

FINANCIAL LEGISLATION AMENDMENT BILL 2021

EXPLANATORY MEMORANDUM

INTRODUCTION

The Financial Legislation Amendment Bill 2021 (the Bill) amends the *Financial Management Act 2006*, *Government Financial Responsibility Act 2000* and the *Loan Act 2017* to progress key financial management reforms aimed at enhancing governance and accountability, reducing internal red tape and unnecessary prescription, and improving the effectiveness of the financial management framework. The reforms are also a high priority for the State's Public Sector Reform initiatives in the 'Roadmap for Reform', which are aimed at creating a more efficient, accountable and high-performing public sector that delivers better services to the community. A robust and improved financial management framework also underpins Treasury's functional area leadership role in financial management. The Bill's proposed amendments are aligned to the findings and recommendations of Government reviews such as the *Special Inquiry into Government Programs and Projects*.

The amendments are outlined under the key themes of governance and accountability, and efficiency and effectiveness.

In terms of governance and accountability –

- sound budget management practice is enhanced by making explicit that an agency's accountable authority must operate within the agency's approved expense limit set out in its resource agreement; prior approval of funding must be obtained before agency officers can enter into a financial commitment; and agencies must formally notify their Minister and the Treasurer in the event of financial difficulty;
- the effectiveness of resource agreements and annual estimates is enhanced as accountability tools with more clarity and transparency; and
- sound budgetary control is reinforced through the establishment of a comprehensive framework of delegations and authorisations, including maintaining proper records and documentation.

In terms of efficiency and effectiveness –

- flexibility in managing the State's finances is enhanced by broadening the definition of 'relevant commitment' in the context of transferring an appropriation to a suspense account; providing for automatic supply of money to meet payments for four months in an election year, in order to allow Parliament adequate time to examine the State's finances; enabling the Treasurer to direct all or part of the balance standing to the credit of a holding account (or other suspense account) to be credited to the Consolidated Account; and allowing for the temporary repayment and redraw of borrowings to improve cash and liquidity management;
- automatic appropriation of all new or supplementary expenditure;

- the compliance burden in reporting key performance indicators in the annual report may be reduced where the Treasurer exercises the exemption power;
- red tape is reduced and administrative processes improved by deleting reference to 'extraordinary or unforeseen' in terms of supplementary funding; and the Governor's role in the approval of write-offs and act of grace payments replaced with that of the Treasurer; and
- a statutory review of the Act to occur every 10 years.

Details for each clause of the Bill are outlined below.

Clause 1: Short title

Clause 1 provides for the Bill, once enacted, to be cited as the *Financial Legislation Amendment Act 2021* (the Act).

Clause 2: Commencement

Clause 2 provides for commencement of the Act. Part 1 of the Act will come into operation on the day on which the Act receives Royal Assent.

The remainder of the Act will come into operation 28 days after the date of Royal Assent. This will allow sufficient time to finalise the Treasurer's instructions and regulations that are required as a result of the amendments contained in the Act.

Clause 3: Act amended

Clause 3 provides for the *Financial Management Act 2006* (WA) (the FM Act) to be amended by Part 2 of the Act.

Clause 4: Section 3 amended

Clause 4 amends section 3 of the FM Act, by inserting the following new definitions:

annual estimates, of an agency for a financial year, means the annual estimates of the financial operations of the agency for the whole of the financial year under section 41(3).

draft annual estimates has the meaning given in section 40(1)(a).

draft resource agreement has the meaning given in section 42(1)(a).

expense limit has the meaning given in section 42(2)(b)(iii).

submission date –

- (a) in relation to draft annual estimates - means the date designated under section 40(2)(a) by which the draft annual estimates must be submitted to the Minister; and
- (b) in relation to a draft resource agreement - means the date under section 42(3)(a) by which the draft resource agreement must be submitted to the Treasurer.

Clause 5: Section 24 amended

Subclause 5(1) deletes former section 24(1) of the FM Act and inserts new subsections (1A) and (1) into section 24.

New section 24(1A) defines ***election year***.

New section 24(1) provides for automatic supply of moneys to fund the core activities of government if, before the end of a financial year (the previous year), no supply is granted to meet the requirements of the next financial year (the current year). In an election year, automatic supply is limited to 35 per cent of the total amount appropriated for the previous year by the Appropriation Acts. In other years (ie non-election years), automatic supply is limited to 20 per cent of the total amount appropriated for the previous year by the Appropriation Acts.

Subclause 5(2) deletes former section 24(3) of the FM Act and inserts new subsection (3) into section 24.

New section 24(3) places time limitations on automatic supply. It provides that the automatic supply of moneys under new section 24(1) ceases to have effect when the first of the following occurs –

- (a) if the end of the previous year –
 - (i) is in an election year - at the end of the first 4 months of the current year;
 - (ii) is not in an election year – at the end of the first 2 months of the current year;
- (b) on the commencement of an Act granting supply for the current year.

Clause 6: Section 26 amended

Clause 6 amends section 26 of the FM Act, which authorises accrual appropriations (ie section 26 enables Parliament to authorise the appropriation of an agency's non-cash funding). The non-cash appropriation is recorded and reported as part of the suspense account in a transparent manner.

Subclause 6(1) amends section 26(1) by deleting the definition of 'relevant commitment'.

Subclause 6(2) inserts the following new definition of 'relevant commitment'.

A ***relevant commitment*** means a commitment relating to salaries, wages, superannuation, leave or depreciation that is relevant to the financial year; or any other commitment prescribed by the Treasurer's instructions that is relevant to the financial year.

The new definition of 'relevant commitment' will enable other relevant commitments that emerge in future (ie relevant commitments that are not salaries, wages, superannuation, leave or depreciation) to be appropriated and transferred to a suspense account. This will give the government increased flexibility to respond to changing circumstances.

Subclause 6(3) inserts new subsection 26(4) which provides that despite subsection 26(3) the Treasurer may at any time direct all or part of the money standing to the credit of a suspense account under subsection 26(2) be credited to the Consolidated Account.

The Treasurer's discretion is likely to be exercised, for example, where the balance of an agency's suspense account has been increasing and the likelihood that the balance will be utilised to replace assets is low because of new technologies.

Clause 7: Section 27 amended

Clause 7 amends section 27 of the FM Act. Once amended, section 27 will allow expenditure authorised by the Governor and the Treasurer under section 27(1) and (2) to be automatically appropriated under a standing appropriation.

The clause amends the title of section 27 by deleting 'Expenditure for extraordinary etc. matters without appropriation' and inserting 'Expenditure not provided for in, or in excess of amount appropriated by, Appropriation Acts'.

Clause 7 deletes former section 27(3) and (4) and inserts new subsection (3) and (4).

Section 27(3) provides that any payments made under subsection (1) or (2) in a financial year must be charged to the Consolidated Account which is appropriated accordingly.

Section 27(4) provides that payments made under subsection (1) or (2) by way of a standing appropriation must be included in the Annual Report on State Finances relating to that financial year released under the *Government Financial Responsibility Act 2000* section 14A. This ensures that payments for excesses and new items will be reported and may be scrutinised by Parliament.

Clause 8: Section 27A inserted

Clause 8 inserts new section 27A 'Transitional provision for *Financial Legislation Amendment Act 2021*' to address Supplementary Appropriation Bills.

Section 27A(1) inserts 3 new definitions:

commencement day means the day on which the *Financial Legislation Amendment Act 2021* section 8 comes into operation;

former section 27 means section 27 as in force immediately before commencement day;

relevant payment means a payment made under former section 27 before commencement day that had been charged to the Consolidated Account but had not been provided for in an Appropriation Act in accordance with former section 27.

Section 27A(2) provides that, on commencement day, the amount of a relevant payment is deemed to be appropriated from the Consolidated Account for the purpose for which the relevant payment was made.

Clause 9: Section 29 amended

A consequential amendment to section 29(3) is required as a result of deletion of former section 27(3). The phrase 'in respect of extraordinary or unforeseen matters' in section 29(3) is replaced with 'under section 27(1) or (2)'.

Clause 10: Part 3 Division 4 replaced

Clause 10 deletes Part 3 Division 4 of the FM Act and inserts new Division 4 'Annual estimates of agencies'.

Section 40 – Preparation of draft annual estimates

Subsection 40(1) provides that unless otherwise directed in writing by the Treasurer, the accountable authority of an agency must, in each financial year, prepare draft annual estimates of the financial operations of the agency for the next financial year in the manner prescribed by the Treasurer's instructions, and submit the draft annual estimates to the agency's Minister on or before the date designated by the Treasurer.

Subsection 40(2) provides that the Treasurer must, for each financial year, designate the date by which the accountable authority must submit the draft annual estimates to the Minister, and make the date known to the accountable authority in a manner that the Treasurer considers appropriate.

Section 41 – Approval of annual estimates

Subsection 41(1) provides that after receiving an agency's draft annual estimates, the agency's Minister must, within a specified time frame, either approve the draft annual estimates, or present the agency's accountable authority with annual estimates for the financial year and direct that they are to be the annual estimates of the financial operations for the agency for the financial year.

Subsection 41(2) enables the Treasurer in exceptional circumstances to consider and determine a different timeframe if the Minister considers that he or she is unable to comply with subsection (1).

Subsection 41(3) provides that when an agency's Minister approves draft annual estimates under subsection (1)(a), or gives a direction under subsection (1)(b) in relation to annual estimates, they become the annual estimates of the financial operations of the agency to which they relate for the whole of the financial year to which they relate.

Subsection 41(4) will enable an agency's Minister to give approval or a direction under subsection (1) after the start of the financial year, in order to accommodate the possibility of a late budget in an election year.

Subsection 41(5) requires an agency's accountable authority to make the agency's annual estimates available to the public as soon as practicable and in the manner prescribed by the Treasurer's instructions. This approach will further transparency and timeliness in the availability of an agency's annual estimates.

Clause 11: Part 3 Division 5 replaced

Clause 11 deletes Part 3 Division 5 of the FM Act and inserts new Division 5 'Resource agreements'.

Section 42 – Preparation of draft resource agreements

Subsection 42(1) provides that unless otherwise directed in writing by the Treasurer, an agency's accountable authority must in each financial year prepare a draft resource agreement for the agency for the next financial year, and submit the draft resource agreement to the Treasurer on or before the date designated by the Treasurer.

Subsection 42(2) states that the draft resource agreement must be in a form prescribed by the Treasurer's instructions and contain:

- (i) the total amount of resources that are expected to be made available to the agency for the financial year;
- (ii) the services proposed to be provided by the agency during the financial year;
- (iii) the estimated total cost of services for the agency for the financial year (the **expense limit**); and
- (iv) any other matters required by the Treasurer's instruction to be specified in the resource agreement.

Under subsection 42(3), the Treasurer must, for each financial year, designate the date by which the accountable authority must submit the draft resource agreement to the Treasurer, and make the date known to the accountable authority in a manner that the Treasurer considers appropriate.

Section 43 – Agreeing on resource agreements

Subsection 43(1) provides that after receiving an agency's draft resource agreement, the Treasurer must, within a specified time frame, either agree on the draft resource agreement with the agency's accountable authority, or present the accountable authority with a resource agreement for the agency for the financial year and direct that it is to be the resource agreement for the agency for the financial year.

Subsection 43(2) requires the accountable authority to obtain the relevant Minister's approval before agreeing with the Treasurer on a draft resource agreement for the agency.

Under subsection 43(3), when the Treasurer and an accountable authority agree on a draft resource agreement under subsection (1)(a), it become the resource agreement for the agency for the whole of the financial year to which it relates unless it is superseded by a modified resource agreement under section 44(3).

Under subsection 43(4), when the Treasurer gives a direction to an accountable authority under subsection (1)(b) in relation to a resource agreement, it become the resource agreement for the agency for the whole of the financial year to which it relates unless it is superseded by a modified resource agreement under section 44(3).

Subsection 43(5) states that subsections (3) and (4) have effect even if the draft resource agreement is agreed on, or the direction was given, after the start of the

financial year, in order to accommodate the possibility of a late budget in an election year.

Section 44 – Modifying resource agreements

Subsection 44(1) enables the Treasurer to modify an agency's resource agreement by giving written notice to the agency's accountable authority – specifying the modification, and directing that the resource agreement with that modification is to be the resource agreement for the agency for the remainder of the financial year.

Subsection 44(2) provides that a modification to a resource agreement may relate to the expense limit contained in the resource agreement.

Subsection (3) provides that when the Treasurer gives written notice of a modification under section 44(1), the resource agreement with the modification becomes the resource agreement for the agency for the remainder of the financial year to which it relates.

Clause 12: Section 48 amended

Clause 12 amends section 48(4) of the FM Act, so as to enable the Treasurer to approve write-offs in excess of \$250,000 and thereby reduce the administrative burden on the Governor in Executive Council. Therefore, the three-tiered approval to write-offs will be the accountable authority of an agency (up to \$100,000), the relevant Minister (up to \$250,000), and the Minister with the Treasurer's prior approval (in excess of \$250,000). A write-off may be in respect of public property, revenue or other debts due to the State or a statutory authority.

Clause 13: Part 3 Division 7 inserted

Clause 13 inserts the heading "Division 7 – Financial Difficulty" before section 51A of the FM Act.

Section 51A – notices of financial difficulty

Clause 13 inserts new section 51A into the FM Act, which will require agencies to notify their Minister should they experience financial difficulty. The purpose of section 51A is to enhance fiscal responsibility by agencies.

Under subsection 51A(1), an agency's accountable authority must notify the agency's Minister if the accountable authority forms the opinion that the agency is unable to, or will be unlikely to be able to, satisfy any of its financial obligations from the financial resources available, or likely to be available, at the time a financial obligation is due.

Subsection 51A(2) provides that subsection (1) does not apply if the accountable authority has the same obligation under another written law that corresponds to subsection (1). The aim of subsection 51A(2) is to avoid the duplication of the requirement to give notice of financial difficulty.

Subsection 51A(3) provides that notice under subsection (1) must be in writing, and must give reasons for the accountable authority's opinion.

Under subsection 51A(4), the Minister must, within 7 days after receipt of the notice, confer with the Treasurer and the accountable authority for the purpose of determining what action is required to ensure that the agency is able to satisfy the relevant financial obligation when it is due.

Clause 14: Section 53 amended

Clause 14 amends section 53 of the FM Act, by inserting additional functions of accountable authorities.

Paragraph (ca) requires an agency's accountable authority to ensure that the agency's total cost of services in a financial year does not exceed the expense limit for the agency contained in the resource agreement, as modified from time to time, for the agency for the financial year.

Paragraph (cb) requires an agency's accountable authority to ensure that the agency complies with any State government policy prescribed by the Treasurer's instructions. The accountable authority is also required to ensure that officers of the agency who commit or incur expenditure on behalf of the agency do so in a manner that is consistent with any State government policy prescribed by the Treasurer's instructions.

Paragraph (cc) requires an agency's accountable authority to ensure that the agency has documented policies and procedures relating to making delegations, or giving authorisations, to officers of the agency that authorise them to enter into financial obligations on behalf of the agency or the State. The accountable authority is also required to have documented policies and procedures relating to how officers of the agency exercise the authority to create such financial obligations.

Paragraph (cd) requires an agency's accountable authority to ensure that the agency has documented policies and procedures relating to, and a register of, all delegations made, and authorisations given, to officers of the agency that authorise them to create financial obligations on behalf of the agency or the State.

Clause 15: Section 61 amended

Clause 15 amends section 61 of the FM Act.

Subclause 15(1) amends section 61(1)(b), so as to give the Treasurer the power to exempt an agency from reporting key performance indicators in its annual report. It is intended that the power will be exercised only in exceptional cases. For instance, agencies that have policy, planning and research functions may possibly be considered eligible for exemption from the requirement to prepare key performance indicators.

Subclause 15(2) amends section 61(2), so as to replace 'objectives' with 'targets'. The aim of the amendment is to reflect the terminology used in agency resource agreements.

Clause 16: Section 80 amended

Clause 16 amends section 80 of the FM Act, by deleting subsection (2) and (4).

The deletion of subsection (2) will remove the Governor's role in approving act of grace payments in response to Recommendation 12 of the Joint Standing Committee on Audit in its *Second Review of the Financial Management Act 2006*, May 2019.

The deletion of subsection (4) will not affect the requirement to comply with Treasurer's instruction 319, which contains instructions relating to the making of act of grace payments.

Clause 17: Periodic statutory reviews

This clause amends section 85(1)(b) of the FM Act, so as to increase the time frame for reviews of the FM Act. Once amended, section 85(1)(b) will require that a review be carried out as soon as is practicable after the expiry of 10 years after the tabling of the Joint Standing Committee on Audit's report under subsection 85(5). Under this amendment, the next legislative review of the FM Act will be in May 2029 (ie 10 years from the tabling of the Joint Audit Committee's report – *Second review of the Financial Management Act 2006* - in Parliament on 16 May 2019).

Clause 18: Schedule 2 amended

Clause 18 amends Schedule 2 to the FM Act. Schedule 2 applies to those agencies listed in section 5(1) of the FM Act, which are generally the oversight and parliamentary agencies. By virtue of their status, some of the requirements in the FM Act are modified in the manner set out in Schedule 2.

Subclause 18(a) implements amendments to modified section 48(4) that are consistent with clause 12.

Subclause 18(b) implements amendments to modified section 61(1)(b) that are consistent with clause 15.

Subclause 18(c) deletes modified section 64(1) and inserts a new modified section 64(1), (1A) and (1B).

Relevantly, modified section 64(1) currently requires an agency's accountable authority to transmit to both Houses of Parliament 'copies' of the agency's annual report. Under new modified section 64(1), the accountable authority will be required to transmit to both Houses of Parliament 'a copy' of the agency's annual report.

Under new modified section 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.

Under new modified section 64(1B), the laying of a copy of an annual report or opinion under new modified section 64(1A) 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.

Subclause 18(d) amends modified section 65(1), so as to refer to 'a copy' rather than 'copies' of an annual report transmitted to Parliament.

Subclause 18(e) amends the footnote at the end of Schedule 2. The agencies listed in section 5(1) may be subject to the provisions relating to resource agreements set out in Part 3 Division 5 of the amended FM Act (clause 11 above), except that the accountable authority will not have to obtain the Minister's approval before agreeing with the Treasurer on a draft resource agreement for the agency.

Clause 19: Schedule 3 amended

Clause 19 amends Schedule 3 to the FM Act. The FM Act has effect in relation to the Office of the Auditor General subject to the modifications set out in Schedule 3.

Subclause 19(a) implements amendments to modified section 48(4) that are consistent with clause 12.

Subclause 19(b) implements amendments to modified section 61(1)(b) that are consistent with clause 15.

Subclause 19(c) deletes modified section 63(2) and inserts a new modified section 63(2), (2A) and (2B) as follows:

Relevantly, modified section 63(2) currently requires the Auditor General to transmit 'copies' of the annual report to both Houses of Parliament. Under new modified section 63(2), the Auditor General will be required to transmit 'a copy' of the annual report.

Under new modified section 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.

Under new modified section 63(2B), the laying of a copy of an annual report or opinion under new modified section 63(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.

Subclause 19(d) amends modified section 65(1), so as to refer to 'a copy' rather than 'copies' of an annual report transmitted to Parliament.

Subclause 19(e) amends the footnote at the end of Schedule 3. The Office of the Auditor General may be subject to the provisions relating to resource agreements set out in Part 3 Division 5 of the amended FM Act (clause 11 above), except that the Auditor General will not have to obtain the Minister's approval before agreeing with the Treasurer on a draft resource agreement for the agency. The exemption from section 64 is retained.

Clause 20: Act amended

This clause provides for the *Government Financial Responsibility Act 2000* (the GF Act) to be amended by Part 3 of the Act.

Clause 21: Section 14A amended

Clause 21 amends section 14A of the GF Act by inserting a new paragraph (bc) which requires the Annual Report on State Finances to include payments made under the *Financial Management Act 2006* section 27(1) or (2) in the budget year.

Clause 22: Act amended

This clause provides for the *Loan Act 2017* (Loan Act) to be amended by Part 4 of the Act.

Clause 23: Section 3A inserted

Clause 23 inserts new section 3A into the Loan Act, so as to allow the temporary repayment and redraw of borrowings. This will facilitate more effective borrowing and improve cash flow management practices.

Subsection 3A(1) provides that section 3A applies if:

- (a) a sum of money is borrowed from a lender under the authority of the Loan Act;
- (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 the Act.

Subsection 3A(2) states that for the purposes of determining the aggregate sum of money borrowed under the authority of the Loan Act, the additional sum of money borrowed from the lender is to be disregarded.