



Legislative Assembly for the ACT

STANDING COMMITTEE ON PUBLIC ACCOUNTS

Financial Management Amendment Bill 2003 (No 3)

MARCH 2004

Report 10

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Resolution of appointment

The Standing Committee on Public Accounts was appointed by the Legislative Assembly on 11 December 2001 to:

- (i) examine:
 - (A) the accounts of the receipts and expenditure of the Australian Capital Territory;
 - (B) the financial affairs of authorities of the Australian Capital Territory; and
 - (C) all reports of the Auditor-General which have been presented to the Assembly;
- (ii) report to the Assembly, with such comments as it thinks fit, any items or matters in those accounts, statements and reports, or any circumstances connected with them, to which the Committee is of the opinion that the attention of the Assembly should be directed;
- (iii) inquire into any question in connection with the public accounts which is referred to it by the Assembly and to report to the Assembly on that question; and
- (iv) examine matters relating to economic and business development, small business, tourism, market and regulatory reform, public sector management, taxation and revenue and sustainability.

Terms of reference

To inquire into the Financial Management Amendment Bill 2003 (No 3); and the general questions of the requirements, purpose, structure, limitations, Ministerial and associated obligations relating to the Treasurer's Advance provisions of the *Financial Management Act 1996*, considering inter alia views from interested parties in the ACT and the operations of Treasurer's Advance provisions in other jurisdictions and report to the Legislative assembly no later than 1 April 2004.¹

Conduct of the inquiry

The Committee invited selected community and public sector individuals and organisations to lodge submissions to the inquiry. The Committee received responses from a number of Australian jurisdictions' department's of Treasury and Auditors-General. A list of responses received is at Appendix A. Subsequently, two public hearings were held. On 17 March 2004, the Committee heard from Mr Ted Quinlan, MLA, Treasurer, Mr Phil Hextell, Director, Accounting Branch, Department of Treasury; and Mrs Tu Pham, Auditor-General, and Mr Bernie Sheville, Director Financial Audits. On 24 March 2004, the Committee heard from Ms Roslyn Dundas, MLA.

¹ Legislative Assembly for the ACT, Fifth Assembly, Minutes of Proceedings No 89, Thursday, 12 February 2004, p 1124.

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Summary of recommendations

The Committee recommends that:

Recommendation 1

The Legislative Assembly should not consider the Financial Management Amendment Bill 2003 (No 3) until the Government presents its amendments to the *Financial Management Act 1996*, in relation to the Treasurer's Advance.

Recommendation 2

The Government's proposed amendments to the *Financial Management Act 1996* in relation to the Treasurer's advance should:

- (a) provide for urgent and unforeseen expenditure, and where there is an error in omission or the understatement of other appropriations;
- (b) include the Commonwealth's definition of urgency;
- (c) define expenditure as:
 - (i) entering into a contract to make a payment for goods or services; or
 - (ii) entering into a contract to make a payment of a grant or subsidy; or
 - (iii) entering into a contract to make a payment for a capital injection.
- (d) provide for the return of 'unspent' funds to the Territory's Banking Account by 30 June each year;
- (e) provide that Treasurer's Advance authorisations be tabled in the Legislative Assembly within 3 sitting days of issue and that this information be presented cumulatively, with a summary of total expenditures tabled at 30 June each year.

Recommendation 3

The Government develop regulations as a matter of priority, for the use of the Treasurer's Advance.

Recommendation 4

The Government should not circumvent the Estimates process by using the Treasurer's Advance to make payments for items already included in a supplementary appropriation bill.

1. Introduction

1.1. On 26 November 2003, the Financial Management Amendment Bill 2003 (No 3) (the Bill) and accompanying explanatory statement were presented to the Legislative Assembly.² On 12 February 2004, notwithstanding Standing Order 174³, the Legislative Assembly referred the Bill to the Standing Committee on Public Accounts for inquiry. In addition, the inquiry reference includes examining the general questions of the requirements, purpose, structure, limitations, Ministerial and associated obligations relating to the Treasurer's Advance provisions of the *Financial Management Act 1996* (FMA), considering inter alia views from interested parties in the ACT and the operations of Treasurer's Advance provisions in other jurisdictions.⁴

2. Background

2.1. In recent years, the use of the Treasurer's advance has been the subject of scrutiny by the former⁵ Auditor-General.⁶ In his Report No 11 of 2001: Financial Audits with Years Ending to 30 June 2001, the Auditor-General recommended that

the FMA provisions relating to the use of the Treasurer's Advance be reviewed and if necessary modified to remove any uncertainty as to the requirements of Section 18(1)(c) of the FMA. This could be considered as part of the review of the FMA currently being undertaken by the Department of Treasury; and

the Department of Treasury design and implement an effective system for monitoring compliance with Section 18(1) (c) of the FMA.⁷

² Legislative Assembly for the ACT, Fifth Assembly, Minutes of Proceedings No 82, Wednesday, 26 November 2003, p 1035.

³ Standing Order 174 states that 'Immediately after a bill has been agreed to in principle a Member may move that the bill be referred to a select or standing committee'.

⁴ Legislative Assembly for the ACT, Fifth Assembly, Minutes of Proceedings No 89, Thursday, 12 February 2004, p 1124.

⁵ Mr John A Parkinson.

⁶ Report No 11 of 2001: Financial Audits with Years Ending to 30 June 2001 and Report No 7 of 2002: Financial Audits with Years Ending to 30 June 2002.

⁷ Auditor-General's Report No 11 of 2001: Financial Audits with Years Ending to 30 June 2001, pp 30-31.

2.2. These recommendations were made after the Auditor-General found that there were instances in relation to the use of the Treasurer's advance in the 2000-2001 financial year where

expenditure could have been foreseen at the time Appropriation Acts were passed.⁸

2.3. Further, the Auditor-General commented

The Department of Treasury was involved in preparation and passage of the Appropriation Acts and also with approving the payments from the Treasurer's Advance. It is therefore probable that Treasury officials, if they had considered the issue, would have reasonably foreseen the need for some of the payments to be made at the time the Appropriation Acts were passed; and

It seems there were no systems in the Department of Treasury, or the agency requesting payment to be met from the Treasurer's Advance, to monitor compliance with this part of the FMA.⁹

2.4. The Chief Executive to the Department of Treasury agreed with the Auditor-General that the FMA required clarification and that the Treasurer's Advance was being looked at as part of the review of the FMA. The Chief Executive also commented that it was not necessarily possible to determine whether a breach of the FMA had occurred due to doubt surrounding the meaning of paragraph 18(1)(c) of the FMA.¹⁰

2.5. Paragraph 18(1)(c) of the FMA was subsequently amended¹¹ to

remove the requirement that the Treasurer may only authorise expenditure from the Treasurer's Advance provided the need for that expenditure could not have been foreseen at the time of the *passing of any* Appropriation Act. The ...provision ...require[s] that the Treasurer may authorise expenditure from the Treasurer's Advance provided the need for that expenditure could not have been foreseen at the time of the *presentation of the first* Appropriation Act for the financial year.¹²

⁸ *ibid.*, p 27.

⁹ *ibid.*, pp 28-29.

¹⁰ *ibid.*, p 30.

¹¹ Previous amendment to the FMA in relation to the Treasurer's Advance was to subsection 18(3) which was 'recast to remove unnecessary words [to] bring the subsection more closely into line with current drafting practice and update language to reflect a change in terminology', Statute Law Amendment Act 2001 (No 2), p 230.

¹² Financial Management Amendment Bill 2001 (No 4) Explanatory Memorandum circulated by authority of the Treasurer, Mr Ted Quinlan, MLA, p 4.

2.6. In the following year, Auditor-General's Report No 7 of 2002: Financial Audits with Years Ending to 30 June 2002 found that

Housing received \$10m[illion] from the Treasurer's Advance in June 2002. The Audit view is that this was a misuse of the Treasurer's Advance and its legality could also be questioned.¹³

2.7. The Auditor-General clarified this finding by stating

The underlying concept of the Treasurer's Advance in all jurisdictions that operate similar systems as the ACT is of a safety valve for situations where essential expenditures are required to be incurred which could not have been foreseen at the time the Budget was prepared. An essential part of this is that the expenditure must be necessary – that is, it must be necessary to be made. In a cash system, this would mean needing the actual cash payments to be made, not just recognising that cash payments need to be made somewhere down the track. It requires the payments to actually be made.¹⁴

2.8. Similarly to the Auditor-General, the Committee in its Review of Auditor-General's Report No 7 of 2002, expressed its concern about the use of the Treasurer's advance commenting that

the process that led to this amount allocated under the Treasurer's Advance that appeared to have been initially for social housing and then for fire safety issues, has contravened section 18 of the *Financial Management Act 1996* as these items were not unforeseen expenses. The Committee is of the opinion that had the need for \$10 million to address fire safety issues in multi-unit complexes been unforeseen then the payment for the item would actually have been made by ACT Housing and the amount not just been transferred from the CFU's [Central Financing Unit] account to ACT Housing's account.¹⁵

¹³ Auditor-General's Report No 7 of 2002: Financial Audits with Years Ending to 30 June 2002, p 38.

¹⁴ Transcript of Evidence, Standing Committee on Public Accounts, Reference: Review of Auditor-General's Report No 7 of 2002: Financial Audits with Years Ending to 30 June 2002, Wednesday, 12 February 2003, p 1.

¹⁵ Standing Committee on Public Accounts, Report No 6, Review of Auditor-General's Report No 7 of 2002: Financial Audits with Years Ending to 30 June 2002, September 2003, p 13.

2.9. Consequently, the Committee made the following recommendations in relation to the Treasurer's advance.

[that] section 18 of the FMA providing for the Treasurer's Advance be reviewed to clarify the purpose and use of the Treasurer's Advance; and regulations be established for the use of the Treasurer's Advance.¹⁶

2.10. Chapter 4 outlines the Government's comments on the Bill. The Government puts forward a number of arguments against the Bill and has stated that it is proposing to present amendments to the FMA that will address the previous problems encountered with the use of the Treasurer's advance. Namely those associated with the \$10 million payment to ACT Housing in 2001-2002.

¹⁶ *ibid.*, p v.

3. The Treasurer's advance and similar provisions in other Australian jurisdictions

3.1. The Government provided the Committee with information about Treasurer's advance provisions in other Australian jurisdictions. The Committee also received written submissions from various Australian jurisdictions in relation to the inquiry. The information collected is consolidated and presented at Appendix C – Treasurer's advance and similar provisions in financial legislation in Australian and selected international jurisdictions.

3.2. In the ACT, the Treasurer's advance is defined as

Funds available for expenditure in excess of specific appropriations or not specifically provided for by existing appropriations and for advances which will be recovered during the financial year.¹⁷

3.3. The Government has argued that the ACT is already more restrictive than other jurisdictions in relation to the use of the Treasurer's Advance.

The use of the Treasurer's Advance in the ACT is more tightly controlled than any other Australian jurisdiction, which each enjoy a greater level of legislative flexibility. This is mainly due to the ACT restriction to 1% of total appropriations, and the limitation that it may only be used for unforeseen expenditure.¹⁸

3.4. Ms Roslyn Dundas, MLA has disagreed with this point, stating that in other jurisdictions the approval of the Governor, in addition to possibly the Auditor-General is required before payment can be made.¹⁹

3.5. Of the fact that the Government has stated that there is less restriction in other jurisdictions over the use of the Treasurer's Advance, the Government has stated

This indicates a well-established acceptance of the need for government to have access to flexibility in managing the budget during the course of the financial year.²⁰

¹⁷ ACT Budget 2003-2004, Budget Overview, Paper No 3, p 322.

¹⁸ Government submission, p 7.

¹⁹ Transcript of evidence, Wednesday, 24 March 2004, pp 4-5.

²⁰ Government submission, p 7.

4. The purpose of the Financial Management Amendment Bill 2003 (No 3)

4.1. The Bill is intended to amend the *Financial Management Act 1996* in relation to the Treasurer's advance provision.

4.2. The purpose of the Bill is to:

- 'clarify the circumstances in which the Treasurer's Advance may be used, by limiting its use to situations where it is not possible to raise an appropriation Bill because of the urgency of the required expenditure.
- [specify] that if money allocated from the Treasurer's Advance is not spent in that same financial year, the money must be returned to the Territory Banking Account for allocation in the next budget. The bill makes it clear that the mere transfer of money from the Territory Banking Account to another account does not prevent the application of this section. The money must be repaid unless it has actually been spent on the approved item.
- [clarify] the meaning of the requirement that the expenditure be "unforeseen", [by making] it clear that if the Treasurer, or a Minister, a Chief Executive of a Department, or a Chief Executive Officer of a Territory Authority knew of the need for the expenditure, then the use of the Treasurer's Advance is not appropriate'.²¹

4.3. The Bill was prepared as a remedy to the inappropriate use of the Treasurer's advance, and as a practical response to the issues encountered in relation to the use of the Treasurer's advance for fire safety purposes for ACT Housing in 2001-2002.

4.4. Ms Roslyn Dundas, MLA made the following comment on presentation of the Bill to the Legislative Assembly.

This bill seeks to improve the accountability of a government in the expenditure of over \$20 million of public monies. I support the continued existence of the Treasurer's Advance because events like the January bushfire show that a government can be required to

²¹ Financial Management Amendment Bill 2003 (No 3), Explanatory Statement circulated by the authority of Roslyn Dundas, MLA on 26 November 2003, p 1.

meet urgent and unavoidable expenses. They may have no real choice but to spend money so quickly that there is no time for the preparation of a supplementary budget. I believe that that is what the Treasurer's Advance should be for - urgent and unforeseen circumstances in which something needs to happen quickly to help the community. This bill makes it clear that these are the types of special circumstances where it is appropriate to use the Treasurer's Advance.

The government has claimed that a lack of clarity in the wording of the Financial Management Act has been responsible for the Auditor-General's criticisms of the use of the Treasurer's Advance. If this bill is passed, the scope for differing interpretations of the meaning of section 18 should be greatly reduced and would see in this place greater accountability for the entire budget process.²²

Comment about the Bill

4.5. The Treasurer has commented that he does not believe that major amendment to the Treasurer's advance provisions of the Financial Management Act is required. The Government believes the major issue that needs to be addressed is 'understanding of the purpose of the Treasurer's Advance'. The Government has suggested that this issue can be addressed through amendments to the Treasurer's advance provisions of the FMA that will clarify the definition of 'expenditure'.²³

4.6. In relation to the Bill, the Auditor-General stated that it should be ensured

that the Treasurer's Advance is provided in such a way that it has transparency, it provides a high degree of accountability to the Assembly, so the Assembly can question and can look at it and examine it, and also it should provide some form of fiscal flexibility for the Government to respond to some urgent need....the Bill as proposed by Ms Dundas tried to address some of these issues, but at the same time created some practical and operational issues and I think, you know, looking at the Government's proposed amendments, I think some of the proposed amendments should be supported because they actually improve accountability and it also gives some sort of better fiscal flexibility. But I think we would like to see an additional concept introduced in terms of urgency similar

²² Legislative Assembly for the ACT Secretariat, Hansard, Week 13, 26 November 26 2003, p 4639.

²³ Government submission, 11 March 2004, p12

to the Dundas Bill, but it should be introduced in such a way that would be manageable and it would be more easy to be implemented without undermining the Government's ability for fiscal responsibility or flexibility.²⁴

4.7. The Treasurer made a number of comments in relation to various aspects of the Bill. Namely, 'foreseeability' (by whom expenditure under the Treasurer's advance is foreseen); the return of unspent money to the Territory Banking Account within the financial year; and the definition of urgency.

4.8. In relation to 'foreseeability', the Government has argued that if the Bill is passed then the Treasurer's advance provisions will revert back to those that existed prior to an amending Bill passed in the Assembly in December 2001.

The amendments changed the original provisions to provide that Treasurer's Advance may be authorised where the need for the expenditure could not have been foreseen at the time of the original budget. The amendment allowed for ... more efficient and prudent cash management practices.²⁵

4.9. The Government argues that if the Bill is passed, the Government would be

forced to adopt [either of the following two options]; include the \$100 000 in the Supplementary Appropriation Bill, incurring additional cost to the Territory, as the agency would be likely to use the savings for alternative purposes; or

wait until later in the financial year when the need for additional cash is possibly established. At this point, any savings that have been achieved, can be used to fund the cost overrun. In the event that no savings have been achieved, Treasurer's Advance would be necessary. This would however, breach the FMA as the need for the expenditure would have been foreseen at the time of the February Supplementation Appropriation Bill.²⁶

4.10. In relation to who needs to be unable to foresee the need for expenditure in relation to the use of the Treasurer's advance, the Government has stated that this part of the Bill is

considered unworkable, and is not supported. The Treasurer is responsible and accountable for authorising expenditure from the

²⁴ Transcript of evidence, Wednesday, 17 March 2004, pp 19-20.

²⁵ Government submission, p 14.

²⁶ *ibid.*

Treasurer's Advance. In signing off on an instrument authorising Treasurer's Advance, it is possible for the Treasurer to declare whether or not s/he could have reasonably foreseen the need for the expenditure. Requiring that the need for the expenditure was reasonably unforeseen by other officers, would require the Treasurer to ascertain the state of mind of another person at a particular point in time. This is not considered feasible.²⁷

4.11. In relation to the unforeseeable provision, the Auditor-General has stated

I think the unforeseeable test is actually quite confusing because it can be foreseen by most Chief Executives throughout the year about cost pressure and so on, but as the Treasurer advised, because you've foreseen the need of the cost pressure, but at the time you don't know if you could use other mechanisms to take care of it, or you don't know the certainty of when that will happen or you don't even know the quantity of it to be accurately advised to Government.

Hence in many cases, if you're really strict in the terms of the foreseeable test, then most of the need can be foreseen by the Chief Executive running the department. So that test is quite confusing in terms of foreseeable by whom, foreseeable at what time, is it before the Appropriation Bill No 1, ie. The first one, or supplementary bill. So if you would like to ensure that the Treasurer's Advance is limited for urgency or urgent need for expenditure, then that test, the unforeseeable test, may or may not be required.

To keep the unforeseen test is not helpful [because] Chief Executives foresee some of these things already, but if they do that then they are in breach of the law by asking for Treasurer's Advance later. So it doesn't work in practice. So...the urgency test would be a better test to apply and remove the foreseeable test.²⁸

4.12. In April 2003, the Auditor-General of Victoria released his report on Parliamentary Control and Management of Appropriations. Part 5 of the report focuses on the operation of the Treasurer's Advance. Of the recommendations he made in part 5, the Auditor-General commented

the type of expenditure that is able to be funded from the Advance is open to wide interpretation, at the discretion of the Government. We have recommended that clearer definitions, supported by

²⁷ *ibid.*

²⁸ Transcript of evidence, p 20.

further guidelines, should be established by the Government to assist in the future operation of the Advance.

4.13. In this context, in relation to the Bill, Victoria's Auditor-General stated

I am supportive of the proposed legislative amendment at your jurisdiction which provides for the Advance to be used only where the expenditure is unforeseen, and where it is not practicable to provide for the expenditure through a supplementary Appropriation Bill. This amendment reinforces Parliament's fundamental role of exercising effective control over public spending.

Of course, the new legislation should be supported by appropriate administrative guidelines, setting out the criteria to be used for assessing when it would be considered practicable to provide for expenditure via a supplementary Appropriation Act. Without such guidelines, the risk remains for inconsistent interpretations of the requirement, and debate regarding the appropriate application of the Advance.²⁹

4.14. The Government is also opposed to the part of the Bill, which would require unspent money allocated to the Treasurer's Advance within the financial year returning to the Territory Banking Account for allocation in the next Budget.

4.15. The Government makes the point that

The proposed amendment would have the effect of, in regard to use of Treasurer's Advance, returning the Territory to cash rather than accrual accounting management practices. To make the provision more consistent with accrual accounting principles, it would be necessary to limit the return of funding to the Territory Banking Account to apply to only uncommitted funds. Uncommitted should be defined as not having incurred an obligation in relation to the expenditure.³⁰

4.16. The Government clarifies this point by stating

Under accrual accounting principles, expenditure is incurred at the time when the entity becomes liable for a debt, and in regard to the purchase of goods or services, this is the time of correct delivery of goods or services. It is recognised that the actual cash payment for this transaction may not occur until a later time. The proposed

²⁹ Auditor-General of Victoria, Mr Wayne Cameron, submission, dated 23 February 2004, p 1.

³⁰ Government submission, p 15.

amendment confuses the accrual term of “expenditure” used in Section 18(5), by then trying to define its use in Section 18(7) with the cash accounting term of “payment”.³¹

4.17. Further the Government states that Section 34B of the FMA already

...enables unspent appropriations to be rolled forward in bank accounts for use in subsequent financial years, providing the funds are used for the same purposes for which they were originally appropriated. Introduction of a requirement to return unspent funds from the Treasurer’s Advance at the year-end would be inconsistent with the cash management practices enabled through Section 34B.³²

4.18. The Government also does not support the Bill in relation to the urgency requirement.

While these amendments may initially appear to support prudent use of the Treasurer’s Advance, they present a significant interpretive difficulty, and would not allow for the operation of prudent cash management practices.³³

4.19. The Government explains by stating

Firstly, there is the interpretive issue of demonstrating that the need for the expenditure is urgent. It is possible that the ambiguous nature of the definition of urgent will lead different people to different conclusions about whether the need for expenditure is urgent, particularly where the payment is scrutinised with the benefit of hindsight. This could lead to breaches or perceived breaches of the provisions.

Secondly, it may be viewed that in order to meet the ‘urgency’ requirement, there should only be a relatively short period of time between identification of the possible need for the additional cash from the Treasurer’s Advance, and the subsequent payment of the additional expenditure by the department. ...a department may foresee in January that a grants program may overrun by \$100 000, but the final payments from the grants program causing the overrun may not occur until later in the financial year. Funding for the cost overrun may not therefore be required until say June. In this situation it could be argued that the Treasurer’s Advance could not be used, as a payment made in June could not be considered as

³¹ *ibid.*

³² *ibid.*

³³ *ibid.*, p 16.

'urgent', if the need for the expenditure was foreseen in January. To either authorise Treasurer's Advance in advance of the need for the expenditure, or to require a supplementary appropriation may decrease the pressure on agencies to manage the cost pressure.³⁴

4.20. The Auditor-General also provided comment about urgency and has stated as previously mentioned that it is a better test for Treasurer's Advance than the foreseeability test. The Auditor-General advocated that the Commonwealth's definition of urgency be applied to the ACT.

...urgency... it's a difficult concept, but it's not unachievable. The Commonwealth legislation has an urgency test. New South Wales does, the same with Victoria. So I think we can introduce the urgency test with some very clear guidelines from the Treasurer or the Treasury in terms of operational guidelines so the agency understands what urgency is about. I think ...[the] Commonwealth definition of urgency is good. And that test would make sure that the use of the Treasurer's Advance is only for the Government to respond to urgent need.³⁵

4.21. The Auditor-General further stated (in the context of the proposed use of the Treasurer's Advance for child protection) that she believes the urgency test is the key test for determining when to use the Treasurer's Advance. And that

...urgency should be clearly defined in the financial instruction operational guidelines issued by the Treasurer.³⁶

4.22. On the establishment of operational guidelines for the use of the Treasurer's Advance, the Auditor-General stated

...you don't want the legislation to be too complicated. The more it is complicated, the harder it is to implement it because it's subject to different interpretation. So some of the detail, especially in terms of examples on a case by case basis, that type of detail is better included in the financial guidelines, and I think the guidelines and how they are implemented can be subject to [an] Auditor-General compliance audit. ...once that guideline has been issued, there is a responsibility on Treasury to make sure that it is implemented properly.³⁷

³⁴ *ibid.*, p 16.

³⁵ Transcript of evidence, p 20.

³⁶ *ibid.*, p 24.

³⁷ *ibid.*

4.23. The Government also raises issues related to the definition of 'practicality' in relation to providing for expenditure by means of a supplementary appropriation.

It is considered that this amendment introduces uncertainty into the legislative provisions. It is unclear how "practicable" is to be defined, and by whom. The determination of whether the preparation of a supplementary appropriation is practicable will need to take into consideration government priorities for the delivery of services and the availability of key resources. What may seem practicable to Members of the Assembly in hindsight may not have been practicable in the view of the Treasurer at the time. In deciding whether the preparation of a supplementary Appropriation Bill is practicable, the FMA should allow the concept of administrative efficiency and cost-effectiveness to be taken into consideration.

4.24. The Government adds that

A further possible adverse implication from the Amendment Bill proposal is that it may result in an imprudent use of public resources. The preparation of a supplementary Appropriation Bill is a significant undertaking, requiring the commitment of considerable resources. ...52 of the last 109 Treasurer's Advance authorisations have been for amounts less than \$0.5 million for any individual purpose. It is considered that it would be impracticable in these cases, for a supplementary Appropriation Bill to be prepared.³⁸

The Government's proposed amendments

4.25. The Government as already outlined, opposes the Bill and has presented elements of amendments to the Treasurer's Advance provisions of the FMA that it will present to the Legislative Assembly in the sitting week commencing 4 May 2004.³⁹ The Government's amendments are intended to address the concerns raised by the former Auditor-General about the use of the Treasurer's Advance for the use of the \$10 million payment to ACT Housing.⁴⁰ The Government has further stated that it can address these concerns by defining 'expenditure' within section 18 of the FMA.

³⁸ *ibid.*, p 17.

³⁹ Answer to question taken on notice at public hearing of Wednesday, 17 March 2004, dated 23 March 2004 p 1.

⁴⁰ Government submission, p19.

4.26. The Government recommended defining 'expenditure' as

- (a) incurring an obligation to make a payment for goods or services; or
- (b) incurring an obligation to make a payment of a grant or subsidy; or
- (c) incurring an obligation to make a payment for a capital injection.⁴¹

4.27. The Government also would like to introduce that each time the Treasurer's Advance is used that the Legislative Assembly should be notified within 3 sitting days. This would

...improve the timeliness of advice provided to the Legislative Assembly.⁴²

4.28. Of its proposed amendments to define 'expenditure', the Government has stated

This amendment will have the effect of only allowing a Treasurer's Advance to be authorised where an obligation to make a payment will be incurred in the financial year. This amendment is consistent with accrual accounting principles and will avoid situations similar to the \$10 m[illion] payment to ACT Housing.⁴³

4.29. In relation to the Government's amendments, the Auditor-General stated

...that is a good amendment to define expenditure.

4.30. The Committee was interested to know the meaning of the term 'obligation' in the context of how it would apply. The Auditor-General stated that

[The] term "obligation' in the Government amendment is probably tighter than commitment. I think obligation means a contract already signed. There's an obligation for payment, so it's even tighter. I [would] use loosely, you know, more loosely, the term "commitment".⁴⁴

⁴¹ Government submission, p 19.

⁴² *ibid.*, p 20.

⁴³ *ibid.*

⁴⁴ Transcript of evidence, Wednesday, 17 March 2004, p 22.

4.31. On the question of whether the term 'obligation' was not clear or strong enough, the Committee was interested to know if the term was understood in financial terms as a signed contract. The Director of Financial Audits replied by stating

...in accounting terms, yes. Normally you'd have to have something signed to create a liability. There are such things as constructive liabilities but normally you would need to have a contract at the point where it's signed before you'd start booking the liability in the book.⁴⁵

4.32. As a concluding comment on the Government's amendments, the Auditor-General stated

I think the Government is not keen to entertain the concept of urgency because it is a new concept compared to the existing concept of the unforeseeable test.

But I think the Auditor-General's Office's view is in line with the discussion going on at Assembly level because of the Housing issue and in looking at Ms Dundas' view and bill, I think there may be merit to consider introducing the test and to introduce the test we can copy the Commonwealth legislation and the Commonwealth legislation says along the lines that the use of the Treasurer's Advance can be made when the Treasurer is satisfied that there's an urgent need for that expenditure for that financial year.

And then they define under their operational guidelines what they mean by urgency. Then they mean urgency is when an agency has exhausted or is close to exhausting all of their available funds under the relevant appropriation. So that also took care of the issue that agencies may try to save money in their Appropriation Bill first, so we define urgency only when agencies have nearly exhausted their appropriation bill for that particular purpose. So I think by looking quickly at the Commonwealth definition of urgency and urgency tests, I think it can be workable.⁴⁶

⁴⁵ *ibid.*, p 23.

⁴⁶ Transcript of evidence, Wednesday, 17 March 2004, pp 24-25.

Committee comment

4.33. The Committee agrees that there needs to be clarification of the understanding of the purpose of the Treasurer's Advance.

4.34. The Committee advocates that the 'urgency' requirement should be introduced and as recommended by the Auditor-General similar to the definition that appears in corresponding Commonwealth legislation.

4.35. As stated in the Government's submission, the Commonwealth definition of 'urgency', which is defined in operational guidelines issued by the Department of Finance and Administration states that urgency is when

an agency has exhausted, or is close to exhausting, all available funding under the relevant appropriation. Close to exhaustion in this context means that an agency expects to exhaust its available appropriation within two weeks.⁴⁷

4.36. Further, the Committee advocates that the unforeseeability component of the Bill remain, with the inclusion of instances where there is error in omission or understatement of other appropriations.

4.37. The Committee believes that there needs to be inclusion of a definition similar to that of the Commonwealth's of 'urgency'. The Committee also believes that, error in omission, or understatement of previous appropriation must be added, as is the case in the Commonwealth, in addition to the criteria of unforeseeability. With these inclusions, the Government's proposed amendments could more adequately achieve a tightening of the provisions relating to the Treasurer's Advance with the Bill.

4.38. The Committee agrees with both the ACT's and Victoria's Auditors-General in their recommendation to draft appropriate administrative guidelines for the use of the Treasurer's Advance, which would serve to minimise the risk of its misinterpretation.

4.39. In relation to the Government's proposed amendments, the Committee would prefer that the definition of 'expenditure' further outline 'obligation' as having entered into a contract. This would avoid any misinterpretation of 'obligation'. The Committee also advocates that any monies intended for the Treasurer's Advance that remain 'unspent' be returned to Treasury at the end of the financial year.

⁴⁷ Government submission, p 18.

4.40. The Committee recommends that:

Recommendation 1

The Legislative Assembly should not consider the Financial Management Amendment Bill 2003 (No 3) until the Government presents its amendments to the *Financial Management Act 1996*, in relation to the Treasurer's Advance.

Recommendation 2

The Government's proposed amendments to the *Financial Management Act 1996* in relation to the Treasurer's advance should:

- (a) provide for urgent and unforeseen expenditure, and where there is an error in omission or the understatement of other appropriations;
- (b) include the Commonwealth's definition of urgency;
- (c) define expenditure as:
 - (i) entering into a contract to make a payment for goods or services; or
 - (ii) entering into a contract to make a payment of a grant or subsidy; or
 - (iii) entering into a contract to make a payment for a capital injection.
- (d) provide for the return of 'unspent' funds to the Territory's Banking Account by 30 June each year;
- (e) provide that Treasurer's Advance authorisations be tabled in the Legislative Assembly within 3 sitting days of issue and that this information be presented cumulatively, with a summary of total expenditures tabled at 30 June each year.

Recommendation 3

The Government develop regulations as a matter of priority, for the use of the Treasurer's Advance.

5. Other matters

5.1. The Committee is concerned about comments made by the Treasurer at the public hearing in relation to the use of the Treasurer's Advance for payment for child protection.

5.2. The Treasurer was commenting about 'urgency' in relation to the Financial Management Amendment Bill 2003 (No 3) and informed the Committee that he would like to use the Treasurer's Advance to make a payment to the Department of Education, Youth and Family Services, for child protection⁴⁸, even though the funding was already included in Appropriation Bill 2003-2004 (No 3). Appropriation Bill 2003-2004 (No 3) is currently before the Select Committee on Estimates No 3 and is due to report to the Assembly by 4 May 2004.

5.3. At the time, the Treasurer was seeking advice from the Government solicitor to ascertain the legality of using the Treasurer's Advance to fund the appropriation.

I've got a letter to the Government Solicitor asking for, you know, how I can free up money for child protection in anticipation of the Appropriation Bill, but in anticipation that that might take time that none of us in the Assembly want taken, but yet we do in the Assembly want the total Appropriation Bill to go through an Estimates process.⁴⁹

5.4. The Committee is concerned that there was an Estimates Committee established by the Legislative Assembly to inquire into the supplementary appropriation bill and that the Treasurer was proposing to use the Treasurer's Advance for an item already included in that Bill.⁵⁰ However, Ms MacDonald did not agree with this view, as outlined in her dissenting report.

5.5. The Government Solicitor's advice can be found at Appendix D. In summary the Government Solicitor advised that

The tabling of the Supplementary Appropriation Bill does not affect the power of the Treasurer to authorise a Treasurer's Advance. The relevant provisions are set out in s.18 of the FMA. Provided each of the elements set out in that section is satisfied, then the Treasurer may authorise a Treasurer's Advance; and

⁴⁸ Transcript of evidence, Wednesday, 17 March 2004, p 2.

⁴⁹ *ibid.*

⁵⁰ *ibid.*, p 13.

If a Treasurer's Advance is made, it is not appropriate to seek to appeal or reverse the instrument authorising that advance. Rather, the Supplementary Appropriation Bill should be amended, to remove the amounts covered by the Treasurer's Advance.⁵¹

5.6. The Auditor-General agreed with the Government Solicitor's view and further stated

The Audit Office is not in a position to advise whether the use of the Treasurer's Advance was 'appropriate' in that it relates to the Committee's concerns that this use would circumvent the scrutiny of the estimates process. The Audit Office considers that the 'appropriateness' of the use of the Advance under these circumstances to be a matter that should be settled by the Legislative Assembly. As Section 18(4) of the *Financial Management Act 1996* requires the Treasurer to provide to the Legislative Assembly a copy of any authorisation of the Treasurer's Advance and to provide a statement of reasons for giving authorisation, the Legislative Assembly would be provided with an opportunity to scrutinise the 'appropriateness' of any authorisation provided by the Treasurer in relation to this matter.⁵²

5.7. The Committee believes that the payment for child protection, if urgent, should not have been included in a supplementary appropriation bill. Using the Treasurer's Advance to make the payment now, makes it look as though the Government is dodging the scrutiny of the Estimates process, but also that in the outset it was 'hollow-logging' by including the amount in a supplementary appropriation bill.

5.8. The Committee recommends that:

Recommendation 4

The Government should not circumvent the Estimates process by using the Treasurer's Advance to make payments for items already included in a supplementary appropriation bill.

⁵¹ Australian Capital Territory Government Solicitor, letter dated 18 March 2004, p 2.

⁵² ACT Auditor-General, letter dated 25 March 2004.

Brendan Smyth, MLA
Chair

31 March 2004

**Dissenting Report by Karin MacDonald, MLA to the
Standing Committee on Public Account's Report No 10
of 2004**

March 2004

Dissenting Report for Financial Management Amendment Bill 2003 (No. 3)

KARIN MACDONALD MLA

I dissent from the fourth recommendation of this report; that the Government should not circumvent the Estimates process by using the Treasurer's Advance to make payments for items already included in a supplementary appropriation bill.

I think it important to note that the Government should be able to make use of the Treasurer's Advance. In the event that the Government need allocate additional funding for child protection prior to the passing of the Appropriation Bill, the Treasurer's Advance provides a necessary and convenient means to ensure that appropriate funds are provided. Without it, the government as well as child protection agencies in the ACT will have their hands tied.

Advice on request from the Auditor General illustrates that assuming additional expenditure for child protection is unforeseen at the first Appropriation Act, then the use of the Treasurer's Advance to meet that expenditure would be legal, (regardless of the existence of any Supplementary Appropriation Bill).

Subject to limitations as outlined in s18 of the *Financial Management Act 1996*, there is nothing which would prohibit the Treasurer from authorising an advance in circumstances where the proposed expenditure has been included in a Bill which has been tabled in the Assembly. The existence of the Supplementary Appropriation Bill in this matter is irrelevant. Providing the relevant elements in s18 have been satisfied, the Treasurer may authorise the relevant expenditure.

The process may very well be legal but it has been advised that the appropriateness of making use of the Treasurer's Advance is up to the Assembly. I appreciate the need to adhere to the estimates process but at the same time understand the need to provide for flexible funding, especially for child protection. The estimates process provides for a transparent means of allocating funds and I understand this need. At the same time similar transparency is provided by s18(4) of the above act. In using the Treasurer's Advance, the Treasurer must provide a statement of the reasons for giving the authorisation and permit the 'appropriateness' of these reasons to then be scrutinised by the Assembly.

The use of the Treasurer's Advance is legal, is appropriate in this matter, is subject to measures guaranteeing accountability and should not be ruled out in the fourth recommendation.

Karin MacDonald, MLA
Deputy Chair

31 March 2004

Appendix A – Written submissions received by the Committee

1. Mr Simon O'Neill, Deputy Auditor-General, South Australia
2. Mr J W Cameron, Auditor-General, Victoria
3. Mr DDR Pearson, Auditor-General, Western Australia
4. Mr Bob Sendt, Auditor-General, New South Wales
5. Mr DW Challen, Secretary, Department of Treasury and Finance, Tasmania
6. Mr Terry Mackenroth MP, Treasurer, Queensland
7. Mr Dean Yates, Director, Budget and Financial Management, Department of Treasury and Finance, Victoria
8. Mr Ted Quinlan, MLA, Treasurer, Australian Capital Territory

Appendix B – Witnesses who appeared before the Committee

1. Mr Ted Quinlan, MLA, Treasurer
2. Mr Phil Hextell, Director, Accounting Branch, Department of Treasury
3. Mrs Tu Pham, ACT Auditor-General
4. Mr Bernie Sheville, Director Performance Audits and Administration,
ACT Auditor-General's Office

Appendix C - Treasurer's advance and similar provisions in financial legislation in Australian and selected international jurisdictions⁵³

| Jurisdiction | Legislative provisions | Amount limit | Reporting requirement |
|-------------------------------------|--|---|--|
| Australian Capital Territory | Expenditure not foreseen at the time of the first appropriation, or in excess of appropriation, may be authorised by the Treasurer. | 1% of total of all Appropriations for the year. | At the end of the financial year. |
| New South Wales | Advance for recurrent services and for capital works and services where it is for the public interest. Authorised by Treasurer with Governor's approval. S 22 of the Public Finance and Audit Act allows for payments out of the Consolidated Fund, but requires parliamentary approval. No restriction on how it is to be used. | Total amount specified in annual Appropriation Act. | At the end of the financial year for retrospective appropriation. |
| Northern Territory | Treasurer may supplement an existing allocation to a purpose, or transfer TA to a purpose with no appropriation. | Total amount specified in annual Appropriation Act. | Reporting of increases in TA allocation within 6 sitting days. |
| Queensland | Provision for potentially emergent costs such as natural disasters and items that had not been finalised at the time of the presentation of the State Budget. Also can be authorised on Treasurer's recommendation in anticipation of appropriation. | No limitation. | Statement of unforeseen expenditure which requires the Auditor-General's approval is required for retrospective appropriation. |
| South Australia | The Governor can authorise the appropriation of money which can be used by the Treasurer for the public purposes of the State. Treasurer can create an imprest account from which to draw on later for the purposes of funding to a government department. | 3% of total appropriations of the previous financial year. No limitation | Quarterly and annually. |

⁵³ Information is quoted and consolidated from submissions 1-8 as listed at Appendix A. Selected information in relation to the Commonwealth of Australia, New Zealand and the United Kingdom is taken from 'Parliamentary control and management of appropriations, Report of the Auditor-General of Victoria, April 2003, http://www.audit.vic.gov.au/reports_other/agpcmadl.html, p 86.

| Jurisdiction | Legislative provisions | Amount limit | Reporting requirement |
|--------------------------|--|--|--|
| Tasmania | <p>Treasurer's Reserve to meet unforeseen expenditures or revenue shortfalls (in the Treasurer's opinion), which can not be managed by other means within financial year.</p> <p>In emergencies, additional expenditure is through the Consolidated Fund and is subject to the Treasurer obtaining a supporting report by the Auditor-General and the written approval of the Governor.</p> <p>The Treasurer may with the Governor's approval determine in anticipation of appropriation, payment of amounts necessary in the public interest, for expenditure for works and services.</p> | <p>Initial advance of \$10 million can be supplemented by contingency appropriation.</p> <p>No limitations.</p> <p>Limited to \$1 million.</p> | <p>Must be submitted to Parliament for approval before the end of the following financial year.</p> <p>As soon as practicable after the end of the financial year.</p> <p>Must be submitted to Parliament for approval before the end of the following financial year.</p> |
| Victoria | <p>Urgent claims included in the annual Appropriation Act</p> <p>Also, 0.5% of total appropriations is available to meet urgent claims, in anticipation of parliamentary sanction.</p> | <p>No limit. Amount specified in annual Appropriation Act.</p> <p>0.5% of total appropriations for the year.</p> | <p>At the end of the financial year for retrospective appropriation.</p> <p>End of financial year, for parliamentary sanction.</p> |
| Western Australia | <p>Extraordinary payments of unforeseen nature in anticipation of or in addition to the annual appropriations granted by Parliament. Governor must authorise expenditure on purposes for which there is no existing appropriation. Treasurer may authorise where appropriation is insufficient. The Treasurer may also make advances on such terms as he or she thinks fit for the temporary financing of works and services.</p> | <p>Amount specified in annual Treasurer's Advance Authorisation Act.</p> | <p>Quarterly and annual reporting requirement.</p> |
| Commonwealth | <p>Provides for urgent and unforeseen expenditure and where there is an error (understatement of other appropriations) or omission, which can be authorised by the Minister for Finance</p> | <p>Total amount specified in annual Appropriation Act.</p> | <p>No requirement. The practice is to report monthly and at the end of the financial year.</p> |
| New Zealand | <p>Supplementary appropriations provide funding for unexpected or new expenditures.</p> | <p>N/A</p> | <p>N/A</p> |
| United Kingdom | <p>Supplementary appropriations provide funding for unexpected or new expenditures.</p> | <p>N/A</p> | <p>N/A</p> |

Appendix D – Legal advice in relation to the use of the Treasurer’s Advance for Child Protection⁵⁴



AUSTRALIAN CAPITAL TERRITORY GOVERNMENT SOLICITOR

Your Reference:

602942

Our Reference:

Philip Mitchell
Ph: (02) 6207 0655

Level 5

12 Moore Street
CANBERRA CITY 2601

18 March 2004

Ms Megan Smithies
A/G Deputy Chief Executive
Department of Treasury
Level 1, Canberra Nara Centre
1 Constitution Avenue
CANBERRA CITY ACT 2601

Dear Ms Smithies

Treasurer’s Advance – Child Protection

I refer to your letter of 17 March 2004.

I note your instructions that a Supplementary Appropriation Bill has been tabled in the Assembly. The Bill includes a proposed additional appropriation of approximately \$2.65 million to the Department of Education, Youth and Family Services for child protection. The total existing 2003 – 04 appropriation to that department for child protection activities is approximately \$35 million.

You have sought my advice on two issues:

1. In the event that additional funding for child protection is required, prior to the passing of the Supplementary Appropriation Bill, would it be permissible to achieve this by way of Treasurer’s Advance under the *Financial Management Act 1996* (“FMA”); and
2. Whether the instrument for the Treasurer’s Advance can be “repealed” or “reversed”, in the event that a Treasurer’s Advance is made prior to the passage of the Supplementary Appropriation Bill.

⁵⁴ As provided by an answer to a question taken on notice on 17 March 2004, dated 23 March 2004.

I confirm my telephone advice that:

- i. The tabling of the Supplementary Appropriate Bill does not affect the power of the Treasurer to authorise a Treasurer's Advance. The relevant provisions are set out in s.18 of the FMA. Provided each of the elements set out in that section is satisfied, then the Treasurer may authorise a Treasurer's Advance; and
- ii. If a Treasurer's Advance is made, it is not appropriate to seek to repeal or reverse the instrument authorising that advance. Rather, the Supplementary Appropriate Bill should be amended, to remove the amounts covered by the Treasurer's Advance.

My comments and reasons are as follows.

1. Section 6 of the FMA provides:

"No payment of public money shall be made otherwise than in accordance with an appropriation."

However the FMA contains certain exceptions and qualifications, such as those dealing with net appropriations for outputs, variations of appropriations, payments in anticipation of appropriation, and Treasurer's Advance. The Treasurer's Advance is dealt with in s.18 of the FMA.

2. A copy of s.18 of the FMA is attached for ease of reference. It provides, in part, that expenditure which is either (1) in excess of amounts specifically appropriated for expenditure of that kind, or (2) not provided for by any appropriation, may be authorised by the Treasurer. This authorisation must be in writing, and is subject to certain provisos and conditions.
3. One of these provisos is set out in paragraph 18(1)(c). It requires that:

"the need for the expenditure could not reasonably have been foreseen at the time of presentation to the Legislative Assembly of the bill for the first Appropriation Act relating to the financial year in which the expenditure is to happen."

As you will see, paragraph 18(1)(c) contains a number of elements, and each of these elements must be satisfied. The first is the "need for the expenditure". This is the expenditure referred to in paragraph 2 above namely, expenditure in excess of appropriation or expenditure not provided for by any appropriation. It is important to note that s.18 is directed towards expenditure, not projects. Accordingly, the "need for the expenditure" in this case is the additional expenditure for child protection – that is, the expenditure in the current financial year that is in excess of the amount previously appropriated for child protection.

-
4. The second element in paragraph 18(1)(c) is that the need for expenditure "could not reasonably have been foreseen" at a particular time. The meaning of this second element is unclear in that it begs the question – foreseen by whom? On one view, recognising that it is the Treasurer who authorises expenditure under s.18, it could be argued that the focus should be on the Treasurer or Treasury officials becoming aware of the need for the expenditure. On another view, where s.18 is seen as a limited exception to the "normal" requirement in s.6 of the FMA, it could also be argued that the focus should be on the relevant department or agency which has sought the Treasurer's authorisation under s.18.

As indicated, the position is unclear. However, at the earliest it seems to me that the need for this expenditure could not reasonably have been foreseen until such time as the responsible officers in the Department of Education, Youth and Family Services had received information which would enable them to understand that additional funds were required.

For the purposes of this advice, it is not necessary to determine which view is correct. As I understand the circumstances, the need for this additional expenditure on child protection could not reasonably have been foreseen by anyone until well after the date of presentation of the Bill for the first Appropriation Act for the current financial year.

5. Section 18 also contains two provisions relating to limits on the amount of Treasurer's Advance. The first of these is paragraph 18(1)(d) which provides:

"the total expenditure authorised under this sub-section in any financial year does not exceed the amount appropriated for that year for this section."

You should satisfy yourself that the limit, established by s.18(1)(d), will not be exceeded by the proposed additional expenditure. For the purposes of this advice I have assumed that this limit will not be exceeded.

6. The second is s.18(3) which provides that the amount appropriated under s.18 in any financial year shall not exceed one percent of the total amount appropriated by all Appropriation Acts for that year. You should also satisfy yourself that this limit will not be exceeded. For the purposes of this advice, I have assumed that the limit on Treasurer's Advance, calculated in accordance with s.18(3), will not be exceeded.
7. Section 18 also contains two reporting obligations. The first is s.18(2) which obliges the Treasurer, at the time of presentation of an appropriation bill (other than the first Appropriation Bill for a financial year), to present details of all expenditure authorised under s.18(1) since the passing of the first Appropriation Act for that year.

-
8. The second reporting obligation is in s.18(4) which obliges the Treasurer to present copies of authorisations under s.18(1), together with a statement of the reasons for giving the authorisations, to the Legislative Assembly as soon as practicable after the end of the year. You should assume that these reporting obligations are satisfied.
 9. As discussed, there is nothing in s.18 of the FMA which would prohibit the Treasurer from authorising an advance in circumstances where the proposed expenditure has been included in a Bill which has been tabled in the Assembly. The existence of the Supplementary Appropriation Bill is not a relevant consideration. If the various elements set out in s.18 have been satisfied, then the Treasurer may authorise the relevant expenditure under that section.
 10. Your second question is whether the instrument for the Treasurer's Advance can be "repealed" or "reversed", in the event that the supplementary Appropriation Bill is ultimately passed by the Legislative Assembly.
 11. The relevant time for determining whether or not expenditure has been properly authorised under the FMA is the date when the expenditure is made. If the expenditure is authorised under s.18, and the expenditure is made, then that expenditure has been properly authorised, and no separate appropriation is required. The authorisation under s.18 is the only authorisation required, and it would not be appropriate to "repeal" or "reverse" the instrument of authorisation, after the authorised expenditure had been made.
 12. In those circumstances, I suggest it would be more appropriate for the Government to amend the Supplementary Appropriation Bill, to remove expenditure which had been authorised under a Treasurer's Advance and made.

Please telephone me if there are any points you would like to discuss.

Yours faithfully

ACT Government Solicitor

per:



Philip Mitchell
Chief Solicitor

the Treasurer may, by instrument, direct that the appropriation be increased by an amount not exceeding the difference between the amount of the estimate and the amount of the payment.

- (3) Where the Treasurer gives a direction under subsection (2), the Treasurer must present a copy of the direction to the Legislative Assembly within 3 sitting days after it is given.
- (4) This section expires on 30 June 2004.

18 Treasurer's advance

- (1) Expenditure that is—
 - (a) in excess of the amount specifically appropriated for expenditure of that kind; or
 - (b) not provided for by any appropriation;may be authorised, in writing, by the Treasurer provided that—
 - (c) the need for the expenditure could not reasonably have been foreseen at the time of presentation to the Legislative Assembly of the bill for the first Appropriation Act relating to the financial year in which the expenditure is to happen; and
 - (d) the total expenditure authorised under this subsection in any financial year does not exceed the amount appropriated for that year for this section.
- (2) The Treasurer must, at the time of presentation of a bill for an Appropriation Act other than the first Appropriation Act relating to a financial year, present details of all expenditure authorised under subsection (1) since the passing of the first Appropriation Act.
- (3) The amount appropriated for this section for a financial year shall not exceed 1% of the total amount appropriated by all Appropriation Acts for that year.
- (4) If the Treasurer has authorised expenditure under subsection (1) during a financial year and expenditure has been incurred under that

authorisation during the year, the Treasurer must present the following to the Legislative Assembly as soon as practicable after the end of the year:

- (a) a copy of the authorisation;
- (b) a statement of the reasons for giving it.

19 Refunds of payments made without liability

- (1) If a payment is made to the Territory in purported discharge of a liability that does not exist, the amount paid may be refunded to the person by whom the payment was made whether or not there is an appropriation available for that purpose.
- (2) If a payment made to the Territory to discharge a liability exceeds the amount of the liability, the amount by which the payment exceeds the liability may be refunded to the person by whom the payment was made whether or not there is an appropriation available for that purpose.
- (3) If—
 - (a) a person has paid an amount to the Territory for tax claimed by the Territory to be due from that person; and
 - (b) a court or tribunal of competent jurisdiction subsequently finds that the person was not liable for that tax or was liable for an amount of tax less than the amount paid;

the amount paid, or the amount by which the payment exceeds the liability, as the case requires, may be refunded to the person who made the payment whether or not there is an appropriation available for that purpose.

19A Payments for Territory GST liabilities

Payments may be made to the Commonwealth for the GST liabilities of the Territory whether or not there is an appropriation for the purpose.