

[Act 2000 No 45]



New South Wales

Public Authorities (Financial Arrangements) Amendment Bill 2000

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Public Authorities (Financial Arrangements) Act 1987 (the Act)* to establish a comprehensive system of arrangements for the control of authorities of the State in entering into and maintaining certain financial and other arrangements.

The Bill:

- (a) extends the coverage of the Act to entities that are covered by the *Public Finance and Audit Act 1983*, Ministers and State owned corporations, as well as to entities prescribed by regulations, and
 - (b) provides that generally all such entities are “authorities” for the purposes of the whole Act, and
 - (c) provides that the Act generally overrides provisions in other Acts that would authorise authorities to enter into such arrangements, and
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- (d) transfers a provision from the *Treasury Corporation Act 1983* that generally requires authorities to obtain financial accommodation from the Treasury Corporation, and
- (e) confers on all authorities generally the limited powers of investment specified in Part 1 of Schedule 4 to the Act, and
- (f) provides that an authority that controls an entity must ensure that the controlled entity does not enter into or maintain arrangements that the authority itself could not enter into or maintain, and
- (g) permits inter-agency loans between authorities within the same ministerial portfolio, and
- (h) requires the Treasurer's approval before an authority exercises a power to enter into joint venture arrangements, and
- (i) enacts provisions of a savings or transitional nature, and
- (j) makes provision for other matters of a minor, consequential or ancillary nature.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Public Authorities (Financial Arrangements) Act 1987* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the consequential amendments to an Act and a regulation set out in Schedule 2. Clause 4 (2) makes it clear that the provisions of the *Interpretation Act 1987* relating to gazettal, commencement, notification and disallowance of statutory rules do not apply to the amendments made by Schedule 2 to the regulation.

Schedule 1 Amendment of Public Authorities (Financial Arrangements) Act 1987

Schedule 1 amends the Act for the purposes mentioned above and described more fully below.

Coverage of Act: paramount operation—Schedule 1 [2]

The Bill inserts provisions into the Act stating that its principal purpose is to establish a comprehensive system of arrangements for the control of authorities in entering into and maintaining financial arrangements and joint venture arrangements. Provisions are inserted to make it clear that the Act prevails over other legislation, and that it provides the principal source of power for authorities to enter into financial arrangements.

Coverage of Act: new definition of “authority”—Schedule 1 [3], [5], [31], Schedule 2.1

The Bill amends the Act to extend its coverage. It does so by inserting a new definition of *authority* in section 3 of the Act. The definition includes entities covered by Schedules 2 and 3 to the *Public Finance and Audit Act 1983*, Ministers, State owned corporations and entities prescribed by regulations as included, but does not include local government authorities and entities prescribed as not included.

Coverage of Act: authorities for purposes of whole Act—Schedule 1 [3], [5], [9], [11], [15], [17]–[20], [22]

The new definition of *authority* applies for the purposes of the whole Act, unless regulations are made limiting the application of the Act to particular authorities. Existing definitions of *authority* are omitted from various sections of the Act.

Treasury Corporation—Schedule 1 [10], Schedule 2.2

Proposed section 10 provides that an authority must not obtain financial accommodation otherwise than from the Treasury Corporation, unless the accommodation is obtained from the Treasurer or permitted by the Treasurer. The proposed section is substantially a re-enactment of section 9 of the *Treasury Corporation Act 1983* (section 9 is proposed to be repealed by Schedule 2.2 to the proposed Act).

Investment powers—Schedule 1 [23], [24]

At present, authorities have investment powers in Part 1, 2, 3 or 4 of Schedule 4 to the Act as determined by the regulations. Proposed section 24 (1A) will confer the limited investment powers in Part 1 on all authorities, subject to any directions of the Treasurer. The regulations will still be able to determine that particular authorities will have the wider powers in Part 2, 3 or 4.

Transactions not regarded as investments—Schedule 1 [26]

Proposed section 28 makes it clear that certain transactions are not subject to the requirements of Part 3 of the Act, which regulates the investment of money by authorities. These transactions are made under statutory powers to make grants, loans or other forms of financial assistance that are not in the nature of investments. Without affecting the generality of the section, certain transactions of this kind involving the Rental Bond Board, the New South Wales Rural Assistance Authority and the Sustainable Energy Development Authority are specifically referred to in the proposed section as not being subject to those requirements, and provision is made for other specific transactions to be identified by the regulations.

Controlled entities—Schedule 1 [3], [4], [6], [11], [14], [16], [27], [28]

The Bill makes provision for entities that are controlled by authorities. Proposed section 37A provides that an authority that controls an entity must ensure that the controlled entity does not enter into or maintain any financial arrangements that the authority itself is not authorised to enter, unless permitted by the Treasurer. Existing references to “affiliates” are replaced by references to “controlled entities”, for consistency of terminology.

Inter-agency loans—Schedule 1 [12]

Proposed sections 14A and 14B authorise a Minister to determine that authorities within the Minister’s portfolio may lend money to each other without such loans being subjected to the requirements of the Act relating to the obtaining of financial accommodation or the investment of money. Proposed section 14C makes it clear that the provisions will not affect the operation or requirements of the *Public Finance and Audit Act 1983*, any Appropriation Act or any other Act.

Joint ventures—Schedule 1 [21]

Proposed section 22L provides that an authority must not enter into a joint venture arrangement without the approval of the Treasurer. The expression “joint venture” is defined in proposed section 22K, and provision is made for regulations to prescribe activities as being or not being within that section.

Savings and transitional provisions—Schedule 1 [30], [32], [33]

Schedule 6 to the Act is amended to include provisions of a savings and transitional nature consequent on the enactment of the proposed Act, and enables regulations of a savings or transitional nature to be made. Proposed clause 17 provides that any existing arrangements are not affected and may be maintained, subject to any directions of the Treasurer.

Proposed clause 18 provides that references to the repealed section 27, which relates to the overriding operation of the Act, are to be taken to be references to the proposed corresponding new provision, and that the enactment of the proposed Act does not affect the current arrangements applying to the investment powers of the Sydney Organising Committee for the Olympic Games.

Proposed sections 46 and 47 contain provisions of a savings and transitional nature consequent on an entity becoming or ceasing to be an authority within the meaning of the amended Act, and enables regulations of a savings or transitional nature to be made. Again, any existing arrangements are not affected and may be maintained, subject (in the case of an entity becoming an authority) to any directions of the Treasurer.

Minor, consequential or ancillary amendments—Schedule 1 [1], [7], [25], [29]

The Bill makes other amendments to the Act that are of a minor, consequential or ancillary nature.

Schedule 2 Consequential amendments

Schedule 2 makes consequential amendments to the *Public Authorities (Financial Arrangements) Regulation 1995* and the *Treasury Corporation Act 1983*.