

Act No. 49

**PUBLIC AUTHORITIES (FINANCIAL ARRANGEMENTS)  
AMENDMENT BILL 1991**

NEW SOUTH WALES



**EXPLANATORY NOTE**

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The Treasury Corporation (Amendment) Bill 1991 is cognate with this Bill.

The object of this Bill is to amend the Public Authorities (Financial Arrangements) Act 1987 so as:

- (a) to extend the credit rating requirements for investments by public sector bodies; and
- (b) to clarify the existing provisions in the Principal Act on financial accommodation, financial adjustment and guarantees; and
- (c) to provide clear statutory authority for public sector bodies to enter joint financing arrangements with other bodies, in both the public sector and the private sector.

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**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act.

**Clause 3** is a formal provision that gives effect to the Schedule of amendments.

**Schedule 1** makes the amendments to the Public Authorities (Financial Arrangements) Act 1987 described more comprehensively below.

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**SCHEDULE 1—AMENDMENTS**

**Definitions**

Items 1, 2 and 3 expand the definitions in the Principal Act. **Item 1** provides cross-references in the main definition section (section 3) to definitions appearing in separate sections for “financial accommodation”, “financial adjustment” and “joint financing arrangement”. Item 1 also inserts a definition of an authority’s “affiliate”, to apply throughout the Principal Act. **Items 7 (b) and 11** consequentially omit the definition from sections 11 and 28A.

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**Item 2** extends the definition of financial accommodation in section 4 of the Principal Act to include the raising of money by an authority when it is paid that money in return for its undertaking to meet the obligations of another party (for example, by a type of liability assumption agreement). This matter is treated at greater length in the cognate Treasury Corporation (Amendment) Bill 1991.

**Item 3** inserts as section 5A in the Principal Act a definition of joint financing arrangement (dealt with in greater detail below).

#### **Treasurer's approval**

**Item 5** amends section 8 to make it clear, among other things, that the Treasurer's approval to financial accommodation may cover a number of authorities at once, or just one at a time.

#### **Financial adjustments**

**Item 10** inserts 3 new Parts in the Principal Act. The first—proposed Part 2A (FINANCIAL ADJUSTMENTS)—gives a clearer statutory framework for financial adjustments. In particular, Part 2A clarifies:

- the need for, and force of, the Treasurer's approval for financial adjustments
- that one approval may cover one or more adjustments and one or more authorities

**Items 4, 6, 7 (a) and 8** make consequential amendments, omitting from the Principal Act material referring to financial adjustments and now covered by proposed Part 2A.

#### **Joint financing arrangements**

The second proposed Part inserted by item 10—Part 2B (JOINT FINANCING ARRANGEMENTS)—allows public authorities a flexible approach to arrangements with other bodies (inside or outside the public sector) for structured financings which involve the carrying out of functions on behalf of the public authorities or the provision of assets or services to the public authorities.

proposed section 19 defines "authority" for the purposes of proposed Part 2B.

Proposed section 20 provides for a public authority (on the recommendation of the appropriate Minister and with the specific approval of the Treasurer) to enter a joint financing arrangement. It also sets out a range of functions to be exercised in such an arrangement.

Proposed section 21 refers to the Treasurer's specific approval of those arrangements and states its evidentiary value.

#### **Guarantees**

The third proposed Part inserted by item 10—Part 2C (GUARANTEES)—creates a separate Part to deal with both statutory and discretionary guarantees. This amendment is aimed at clarification, rearranging the existing guarantee provisions in the Principal Act rather than changing them.

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However, proposed section 22A (Statutory guarantee) departs from present section 15 by widening the categories of financial accommodation covered and in containing a cross-reference to the State Owned Corporations Act 1989 to make clear that the discretion concerning guarantees under section 16 of that Act continues to operate.

Proposed section 22B (Discretionary guarantees) departs from present section 16 to make clear that discretionary guarantees may be specific or general.

Proposed section 22C (Statutory charge) departs from present section 16A to ensure that payments in respect of financial adjustments (not just financial accommodation) are a charge on the revenue of an authority.

Proposed sections 22D (Guarantee fee), 22E (Other payments by Government) and 22G (Priorities) mirror the corresponding existing provisions of the Principal Act, except that the sections will refer also to joint financing arrangements and all will refer to financial adjustments.

Proposed sections 22F (Treasurer may enter into and execute guarantee etc. on behalf of Government), 22H (Recovery of money paid under guarantee or agreement) and 22I (Appropriation) follow the corresponding existing provisions of the Principal Act.

**Item 9** consequentially omits Part 2, Division 4 (Guarantees) of the Principal Act.

**Credit rating criteria**

**Item 12** amends Schedule 4 of the principal Act to give a more general application of prescribed ratings to investments authorised for authorities. This means that in future an authority cannot invest, for example, in a bank, except in the Reserve Bank or a bank carrying a credit rating prescribed in the regulations and given by a rating agency also prescribed in the regulations.

**Savings and transitional provisions**

**Item 13** substitutes Schedule 6 of the Principal Act to enlarge the savings and transitional provisions to cover the enactment of the proposed

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