

TREASURY CORPORATION (AMENDMENT) ACT 1988
No. 79

NEW SOUTH WALES



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TREASURY CORPORATION (AMENDMENT) ACT 1988 No. 79

NEW SOUTH WALES



Act No. 79, 1988

An Act to amend the Treasury Corporation Act 1983 so as to establish a board of directors for the Treasury Corporation; to vary the conditions of service of the Chief Executive of the Corporation; to extend the powers of the Corporation in relation to financial management; and for other purposes. [Assented to 23 November 1988]

See also Public Authorities (Financial Arrangements) Amendment Act 1988.

*Treasury Corporation (Amendment) 1988***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Treasury Corporation (Amendment) Act 1988.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Treasury Corporation Act 1983 No. 75

3. The Treasury Corporation Act 1983 is amended as set out in Schedule 1.

Amendment of Statutory and Other Offices Remuneration Act 1975 (1976 No. 4), Sch. 2 (Public Offices)

4. The Statutory and Other Offices Remuneration Act 1975 is amended by omitting from Part 1 of Schedule 2 the following words:

Chief Executive of the New South Wales Treasury Corporation.

Saving

5. The Chief Executive of the New South Wales Treasury Corporation is entitled (on and from the commencement of Schedule 1 (7) (b) and until the first determination under clause 5 of Schedule 1 to the Treasury Corporation Act 1983, as amended by this Act, takes effect) to be paid remuneration at the same rate as that at which the Chief Executive was entitled to be paid immediately before that commencement.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 3 (Definitions)—

Section 3 (1)—

Insert, in alphabetical order, the following definitions:

“Board” means the board of directors of the Corporation;

“Chairperson” means the Chairperson of the Board;

“Deputy Chairperson” means the Deputy Chairperson of the Board;

(2) Section 4 (New South Wales Treasury Corporation)—

Section 4 (2)–(9)—

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Omit section 4 (2)–(4), insert instead:

(2) The policies of the Corporation shall be as determined by the Board.

(3) The affairs of the Corporation shall be managed by the Chief Executive in accordance with such policies as may be determined by, and such directions as may be given by, the Board.

(4) Any act, matter or thing done in the name of, or on behalf of, the Corporation by the Chief Executive, or with the authority of the Chief Executive, shall be taken to have been done by the Corporation.

(5) The Corporation is subject to the control and direction of the Treasurer.

(6) If the Corporation is of the opinion that compliance with a direction given under subsection (5) is likely to have a significantly adverse effect on the performance by the Corporation of its functions—

(a) the Corporation may request the Treasurer to review the direction; and

(b) if the Corporation is of the same opinion after the direction has been reviewed, the Corporation shall include particulars of the direction, and of its opinion as to the effect of compliance with the direction, in its annual report under the Annual Reports (Statutory Bodies) Act 1984.

(7) A direction given by the Treasurer under subsection (5) does not cease to have effect merely because a request has been made for a review of the direction under subsection (6).

(8) In the event of an inconsistency between a direction given by the Treasurer and a direction given by the Board, the direction given by the Treasurer prevails to the extent of the inconsistency.

(9) Any act, matter or thing done by the Chief Executive may not be called into question, by any person transacting any business or otherwise dealing with the Corporation, because of a contravention of any direction under this section.

(3) Sections 4A, 4AA—

Omit section 4A, insert instead:

Establishment of Board

4A. (1) There is constituted by this Act a board of directors of the Corporation.

(2) The Board shall consist of—

(a) the Secretary of the Treasury; and

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- (b) another officer of the Treasury nominated for the time being by the Secretary of the Treasury; and
- (c) the Chief Executive; and
- (d) no more than 2 persons appointed by the Governor, on the recommendation of the Treasurer, to represent the interests of public authorities; and
- (e) no more than 2 other persons appointed by the Governor on the recommendation of the Treasurer.

(3) The Chairperson of the Board is the Secretary of the Treasury and the Deputy Chairperson of the Board is the officer of the Treasury nominated for the time being by the Secretary of the Treasury for the purposes of subsection (2) (b).

(4) Schedules 3 and 4 have effect with respect to the members and procedure of the Board.

Functions of Board

4AA. The functions of the Board are—

- (a) to determine the policies of, and give directions to the Chief Executive in connection with the management of the affairs of, the Corporation; and
- (b) to determine, with the concurrence of the Treasurer, the remuneration (including travelling and subsistence allowances) that the Chief Executive is entitled to be paid; and
- (c) to perform such other functions as may be conferred or imposed on the Board by or under this or any other Act or law.

(4) Section 5 (Functions of Corporation)—

(a) Section 5 (1) (e1)—

After section 5 (1) (e), insert:

- (e1) accept money for investment, as provided by paragraph (e), from the Government and from public authorities and other public bodies;

(b) Section 5 (1) (h1)—

After section 5 (1) (h), insert:

- (h1) participate in, and give advice concerning, the management of the liabilities and assets of the Government and of public authorities and other public bodies;

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SCHEDULE 1—AMENDMENTS—*continued*

(5) Section 8—

Omit the section, insert instead:

Powers of public authorities etc.

8. Notwithstanding anything in any other Act—

- (a) a public authority may deposit money with the Corporation for investment as provided by section 5 (1) (e); and
- (b) the Government and any public authority or other public body may participate with the Corporation in the management of the liabilities and assets of the Government or of the public authority or other public body, as the case may be.

(6) Section 9A (**Provision of financial accommodation to councils**)—

(a) Section 9A (1), (2)—

Omit “Treasurer” wherever occurring, insert instead “Corporation”.

(b) Section 9A (5)—

After section 9A (4), insert:

(5) A council that is required to obtain financial accommodation from the Corporation during any period is not prohibited from obtaining additional financial accommodation, otherwise than from the Corporation, during the same period.

(7) Schedule 1 (**The Chief Executive**)—

(a) Clause 2—

Clause 2 (2A)–(2C)—

After clause 2 (2), insert:

(2A) The Chairperson may, in the absence of any appointment of a person under subclause (1), appoint a member of staff of the Corporation to act in the office of the Chief Executive during the illness or absence of the Chief Executive, and the person, while so acting, has all the functions of the Chief Executive and shall be taken to be the Chief Executive.

(2B) The Chairperson may, at any time, remove a person appointed under subclause (2A) from office.

(2C) An appointment under subclause (2A) ceases to have effect—

- (a) on the appointment of a person under subclause (1); or

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SCHEDULE 1—AMENDMENTS—*continued*

(b) on the expiration of 3 months after the appointment was made; or

(c) on the removal of the person from office as acting Chief Executive,

whichever first occurs.

(b) Clause 5—

Omit the clause, insert instead:

Remuneration

5. The Chief Executive is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Board may, with the concurrence of the Treasurer, determine.

(8) Schedule 2 (**Provisions relating to the Rights of Certain Staff of the Corporation**)—

Clause 4—

At the end of clause 4, insert:

(2) This clause does not apply to the Chief Executive.

(3) The reference in subclause (2) to the Chief Executive includes a reference to the person holding office as Chief Executive at the commencement of that subclause.

(9) Schedules 3, 4—

After Schedule 2, insert:

SCHEDULE 3—PROVISIONS RELATING TO THE MEMBERS OF THE BOARD

(Sec. 4A (4))

Definition

1. In this Schedule—

“appointed member” means a person referred to in section 4A (2) (d) or (e).

Age of appointed members

2. A person of or above the age of 70 years is not eligible to be appointed as an appointed member.

Acting appointed members

3. (1) The Governor may, from time to time, appoint a person to act in the office of an appointed member during the illness or absence of the member, and the person, while so acting, has all the functions of the member and shall be taken to be an appointed member.

(2) A person while acting in the office of an appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Treasurer may from time to time determine in respect of the person.

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SCHEDULE 1—AMENDMENTS—*continued*

Term of office of appointed members

4. Subject to this Schedule, an appointed member shall hold office for such period (not exceeding 5 years) as may be specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

Remuneration of appointed members

5. An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Treasurer may from time to time determine in respect of the member.

Vacancy in office of appointed member

6. (1) The office of an appointed member becomes vacant if the member—
- (a) dies; or
 - (b) completes a term of office and is not re-appointed; or
 - (c) resigns the office by instrument in writing addressed to the Treasurer; or
 - (d) is removed or retired from office by the Governor under this clause or under Part 8 of the Public Sector Management Act 1988; or
 - (e) reaches the age of 70 years; or
 - (f) is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Treasurer or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Treasurer for having been absent from those meetings; or
 - (g) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
 - (h) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or
 - (i) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Governor may remove an appointed member from office at any time.
- (3) Without affecting the generality of subclause (2), the Governor may remove from office an appointed member who contravenes clause 8.

Filling of vacancy in office of appointed member

7. If the office of an appointed member becomes vacant, a person may, subject to this Act, be appointed to fill the vacancy.

Disclosure of pecuniary interests

8. (1) A member who has a direct or indirect pecuniary interest—
- (a) in a matter being considered or about to be considered at a meeting of the Board; or

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(b) in a thing being done or about to be done by the Board, shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

- (2) A disclosure by a member at a meeting of the Board that the member—
- (a) is a member, or is in the employment, of a specified company or other body; or
 - (b) is a partner, or is in the employment, of a specified person; or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person which may arise after the date of the disclosure.

(3) The Board shall cause particulars of any disclosure made under this clause to be recorded in a book kept for the purpose and that book shall be open at all reasonable hours to inspection by any person on payment of such fee as may be determined by the Board from time to time.

(4) After a member has disclosed the nature of an interest in any matter or thing, the member shall not, unless the Treasurer otherwise determines—

- (a) be present during any deliberation of the Board, or take part in any decision of the Board, with respect to that matter; or
- (b) perform any function under this Act with respect to that thing.

(5) A contravention of this clause does not invalidate any decision of the Board or the performance of any function under this Act.

(6) A reference in this clause to a meeting of the Board includes a reference to a meeting of a committee of the Board.

Effect of certain other Acts

9. (1) The Public Sector Management Act 1988 does not apply to the appointment of an appointed member and an appointed member is not, as an appointed member, subject to that Act (except Part 8).

(2) If by or under any other Act provision is made—

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of an appointed member or from accepting and retaining any remuneration payable to the person under this Act as an appointed member.

(3) The office of an appointed member is not, for the purposes of any Act, an office or place of profit under the Crown.

Liability of members etc.

10. No matter or thing done by the Board, any member of the Board or any person acting under the direction of the Board shall, if the matter or thing was done in good faith for the purpose of executing this or any other Act, subject a member of the Board or a person so acting personally to any action, liability, claim or demand.

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SCHEDULE 1—AMENDMENTS—*continued*

SCHEDULE 4—PROVISIONS RELATING TO THE PROCEDURE OF THE BOARD

(Sec. 4A (4))

General procedure

1. The procedure for the calling of meetings of the Board and for the conduct of business at those meetings or otherwise shall, subject to this Act and the regulations, be as determined by the Board.

Quorum

2. The quorum for a meeting of the Board is 3 members, of whom, subject to clause 8 of Schedule 3—

- (a) one must be the Chairperson or the Deputy Chairperson; and
- (b) one must be the Chief Executive.

Presiding member

3. (1) The Chairperson or, in the absence of the Chairperson, the Deputy Chairperson shall preside at a meeting of the Board.

(2) The person presiding at a meeting of the Board has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

Voting

4. A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

Transaction of business outside meetings or by telephone etc.

5. (1) The Board may, if it thinks fit, transact any of its business by the circulation of papers (including facsimile or other transmission) among all the members of the Board for the time being, and a resolution in writing approved in writing by a majority of those members shall be taken to be a decision of the Board.

(2) The Board may, if it thinks fit, transact any of its business at a meeting at which some or all members are not personally present, but at which the members are able to speak to each other by telephone or other means, and to hear any member when the member speaks, on a matter before the meeting.

(3) For the purposes of—

- (a) the approval of a resolution under subclause (1); or
- (b) a meeting held in accordance with subclause (2),

each member and the Chairperson has the same voting rights as he or she has at an ordinary meeting of the Board.

(4) A resolution approved under subclause (1) shall, subject to the regulations, be recorded in the minutes of the Board.

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SCHEDULE 1—AMENDMENTS—*continued*

Minutes

6. The Board must cause full and accurate minutes to be kept of the proceedings of each meeting of the Board.

[*Minister's second reading speech made in—
Legislative Assembly on 21 September 1988
Legislative Council on 15 November 1988*]
