

Passed by both Houses



New South Wales

# Public Authorities (Financial Arrangements) Amendment Bill 2000

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*I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney, , 2000*



New South Wales

## **Public Authorities (Financial Arrangements) Amendment Bill 2000**

Act No , 2000

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An Act to amend the *Public Authorities (Financial Arrangements) Act 1987* 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; to make consequential amendments to the *Public Authorities (Financial Arrangements) Regulation 1995* and the *Treasury Corporation Act 1983*; and for other purposes.

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*I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.*

*Chairman of Committees of the Legislative Assembly.*

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Public Authorities (Financial Arrangements) Amendment Act 2000*.

**2 Commencement**

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

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

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

**4 Consequential amendments**

- (1) The *Public Authorities (Financial Arrangements) Regulation 1995* and the *Treasury Corporation Act 1983* are amended as set out in Schedule 2.
- (2) Sections 39, 40 and 41 of the *Interpretation Act 1987* do not apply to the amendments to the *Public Authorities (Financial Arrangements) Regulation 1995* set out in Schedule 2.

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

(Section 3)

### **[1]    Long title**

Omit “and investments”. Insert instead “(including investments)”.

### **[2]    Sections 2A–2C**

Insert after section 2:

#### **2A    Principal purpose of Act**

The principal purpose of this Act is to provide a comprehensive system of arrangements for the control of authorities of the State in entering into and maintaining arrangements of the kinds covered by this Act.

#### **2B    Exclusive operation of Act**

- (1) If an Act or statutory rule (other than this Act and the regulations) expressly or impliedly confers or imposes any function on an authority for or with respect to the entry into and maintenance of financial arrangements or joint venture arrangements, the authority is not to exercise those functions unless:
  - (a) the authority is authorised to do so under subsection (3) or by or under any other provision of this Act, or
  - (b) the arrangements are approved under this Act.
- (2) The regulations may provide that subsection (1) does not apply to any arrangement or any arrangement of a class prescribed by the regulations.
- (3) The Treasurer may, by order in writing, authorise a specified authority to exercise any specified function referred to in subsection (1), either generally or in relation to any specified arrangement or arrangement of a specified class. Any such authorisation may be given unconditionally or subject to such conditions as the Treasurer thinks appropriate.

**2C Relationship with other Acts**

- (1) This Act has effect despite anything in any Act or statutory rule (other than this Act and the regulations) enacted or made before the commencement of this section.
- (2) Any Act or statutory rule (other than this Act and the regulations) enacted or made after the commencement of this section is to be construed as having effect subject to this Act, except to the extent that such an Act expressly overrides this Act.

**[3] Section 3 Definitions**

Insert in alphabetical order in section 3 (1):

***authority*** means:

- (a) a person, group of persons or body specified in Schedule 2 to the *Public Finance and Audit Act 1983*, or
- (b) a person, group of persons or body specified in Column 1 of Schedule 3 to the *Public Finance and Audit Act 1983*, or
- (c) a Minister of the Crown, or
- (d) a State owned corporation or a subsidiary of a State owned corporation, or
- (e) an entity or entity of a class prescribed by the regulations as being within this definition,

but does not include:

- (f) a local government authority, or
- (g) an entity or entity of a class prescribed by the regulations as not being within this definition.

***controlled entity***, in relation to an authority, means an entity of which the authority has control within the meaning of a standard referred to in section 39 (1A) or 45A (1A) of the *Public Finance and Audit Act 1983*, and includes an entity or entity of a class prescribed by the regulations as being within this definition, but does not include:

- (a) an entity that is itself an authority within the meaning of this Act, or

- (b) an entity or entity of a class prescribed by the regulations as not being within this definition.

Accordingly, a reference (however expressed) in this Act to an entity controlled by an authority is a reference to such a controlled entity.

*entity* has the same meaning as in the Corporations Law, and (without limitation) includes any person, group of persons or body.

*financial arrangements* means arrangements for or with respect to:

- (a) the obtaining of financial accommodation, or
- (b) the effecting of a financial adjustment, or
- (c) a joint financing arrangement, or
- (d) the investment of funds,

and includes an arrangement or arrangement of a class prescribed as being within this definition, but does not include an arrangement or arrangement of a class prescribed as not being within this definition.

*joint venture* is defined in section 22K.

*joint venture arrangements* means arrangements (as defined in section 22J) for or with respect to the carrying on of a joint venture.

*local government authority* means a council or county council within the meaning of the *Local Government Act 1993* or any person exercising all or any of the functions of such a council or county council.

*portfolio Minister* of an entity is defined in section 5B.

**[4] Section 3 (1)**

Omit the definition of *affiliate*.

**[5]    Section 3 (4)–(6)**

Insert after section 3 (3):

- (4) The prescription of an entity or class of entities under paragraph (e) or (g) of the definition of *authority* in subsection (1) may be made generally or may be made for the purposes of specified provisions of this Act only. Such a prescription is taken to be made generally unless it is expressed to be made for the purposes of specified provisions of this Act.
- (5) A part of an entity may be prescribed for the purposes of paragraph (e) or (g) of the definition of *authority* in subsection (1).
- (6) Two or more parts of an entity may be separate authorities for the purposes of this Act. If:
  - (a) an entity is an authority, and
  - (b) a part of the entity is also an authority,the authority referred to in paragraph (a) is taken not to include the part referred to in paragraph (b), unless the regulations otherwise provide.

**[6]    Section 3 (7)**

Insert as section 3 (7):

- (7) A reference in the definition of *controlled entity* in subsection (1) to a standard includes a reference to:
  - (a) if the standard is amended—the standard as in force for the time being, and
  - (b) if the standard is replaced—the substituted standard, and
  - (c) if the substituted standard is amended—the substituted standard as in force for the time being.

**[7]    Section 3 (8)**

Insert as section 3 (8):

- (8) An order of the Treasurer under this Act may be given in the form of a written direction of the Treasurer.

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**[8] Section 5B**

Insert after section 5A:

**5B Meaning of portfolio Minister**

- (1) In this Act, a reference to the *portfolio Minister* of an entity (including an authority) is a reference to:
  - (a) subject to paragraphs (b), (c) and (d)—the Minister who solely or jointly administers the legislation under which the entity is established or regulated, or
  - (b) in the case of a statutory State owned corporation—the portfolio Minister of the corporation (under section 20I of the *State Owned Corporations Act 1989*), or
  - (c) in the case of a company State owned corporation—the Minister who is designated by the Treasurer as the portfolio Minister of the corporation (under subsection (2)), or
  - (d) in the case of an entity that is controlled by an authority—the Minister who is the portfolio Minister of the authority under another paragraph of this subsection.
- (2) The Treasurer may, by order published in the Gazette, designate a Minister as the portfolio Minister of a company State owned corporation for the purposes of this Act.

**[9] Section 6 Definition of “authority”**

Omit the section.

**[10] Section 10**

Insert after section 9:

**10 Provision of financial accommodation from Treasury Corporation**

- (1) Despite anything in this Act, but subject to subsection (2), an authority must not obtain financial accommodation otherwise than from the Treasury Corporation.



- (2) Subsection (1) does not apply:
  - (a) in respect of the provision of financial accommodation by way of an advance of money by the Treasurer under section 9, or
  - (b) to the extent of any exemptions under subsection (3).
- (3) The Treasurer may, by order in writing, grant exemptions from subsection (1). Such an exemption may be granted in relation to specified authorities, specified classes of authorities or all authorities or in relation to specified transactions, specified classes of transactions or all transactions, or any combination.

**[11] Section 11 General powers in relation to obtaining financial accommodation**

Omit “affiliate of the authority” from section 11 (2) (f).  
Insert instead “entity controlled by the authority”.

**[12] Part 2, Division 4**

Insert after section 14:

**Division 4      Inter-agency financial accommodation**

**14A    Inter-agency loans within same ministerial portfolio**

- (1) The portfolio Minister of an entity that is an authority may determine that an amount of money in the funds of or under the control of the authority is to be lent to another entity for which he or she is the portfolio Minister.
- (2) Any such amount is to be lent in accordance with that determination and on such terms and conditions as the portfolio Minister determines.

**14B    Application of Act to inter-agency loans within same portfolio**

This Act (other than this Division) does not apply to or in respect of a loan made under this Division.

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**14C Other Acts not affected**

This Division is subject to and does not affect the operation or requirements of the *Public Finance and Audit Act 1983*, any Appropriation Act or any other Act (other than this Act).

**[13] Section 15 Definition of “authority”**

Omit the section.

**[14] Section 17 General powers in relation to effecting financial adjustments**

Omit “affiliate of the authority” from section 17 (2) (f).  
Insert instead “entity controlled by the authority”.

**[15] Section 19 Definition of “authority”**

Omit the section.

**[16] Section 20 Power to enter joint financing arrangements**

Omit “affiliate of the authority” from section 20 (3) (i).  
Insert instead “entity controlled by the authority”.

**[17] Section 22 Definition of “authority”**

Omit the section.

**[18] Section 22A Statutory guarantee**

Omit “, as defined for the purposes of Part 2,” from section 22A (1) (a).  
Insert instead “pursuant to Part 2”.

**[19] Section 22A (1) (b)**

Omit “by such an authority”  
Insert instead “by an authority pursuant to Part 2”.

**[20] Section 22A (1) (c)**

Omit “such” where secondly occurring.

**[21] Part 2D**

Insert after Part 2C:

**Part 2D Joint ventures**

**22J Definition**

In this Part:

*arrangement* includes a contract or understanding, and includes the constitution of a body corporate referred to in section 22K (1) (b).

**22K Meaning of joint venture**

- (1) In this Act, a reference to a joint venture is a reference to an activity:
  - (a) carried on jointly by two or more persons, whether or not in partnership, or
  - (b) carried on by a body corporate formed by two or more persons for the purpose of enabling those persons to carry on that activity jointly by means of their joint control, or by means of their ownership of shares in the capital, of that body corporate,and includes a reference to an activity or activity of a class prescribed by the regulations as being within this section, but does not include a reference to an activity or activity of a class prescribed by the regulations as not being within this section.
- (2) An activity may be regarded as carried on jointly even though some or all of the persons involved carry on different aspects of the activity.

**22L Restriction on joint ventures**

- (1) An authority must not:
  - (a) enter into an arrangement with another person for the purpose of carrying on a joint venture, or
  - (b) carry on a joint venture under such an arrangement,unless the Treasurer has approved of the arrangement.

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- (2) The Treasurer's approval:
- (a) may be given for a specified arrangement or class of arrangements, and
  - (b) may be given in respect of one or more specified authorities or in respect of a specified class of authorities, and
  - (c) may be otherwise specific or may be general, and
  - (d) may be given on such terms and subject to such conditions as the Treasurer thinks fit.
- (3) The Treasurer's approval must be in writing.
- (4) The Treasurer's approval is required under this section even though the arrangement is, or is entered into in connection with, financial accommodation authorised under Part 2, a joint financing arrangement authorised under Part 2B or some other financial arrangement authorised under this Act.

**[22] Section 23 Definition of "authority"**

Omit the section.

**[23] Section 24 Investment powers of authorities**

Omit "Part 1, 2, 3 or 4" from section 24 (1). Insert instead "Part 2, 3 or 4".

**[24] Section 24 (1A)**

Insert after section 24 (1):

- (1A) An authority that does not have the investment powers described in any of Parts 2, 3 and 4 of Schedule 4 has, in respect of all funds of or under the control of the authority, the investment powers described in Part 1 of that Schedule, except to the extent that the Treasurer by order in writing declares that the authority does not have those powers in respect of all or any specified funds or has them only in relation to specified funds.

**[25] Section 27 Replacement of other investment powers**

Omit the section.

**[26] Section 28**

Insert after section 27:

**28 Part not to apply in certain cases**

- (1) This Part does not affect any statutory power to make grants, loans or other forms of financial assistance that are not in the nature of investments, and in particular does not affect:
  - (a) the power of the Rental Bond Board to make a grant or loan under section 20 (4), or to provide money under section 21, of the *Landlord and Tenant (Rental Bonds) Act 1977*, or
  - (b) the power of the New South Wales Rural Assistance Authority to grant loans or other assistance under the *Rural Assistance Act 1989*, or
  - (c) the power of the Sustainable Energy Development Authority to grant financial accommodation under the *Sustainable Energy Development Act 1995*, or
  - (d) any other functions under any Act that are prescribed by the regulations for the purposes of this section.
- (2) This section does not affect the generality of section 2B (2) or (3).

**[27] Section 28A General powers in relation to investments**

Omit “affiliate of the authority” from section 28A (2) (f).  
Insert instead “entity controlled by the authority”.

**[28] Part 4A**

Insert after Part 4:

**Part 4A Controlled entities**

**37A Controlled entities**

- (1) 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 by or under this Act to enter into, except to the extent that:

- 
- (a) the authority is permitted by the Treasurer under subsection (2) to authorise the entity to enter into or maintain (or both) any such financial arrangements, or
- (b) this subsection does not apply to any such financial arrangements because of the regulations under subsection (3).
- (2) The Treasurer may, by order in writing, permit a specified authority to authorise a controlled entity to enter into or maintain (or both) financial arrangements of the kind referred to in subsection (1). Permission may be given in respect of a specified financial arrangement or financial arrangements of a specified class.
- (3) The regulations may provide that subsection (1) does not apply to financial arrangements of a specified class.
- (4) This section does not itself confer power on a controlled entity to enter into or maintain any financial arrangements.
- (5) This section does not affect any obligations imposed on a controlled entity by or under any Act or law, other than an obligation imposed on the controlled entity by the authority at its discretion.
- (6) The fact that a Minister may exercise control over or give directions to an authority does not make the authority a controlled entity of that Minister for the purposes of this Act.
- (7) In this section:
- authority*** includes any person who may exercise functions on behalf of the authority.
- financial arrangements*** includes arrangements for or with respect to carrying on a joint venture.

**[29] Section 45**

Insert after section 44:

**45 Exercise of functions by authorities that are not corporations**

- (1) The functions expressed to be conferred or imposed on an authority by or under this Act may, in the case of an authority that is not a corporation, be exercised on behalf of the authority:
  - (a) subject to paragraph (b), by a Minister or by the head or other chief officer of the authority, or
  - (b) by such person or by the holder of such office as is prescribed by the regulations.
- (2) This section does not affect any other manner in which such an authority may lawfully exercise such a function.

**[30] Sections 46 and 47**

Insert as sections 46 and 47:

**46 Transitional provisions applying to entities that become authorities**

- (1) This section applies where an entity becomes an authority within the meaning of this Act on or after the commencement of this section, and so applies whether the entity becomes an authority for the purposes of:
  - (a) this Act generally, or
  - (b) particular provisions of this Act, whether or not it is already an authority for other provisions of this Act.
- (2) Subject to any directions of the Treasurer under this section:
  - (a) nothing in this Act affects any financial arrangements or joint venture arrangements entered into before the entity became an authority, and the authority may maintain those arrangements, and
  - (b) the authority has and may exercise any power that the entity would (had it not become an authority) have apart from this Act to enter into financial arrangements or joint venture arrangements for a period of 6 months after it so becomes an authority.

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- (3) The Treasurer may give directions of either or both of the following kinds:
    - (a) requiring the authority to modify or terminate any arrangements referred to in subsection (2) (a) or (b) within such period and in such manner (if any) as the Treasurer specifies,
    - (b) requiring the authority not to exercise any power referred to in subsection (2) (b) after a specified date within that period of 6 months.
  - (4) The authority must comply with any such direction.
  - (5) Such a direction may be given only in relation to arrangements of a kind that the authority cannot enter into under this Act or that requires an authorisation or approval under this Act.
  - (6) The Treasurer is required to consult with the portfolio Minister of the authority, or with the authority or the authority's representatives, before giving any such direction.
  - (7) The regulations may contain provisions of a savings or transitional nature consequent on an entity's becoming an authority on or after the commencement of this section.

**47 Transitional provisions applying to entities that cease to be authorities**

- (1) This section applies where an entity ceases to be an authority within the meaning of this Act on or after the commencement of this section, and so applies whether the entity ceases to be an authority for the purposes of:
  - (a) this Act generally, or
  - (b) particular provisions of this Act, whether or not it continues to be an authority for other provisions of this Act.
- (2) Nothing in this Act affects any financial arrangements or joint venture arrangements entered into by the entity as an authority, and the entity may maintain those arrangements.
- (3) The regulations may contain provisions of a savings or transitional nature consequent on an entity's ceasing to be an authority on or after the commencement of this section.



**[31]    Schedule 1 Authorities**

Omit the Schedule.

**[32]    Schedule 6 Savings and transitional provisions**

Insert “*Public Authorities (Financial Arrangements) Amendment Act 2000*” at the end of clause 1 (1).

**[33]    Schedule 6, Part 4**

Insert after Part 3:

**Part 4   Provisions consequent on enactment of  
Public Authorities (Financial Arrangements)  
Amendment Act 2000**

**16    Definition**

In this Part:

*amending Act* means the *Public Authorities (Financial Arrangements) Amendment Act 2000*.

**17    Effect of amendments on arrangements entered into by  
authorities**

- (1) This clause applies where an entity, to which any provision of this Act applied before the commencement of any amendment made by the amending Act, is or becomes an authority (as defined in section 3) on the commencement of the amendment.
- (2) Subject to any directions of the Treasurer under this clause:
  - (a) an amendment made by the amending Act does not affect any financial arrangements or joint venture arrangements entered into by the entity before the commencement of the amendment (under this Act or otherwise), and the authority may maintain those arrangements, and

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- (b) the authority has and may exercise any power that the entity would (had the amending Act not been enacted) have apart from this Act to enter into financial arrangements or joint venture arrangements for a period of 6 months after the commencement of the amendment.
  - (3) The Treasurer may give directions of either or both of the following kinds:
    - (a) requiring the authority to modify or terminate any arrangements referred to in subclause (2) (a) or (b) within such period and in such manner (if any) as the Treasurer specifies,
    - (b) requiring the authority not to exercise any power referred to in subclause (2) (b) after a specified date within that period of 6 months.
  - (4) The authority must comply with any such direction.
  - (5) Such a direction may be given only in relation to arrangements of a kind that the authority cannot enter into under this Act or that requires an authorisation or approval under this Act.
  - (6) The Treasurer is required to consult with the portfolio Minister of the authority, or with the authority or the authority's representatives, before giving any such direction.

## **18 Provisions relating to exclusive operation of Act**

- (1) A reference in any other Act, statutory instrument or document to section 27 (which was repealed by the amending Act) is, subject to the regulations, taken to be a reference to section 2B (which was inserted by the amending Act).
- (2) Neither sections 2B and 2C, nor the enactment of the amending Act, affects the operation of section 49 of the *Sydney Organising Committee for the Olympic Games Act 1993*.

## Schedule 2 Consequential amendments

(Section 4)

### 2.1 Public Authorities (Financial Arrangements) Regulation 1995

**[1] Clause 3 Definitions**

Omit the definition of *authority*.

**[2] Clause 48 Investment powers of authorities**

Omit clause 48 (a).

**[3] Clause 56 Declaration of authorities**

Omit clause 56 (1). Insert instead:

- (1) The entities listed in Schedule 5 are prescribed as being within the definition of *authority* in section 3 (1) of the Act.

**[4] Clause 56A**

Omit the clause. Insert instead:

**56A Declaration of authority—financial adjustments**

The Commissioner of Police is prescribed as being within the definition of *authority* in section 3 (1) of the Act, but only for the purposes of Part 2A of the Act.

**[5] Schedule 1 Part 1 investment powers**

Omit the Part.

**[6] Schedule 5, heading**

Omit “Part 2 authorities”.

Insert instead “Authorities specifically included”.

**[7] Schedule 5**

Insert in alphabetical order:

Albury-Wodonga (New South Wales) Corporation  
Ambulance Service of New South Wales  
Area health service constituted under the *Health Services Act 1997*  
Geological and Mining Museum Trust  
Health Administration Corporation  
Minister administering the *Environmental Planning and Assessment Act 1979* (a corporation)  
Minister administering the *Heritage Act 1977* (a corporation)  
Ministerial Corporation for Industry  
New South Wales Capital Works Financing Corporation  
New South Wales Health Foundation  
Statutory health corporation constituted under the *Health Services Act 1997*  
TAFE Commission  
Tourism New South Wales  
Water Administration Ministerial Corporation

**2.2 Treasury Corporation Act 1983 No 75**

**[1] Section 3 Definitions**

Omit “(other than an authority within the meaning of Part 2 of the funding Act)” from the definition of *council* in section 3 (1).

**[2] Section 3 (1)**

Omit “Part 2 of” from the definition of *public authority*.

**[3] Section 3 (4)**

Insert after section 3 (3):

(4) Notes in this Act do not form part of this Act.

**[4] Section 9**

Omit the section. Insert instead:

**9 Provision of financial accommodation from Corporation**

\* \* \* \* \*

**Note.** Section 10 of the *Public Authorities (Financial Arrangements) Act 1987* provides that, subject to subsection (2) of that section, an authority (within the meaning of that Act) must not obtain financial accommodation otherwise than from the Corporation.