

# **Financial Management (Amendment) Act 1994**

**No. 75 of 1994**

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**Victoria**

**No. 75 of 1994**

## **Financial Management (Amendment) Act 1994**

[Assented to 22 November 1994]

**The Parliament of Victoria enacts as follows:**

### **PART 1—PRELIMINARY**

#### **1. *Purposes***

The purposes of this Act are—

- (a) to amend the **Financial Management Act 1994** to provide for supply management in the public sector, including the establishment of a Victorian Government Purchasing Board;
- (b) to amend the **Financial Management Act 1994** for other purposes;

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- (c) to make consequential amendments to other Acts.

**2. Commencement**

- (1) Section 7 (6) is deemed to have come into operation on 10 May 1994.
- (2) The remaining provisions of this Act come into operation on 1 January 1995.

**3. Principal Act**

No. 18/1994.

In this Act the **Financial Management Act 1994** is called the Principal Act.

**PART 2—SUPPLY MANAGEMENT**

**4. New Part 7A inserted in Principal Act**

After section 54 of the Principal Act insert—

**“PART 7A—SUPPLY MANAGEMENT**

**54A. Establishment of Victorian Government Purchasing Board**

- (1) The Victorian Government Purchasing Board is established.
- (2) The Board—
- (a) is a body corporate with perpetual succession;
  - (b) has a common seal;
  - (c) may sue and be sued in its corporate name;
  - (d) may acquire, hold and dispose of real and personal property;
  - (e) may do and suffer all things that a body corporate may, by law, do and suffer.

- (3) The common seal must be kept as directed by the Board and must not be used except as authorised by the Board.
- (4) All courts must take judicial notice of the common seal on a document and, until the contrary is proved, must presume that the seal was properly affixed.

**54B. Functions of Board**

The Board has the following functions—

- (a) in relation to the supply of goods, works and services to departments and the management and disposal of goods by departments—
  - (i) to develop, implement and review policies and practices; and
  - (ii) to provide advice, staff training and consultancy services;
- (b) to monitor departmental compliance with supply policies and Ministerial directions and to report irregularities to the relevant Minister and the Minister;
- (c) to foster improvements in the use and application of purchasing systems and electronic trading;
- (d) to establish and maintain a comprehensive data base of purchasing data of departments and supply markets for access by departments;
- (e) any other functions conferred on the Board by this Part.

**54c. Powers of Board**

- (1) The Board has all the powers necessary to perform its functions.
- (2) Without limiting sub-section (1), the Board may—
  - (a) enter into contracts or arrangements on its own behalf, on behalf of the State or on behalf of departments;
  - (b) call and award tenders and advertise;
  - (c) consider and approve requisitions for the purchase of goods and services by departments;
  - (d) require accountable officers to audit departmental compliance with supply policies and Ministerial directions and provide audit reports to the Board;
  - (e) require accountable officers to provide information and data relating to the supply of goods, works and services and the management and disposal of goods;
  - (f) exercise any other powers conferred on the Board by this Act or the regulations.
- (3) An accountable officer must provide to the Board on request—
  - (a) audit reports referred to in sub-section (2) (d);
  - (b) information and data referred to in sub-section (2) (e).

**54d. Membership of Board and terms of office**

- (1) The Board consists of a chairperson and not less than 6 other members appointed by the Governor in Council.

- (2) A member of the Board holds office for the term, not exceeding 3 years, that is specified in the instrument of appointment and is eligible for re-appointment.
- (3) The **Public Sector Management Act 1992** (except Part 9) does not apply to a member in respect of the office of member.

**54E. *Payment of members***

- (1) A member of the Board, other than a member who is an officer or employee of the public service within the meaning of the **Public Sector Management Act 1992**, is entitled to receive the fees that are fixed from time to time by the Governor in Council.
- (2) Each member of the Board is entitled to receive the allowances that are fixed from time to time by the Governor in Council.

**54F. *Procedure of Board***

- (1) The chairperson of the Board, or in his or her absence a member elected by the members present, must preside at a meeting of the Board.
- (2) The quorum of the Board is 4 members.
- (3) The person presiding at a meeting of the Board has a deliberative vote only and if voting is equal the motion is lost.
- (4) Subject to this Part the Board may regulate its own proceedings.

**54G. *Validity of Board decisions***

An act or decision of the Board is not invalid by reason only—

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- (a) of a vacancy in its membership; or
- (b) of a defect or irregularity in the appointment of any member.

**54H. *Members' pecuniary interests***

- (1) A member who has a pecuniary interest in a matter being considered or about to be considered by the Board must, as soon as practicable after the relevant facts have come to his or her knowledge, declare the nature of the interest at a meeting of the Board.

Penalty: 5 penalty units.

- (2) The person presiding at a meeting at which a declaration is made must cause a record of the declaration to be made in the minutes of the meeting.
- (3) After a declaration is made—
  - (a) unless the Board directs otherwise, the member must not be present during any deliberations on the matter; and
  - (b) the member is not entitled to vote on the matter; and
  - (c) if the member does vote, the vote must be disallowed.
- (4) For the purposes of this section, a member is not to be regarded as having a pecuniary interest in a contract or arrangement only because that contract or arrangement may benefit—
  - (a) a department or public body in which the member is employed or of which he or she is a member;
  - (b) a company or other body in which the member has a beneficial interest that does not exceed 1% of the total



nominal value of beneficial interests  
in that company or body.

**54I. *Improper use of information***

A person who is, or has been, a member of the Board must not make improper use of any information acquired in the course of his or her duties to obtain directly or indirectly any pecuniary or other advantage for himself or herself or for any other person.

Penalty: 5 penalty units.

**54J. *Delegation***

The Board may delegate in writing to a member of the Board any of its powers except—

- (a) the power to require compliance audits to be undertaken under section 54C (2) (d);
- (b) the power to make, amend or revoke supply policies under section 54L;
- (c) this power of delegation.

**54K. *Minister's directions***

- (1) The Minister may give directions in writing to the Board in relation to any of its functions or powers.
- (2) A copy of any direction must be included in the Board's annual report under section 54M.
- (3) The Board must comply with directions of the Minister.

**54L. Supply policies**

- (1) The Board may prepare, make, amend and revoke instruments, to be known as “supply policies”, with respect to policies and practices relating to the supply of goods, works and services to departments and the management and disposal of goods by departments.
- (2) A supply policy—
  - (a) must be consistent with directions under section 8 and the regulations;
  - (b) may be of general or limited application;
  - (c) may differ according to differences in time, place or circumstance;
  - (d) may confer a discretionary authority or impose a duty on a specified person or class of persons;
  - (e) may leave anything for the approval or satisfaction of a specified person or class of persons;
  - (f) may apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any person whether—
    - (i) wholly or partially or as amended by the policy; or
    - (ii) as formulated, issued, prescribed or published at the time the policy is made or at any time before then; or
    - (iii) as formulated, issued, prescribed or published from time to time;
  - (g) may provide in a specified case or class of cases for the exemption of

departments, persons or things or classes of persons or things from any of the provisions of the policy, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified.

- (3) The Board must cause notice of the making, amendment or revocation of supply policies to be published in the Government Gazette.
- (4) All accountable officers and other members of staff of departments must comply with supply policies.

**54M. Annual report**

- (1) On or before 30 September each year the Board must give the Minister a report of its work and activities for the year ending on 30 June that year.
- (2) The report must also contain any information specifically requested by the Minister.
- (3) The Minister must cause each annual report of the Board to be laid before each House of Parliament before the expiration of the 7th sitting day of that House after the report is received by the Minister.”.

**PART 3—AMENDMENT OF THE PRINCIPAL ACT**

**5. Amendment of section 3 and repeal of section 4**

- (1) In section 3 of the Principal Act—

(a) in the definition of “accountable officer”—

- (i) for “an authority” substitute “a department”;

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- (ii) for “that authority” **substitute** “that department”;
- (b) after the definition of “authority” **insert**—
  - “**Board**” means the Victorian Government Purchasing Board established by section 54A;”;
- (c) in the definition of “financial year” for paragraph (a) **substitute**—
  - “(a) in relation to a public body—
    - (i) if the Minister has made a determination under section 6 with respect to the financial year of that public body, the period referred to in the determination;
    - (ii) if a period is determined by or under any other Act to be the financial year for that public body, that period;”;
- (d) in the definition of “public body”—
  - (i) at the end of paragraph (c) **omit** “and”;
  - (ii) **omit** paragraph (d);
- (e) for the definition of “the relevant Minister” **substitute**—
  - “**the relevant Minister**” means—
    - (a) in Part 7—
      - (i) in relation to a department, the Minister or Ministers for the time being responsible for any part of that department;
      - (ii) in relation to a public body established by or under a provision of an Act or enactment, the Minister or Ministers for the time being administering that provision or enactment;
      - (iii) in relation to any other public body, the Minister declared by

Order under section 5 to be the relevant Minister;

- (b) in Part 7A, in relation to a department, the Minister or Ministers for the time being responsible for any part of that department;’.

(2) Section 4 of the Principal Act is **repealed**.

**6. *New section 6 substituted***

For section 6 of the Principal Act substitute—

**“6. *Declaration of financial year***

The Minister may determine in writing that a period, other than the period of 12 months ending at midnight on 30 June or the period determined by or under any other Act, is the financial year for a public body for the purposes of its first or final report of operations and financial statements under Part 7.”.

**7. *Amendment of sections 25 to 54 and Schedule 2***

(1) In the Principal Act—

- (a) in section 25 (h) after “other contingent liabilities” **insert** “but not including liabilities of public bodies”;
- (b) in section 29, after paragraph (b) **insert**—  
“; or  
(ba) by way of specific purpose payment by a municipal council”;
- (c) in section 37, after “authority” (wherever occurring) **insert** “or public body”;
- (d) in section 42 (1) for “this Part” **substitute** “this Act”.

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- (2) After section 45 (2) of the Principal Act insert—
 

“(2A) Despite sub-section (2), the financial statements of an Administrative Office within the meaning of the **Public Sector Management Act 1992** for a financial year must be incorporated in and consolidated with the financial statements for that financial year of the department in column 1 of Schedule 1 to that Act opposite that Administrative Office.”.
- (3) In section 46 (3) of the Principal Act for “the Minister” substitute “the relevant Minister”.
- (4) In section 53 of the Principal Act for “public bodies” (wherever occurring) substitute “departments or public bodies or both”.
- (5) In section 54 of the Principal Act after “annual report” insert “, or requiring an annual report to be laid before the Legislative Assembly or the Legislative Council or both,”.
- (6) In item 15 of Schedule 2 to the Principal Act for “paragraph (f)” substitute “paragraph (d)”.

**8. *New Part 7B inserted***

Before Part 8 of the Principal Act insert—

**“PART 7B—ACQUISITION, LEASING AND  
 LICENSING OF LAND AND PREMISES**

**54N. *Minister may acquire land***

- (1) The Minister may purchase by agreement or compulsorily acquire any land required for the construction, completion or extension of any public works or for any related purpose.
- (2) The **Land Acquisition and Compensation Act 1986** applies to this Act and for that purpose—

- (a) the **Financial Management Act 1994** is the special Act;
- (b) the Minister is the Authority.

**54o. Minister may lease land or premises for other Ministers**

In addition to all other powers of the Minister, the Minister may take on lease, on any terms and conditions the Minister thinks fit, any land or premises required for the purposes of any department or Minister.

**54p. Minister may grant leases and licences of structures on Crown land**

Despite anything in the **Land Act 1958**, the Minister may grant any person, on any terms and conditions the Minister thinks fit—

- (a) a lease over; or
- (b) a licence to enter and use—

any building or other structure, or part of any building or other structure, on Crown land that is not required for the purposes of a department or a Minister or any other public purpose.”.

**9. Other amendments**

- (1) After section 56 (7) of the Principal Act insert—

“(8) Sub-section (4) does not apply to a deduction in respect of an overpayment that has not been repaid at the date the officer ceases for any reason to be employed in the service of the State or a department.”.

- (2) In section 59 (1) of the Principal Act—

- (a) after paragraph (d) insert—

“(da) the form and content of reports of operations, financial statements and information required under Part 7;”;

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(b) for paragraph (i) **substitute—**

“(i) systems and procedures for the purchase and supply of goods, works and services for or on behalf of the State;”.

(3) After section 62 (2) of the Principal Act **insert—**

“(3) Each contract or other document in effect immediately before the commencement of this sub-section that refers to the Tender Board continues to have effect according to its tenor on and after that commencement as if a reference in the document to the Tender Board were a reference to the Board.

(4) In this section “**Tender Board**” means the Tender Board established by Regulation 7 of the Supply Management Regulations 1994.”.

**PART 4—AMENDMENT OF OTHER ACTS**

**10. Amendment of the Alcoholics and Drug-dependent Persons Act 1968**

For section 4A (3) of the **Alcoholics and Drug-dependent Persons Act 1968** **substitute—**

“(3) If a contract under this section contains a provision referred to in sub-section (2) (f), sections 9, 10, 11 and 12 of the **Audit Act 1994** apply to the audit of the accounts and financial statements in relation to the contracted service as if references to an authority in those sections were references to the contracted service provider.”.

**11. Amendment of the Cemeteries Act 1958**

**In the Cemeteries Act 1958—**

(a) in section 54 for all the words and expressions after paragraph (d) **substitute—**

“the Minister may purchase or compulsorily acquire the land.”;



- (b) section 55 is **repealed**;
- (c) in sections 56, 58, 58A and 59 for “the Minister administering section 8 (2) of the **Public Lands and Works Act 1964**” (wherever occurring) substitute “the Minister”;
- (d) in section 57 omit “and before the certificate aforesaid is given to the Minister administering section 8 (2) of the **Public Lands and Works Act 1964**”.

**12. Amendment of the Crown Land (Reserves) Act 1978**

Section 17 (7) of the **Crown Land (Reserves) Act 1978** is **repealed**.

**13. Amendment of the Financial Management (Consequential Amendments) Act 1994**

In Schedule 1 to the **Financial Management (Consequential Amendments) Act 1994**, items 60 and 63 are **repealed**.

**14. Amendment of the Health Services Act 1988**

- (1) For section 67 (1) of the **Health Services Act 1988** substitute—
  - “(1) The Minister may purchase or compulsorily acquire land for the purposes of a registered funded agency if, after inquiry and report by the Chief General Manager, the Minister considers it necessary or desirable to do so.”.
- (2) In section 67 of the **Health Services Act 1988**—
  - (a) sub-section (2) is **repealed**;
  - (b) in sub-section (3) for “the Minister administering section 8 (2) of the **Public Lands and Works Act 1964**” substitute “the Minister”.
- (3) In section 68 of the **Health Services Act 1988** for “the Minister administering section 8 (2) of the

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**Public Lands and Works Act 1964** substitute "the Minister".

**15. Amendment of the Housing Act 1983**

Section 12 of the **Housing Act 1983** is repealed.

**16. Amendment of the Land Act 1958**

In the **Land Act 1958**—

- (a) in sections 102 to 105 for "the Minister of Public Works" (wherever occurring) substitute "the Minister";
- (b) in section 103 (3) (b) for "the Minister administering section 8 (2) of the **Public Lands and Works Act 1964**" substitute "the Minister";
- (c) Part VII is repealed.

**17. Amendment of the Parliamentary Committees Act 1968**

In the **Parliamentary Committees Act 1968**—

- (a) in section 4T omit "the Treasurer and" (wherever occurring);
- (b) in section 52 (1) omit "when approved by the Treasurer of Victoria".

**18. Amendment of the Petroleum Act 1958**

- (1) For section 7 (1) of the **Petroleum Act 1958** substitute—

"(1) The Minister may purchase or compulsorily acquire any land that is necessary or desirable for the purposes of this Part."

- (2) In section 7 of the **Petroleum Act 1958**—

- (a) sub-section (2) is repealed;
- (b) in sub-section (3) for "the Minister administering section 8 (2) of the **Public Lands**

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and Works Act 1964" substitute "the Minister".

**19. *Amendment of the Public Lands and Works Act 1964***

Sections 8 (2) and (3), 8A and 8B of the **Public Lands and Works Act 1964** are repealed.

**20. *Amendment of the Transport Act 1983***

In section 66 (3) of the **Transport Act 1983** paragraphs (a) and (b) are repealed.

**21. *Amendment of the University of Ballarat Act 1993***

Sections 38, 39 and 40 of the **University of Ballarat Act 1993** are repealed.

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NOTES

1. *Minister's second reading speech—*

*Legislative Assembly: 8 September 1994*

*Legislative Council: 8 November 1994*

2. The long title for the Bill for this Act was "A Bill to amend the **Financial Management Act 1994** in relation to supply management and various other matters, to amend other Acts and for other purposes."
3. Section headings appear in bold italics and are not part of the Act. (See **Interpretation of Legislation Act 1984**.)