

JOINT STANDING COMMITTEE ON AUDIT
SUPPLEMENTARY INFORMATION
RELATING TO THE DEPARTMENT OF TREASURY'S *REPORT
REVIEW OF THE FINANCIAL MANAGEMENT ACT (2006)*

Department of Treasury

Q: Supplementary Information No A1 – Report recommendations the Government has accepted, rejected or modified. Interim measures taken to keep things moving and what those interim measures are.

Answer: The Government has accepted all the recommendations of the Department of Treasury *Review of the Financial Management Act (2006)* report.

Treasury has undertaken to look at other mechanisms within the existing FMA legislative framework, such as utilising Treasurer's Instructions (TIs) and other policy instruments.

The interim measures taken in respect of the report's recommendations have focused mainly on controls over public expenditure by revising TI 808 *Resource Agreements* utilising resource agreements to further strengthen these controls, particularly around expense limits and linking these to CEO performance agreements.

Treasury is also currently in the process of finalising a new TI, requiring agencies to maintain a contracts register to enable better contract and financial management across government.

Q: Supplementary Information No A2 – A list of agencies that have exceeded their expense limits since 2011-12.

Answer: The tables in Appendix 1 show expense limit outcomes that exceeded approved expectations since 2011-12 for agencies subject to Resource Agreements (expense limits are applied as part of Resource Agreements, which apply to the controlled operations of agencies funded by a service appropriation). In each case, the expected outturn is approved by Cabinet at the cut-off date for the following year's Budget (e.g. the 2011-12 expected outturn approved for inclusion in the 2012-13 Budget), or reflects an adjusted post-Budget cut-off expectation following a Government spending decision made before 30 June.

Detailed analysis of outcomes in excess of approved limits are not available from agencies in the time available to provide this information.

Variances to approved estimated outturn (EOT) can occur due to a number of reasons, some of which are outside the agency's or Minister's control. For example, actuarial valuations on superannuation and long service leave, foreign exchange movements, and timing issues related to the receipt of late grant money from other parties such as the Commonwealth government.

Q: Supplementary Information No A3 – Additional comment on accountability issues around contract management.

Answer: The review of the FMA identified a number of issues, particularly highlighting controls over public expenditure. Better contract management has been a focus of Treasury since the review was completed, which has led to the Treasurer recently approving a Treasurer's Instruction on maintaining a contracts register.

Q: Supplementary Information No A4 – Loan Guarantee Fee and how it is recorded in the accounts of the State to make provision for the risk. Is there somewhere in the State accounts that records the risk of those debts not being repaid? If there is not, why? If not, should something be put in the FMA if it is not there now?

Answer: The Loan Guarantee Fee (LGF) – sometimes referred to as the Government Guarantee Fee – is designed to:

- compensate the State's taxpayers for bearing the risk associated with debts held with the Western Australian Treasury Corporation (WATC);
- ensure that investment and pricing decisions more closely reflect the true cost of capital, leading to improved allocation of resources; and
- reduce the competitive advantage provided to some entities by the government guarantee and ability to leverage off the State's credit worthiness (i.e. competitive neutrality principles).

WATC collects the LGF from State government agencies, public universities and local government borrowers on behalf of the Treasurer in respect of monies lent by the WATC. The Treasurer charges the fee for providing an explicit government guarantee on liabilities incurred by WATC in raising loan funds.

- On 1 July 2012, the annual loan guarantee fee increased from 20 basis points to 70 basis points for borrowings by government trading enterprises and selected agencies.
- On 1 July 2015, the annual loan guarantee fee increased from 20 basis points to 70 basis points for borrowings by Western Australian public universities and from 10 basis points to 70 basis points for borrowings by local government authorities.

The current scale of LGFs is as follows:

- 70 basis points per annum for local government authorities, public universities, government trading enterprises (such as the Water Corporation, Synergy, Horizon Power, Western Power and LandCorp) and other government statutory authorities (such as the Public Transport Authority, the Metropolitan Redevelopment Authority, the Housing Authority and Port Authorities) and for borrowings (short and long-term) by agencies through WATC; and
- 20 basis points per annum for other general government agencies.

The LGF (for borrowings) is consistent with section 13 of the *Western Australian Treasury Corporation Act 1986*:

13. State guarantee

- (1) Financial liabilities incurred or assumed by the Corporation under this Act (otherwise than under section 12) are guaranteed by the Treasurer on behalf of the State.
- (2) A financial liability of the Treasurer under a guarantee arising by virtue of subsection (1) shall be charged to, and paid out of, the Consolidated Account, which is hereby appropriated to the necessary extent.

The mechanism for the LGF is levied as per section 13(3) of the *Western Australian Treasury Corporation Act 1986*:

- (3) The Treasurer may in writing served on the Corporation –
 - (a) specify a fee or fees to be paid by an authority for a guarantee arising under subsection (1) in respect of money lent by the Corporation to that authority; and
 - (b) require the Corporation to collect the fee or fees from the authority concerned.
- (3a) The Corporation shall pay any fee so collected to the Treasurer who is, on receipt, to credit the fee to the Consolidated Account.

LGF revenue is classified as general government taxation revenue, in line with Australian Bureau of Statistics' classifications, and appears in the Operating Revenue disclosures of the State's finances (e.g. see Appendix 2: *Operating Revenue*, 2016-17 Budget Paper No. 3: *Economic and Fiscal Outlook*).

The (guaranteed) borrowings undertaken by WATC are disclosed in the total public sector balance sheet. There is no additional risk disclosure (or contingent liability) as the borrowings are guaranteed by the State and the payment obligation is already explicitly accounted for as a public sector liability.

JOINT STANDING COMMITTEE ON AUDIT

ADDITIONAL QUESTIONS
SUBMITTED BY COMMITTEE MEMBERS RELATING TO
THE DEPARTMENT OF TREASURY'S REPORT
REVIEW OF THE FINANCIAL MANAGEMENT ACT (2006)

Department of Treasury

[p. 12-13] Control and authorisation of major expenditure

Q: How do you intend to define a 'significant' financial commitment for the purposes of Recommendations 4 and 5?

Answer: Treasury will be guided by the Parliamentary Counsel's Office to sufficiently define the term or phrase in the FMA, which is likely to be re-enforced through a Treasurer's instruction (TI) and/or regulation to provide the necessary guidance and clarity to officers of agencies as to how this will apply in practice.

Q: If the Act is amended to provide for prior approval of funding, does this render equivalent provisions in the Public Works Act 1902, statutory authorities' enabling legislation and the State Supply Commission Act 1991 redundant?

Answer: Not necessarily. The FMA does not have a control framework for major expenditures that requires funding to be authorised and available prior to entering into any major expenditure commitments. Most major public sector expenditure commitments are entered through the provisions of the *Public Works Act 1902* (PW Act) for major works and the *State Supply Commission Act 1991* (SSC Act) for the supply and disposal of goods and services.

The framework specified in the PW Act and SSC Act does not apply to all agencies, or in the case of the SSC Act the agency may have an exemption. Some statutory authorities have the power under their enabling legislation to enter into contracts and to acquire, hold and dispose of real and personal property.

The framework envisaged for the FMA would be based on similar legislation applied by the Commonwealth and will relate to obtaining funding approval prior to entering into a major expenditure commitment and would complement the relevant provisions in the PW Act, SSC Act and statutory authorities' enabling legislation, as these pieces of legislation will then work hand in hand with each other.

[p. 13] Notice of financial difficulty

Q: Which statutory authorities are required to disclose financial difficulties to their Minister? Is this requirement being complied with?

Answer: Seven statutory authorities have been identified as follows:

- Forest Products Commission;
- Metropolitan Redevelopment Authority;
- Minerals Research Institute of Western Australia;
- Public Transport Authority of Western Australia;
- Racing and Wagering Western Australia;
- Western Australian Health Promotion Foundation; and
- Western Australian Land Information Authority.

Treasury is not aware of any instances where the requirement is not being complied with.

Q: How widespread is the practice of agencies not advising their Minister (or Treasury officials) of financial difficulties? Can you provide examples?

Answer: From a Treasury perspective, it is not widespread.

Q: Why is Recommendation 7 limited to budget dependent agencies rather than all agencies subject to the Act?

Answer: It is acknowledged that to enhance overall accountability and governance, Recommendation 7 ought to apply to all agencies subject to the FMA.

[p. 14-15] Public universities in Western Australia and the FMA

Q: How would you operationalise Recommendation 8?

Answer: The universities would be removed from the purview of the FMA by repealing the relevant provisions that make them subject to the FMA, for example, deleting section 22 of the *Curtin University of Technology Act 1966* which applies the FMA and the *Auditor General Act 2006* to Curtin University with some modification. Additionally, the universities would be deleted from Schedule 1 to the FMA under consequential amendments, thereby removing them from the requirement to comply with the FMA and its subsidiary legislation. A significant implication is that universities would no longer be required to prepare annual reports under the FMA and TIs.

However, to ensure that the universities remain accountable as creatures of State statute, annual reporting requirements may be imposed by suitable legislative amendment. Similar to government trading enterprises, enabling legislation could include a requirement to prepare and table an annual report which includes a financial report. The universities could be required to have the financial report audited by the Auditor General. Should there be a need for the universities to provide additional information (e.g. key performance indicators under outcome based management) this could also be legislated either generally or specifically.

[p. 15] Western Australian Building Management Authority

Q: Have you reviewed whether other entities in Schedule 1 of the Act should be abolished?

Answer: The review mainly focused on matters relating to the operation and effectiveness of the Act. Consequently a limited review was undertaken on whether entities on Schedule 1 of the Act should be abolished, which was confined to those entities that had already been identified before or during the review. In addition to the recommended changes to the Western Australian Building Management Authority, Treasury assessed options to abolish the State Supply Commission (SSC). However, certain legal complexities became apparent in respect of abolishing the SSC and the State Supply Commission Act 1991 in the final stages of the review. Therefore, Treasury decided to withdraw this proposed recommendation from the final review in order to give more consideration to the legislative matters, including the abolition of the SSC.

[p. 15-16] Key performance indicators

Q: When it would be appropriate to exempt an agency from reporting against key performance indicators?

Answer: In some limited circumstances, due to the nature of the core business of an agency it may be difficult to identify clear and measureable outcomes and it may therefore be appropriate to provide an exemption. This is likely to be in relation to the Policy, Planning or Research functions of an agency where the efficiency and effectiveness of the functions are difficult to measure in a meaningful way. In some central agencies, these functions comprise the majority of the agency.

Another situation where an exemption may be appropriate is where a new agency is established due to a new function being performed by Government or because of Machinery of Government changes. This exemption would be to enable the new entity to carry out strategic planning to develop a suitable performance reporting framework.

Q: How would the public be made aware of a decision to exempt an agency from these reporting requirements?

Answer: The Office of the Auditor General audits agency performance information and this is published in the agency annual reports which are tabled in Parliament and publicly available. Any exemptions would be disclosed accordingly.

Q: Can you provide an update on your current review of outcomes based management reporting structures?

Answer: Agencies are required to regularly review their OBM reporting structures. Treasury works with the agency together with the Office of the Auditor General (OAG) as part of these reviews to provide advice and feedback. Some reviews result from the annual audit process by the OAG.

[p. 17] Joint bank accounts

Q: How frequently has the need for joint bank accounts arisen?

Answer: There are currently no joint bank accounts in the Public Bank Account which are subject to the FMA.

Q: How has the need for joint bank accounts been managed currently?

Answer: Not applicable.

Q: Under what circumstances would a joint account be appropriate?

Answer: As explained on p.17 of the Review, joint bank accounts between the State and a contracting party may be required under complex contractual arrangements that are high value, long-term contracts necessary to protect the State's interests.

In the circumstances contemplated at the time of drafting the recommendation, an insured event would need to occur in order to trigger the necessity to establish a bank account. It may be that the developer is required to take out insurance policies for a damage or destruction event and under the terms of the contract any insurance payout is required to be held in a bank account. The contract may require that the account be held jointly by the contractor and the State to meet the cost of remediating the damage or destruction, or if necessary demolishing the damaged or destroyed structure. The joint account is a contingency measure to ensure that moneys are dealt with in the agreed manner and would allow the State to have control over the spending of those moneys. This situation did arise with the Old Treasury Buildings contract but an alternative arrangement was implemented so that the developer established the bank account and the ministerial body corporate (Minister for Works) and the developer were joint signatories to the bank account.

Q: Where would joint bank accounts sit in the Public Bank Account? How would they be accounted for in the whole-of-government financial statements?

Answer: The current view of the SSO is that the moneys held in the bank account would belong to the contracting party and therefore would not impact on the agency's and whole-of-government financial statements.

[p. 18] Treasurer's Advance Arrangements

Q: Can you confirm that references to spending in sections 27 and 29 of the Act relate to appropriation funding rather than expense limit changes?

Answer: Yes. The sections relate to funding in addition to the annual Appropriation Acts for the budget year, that are either authorised by the Governor (new item) or the Treasurer (supplementary funding) which may also result in the increase of agency expense limits, depending on whether there are offsetting expenditure savings elsewhere.

Q: How frequently do you approach the Governor to authorise spending under section 27(1)? Can you provide examples of when this power was used?

Answer: The Governor's approval is requested infrequently. In 2013-14 there were two new items approved for a total amount of \$3.5 million and in 2014-15, one item for \$9.1 million. This information is publicly available in the Annual Report on State Finances.

Q: Is the distinction between new appropriations in section 27(1) and existing appropriations in section 27(2) meaningful?

Answer: There is considered to be a distinction from a governance and accountability perspective.

It is considered prudent that the Governor authorise new expenditure items that have not been provided for under an appropriation by an Appropriation Act.

Similarly, where there is an existing expenditure item provided for under an appropriation by an Appropriation Act and the expenditure exceeds the amount appropriated it is prudent that the Treasurer, being the Minister responsible for the public finances of the State, authorise that supplementary expenditure.

There is no distinction when it comes to those payments made under both scenarios as they are to be provided for in an Appropriation Act in the next or later financial years (section 27(4)(b)).

Q: Have you examined whether 3% is an appropriate rate for the Treasurer's Advance?

Answer: The 3% is considered appropriate. The last Treasurer's Advance Authorisation Act to increase the limit above 3% was required in the 2009-10 financial year.

Q: If the recommendation is accepted, what would be the purpose of section 27(3)?

Answer: Section 27(3) would be considered redundant.

Q: Can you confirm that you are required to obtain retrospective approval from the Parliament for spending made under the Treasurer's Advance?

Answer: Yes, this is required under section 27(4)(b).

Q: If so, when will you present a bill to Parliament seeking approval for spending under the Treasurer's Advance for the last five years?

Answer: In 2016.

Q: Can you outline the process by which the Treasurer's Advance limit is currently calculated?

Answer: The amount for 2015-16 is calculated as follows: the sum of 2014-15 Appropriation Acts 1 and 2 multiplied by 3%: \$21,505,251,000 x 3% = \$645,157,530.

Q: What would be the process to calculate the Treasurer's Advance limit if the legislation is amended in line with Recommendation 15? Under the proposed process, when would the Parliament be advised of the authorisation limit for the budget year?

Answer: The process to calculate the limit will remain the same, but the previous year actual amounts appropriated will be used instead of the budgeted amounts. The actual is known the first week in July each year. This change provides clarity to the current wording in s 29(1) whereby the 3% is equal to the total amount authorised in the previous year.

By way of example, if the changes in recommendation 15 had been in place when setting the 2015-16 limit, the calculation would have been 2014-15 actual appropriation multiplied by 3% ie \$21,050,134,931 x 3% = \$631,504,048 (a reduction of \$13.65 million).

[p. 19] Write-offs

Q: How frequently does the Governor approve write-offs? Can you provide examples of when this power was used?

Answer: As per the *Financial Management Regulations 7* the Governor's approval is required for write-offs above \$250,000. The below table summarises the number of write-offs approved by the Governor in the last five years.

Year	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16*
Frequency	4	5	3	2	5	1

* As at 7 June 2016.

Examples:

1. Insurance Commission of Western Australia (ICWA): Third Party Insurance Fund Bad Debts Write-off.

The operations of the Third Party Insurance Fund sometimes results in ICWA recovering the total costs of a claim from an owner/driver. This will occur where the conditions of the Third Party Policy has been breached, e.g. driving under the influence of alcohol or driving unlicensed. In a majority of occasions write-offs are necessary because:

- the person in breach has significantly less assets than the amount needed to be recovered;
- the person cannot be traced; or
- recovery actions will see the debtor become bankrupt.

The cost of pursuing recoveries makes it uneconomic relative to the benefits that may be realised. Consequently the debt is written off. For example, in 2015-16 there was an instance where a person was involved in a crash whose licence had expired. The debt that arose totalled \$2.2 million. The individual was a single parent with no assets, avoided fulfilling her \$20 per month payment plan (capped at \$2,000 to finalise the debt), had several license suspensions due to outstanding fines, and it had been more than six years since the date of settlement precluding ICWA pursuing debt under the *Limitations Act 2005* section 13(1).

2. Damage to public property:

Property is sometimes written off due to arson, accidents or causes unknown. For example:

- \$789,000 worth of damage to the administration building at Wickham Primary School due to sparks from an angle grinder (2014-15);

- \$1,478,976 worth of damage to Waggrakine Primary School to buildings and assets due to arson (2014-15); and
- \$4,563,795 worth of fire damage to Mt Lawley Primary School (2013-14).

3. Unrecoverable debts:

Debts are sometimes written off due to the party in question becoming insolvent. For example:

- \$446,821 was owed by a company for coastal maintenance obligations. They went into voluntary administration in 2011. There was no realistic prospect of recovery with insufficient assets and higher ranked creditors being due a larger amount (2014-15); and
- \$331,605 was owed by a privately operated college for training services to be delivered to the Pilbara Institute. In 2012, the privately operated college was declared insolvent that meant no return was to be made to unsecured creditors due to insufficient funds (2014-15).

[p. 19] Payment of interest on public monies

Q: In what circumstances would it be appropriate for interest on public monies to be allocated directly to agencies?

Answer: Interest on public monies can be allocated directly to agencies where the contributor requires interest to be paid on monies held in an agency's Special Purpose Account (SPA) for specific purposes under section 16(1)(d) of the FMA. For example the Treasurer approved for the Home Indemnity Insurance SPA, administered by the Department of Commerce, to be paid interest to top up the SPA comprising of public monies.

Q: How frequently have you been required to obtain supplementary funding to cover a shortfall in the Treasury administered appropriation for interest payments to agencies?

Answer: Treasury has been required infrequently to obtain supplementary funding to cover a shortfall in administered appropriations to pay interest to agencies. The last occasion occurred in the 2010-11 financial year where the actual interest bearing balances were higher than budgeted.

Q: Which agencies or agency special purpose accounts are likely to be eligible for direct crediting of interest from the Public Bank Account Interest Earning Account?

Answer: Agencies with interest-bearing SPAs, approved by The Treasurer, are eligible for direct crediting of interest from the Public Bank Account Interest Earning Account.

Interest is paid on the balance of the SPAs if required by any written law or contract to receive the proceeds from investment of moneys, or when the SPAs hold non-State Government sourced moneys for the ultimate benefit of non-government persons or bodies (e.g. scholarships and contractors' performance bonds).

[p. 19] Chief Finance Officer appointments

Q: Can you explain the rationale for this Recommendation?

Answer: Due to the size and nature of some agencies, it is often uneconomical or impracticable to employ a dedicated Chief Finance Officer (CFO) within the agency. In such circumstances, and to provide an appropriate level of flexibility, it is preferable to enable agencies to designate CFOs outside the agency but within the public sector.

Therefore, in order to overcome the restriction in section 57, Treasury has recommended an amendment to section 57(1)(a) that would accommodate a situation where the CFO function of an agency can be performed by another agency.

Q: Have you obtained legal advice on whether amendments are required to designate someone outside the agency as that agency's chief finance officer?

Answer: Yes.

Q: Would this recommendation allow someone outside the public sector to be appointed as a chief finance officer?

Answer: No.

[p. 20] Tabling requirements and special reports when there is a dual reporting obligation

Q: Which agencies have dual reporting obligations?

Answer: The following agencies have been identified:

- Commissioner for Children and Young People (deemed department);
- Corruption and Crime Commission (statutory authority);
- Office of the Director of Public Prosecutions (department);
- Commissioner for Equal Opportunity (sub-department);
- Office of the Information Commissioner (deemed department); and
- Office of Inspector of Custodial Services (department).

Q: What are the effective differences in the reporting requirements for agencies subject to dual reporting obligations?

Answer: The accountable authorities of agencies that are subject to dual reporting obligations have reporting obligations under both the FMA (annual report under Part 5 Division 2) and their own enabling legislation (statutory report/report on activities). Both reports are required to be tabled in Parliament.

[p. 20] Reporting requirements

Q: Have you reviewed the reporting requirements and, if so, what was the result of that review?

Answer: Yes. A review of Treasury's Model Annual Reports (MAR) has been conducted. The review's recommendations for simplifying and streamlining the financial statements are currently being implemented.

Treasury is currently conducting a further review of the FMA and TIs to identify areas to streamline compliance and to cut unnecessary red tape for agencies.

[p. 20-21] Mandatory reporting of non-compliance

Q: Can you describe the process you undertook to examine existing processes to identify and scrutinise non-compliance with policies or standards?

Answer: Treasury considered feedback received on this aspect of the Review. Consistent with the feedback, Treasury reviewed the Victorian framework and found that the Western Australian framework was very similar. This is also the case with other jurisdictions.

Treasury also looked at the FMA and TIs, and other mechanisms such as Parliamentary scrutiny and the role of integrity agencies (e.g. Auditor General) and concluded that the existing Western Australian framework overall adequately provides for transparency, accountability and compliance.

Q: As part of that analysis, did you uncover any gaps in the current processes?

Answer: No. The Western Australian financial management framework is interactive and forms a circle of control, transparency and accountability which addresses the concerns raised in the feedback received.

[p. 21] Definition of 'subsidiary body'

Q: How did changes to the definition of 'control' in Australian Accounting Standard AASB 10 affect the definition of a 'subsidiary body' in the Act? What were the implications of that change for the scope of the Act?

Answer: The new definition of 'control' in Australian Accounting Standard AASB 10 does not dramatically affect the definition of a 'subsidiary body' in the Act. However, it is best practice to make them consistent and future-proof amendments to the Australian accounting standards.

[p. 21-22] Consolidation of annual reports

Q: If the proposal to allow agencies to consolidate annual reports were to proceed, which agencies would be likely candidates for consolidated reporting?

Answer: Recommendation 24 rejected the proposal of preparing a combined annual report on a Minister's portfolio. For example, the Treasurer might authorise the preparation of a combined annual report for the Department of Treasury and Insurance Commission of Western Australia. Given their services delivered are diverse, the combined annual report would not be useful to readers, including Parliamentarians, and potentially obscure material information. In addition, it would not be practicable to prepare and assess Key Performance Indicators of the combined entity.

[p. 22] Minister to report decisions not to provide certain information about agencies

Q: Did you assess whether section 82 is working as intended? If so, what did you conclude?

Answer: Yes it was assessed. Section 82 is meant to work in tandem with section 81. It was found that the phrases 'reasonable and appropriate' and 'certain information' are not defined and therefore do not provide the Auditor General (AG) with a sufficient basis for forming an opinion. Therefore, it has been suggested that clarification is needed around this provision and the complementary *Auditor General Act 2006* provisions, which are not well understood in practice.

It was further found that the provision does not adequately consider the situation of 'confidential information' and the possibility that the AG, in discharging his/her duties may inadvertently disclose to Parliament the information in question.

Q: What is the policy rationale for limiting the application of section 82 to commercial-in-confidence situations?

Answer: While the phrases ‘reasonable and appropriate’ and ‘certain information’ are not defined, the AG has issued an Audit Practice Statement. In arriving at an opinion, the AG needs to review the Minister’s reason for not providing the information and determine whether it is reasonable and therefore appropriate when the information is not provided to Parliament, particularly when the information is commercially confidential or in the public interest .

In order to provide more certainty around the practical application of the section, it was recommended that its application be confined to situations where the Minister declines to provide information on the basis of commercial confidentiality.

Q: Have you obtained legal advice on the scope of section 82 in relation to subsidiaries, related and affiliated bodies?

Answer: Yes.

Q: What is the policy rationale for extending section 82 to these entities?

Answer: These entities receive public funding through their controlling agencies, and therefore should be subject to scrutiny by Parliament.

[p. 23] Act of grace payments over \$250,000

Q: In what circumstances would an Act of Grace payment be made? Can you provide examples of recent payments?

Answer: Under section 80 of the FMA, Act of Grace payments can be made for any reason where the Treasurer is satisfied that it is appropriate to do so because of special circumstances. Act of Grace payments are those payments that are not payable in pursuance of the law or are not payable under a legal liability. Although not legally bound, the Government makes these payments when it considers that it is appropriate to do so because of special circumstances even though the payment would not otherwise be authorised by law or required to meet a legal liability.

Example:

- Payment of \$450,000 each to Turia Pitt and Kate Sanderson (the Kimberley ultramarathon victims), in recognition of the unlikelihood of justice through the court system (28 December 2012).

[p. 23] Act of grace payments under \$1,500

Q: Have you examined whether the administrative arrangements for Act of Grace payments can be streamlined? What was the outcome of that examination?

Answer: Yes. If the authority to approve Act of Grace payments were to be devolved to agencies, the concern is that it has the potential to set an undesirable precedent that may undermine control and good governance over how public money is spent in this particular respect.

[p. 23] Alternate tabling provisions

Q: Which pieces of legislation will need to be amended as a result of Recommendation 30?

Answer: The alternative tabling provisions, as is currently worded, is particularly an issue for the tabling of annual reports under the FMA because of the length of time (i.e. 90 days) and the intersection with Parliamentary sitting dates.

Treasury has not identified the statutes that may need amendment in terms of the alternate tabling provisions. It is our view that if this were to progress the alternative tabling provisions will need to be considered on a case by case basis in relation to the documents to be tabled in conjunction with PCO and the relevant agency.

[p. 24] Definition of 'department' and 'sub-department'

Q: Have you reviewed the definitions contained in Recommendation 31? What was the outcome of that review?

Q: How does the coverage of the Public Sector Management Act 1994 differ from the Act?

Answer: Treasury is aware that differences exist between the *Public Sector Management Act 1994* (PSMA) and the FMA, but this has not been given further consideration as the wider review of the PSMA has not occurred.

The PSMA is primarily about employment, people management and public administration and the FMA is about financial management. Accordingly, it is expected that there will be differences between the two statutes.

- Sub-department

It is noted that the repealed *Public Service Act 1978* did include the establishment of sub-departments as parts of departments (section 22). However, it was discontinued with the introduction of the PSMA presumably because they were not necessary as part of the new public sector structure contemplated by the written law.

On the other hand, the notion of sub-departments was first introduced in the *Financial Administration Audit Act 1985* (upon repealing the *Audit Act 1904*) and is continued under the FMA. It appears that the FMA continues to support the creation of sub-departments but only as a temporary arrangement, for example, the Office of Shared Services, Office of Native Title etc. There are currently three sub-departments under the FMA (Office of the Government Chief Information Officer, State Emergency Management Committee Secretariat and the Equal Opportunity Commission). As these entities receive public funding it is necessary that they be temporarily created to allow for their discharge of public moneys through the FMA requirements.

- Department

Only section 35 of the PSMA allows for the establishment of departments. Therefore, there are no differences between the two statutes because the FMA essentially considers departments to be that which are established under section 35(1) of the PSMA.

- Deemed department

Despite section 3 of the FMA, deemed departments under the FMA (section 5) are taken to constitute a department for the purposes of the FMA. These are the:

- Legislative Assembly;
- Legislative Council;
- Parliamentary Services Department;
- Parliamentary Commissioner for Administrative Investigations;
- Information Commissioner;
- Governor's Commissioner for Children and Young People; and
- Governor's Establishment.

The deemed departments are not departments for the purposes of section 35 of the PSMA nor have they been established as departments to support an organisation for the purposes of s5(2) PSMA. These entities receive public funds and through the FMA discharge accountability for public funds as specified. The only difference is that the annual report is tabled directly in Parliament and not through a Minister.

The FMA contains a list of statutory authorities in Schedule 1. Whereas the PSMA contains a different definition of 'organisation' comprising 'SES organisations' and 'non-SES organisations', some of which, but not all, are statutory authorities for the purposes of the FMA. Again, this illustrates the differing purposes that the two Acts serve.

[p. 24] Out of court settlements

Q: What is the current process for approving out of court settlements?

Answer: The process for approving out of court settlements is not covered by the FMA and the Treasurer's instructions. Therefore, the process will depend on each individual agency's circumstances.

Q: How do out of court settlements differ from that of act of grace payments?

Answer: Act of Grace payments are those payments that are not payable in pursuance of the law or are not payable under a legal liability. Although not legally bound, the Government makes these payments when it considers that it is appropriate to do so because of special circumstances even though the payment would not otherwise be authorised by law or required to meet a legal liability. The lawful authority to make the payment is derived from section 80 of the FMA and is vested in the Treasurer.

Out of court settlements are the consequence of a legal process. Out of court settlements usually result from negotiating a settlement that is a legally binding agreement between the relevant parties.

[p. 25] Business arrangements

Q: How does the use of business arrangements pose a risk to the State's finances?

Answer: 'Business arrangements' which principally comprises companies, partnerships, trusts, and joint ventures pose a risk to the State's finances because they are subject to *Corporations Law*, other written laws and the common law, and therefore fall outside the ambit of the FMA accountability framework applying to agencies. The 1992 Report of the Royal Commission into Commercial Activities of Government and Other Matters stated that the use of companies should be regulated (3.14.8) because their accountability requirements, character and purpose differ from government agencies. The Report acknowledged that governmental involvement to some degree in commercial activity is inevitable (3.13.1), however, the vital issue is not the activities in which government engages, but the conditions under which it engages in them (3.13.2).

Consequently, where Government has invested in these types of business arrangements, the use of these vehicles do not necessarily limit the State's liability.

Q: What is the rationale for using these structures to affect business arrangements?

Answer: Where Government considers that there is no longer an imperative for it to be involved in an activity because of increased private sector investment, it may for example, as a first step, transfer the activity into a company arrangement in preparation for its final divestment to the private sector in the medium to long term. As the company becomes financially stronger, Government may then choose to reduce its shareholding over time.

Government may also wish to pursue pure commercial opportunities, for example where it is the exclusive owner and provider of intellectual property.

Australian jurisdictions along with the Commonwealth may also enter into company arrangements for common purposes.

Q: Which Acts permit the use of corporate structures?

Answer: See attached (Appendix 2).

Q: How frequently are you required to assess requests to use corporate structures?

Answer: Infrequently.

Q: Why are you recommending the Biosecurity and Agriculture Management Act 2007 be amended and not the other Acts?

Answer: The Biosecurity and Agriculture Management (BAM) Bill was drafted and introduced so that the functions of the body corporate 'The Western Australian Agriculture Ministerial Body' would be discharged by the Minister. To remove any doubt that the activities conducted through the body corporate were activities of the Department of Agriculture and Food (DAFWA), clause 156 contained a standard provision stating that the powers exercised by the ministerial body are taken to be services under the control of DAFWA for the purposes of the FMA. The Explanatory Memorandum reiterated that the purpose of the ministerial body was to enable the performance of those ministerial functions that can more conveniently or appropriately be performed by a body corporate than an individual. Following some last minute advice from the State Solicitor's Office (SSO), amendments were made in Committee in the Legislative Council whereby powers were directly conferred on the Western Australian Agricultural Authority (WAAA), which has created an unintended consequence whereby it has been construed by the Auditor General (AG) that WAAA is a separate reporting entity.

No recent legislation that contains ministerial body corporate provisions has the same effect as the BAM Act.

Q: Does the Biosecurity and Agriculture Management Act 2007 still need to be amended?

Answer: Treasury has discussed this matter with DAFWA, which has resulted in DAFWA now taking responsibility for advising their Minister on the proposed legislative changes to the BAM Act that are required in order to cure the unintended consequences as raised in the answer to the previous question.

[p. 26-27] Western Australian Agriculture Authority

Q: Which Acts establish a body corporate?

Answer: See attached (Appendix 3) for the Acts that establish a Ministerial/CEO body corporate.

Q: Which body corporates are subject to the Act?

Answer: None of the bodies corporate listed in Appendix 3 are considered to be agencies subject to the FMA. This is because the body corporate is a contracting mechanism, a legal entity to be used by the Minister in the exercise of his/her powers should this be required. Any acts or things done through the Ministerial/CEO body corporate is regarded as services of the relevant department for the purpose of section 52 of the FMA. Accountability is discharged at the agency level that would incorporate the activities of the relevant Ministerial/CEO body corporate.

Q: Should the Western Australian Agriculture Authority be listed in Schedule 1 of the Act? If not, why?

Answer: The WAAA is intended to be a contracting mechanism only. While it could be perceived that the WAAA is a statutory authority and ought to be listed in Schedule 1 to the FMA, this is not the intention behind the creation of the WAAA. It has been proposed that the BAM Act be amended to put the WAAA on the correct footing consistent with other legislation that creates these types of bodies corporate.

Q: If the Recommendation is accepted, what would be the role of the Western Australian Agriculture Authority?

Answer: As explained above, the WAAA is intended to be a contracting mechanism and would be no different to the other types of bodies corporate discussed above, such as the Health Ministerial Body in the recently assented *Health Services Act 2016* and the Alcohol and Other Drugs Ministerial Body in the *Alcohol and Other Drugs Act 1974*.

[p. 27] Transfer of Land Act 1893

Q: Are there provisions in other Acts that require the Treasurer (or any other Minister) to hold funds in trust like the Transfer of Land Act 1893? If so, should those Acts be similarly amended to ensure that all unclaimed monies are dealt with consistently?

Answer: The issue regarding the *Transfer of Land Act 1893* was brought to Treasury's attention. Similar provisions in other Acts may exist, but examining all other Acts was not in scope of the Review.

Q: Will the Western Australian Land Information Authority be consulted on changes to the Transfer of Land Act 1893?

Answer: Yes. Landgate has been consulted during the review process (in 2013).

Q: Should this section and Recommendation refer to the 'mortgagor' or the 'mortgagee'?

Answer: It is acknowledged that there are inconsistencies in the terminology used in section 126 of the *Transfer of Land Act 1893* and in the Review (the Act refers to 'mortgagee' and the Review refers to 'mortgagor'). Treasury will seek legal advice to clarify this and determine the appropriate action to take.

[p. 41] Appendix E: TIs and the Financial Management Regulations 2007 issues

Q: What is the status of the recommendations made in Appendix E? Are these recommendations being pursued through other processes?

Answer: The recommendations are currently on Treasury's work program subject to available resourcing, with the exception of the Holding Account (see answer to the next question below).

A newly formed Chief Finance Officers Reform Steering Committee comprising a cross-section of agencies, including Treasury will start to drive some of these recommendations over time.

Q: Are these recommendations still current?

Answer: Yes, except for the one on the Holding Account recommendation where it has been subsequently been found that there are some impediments under the accounting standards and further work is required to determine how to give effect to the recommendation.

[p. 42-43] Appendix F: Statutory authorities' enabling legislation issues

Q: What is the status of the recommendations made in Appendix F? Are these recommendations being pursued through other processes?

Answer: The recommendations are still current, but these are difficult to implement as many of them require legislative amendment. Considering the current legislative profile and priority these recommendations are to be implemented when the opportunity arises and on a case by case basis.

Q: Are these recommendations still current?

Answer: Yes.

Q: Has Treasury reviewed statutory authorities' legislation to ensure that fines, penalties and infringement notices revenue is credited to the Consolidated Account?

Answer: No.

Q: In relation to access to information, the recommendation does not seem consistent with the assertion that a standardised clause is not necessary. Can you explain?

Answer: The recommendation acknowledges that changes will only be recommended to existing provisions when it is appropriate.

Q: Are there any statutory authorities that are prevented from providing information to their Minister? If so, how does that interact with section 81 of the Act?

Answer: The review did not analyse the enabling legislation of all statutory authorities. This will be undertaken as and when the opportunity arises, at which point an assessment will be made on the appropriateness of any change. The intent of the recommendation is to ensure consistency across statutory authorities where appropriate.

If any instances do arise in the normal course of business, Treasury would seek legal advice on how such a situation would interact with section 81 of the FMA.

[p. 44-45] Appendix G: Issues outside the scope of the FMA

Q: What is the status of the recommendations made in Appendix G? Are these recommendations being pursued through other processes?

Answer: The recommendations surrounding the net appropriation determination and 27th pay have been implemented, while the rest will be implemented when the opportunity arises and on a case by case basis.

Q: Are these recommendations still current?

Answer: Yes, except for the recommendations already implemented (see answer to previous question).

OTHER QUESTIONS

Coverage of the *Financial Management Act 2006*

Q: Which entities are currently subject to the Act?

Answer: Entities currently subject to the FMA are as follows:

- all departments established under section 35(1)(a) and (b) of the *Public Sector Management Act 1994*;
- deemed departments under section 5 of the Act;
- all statutory authorities subject to the Act and listed in Schedule 1 to the Act; and
- all sub-departments established under section 56(2) of the Act. These include the Office of the Government Chief Information Officer, Commissioner for Equal Opportunity, and the State Emergency Management Committee Secretariat.

Q: Which entities are not currently subject to the Act?

Answer: Government trading enterprises that are subject to *Corporations Law* equivalent provisions in their legislation. These are LandCorp, electricity corporations, port authorities, water corporations.

Also there are numerous other statutory bodies that are not either departments, deemed departments, sub-departments or Schedule 1 statutory authorities. These bodies either discharge their accountability under the respective agencies subject to the FMA, or have been established for a public purpose independent of government and are required to discharge their accountability under their respective enabling statutes.

Q: Are you comfortable with the current coverage of the Act?

Answer: Yes.

Q: Did you consider whether to expand the scope of the Act to uncovered entities?

Answer: No, not as part of this review.

Return of excess cash

Q: How many times have you sought to recover excess cash balances from agencies? For each instance, can you provide the amount recovered by agency?

Answer: In 2014-15, a specific review of agencies cash balances was carried out and the Government approved the return of surplus cash held by agencies to the Consolidated Account as listed in the attached (Appendix 4).

It should also be noted that the cash management policy has been in place for a number of years and, as part of the annual budget process, it is common practice to review if the level of cash held by each agency is excessive and where it is deemed that this is the case an adjustment is made. This is not that common and no central register is held for tracking these as the circumstances will vary and each is considered on a case-by-case basis.

Q: What is the accounting treatment for recovered amounts?

Answer: The surplus cash recovered from agencies is generally implemented through the reduction of their appropriation revenue and results in an increase in the Consolidated Account balance. This would reduce the amount of gross borrowings by the government.

Q: How were recovered amounts disclosed at whole-of-government and agency levels?

Answer: The measure detailed above was disclosed in the 2014-15 Budget Statements in Budget Paper No. 3 *Economic and Fiscal Outlook*.

Q: How are agencies able to accumulate excess cash balances?

Answer: Excess cash balances can accumulate over time due to underspending in various expense categories. The most significant case where this can occur is due to vacant positions from delays in recruitment processes. Other circumstances can vary greatly and the tight control of expenditure by an agency can contribute to the build-up.

Temporary high cash balances may result from capital funding where projects are delayed, however, these are only timing differences and would not generally lead to the removal of excess balances from agencies.

Treasurer 's power to make payments before supply is grant

Q: Has the Treasurer been required to exercise the supply power grants under section 24(1) of the Act? If so, what were the occasions?

Answer: Yes. If the Appropriation Bills are not passed by 30 June, section 24(1) comes into effect – e.g. when the 2015-16 Bills were passed on 26 August 2015.

Q: Is the Treasurer required to notify Parliament that the supply power is going to be used?

Answer: No.

Health Services Bill 2006

Q: Are you aware of any other instances where it may not be feasible to deposit 'other money' into bank accounts?

Answer: No. Note: The requirement for hospitals not to bank moneys will only apply to amounts under \$500 and in particular circumstances that will be prescribed in general regulations, and will be fully documented by the Department of Health prior to implementation. It is not intended to compromise the principles of good financial management such as integrity, accountability and transparency in granting this exemption. It is a pragmatic solution should patients choose to bring moneys to the hospital.

Q: Do other Acts provide an exemption from section 36(3) of the Act?

Answer: Treasury is not aware of any legislation that would provide an exemption from the oversight arrangements in relation to business arrangements. It is not intended for powers under section 36(3) of the *Health Services Act 2016* which relates to business arrangements to be exempted from the requirement for Minister's written agreement with the Treasurer's prior approval specified in section 38(3) and (4) of the Act.

Resource agreements

Q: How many agencies are currently subject to a resource agreement?

Answer: 68

Q: How has the number of agencies subject to a resource agreement changed over time?

Answer: Resource agreements were first introduced for the 1999-2000 Budget. As a general rule, resource agreements are required to be submitted by all budget-funded agencies that are classified as being within the general government sector. Agencies that prepare Strategic Development Plans (SDPs) and Statements of Corporate Intent (SCIs), or report directly to Parliament, are exempt. Therefore, the number of agencies subject to a resource agreement has remained relatively unchanged over time.

Q: Are resource agreements an effective tool for managing agency performance?

Answer: Yes, Treasury considers resource agreements to be effective, particularly now these agreements link agencies' Budget financial targets with estimated actual and actual results, ensuring the resource agreements remain 'live' throughout the year.

Q: How do you manage performance in agencies that are not subject to a resource agreement?

Answer: These agencies must submit SDPs and SCIs, which reflect all relevant Government budgetary and policy positions affecting the agency. There are some agencies, such as the Metropolitan Redevelopment Authority, that do not prepare SDPs or SCIs, but they have similar corporate planning requirements that need Ministerial approval and concurrence by the Treasurer.

Q: Have you ever directed an accountable authority to revise a draft resource agreement? If so, what were the circumstances?

Answer: No, the quality of resource agreements received has always been high because the accountable authority is required to seek the relevant Minister's approval to the draft resource agreement before it is submitted to the Treasurer. Moreover, both Ministers and accountable authorities are aware that details regarding their performance relative to targets specified in their resource agreements must be included in their annual report, helping to ensure a high quality baseline.

Treasurer's power to obtain information

Q: Have you been required to exercise the information gathering powers contained in section 79? If so, in what circumstances?

Answer: No. I have not been required to exercise this power during the time I have held the position as Treasurer.

Q: What are the consequences of not complying with your direction under this section or any other section?

Answer: There are no penalties specified in the FMA for non-compliance or breaches of the FMA. There may be other consequences relating to disciplinary action either under the *Public Sector Management Act 1994* or at common law.

There may also be other legal and non-legal consequences, but the nature of these would depend on the particular facts and circumstances of the situation.

Provision of information to Parliament

Q: Are you aware of any instances where individuals have taken action or omitted to take an action or entered into a contract that would prevent information from being supplied to the Parliament? If so, can you provide details of those instances?

Answer: No. More specifically, the contracts entered into by the Treasurer and Treasury in their capacity as delegates of the Minister for Works under the *Public Works Act 1902* all expressly provide for the State to disclose information to satisfy the requirements of Parliamentary accountability.

Cash management practices

Q: How did the review in cash management practices of the Public Bank Account in late-2013 inform the contents of the Treasury report?

Answer: The review did not inform the content of the Treasury report.

Q: Can you provide a copy of the review and the State Solicitor's Office advice?

Answer: A desktop review was undertaken as part of the 2014-15 Budget deliberations. This involved consultation between Treasury analysts and agencies regarding cash holdings and categorisation of those holdings. Advice was provided to the Economic and Expenditure Reform Committee and the results were published in the 2014-15 Budget papers. See also the response to the first question under 'Return of excess cash'.

The State Solicitor's Office advice cannot be provided as it is subject to legal professional privilege and confidentiality.

SPENDING IN EXCESS OF APPROVED EXPENSE LIMIT

2011-12

Agency Name	Expected Outturn \$000	2011-12		
		Actual \$000	Variance \$000	Variance %
Agriculture and Food	215,866	216,664	798	0.37%
Attorney General	507,829	596,024	88,195	17.37%
Child Protection and Family Support	518,376	526,378	8,002	1.54%
Commissioner for Children and Young People	3,168	3,331	163	5.15%
Commissioner for Equal Opportunity	4,220	4,298	78	1.85%
Corrective Services	745,774	747,518	1,744	0.23%
Culture and the Arts	184,837	191,544	6,707	3.63%
Disability Services Commission	654,712	657,469	2,757	0.42%
Fire & Emergency Services Authority	424,838	440,549	15,711	3.70%
Fisheries	79,496	86,098	6,602	8.30%
Health	6,300,762	6,373,654	72,892	1.16%
National Trust of Australia (W.A.)	7,651	8,106	455	5.95%
Office of Energy	33,591	36,352	2,761	8.22%
Office of the Director of Public Prosecutions	38,164	38,934	770	2.02%
Peel Development Commission	4,630	5,405	775	16.74%
Pilbara Development Commission	6,088	6,154	66	1.08%
Planning	67,711	72,846	5,135	7.58%
Public Transport Authority	1,074,583	1,076,684	2,101	0.20%
Racing, Gaming and Liquor	13,167	14,449	1,282	9.74%
Rural Business Development Corporation	17,923	18,729	806	4.50%
South West Development Commission	8,479	8,855	376	4.43%
Swan River Trust	14,272	16,092	1,820	12.75%
WA Planning Commission	47,608	74,855	27,247	57.23%
Western Australia Police	1,170,517	1,174,436	3,919	0.33%
Zoological Parks Authority	21,857	21,942	85	0.39%

SPENDING IN EXCESS OF APPROVED EXPENSE LIMIT

2012-13

Agency Name	Expected Outturn \$000	2012-13		
		Actual \$000	Variance \$000	Variance %
Agriculture and Food	195,471	199,117	3,646	1.87%
Botanic Gardens and Parks Authority	19,695	22,363	2,668	13.55%
Child Protection and Family Support	559,071	563,132	4,061	0.73%
Commerce	197,050	210,220	13,170	6.68%
Commissioner for Children and Young People	3,035	3,064	29	0.96%
Commissioner for Equal Opportunity	4,136	4,431	295	7.13%
Corrective Services	815,151	815,804	653	0.08%
Country High School Hostels Authority	14,393	14,658	265	1.84%
Culture and the Arts	171,519	179,655	8,136	4.74%
Department of Parks and Wildlife	342,788	347,233	4,445	1.30%
Department of Regional Development	173,912	186,397	12,485	7.18%
Economic Regulation Authority	10,161	10,223	62	0.61%
Fisheries	79,013	89,929	10,916	13.82%
Health	6,925,812	6,995,619	69,807	1.01%
National Trust of Australia (W.A.)	7,318	7,904	586	8.01%
Office of the Director of Public Prosecutions	40,114	40,150	36	0.09%
Office of the Environmental Protection Authority	16,058	17,513	1,455	9.06%
Premier and Cabinet	158,300	160,342	2,042	1.29%
Racing, Gaming and Liquor	13,815	14,868	1,053	7.62%
Small Business Development Corporation	12,990	13,281	291	2.24%
Sport and Recreation	80,577	81,429	852	1.06%
Training and Workforce Development	705,037	705,893	856	0.12%
Transport	339,700	357,722	18,022	5.31%
WA Planning Commission	47,237	69,449	22,212	47.02%
WA Tourism Commission	71,346	74,056	2,710	3.80%
Water	84,774	89,976	5,202	6.14%

SPENDING IN EXCESS OF APPROVED EXPENSE LIMIT

2013-14

Agency Name	Expected Outturn \$000	2013-14		
		Actual \$000	Variance \$000	Variance %
Aboriginal Affairs	36,102	36,588	486	1.35%
Botanic Gardens and Parks Authority	23,292	23,506	214	0.92%
Culture and the Arts	177,731	180,090	2,359	1.33%
Department of Environment Regulation	68,046	68,868	822	1.21%
Goldfields-Esperance Development Commission	4,419	4,884	465	10.52%
Mid-West Development Commission	3,362	3,364	2	0.06%
Office of the Environmental Protection Authority	15,563	16,043	480	3.08%
Peel Development Commission	2,930	3,029	99	3.38%
Premier and Cabinet	194,463	195,222	759	0.39%
Public Transport Authority	1,227,683	1,236,588	8,905	0.73%
Racing, Gaming and Liquor	15,208	16,382	1,174	7.72%
Small Business Development Corporation	12,682	13,875	1,193	9.41%
South West Development Commission	5,123	8,642	3,519	68.69%

SPENDING IN EXCESS OF APPROVED EXPENSE LIMIT

2014-15

Agency Name	Expected Outturn \$000	2014-15		
		Actual \$000	Variance \$000	Variance %
Agriculture and Food	223,549	224,320	771	0.34%
Botanic Gardens and Parks Authority	21,736	23,328	1,592	7.32%
Commissioner for Equal Opportunity	3,918	4,250	332	8.47%
Corrective Services	897,812	912,446	14,634	1.63%
Culture and the Arts	168,694	172,198	3,504	2.08%
Department of Fire and Emergency Services	353,977	359,809	5,832	1.65%
Department of Parks and Wildlife	296,439	302,421	5,982	2.02%
Fisheries	92,658	98,914	6,256	6.75%
Great Southern Development Commission	4,120	4,342	222	5.39%
Mines and Petroleum	158,165	159,724	1,559	0.99%
Office of the Director of Public Prosecutions	38,832	41,297	2,465	6.35%
Premier and Cabinet	168,483	169,727	1,244	0.74%
Public Transport Authority	1,265,284	1,267,454	2,170	0.17%
Racing, Gaming and Liquor	14,780	16,880	2,100	14.21%
Rural Business Development Corporation	1,100	1,235	135	12.27%
South West Development Commission	8,472	8,822	350	4.13%
WA Planning Commission	59,995	167,468	107,473	179.14%
WA Sports Centre Trust	63,860	66,391	2,531	3.96%

BUSINESS ARRANGEMENTS

Agency	Legislation	Business Arrangement	Comment
Model 1			
Department of Agriculture and Food through the body corporate The Western Australian Agriculture Authority (the Authority)	Biosecurity and Agriculture Management Act 2007 Part 7	<p><u>Business concern</u></p> <p>Company, partnership, trust, joint venture, or any other business arrangement but does not include a research body</p> <p>s.152(3)(b) The Authority may participate in any business concern or research body and acquire, hold and dispose of shares, units or other interests in, or relating to, a business concern or research body. Prior to exercising this power:</p> <ul style="list-style-type: none"> the Authority is to notify the Treasurer of the proposal in relation to a business concern; and the Authority must seek the Treasurer's approval to the business concern <p>unless it is a kind that the Treasurer has determined in writing not to be so notified (s.153)</p> <p>The Treasurer may give directions or impose requirements to be complied with as part of his approval.</p>	<ol style="list-style-type: none"> The Authority does not require the Treasurer's approval to a business concern with respect to a research body. Accordingly, the Treasurer's approval was not required to setting up the <i>Corporations Law</i> company, Australian Export Grains Innovation Centre (AEGIC). However Treasury was consulted. Treasury's oversight is essential where a <i>Corp Law</i> company is being created even for research purposes. There is no requirement for the Minister's involvement because the power is being exercised by the ministerial body corporate. Section 153 requires two things to occur (1) notify the Treasurer (2) seek his approval.

APPENDIX 2

Attachment B - Additional Questions

Agency	Legislation	Business Arrangement	Comment
Department of Education through the body corporate Minister for Education (s.214)	School Education Act 1999	<p><u>business arrangement</u></p> <p>a company, a partnership, a trust, a joint venture, or an arrangement for sharing profits</p> <p>s.216(2)(c) The Minister may subject to section 217, participate in any business arrangement and acquire, hold and dispose of shares, units or other interests in, or relating to, a business arrangement</p> <ul style="list-style-type: none">• The Minister is to notify the Treasurer of the proposal in relation to a business arrangement before exercising any power.• The Minister must seek the Treasurer's approval to the business concern <p>unless it is a kind that the Treasurer has determined in writing not to be so notified (s.217)</p> <p>The Treasurer may give directions or impose requirements as part of his approval.</p>	<ol style="list-style-type: none">1. There is no requirement for the Minister's involvement as the power is being exercised by the ministerial body corporate.2. Section 217 requires two things to occur (1) notify the Treasurer (2) seek his approval.

APPENDIX 2

Attachment B - Additional Questions

Agency	Legislation	Business Arrangement	Comment
Model 2			
Chemistry Centre	Chemistry Centre (WA) Act 2007	<u>Business concern</u> a company, a partnership, a trust, a joint venture or any other business arrangement s.11(2)(d) The Chemistry Centre may with the Minister and Treasurer's approval participate in any business concern or acquire, hold and dispose of, shares, units or other interest in or relating to a business concern.	1. Under the <i>Interpretation Act 1984</i> , the power to approve includes setting reasonable conditions. Therefore the omission in the Act is not an issue. 2. There is no provision to exempt any business arrangement from the approval process (see s.153 BAM Act).
Western Australian Tourism Commission	Western Australian Tourism Commission Act 1983	<u>business arrangement</u> a proprietary limited company, partnership or trust s.15 The Commission may, with the approval of the Minister and of the Treasurer, participate in any business arrangement for specific purposes; and acquire, hold and dispose of shares, units or other interests in any business arrangement.	1. There is no provision to exempt any business arrangement from the approval process (see s.1t53 BAM Act). 2. Under the <i>Interpretation Act 1984</i> , the power to approve includes setting reasonable conditions. Therefore the omission in the Act is not an issue.
Minerals Research Institute of Western Australia	Minerals Research Institute of Western Australia Act 2013		Minister's agreement with Treasurer's approval is required
Perth Theatre Trust	Perth Theatre Trust Act 1979		Minister and Treasurer's approval is required.

APPENDIX 2

Attachment B - Additional Questions

Agency	Legislation	Business Arrangement	Comment
Model 3			
Land Information Authority (Landgate)	Land Information Authority Act 2006	<u>Business concern</u> a company, a partnership, a trust, a joint venture, or any other business arrangement s.12(2)(d) Landgate may for the purpose of performing its functions participate, with the Minister's approval, in any business concern and, with the Treasurer's approval, acquire, hold, and dispose of, shares, units, or other interests in, or relating to, a business concern.	<ol style="list-style-type: none">1. The Minister and Treasurer's approval are only required where Landgate proposes to acquire, hold and dispose of shares, units or other interests relating to a business concern.2. The Minister, with the Treasurer's concurrence, may be order exempt a transaction or class of transactions from the Minister's approval.

APPENDIX 2

Attachment B - Additional Questions

Agency	Legislation	Business Arrangement	Comment
Public Transport Authority (Authority)	Public Transport Authority Act 2003	<u>Business concern</u> a company, a partnership, a trust, a joint venture, or any other business arrangement; s.13(2)(d) the Authority may participate, with the Minister's approval, in any business concern and, with the Treasurer's approval, acquire, hold, and dispose of, shares, units, or other interests in, or relating to, a business concern.	<ol style="list-style-type: none">1. The Treasurer's approval is only required where Public Transport Authority proposes to acquire, hold and dispose of shares, units or other interests relating to a business concern.2. There is no provision to exempt any business arrangement from the approval process (see s.153 BAM Act).

APPENDIX 2

Attachment B - Additional Questions

Agency	Legislation	Business Arrangement	Comment
Model 4			
Metropolitan Redevelopment Authority (the Authority)	Metropolitan Redevelopment Authority Act 2011	<p><u>Business arrangement</u></p> <p>a proprietary limited company, partnership, trust, joint venture or arrangement for sharing profits</p> <p>s.11(3)(b) states that subject to section 12, the Authority may participate in any business arrangement and acquire, hold and dispose of shares, units or other interests in, or relating to, a business arrangement.</p> <p>s.12 The Authority must obtain the written <u>agreement</u> of the Minister before it enters into any transaction.</p> <p>The Minister must obtain the Treasurer's approval before giving a written agreement</p> <p>The Treasurer may, by notice published in the Gazette, exempt any transaction or class of transaction from the requirement for the Treasurer's approval either unconditionally or on specified conditions.</p>	<ol style="list-style-type: none"> 1. The exemption of any transaction or class of transactions from Minister's agreement and Treasurer's prior approval must be gazette. 2. Other statutes appear to require both the Minister and Treasurer to <u>approve</u>.

Agency	Legislation	Business Arrangement	Comment
Model 5			
Western Australian Planning Commission (the Commission)	Planning and Development Act 2005	<p><u>Business arrangement</u></p> <p>a company, a partnership, a trust, a joint venture, an arrangement for sharing profits or an arrangement for sponsorship</p> <p>s.15(2)(f) The Commission for the purpose of performing its functions may, on terms and conditions approved by the Minister and the Treasurer, participate in any business arrangement and acquire, hold and dispose of shares, units or other interests in, or relating to, a business arrangement.</p> <p>s.15(4) For the purposes of subsection (2)(f) the Minister and the Treasurer may approve terms and conditions in respect of a specific business arrangement or class of business arrangement or in respect of business arrangements generally.</p>	<ol style="list-style-type: none"> 1. It appears that the Commission does not require the Minister's and the Treasurer's approval to the business arrangement, but merely approval to the terms and conditions for entering into the same. 2. Should the Minister wish to prevent the Commission from entering into a business arrangement, he could decline to approve the terms and conditions subject to sub-section (4). 3. There is no provision to exempt any business arrangement from the approval process (see s.153 BAM Act).

APPENDIX 2

Attachment B - Additional Questions

Agency	Legislation	Business Arrangement	Comment
Department of Training and Workforce Development through the body corporate VET (WA) Ministerial Corporation	Vocational Education and Training Act 1996	<p><u>business arrangement</u></p> <p>a company, a partnership, a trust, a joint venture, or an arrangement for sharing profits</p> <p>s.9(2)(l) The Minister may for the purpose of performing any function, on terms and conditions approved by the Treasurer, participate in any business arrangement and acquire, hold and dispose of shares, units or other interests in, or relating to, a business arrangement.</p>	<ol style="list-style-type: none"> 1. The power is being exercised by the ministerial body corporate 2. It appears that the Treasurer's approval to the business arrangement is to the terms and conditions for entering into the same. 3. There is no provision to exempt any business arrangement from the approval process (see BAM Act).
Botanic Gardens and Parks Authority (the Authority)	Botanic Gardens and Parks Authority Act 1998	<p><u>Business arrangement</u></p> <p>a proprietary limited company, partnership, trust, joint venture, arrangement for sharing profits or arrangement for sponsorship</p> <p>s.10(2)(m) The Authority may, on terms and conditions approved by the Minister and Treasurer, participate in any business arrangement that is consistent with its functions.</p> <p>The terms and conditions may be in respect of a specific business arrangement or class of business arrangement or in respect of business arrangements generally.</p>	<ol style="list-style-type: none"> 1. There is no provision to exempt any business arrangement from the approval process (see s.153 BAM Act). 2. The Treasurer's approval to the business arrangement seems to be implied

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Agency	Legislation	Business Arrangement	Comment
Zoological Parks Authority	Zoological Parks Authority Act 2001	<p><u>business arrangement</u></p> <p>means a company, a partnership, a trust, a joint venture, an arrangement for sharing profits or an arrangement for sponsorship</p> <p>s.10(2)(n) The Authority may on terms and conditions approved by the Minister and the Treasurer, participate in any business arrangement and acquire, hold and dispose of shares, units or other interests in, or relating to a business arrangement.</p> <p>s.10(3) For the purposes of subsection (2)(n) the Minister and the Treasurer may approve terms and conditions in respect of a specific business arrangement or class of business arrangement or in respect of business arrangements generally.</p>	<ol style="list-style-type: none"> 1. There is no provision to exempt any business arrangement from the approval process (see s.15 BAM Act). 2. The Treasurer's approval to the business arrangement appears to be implied
TAFE Colleges	Vocational Education and Training Act 1996	<p><u>business arrangement</u></p> <p>a company, a partnership, a trust, a joint venture, or an arrangement for sharing profits</p> <p>s.37(1)(f) the college with the approval of the Minister, on terms and conditions approved by the Treasurer, participate in business arrangements relating to the provision of vocational education and training;</p>	<ol style="list-style-type: none"> 1. The Minister approves the colleges entering into business arrangements. The Treasurer's approval is limited to approving the terms and conditions. 2. There is no provision to exempt any business arrangement from the approval process (see BAM Act).

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Agency	Legislation	Business Arrangement	Comment
Model 6			
Racing and Wagering Western Australia (RWWA)	Racing and Wagering Western Australia Act 2003	<u>business arrangement</u> a company, a partnership, a trust, a joint venture or an arrangement for sharing profits s.30(2)(g) RWWA may participate in any business arrangement and acquire, hold and dispose of shares, units or other interests in, or relating to, a business arrangement.	As entering into business arrangements is part of doing business, there is no requirement for Minister's or Treasurer's approval. The agency receives no Consolidated Account funding
Western Australian Meat Industry Authority	Western Australian Meat Industry Authority Act 1976	s.16A(2)(c) the Authority with the approval of the Minister, may participate in any business arrangement; and acquire, hold and dispose of units or other interests in, or relating to, any business arrangement. This is subject to it being limited to the Midland Saleyards and improving the efficiency of the meat industry.	The agency receives no Consolidated Account funding
Curtin University of Technology	Curtin University of Technology Act 1966	s.7(3) The University may carry out its functions and exercise its powers, including the power to enter into business arrangements, within or outside the State.	As entering into business arrangements is part of doing business, there is no requirement for Minister's or Treasurer's approval. The agency receives no Consolidated Account funding
Gold Corporation	Gold Corporation Act 1987	s.11(2)(e) The Gold Corporation may form or establish, or participate in the formation or establishment of, and conduct any business undertaking to promote the objects of the Act.	As entering into business arrangements is part of doing business, there is no requirement for Minister's or Treasurer's approval.

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Agency	Legislation	Business Arrangement	Comment
Rottneest Island Authority	Rottneest Island Authority Act 1987	s.13(2)(d)(i) The Authority may establish or acquire any business undertaking in respect of providing and operating recreational and holiday facilities on the Island	As entering into business arrangements is part of doing business, there is no requirement for Minister's or Treasurer's approval.
Insurance Commission of Western Australia	Insurance Commission of Western Australia Act 1986	s.7(2)(f) The Commission may form or establish, or participate in the formation or establishment of, any business undertaking	As entering into business arrangements is part of doing business, there is no requirement for Minister's or Treasurer's approval.
Model 7			
Department of Environment and Conservation through the Conservation and Land Management Executive Body governed by the CEO	Conservation and Land Management Act 1984	<p><u>Business undertaking</u></p> <p>Person, corporation, trust, joint venture, government agency or other entity engaging or intending to engage in any scheme, project or operation</p> <p>The CEO may form, promote or establish, or participate in the formation, promotion or establishment of, any business undertaking. Additionally the CEO may enter into any partnership or arrangements for the sharing of profits.</p> <p>The CEO to seek the Treasurer's approval unless this is in relation to timber sharefarming agreements.</p>	<p>The body corporate powers are exercised by the CEO.</p> <p>The Executive Body is established to provide a body corporate through which the CEO can perform any of the CEO's functions under this Act or the Wildlife Conservation Act 1950 that can more conveniently be performed by a body corporate than an individual.</p>
Health Ministerial Body	Health Services Act 2016		To be proclaimed
FES Ministerial Body	Fire and Emergency Services Act		
Alcohol and Other Drugs Ministerial Body	Alcohol and Other Drugs Act 1974		

Note: This list may not be exhaustive.

BODIES CORPORATE

Key features	Act	Governed by	Comment
Water Resources Ministerial Body	<i>Water Agencies (Powers) Act 1984</i>	Minister	<p>s.11 & 12 The Ministerial Body is established to provide a body corporate through which the Minister can perform any of the Minister's functions under this Act, a relevant Act, the Land Administration Act 1997 or the Public Works Act 1902 that can more conveniently be performed by a body corporate than an individual.</p> <p>s.9 & 10 specify the functions of the Minister</p>
FES Ministerial Body	<i>Fire and Emergency Services Act 1998</i>	Minister	<p>c.5 & 6 The FES Ministerial Body is established to provide a body corporate through which the Minister can perform any of the Minister's functions under the emergency services Acts that can more conveniently be performed by a body corporate than an individual.</p> <p>Any acts or things done through the FES Ministerial Body are to be regarded as:</p> <ul style="list-style-type: none"> • services under the control of the Department for the purposes of the FMA section 52; and • operations of the Department for the purposes of Part 5 of that Act. <p>c.8 & 9 specifies the powers of the Minister</p> <p>s.11 specifies the powers of the Commissioner</p>
Conservation and Land Management Executive Body	<i>Conservation and Land Management Act 1984</i>	Chief Executive Officer	<p>s.33 specifies the functions of the CEO</p> <p>s.36 establishes the body corporate</p> <p>s.37 states that the body corporate is a mechanism through which the CEO can perform any of the CEO's functions under this Act or the Wildlife Conservation Act 1950 that can more conveniently be performed by a body corporate than an individual.</p>

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Key features	Act	Governed by	Comment
Transport Co-ordination Ministerial Body	<i>Transport Co-ordination Act 1966</i>	Minister	s.6 establishes the body corporate s.6A A mechanism through which the Minister can perform any of the Minister's functions under or for the purposes of this Act that can more conveniently be performed by a body corporate than an individual. s.7A Minister may become a member of or shareholder in any body for the purpose of research etc and may also contribute funds in this regards. s.10 Minister may borrow with the Treasurer's approval s.15B specifies the functions of the DG.
The Western Australian Agriculture Authority (WAAA)	<i>Biosecurity and Agriculture Management Act 2007</i>	Minister	s.150 establishes the body corporate s.152 specifies the powers of the WAAA including entering into business arrangements s.154 IP assigned to the WAAA s.156 Acts or things done under s.152 and 154 are services under the control of the department under s.52 of the FMA, and part of the operations of the department under Part 5 FMA.

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Key features	Act	Governed by	Comment
Children and Community Services Ministerial Body	<i>Children and Community Services Act 2004</i>	Minister	s.18 retitles the previously established body corporate s.19 The purpose and nature of the ministerial body is to provide a mechanism through which the Minister can perform any of the Minister's functions under or for the purposes of this Act that can more conveniently be performed by a body corporate than an individual s.21 specifies the functions of the CEO s.15 Minister's powers to enter into agreements
The Minister administering the <i>Health Act 1911</i> shall be a body corporate and shall be known by such designation as is conferred on him by the Governor under the <i>Constitution Acts Amendment Act 1899</i> or the <i>Alteration of Statutory Designations Act 1974</i> (note: no designation stated)	<i>Health Act 1911</i>	Minister	s.8 establishes the body corporate who may acquire, hold, let and take land on lease, and alienate real and personal property s.7 general administration of the Act under the control of the Minister s.12 powers of Executive Director, Public Health s.39 Additional powers of the Minister
Body corporate Minister shall be known by such designation as is conferred on the Minister by the Governor under the Constitution Acts Amendment Act 1899 (note: no designation stated)	<i>Industry and Technology Development Act 1998</i>	Minister	s.5 continues the body corporate established in the repealed <i>Technology and Industry Development Act 1983</i> s.6 Functions of Minister s.7 Powers of Minister s.12 CEO responsible for day to day operations.

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Key features	Act	Governed by	Comment
Minister for Lands	<i>Land Administration Act 1997</i>	Minister	s.7 The body corporate established under the <i>Land Act</i> 1933 is continued and consists of the Minister to whom the administration of the Act is from time to time committed by the Governor s.8 The International Program Trust Account is administered by the Minister s.10 Powers of the Minister in relation to land The CEO has various functions under the Act but are not specifically set out in a specific provision
The Minister for Transport	<i>Marine and Harbours Act 1981</i>	Minister	s.5 outlines the functions of the department s.6 & 7 Minister has powers to contract and appoint agents s.8 establishes the body corporate which may acquire, hold and dispose of real and personal property s.9 Governor may vest real or personal property in the Minister s12(2) Minister may lease land or property The CEO has various functions under the Act but are not specifically set out in a specific provision

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Key features	Act	Governed by	Comment
VET (WA) Ministerial Body Corporation	<i>Vocational Education and Training Act 1996</i>	Minister	<p>s.7A continues the body corporate previously titled Minister for Training under its new name</p> <p>s.7B body corporate has contracting powers, and the powers to deal with property.</p> <p>s.8 functions of Minister. s.9 powers of Minister including entering into business arrangements.</p> <p>s.17 & 17A Minister may lend and borrow moneys</p> <p>No reference to functions of the CEO of the department.</p>
Minister for Works	<i>Public Works Act 1902</i>	Minister	<p>s.5 Minister administering the Act shall be the body corporate Minister.</p> <p>s.5 The body corporate may acquire, hold, let and take land on lease, and alienate real and personal property, and do all such other acts and things as may be necessary or expedient for carrying out the purposes of this Act.</p> <p>s.5A The Minister may delegate any of his powers or duties under the Act except the power of delegation.</p> <p>s.6 Contracts and agreements devolve to the Minister's successor</p>
Minister for Education	<i>School Education Act 1999</i>	Minister	<p>s.61 specifies the functions of the CEO</p> <p>s.214 establishes the body corporate.</p> <p>s.215 states that property is vested in the Minister.</p> <p>s.216 outlines the powers of the Minister including dealing with property, participating in business arrangements and holding shares, commercializing IP etc</p>

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Key features	Act	Governed by	Comment
Minister for Fisheries	<i>Fish Resources Management Act 1994</i>	Minister	<p>s.9 The body corporate Minister established under the repealed <i>Fisheries Act 1905</i> is continued.</p> <p>s.14 Minister may cause to be carried out any research, exploration, experiments, works or operations of any kind for the purposes of the Act.</p> <p>No reference to functions of the CEO of the department.</p> <p>The Minister has various functions under the Act.</p>
Minister for Mines and Petroleum	<i>Mining Act 1978</i>	Minister	<p>s.10 The Minister shall be corporation sole. The Minister may, in his corporate name, acquire, hold, lease and otherwise dispose of real and personal property.</p> <p>Note: no further reference to the body corporate in the statute.</p>
The Aboriginal Affairs Planning Authority	<i>Aboriginal Affairs Planning Authority Act 1972</i>	Minister	s.8(2) Minister's powers in dealing with property
The Minister administering the <i>Aboriginal Heritage Act 1972</i> shall be a body corporate and shall be known by such designation as is conferred on the Minister by the Governor in being charged with the administration of the Act.	<i>Aboriginal Heritage Act 1972</i>	Minister	s.11

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Key features	Act	Governed by	Comment
Alcohol and Other Drugs Ministerial Body	<i>Alcohol and Other Drugs Act 1974</i>	Minister	s.5, 6, 8
Public Transport Authority	<i>Public Transport Authority Act 2003</i>	Chief executive officer	s.5
Housing Authority	<i>Housing Act 1980</i>	Chief executive officer	s.6
Health Ministerial Body	<i>Health Services Act 2016</i>	Minister	s.10, 11, 13

Note: This list may not be exhaustive.

SURPLUS CASH BY AGENCY

Agency	Surplus Cash (\$000s)
Department of Education	70,685
Department of State Development	18,759
Department of Mines and Petroleum	15,560
Department of Local Government and Communities	15,438
Department of Education Services	10,765
Department of Commerce	4,596
Public Sector Commission	3,222
School Curriculum and Standards Authority	3,109
Registrar – Western Australian Industrial Relations Commission	1,839
Department of Lands	1,714
Total	145,687