



DEPARTMENT OF TREASURY

This memorandum applies to: Departments, Territory Authorities, and TOCs.

Department of Treasury Finance Memorandum 2006/04

Agency Heads

cc Chief Finance Officers

cc Budget Contact Officers

AMENDMENTS TO FINANCIAL MANAGEMENT LEGISLATION

Purpose

To advise agencies of the impact of recent amendments to financial management legislation including the *Financial Management Act 1996* (FMA).

Background

The *Financial Management Legislation Amendment Act 2005* (FMLAA) was passed by the Legislative Assembly on 18 October 2005 and notified on 26 October 2005. The FMLAA has an impact on departments, territory authorities and Territory Owned Corporations (TOCs).

Copies of the FMLAA and the explanatory memorandum are available on the ACT Legislation Register (www.legislation.act.gov.au). The republished version of the FMA (ie incorporating all the FMLAA amendments) is also available through the Register.

Issues

The amendments affect departments, Territory authorities and Territory Owned Corporations (TOCs). The significant areas of change made by the amendments are:

	Departments	Territory Authorities	TOCs
Appropriation and Budget Framework		✓	✓
Chief Executive Financial Targets	✓		
Annual Financial Reporting	✓	✓	
Performance Management Framework	✓	✓	
Credit Facility		✓	
Governance of Territory Authorities		✓	

An overview of the changes is provided in **Attachment A** to this memo.

Further Information and Feedback

For information and assistance on agency specific implementation issues, please contact your usual Treasury Analyst in the first instance. For more information on broader technical and policy issues associated with the amendments, please contact:

Sandra Kennedy: [620 70299]	Appropriation and Budget Framework
	Chief Executive Financial Targets
	Annual Financial Reporting
	Performance Management Framework
	Credit Facility
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Treasury welcomes any feedback on the clarity and usefulness of its memoranda. Any comments can be forwarded to Cody Phang, Department of Treasury, Level 1, Canberra Nara Centre (telephone 6207 0835).

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March 2006

Overview of Recent FMA Amendments

Appropriation and Budget Framework [Territory authorities and TOCs]

Budget Estimates (section 12A)

The amendments have formalised the ACT Government's current practice of publishing budget estimates for Territory authorities and TOCs. At a minimum, future budget estimates must include:

- financial statements (including the three forward estimates);
- for prescribed authorities (see below), a statement of outputs that will be delivered during the year and the performance criteria to be met in delivering those services; and
- for authorities or TOCs issued with loan capital injection, information about that loan and its conditions.

These budget estimates must be prepared in a way that allows comparison between the budget for the year, the budget and the estimated outcome for the previous year.

This change applies from the 2006-07 financial year.

Appropriations (section 8)

The amendments broaden the appropriation framework to allow appropriations to be made directly to territory authorities and TOCs from the 2006-07 Budget. This enables the cessation of many of the quasi-service purchasing arrangements that currently exist between departments and these entities.

Authorities and TOCs can now be appropriated directly, where appropriate, with Government Payment for Output (GPO) and/or capital injection (KI) appropriations. Appropriations will be devolved to authorities and TOCs in the 2006-07 Budget as follows:

- GPO: all funding *except* Concessions, ICRC services and VET contestable funding; and
- KI: all funding.

In addition to appropriation acts, the following appropriation instruments can also affect authorities and TOCs:

- section 14 – Transfer of funds between appropriations;
- section 16 – Transfer of functions after Appropriation Act passed;
- section 17 – Variation of appropriations for Commonwealth grants;
- section 18 – Treasurer's advance; and
- section 19B – Authorisation of expenditure of certain Commonwealth grants.

Territory Authorities Prescribed for Outputs (section 12A)

As mentioned above, certain territory authorities will be required to disclose output performance criteria in budget papers and report their performance against these criteria in

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their annual report to ensure an appropriate level of accountability is maintained for key appropriations. This ensures that accountability and disclosure are not diluted by what is largely a technical change to the appropriation framework.

Those authorities that are prescribed for outputs in the 2006-07 Budget will need to define at least one output that describes the functions that will be undertaken with the appropriation provided for the year. Similarly, strategic and accountability performance measures will need to be developed for each output in the context of the ACT Government's recently revised performance management framework. These measures should also focus on providing the Assembly and Community with a useful basis for understanding each authority's performance.

Prescribed authorities will be able to amend performance criteria disclosed in the budget estimates where they are included in a supplementary appropriation act or through a notifiable instrument under section 19D – Amendment of Performance criteria. The latter allows agencies to amend, transfer or delete existing performance criteria, and add new performance criteria. For more information on the preparation of section 19D instruments, please see DT Memo 2002/25.

Chief Executive Financial Targets [departments]

The amendments remove the requirement (under sections 12, and 31) for chief executives of departments to budget and report against key financial targets. Instead, section 31 now requires chief executives of department to ensure that:

“...as far as practicable, the operations of the department for a financial year are consistent with, and comparable to, the budget for the year”
[new s31(2)(b)]

Recognising there may be legitimate circumstances where a department's operations may vary from budget, the new section 31 (3) also requires that explanations of material variances from the department's revised budget (ie the last budget estimates approved by the Assembly) must be reported in the relevant annual report for the year. These explanations will be fulfilled through the Management Discussion and Analysis (MD&A) accompanying the department's annual financial statements for the year.

This change applies from the 2005-06 financial year and will be reflected in departments' 2005-06 annual financial statements. Agencies should also note that section 19E (Amendment of financial targets) has also been removed from the FMA, as a consequence of the above changes.

Annual Financial Reporting and MD&A [departments and Territory authorities]

Departments [sections 27-30]

From 2005-05, the following changes will apply to departments' annual financial statements:

- annual financial statements will be prepared comparing results against the *original* budget for the year (ie budget estimates for the first appropriation act of the year);
- output performance measures have been *separated* from the annual financial statements (see Statement of Performance below);

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- financial targets are no longer included (see Chief Executive financial targets above).

Departments should also note that the amendments make explicit the requirements for annual financial statements and accompanying audit opinions to be included in the relevant annual report for the year. This change also means that departments will need to ensure they meet the timeframes mandated under the *Annual Reports (Government Agencies) Act 2004*. For further information on please see the Annual Report Directions for the year, which is expected to be released in March.

From 2005-06, the following changes will apply to departments' MD&A:

- compare results against an *amended* budget for the year. However, the amended (or revised) budget is now defined as being the last budget estimates approved by the Assembly (ie either original budget or supplementary budget estimates);
- include explanations for all material variances from the amended budget for the year (see also Chief Executive financial targets above).

Departments should also note that section 19E (Amendment of financial targets) and section 19F (Amendment of budgets) have been deleted from the FMA, as a consequence of the above mentioned changes.

Territory Authorities [sections 63-66]

Similarly, from 2005-06, authorities' annual financial statements no longer include performance measures (see Performance Management Framework below). The amendments also formalise the requirement that annual financial statements and accompanying audit opinion must be included in the relevant annual report for the year. Again, authorities will need to ensure they meet the timeframes mandated under the *Annual Reports (Government Agencies) Act 2004*. For further information on please see the Annual Report Directions for the year, which is expected to be released in March.

Additionally, from 2005-06, authorities' MD&A must include explanations for all material variances from the authority's Statement of Intent (SOI) for the year, to fulfil their respective responsibilities under sections 55(4) or 56(4).

Performance Management Framework [departments and Territory authorities]

The Government implemented a revised Performance Management Framework with the 2005-06 Budget. The revised Framework aims to provide more meaningful and useful measures for the Legislative Assembly and the Community. The FMA has been amended to support the improvements under the new performance measurement framework.

Departments

Half-Yearly Reporting [section 30E]

The amendments alter departments' periodic performance reporting from quarterly to half-yearly. Under section 30E, portfolio ministers are now required, for each department within their responsibility, to prepare and circulate a performance report for the period ending 31 December within 30 days after that date (ie by 30 January).

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The report must include a progress report on the delivery of outputs, and an explanation of any significant variations from performance criteria. All strategic and accountability performance criteria are expected to be disclosed in the progress report. However, where results are unavailable for a particular performance measure, this can be noted in the report with expected timeframes in which those results will become available.

As a guide, significant variations are usually material in nature, or at least plus or minus 5% from pro rata for the quarter. However, in applying these criteria, departments should also use informed judgement and knowledge of their organisation's business operations.

Departments should note that the amendments are such that an interim June report to the Assembly is *not* required under the FMA. Nonetheless, full year performance must be reported in an annual Statement of Performance and included in the relevant annual report (see below).

Annual Reporting [sections 30A – 30D]

As mentioned above, from 2005-06 financial year, output performance measures have been moved from the annual financial statements into a separate statement of performance. The statement of performance is subject to separate chief executive sign-off and a separate Auditor-General's report.

Like the annual financial statements, departments' statement of performance must be included, with the Auditor-General report on the statement, in the relevant annual report for the year.

The Statement must:

- compare the department's actual performance in providing each class of outputs with the *amended* budget for the year. The amended budget for the year remains defined as the original budget and, if that budget is amended by supplementary appropriations and/or under section 19D "Amendment of performance criteria, the budget as amended; and
- state the extent to which the output performance criteria set out in the budget were met. As part of explaining the latter, agencies will need to include explanations of significant variances. As a guide, significant variations are usually material in nature, or at least plus or minus 5% from the amended budget. However, in applying these criteria, departments should also use informed judgement and knowledge of their organisation's business operations.

Auditor-General scrutiny of the statement of performance is now defined by FMA guidelines. Currently, under the guidelines, the Auditor-General will provide a statement of factual findings on accountability indicators only. However, departments should note that this does not preclude the Auditor-General from conducting performance audits on both strategic and accountability indicators in the future.

Territory Authorities [sections 68 – 71]

From the 2005-06 financial year, performance reporting for Territory authorities has also been moved from the annual financial statements to a separate statement of performance. Like departments, the Territory authority statement of performance is subject to a separate

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sign-off. However, the person responsible for endorsing the statement of performance depends on the authority's structure:

- where an authority has a governing board, the chair of the board signs; alternatively
- where an authority does not have a governing board, the chief executive officer signs.

Like the annual financial statements, authorities' statement of performance must be included, with the Auditor-General report on the statement, in the relevant annual report for the year.

From 2005-06, *all* authorities' statements of performance must:

- compare the authority's actual performance in meeting the objectives in its SOI for the year, by reporting against the performance criteria and other measures included in the SOI. As part of explaining the latter, authorities will need to include explanations of significant variances. As a guide, significant variations are usually material in nature, or at least plus or minus 5% from the amended budget. However, in applying these criteria, authorities should also use informed judgement and knowledge of their organisation's business operations.

From 2006-07, those authorities that are prescribed for outputs must also:

- compare the authority's actual performance in providing each class of outputs with the *amended* budget for the year. The amended budget for the year is defined as the original budget and, if that budget is amended by supplementary appropriations and/or under section 19D "Amendment of performance criteria, the budget as amended; and
- state the extent to which the output performance criteria set out in the budget were met. As part of explaining the latter, prescribed authorities will also need to include explanations of significant variances.

As with departments, Auditor-General scrutiny of the statement of performance is now defined by FMA guidelines. Currently, under the guidelines, the Auditor-General will provide a statement of factual findings on SOI indicators and, for prescribed authorities, accountability indicators only. However, prescribed authorities should note that this does not preclude the Auditor-General from conducting performance audits on both strategic and accountability indicators in the future.

Territory Authority Credit Facility [sub-sections 58 (5)-(10) and 61 (5)(f)]

The amendments now allow the Treasurer to approve an overdraft or credit facility to a Territory authority from the Territory Banking Account. Overdrafts or credit facilities issued under these provisions are generally aimed at authorities with larger scale project-type operations, such as Land Development Authority. Nonetheless, the purpose of any overdraft must be consistent with one or more functions of the authority.

Approvals under section 58(5) must be made by disallowable instrument, in order to maintain the Assembly's important role in scrutinising new agency borrowings as well as the Assembly's participation in the approval process. The disallowable instrument must state:

- the purpose of the overdraft,

- the maximum limit of the overdraft,
- principal and interest repayment conditions,
- interest rate conditions; and
- any other conditions required by the Treasurer.

Any overdraft or credit facility approved under section 58 (5) will also be subject to the Treasurer's annual review, in consultation with the relevant authority and portfolio minister. The results of the review must be included in the authority's annual SOI. Where a review finds that the conditions of the overdraft should be altered, a new disallowable instrument will be issued and tabled in the Assembly.

Territory Authority Governance Arrangements

Parts 8 and 9 of the recently amended FMA contain standardised financial, accountability and governance provisions for prescribed territory authorities. It is a matter for relevant territory authorities to become fully acquainted with the relevant provisions.

Prescribed territory authorities have been classified as either having a governing board or not having a governing board.

Part 8, section 54 of the FMA includes a list of prescribed territory authorities. Part 9, section 76 contains a list of prescribed territory authorities with a governing board.

Depending on the classification of the prescribed territory authority, the relevant provisions of Part 8 and 9 will apply *unless* contrary provisions are contained in the enabling Act.

An outline of several key provisions to highlight the differences between territory authorities with a governing board and those authorities without a governing board are as follows:

Part 8 Financial provisions for territory authorities

Responsibilities of Chief Executive Officers [section 55]

If the territory authority does not have a governing board the chief executive officer is responsible for the efficient and effective financial management of the authority.

Responsibilities of governing boards of territory authorities [section 56]

If the territory authority has a governing board it is the responsibility of the governing board to ensure the efficient and effective financial management of the authority.

Territory authority statements of intent [sections 61 - 62]

Statements of intent must be prepared according to the requirements of the Treasurer.

Territory authorities must consult with and consider any comments made by the responsible Minister before submitting the statement of intent to the Treasurer.

Statements of intent must include a review and analysis of performance in the previous financial year and, if relevant, the results of any review of an overdraft or credit facility.

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Statements of intent must be agreed between the Treasurer and the chair of the governing board or the chief executive officer if the authority does not have a governing board.

Statements of intent are required to be presented with the budget papers. If this does not occur the Treasurer must give an explanation to the Legislative Assembly and present the statement of intent as soon as practicable.

Responsibility of annual financial statements of territory authorities [section 64]

The annual financial statements must include a statement of responsibility endorsed by the either the chair if there is governing board or the chief executive officer if there is no governing board.

Other standard provisions applying to territory authorities include requirements and obligations relating to:

- banking, investment, borrowing, guarantees and limitations on authorities forming corporations or taking part in joint ventures and trusts;
- disclosure, handling and reporting of material governing board member interests;
- the conduct of governing board members who must act honestly, exercise care and diligence;
- certain arrangements to apply in conducting governing board meetings; and
- keeping the responsible Minister informed about significant events.