

Passed by both Houses



New South Wales

COVID-19 Legislation Amendment (Emergency Measures—Treasurer) Bill 2020

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Explanatory notes	2
Schedule 1 Amendment of legislation administered by the Treasurer	3

I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2020



New South Wales

COVID-19 Legislation Amendment (Emergency Measures—Treasurer) Bill 2020

Act No _____, 2020

An Act to amend legislation administered by the Treasurer to implement further emergency measures as a result of the COVID-19 pandemic.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *COVID-19 Legislation Amendment (Emergency Measures—Treasurer) Act 2020*.

2 Commencement

This Act commences on the date of assent to this Act.

3 Explanatory notes

The matter appearing under the heading “Explanatory note” in Schedule 1 does not form part of this Act.

Schedule 1 Amendment of legislation administered by the Treasurer

1.1 Government Sector Finance Act 2018 No 55

[1] Section 4.11 Variations of annual appropriations for Commonwealth grants

Omit section 4.11(3). Insert instead—

- (3) To avoid doubt, the Treasurer may issue a certificate under this section even if it is in respect of an annual reporting period for the NSW Government that has ended unless the annual Appropriation Act for the next annual reporting period has already given an appropriation for it.
- (3A) If the Treasurer issues a certificate under this section for an annual reporting period (the *certified period*)—
 - (a) for a new specific purpose payment that has been certified in a certificate issued during the certified period—an appropriation for the purpose of the payment is taken to have been made under the authority of this section for the certified period, and
 - (b) for a new specific purpose payment that has been certified in a certificate issued after the certified period—an appropriation for the purpose of the payment is taken to have been made under the authority of this section for the annual reporting period for the NSW Government during which the certificate was issued, and
 - (c) for a decreased or increased specific purpose payment that has been certified (whether in a certificate issued during or after the certified period)—the appropriation for the purpose of the payment is taken to have been decreased or increased accordingly under the authority of this section for the certified period.

[2] Section 10.5

Insert after section 10.4—

10.5 Repeal of Schedule 2

- (1) Schedule 2 is repealed on 1 November 2021.
- (2) Anything done, or omitted to be done, pursuant to a provision of Schedule 2 (or of a regulation made for the purposes of a provision of the Schedule) remains as legally effective after the repeal of the Schedule as it was before its repeal.

[3] Schedule 1 Savings, transitional and other provisions

Omit “1 July 2020” wherever occurring in clause 10(1), (4), (5) and (6).

Insert instead “1 July 2021”.

[4] Schedule 1, clause 10(2) and (3)

Omit “1 July 2020 until 1 July 2021” wherever occurring.

Insert instead “1 July 2021 until the relevant day”.

[5] Schedule 1, clause 10(7)

Insert after clause 10(6)—

- (7) In this clause—

relevant day means whichever of the following days is the earlier—

- (a) 1 July 2022,
- (b) the day on which—
 - (i) for subclause (2)—the *Annual Reports (Statutory Bodies) Act 1984* is repealed, or
 - (ii) for subclause (3)—the *Annual Reports (Departments) Act 1985* is repealed.

[6] **Schedule 2**

Insert after Schedule 1—

Schedule 2 Provisions for COVID-19 pandemic

Part 1 Preliminary

1 Interpretation

In this Schedule—

2020–2021 annual Appropriation Act means the annual Appropriation Act for the 2020–2021 annual reporting period.

2020–2021 annual reporting period means the annual reporting period for the NSW Government commencing on 1 July 2020.

2020–2021 Budget means the Budget for the 2020–2021 annual reporting period.

different day prescribed by the regulations—see clause 4.

extended Budget presentation day means—

- (a) 31 December 2020, or
- (b) any different day prescribed by the regulations.

modified Acts—see clause 2.

2 Objects of Schedule

The objects of this Schedule are to modify the operation of the following Acts (the **modified Acts**) to extend certain budgetary and financial and annual reporting time frames, and to confer additional powers on the Treasurer, as a consequence of the COVID-19 pandemic—

- (a) this Act,
- (b) the *Annual Reports (Departments) Act 1985*,
- (c) the *Annual Reports (Statutory Bodies) Act 1984*,
- (d) the *Public Finance and Audit Act 1983*.

3 Relationship of Schedule with modified Acts

The provisions of this Schedule apply despite anything to the contrary in the modified Acts or regulations made under the modified Acts.

4 Extending compliance days by regulation

- (1) This clause applies in relation to a provision of this Schedule that allows a different day to be prescribed by the regulations for a day specified by the provision.

- (2) The day prescribed by the regulations may be earlier than the day specified by the provision.
- (3) However, the day prescribed by the regulations may not be later than 30 June 2021.

Part 2 Modifications concerning 2020–2021 Budget and certain appropriations

5 Presentation of 2020–2021 Budget

- (1) The Treasurer is to cause the Budget Papers for the 2020–2021 Budget to be tabled in the Legislative Assembly before the extended Budget presentation day instead of 30 June 2020 as provided by section 4.4 of this Act.
- (2) For these Budget Papers, section 4.2(3)(a) of this Act does not apply in relation to the budget aggregates for the 2 prior years.

6 Payments authorised on lapse of appropriation because of delay in 2020–2021 Budget

- (1) The Treasurer may authorise payments out of the Consolidated Fund under section 4.10 of this Act until whichever of the following occurs first—
 - (a) the extended Budget presentation day,
 - (b) the enactment of the 2020–2021 annual Appropriation Act.
- (2) Payments that are authorised to be made under section 4.10 for this purpose must not exceed, in total, an amount equivalent to 75% of the amount appropriated under the *Appropriation Act 2019* (adjusted for consumer prices as provided by regulations made for the purposes of section 4.10(4)(a) of this Act).
- (3) Subclause (2) does not prevent payments being authorised to meet any exigencies of Government as provided by clause 7 of this Schedule or section 4.13 of this Act.

7 Payments out of Consolidated Fund for exigencies of Government resulting from COVID-19 pandemic

- (1) This clause applies until the 2020–2021 annual Appropriation Act is enacted.
- (2) The Treasurer may, with the approval of the Governor, determine that money is to be paid out of the Consolidated Fund during the 2020–2021 annual reporting period in anticipation of appropriation by Parliament by the 2020–2021 annual Appropriation Act if it is required to meet any exigencies of Government resulting from the effects of the COVID-19 pandemic.
- (3) Any money determined under subclause (2) for an exigency must be no more than is necessary in the public interest to fund expenditure to meet the exigency.
- (4) The Treasurer must cause details of the payments of money paid under this clause to be included in the Budget Papers for the 2020–2021 Budget.
- (5) This clause does not limit section 4.13 of this Act.

Part 3 Modifications concerning certain financial statements, reviews and reports

8 Consolidated financial statements and general government sector financial statements for 2019–2020 financial year

- (1) The Treasurer is, for the purposes of section 6 of the *Public Finance and Audit Act 1983*, to transmit to the Auditor-General the statements referred to in that section for the financial year commencing on 1 July 2019 (the **2019–2020 consolidated statements**) on or before 15 March 2021, or any different day prescribed by the regulations, instead of on or before 15 September 2020.
- (2) The Auditor-General is, for the purposes of section 49 of the *Public Finance and Audit Act 1983*, to transmit the Auditor-General’s opinion or opinions on the 2019–2020 consolidated statements on or before 22 April 2021, or any different day prescribed by the regulations, instead of on or before 22 October 2020.
- (3) The Treasurer is, for the purposes of section 51 of the *Public Finance and Audit Act 1983*, to present the 2019–2020 consolidated statements as audited by the Auditor-General (and the opinion or opinions of the Auditor-General as to those statements) to the Legislative Assembly no later than 30 April 2021, or any different day prescribed by the regulations, instead of no later than 31 October 2020.

9 Half-yearly review for 2020

The Treasurer is to publicly release, by 28 February 2021, the half-yearly review referred to in section 8 of the *Public Finance and Audit Act 1983* for the financial year commencing on 1 July 2019.

10 Monthly statements for 2020–2021

Unless it is not reasonably practicable to do so, the Treasurer is to publicly release monthly statements referred to in section 8 of the *Public Finance and Audit Act 1983* during the period—

- (a) beginning on the commencement of this Schedule, and
- (b) ending on 31 October 2021.

11 Financial reports by statutory bodies and Departments

- (1) A financial report referred to in section 41A or 45D of the *Public Finance and Audit Act 1983* for a financial year commencing in 2019 for a statutory body or Department is to be prepared or submitted for the purposes of that section—
 - (a) if the financial year for the body or Department commenced on 1 July 2019—within the period of 6 weeks after 31 December 2020, or any different day prescribed by the regulations, instead of within the period of 6 weeks after the end of the financial year, or
 - (b) if the financial year for the body or Department commenced on any other day in 2019—within the period of 6 weeks after a day directed by the Treasurer, instead of within the period of 6 weeks after the end of the financial year.
- (2) Subclause (1) does not affect any financial report that has already been prepared and submitted in accordance with section 41A or 45D of the *Public Finance and Audit Act 1983* before the commencement of this Schedule.

Part 4 Modifications concerning certain annual reports

12 Annual reports

- (1) This clause applies to the submission of an annual report to the responsible Minister or Treasurer under section 12 of the *Annual Reports (Departments) Act 1985* or section 10 of the *Annual Reports (Statutory Bodies) Act 1984*.
- (2) An annual report for a financial year commencing in 2019 for a Department or statutory body is to be submitted—
 - (a) if the financial year for the Department or body commenced on 1 July 2019—not later than 4 months after 31 December 2020, or any different day prescribed by the regulations, instead of 4 months after the end of the financial year, or
 - (b) if the financial year for the Department or body commenced on any other day in 2019—not later than 4 months after a day directed by the Treasurer, instead of 4 months after the end of the financial year.
- (3) Subclause (2) does not affect any annual report that has already been submitted in accordance with section 12 of the *Annual Reports (Departments) Act 1985* or section 10 of the *Annual Reports (Statutory Bodies) Act 1984* before the commencement of this Schedule.

Explanatory note

Item [1] of the proposed amendments clarifies the circumstances in which the Treasurer is authorised under section 4.11 of the *Government Sector Finance Act 2018* to issue certificates confirming variations in appropriations for Commonwealth specific purpose payments.

Items [3]–[5] modify certain savings and transitional provisions as a result of the anticipated delayed commencement of financial reporting provisions of the *Government Sector Finance Act 2018*.

Item [6]—

- (a) allows the Treasurer to present the 2020–2021 Budget to Parliament no later than 31 December 2020 or a different day prescribed by the regulations (the **extended Budget presentation day**), and
- (b) allows the Treasurer to authorise payments under section 4.10 of the *Government Sector Finance Act 2018* from the Consolidated Fund on the lapse of the appropriations made by the 2019–2020 Budget because of the delay in the 2020–2021 Budget (up to an amount of 75% of the appropriations under the 2019–2020 Budget) until the extended Budget presentation day or the enactment of the 2020–2021 Budget, whichever occurs first, and
- (c) allows the Treasurer, with the Governor's approval, to authorise payments out of the Consolidated Fund for exigencies of Government resulting from the COVID-19 pandemic until the 2020–2021 Budget is enacted, and
- (d) enables the Treasurer—
 - (i) to provide the consolidated financial statements and general government sector financial statements for 2019–2020 financial year to the Auditor-General on or before 15 March 2021, or any different day prescribed by the regulations, instead of on or before 15 September 2020 as required by the *Public Finance and Audit Act 1983*, and
 - (ii) to decide if and when to publish monthly statements and half-yearly reviews concerning the Budget for the 2019–2020 financial year for the purposes of the *Public Finance and Audit Act 1983*, and
- (e) extends the period for certain Departments and statutory bodies to prepare their financial reports under the *Public Finance and Audit Act 1983* beyond the 6-week period after the end of their financial years, and
- (f) extends the period for certain Departments and statutory bodies to prepare their annual reports under the *Annual Reports (Departments) Act 1985* or *Annual Reports (Statutory Bodies) Act 1984* beyond the 4-month period after the end of their financial years.

Item [2] provides for the provisions inserted by item [6] to be repealed on 1 November 2021.

1.2 Government Sector Finance Regulation 2018

Clause 12A

Insert before clause 13—

12A Consumer price adjustments for payments authorised on lapse of appropriation—section 4.10 of Act

- (1) The purpose of this clause is to provide for the purposes of section 4.10(4)(a) of the Act for the adjustment for consumer prices in an annual reporting period for the NSW Government (the *current period*) of the amount appropriated under the annual Appropriation Act (the *previous appropriated amount*) for the previous annual reporting period (the *previous period*).
- (2) The previous appropriated amount is to be adjusted by whichever of the following percentages is the greater—
 - (a) the percentage change in the Consumer Price Index (All Groups Index) for Sydney published by the Australian Bureau of Statistics between the March quarter immediately before the commencement of the current period compared with the March quarter immediately before the commencement of the previous period,
 - (b) the percentage (as at 31 March immediately before the commencement of the current period) declared by a regulation made for the purposes of section 146C of the *Industrial Relations Act 1996* to be government policy in respect of the maximum percentage for increases in the remuneration of public sector employees.

Explanatory note

The proposed amendment provides for consumer price adjustment for the purposes of section 4.10 of the *Government Sector Finance Act 2018* by reference to whichever of the following percentages is the greater—

- (a) the percentage change in the Consumer Price Index (All Groups Index) for Sydney published by the Australian Bureau of Statistics over a certain 12-month period before the next Budget is due,
- (b) the percentage declared by a regulation made for the purposes of section 146C of the *Industrial Relations Act 1996* that applies at a certain time before the next Budget is due.

1.3 Payroll Tax Act 2007 No 21

Section 66D

Insert after section 66C—

66D Wages subsidised under Commonwealth jobkeeper scheme

- (1) This section applies in relation to an employee (a *jobkeeper subsidised employee*) in respect of whom jobkeeper payments are paid or payable to the employer if, but for those payments, less wages or no wages would have been paid to the employee.
- (2) The wages paid to a jobkeeper subsidised employee are exempt wages, but only to the extent of the difference between—
 - (a) the amount of jobkeeper payments paid or payable to the employer in respect of the employee, and
 - (b) the amount of wages that would have been paid to the employee but for those jobkeeper payments.
- (3) Subsection (2) applies only in respect of wages paid during the period—

- (a) commencing on 30 March 2020, and
 - (b) ending on the day the scheme for jobkeeper payments ends.
- (4) For the purposes of this section, any overpayment of jobkeeper payments is to be disregarded in calculating the amount of jobkeeper payments paid or payable to an employer in respect of an employee.
- (5) To avoid doubt, this section does not apply in relation to an employee if the wages paid or payable to the employee are greater than the jobkeeper payments paid or payable to the employer in respect of the employee.
- (6) In this section—
- jobkeeper payment** has the same meaning as it has in Part 6–4C of the *Fair Work Act 2009* of the Commonwealth.
- overpayment**, in relation to a jobkeeper payment, means any amount in respect of the payment that an employer is liable to repay to the Commonwealth under section 9 of the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020* of the Commonwealth.

Explanatory note

The proposed amendment provides for certain wages paid to employees subsidised by the Commonwealth jobkeeper scheme to be exempt from payroll tax.

1.4 Public Finance and Audit Act 1983 No 152

[1] Section 39 Application and interpretation

Insert after section 39(3)—

- (3A) Without limiting section 40, the regulations may provide for this Division to apply to particular statutory bodies or kinds of statutory bodies except for specified provisions.
- (3B) The following provisions apply in respect of a regulation made for the purposes of subsection (3A) (an **exemption regulation**)—
 - (a) the Treasurer must consult the Auditor-General about any proposed provisions to be included in an exemption regulation,
 - (b) section 3.5 of the *Government Sector Finance Act 2018* applies to the consultation referred to in paragraph (a) in the same way as it applies to a consultation requirement under that Act,
 - (c) an exemption regulation must provide for its provisions to be repealed on a day that is no later than 1 November 2021.

Note. Section 10.5 of the *Government Sector Finance Act 2018* provides for the repeal of Schedule 2 (Provisions for COVID-19 pandemic) to that Act on 1 November 2021.
- (3C) A statutory body to which an exemption regulation applies is not required to comply with the provisions of this Division that are prescribed as exceptions.
- (3D) Anything done, or omitted to be done, pursuant to an exemption regulation remains as legally effective after the repeal of the regulation as it was before its repeal.

[2] Section 45A Application and interpretation

Insert after section 45A(4)—

- (4A) Without limiting section 45B, the regulations may provide for this Division to apply to particular Departments or kinds of Departments except for specified provisions.

- (4B) The following provisions apply in respect of a regulation made for the purposes of subsection (4A) (an *exemption regulation*)—
- (a) the Treasurer must consult the Auditor-General about any proposed provisions to be included in an exemption regulation,
 - (b) section 3.5 of the *Government Sector Finance Act 2018* applies to the consultation referred to in paragraph (a) in the same way as it applies to a consultation requirement under that Act,
 - (c) an exemption regulation must provide for its provisions to be repealed on a day that is no later than 1 November 2021.
- Note.** Section 10.5 of the *Government Sector Finance Act 2018* provides for the repeal of Schedule 2 (Provisions for COVID-19 pandemic) to that Act on 1 November 2021.
- (4C) A Department to which an exemption regulation applies is not required to comply with the provisions of this Division that are prescribed as exceptions.
- (4D) Anything done, or omitted to be done, pursuant to an exemption regulation remains as legally effective after the repeal of the regulation as it was before its repeal.

Explanatory note

The proposed amendments enable the regulations under the *Public Finance and Audit Act 1983* to provide for the following provisions of that Act to apply to particular Departments and statutory bodies, or kinds of Department and statutory bodies except for specified provisions—

- (a) Division 3 (General audit of statutory bodies) of Part 3,
- (b) Division 4A (General audit of Departments) of Part 3.

Regulations made for this purpose must provide for their repeal not later than on 1 November 2021.

1.5 Public Finance and Audit Regulation 2015

Schedule 2

Insert after Schedule 1—

Schedule 2 Special provisions for COVID-19 pandemic concerning financial reporting

Part 1 Interpretation

1 Definitions

In this Schedule—

accountable authority has the same meaning as in the *Government Sector Finance Act 2018*.

assets, commitments, contingent liabilities, expenses, income and liabilities have the same meanings as in the Australian Accounting Standards.

controlled entity has the same meaning as in the *Government Sector Finance Act 2018*.

Crown land manager has the same meaning as in the *Crown Land Management Act 2016*.

Department means a Department within the meaning of Division 4A of Part 3 of the Act.

exempt Department means a Department that is an exempt Department because of the operation of Part 2 of this Schedule.

exempt statutory body means a statutory body that is an exempt statutory body because of the operation of Part 2 of this Schedule.

relevant agency means a Department or statutory body.

relevant transaction means a transaction, approved or directed by the Premier or Treasurer or other Minister, for the sale, lease, assignment, transfer or other disposal of assets or liabilities of the State to a non-government sector entity.

retained State interest, in relation to a relevant transaction, means an interest or right in or related to an asset or liability disposed of under a relevant transaction that is held by or on behalf of the State as a consequence of the transaction.

statutory body means a statutory body within the meaning of Division 3 of Part 3 of the Act.

2 Effect of Schedule on other provisions of Regulation

This Schedule does not limit the operation of clauses 9 and 12A of this Regulation.

Part 2 Exempt Departments and exempt statutory bodies

3 Small agencies

A Department or statutory body meeting all of the following requirements is an exempt Department or exempt statutory body (as the case requires)—

- (a) the assets, liabilities, income, expenses, commitments and contingent liabilities of the Department or statutory body are each less than \$5,000,000,
- (b) the total cash or cash equivalents held by the Department or statutory body is less than \$2,500,000,
- (c) at least 95% of the Department's or statutory body's income is derived from money paid out of the Consolidated Fund or from money provided by other relevant agencies,
- (d) the Department or statutory body does not administer legislation for a Minister by or under which members of the public are regulated.

4 Crown land managers

A Department or statutory body meeting all of the following requirements is an exempt Department or exempt statutory body (as the case requires)—

- (a) the Department or statutory body is a Crown land manager,
- (b) the requirements referred to in clause 3(a), (b) and (d),
- (c) the income of the Department or statutory body, derived from sources other than money paid out of the Consolidated Fund or money provided by other relevant agencies, is less than \$100,000.

5 Special purpose staff agencies

A Department or statutory body that comprises solely of persons who are employed to enable another particular relevant agency to exercise its functions is an exempt Department or exempt statutory body (as the case requires).

6 Retained State interests

A Department or statutory body meeting all of the following requirements is an exempt Department or exempt statutory body (as the case requires)—

- (a) the sole purpose of the Department or statutory body (the *first agency*) is to hold and manage retained State interests arising from a particular relevant transaction, and all of its activities relate to that purpose,
- (b) the first agency's financial position and financial performance are consolidated within the financial statements of another relevant agency (the *second agency*),
- (c) the first agency and the second agency each has the same accountable authority,
- (d) if there is another relevant agency that is also a controlled entity of the second agency, the second agency and that controlled entity have the same sole purpose.

Part 3 Modification of reporting requirements

7 Reporting requirements for exempt Department

For the purposes of section 45(4C) of the Act, Division 4A of Part 3 of the Act applies to an exempt Department except for sections 45D–45H.

8 Reporting requirements for exempt statutory body

For the purposes of section 39(3C) of the Act, Division 3 of Part 3 of the Act applies to an exempt statutory body except for sections 41A–42.

Part 4 General

9 Repeal of Schedule

This Schedule is repealed on 1 November 2021.

Explanatory note

The proposed amendment makes provision for the purposes of the regulation-making powers conferred by the amendments to the *Public Finance and Audit Act 1983* elsewhere in this Schedule. In particular, it exempts certain kinds of Departments and statutory bodies from requirements relating to the preparation of financial reports. The provisions will be repealed on 1 November 2021.