

Financial Agreement (Amendment) Act 1976 No 35

[1976-35]



New South Wales

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Financial Agreement (Amendment) Act 1976 No 35



New South Wales

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Financial Agreement (Amendment) Act 1976 No 35



New South Wales

An Act to approve an Agreement between the Commonwealth of Australia and the States; and to amend the *Financial Agreement Act 1944*.

1 Name of Act

This Act may be cited as the *Financial Agreement (Amendment) Act 1976*.

2 Commencement

- (1) Section 1 and this section shall commence on the date of assent to this Act.
- (2) Except as provided in subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

3 Approval of Agreement

The Agreement made on 5 February 1976, a copy of which is set forth in the Schedule, is approved.

4 (Repealed)

Schedule

(Section 3)

AGREEMENT made the Fifth day of February One thousand nine hundred and seventy-six between—

- THE COMMONWEALTH OF AUSTRALIA of the first part;
- THE STATE OF NEW SOUTH WALES of the second part;
- THE STATE OF VICTORIA of the third part;
- THE STATE OF QUEENSLAND of the fourth part;
- THE STATE OF SOUTH AUSTRALIA of the fifth part;
- THE STATE OF WESTERN AUSTRALIA of the sixth part; and

THE STATE OF TASMANIA of the seventh part,

(each of the parties of the second, third, fourth, fifth, sixth and seventh parts being in this Agreement referred to as a “State” and the expression “the States” in this Agreement meaning, where the context so permits or requires, all of those parties).

WHEREAS—

- (A) an Agreement (in this Agreement called “the Original Agreement”) was made the 12th December 1927 between the parties to this Agreement with respect to the public debts of the States;
- (B) the provisions of the Original Agreement have been varied, affected or supplemented by the following agreements made in pursuance of section 105A of the Constitution of the Commonwealth of Australia—
 - (i) Agreement made the 1st July 1928, a copy of which is set out in the *Tasmania Sinking Fund Agreement Act 1928*;
 - (ii) Agreement made the 21st July 1931, a copy of which is set out in the Schedule to the *Debt Conversion Agreement Act 1931*;
 - (iii) Agreement made the 22nd October 1931, a copy of which is set out in the Schedule to the *Debt Conversion Agreement Act (No. 2) 1931*;
 - (iv) Agreement made the 3rd July 1934, a copy of which is set out in the Schedule to the *Soldier Settlement Loans (Financial Agreement) Act 1935*;
 - (v) Agreement made the 15th November 1944, a copy of which is set out in the Schedule to the *Financial Agreement Act 1944*; and
 - (vi) Agreement made the 11th February 1966, a copy of which is set out in the Schedule to the *Financial Agreement Act 1966*,(which Agreements are in this Agreement referred to as “the Supplemental Agreements”);
- (C) the parties have agreed that in pursuance of section 105A of the Constitution the provisions of the Original Agreement as varied by the Supplemental Agreements should be further varied as hereinafter appears; and
- (D) certain of the provisions of the Original Agreement as varied by the Supplemental Agreements have been fully performed and may be omitted from the Original Agreement for the purposes of its continued operation:

NOW IT IS HEREBY AGREED as follows:

COMMENCEMENT AND OPERATION

1.

This Agreement shall have no force or effect and shall not be binding upon any party until, in respect of each party, either—

- (a) it is signed with the prior authority of the Parliament of that party; or

(b) after having been signed, it is approved by the Parliament of that party.

2.

Subject to clause 1, this Agreement shall be deemed to have commenced to operate on the 30th June 1975 and the provisions of clause 11 shall apply to give effect to such commencement.

INTERPRETATION

3.

The Original Agreement as varied by the Supplemental Agreements is in this Agreement referred to as “the Principal Agreement”.

4.

The expression “the 1975 Supplemental Agreement” in the Principal Agreement as varied by this Agreement is a reference to this Agreement.

TITLE

5.

Clause 1 of the Principal Agreement is omitted and the following clause is inserted in its place:

“1.

This Agreement as varied from time to time shall be known as ‘the Financial Agreement’ ”.

DEFINITIONS

6.

Clause 2 of the Principal Agreement is omitted and the following clause is inserted in its place:

“2.—

(1.)

In this Agreement, unless the contrary intention appears:

‘bondholder’ means holder of any securities but does not include the Commonwealth;

‘face value’ means—

- (a) in relation to securities repayable in Australian currency, the principal amount, excluding any amount payable by way of premium, remaining to be repaid in respect of the securities;
- (b) in relation to securities repayable in an overseas currency, the equivalent in Australian currency of the principal amount, excluding any amount payable by way of premium, remaining to be repaid in respect of the securities, converted at the Reserve Bank of Australia selling rate to the Australian Government at the time of conversion or at such rate as is agreed between the Commonwealth and the States;

‘gross cost’, in relation to the purchase of securities, means the amount actually paid for

the securities, including interest, brokerage and commission, less any amount payable to the Commission;

'holder', in relation to securities, means owner of the securities according to the manner in which ownership of the securities is determined;

'net public debt', in relation to a State, means the public debt of the State less an amount equal to the sum of the balance standing to the credit of the State in the Sinking Fund;

'public debt', in relation to a State, means the aggregate of the face value of the securities issued or created by the State or issued or created in respect of the State in accordance with this Agreement that have not been purchased, redeemed or otherwise repaid or in respect of which the State has not otherwise been freed and discharged from liability;

'securities' means—

- Inscribed Stock and Bonds
- Instalment Stock
- Registered Stock
- Funded Stock
- Stock payable to bearer
- Special Bonds
- Australian Savings Bonds
- Debentures

issued or created by a State or issued or created in respect of a State;

'the Commission' means the National Debt Commission continued in existence by the *National Debt Sinking Fund Act 1966*;

'the Loan Council' means the Australian Loan Council created in pursuance of this Agreement;

'the Sinking Fund' means the National Debt Sinking Fund referred to in sub-clause (1.) of Clause 12A of this Agreement; and

'transferred properties' means the properties mentioned or specified in the Schedule of Transferred Properties signed by representatives of the Commonwealth and the States as revised to the 30th June 1927, being properties which became vested in the Commonwealth pursuant to section 85 (i) of the Constitution of the Commonwealth.

(2.)

In this Agreement—

- (a) a reference to a year is, unless the contrary intention appears, a reference to a

- financial year commencing on a 1st July;
- (b) the expression 'in writing' includes any mode of representing or reproducing words and figures in a written form; and
 - (c) except where inconsistent with the context, words in the singular include the plural and words in the plural include the singular.

AUSTRALIAN LOAN COUNCIL

7.

Clause 3 of the Principal Agreement is amended as follows—

- (a) by deleting existing paragraph (b) of sub-clause (1.) and inserting in its place the following paragraph—

“(b) Any nomination of a substitute representative of the Commonwealth or of a State shall be tabled at the meeting of the Loan Council next succeeding the nomination.”

- (b) by deleting from the end of paragraph (b) of sub-clause (10) the words “in manner stated in sub-clause (9.) of Clause 12 of this Agreement” and inserting in their place the following words—

“in respect of loan moneys which have been advanced under terms providing for their repayment”.

- (c) by inserting after sub-clause (12) the following sub-clause—

“(12A.)

A decision of the Loan Council referred to in sub-clause (9.) of this Clause may be varied and a decision provided for by sub-clause (1.) may be made or varied, without a meeting of the Loan Council, by a resolution that is agreed to in writing by all members for the time being of the Loan Council.”.

- (d) by inserting at the end of the clause the following sub-clause—

“(17.)

Where under sub-clause (1.) of this Clause a Minister has been nominated by the Prime Minister or a Premier as a member of the Loan Council, the nomination shall be deemed to include another Minister of the Commonwealth or of the State, as the case may be, who is for the time being acting for the Minister nominated and references in this clause to a member of the Loan Council shall be read so as to include a Minister who is so acting.”

SINKING FUNDS

8.

Clause 12 of the Principal Agreement shall cease to apply and is omitted and the following clauses are inserted in the Principal Agreement to apply in place of that clause:

“12A.

(1.)

There shall be a National Debt Sinking Fund which shall be controlled by the Commission.

“(2.)

A separate account shall be established and kept in the Sinking Fund in respect of each State.

“(3.)

There shall be paid into the account of each State in the Sinking Fund—

- (a) the balance of cash held by the Commission at the 30th June 1975 in respect of that State arising from the operation of the sinking funds under this Agreement; and
- (b) amounts payable in accordance with the succeeding provisions of this Clause and the provisions of Clauses 12B and 12C.

“(4.)

Moneys standing to the credit of a State in the Sinking Fund shall not be accumulated but, subject to sub-clause (5.) of this Clause, shall be applied to the purchase, redemption, including redemption upon conversion, and repayment of securities of the State, and the gross cost, in the case of purchase, or the cost at face value, in the case of redemption and repayment, shall be charged to the State account in the Sinking Fund.

“(5.)

Moneys standing to the credit of a State in the Sinking Fund may, if at any time the Commission considers it expedient to do so, be temporarily invested by the Commission in any investments in which the Commission is for the time being authorized by law to invest moneys.

“(6.)

For the purposes of sub-clause (5.) of this Clause moneys are temporarily invested if they are invested for a period not exceeding one year.

“(7.)

Interest received by the Commission by virtue of an investment made under sub-clause (5.) of this Clause shall be paid to the credit of the account of the State or accounts of the respective States in the Sinking Fund from which the moneys that are invested were drawn.

“(8.)

Any profit or loss sustained on realization of an investment made under sub-clause (5.) of this Clause shall be paid to the credit of, or debited to, the account of the State or accounts of the respective States in the Sinking Fund from which the moneys that were invested were drawn.

“(9.)

Amounts that are to be paid to the Sinking Fund in accordance with the provisions of this Clause and of Clauses 12B and 12C shall be debts payable to and recoverable by the Commission.

“(10.)

When a security of a State is purchased, redeemed or repaid by the Commission, the security shall be deemed to have been cancelled on the date of the purchase, redemption or repayment.

“(11.)

A State may from time to time pay to the Commission in addition to the moneys otherwise payable by the State under this Agreement an amount to be applied for the purpose of the purchase, redemption or repayment of securities of the State.

“(12.)

The Commission may arrange with any State to act as its agent in connection with payments due to bondholders.

“12B.

(1.)

Each State shall, in respect of the public debt of the State, pay to the Commission for credit to the account of the State in the Sinking Fund in respect of each year after the 30th June 1975 by equal monthly instalments during the year or in such other amounts during the year as are determined by agreement between the Commonwealth and the relevant State a sinking fund contribution calculated as provided in this clause.

“(2.)

The sinking fund contribution payable by a State in the year commencing the 1st July 1975 shall be the amount in respect of the State set out opposite the State in the following table—

	\$
New South Wales	41,500,000
Victoria	29,000,000
Queensland	15,900,000
South Australia	16,100,000
Western Australia	12,000,000
Tasmania	7,000,000
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	121,500,000
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“(3.)

The sinking fund contribution payable by a State in each of the nine years after the 30th

June 1976 (except in the case of New South Wales in relation to which the number of years after that date shall be ten) shall be the amount in respect of the State provided by sub-clause (2.) of this Clause—

- (a) increased, if the net public debt of the State at the 30th June immediately preceding the year is greater than the net public debt of the State at the 30th June 1975, by an amount equal to 1.20 per centum of the amount by which the net public debt first mentioned is the greater; or
- (b) reduced, if the net public debt of the State at the 30th June immediately preceding the year is less than the net public debt of the State at the 30th June 1975, by an amount equal to 1.20 per centum of the amount by which the net public debt first mentioned is the lesser.

“(4.)

The sinking fund contribution payable by a State in each year after the 30th June 1985 (except in the case of New South Wales in relation to which that date shall be the 30th June 1986) shall be the amount that is equivalent to 0.85 per centum of the net public debt of the State at the 30th June immediately preceding the year in which the contribution is payable.

“12C.

(1.)

The Commonwealth shall, in respect of the public debt of each State, pay to the Commission for credit to the account of the State in the Sinking Fund in respect of each year after the 30th June 1975 by equal monthly instalments during the year or in such other amounts during the year as are determined by agreement between the Commonwealth and the relevant State a sinking fund contribution calculated as provided in this clause.

“(2.)

The sinking fund contribution payable by the Commonwealth in relation to a State in the year commencing the 1st July 1975 shall be the amount in respect of the State provided in the following table—

	\$
New South Wales	9,900,000
Victoria	7,500,000
Queensland	3,900,000
South Australia	4,000,000
Western Australia	2,800,000
Tasmania	2,100,000
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	30,200,000
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“(3.)

The sinking fund contribution payable by the Commonwealth in relation to a State in each of the nine years after the 30th June 1976 (except in the case of New South Wales in relation to which the number of years after that date shall be ten) shall be the amount in respect of the State provided by sub-clause (2.) of this Clause—

- (a) increased, if the net public debt of the State at the 30th June immediately preceding the year is greater than the net public debt of the State at the 30th June 1975, by an amount equal to 0.28 per centum of the amount by which the net public debt first mentioned is the greater; or
- (b) reduced, if the net public debt of the State at the 30th June immediately preceding the year is less than the net public debt of the State at the 30th June 1975, by an amount equal to 0.28 per centum of the amount by which the net public debt first mentioned is the lesser.

“(4.)

The sinking fund contribution payable by the Commonwealth in relation to a State in respect of each year after the 30th June 1985 (except in the case of New South Wales in relation to which that date shall be the 30th June 1986) shall be the amount that is equivalent to 0.28 per centum of the net public debt of the State at the 30th June immediately preceding the year in which the contribution is payable.”

TRANSFER OF DEBTS AND CHARGES

9.

The following heading and clause are inserted in Part III of the Principal Agreement immediately after clause 13—

“TRANSFER OF DEBTS AND CHARGES”

“13A.

The debts specified in the Schedule of Debts set out in the Schedule to the 1975 Supplemental Agreement are taken over from the States by the Commonwealth as from the 30th June 1975 and the States shall be completely freed and discharged from all liabilities in relation thereto, whether in respect of principal, interest, sinking fund contribution or otherwise falling due after that date, and those liabilities shall as between the Commonwealth and the respective States for all purposes be assumed by the Commonwealth on that date.”

OMITTED PROVISIONS

10.

The following further amendments are made to the Principal Agreement in order to give effect to the purpose referred to in recital (D) hereof—

- (a) sub-clause (3.) of clause 4 is omitted;
- (b) sub-clause (7.) of clause 5 is omitted;

(c) the table in sub-clause (2.) of clause 11 is amended to read as follows—

	\$
New South Wales	5,834,822
Victoria	4,254,318
Queensland	2,192,470
South Australia	1,407,632
Western Australia	946,864
Tasmania	533,718
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	15,169,824
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(d) paragraph (d) of clause 13 is omitted;

(e) clause 18 is omitted.

RETROSPECTIVE OPERATION

11.

The following provisions shall apply with respect to the period (in this clause referred to as “the interim period”) between the 30th June 1975 and the date on which this Agreement comes into force:

- (1) Any action or proceeding which has been taken or has taken place during the interim period in relation to the Loan Council in contemplation of and in accordance with clause 3 of the Principal Agreement as that clause will be amended when this Agreement comes into force shall have effect as if the amendment of that clause had been made on the 30th June 1975.
- (2) Moneys borrowed for a State during the interim period in accordance with the Principal Agreement shall be deemed to have been borrowed under the Financial Agreement constituted by the Principal Agreement as varied by this Agreement.
- (3) Contributions and other payments to or from sinking funds under the Principal Agreement during the interim period and any transactions in respect of those sinking funds during the interim period shall be brought to account and given effect to as if the payments and transactions had been made or carried out under and in accordance with the Financial Agreement constituted by the Principal Agreement as varied by this Agreement.
- (4) Moneys paid by a State in respect of the debts specified in the Schedule of Debts to this Agreement by way of payment of interest during the interim period shall be brought to account for the purposes of the operation of sub-clause (3.) of clause 11 of the Principal Agreement as payments made by the State under that sub-clause in respect of public debt of the State other than the debts so specified.
- (5) Where any of the debts specified in the Schedule of Debts to this Agreement mature or are redeemed during the interim period any payment by a State during the interim period in

respect of such debts, not being sinking fund contributions or interest, shall be reimbursed to the State by the Commonwealth after this Agreement comes into force.

- (6) Any debt liability assumed by a State during the interim period in respect of the maturing of any of the debts specified in the Schedule of Debts to this Agreement shall be transferred to the Commonwealth as if the debt were a debt specified in the Schedule.
- (7) The Commonwealth will pay to the account of the State or the accounts of the respective States in the Sinking Fund any sinking fund moneys which may be applied during the interim period to the redemption of any part of the debts specified in the Schedule of Debts to this Agreement.
- (8) The Commonwealth of Australia and the States will make all such payments or adjustments and do all such acts and things as are appropriate and requisite to give effect as far as practicable to the Financial Agreement constituted by the Principal Agreement as varied by this Agreement as from the 30th June 1975.

**SCHEDULE
SCHEDULE OF DEBTS**

Clause 9

Description of Debts		Amount of Debts (expressed in thousands of dollars)						
Rate of Interest	Maturity Date	New South Wales	Victoria	Queensland	South Australia	Western Australia	Tasmania	Total
		\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
6.2%	February 1976	34,319	24,874	10,419	13,298	9,941	7,149	100,000
5.9%	July 1977	...	...	4,000	...	...	...	4,000
6.8%	August 1978	13,212	9,676	3,304	5,200	3,844	2,764	38,000
6.6%	February 1981	18,066	13,751	5,219	7,529	5,344	3,841	53,750
5.0%	May 1984	66,060	48,380	26,520	26,000	19,220	13,820	200,000
5.0%	September 1985	66,060	48,380	22,520	26,000	19,220	13,820	196,000
4.5%	July 1986	26,424	19,352	9,608	10,400	7,688	5,528	79,000
4.5%	February 1987	6,606	4,838	2,652	2,600	1,922	1,382	20,000
5.4%	May 1987	16,515	12,095	6,630	6,500	4,805	3,455	50,000
7.0%	May 1989	16,515	12,095	6,630	6,500	4,805	3,455	50,000
5.4%	May 1990	16,515	12,095	6,630	6,500	4,805	3,455	50,000

7.0%	July 1991	16,978	12,174	5,208	6,473	4,896	3,521	49,250
6.0%	October 1991	...	...	10,000	...	...	...	10,000
5.25%	February 2004	33,030	24,190	13,260	13,000	9,610	6910	100,000
	Total	330,300	241,900	132,600	130,000	96,100	69,100	1,000,000

IN WITNESS WHEREOF this agreement has been signed for and on behalf of the parties respectively as at the day and year first above written.

SIGNED by the Honourable JOHN MALCOLM FRASER, Prime Minister of the Commonwealth of Australia, in the presence of—
 J. L. Menadue } MALCOLM FRASER

SIGNED by the Honourable SIR ERIC ARCHIBALD WILLIS, Premier of the State of New South Wales, in the presence of—
 W. E. Henry } E. A. WILLIS

SIGNED by the Honourable RUPERT JAMES HAMER, Premier of the State of Victoria, in the presence of—
 E. W. Coates } R. J. HAMER

SIGNED by the Honourable JOHANNES BJELKE-PETERSEN, Premier of the State of Queensland, in the presence of—
 Keith Spann } JOH. BJELKE-PETERSEN

SIGNED by the Honourable DONALD ALLAN DUNSTAN, Premier of the State of South Australia, in the presence of—
 R. D. Barnes } D. A. DUNSTAN

SIGNED by the Honourable SIR CHARLES WALTER MICHAEL COURT, Premier of the State of Western Australia, in the presence of—
 Brian V. Johnson } CHARLES COURT

SIGNED by the Honourable WILLIAM ARTHUR NEILSON, Premier of the State of Tasmania, in the presence of—
 R. B. Ward } W. A. NEILSON