TREASURY CORPORATION (AMENDMENT) BILL 1992

MR PRESIDENT

I MOVE:

THAT THIS BILL NOW BE READ A SECOND TIME.

THIS NEW SOUTH WALES GOVERNMENT IS COMMITTED TO EXTENDING THE BEST PRIVATE SECTOR FINANCIAL MANAGEMENT PRACTICES TO THE PUBLIC SECTOR. THIS PROMOTES PUBLIC SECTOR FINANCIAL EFFICIENCY.

ACCORDINGLY, THE GOVERNMENT NOW PROPOSES TO UPDATE CERTAIN ASPECTS OF ONE OF THE MOST IMPORTANT ACTS GOVERNING FINANCIAL OPERATIONS OF PUBLIC AUTHORITIES - THE TREASURY CORPORATION ACT 1983. THE AMENDMENTS ARE OF A TECHNICAL OR MACHINERY NATURE AND AIM TO MAINTAIN FINANCIAL LEGISLATION WHICH MEETS CURRENT PRACTICAL REQUIREMENTS.

THE TREASURY CORPORATION (AMENDMENT) BILL COVERS TWO MATTERS OF A MACHINERY NATURE IN CONNECTION WITH TREASURY CORPORATION'S (TCORP'S) FINANCING OPERATIONS. TCORP HAS BEEN PROVIDING FINANCIAL SERVICES TO THE STATE ON AN ECONOMICAL AND COST-EFFECTIVE BASIS SINCE ITS INCEPTION IN 1983 AND THE AMENDMENTS ENABLE TCORP TO CONTINUE DEVELOPING THIS ROLE.

A STATUTORY CORPORATION SUCH AS TCORP MAY ONLY EXERCISE THE FUNCTIONS CONFERRED ON IT BY LEGISLATION. ON SEVERAL OCCASIONS

THIS HAS PREVENTED TCORP FROM PURSUING THE OBJECTIVES FOR WHICH IT EXISTS AS SOME ACTIVITIES REQUIRED OF A MODERN TCORP ARE NOT CONTEMPLATED IN THE ORIGINAL LEGISLATION.

THE TREASURY CORPORATION (AMENDMENT) BILL PROVIDES TCORP WITH ONGOING POWER TO ENGAGE IN ACTIVITIES THAT ACCORD WITH ITS ORIGINAL OBJECTIVES, NAMELY THE PROVISION OF FINANCIAL SERVICES FOR THE BENEFIT OF THE GOVERNMENT AND PUBLIC SECTOR BODIES. THIS WILL REMOVE THE NEED FOR TCORP TO IDENTIFY A SPECIFIC HEAD OF POWER IN THE ACT FOR SUCH ACTIVITY . TCORP WILL HAVE THE SAME LEGAL CAPACITY, POWER AND AUTHORITY AS A COMPANY UNDER THE CORPORATIONS LAW TO PURSUE ITS OBJECTS BUT WILL REMAIN SUBJECT TO THE ONGOING DIRECTION AND CONTROL OF THE TREASURER.

FOR THOSE PEOPLE DEALING WITH TCORP PROTECTION WILL BE PROVIDED BY NEW PROVISIONS THAT REMOVE THE NEED TO INQUIRE INTO TCORP'S POWER TO ENTER INTO THESE DEALINGS.

THE OTHER RELEVANT PROPOSAL IN THE TREASURY CORPORATION (AMENDMENT) BILL IS THE CONFERRAL OF CLEAR POWER ON PUBLIC AUTHORITIES AND OTHER PUBLIC BODIES TO APPOINT TCORP AS THEIR AGENT FOR ANY PURPOSE.

TCORP CURRENTLY POSSESSES THE POWER TO PARTICIPATE WITH PUBLIC AUTHORITIES IN MANAGING THEIR ASSETS AND LIABILITIES. THIS IS

USUALLY DONE THROUGH "DERIVATIVE" RISK MANAGEMENT INSTRUMENTS SUCH AS SWAPS, OPTIONS, FORWARDS AND FUTURES, DEFINED IN THE PUBLIC AUTHORITIES (FINANCIAL ARRANGEMENTS) ACT AS "FINANCIAL ADJUSTMENTS". THIS AMENDMENT CONFERS POWER ON PUBLIC AUTHORITIES AND OTHER PUBLIC BODIES TO APPOINT TCORP AS THEIR AGENT TO ENTER INTO THESE AND OTHER ARRANGEMENTS, ALLOWING THEM TO DRAW ON TCORP'S EXPERTISE IN MINIMISING FINANCIAL RISK.

I TABLE A SUMMARY OF THE BILL.

I COMMEND THE BILL TO THE HOUSE.

FIRST PRINT

TREASURY CORPORATION (AMENDMENT) BILL 1992

NEW SOUTH WALES

EXPLANATORY NOTE

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

A statutory corporation may only exercise the functions that are conferred on the corporation by Act. This may operate to prevent such a corporation pursuing the objects for which it is established by means of a particular activity because the activity is not specifically mentioned or contemplated in the list of functions of the corporation. The Corporations Law specifically provides that this principle is not applicable to companies.

The object of this Bill is to amend the Treasury Corporation Act 1983 to give the Treasury Corporation ("TCorp") full power to engage in any activity that is in pursuance of the objects for which it is established. This will remove the need for TCorp to identify a specific head of power in the Act for each such activity.

At present the Act contains a list of TCorp's functions. The list is narrow and specific and can operate to unduly restrict TCorp in its role as provider of financial services to the public sector.

The Bill inserts new provisions which remove the need for a list of specific functions. There will be a clear statement of the principal object for which TCorp is established, namely, to provide financial services for or for the benefit of the Government and public sector bodies. TCorp will have the same legal capacity, powers and authorities as a company under the Corporations Law to pursue its objects. TCorp will remain subject to the control and direction of the Treasurer.

A person having dealings with TCorp will be protected by new provisions that remove the need for such a person to inquire into TCorp's power to enter into those dealings.

The specific list of functions currently in the Act are re-enacted in the form of examples of the activities in which TCorp can engage. Some of the existing functions also contain restrictions on TCorp or extra powers, and these have been retained in a new format. Neither the list of examples nor the extra powers are to be interpreted as limiting TCorp's powers.

In addition, section 8 has been amended to confer a clear power on public authorities and other public bodies to appoint TCorp as their agent for any purpose. A minor consequential amendment is made to section 7 and the long title of the Act.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision to give effect to the amendments to the Treasury Corporation Act 1983 specified in Schedule 1.

Schedule 1 contains the amendments to the Treasury Corporation Act 1983 described above.

FIRST PRINT

TREASURY CORPORATION (AMENDMENT) BILL 1992

NEW SOUTH WALES

TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Treasury Corporation Act 1983 No. 75

SCHEDULE 1—AMENDMENTS

TREASURY CORPORATION (AMENDMENT) BILL 1992

NEW SOUTH WALES

No. , 1992

A BILL FOR

An Act to amend the Treasury Corporation Act 1983 to make further provision with respect to the objects and functions of the Treasury Corporation; and for other purposes.

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Treasury Corporation (Amendment) Act 1992.

Commencement

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

Amendment of Treasury Corporation Act 1983 No. 75

3. The Treasury Corporation Act 1983 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Sections 5–6B:

Omit sections 5 and 6, insert instead:

Objects of the Corporation

5. (1) The principal object of the Corporation is to provide financial services for or for the benefit of the Government, public authorities and other public bodies.

(2) The Corporation has such other objects as may be provided for by or under any other Act.

Powers etc. of the Corporation

6. The Corporation has, for the purpose of pursuing its objects (both within and outside the State), the same legal capacity, powers and authorities as a company under the Corporations Law.

Examples of activities in which the Corporation can engage

6A. (1) The activities in which the Corporation can engage include the following:

SCHEDULE 1—AMENDMENTS—*continued*

(a) it can provide the Government, a public authority or any other public body with financial accommodation on such terms and conditions as the Corporation considers appropriate;

(b) it can act as agent for the Government, a public authority or any other public body in obtaining financial accommodation, effecting a financial adjustment or entering into a joint financing arrangement under the funding Act or any other Act;

(c) it can appoint and employ a person (including a public authority or other public body) as agent for the purpose of exercising any power of the Corporation;

(d) it can by agreement with the Government assume any liability incurred by the Government in relation to finance obtained by the Government;

(e) it can invest funds of or under the control of the Corporation;

(f) it can require the Government, a public authority or any other public body to pay to the Corporation such fees as the Corporation considers appropriate for the performance of its functions;

(g) it can assume the responsibility of the Government, a public authority or any other public body for the administration of any matter relating to financial accommodation, financial adjustments or joint financing arrangements;

(h) it can accept money for investment from the Government and from public authorities and other public bodies;

(i) it can aggregate or divide, in such manner as it considers appropriate, any funds obtained by it for the purpose of providing financial accommodation to the Government, public authorities and other public bodies;

(j) it can redeem any securities issued by the Corporation and hold, cancel or re-issue any such securities;

SCHEDULE 1—AMENDMENTS—*continued*

(k) it can manage the liabilities and assets of the Corporation having regard to current situations and possible eventualities;

(l) it can carry out, participate in, and give advice concerning, the management of the liabilities and assets of the Government, public authorities and other public bodies;

(m) it can enter into a contract of guarantee;

(n) it can do anything that may be necessary or convenient to be done for the purpose of pursuing its objects.

(2) This section is not to be read as in any way limiting the functions of the Corporation.

Limitations on powers

6B. (1) The Corporation is not to invest funds of or under the control of the Corporation except:

(a) in the manner authorised by the Public Authorities (Financial Arrangements) Act 1987; or

(b) if that Act does not confer power on the Corporation to invest the funds concerned, in any other manner approved by the Treasurer.

(2) The regulations may make provision for or with respect to the manner in which the Corporation is to assume the responsibility of the Government, a public authority or other public body for the administration of any matter relating to financial accommodation obtained.

(3) The Corporation is not to enter into a contract of guarantee except on such terms and conditions as are approved by the Treasurer.

(4) The Corporation is not to appoint or employ a person (whether or not a public authority or other public body) to act as agent for the purpose of exercising the powers of the Corporation under the funding Act except with the approval of the Treasurer.

(5) The Corporation is not to act as agent for a public authority or other public body in obtaining financial

SCHEDULE 1—AMENDMENTS—*continued*

accommodation under the funding Act or any other Act when the financial accommodation is obtained from the Corporation.

(2) Section 7 (**Obligations of public authorities**):

From section 7 (1), omit "the Corporation exercises in relation to financial accommodation obtained by a public authority the powers conferred by section 5 (1) (d)", insert instead "the Corporation assumes the responsibility of a public authority or other public body for the administration of any matter relating to financial accommodation obtained by the public authority or other public body".

(3) Section 8 (**Powers of public authorities**):

At the end of section 8 (b), insert:

; and

(c) the Government and any public authority or other public body may appoint the Corporation to act as agent for it for any purpose.

(4) Section 9B:

After section 9A, insert:

Special powers of the Corporation

9B. (1) The Corporation has power to impose conditions relating to the provision by it of financial accommodation, the management by it of financial accommodation provided by it and the repayment of financial accommodation provided by it. Such a condition can be imposed before or after the financial accommodation is provided.

(2) The Corporation has power to replace securities and other like instruments evidencing financial accommodation that have been issued by the Government, a public authority or another public body with securities or other like instruments issued by the Government or the Corporation, subject to the following:

(a) the Corporation is not authorised to replace securities or other like instruments if the holder objects (in the manner required by the regulations) to the exchange;

SCHEDULE 1—AMENDMENTS—*continued*

(b) the terms and conditions on which securities and other like instruments can be replaced under this section are the terms and conditions determined by the Treasurer.

(3) The Corporation is empowered to act on behalf of, or as agent for, the Government in the negotiation, entering into and carrying out of any agreement to obtain finance.

(4) This section is not to be read as limiting the powers of the Corporation.

(5) Sections 11–12:

After section 10, insert:

Protection of persons having dealings with the Corporation

11. (1) The purpose of this section is to give protection to a person having dealings with the Corporation.

(2) An act of the Corporation is not invalid merely because it is not in pursuance of the objects of the Corporation.

(3) The performance of a function by the Corporation is not invalid merely because it is performed contrary to a restriction or prohibition imposed by or under this or any other Act.

(4) A person who has dealings with the Corporation is entitled to make the following assumptions in relation to those dealings:

(a) that the Corporation has power to have the dealings with the person;

(b) that the dealings are in pursuance of the objects of the Corporation;

(c) that the Corporation is acting in compliance with this Act and the funding Act.

(5) No actual or constructive notice that any of those assumptions is incorrect prevents a person from making those assumptions.

(6) In any proceedings in relation to dealings that a person has with the Corporation, an assertion by the Corporation or

SCHEDULE 1—AMENDMENTS—*continued*

any other person (except the person who has those dealings) that an assumption made under this section is incorrect is to be disregarded.

Corporation not liable for stamp duty

11A. The Corporation is not liable to pay stamp duty under the Stamp Duties Act 1920.

Special provision as to finance obtained by the Government for which Corporation is liable

12. Finance which the Government has obtained and in relation to which the Corporation has agreed to assume liability is not to be carried to the Consolidated Fund.

(6) Long title:

Omit the long title, insert instead:

An Act to constitute the New South Wales Treasury Corporation and to provide for the objects and functions of the Corporation; and for other purposes.

TREASURY CORPORATION (AMENDMENT) ACT 1992
No. 113

NEW SOUTH WALES

TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Treasury Corporation Act 1983 No. 75

SCHEDULE 1—AMENDMENTS

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[12]

TREASURY CORPORATION (AMENDMENT) ACT 1992
No. 113

NEW SOUTH WALES

Act No. 113, 1992

An Act to amend the Treasury Corporation Act 1983 to make further provision with respect to the objects and functions of the Treasury Corporation; and for other purposes. [Assented to 8 December 1992]

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Treasury Corporation (Amendment) Act 1992.

Commencement

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

Amendment of Treasury Corporation Act 1983 No. 75

3. The Treasury Corporation Act 1983 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Sections 5–6B:

Omit sections 5 and 6, insert instead:

Objects of the Corporation

5. (1) The principal object of the Corporation is to provide financial services for or for the benefit of the Government, public authorities and other public bodies.

(2) The Corporation has such other objects as may be provided for by or under any other Act.

Powers etc. of the Corporation

6. The Corporation has, for the purpose of pursuing its objects (both within and outside the State), the same legal capacity, powers and authorities as a company under the Corporations Law.

Examples of activities in which the Corporation can engage

6A. (1) The activities in which the Corporation can engage include the following:

SCHEDULE 1—AMENDMENTS—*continued*

(a) it can provide the Government, a public authority or any other public body with financial accommodation on such terms and conditions as the Corporation considers appropriate;

(b) it can act as agent for the Government, a public authority or any other public body in obtaining financial accommodation, effecting a financial adjustment or entering into a joint financing arrangement under the funding Act or any other Act;

(c) it can appoint and employ a person (including a public authority or other public body) as agent for the purpose of exercising any power of the Corporation;

(d) it can by agreement with the Government assume any liability incurred by the Government in relation to finance obtained by the Government;

(e) it can invest funds of or under the control of the Corporation;

(f) it can require the Government, a public authority or any other public body to pay to the Corporation such fees as the Corporation considers appropriate for the performance of its functions;

(g) it can assume the responsibility of the Government, a public authority or any other public body for the administration of any matter relating to financial accommodation, financial adjustments or joint financing arrangements;

(h) it can accept money for investment from the Government and from public authorities and other public bodies;

(i) it can aggregate or divide, in such manner as it considers appropriate, any funds obtained by it for the purpose of providing financial accommodation to the Government, public authorities and other public bodies;

(j) it can redeem any securities issued by the Corporation and hold, cancel or re-issue any such securities;

SCHEDULE 1—AMENDMENTS—*continued*

(k) it can manage the liabilities and assets of the Corporation having regard to current situations and possible eventualities;

(l) it can carry out, participate in, and give advice concerning, the management of the liabilities and assets of the Government, public authorities and other public bodies;

(m) it can enter into a contract of guarantee;

(n) it can do anything that may be necessary or convenient to be done for the purpose of pursuing its objects.

(2) This section is not to be read as in any way limiting the functions of the Corporation.

Limitations on powers

6B. (1) The Corporation is not to invest funds of or under the control of the Corporation except:

(a) in the manner authorised by the Public Authorities (Financial Arrangements) Act 1987; or

(b) if that Act does not confer power on the Corporation to invest the funds concerned, in any other manner approved by the Treasurer.

(2) The regulations may make provision for or with respect to the manner in which the Corporation is to assume the responsibility of the Government, a public authority or other public body for the administration of any matter relating to financial accommodation obtained.

(3) The Corporation is not to enter into a contract of guarantee except on such terms and conditions as are approved by the Treasurer.

(4) The Corporation is not to appoint or employ a person (whether or not a public authority or other public body) to act as agent for the purpose of exercising the powers of the Corporation under the funding Act except with the approval of the Treasurer.

(5) The Corporation is not to act as agent for a public authority or other public body in obtaining financial

SCHEDULE 1—AMENDMENTS—*continued*

accommodation under the funding Act or any other Act when the financial accommodation is obtained from the Corporation.

(2) Section 7 (**Obligations of public authorities**):

From section 7 (1), omit "the Corporation exercises in relation to financial accommodation obtained by a public authority the powers conferred by section 5 (1) (d)", insert instead "the Corporation assumes the responsibility of a public authority or other public body for the administration of any matter relating to financial accommodation obtained by the public authority or other public body".

(3) Section 8 (**Powers of public authorities**):

At the end of section 8 (b), insert:

; and

(c) the Government and any public authority or other public body may appoint the Corporation to act as agent for it for any purpose.

(4) Section 9B:

After section 9A, insert:

Special powers of the Corporation

9B. (1) The Corporation has power to impose conditions relating to the provision by it of financial accommodation, the management by it of financial accommodation provided by it and the repayment of financial accommodation provided by it. Such a condition can be imposed before or after the financial accommodation is provided.

(2) The Corporation has power to replace securities and other like instruments evidencing financial accommodation that have been issued by the Government, a public authority or another public body with securities or other like instruments issued by the Government or the Corporation, subject to the following:

(a) the Corporation is not authorised to replace securities or other like instruments if the holder objects (in the manner required by the regulations) to the exchange;

SCHEDULE 1—AMENDMENTS—*continued*

(b) the terms and conditions on which securities and other like instruments can be replaced under this section are the terms and conditions determined by the Treasurer.

(3) The Corporation is empowered to act on behalf of, or as agent for, the Government in the negotiation, entering into and carrying out of any agreement to obtain finance.

(4) This section is not to be read as limiting the powers of the Corporation.

(5) Sections 11–12:

After section 10, insert:

Protection of persons having dealings with the Corporation

11. (1) The purpose of this section is to give protection to a person having dealings with the Corporation.

(2) An act of the Corporation is not invalid merely because it is not in pursuance of the objects of the Corporation.

(3) The performance of a function by the Corporation is not invalid merely because it is performed contrary to a restriction or prohibition imposed by or under this or any other Act.

(4) A person who has dealings with the Corporation is entitled to make the following assumptions in relation to those dealings:

(a) that the Corporation has power to have the dealings with the person;

(b) that the dealings are in pursuance of the objects of the Corporation;

(c) that the Corporation is acting in compliance with this Act and the funding Act.

(5) No actual or constructive notice that any of those assumptions is incorrect prevents a person from making those assumptions.

(6) In any proceedings in relation to dealings that a person has with the Corporation, an assertion by the Corporation or

SCHEDULE 1—AMENDMENTS—*continued*

any other person (except the person who has those dealings) that an assumption made under this section is incorrect is to be disregarded.

Corporation not liable for stamp duty

11A. The Corporation is not liable to pay stamp duty under the Stamp Duties Act 1920.

Special provision as to finance obtained by the Government for which Corporation is liable

12. Finance which the Government has obtained and in relation to which the Corporation has agreed to assume liability is not to be carried to the Consolidated Fund.

(6) Long title:

Omit the long title, insert instead:

An Act to constitute the New South Wales Treasury Corporation and to provide for the objects and functions of the Corporation; and for other purposes.

[*Minister's second reading speech made in—*
Legislative Assembly on 18 November 1992
Legislative Council on 27 November 1992]

BY AUTHORITY
R. J. MILLIGAN, ACTING GOVERNMENT PRINTER—1992