



Legislative Assembly for the
Australian Capital Territory

Select Committee on Financial
Management and Government
Procurement Legislative Compliance

Submission cover sheet

Inquiry into Financial Management and Government Procurement Legislative Compliance

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Supplementary submission by Peter Bradbury
Relating to Appropriation Instrument Reporting
following the 23 April 2026 hearing of the
Select Committee Inquiry into Financial Management and
Government Procurement Legislative Compliance

During my attendance at the hearing on 23 April 2026, I was asked whether I was aware of ACT Government claims that it was not breaching legislation in its practices attaching signed appropriation instruments to periodic financial statements, particularly its reliance on its interpretation of Clause 68 of the Explanatory Statement to the Financial Management Amendment Bill 2015.

My response was that I had read the Government's submission but had not drilled down to the Explanatory Statement because the resulting legislation is unambiguous. I have now taken the opportunity to look at this in detail. My position is unchanged, the FMA is unambiguous in its reporting requirements and Clause 68 doesn't unambiguously support the Government's position.

It was not clear, to me, in the hearing that Clause 68 didn't relate directly to the attachment of signed s16B instruments to financial reports, but indirectly by reference to a summary of attached signed instruments. While this doesn't mean that it is irrelevant, it needs to be considered alongside the related clauses of the Explanatory Statement and sections of the FMA.

It is well accepted in legal interpretation that the pre-cursors to legislation, such as explanatory statements, are valid inputs to resolve ambiguity in legislation. The problem with the Government's position on this matter is that there is no ambiguity in the legislation (the FMA) that it is pointing to. The most favourable interpretation, for the Government, is that Clause 68 is ambiguous or creates ambiguity because that clause is internally inconsistent, and inconsistent with the other clauses that cover these authorisations.

The Government's argument is that the words of one sentence in Clause 68

"The amendment requires territory periodic financial statements to include a summary of all the appropriation instruments authorised during the quarter, along with individual instruments"

have only one meaning because during the quarter can only be the quarter that matches the dates of the financial statements. It does not consider that it could mean the quarter since the last financial statement was presented.

In the hearing, Mr Werner-Gibbins put to me that that as a s16B rollover signed in early April couldn't be spent before the June quarter, that was the appropriate quarterly report to attach it to. Putting aside the evidence that money is being spent without approved appropriation, this would have some merit if the only purpose of quarterly financial reports were to record expenditure, however, they contain expected budget

outcomes. They are as much about transparency as they are about book-keeping. So, without a budget provision for expected s16B rollovers, the moment a s16B authorisation is signed the expected budget outcome changes and that should be reflected in the next financial report presented to the Assembly and the community as well.

The weakness in the Government's position is also demonstrated by how their practice would be applied in other circumstances, for example:

1. In relation to s18-18G. If the Treasurer also signed an instrument under these sections on 10 April 2025, given the timelier reporting requirements to the Assembly it would advise MLAs by 17 April 2025, but it would not advise the community by mid-May 2025 (the next financial report presented to the Assembly), but in mid-August 2025. The Government's position makes no sense when compared to the underlying rationale presented in the second paragraph of Clause 68.
2. In relation to s16B rollovers it is possible to sign an authorisation during the original financial year and for the entire amount to be rolled over to the following year. The Government is arguing that a s16B rollover might be signed in July 2023 and that the earliest it is reported is the September quarter 2024 report in mid-November 2024. I doubt that was the intention of the 2015 amendments.

For the Government's view to prevail it needs to also demonstrate that the words in other clauses and the FMA align with its interpretation or are equally ambiguous. I see no evidence for this, quite the contrary.

Clause 44 of the Explanatory Statement relates to attaching signed s16B instruments to financial reports, and says:

"This clause replaces the existing presentation requirements in sub section 6 in relation to the authorisation under section 16B from 'within 3 sitting days after the day the appropriation is authorised' to 'on the next financial statement presentation day'."

The resulting sub section of the FMA is worded slightly differently but unambiguously describes the same requirement:

"If the Treasurer authorises an amount to be disbursed under this section, the Treasurer must attach a copy of the authorisation to the next financial statement presented to the Legislative Assembly."

Where similar instruments are mentioned in the Explanatory Statement the same words are used, and that is true for all the equivalent sections of the FMA.

As I outlined in my original submission, the underlying problem is that expected budget outcomes are deficient because they make no provision for events that are expected to happen, in this case s16B rollovers. It adds to the list of deficiencies identified by the Assembly in a motion passed on 25 February ([Hansard P563-579](#)):

That this Assembly: ...

(3) further acknowledges that the Budget Review headline figures do not account for the:

- (a) full cost of ACT Labor election commitments;
 - (b) full cost of ACT Public Service pay rises anticipated under the Enterprise Bargaining Agreement;
 - (c) cost of continuing community service funding arrangements that are due to expire during the forward estimates; and
 - (d) the outcomes of the new National Health Reform Agreement; ...
- rollovers of appropriation (FMA s16B) from the previous financial year.

I note that Clause 68 relates to s26(2) (now s26(3)), the legislative note to that section contains errors:

Note Instruments made under s 7A, s 14, s 14A, s 14B, s 15A, s 16, s 16A, s 16B, s 17, s 17A, s 18C, s 18G and s 19B may be attached to the financial statements.

The instruments 'must' be attached, and instruments are made under s18, s18A, s18B, and s18E not s18C and s18G.
