



Western Australia

# **Financial Legislation Amendment Act 2021**

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# Financial Legislation Amendment Act 2021

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# Financial Legislation Amendment Act 2021

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No. 12 of 2021

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**An Act to amend —**

- the *Financial Management Act 2006*; and
- the *Government Financial Responsibility Act 2000*; and
- the *Loan Act 2017*.

[Assented to 24 August 2021]

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

**1. Short title**

This is the *Financial Legislation Amendment Act 2021*.

**2. Commencement**

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on the 28<sup>th</sup> day after that day.

## **Part 2 — *Financial Management Act 2006* amended**

### **3. Act amended**

This Part amends the *Financial Management Act 2006*.

### **4. Section 3 amended**

In section 3 insert in alphabetical order:

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

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

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

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

*submission date* —

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

**5. Section 24 amended**

(1) Delete section 24(1) and insert:

(1A) In this section —

*election year* means a year in which a general election, as defined in the *Electoral Act 1907* section 4(1), for the Legislative Assembly is held.

(1) If, before the end of a financial year (the *previous year*), no supply is granted to meet the requirements of the next financial year (the *current year*), the Treasurer may make and charge to the Consolidated Account any payments and advances to meet those requirements at and after the start of the current year that do not exceed in total an amount equal to —

- (a) if the end of the previous year is in an election year — 35% of the total amount appropriated for the previous year by the Appropriation Acts; or
- (b) otherwise — 20% of the total amount appropriated for the previous year by the Appropriation Acts.

(2) Delete section 24(3) and insert:

(3) The authority conferred on the Treasurer by subsection (1) ceases to have effect when the first of the following occurs —

- (a) if the end of the previous year —
  - (i) is in an election year — at the end of the first 4 months of the current year;
  - (ii) is not in an election year — at the end of the first 2 months of the current year;



- (b) on the commencement of an Act granting supply for the current year.

**6. Section 26 amended**

- (1) In section 26(1) delete the definition of *relevant commitment*.
- (2) In section 26(1) insert in alphabetical order:

*relevant commitment* means —

- (a) a commitment relating to salaries, wages, superannuation, leave or depreciation that is relevant to the financial year referred to in subsection (2); or
  - (b) any other commitment prescribed by the Treasurer's instructions that is relevant to the financial year referred to in subsection (2).
- (3) After section 26(3) insert:
    - (4) Despite subsection (3), the Treasurer may at any time direct that all or part of the money standing to the credit of a suspense account under subsection (2) be credited to the Consolidated Account.

**7. Section 27 amended**

Delete section 27(3) and (4) and insert:

- (3) Payments made under subsection (1) or (2) in a financial year must be charged to the Consolidated Account, and the Consolidated Account is appropriated accordingly by this section.

- (4) Payments made under subsection (1) or (2) in a financial year must be included in the Annual Report on State Finances relating to that financial year released under the *Government Financial Responsibility Act 2000* section 14A.

Note: The heading to amended section 27 is to read:

**Expenditure not provided for in, or in excess of amount appropriated by, Appropriation Acts**

**8. Section 27A inserted**

After section 27 insert:

**27A. Transitional provision for *Financial Legislation Amendment Act 2021***

- (1) In this section —
- commencement day** means the day on which the *Financial Legislation Amendment Act 2021* section 8 comes into operation;
- former section 27** means section 27 as in force immediately before commencement day;
- relevant payment** means a payment made under former section 27 before commencement day that —
- (a) had been charged to the Consolidated Account; but
  - (b) had not been provided for in an Appropriation Act in accordance with former section 27.
- (2) On commencement day, the amount of a relevant payment is, by this section, appropriated from the Consolidated Account for the purpose for which the relevant payment was made.

**9. Section 29 amended**

In section 29(3) delete “in respect of extraordinary or unforeseen matters” and insert:

under section 27(1) or (2)

**10. Part 3 Division 4 replaced**

Delete Part 3 Division 4 and insert:

**Division 4 — Annual estimates of agencies**

**40. Preparation of draft annual estimates**

- (1) Unless otherwise directed in writing by the Treasurer, the accountable authority of an agency must, in each financial year —
  - (a) prepare draft annual estimates of the financial operations of the agency for the next financial year (*draft annual estimates*) in the manner prescribed by the Treasurer’s instructions; and
  - (b) submit the draft annual estimates to the Minister on or before the date designated by the Treasurer under subsection (2).
- (2) For the purposes of subsection (1)(b), the Treasurer must —
  - (a) for each financial year, designate the date by which the accountable authority must submit the draft annual estimates to the Minister; and
  - (b) make the date known to the accountable authority in a manner that the Treasurer considers appropriate.

**41. Approval of annual estimates**

- (1) After receiving draft annual estimates submitted by an accountable authority under section 40(1), the Minister must, within the period of 1 month after the submission date for the draft annual estimates or such other period as is specified in a determination under subsection (2), either —
  - (a) approve the draft annual estimates; or
  - (b) present the accountable authority of the agency with annual estimates of the financial operations of the agency for the financial year to which the draft annual estimates relate, and direct that they are to be the annual estimates of the financial operations of the agency for the financial year.
- (2) The Treasurer may, in writing, determine the period that applies for the purposes of subsection (1) in a particular case.
- (3) When the Minister approves draft annual estimates under subsection (1)(a), or gives a direction under subsection (1)(b) in relation to annual estimates, they become the annual estimates of the financial operations of the agency to which they relate for the whole of the financial year to which they relate.
- (4) Subsection (3) has effect even if the approval or direction was given after the start of the financial year.
- (5) The accountable authority of an agency must make the annual estimates of the financial operations of the agency for a financial year available to the public —
  - (a) as soon as is practicable after they become the annual estimates of the financial operations of the agency for the financial year; and

- (b) in the manner prescribed by the Treasurer's instructions.

**11. Part 3 Division 5 replaced**

Delete Part 3 Division 5 and insert:

**Division 5 — Resource agreements**

**42. Preparation of draft resource agreements**

- (1) Unless otherwise directed in writing by the Treasurer, the accountable authority of an agency must, in each financial year —
  - (a) prepare a draft resource agreement for the agency for the next financial year (a *draft resource agreement*) in accordance with subsection (2); and
  - (b) submit the draft resource agreement to the Treasurer on or before the date designated by the Treasurer under subsection (3).
- (2) The draft resource agreement must —
  - (a) be in a form prescribed by the Treasurer's instructions; and
  - (b) contain —
    - (i) the total amount of resources that are expected to be made available to the agency for the financial year to which it relates; and
    - (ii) the services proposed to be provided by the agency during the financial year; and

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- (iii) the estimated total cost of services for the agency for the financial year (the *expense limit*); and
  - (iv) any other matters required by the Treasurer's instructions to be specified in the resource agreement.
- (3) For the purposes of subsection (1)(b), the Treasurer must —
- (a) for each financial year, designate the date by which the accountable authority must submit the draft resource agreement to the Treasurer; and
  - (b) make the date known to the accountable authority in a manner that the Treasurer considers appropriate.

**43. Agreeing on resource agreements**

- (1) After receiving a draft resource agreement submitted by an accountable authority of an agency under section 42(1), the Treasurer must, within the period of 1 month after the submission date for the draft resource agreement, either —
- (a) agree on the draft resource agreement with the accountable authority; or
  - (b) present the accountable authority with a resource agreement for the agency for the financial year to which the draft resource agreement relates, and direct that it is to be the resource agreement for the agency for the financial year.
- (2) The accountable authority of an agency must obtain the Minister's approval before agreeing with the Treasurer on a draft resource agreement for the agency.

- (3) When the Treasurer and an accountable authority of an agency agree on a draft resource agreement under subsection (1)(a), it becomes the resource agreement for the agency for the whole of the financial year to which it relates, unless it is superseded by a modified resource agreement under section 44(3).
- (4) When the Treasurer gives a direction to the accountable authority of an agency under subsection (1)(b) in relation to a resource agreement for the agency, it becomes the resource agreement for the agency for the whole of the financial year to which it relates, unless it is superseded by a modified resource agreement under section 44(3).
- (5) Subsections (3) and (4) have effect even if the draft resource agreement was agreed on, or the direction was given, after the start of the financial year.

#### **44. Modifying resource agreements**

- (1) The Treasurer may, at any time in a financial year, modify an agency's resource agreement by giving written notice to the accountable authority of the agency —
  - (a) specifying the modification; and
  - (b) directing that the resource agreement, with that modification, is to be the resource agreement for the agency for the remainder of the financial year.
- (2) Without limiting subsection (1), a modification to a resource agreement may relate to the expense limit contained in the resource agreement.
- (3) When the Treasurer gives the accountable authority of an agency a notice under subsection (1) in relation to the agency's resource agreement, the resource

agreement, with the modification specified in the notice, becomes the resource agreement for the agency for the remainder of the financial year to which it relates.

**12. Section 48 amended**

In section 48(4) delete “Governor,” and insert:

Treasurer,

**13. Part 3 Division 7 inserted**

At the end of Part 3 insert:

**Division 7 — Financial difficulty**

**51A. Notices of financial difficulty**

- (1) The accountable authority of an agency must notify the Minister if the accountable authority forms the opinion that the agency is unable to, or will be unlikely to be able to, satisfy any of its financial obligations from the financial resources available, or likely to be available, to it at the time a financial obligation is due.
- (2) Subsection (1) does not apply if the accountable authority is required to give notice to the Minister under another written law that corresponds to subsection (1).
- (3) The notice under subsection (1) must be in writing, giving reasons for the accountable authority’s opinion.



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

**14. Section 53 amended**

After section 53(1)(c) insert:

- (ca) ensuring that the agency's total cost of services in a financial year does not exceed the expense limit for the agency contained in the resource agreement, as modified from time to time, for the agency for the financial year; and
  - (cb) ensuring that —
    - (i) the agency complies with any State government policy prescribed by the Treasurer's instructions; and
    - (ii) in particular, officers of the agency who commit and incur expenditure on behalf of the agency do so in a manner that is not inconsistent with any State government policy prescribed by the Treasurer's instructions;
- and
- (cc) ensuring that the agency has documented policies and procedures relating to —
    - (i) making delegations, or giving authorisations, to officers of the agency that authorise them to enter into financial obligations on behalf of the agency or the State; and

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(ii) how officers of the agency exercise the authority to enter into such financial obligations;

and

(cd) establishing and maintaining records relating to, and a register of, all delegations made, and authorisations given, to officers of the agency that authorise them to enter into financial obligations on behalf of the agency or the State; and

**15. Section 61 amended**

(1) In section 61(1)(b) delete “key” and insert:

unless otherwise directed in writing by the Treasurer, key

(2) In section 61(2) delete “objectives” and insert:

targets

**16. Section 80 amended**

Delete section 80(2) and (4).

**17. Section 85 amended**

Delete section 85(1)(b) and insert:

(b) the expiry of 10 years after the tabling of each subsequent report on a review under subsection (5).

**18. Schedule 2 amended**

In Schedule 2:

- (a) in the item for section 48 in column 2 delete “Governor,” and insert:

Treasurer,

- (b) in the item for section 61 in column 2 delete “key” and insert:

unless otherwise directed in writing by the Treasurer, key

- (c) delete the item for section 64 and insert:

- 64            64. (1) The accountable authority of an agency is to transmit to both Houses of Parliament within the prescribed period after the end of a financial year of the agency —
- (a) a copy of the annual report for the financial year prepared by the accountable authority under section 61(1); and
- (b) unless the audit of the agency’s accounts in respect of the financial year has been dispensed with under the *Auditor General Act 2006* section 14(2) — a copy of the opinion of the Auditor General prepared and signed under section 15 of that Act.
64. (1A) A copy of an annual report or opinion transmitted to a House of Parliament is to be regarded as having been laid before that House.
64. (1B) The laying of a copy of an annual report or opinion that is regarded as having occurred under subsection (1A) is to be recorded in the Minutes, or Votes and Proceedings, of the House

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on the first sitting day of the House after it is transmitted to the House.

- (d) in the item for section 65 in column 2 delete “copies” and insert:

a copy

- (e) delete “Part 3 Division 5” and insert:

section 43(2)

**19. Schedule 3 amended**

In Schedule 3:

- (a) in the item for section 48 in column 2 delete “Governor,” and insert:

Treasurer,

- (b) in the item for section 61 in column 2 delete “key” and insert:

unless otherwise directed in writing by the Treasurer, key

- (c) delete the item for section 63 and insert:

- 63            63. (2) After receiving the opinion of the independent auditor appointed in accordance with the *Auditor General Act 2006* section 38, the Auditor General is to transmit a copy of the annual report for a financial year prepared by the accountable authority under section 61(1) together with a

copy of the opinion of the independent auditor to both Houses of Parliament within 90 days after the end of the financial year.

63. (2A) A copy of an annual report or opinion transmitted to a House of Parliament is to be regarded as having been laid before that House.
63. (2B) The laying of a copy of an annual report or opinion that is regarded as having occurred under subsection (2A) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after it is transmitted to the House.

- (d) in the item for section 65 in column 2 delete “copies” and insert:

a copy

- (e) delete “Part 3 Division 5 and section 64” and insert:

sections 43(2) and 64

**Part 3 — *Government Financial Responsibility Act 2000*  
amended**

**20. Act amended**

This Part amends the *Government Financial Responsibility Act 2000*.

**21. Section 14A amended**

After section 14A(3)(bb) insert:

- (bc) include payments made under the *Financial Management Act 2006* section 27(1) or (2) in the budget year; and

## **Part 4 — *Loan Act 2017* amended**

### **22. Act amended**

This Part amends the *Loan Act 2017*.

### **23. Section 3A inserted**

After section 3 insert:

#### **3A. Re-borrowings not to be counted for purposes of determining aggregate sum borrowed**

- (1) This section applies if —
  - (a) a sum of money is borrowed from a lender under the authority of this Act; and
  - (b) all or part of the sum of money is repaid to the lender; and
  - (c) an additional sum of money not exceeding the sum of money repaid is borrowed from the lender under the authority of this Act.
- (2) For the purposes of determining the aggregate sum of money borrowed under the authority of this Act, the additional sum of money borrowed from the lender is to be disregarded.

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