

# **Borrowing and Investment Powers Bill**

## **EXPLANATORY MEMORANDUM**

### **PART 1—PRELIMINARY**

*Clause 1* sets out the purpose of the Act.

*Clause 2* provides for the Act to come into operation on proclamation.

*Clause 3 sub-clause (1)* sets out definitions for the purposes of the Act, including definitions of “arrangement” “financial accommodation” “financial arrangement” “invest” and “lease”.

*Sub-clause (2)* provides for the Treasurer’s approval to be given conditionally or unconditionally.

### **PART 2—BORROWING POWERS**

#### **Division 1—General**

*Clause 4* enables authorities to exercise powers conferred on them by Part 2 and provides authorities with an incidental power to be exercised subject to the Treasurer’s approval.

#### **Division 2—Financial Accommodation**

*Clause 5* enables an authority specified in Schedule 1 or 2 to obtain overdrafts or loans from the Cash Management Account or State Development Account with the Treasurer’s approval.

*Clause 6 sub-clauses (1) and (2)* enable authorities specified in Schedule 2 to obtain financial accommodation within Australia for periods not exceeding 12 months with the Treasurer’s approval.

*Sub-clause (3)* provides that authorities may not obtain financial accommodation under this clause by entering into leasing arrangements.

*Clause 7 sub-clauses (1) and (2)* enable authorities specified in Schedule 2 to obtain financial accommodation within and outside Australia for periods not exceeding 12 months with the Treasurer’s approval.

*Sub-clause (3)* provides that authorities may not obtain financial accommodation under this clause by entering into leasing arrangements.

*Clause 8 sub-clauses (1) and (2)* enable authorities specified in Schedule 2 to obtain financial accommodation within Australia for periods exceeding 12 months with the Treasurer’s approval.

*Sub-clause (3)* provides that authorities may not obtain financial accommodation under this clause by entering into leasing arrangements.

*Clause 9 sub-clauses (1) and (2)* enable authorities specified in Schedule 2 to obtain financial accommodation within and outside Australia for periods exceeding 12 months with the Treasurer’s approval.

*Sub-clause (3)* provides that authorities may not obtain financial accommodation under this clause by entering into leasing arrangements.

*Clause 10* enables authorities specified in Schedule 2 to obtain financial accommodation within or outside Australia by entering into leasing arrangements.

*Clause 11* enables authorities specified in Schedule 2 to enter into and perform financial arrangements within and outside Australia with the Treasurer's approval.

### **Division 3—Guarantees**

*Clause 12 sub-clauses (1) and (2)* enable the Treasurer to execute a certificate which will operate to guarantee financial benefits obtained pursuant to clause 5.

*Clause 13 sub-clauses (1) and (2)* contain a statutory guarantee for certain types of financial accommodation.

*Clause 14 sub-clauses (1) and (2)* enable the Treasurer to execute a guarantee in respect of certain types of financial accommodation.

*Clause 15 sub-clauses (1) and (2)* enable the Treasurer to execute a certificate which will operate to guarantee the financial obligations of authorities under financial arrangements.

*Clause 16 sub-clauses (1) and (2)* provide for a standing appropriation of the Consolidated Fund in the event that the Treasurer is required to fulfill any liability arising under a guarantee provided for under Division 3 and require the Treasurer to pay any sums he recovers from an authority in respect of a guarantee, into the Consolidated Fund.

*Clause 17 sub-clause (1)* provides that guarantees provided under this Part may be assigned unless the terms of the guarantee provide otherwise.

*Sub-clause (2)* provides that any guarantee provided under this Part may be enforced under the *Crown Proceedings Act 1958*.

### **Division 4—Miscellaneous**

*Clause 18 sub-clauses (1) and (2)* enable the Governor in Council to make regulations.

## **PART 3—INVESTMENT POWERS**

### **Division 1—Preliminary**

*Clause 19* enables authorities to exercise powers conferred on them by Part 3 and provides authorities with an incidental power to be exercised subject to the approval of the Governor in Council on the recommendation of the Treasurer.

### **Division 2—Investment**

*Clause 20* enables authorities specified in Schedule 1 or 2 to invest moneys in any manner approved by the Governor in Council on the recommendation of the Treasurer.

*Clause 21* enables authorities specified in Schedule 1 or 2 to trade in approved investments with the approval of the Governor in Council on the recommendation of the Treasurer.

*Clause 22* enables authorities specified in Schedule 4 to underwrite or sub-underwrite the issue of approved shares, units or securities with the approval of the Governor in Council on the recommendation of the Treasurer.

#### **PART 4—CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL PROVISIONS**

*Clause 23* provides for the consequential amendments set out in Schedule 4 to take effect.

The amendments set out in Schedule 4 relate to the existing borrowing and guarantee provisions in the Acts under which the authorities are constituted.

*Clause 24* provides for the consequential amendments set out in Schedule 5 to take effect.

The amendments set out in Schedule 5 relate to existing investment powers.

*Clause 25* confers powers of the *Borrowing and Investment Powers Act 1987* in the Acts of affected authorities.

*Clause 26* contains transitional provisions.

*Clause 27* provides that guarantees in force under any Act prior to the commencement of this clause may be enforced under the *Crown Proceedings Act 1958*.

