which holds other moneys under section 36(2).

DIVISION 7 : INVESTMENT OF PUBLIC MONEYS

Clause 17 : Section 39 amended

37. The amendment to section 39(b) will limit the distribution of interest earned under section 38 from the investment of public moneys held in the Public Bank Account, to either the Consolidated Revenue Fund or the General Loan and Capital Works Fund, or allocation to the suspense account provided for by sub-clause 8(d) pending determination by the Treasurer of the Fund to be credited.

DIVISION 8 : INVESTMENT OF MONEYS OF A STATUTORY AUTHORITY AND OTHER MONEYS

Clause 18 : Section 40 amended

38. Section 40 is amended to now allow the Treasurer to authorize a statutory authority which does not have the necessary power in its own legislation, to separately invest moneys of the statutory authority forming part of the Public Bank Account.

Clause 19 : Section 41 amended

39. Consistent with the amendment to section 39, clause 19 will enable the Treasurer to also distribute interest earned under section 40, from the investment of moneys of a statutory authority or other moneys held in the Public Bank Account to the General Loan and Capital Works Fund, or the suspense account provided for by sub-clause 8(d) pending determination by the Treasurer of the Fund or account to be credited.

DIVISION 9 : FINANCIAL ADMINISTRATION OF STATUTORY AUTHORITIES

Clause 20 : Section 42 amended

40. Section 42(2) now requires the submission of estimates to Ministers for approval within the first two months of the financial year. It also removes the requirement that Ministers forward approved estimates of the financial operations of each statutory authority to the Treasurer.

Clause 21 : Section 44 amended

41. The amendments to section 44 recognise that the obligation rests with an accountable authority to cause an accounting manual to be prepared, rather than the accountable authority being required personally to prepare and issue the accounting manual.

DIVISION 10 : WRITE-OFFS AND RECOVERIES

Clause 22 : Section 45 amended

42. Sub-clauses 22(a) and (b) delete reference to "other property", and amend sub-sections 45(1) and (2) to clarify the authority of accountable officers and their Ministers to write-off amounts relating to public property held, and revenue and debts due to a department.

43. Sub-clause 22(c) provides that, subject to the write-off powers in any written law applicable to a statutory authority, Ministers may write-off any amount in respect of a statutory authority's operations, and accountable authorities may write-off within the limits prescribed by the Regulations.

DIVISION 11 : APPOINTMENTS, DELEGATIONS AND INSTRUCTIONS

Clause 23 : Section 52 amended

44. This amendment follows from the inclusion of the definition "chief executive officer".

Clause 24 : Section 56 amended

45. Clause 24 removes the requirement for the Under Treasurer to be advised of the appointment of principal accounting officers, which was included as part of an "overview and support" approach that was adopted when the Act was introduced.

Clause 25 : Section 57 amended

46. Section 57(3) is amended to reflect the intent that the Under Treasurer may delegate the functions conferred on the Under Treasurer by the Treasurer's Instructions.

Clause 26 : Section 58 amended

47. Clause 26 amends section 58(2)(f) to allow the Treasurer to issue instructions for the inclusion of information on affiliated bodies in the annual reports of departments and statutory authorities. The introduction of sub-section 58(2)(fa) provides for a final report on the abolition of a department.

Clause 27 : Sections 58A to 58C inserted

48. This clause inserts three sub-sections 58A, 58B and 58C which respectively:

- (i) provide the Treasurer with power to require information necessary for the purposes of the Act, such as annual estimates of the financial operations of departments and statutory authorities;
- (ii) empower the Treasurer to approve "act of grace" payments in justifiable circumstances, up to an amount specified by Regulation. Amounts above that specified by Regulation will still require the approval of the Governor. This provision will not apply to statutory authorities which have power to make "act of grace" payments under their own legislation; and
- (iii) implement the Burt Commission's recommendation that no government agency be permitted to enter into any agreement, or conduct its operations in such a manner, which would prevent that agency or the Minister from providing information to Parliament on the operations of the agency.

DIVISION 12 : TREASURER'S REPORTS

Clause 28 : Section 60 amended

49. Section 60(2) removes wording that replicates obligations already imposed by section 58(3).

Clause 29 : Section 61 amended

50. An amendment to section 93 recommended by the Auditor General allows him until 31 October to prepare and issue his opinion on the Treasurer's Annual Statements.

51. As section 60(3) allows the Treasurer 21 days from the receipt of the Auditor General's opinion to table copies of the statements and opinion, clause 29 revises the date in section 61 to 21 November, to be consistent with the latest date by which the statements and opinion can be tabled in conformity with the Act.

DIVISION 13 : REPORTS OF ACCOUNTABLE OFFICERS OF DEPARTMENTS

Clause 30 : Section 62 amended

52. The amendment clarifies that sub-section 62(1)(c) relates to the same financial year as the other sub-sections.

Clause 31 : Section 63 amended

53. Clause 31 removes the requirement from section 63 that departments submit financial statements to the Treasurer, as these are not required in the preparation of the Treasurer's Annual Statements. Removal of this requirement is balanced by the introduction of section 58A which enables the Treasurer to require information considered necessary for the purposes of the Act.

Clause 32 : Section 65 amended

54. Section 65 is amended to enable Ministers to extend beyond 31 August the date by which financial statements and performance indicators are to be submitted to the Auditor General, under section 63. The clause also requires that Parliament be advised of such extensions, which is consistent with the approach for extensions of timeframes required by section 62.

Clause 33 : Section 65A inserted

55. As the function of the accountable officer ceases on abolition, this amendment empowers the Treasurer to appoint a reporting officer to be responsible for, and have the necessary powers in relation to, preparing a final report to the date of abolition of a department.

56. The final report is to comprise of the general elements of an annual report, while recognising the practicalities of a situation where, through circumstances, the reporting officer was not the accountable officer at the date of abolition.

DIVISION 14 : STATUTORY AUTHORITY'S REPORTS

Clause 34 : Section 66 amended

57. The amendment clarifies that sub-section 66(1)(c) relates to the same financial year as the other sub-sections.

PART III - AUDIT

DIVISION 3 : AUDITOR GENERAL'S OPINIONS AND REPORTS

Clause 35 : Section 93 amended

58. This clause amends section 93 to enable the Auditor General to issue opinions on the Treasurer's Annual Statements, and the financial statements and performance indicators of departments and statutory authorities, within periods of time which are based upon the latest day which reporting agencies are required to submit information to the Auditor General for audit.

PART IV - MISCELLANEOUS

Clause 36 : Section 96 amended

59. Clause 36 extends section 96 so that regulations can be made for dealing with the proceeds of the disposal of public property.

Schedule 1A : Modifications Applicable in Special Cases

Clause 37 : Schedule 1A amended

60. The amendment introduces the write-off provisions of section 45 in Parts I and II of Schedule 1A, and replicates the amendment to section 62(1)(c) of the Act.

Clause 38 : Consequential amendments

61. Sub-clause (1) repeals section 4(2) of the Financial Agreement Act, as section 7 of the FA&A Act adequately provides for the treatment of loan repayments. The other sub-clauses amend relative sections of related legislation to reflect the amendment to section 58(2) of the FA&A Act.