

CONCURRENCE COPY

LOCAL GOVERNMENT BORROWING CORPORATION BILL, 1983.

EXPLANATORY NOTE

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

The objects of this Bill are to constitute a corporation as a central borrowing authority for local government councils and to confer upon it functions enabling it to provide financial accommodation and other financial services to those councils.

The Bill contains the following provisions:—

Clause 1.—Short title.

Clause 2.—Commencement.

Clause 3.—Interpretation.

Clause 4 constitutes the Local Government Borrowing Corporation (“the Corporation”) and provides for its management.

Clause 5 constitutes the Local Government Borrowing Board (“the Board”) for the purpose of managing the Corporation.

Clause 6 authorises the Corporation to obtain financial accommodation.

Clause 7 enumerates the functions of the Corporation.

Clause 8 provides a statutory security for financial accommodation obtained, and provided, by the Corporation.

Clause 9 authorises the Corporation to employ servants to enable it to perform its functions.

Clause 10 provides for delegation of functions of the Corporation.

Clause 11 subjects the accounts of the Board to inspection and audit by the Auditor-General.

Clause 12 requires the Corporation to submit an annual report to the Minister for presentation to Parliament.

Clause 13 empowers the Governor to make regulations.

Schedule 1 provides for detailed matters relating to membership of the Board.

Schedule 2 makes provision for matters relating to meetings of the Board.

Schedule 3 contains detailed provisions relating to the accounts of the Corporation and the auditing thereof.

**LOCAL GOVERNMENT BORROWING CORPORATION BILL,
1983**

No. , 1983.

A BILL FOR

An Act to constitute the Local Government Borrowing Corporation and to confer upon it functions as a central borrowing authority providing financial accommodation and other financial services for councils and for other purposes.

[MR BOOTH—24 *March*, 1983.]

Local Government Borrowing Corporation.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

5 Short title.

1. This Act may be cited as the “Local Government Borrowing Corporation Act, 1983”.

Commencement.

2. (1) Sections 1 and 2 shall commence on the date of assent to this
10 Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and as may be notified by proclamation published in the Gazette.

Interpretation.

15 3. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

“Board” means the Local Government Borrowing Board constituted by section 5;

“Chairman” means the Chairman of the Board;

20 “Corporation” means the Local Government Borrowing Corporation constituted by section 4;

“council” has the same meaning as it has in the Local Government Act, 1919;

25 “financial accommodation” means a class of financial accommodation the obtaining of which by a council is authorised by the Local Government Act, 1919;

“function” includes power and duty;

“member” means member of the Board.

Local Government Borrowing Corporation.

(2) In this Act, a reference to the performance of a function includes, where the function is a power or duty, a reference to the exercise of the power or performance of the duty.

Local Government Borrowing Corporation.

5 4. (1) There is hereby constituted a corporation with the corporate name "Local Government Borrowing Corporation".

(2) The Corporation shall be managed by the Board.

(3) The Corporation shall have a seal which shall be affixed only in the presence of at least 2 members of the Board with an attestation by the
10 signatures of those members of the fact and date of the affixing of the seal.

(4) Section 38 (I) (b) and (II) of the Interpretation Act, 1897, does not apply to or in respect of the Corporation.

(5) The Corporation may authorise a servant of the Corporation or an officer or temporary employee of the Public Service to sign any specified
15 instrument or class of instruments in his own name on behalf of the Corporation and any instrument signed pursuant to such an authority shall be as effective as it would have been if the seal of the Corporation had been duly affixed thereto in accordance with subsection (3).

(6) All acts and things done in the name of, or on behalf of, the
20 Corporation by the Board, or with the authority of the Board, shall be deemed to have been done by the Corporation.

Local Government Borrowing Board.

5. (1) There is hereby constituted a Local Government Borrowing Board which shall consist of not more than 5 part-time members appointed
25 by the Governor, one of whom shall, by the instrument of his appointment as a member, or by another instrument, be appointed by the Governor as Chairman of the Board.

Local Government Borrowing Corporation.

(2) Of the members—

- 5 (a) at least one shall be a person nominated by the Treasurer as the representative of the New South Wales Treasury Corporation;
- (b) at least one shall be a person employed in the administration of the Local Government Act, 1919;
- (c) at least one shall be a person selected by the Minister from a panel of at least 5 persons nominated by the Local Government Association; and
- 10 (d) at least one shall be a person selected by the Minister from a panel of at least 5 persons nominated by the Shires Association.

(3) In the performance of its functions, the Board is subject to the direction and control of the Minister.

(4) Schedules 1 and 2 have effect.

Corporation may obtain financial accommodation.

- 15 **6. (1)** For the purpose of performing its other functions, the Corporation has the same functions in relation to obtaining financial accommodation as a council has for the purpose of performing its functions as a council.

20 **(2)** With such modifications as may be prescribed, the provisions of the Local Government Act, 1919, apply to and in respect of the obtaining of financial accommodation by, and the provision of financial accommodation to, the Corporation in the same way as they apply to and in respect of the obtaining of financial accommodation by, and the provision of financial accommodation to, a council.

Functions of the Corporation.

- 25 **7.** The Corporation may—

- (a) provide a council with financial accommodation on such terms and conditions as are agreed upon by the council and the Corporation;
- 30 (b) invest any money held by it in any manner authorised by the Local Government Act, 1919, for the investment of funds of a council;
- (c) open and maintain banking accounts;

Local Government Borrowing Corporation.

- (d) accept money on deposit from a council;
- (e) aggregate and divide, in such manner as it considers appropriate for the performance of its functions, money borrowed by it for the purpose of lending to councils; and
- 5 (f) perform such other functions as may be prescribed.

Certain income and revenue charged.

8. (1) The due repayment of financial accommodation obtained by the Corporation and the due payment of any interest and other charges relating thereto are a charge on the income and revenue of the Corporation from
10 whatever source arising.

(2) The due repayment of financial accommodation provided by the Corporation to a council and the due payment of any interest and charges relating thereto are a charge on the income and revenue of the council from whatever source arising.

15 Corporation may employ servants.

9. (1) For the purpose of enabling it to perform its functions, the Corporation may employ such servants as it thinks fit.

(2) With the approval of the Minister and upon such terms and conditions as are agreed upon between the Corporation and the council concerned, the Corporation may make use of a servant of the council.
20

(3) A person employed by the Corporation pursuant to subsection (1) shall be deemed to be a servant of a council.

Delegation.

10. (1) The Corporation may, by instrument in writing, delegate to a
25 member of the Board or to a person referred to in section 9 any function of the Corporation other than its function under section 6 and this power of delegation.

Local Government Borrowing Corporation.

(2) An act or thing done in the performance of a function by a person to whom the function has been delegated under subsection (1) has the same force and effect as if it had been done by the Corporation.

(3) A delegation under subsection (1) does not prevent the performance by the Corporation of the function delegated.

(4) A delegation under this section may be made subject to such conditions or limitations as to the performance of the function delegated as are specified in the instrument of delegation.

Accounts and audit.

10 11. Schedule 3 has effect in relation to the accounts and records of the Corporation and the auditing thereof.

Annual report by Corporation.

12. (1) As soon as practicable after 30th June, but on or before 31st December in any year, the Corporation shall prepare and forward to the Minister a report on the performance of its functions by the Corporation during the year ended on that 30th June.

(2) The Minister shall lay the report, or cause it to be laid, before both Houses of Parliament as soon as practicable after the receipt by him of the report.

20 **Regulations.**

13. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Local Government Borrowing Corporation.

(2) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind;
or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by a specified person,

or may do any of those things.

SCHEDULE 1.

(Sec. 5 (5).)

PROVISIONS WITH RESPECT TO THE CONSTITUTION OF THE BOARD.

Age of members.

1. A person who is of or above the age of 65 years shall not be appointed as a member or act in the office of a member.

15 Term of office.

2. (1) Subject to this Act, a member appointed under section 5 (2) (a) or (b) holds office as such until a successor is appointed or he vacates office as provided by clause 7, whichever first occurs.

(2) Subject to this Act, each member appointed under section 5 (2) (c) and (d) holds office for such term, not exceeding 2 years, as is specified in the instrument of his appointment.

Certain persons not disqualified.

3. Where, by or under any Act, provision is made requiring the holder of an office specified therein to devote the whole of his time to the duties of his office, that provision does not operate to disqualify him from holding that office and also the office of a member or from accepting and retaining any remuneration payable to a member under clause 4.

Local Government Borrowing Corporation.

SCHEDULE 1—*continued.*

PROVISIONS WITH RESPECT TO THE CONSTITUTION OF THE BOARD—*continued.*

Remuneration.

- 5 4. A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of him.

Public Service Act, 1979, not to apply.

- 10 5. The provisions of the Public Service Act, 1979, do not apply to or in respect of the appointment of a member and a member is not, in his capacity as a member, subject to the provisions of that Act during his term of office.

Alternate members.

6. (1) The Treasurer may appoint a person to act in the office of the member referred to in section 5 (2) (a) during the absence of the member from office owing to illness or other cause and may revoke any such appointment.
- 15 (2) The Minister may appoint a person to act in the office of the member referred to in section 5 (2) (b) during the absence of the member from office owing to illness or other cause and may revoke any such appointment.
- 20 (3) The Minister may appoint from each of the panels referred to in section 5 (2) (c) and (d) a member to act in the office of the member so referred to during the absence of the member from office owing to illness or other cause and may revoke any such appointment.
- (4) During the absence of a member from office owing to illness or other cause, a person appointed under subclause (1), (2) or (3) to act during that absence has, and may perform, the functions of the member in whose office he is appointed to act 25 (including, if such be the case, the functions of Chairman).
- (5) A member is, for the purposes of this clause, absent from his office if there is a vacancy in the office.

Local Government Borrowing Corporation.

SCHEDULE 1—*continued.*PROVISIONS WITH RESPECT TO THE CONSTITUTION OF THE BOARD—*continued.*

- 5 (6) No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising a person to act in the office of the Chairman or a member, and all things done or omitted to be done by that person while so acting shall be as valid and effectual and have the same consequences as if they had been done or omitted to be done by the chairman or that member, as the case may be.

Vacation of office.

7. (1) A member shall be deemed to have vacated his office—
- 10 (a) if he dies;
- (b) if he resigns his office by writing under his hand addressed to the Minister on whose nomination, or on whose selection, he was appointed and the Governor accepts his resignation;
- 15 (c) if he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes any assignment of his remuneration, allowances or estate for their benefit;
- (d) if he becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;
- 20 (e) if he is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to him personally or in the ordinary course of post, unless on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, he is excused by the Minister for his absence from those meetings;
- 25 (f) if he is convicted in New South Wales of a crime or an offence punishable by imprisonment for 12 months or longer, or if he is convicted elsewhere than in New South Wales of a crime or an offence which, if committed in New South Wales, would be a crime or an offence so punishable;
- (g) if he is removed from office by the Governor under subclause (2); or
- 30 (h) on his attaining the age of 65 years.
- (2) The Governor may remove a member from office for any cause.
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Local Government Borrowing Corporation.

SCHEDULE 2.

(Sec. 5 (5).)

PROVISIONS WITH RESPECT TO MEETINGS OF THE BOARD.

Convening of meetings.

- 5 1. Meetings of the Board may be convened by the Chairman or by any 3 members.

Quorum.

2. The Chairman and 2 other members constitute a quorum of the Board.

Presiding member.

3. The Chairman shall preside at meetings of the Board.

10 Decisions of the Board.

4. (1) A meeting of the Board at which a quorum is present may transact any business of the Board.

(2) A decision supported by a majority of votes at a meeting of the Board at which a quorum is present is a decision of the Board.

15 Voting.

5. In the event of an equality of votes at a meeting of the Board at which a quorum is present, the Chairman has a casting vote as well as a deliberative vote.

Procedure.

6. The procedure for the calling of, and for the conduct of business at, a meeting of the Board shall, subject to this Schedule, be as determined by the Board.

Local Government Borrowing Corporation.

SCHEDULE 3.

(Sec. 11.)

ACCOUNTS AND AUDIT.

Accounts.

5 1. (1) The Corporation shall cause to be kept proper accounts and records in relation to all of its operations.

(2) The Corporation shall, as soon as practicable, but within 6 months, after the end of each financial year of the Corporation, prepare and submit to the Minister for presentation to Parliament a statement of accounts, together with the Auditor-
10 General's certificate given under this clause in relation to the statement.

(3) The statement of accounts shall be in a form approved by the Auditor-General, and shall include such information as is requested by him, and shall exhibit a true and fair view of the financial position and transactions of the Corporation.

(4) The Corporation shall, as soon as practicable, but within 4 months, after
15 the end of the financial year to which a statement of accounts relates, transmit the statement to the Auditor-General for verification and certification.

(5) The Auditor-General's certificate shall state that he has audited the accounts of the Corporation relating to the relevant financial year, and shall indicate whether the statement of accounts complies with subclause (3), and shall set forth any
20 qualifications subject to which the certificate is given.

(6) Nothing in this clause prevents the alteration of the statement of accounts, with the approval of the Auditor-General, after its receipt by him and before its submission to the Minister.

(7) The Minister shall lay the statement of accounts, or cause it to be laid,
25 together with the Auditor-General's certificate, before both Houses of Parliament as soon as practicable after the receipt by him of the statement.

Audit.

2. (1) The accounts and records of financial transactions of the Corporation, and the records relating to assets of or in the custody of the Corporation, shall be inspected
30 and audited by the Auditor-General.

(2) For the purposes of any such inspection and audit, the Auditor-General or a person authorised by him is entitled at all reasonable times to full and free access to the accounts, records, documents and papers of the Corporation and may make copies thereof or take extracts therefrom.

Local Government Borrowing Corporation.

SCHEDULE 3—*continued.*ACCOUNTS AND AUDIT—*continued.*

- 5 (3) The Auditor-General or a person authorised by him may require a person, being a member, officer or employee of the Corporation, to furnish him with such information in the possession of the person or to which the person has access as the Auditor-General or authorised person considers necessary for the purposes of the functions of the Auditor-General under this Act, and the person shall comply with the requirement.

Penalty: \$200.

- 10 (4) The Auditor-General may dispense with all or any part of the detailed inspection and audit of any accounts or records referred to in subclause (1).

(5) The Auditor-General shall report to the Corporation and the Minister on the result of any such inspection and audit, and as to such irregularities or other matters as in his judgment call for special notice or as are prescribed.

- 15 (6) Towards defraying the costs and expenses of any such inspection and audit, the Corporation shall pay to the Consolidated Fund such amounts, at such times, as the Treasurer decides.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1983

