

FINANCIAL ADMINISTRATION AND OTHER LEGISLATION AMENDMENT BILL 2001

EXPLANATORY NOTES

(a) Short title

The proposed Bill may be cited as the *Financial Administration and Other Legislation Amendment Bill 2001*.

(b) Policy Objectives

An Act to amend the *Financial Administration and Audit Act 1977* ('the FA&A Act'), the *Government Owned Corporations Act 1993* ('the GOC Act'), and for other purposes.

(c) Achievement of Policy Objectives

The Bill provides for a number of operational and technical enhancements to the FA&A Act and to the GOC Act. Some amendments to other legislation within the Treasurer's responsibilities also are included in the Bill to correct cross-referencing errors and other minor inconsistencies.

(d) Alternative Ways of achieving Policy Objectives

Not applicable.

(e) Assessment of Administrative Costs to Government

The administrative costs to Government in implementing the Bill are not material.

(f) Consistency with Fundamental Legislative Principles

The Bill is consistent with fundamental legislative principles.

(g) Results of Consultation

The accountable officers of all departments were consulted, including the Auditor-General, Official Secretary, Office of the Governor and the Clerk of the Parliament. There was general agreement with the purpose and effect of the proposed amendments.

(h) Explanation of Purpose and Operation of Clauses of Bill

PART 1—PRELIMINARY

1. *Short Title*

The title of the proposed Act is the *Financial Administration and Other Legislation Amendment Act 2001*.

**PART 2—AMENDMENT OF FINANCIAL
ADMINISTRATION AND AUDIT ACT 1977**

2. *Act amended in pt 2*

Part 2 of the Bill amends the *Financial Administration and Audit Act 1977*.

3. *Replacement of s 3 (Meaning of “Annual Appropriation Act”)*.

Currently, two separate Annual Appropriation Acts are prepared that authorise the payment of appropriation funding to departments. One Act covers the respective ministerial departments, the other being for the Legislative Assembly and Parliamentary Service. The amendment updates the definition of an ‘Annual Appropriation Act’ to reflect that there are two separate Annual Appropriation Acts, namely an ordinary Annual Appropriation Act and a parliamentary Annual Appropriation Act.

4. *Amendment of s 4A (Meaning of “department”)*

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The effect of this amendment is to make the Office of the Governor a ‘department’ for the purposes of the FA&A Act. The amendment is necessary, as only departments can be paid appropriations under that Act. Until the 1998-99 financial year, the Office of the Governor was funded by way of a grant from the Department of the Premier and Cabinet. The new arrangements better reflect the ‘separation of powers’ doctrine.

The amendment to section 4A also deletes the reference to the Clerk of the Parliament being responsible for the ‘accounts’ of the Legislative Assembly and Parliamentary Service. This is necessary to harmonise with the amendment to section 35 of the Act making the Clerk of the Parliament the accountable officer for the Assembly and Service, not just for its ‘accounts’.

5. Amendment of s 5 (Meaning of “statutory body”)

This is a consequential amendment to correctly reflect in section 5 the renumbering of certain subsections in section 4A.

6. Amendment of s 14 (Moneys to be kept at financial institution)

This is a consequential amendment following the insertion of a new Part 6A which sets out what constitutes a ‘Treasurer’s approval’ under the FA&A Act.

7. Amendment of s 16 (Overdrafts)

This is a consequential amendment following the insertion of a new Part 6A which sets out what constitutes a ‘Treasurer’s approval’ under the FA&A Act.

8. Amendment of s 19 (Overdrawn accounts)

This is a consequential amendment following the insertion of a new Part 6A which sets out what constitutes a ‘Treasurer’s approval’ under the FA&A Act.

9. Replacement of s 21 (Annual Appropriation Act and documents about funding appropriations)

This section is amended to reflect the practice that two separate Annual Appropriation Bills are presented to the Legislative Assembly by the Treasurer.

Also, existing subsections 21(1) and 21(2) have been deleted as the current wording might be construed as requiring that supporting documentation, explaining how amounts appropriated by the Annual Appropriation Acts will be funded, be on a ‘cash’ basis. In practice, this

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information is provided on an ‘accruals’ basis, consistent with other budget data.

10. Replacement of s 22A and 23

Existing sections 22A and 23 of the FA&A Act dealing with the payment of departmental appropriations have been replaced by a new section 23.

Under the new section 23, the Treasurer may now make appropriation payments to a department, up to the total of its vote for a financial year, for the outputs, administered items or equity adjustment that it has delivered in the previous financial year (and for which payment has not been received), or has delivered or is to deliver in the current financial year or in the next financial year.

This removes the present restriction on the Treasurer, under existing section 22A of the Act, from paying appropriations in advance of outputs etc. delivered by agencies.

Also, existing section 23 of the Act currently permits the Treasurer to pay an appropriation to a department up until 31 August after the end of the financial year to which the appropriation relates. This timeframe has been reduced to 14 July in the new section 23 to mirror the timeframe referenced in clause 19 of these explanatory notes (amended section 38).

11. Amendment of s 23A (Availability of appropriation after redistribution of public business)

This amendment updates section 23A of the FA&A Act to harmonise with the new definition of an ‘ordinary Annual Appropriation Act’ in section 3 of the amended Act.

12. Amendment of s 23C (Payment of equity withdrawal under Annual Appropriation Act)

This amendment updates section 23C of the FA&A Act to harmonise with the new definition of an ‘Annual Appropriation Act’ in section 3 of the amended Act.

13. Replacement of section 23D (Supply for financial year pending Annual Appropriation Act)

Existing section 23D of the FA&A Act is replaced by new sections 23D and 23E to reflect that there are two separate ‘supply amounts’ pending the enactment of the Annual Appropriation Acts. For the ministerial departments, this is termed the ‘ordinary supply amount’. For the Legislative Assembly and Parliamentary Service the term ‘parliamentary supply amount’ is used.

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14. *Amendment of s 24A (When part of vote for treasury department may be applied for headings of another department)*

This amendment updates section 24A(3) of the Act to harmonise with the new definition of an 'Annual Appropriation Act' in section 3 of the Act.

15. *Amendment of s 26 (Statement of unforeseen expenditure to be appropriated to be laid before Legislative Assembly)*

This is a minor amendment to indicate that the statement contains a 'report' by the Auditor-General rather than being 'certified' by that official.

16. *Replacement of s 30 (Continuing fund not to be overdrawn unless approved)*

This is a consequential amendment following the insertion of a new Part 6A which sets out what constitutes a 'Treasurer's approval' under the FA&A Act.

17. *Amendment of s 34 (Accountable officers generally)*

This is a technical amendment only. It is necessary as the Electoral Commissioner, who is appointed an accountable officer under Schedule 1 of the FA&A Act is also appointed an accountable officer under section 34(1) of the Act by virtue of that official's appointment as a chief executive of a department under section 12(1) of the *Public Service Act 1996*.

The amendment clarifies that a person appointed as an accountable officer under Schedule 1 of the FA&A Act is not also appointed under section 34 of that Act.

18. *Replacement of ss 35 and 35A*

New sections 35 and 35A reinforce the 'separation of powers' doctrine in relation to the role of the Governor and of the Speaker. The new sections 35 and 35A also make the Clerk of the Parliament and the Official Secretary, Office of the Governor the accountable officers for their respective agencies.

New section 35B clarifies that the Auditor-General, Electoral Commissioner and the Ombudsman are the accountable officers of their respective agencies, rather than the accountable officer for just the 'accounts' of their agencies as currently worded in section 35A(1) of the Act. This is consistent with the obligations of the other accountable officers under the Act, including the Clerk of the Parliament and the Official Secretary, Office of the Governor and removes doubts as to the meaning of the word 'accounts'.

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19. Amendment of s 36 (Functions and duties of accountable officer)

This amendment reinforces the need for accountable officers to maintain sound systems of internal control and risk management in their departments. The amendment also requires that the internal audit function of a department take into account any 'prescribed requirements' eg. the requirements of the *Financial Management Standard 1997*.

20. Amendment of s 36A (Accountable officer to pay for tax equivalents and dividends)

This is a consequential amendment to place the Official Secretary, Office of the Governor in the same position as the Clerk of the Parliament and the other accountable officers referenced in Schedule 1 of the Act (Auditor-General, Electoral Commissioner and Ombudsman).

21. Amendment of s 38 (Quarterly statement by Treasurer)

This amendment permits the Treasurer to record amounts paid from/received into the Consolidated Fund during a further 14 days after the end of the financial year, as having been paid from/received into the Fund as at 30 June of that year. This provides flexibility to the Treasurer to account for items that may have a material effect on the operations of the Consolidated Fund relating to a financial year but which, for some reason, were not processed by 30 June.

22. Replacement of s 38A (Treasurer's appropriation statement)

This amendment harmonises section 38A of the FA&A Act with the new definition of 'Annual Appropriation Acts' in section 3 of the Act.

Also, subsection 38A(4) of the Act currently allows a period of up to 10 weeks from the end of the financial year for the Treasurer to sign the Treasurer's Appropriation Statement and send it to the Auditor-General. This timeframe is amended in new section 38AA to replicate that set for the preparation and audit of other agency financial statements.

23. Replacement of s 38C (Under-Treasurer may require information for preparing consolidated whole-of-government financial statement)

Under existing section 38C of the FA&A Act, the Under-Treasurer may, by written notice, require an accountable officer or statutory body to provide information for a financial year in order for the Treasurer to prepare the State's whole-of-government financial statements pursuant to Australian Accounting Standard AAS 31 - *Financial Reporting by Governments*. However, for budget monitoring and other purposes this information is normally required on a more frequent basis.

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The amendment authorises the Treasurer (who may delegate the power to the Under Treasurer) to require information for budget monitoring or whole-of-government reporting purposes for any period, not just in respect of a financial year.

24. Amendment of s 39 (Annual report by department and short form annual report)

This amendment permits the Official Secretary, Office of the Governor and the Clerk of the Parliament to give the annual reports on their respective agencies to the Speaker rather than to the Premier for tabling in the Legislative Assembly. This better reflects the ‘separation of powers’ doctrine and reflects existing practices in relation to the annual report of the Legislative Assembly and Parliamentary Service.

The amendment also gives all departments the option to include their financial statements in their annual reports in electronic form eg. a cd-rom, provided that the financial statements are still available in paper form, on request.

25. Amendment of s 40 (General purpose financial statements)

This amendment removes the previous 2 month timeframe given to accountable officers to prepare their annual financial statements and give them to the Auditor-General for audit. The amendment should be read in conjunction with Clause 24 of the Bill following.

26. Insertion of new s 40AA

As indicated in the previous clause, under existing sections 40(2) and 46F(2) of the FA&A Act, all departments and statutory bodies currently have until 31 August each year to prepare and submit their annual financial statements to the Auditor-General for audit *or the longer period agreed to between the accountable officer and the Auditor-General*.

If the Auditor-General grants such an extension, agencies can effectively extend their reporting/audit deadline to 31 October each year (which is the deadline for preparing their annual reports).

In some cases, this has impacted adversely on the timeliness of individual agency’s financial statements as well as the State’s whole-of-government AAS 31 financial report.

As accrual accounting has now been the required reporting model for most public sector agencies for some years, it is expected that they should now have adequate accounting systems that ensure that their financial reports are produced on a timely basis.

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It is proposed therefore, to amend the FA&A Act to adopt a more collegiate model whereby each accountable officer and statutory body must agree a timeframe for the preparation and audit of their respective annual financial statements with the Auditor-General, but so as to ensure that the two processes are completed no later than 30 September each year.

In exceptional circumstances, eg. a late State Budget or if a series of complex, end of year machinery of Government changes occurs, the Treasurer will be permitted, in consultation with the respective accountable officers and the Auditor-General, to extend the 30 September deadline up to 31 December

Existing sections of the Act relating to the timeframe for departments and statutory bodies to submit their annual reports to the appropriate Minister/Speaker and for that person to table those reports in Parliament within four months after the end of the financial year, have not been altered.

27. Amendment of s 40A (Treasurer's borrowing powers)

The proposed amendment to section 40A of the Act permits accountable officers to borrow amounts for the State from the Queensland Treasury Corporation, but only under a 'Treasurer's approval'. This is operationally more efficient than the current arrangements whereby the Treasurer must borrow on the department's behalf and the department must then enter into a separate agreement with the Treasurer to meet the Treasurer's repayment obligations.

28. Amendment of s 40C (No-one other than Treasurer may invest)

This amendment clarifies that only the Treasurer has the power to invest or otherwise lend, unless authority is expressly provided under another Act.

29. Amendment of s 41A (Dealing with moneys earned on investment)

This is a technical amendment to clarify that investment earnings must be paid into the 'administered' departmental financial institution account of Queensland Treasury before being on-remitted to the Consolidated Fund.

30. Amendment of s 43B (Certain departments may enter into derivative transactions)

This is a consequential amendment following the insertion of a new Part 6A which sets out what constitutes a 'Treasurer's approval' under the FA&A Act.

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31. Omission of s 43C (Treasurer's approval for derivative transactions)

The provisions of this section are now contained in amended section 43B. Refer previous clause.

32. Amendment of s 44 (Formation of companies by department etc. requires Treasurer's approval)

This is a consequential amendment following the insertion of a new Part 6A which sets out what constitutes a 'Treasurer's approval' under the FA&A Act.

33. Amendment of s 46 (Treasurer's unclaimed moneys fund)

Currently, section 46(2) of the FA&A Act requires that every amount of public moneys or other moneys that is unclaimed for 3 months after it becomes payable to the person entitled to it shall be paid into the Treasurer's Unclaimed Moneys Fund.

Because of administrative difficulties created by the Goods and Services Tax, the Bill extends the 3 month timeframe to 1 year.

34. Amendment of s 46F (Statutory body to prepare annual financial statements)

This amendment removes the previous 2 month timeframe given to statutory bodies to prepare their annual financial statements and give them to the Auditor-General for audit. The amendment should be read in conjunction with Clause 33 of the Bill following.

35. Insertion of new section 46FA

This amendment replicates new section 40AA of the FA&A Act dealing with the timeframe in which departments must produce their annual financial statements and have them audited ie. by 30 September each year. As for departments, the Treasurer may now, in consultation with the statutory body and the Auditor-General, extend this period in exceptional circumstances eg. a significant restructuring of the statutory body or a group of statutory bodies.

36. Amendment of s 46J (Annual report)

The term 'give' in lieu of 'furnish' in section 46J(1) reflects current usage.

Also, the amendment gives statutory bodies the option to include their financial statements in their annual reports in electronic form eg. a cd-rom, provided that the financial statements are still available in paper form, on

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request. It mirrors a similar amendment to section 39 of the Act dealing with the annual reports of departments.

37. Replacement of s 46K (Appropriate Minister must table reports)

This amendment is required to clarify that in the case of the annual report of the Office of the Governor and of the Legislative Assembly and Parliamentary Service, the person that tables the report is the Speaker and not the ‘appropriate Minister’ ie. the Premier. This clause and clauses 37 and 38 following should be read in conjunction with clause 22.

38. Amendment of s 46KB (Minister to explain late tabling of annual report)

This amendment is required to clarify that the person that explains any late tabling of an annual report of the Office of the Governor or of the Legislative Assembly and Parliamentary Service, is the Speaker and not the ‘appropriate Minister’.

39. Amendment of s 46KC (Procedure if Legislative Assembly not in session or sitting)

This is a further amendment to clarify that the Speaker rather than the ‘appropriate Minister’ is responsible for any out-of-session tabling of the annual reports of the Office of the Governor or of the Legislative Assembly and Parliamentary Service, or for tabling the explanations for any late tabling of such reports.

40. Amendment of s 95 (Audit fees)

This is a consequential amendment following the insertion of a new Part 6A which sets out what constitutes a ‘Treasurer’s approval’ under the FA&A Act.

41. Insertion of pt 6A

This amendment inserts a new Part 6A to the FA&A Act after the existing section 105 defining what constitutes an ‘approval by the Treasurer’ under the Act. The amendments substantially mirror those contained in Part 9 of the *Statutory Bodies Financial Arrangements Act 1982*.

Those sections of the FA&A Act that currently provide for a ‘Treasurer’s approval’ also are amended to reflect the new Part 6A.

42. Amendment of s 109 (Delegation by Treasurer of certain powers)

A number of powers are conferred on the Treasurer under the FA&A Act. Section 109 of the Act permits the Treasurer to delegate certain of these powers to officers or employees of the Treasury Department. The

amendment extends this power of delegation to encompass other sections of the Act not previously included in section 109. New delegations are in respect of sections 38A, 38AA, 38C, 40A, 41A and 46FA.

43. *Insertion of new pt 8, div 3*

This part deals with transitional arrangements resulting from the proposed amendments.

44. *Amendment of sch 1 (Other accountable officers for certain bodies)*

This amendment adds the Electoral Commissioner to the list of 'independent' persons appointed as accountable officers under section 35B of the Act and listed in Schedule 1 of the Act. The schedule now comprises the Auditor-General, Electoral Commissioner and the Ombudsman.

45. *Amendment of sch 3 (Dictionary)*

This is essentially a technical amendment that clarifies the meaning of certain words and expressions used in the amended Act.

The definition of a 'public sector entity' also is amended to include an entity that is controlled by 1 or more than 1 department, local government or statutory body. This amendment is necessary to ensure that the Auditor-General audits all such entities.

PART 3—AMENDMENT OF THE GOVERNMENT OWNED CORPORATIONS ACT 1993

46. *Act amended in pt 3*

The amendment reflects that the Act amended is the *Government Owned Corporations Act 1993*.

47. *Amendment of s 128 (Application of Financial Administration and Audit Act).*

The effect of this amendment is to apply amended section 38C of the FA&A Act to company GOCs and their subsidiaries. Amended section 38C of the FA&A Act permits the Treasurer (who may delegate the power to the Under Treasurer) to obtain information for budget monitoring or whole-of-government reporting purposes.

**PART 4—MINOR AMENDMENTS OF OTHER ACTS
ADMINISTERED BY THE TREASURER**

48. Minor amendments of other legislation administered by the Treasurer

The amendments listed in the schedule to this Part are required to correct existing cross-referencing errors and other minor inconsistencies in other Acts administered by the Treasurer.

The relevant Acts amended are:

GST and Related Matters Act 2000;

Public Officers Superannuation Benefits Recovery Act 1988;

Queensland Competition Authority Act 1997;

Queensland Investment Corporation Act 1991; and

Superannuation (State Public Sector) Act 1990.