

CONCURRENCE COPY

PUBLIC AUTHORITIES (FINANCIAL ACCOMMODATION) FURTHER AMENDMENT BILL, 1983

EXPLANATORY NOTE

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

The objects of this Bill are to clarify the application of the Public Authorities (Financial Accommodation) Act, 1981 ("the Act"), to various forms of financial accommodation and related arrangements, and to make further provisions relating to financial accommodation, and guarantees given in connection with financial accommodation, obtained under the Act.

The Bill amends the Act, so as—

- (a) to make it clear that certain references in the Act to "the repayment of financial accommodation" cover payments of any kind to be made by a public authority in connection with financial accommodation obtained by it (Schedule 1 (2) (b)—proposed section 4 (3); and consequential amendments in Schedule 1 (4), (6) (d), (9));
- (b) to make it clear that references to "obtaining financial accommodation" cover participation by a public authority in approved transactions or classes of transactions (Schedule 1 (2) (b)—proposed section 4 (4));
- (c) to make it clear that a public authority has all necessary power to enter into transactions relating to approved financial accommodation (Schedule 1 (3)—proposed section 5 (2));
- (d) to make it clear that the Act extends to financial accommodation obtained from an inter-related combination or series of transactions, whether or not the public authority concerned is a party to all the transactions (Schedule 1 (5)—proposed section 7B (3), (4));
- (e) to enable financial accommodation of a kind covered by other provisions of the Act to be brought within section 16 of the Act, thereby (among other things)—
 - (i) enabling any guarantee to be the subject of negotiation instead of being compulsory; and
 - (ii) enabling the application of section 16A, as mentioned in paragraph (f) below,(Schedule 1 (6) (b), (c)); and
- (f) to enable financial accommodation certified as being of special significance to the State to be obtained by a public authority on certain special terms and conditions, including terms and conditions that bind the authority to perform

obligations (including obligations to make payments of money) which in some circumstances the authority might not otherwise have to perform (Schedule 1 (7)—proposed section 16A).

The Bill also—

- (a) makes other amendments to the Act of a minor or consequential nature (Schedule 1 (1), (2) (a), (5) (proposed section 7B (1), (2)), (6) (a), (8), (10));
 - (b) provides that any approvals, contracts, agreements, transactions and guarantees given or entered into before the date of assent to the Bill are as valid and effectual as if the amendments made by the Bill had always been in force and applicable (Schedule 2); and
 - (c) makes other provisions of an ancillary nature.
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**PUBLIC AUTHORITIES (FINANCIAL ACCOMMODATION)
FURTHER AMENDMENT BILL, 1983**

No. , 1983.

A BILL FOR

An Act to amend the Public Authorities (Financial Accommodation) Act, 1981, with respect to the financial accommodation that may be obtained under that Act by certain public authorities, and for other purposes.

[MR BOOTH—24 *August*, 1983.]

Public Authorities (Financial Accommodation) Further Amendment.

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 "Public Authorities (Financial Accommodation) Further Amendment Act, 1983".

Principal Act.

2. The Public Authorities (Financial Accommodation) Act, 1981, is referred to in this Act as the Principal Act.

Schedules.

3. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT.

SCHEDULE 2.—VALIDATION AND TRANSITIONAL PROVISIONS.

15 Amendment of Act No. 82, 1981.

4. The Principal Act is amended in the manner set forth in Schedule 1.

Validation and transitional provisions.

5. Schedule 2 has effect.

Public Authorities (Financial Accommodation) Further Amendment.

SCHEDULE 1.

(Sec. 4.)

AMENDMENTS TO THE PRINCIPAL ACT.

(1) (a) Section 3—

5 From the matter relating to Part II, omit “7”, insert instead “7B”.

(b) Section 3—

From the matter relating to Part V, omit “15, 16”, insert instead “15-16A”.

10 (2) (a) Section 4 (1), definition of “financial accommodation”—

Omit “any other”, insert instead “also includes any”.

(b) Section 4 (3), (4)—

Omit section 4 (3), insert instead:—

15 (3) In this Act (except Parts III and IV and Schedule 3), a reference (however expressed) to the repayment of any financial accommodation includes a reference to the payment of any money that is, in relation to that financial accommodation, payable by the authority concerned (whether or not by way of repayment of money by the authority, and whether or not constituting a payment by way of advance).

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(4) In this Act, a reference (however expressed) to obtaining financial accommodation includes a reference to participating in a transaction or class of transactions referred to in the definition of “financial accommodation” in subsection (1).

Public Authorities (Financial Accommodation) Further Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(3) Section 5 (2)—

At the end of section 5, insert:—

5 (2) Where an authority is authorised by this Act to obtain financial accommodation, it is hereby empowered to the necessary extent (whether or not the authority has the necessary power apart from this subsection) to do all things necessary or convenient to be done in connection therewith and, in particular, may—

10 (a) enter into any contract, agreement or other transaction in connection therewith, including any transaction that forms part of an arrangement of the kind referred to in section 7B (3); and

15 (b) incur any obligations under such a contract, agreement or other transaction, and make any payments (which may include advances) pursuant thereto, whether in Australian currency or foreign currency.

(4) Section 6—

Omit “and” where secondly occurring, insert instead “including”.

20 (5) Section 7B—

After section 7A, insert:—

Approvals.

25 7B. (1) Where by this Act any matter or thing relating to an authority is required or permitted to be done with the approval of the Governor, the approval referred to is approval given upon the recommendation of the Minister for the authority, with the concurrence of the Treasurer.

Public Authorities (Financial Accommodation) Further Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

5 (2) The Governor may approve any transactions or class of transactions for the purposes of this Act, as referred to in the definition of "financial accommodation" in section 4 (1).

10 (3) Without affecting the generality of any other provision of this Act, a transaction or class of transactions may be approved under subsection (2) whether or not the transaction or any such transaction constitutes or is part of an arrangement consisting of an inter-related combination or series of transactions (whether or not involving the repayment of money by the authority) under which, in the opinion of the Minister for an authority, the authority has obtained, is obtaining or may obtain a direct or indirect benefit.

15 (4) Subsection (3) applies to a combination or series of transactions notwithstanding that the authority concerned is not a party to all of the transactions, so long as it is a party to at least one of them.

(6) (a) Section 16 (2)—

Omit "in Australia", insert instead "within the Commonwealth".

20 (b) Section 16 (2A)—

After section 16 (2), insert:—

25 (2A) Without prejudice to any other powers conferred on it by this Act, but subject to subsection (3), where the Governor so approves, an authority to which this section applies may, under this section, obtain financial accommodation (whether within the Commonwealth or elsewhere) of a kind that is provided for by Part III or IV or section 15.

(c) Section 16 (3)—

After "(2)", insert "or (2A)".

Public Authorities (Financial Accommodation) Further Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(d) Section 16 (4)—

Omit “and” where firstly occurring, insert instead “including”.

5 (7) Section 16A—

After section 16, insert:—

Special provisions.

16A. (1) In this section—

10 “affiliate” means any company in which the authority referred to in subsection (2) has a controlling interest by virtue of its shareholding in the capital of the company;

“special arrangement” means a contract, agreement or other transaction referred to in subsection (2).

15 (2) This section applies to a contract, agreement or other transaction entered into by an authority (being an authority to which section 16 applies) in connection with financial accommodation referred to in section 16 (2) or (2A), where the contract, agreement or transaction is, or relates to a project that is, approved under subsection (3) as one to which this section applies.

20 (3) Where the Minister for the authority and the Treasurer certify to the Governor that they are of the opinion that a contract, agreement or transaction, or a project, is of special significance to the State, the Governor may approve it as one to which this section applies.

25 (4) A special arrangement may contain absolute and unconditional covenants and promises and, in particular, may contain—

30 (a) absolute and unconditional covenants or promises (however expressed) by the authority or an affiliate to pay for, or to make payments calculated by reference to, output or some

Public Authorities (Financial Accommodation) Further Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- 5 other product or service, or the prospect of obtaining output or some other product or service, whether or not that output, product or service is, at any relevant time—
- (i) produced, delivered or supplied; or
 - (ii) capable of being produced, delivered or supplied;
- (b) absolute and unconditional covenants or promises (however expressed) by the authority or an affiliate—
- 10 (i) to purchase, and pay for, any property; or
- (ii) to pay rental or other consideration as lessee (whether or not the relevant lease or leased property continues in existence),
- 15 in the events or circumstances specified in the special arrangement; and
- (c) absolute and unconditional covenants or promises (however expressed) by the authority or an affiliate to make loans (at interest or otherwise) or other payments in the events or circumstances specified in the special arrangement,
- 20 or any of them.
- (5) A covenant or promise referred to in subsection (4) (a) may contain an obligation to make payments in advance.
- (6) Where the authority, in any special arrangement, makes a covenant or promise (however expressed) to make any payment
- 25 irrespective of any event or circumstance which otherwise would or might at law terminate, or permit termination of, the arrangement or excuse compliance with, or performance of, or provide a defence to, any proceedings to enforce the covenant or promise, the covenant or promise shall operate and be enforceable in accordance with its terms
- 30 notwithstanding any provision of the Frustrated Contracts Act, 1978, any other Act or statute or any rule of law to the contrary.

Public Authorities (Financial Accommodation) Further Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

5 (7) A special arrangement may contain a provision (how-
ever expressed) that the arrangement or any part thereof shall not be
terminated on account of any matter or thing referred to in the special
arrangement and shall be enforceable notwithstanding any such
10 matter or thing, being or including (without limiting the generality
of the foregoing) any default, event of force majeure or other event
which would or might at law otherwise terminate, or permit termina-
tion of, the arrangement or excuse compliance with, or performance
of, or provide a defence to, any proceedings to enforce the arrange-
ment, and where any special arrangement so provides the provision—

15 (a) shall operate in accordance with its terms so that the special
arrangement or the relevant part thereof shall not be capable
of being terminated on account of any such matter or thing;
and

(b) shall be enforceable in accordance with its terms,
notwithstanding any provision of the Frustrated Contracts Act, 1978,
any other Act or statute or any rule of law to the contrary.

20 (8) A special arrangement may include an express waiver
by the authority of its immunity (if any) under any Act or rule of
law from proceedings, either in whole or in part, and any such waiver
shall operate in accordance with its terms notwithstanding the provi-
sions of any Act or rule of law to the contrary.

25 (9) Nothing in this section limits any powers conferred on
an authority under any other provisions of this Act.

(8) Section 17—

Omit the section, insert instead:—

Interpretation.

30 17. (1) In section 18, a reference to a guarantee is a reference to
a guarantee under section 13 or 16.

Public Authorities (Financial Accommodation) Further Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(2) In section 20, a reference to a guarantee is a reference to a guarantee under section 11, 13 or 16.

5 (9) Schedule 2, clause 2 (1)—

Omit “and, where payable,”, insert instead “, including, where interest is payable, an obligation”.

(10) Schedule 3, clause 1 (1) (c)—

Omit “section”, insert instead “clause”.

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SCHEDULE 2.

(Sec. 5.)

VALIDATION AND TRANSITIONAL PROVISIONS.

1. In this Schedule, “original commencing day” means the day appointed and notified under section 2 (2) of the Principal Act.

15 2. (1) This clause applies to—

(a) any approval given or purporting to have been given under the Principal Act before the commencement of this Act;

(b) any contract, agreement or other transaction entered into or purporting to have been entered into by an authority within the meaning of the Principal Act before that commencement; and

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(c) any guarantee executed or purporting to have been executed before that commencement.

Public Authorities (Financial Accommodation) Further Amendment.

SCHEDULE 2—*continued.*VALIDATION AND TRANSITIONAL PROVISIONS—*continued.*

5 (2) Any approval, contract, agreement, transaction or guarantee to which this clause applies is as valid and effectual, and shall be deemed to have been, at all times since it was or purports to have been given, entered into or executed, as valid and effectual, as if—

(a) the amendments made by this Act had commenced on the original commencing day; and

10 (b) any necessary opinions referred to in section 7B of the Principal Act, as amended by this Act, had been formed at all relevant times.

3. Without limiting the operation of clause 2, section 16A of the Principal Act, as amended by this Act, applies to a contract, agreement or transaction referred to in clause 2 (1) (b), and shall be deemed to have so applied at all times since the contract, agreement or transaction was or purports to have been entered into, as if—

15 (a) that section had commenced on the original commencing day and had at all relevant times applied to the contract, agreement or transaction; and

(b) any necessary certificates and approvals had been duly given under that section in connection therewith.

BY AUTHORITY

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

**PUBLIC AUTHORITIES (FINANCIAL ACCOMMODATION)
FURTHER AMENDMENT ACT, 1983, No. 78**

New South Wales



ANNO TRICESIMO SECUNDO

ELIZABETHÆ II REGINÆ

Act No. 78, 1983.

An Act to amend the Public Authorities (Financial Accommodation) Act, 1981, with respect to the financial accommodation that may be obtained under that Act by certain public authorities, and for other purposes. [Assented to, 2nd September, 1983.]

Public Authorities (Financial Accommodation) Further Amendment.

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:—

Short title.

1. This Act may be cited as the "Public Authorities (Financial Accommodation) Further Amendment Act, 1983".

Principal Act.

2. The Public Authorities (Financial Accommodation) Act, 1981, is referred to in this Act as the Principal Act.

Schedules.

3. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT.

SCHEDULE 2.—VALIDATION AND TRANSITIONAL PROVISIONS.

Amendment of Act No. 82, 1981.

4. The Principal Act is amended in the manner set forth in Schedule 1.

Validation and transitional provisions.

5. Schedule 2 has effect.

Public Authorities (Financial Accommodation) Further Amendment.

SCHEDULE 1.

(Sec. 4.)

AMENDMENTS TO THE PRINCIPAL ACT.

(1) (a) Section 3—

From the matter relating to Part II, omit “7”, insert instead “7B”.

(b) Section 3—

From the matter relating to Part V, omit “15, 16”, insert instead “15-16A”.

(2) (a) Section 4 (1), definition of “financial accommodation”—

Omit “any other”, insert instead “also includes any”.

(b) Section 4 (3), (4)—

Omit section 4 (3), insert instead:—

(3) In this Act (except Parts III and IV and Schedule 3), a reference (however expressed) to the repayment of any financial accommodation includes a reference to the payment of any money that is, in relation to that financial accommodation, payable by the authority concerned (whether or not by way of repayment of money by the authority, and whether or not constituting a payment by way of advance).

(4) In this Act, a reference (however expressed) to obtaining financial accommodation includes a reference to participating in a transaction or class of transactions referred to in the definition of “financial accommodation” in subsection (1).

Public Authorities (Financial Accommodation) Further Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(3) Section 5 (2)—

At the end of section 5, insert:—

(2) Where an authority is authorised by this Act to obtain financial accommodation, it is hereby empowered to the necessary extent (whether or not the authority has the necessary power apart from this subsection) to do all things necessary or convenient to be done in connection therewith and, in particular, may—

- (a) enter into any contract, agreement or other transaction in connection therewith, including any transaction that forms part of an arrangement of the kind referred to in section 7B (3); and
- (b) incur any obligations under such a contract, agreement or other transaction, and make any payments (which may include advances) pursuant thereto, whether in Australian currency or foreign currency.

(4) Section 6—

Omit “and” where secondly occurring, insert instead “including”.

(5) Section 7B—

After section 7A, insert:—

Approvals.

7B. (1) Where by this Act any matter or thing relating to an authority is required or permitted to be done with the approval of the Governor, the approval referred to is approval given upon the recommendation of the Minister for the authority, with the concurrence of the Treasurer.

Public Authorities (Financial Accommodation) Further Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(2) The Governor may approve any transactions or class of transactions for the purposes of this Act, as referred to in the definition of "financial accommodation" in section 4 (1).

(3) Without affecting the generality of any other provision of this Act, a transaction or class of transactions may be approved under subsection (2) whether or not the transaction or any such transaction constitutes or is part of an arrangement consisting of an inter-related combination or series of transactions (whether or not involving the repayment of money by the authority) under which, in the opinion of the Minister for an authority, the authority has obtained, is obtaining or may obtain a direct or indirect benefit.

(4) Subsection (3) applies to a combination or series of transactions notwithstanding that the authority concerned is not a party to all of the transactions, so long as it is a party to at least one of them.

(6) (a) Section 16 (2)—

Omit "in Australia", insert instead "within the Commonwealth".

(b) Section 16 (2A)—

After section 16 (2), insert:—

(2A) Without prejudice to any other powers conferred on it by this Act, but subject to subsection (3), where the Governor so approves, an authority to which this section applies may, under this section, obtain financial accommodation (whether within the Commonwealth or elsewhere) of a kind that is provided for by Part III or IV or section 15.

(c) Section 16 (3)—

After "(2)", insert "or (2A)".

Public Authorities (Financial Accommodation) Further Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(d) Section 16 (4)—

Omit “and” where firstly occurring, insert instead “including”.

(7) Section 16A—

After section 16, insert:—

Special provisions.

16A. (1) In this section—

“affiliate” means any company in which the authority referred to in subsection (2) has a controlling interest by virtue of its shareholding in the capital of the company;

“special arrangement” means a contract, agreement or other transaction referred to in subsection (2).

(2) This section applies to a contract, agreement or other transaction entered into by an authority (being an authority to which section 16 applies) in connection with financial accommodation referred to in section 16 (2) or (2A), where the contract, agreement or transaction is, or relates to a project that is, approved under subsection (3) as one to which this section applies.

(3) Where the Minister for the authority and the Treasurer certify to the Governor that they are of the opinion that a contract, agreement or transaction, or a project, is of special significance to the State, the Governor may approve it as one to which this section applies.

(4) A special arrangement may contain absolute and unconditional covenants and promises and, in particular, may contain—

(a) absolute and unconditional covenants or promises (however expressed) by the authority or an affiliate to pay for, or to make payments calculated by reference to, output or some

Public Authorities (Financial Accommodation) Further Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

other product or service, or the prospect of obtaining output or some other product or service, whether or not that output, product or service is, at any relevant time—

- (i) produced, delivered or supplied; or
 - (ii) capable of being produced, delivered or supplied;
- (b) absolute and unconditional covenants or promises (however expressed) by the authority or an affiliate—
- (i) to purchase, and pay for, any property; or
 - (ii) to pay rental or other consideration as lessee (whether or not the relevant lease or leased property continues in existence),

in the events or circumstances specified in the special arrangement; and

- (c) absolute and unconditional covenants or promises (however expressed) by the authority or an affiliate to make loans (at interest or otherwise) or other payments in the events or circumstances specified in the special arrangement,

or any of them.

(5) A covenant or promise referred to in subsection (4) (a) may contain an obligation to make payments in advance.

(6) Where the authority, in any special arrangement, makes a covenant or promise (however expressed) to make any payment irrespective of any event or circumstance which otherwise would or might at law terminate, or permit termination of, the arrangement or excuse compliance with, or performance of, or provide a defence to, any proceedings to enforce the covenant or promise, the covenant or promise shall operate and be enforceable in accordance with its terms notwithstanding any provision of the Frustrated Contracts Act, 1978, any other Act or statute or any rule of law to the contrary.

Public Authorities (Financial Accommodation) Further Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(7) A special arrangement may contain a provision (however expressed) that the arrangement or any part thereof shall not be terminated on account of any matter or thing referred to in the special arrangement and shall be enforceable notwithstanding any such matter or thing, being or including (without limiting the generality of the foregoing) any default, event of force majeure or other event which would or might at law otherwise terminate, or permit termination of, the arrangement or excuse compliance with, or performance of, or provide a defence to, any proceedings to enforce the arrangement, and where any special arrangement so provides the provision—

(a) shall operate in accordance with its terms so that the special arrangement or the relevant part thereof shall not be capable of being terminated on account of any such matter or thing;
and

(b) shall be enforceable in accordance with its terms,
notwithstanding any provision of the Frustrated Contracts Act, 1978, any other Act or statute or any rule of law to the contrary.

(8) A special arrangement may include an express waiver by the authority of its immunity (if any) under any Act or rule of law from proceedings, either in whole or in part, and any such waiver shall operate in accordance with its terms notwithstanding the provisions of any Act or rule of law to the contrary.

(9) Nothing in this section limits any powers conferred on an authority under any other provisions of this Act.

(8) Section 17—

Omit the section, insert instead:—

Interpretation.

17. (1) In section 18, a reference to a guarantee is a reference to a guarantee under section 13 or 16.

Public Authorities (Financial Accommodation) Further Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(2) In section 20, a reference to a guarantee is a reference to a guarantee under section 11, 13 or 16.

(9) Schedule 2, clause 2 (1)—

Omit “and, where payable,”; insert instead “, including, where interest is payable, an obligation”.

(10) Schedule 3, clause 1 (1) (c)—

Omit “section”, insert instead “clause”.

SCHEDULE 2.

(Sec. 5.)

VALIDATION AND TRANSITIONAL PROVISIONS.

1. In this Schedule, “original commencing day” means the day appointed and notified under section 2 (2) of the Principal Act.

2. (1) This clause applies to—

- (a) any approval given or purporting to have been given under the Principal Act before the commencement of this Act;
- (b) any contract, agreement or other transaction entered into or purporting to have been entered into by an authority within the meaning of the Principal Act before that commencement; and
- (c) any guarantee executed or purporting to have been executed before that commencement.

Public Authorities (Financial Accommodation) Further Amendment.

SCHEDULE 2—*continued.*VALIDATION AND TRANSITIONAL PROVISIONS—*continued.*

(2) Any approval, contract, agreement, transaction or guarantee to which this clause applies is as valid and effectual, and shall be deemed to have been, at all times since it was or purports to have been given, entered into or executed, as valid and effectual, as if—

- (a) the amendments made by this Act had commenced on the original commencing day; and
- (b) any necessary opinions referred to in section 7B of the Principal Act, as amended by this Act, had been formed at all relevant times.

3. Without limiting the operation of clause 2, section 16A of the Principal Act, as amended by this Act, applies to a contract, agreement or transaction referred to in clause 2 (1) (b), and shall be deemed to have so applied at all times since the contract, agreement or transaction was or purports to have been entered into, as if—

- (a) that section had commenced on the original commencing day and had at all relevant times applied to the contract, agreement or transaction; and
- (b) any necessary certificates and approvals had been duly given under that section in connection therewith.

In the name and on behalf of Her Majesty I assent to this Act.

J. A. ROWLAND,
Governor.

Government House,
Sydney, 2nd September, 1983.



