

**PUBLIC AUTHORITIES (FINANCIAL ARRANGEMENTS)
AMENDMENT ACT 1991 No. 49**

NEW SOUTH WALES



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SCHEDULE 1—AMENDMENTS

**PUBLIC AUTHORITIES (FINANCIAL ARRANGEMENTS)
AMENDMENT ACT 1991 No. 49**

NEW SOUTH WALES



Act No. 49, 1991

An Act to amend the Public Authorities (Financial Arrangements) Act 1987 with respect to credit rating criteria for investments by authorities, to financial adjustments by authorities, and to joint financing arrangements between authorities and other persons; and for other purposes. [Assented to 11 December 1991]

Public Authorities (Financial Arrangements) Amendment 1991

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Public Authorities (Financial Arrangements) Amendment Act 1991.

Commencement

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

Amendment of Public Authorities (Financial Arrangements) Act 1987 No. 33

3. The Public Authorities (Financial Arrangements) Act 1987 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 3 (**Definitions**):

In section 3 (1), insert in alphabetical order:

“**affiliate**” of an authority (within the meaning of any section) includes any corporation, partnership or other body or entity in which the authority has a controlling interest, whether by reason of any shareholding, proprietary interest, voting power or otherwise;

“**financial accommodation**” is referred to in section 4;

“**financial adjustment**” is referred to in section 5;

“**joint financing arrangement**” is defined in section 5A;

(2) Section 4 (**Meaning of obtaining financial accommodation**):

After section 4 (1) (a), insert:

(a1) the raising of money by the authority as consideration for the authority's assumption of any liability; and

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SCHEDULE 1—AMENDMENTS—*continued*

(3) After section 5, insert:

Meaning of joint financing arrangement

5A. In this Act, a reference to a joint financing arrangement is a reference to an arrangement entered into by an authority with a person, for the purpose of the exercise of the authority's functions and in respect of infrastructure or other capital assets, if the arrangement is one of the following:

- (a) an arrangement under which the person acquires assets (including by lease or purchase) from the authority, a third party or a combination of the two, and uses them for the exercise of a function of the authority;
- (b) an arrangement under which the person constructs assets and uses them for the exercise of a function of the authority;
- (c) an arrangement described in paragraph (a) or (b), coupled with a transfer or reversion of the assets to the authority;
- (d) an arrangement approved by the Treasurer or prescribed by the regulations.

(4) Part 2, heading:

Omit "AND OTHER ARRANGEMENTS".

(5) Section 8 (**Power to obtain financial accommodation**):

Omit section 8 (3), insert instead:

(3) The Treasurer's approval:

- (a) may be in respect of a specified purpose, or of 1 or more specified authorities, or of a specified class of authorities; and
- (b) may be otherwise specific or may be general; and
- (c) may be on such terms and subject to such conditions as the Treasurer thinks fit.

(6) Section 10 (**Financial adjustments**):

Omit the section.

SCHEDULE 1—AMENDMENTS—*continued*(7) Section 11 (**General powers in relation to obtaining financial accommodation**):

- (a) From section 11 (1), omit “or effecting a financial adjustment”.
- (b) Omit section 11 (4).

(8) Section 13:

Omit the section, insert instead:

Treasurer’s approval as evidence

13. The written approval of the Treasurer to the obtaining of financial accommodation by an authority is conclusive evidence that anything done by the authority in accordance with the approval is authorised by this Act.

(9) Part 2, Division 4 (**Guarantees** (ss. 15–22)):

Omit the Division.

(10) Parts 2A, 2B, 2C:

After Part 2, insert:

PART 2A—FINANCIAL ADJUSTMENTS**Definition of “authority”**

15. In this Part:

“**authority**” means an authority as defined for the purposes of Part 2 or a corporation declared by the regulations under section 24, as well as any person declared to be an authority for the purposes of this Part by the regulations.

Financial adjustments

16. (1) For the purpose of exercising its functions, an authority may, in accordance with the written approval of the Treasurer, effect a financial adjustment.

(2) The Treasurer’s approval:

- (a) may be in respect of a specified purpose, or of 1 or more specified authorities, or of a specified class of authorities; and

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SCHEDULE 1—AMENDMENTS—*continued*

- (b) may be otherwise specific or may be general; and
- (c) may be on such terms and subject to such conditions as the Treasurer thinks fit.

(3) The Treasurer's approval is required even though a financial adjustment is, or is effected in connection with, financial accommodation authorised under Part 2, a joint financing arrangement authorised under Part 2B, an investment authorised under Part 3 or for any other purpose.

General powers in relation to effecting financial adjustments

17. (1) An authority may do all things necessary or convenient to be done in connection with effecting a financial adjustment.

(2) In particular, but without limiting the power given by this section, the authority may do any one or more of the following:

- (a) enter into any contract, agreement or other transaction;
- (b) incur any obligations under a contract, agreement or other transaction;
- (c) make any payment (including an advance) under a contract, agreement or other transaction;
- (d) make any covenants or promises, including those which are absolute and unconditional;
- (e) exercise such other functions as the Treasurer approves;
- (f) do or effect any of the things it is empowered to do under this Act by or through any affiliate of the authority.

(3) This section does not limit any powers that the authority has apart from this section.

Treasurer's approval as evidence

18. The written approval of the Treasurer to the effecting of one or more financial adjustments by an authority is conclusive evidence that anything done by the authority in accordance with the approval is authorised by this Act,

SCHEDULE 1—AMENDMENTS—*continued*

PART 2B—JOINT FINANCING ARRANGEMENTS

Definition of “authority”

19. In this Part:

“authority” means an authority as defined for the purposes of Part 2, as well as any person declared to be an authority for the purposes of this Part by the regulations.

Power to enter joint financing arrangements

20. (1) An authority may enter a joint financing arrangement, on the recommendation of the Minister for the authority, and with the written approval of the Treasurer specifically given in the case of each arrangement.

(2) An authority may do all things necessary or convenient to be done in connection with a joint financing arrangement.

(3) In particular, but without limiting the power given by this section, the authority may do any one or more of the following:

- (a) enter into any contract, agreement or other transaction;
- (b) incur any obligations under a contract, agreement or other transaction;
- (c) make any payment (including an advance) under a contract, agreement or other transaction;
- (d) make any covenants or promises, including those which are absolute and unconditional;
- (e) delegate any function of the authority to a participant in the arrangement;
- (f) agree to the exercise of any function of the authority by a participant in the arrangement;
- (g) agree not to exercise any function of the authority to the extent that an agreement for its exercise by a participant in the arrangement is in force;
- (h) exercise such functions as are ancillary or incidental to the other functions in this subsection and approved by the Treasurer,
- (i) do or effect by or through any affiliate of the authority any of the things it is empowered to do under this Act.

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SCHEDULE 1—AMENDMENTS—*continued*

(4) This section does not limit any function that the authority has apart from this section.

(5) However, an authority may enter a joint financing arrangement only in accordance with this section, unless the regulations otherwise provide.

(6) Despite the provisions of any other law, a participant with an authority in a joint financing arrangement may exercise any function of the authority (in accordance with the joint financing arrangement and in accordance with the Treasurer's approval to that arrangement) as if the participant were the authority.

Treasurer's approval

21. (1) The written approval of the Treasurer to the entering by an authority into a specific joint financing arrangement is conclusive evidence that anything done by the authority in accordance with the approval is authorised by this Act.

(2) The Treasurer's approval may be given on such terms as the Treasurer thinks fit.

PART 2C—GUARANTEES

Definition of "authority"

22. In this Part, except section 22A, "authority" means an authority as defined for the purposes of Part 2A or 2B, as well as any person declared to be an authority for the purposes of this Part by the regulations.

Statutory guarantee

22A. (1) The due repayment of:

- (a) financial accommodation obtained (whether within or outside Australia) by an authority, as defined for the purposes of Part 2, by the issue of debentures, bonds, inscribed stock, registered stock, discounted securities or promissory notes; or
- (b) financial accommodation obtained (whether within or outside Australia) by such an authority as consideration for the authority's assumption of liability for any obligation; or

SCHEDULE 1—AMENDMENTS—*continued*

- (c) such other forms of financial accommodation obtained by such an authority as may be prescribed by the regulations, whether or not involving the issue of securities of any kind,

and, where payable, the due payment of interest and other charges relating to that financial accommodation, are all guaranteed by the Government.

(2) This section applies to a State owned corporation only to the extent that the board of the corporation and voting shareholders agree in writing in accordance with section 16 of the State Owned Corporations Act 1989.

Discretionary guarantees

22B. (1) The Government may guarantee the due performance by an authority of any obligations incurred by it as a result of or in connection with its entering into, or participating in, any arrangement or transaction, as authorised by this Act.

(2) The form of the guarantee (including its terms and conditions) is to be as determined by the Treasurer who may determine different forms for different guarantees.

(3) The guarantee may be specific or general.

Statutory charge

22C. (1) The due repayment of financial accommodation obtained (whether within or outside Australia) by an authority under this Act and, where payable, the due payment of interest and other charges relating to that financial accommodation are charges on the income and revenue of the authority arising from whatever source.

(2) The payments due in respect of any financial adjustment effected (whether within or outside Australia) by an authority under this Act are charges on the income and revenue of the authority arising from whatever source.

(3) The charge imposed by this section on the income and revenue of an authority does not operate to prevent the authority from dealing, in the ordinary course of the exercise of its functions, with its income and revenue free of the charge.

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SCHEDULE 1—AMENDMENTS—*continued*

Guarantee fee

22D. An authority must, if the Treasurer requires, pay to the credit of the Consolidated Fund a fee determined by the Treasurer in respect of a guarantee which is provided by or under this Act and which is directly or indirectly related to the obtaining of financial accommodation by the authority, the effecting of a financial adjustment by the authority or the participation in a joint financing arrangement by the authority.

Other payments by Government

22E. The Government may, in relation to any financial accommodation obtained by an authority, any financial adjustment effected by an authority or any joint financing arrangement entered into by an authority, agree to make a payment even though the authority may be precluded by the law of New South Wales from making the payment.

Treasurer may enter into and execute guarantee etc. on behalf of Government

22F. The Treasurer may act on behalf of the Government for the purposes of giving a guarantee under section 22B or entering into an agreement under section 22E and the Treasurer (or a person appointed by the Treasurer) may execute any relevant document relating to the guarantee or agreement.

Priorities

22G. (1) All obligations of an authority to make repayments or payments in respect of financial accommodation, financial adjustments or joint financing arrangements, if repayment or payment is secured on the income and revenue of the authority (whether under this Act or otherwise), rank equally without preference by reason of priority of date or otherwise.

(2) All obligations of the Government under a guarantee rank equally without preference with all other outstanding obligations of the Government.

SCHEDULE 1—AMENDMENTS—*continued***Recovery of money paid under guarantee or agreement**

22H. (1) If, under this Part, the Treasurer pays an amount under a guarantee or pursuant to an agreement, the authority is liable to pay that amount to the Treasurer to the credit of the Consolidated Fund.

(2) The amount is payable by such instalments, at such times, and with such interest as the Treasurer, after consultation with the Minister for the authority, determines in each case.

Appropriation

22I. Any liability of the Treasurer or the Government under this Act or arising out of any action taken under this Act is to be discharged out of the Consolidated Fund without any further appropriation than this Act.

(11) Section 28A (General powers in relation to investments):

Omit section 28A (4).

(12) Schedule 4 (Investment powers of authorities):**(a) Clause 1 (1):**

Omit the definition of “bank”, insert instead:

“**bank**” means the Reserve Bank of Australia or an eligible entity which is either a bank within the meaning of the Banking Act 1959 of the Commonwealth or a bank constituted by a law of a State or of the Commonwealth or of a Territory;

(b) Clause 3 (b):

Omit the paragraph, insert instead:

(b) investments with, issued by, or guaranteed by, the Government of New South Wales or an eligible entity which is the Government of any other State or of the Commonwealth or of a Territory;

(c) Clause 3 (d):

Omit “a person who”, insert instead “an eligible entity which”.

(d) Clause 3 (d):

Omit “to whom”, insert instead “to which”.

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SCHEDULE 1—AMENDMENTS—*continued*

(e) Clause 4 (1) (h) (i):

Omit the subparagraph, insert instead:

(i) issued or guaranteed by the Government of New South Wales or an eligible entity which is the Government of any other State or of the Commonwealth or of a Territory; or

(f) Clause 4 (1) (i):

Omit “spot purchase or sale of foreign currency”, insert instead “spot purchase from, or spot sale to, a bank or eligible entity of foreign currency”.

(g) Clause 4 (1) (k):

Omit the paragraph.

(h) Clause 4 (2):

Omit “subclause (1) (g)–(k)”, insert instead “subclause (1) (g)–(j)”.

(i) Clause 4 (3):

Omit the subclause, insert instead:

(3) The Treasurer’s approval:

(a) may be in respect of a specified purpose, or of 1 or more specified authorities, or of a specified class of authorities; and

(b) may be otherwise specific or may be general; and

(C) may be on such terms and subject to such conditions as the Treasurer thinks fit.

(13) Schedule 6 (**Savings and transitional provisions**):

Omit the Schedule, insert instead:

SCHEDULE 6—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 42)

**PART 1—SAVINGS AND TRANSITIONAL REGULATIONS
CONSEQUENT ON ENACTMENT OF CERTAIN ACTS**

Regulations

1. (1) The regulations may make provision of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

Public Authorities (Financial Arrangements) Further Amendment Act
1989

Public Authorities (Financial Arrangements) Amendment 1991

SCHEDULE 1—AMENDMENTS—*continued*

Universities Legislation (Investment) Amendment Act 1989

Public Authorities (Financial Arrangements) Amendment Act 1991.

(2) A provision made under subclause (1) may, if the regulations under this clause so provide, take effect as from the date of assent to the Act concerned or a later day.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

(4) A provision made under subclause (1) is, if the regulations under this clause so provide, to have effect notwithstanding any other clause of this Schedule.

PART 2—PROVISIONS CONSEQUENT ON ENACTMENT OF THIS ACT

Definitions

2. In this Part:

"the 1981 Act" means the Public Authorities (Financial Arrangements) Act 1987;

"the repealed Act" means the Public Authorities (Financial Accommodation) Act 1981, as in force immediately before its repeal.

Approvals

3. An approval of the Governor to the obtaining of financial accommodation, given under the repealed Act and in force immediately before the commencement of the 1987 Act is, on that commencement taken to be an approval of the Treasurer under the 1987 Act.

Guarantees

4. A guarantee in force under the repealed Act immediately before the commencement of the 1987 Act is, on that commencement taken to be a guarantee under the 1987 Act.

Guarantee fees

5. Section 17 of the 1987 Act applies in respect of a guarantee provided by the Government before the commencement of the 1987 Act if:

- (a) the guarantee is of a kind to which that section applies;
- (b) the guarantee is in force as at that commencement; and
- (c) money is still payable or repayable in relation to the financial accommodation concerned.

Public Authorities (Financial Arrangements) Amendment 1991

SCHEDULE 1—AMENDMENTS—*continued*

Priorities

6. Section 20 of the 1987 Act applies in respect of financial accommodation whether obtained before or after the commencement of the 1987 Act.

Regulations

7. A regulation in force under the repealed Act immediately before the commencement of the 1987 Act is, on that commencement, taken to have been made under the 1987 Act.

**PART 3—PROVISIONS CONSEQUENTIAL ON ENACTMENT OF
PUBLIC AUTHORITIES (FINANCIAL ARRANGEMENTS)
AMENDMENT ACT 1991**

Definitions

8. In this Part:

“the Act” means the Public Authorities (Financial Arrangements) Act 1987, as in force immediately after the commencement of the 1991 Act;

“the 1987 Act” means the Public Authorities (Financial Arrangements) Act 1987, as in force immediately before the commencement of the 1991 Act;

“the 1991 Act” means the Public Authorities (Financial Arrangements) Amendment Act 1991.

Treasurer’s approval to financial adjustment

9. An approval by the Treasurer under Part 2 of the 1987 Act in respect of the effecting of a financial adjustment and in force immediately before the commencement of Schedule 1 (6) of the 1991 Act is, on that commencement, taken to be an approval of the Treasurer under Part 2A of the Act.

Guarantees

10. A guarantee in force under a provision of the 1987 Act immediately before the commencement of the corresponding provision of the Act is, on that commencement, taken to be a guarantee in force under the corresponding provision of the Act.

Statutory charge

11. A statutory charge imposed by section 16A of the 1987 Act and in force immediately before the commencement of section 22C of the Act is, on that commencement, taken to be a statutory charge in force under section 22C of the Act.

Guarantee fee

12. Any part of a guarantee fee required to be paid under section 17 of the 1987 Act and remaining unpaid at the commencement of section 22D of the Act is, on that commencement, taken to be payable under section 22D of the Act.

Public Authorities (Financial Arrangements) Amendment 1991

SCHEDULE 1—AMENDMENTS—*continued*

Other payments by Government

13. An agreement made by the Government under section 18 of the 1987 Act and in force immediately before the commencement of section 22E of the Act is, on that commencement, taken to be an agreement under section 22E of the Act.

Recovery of money paid under guarantee or agreement

14. Any liability which arose under section 21 of the 1987 Act and remaining outstanding immediately before the commencement of section 22H of the Act is, on that commencement, taken to be a liability under section 22H of the Act.

Regulations

15. A regulation in force under a provision of the 1987 Act immediately before the commencement of the corresponding provision of the Act is, on that commencement, taken to have been made under the Act.

*[Minister's second reading speech made in—
Legislative Assembly on 12 November 1991
Legislative Council on 3 December 1991]*