

STATUTORY BODIES FINANCIAL ARRANGEMENTS AMENDMENT BILL 2002

EXPLANATORY NOTES

GENERAL OUTLINE

Short Title

The short title of the Bill is the *Statutory Bodies Financial Arrangements Amendment Bill 2002*.

Policy Objectives of the Bill

The objective of the *Statutory Bodies Financial Arrangements Amendment Bill 2002* is to:

- amend the *Statutory Bodies Financial Arrangements Act 1982* (“SBFA Act”) to clarify the application of part 7, division 3;
- amend the definition of financial arrangements;
- update references in part 6 of the SBFA Act to Queensland Investment Corporation (“QIC”) and Queensland Treasury Corporation (“QTC”) investment products;
- amend the SBFA Act to allow for conditions to be attached to any general approvals issued under part 9, division 2; and
- make minor technical amendments to the SBFA Act.

Reasons for the Objectives and how they will be achieved

Part 7 division 3

Part 7 division 3 of the SBFA Act enables a statutory body (without power under its authorising Act or another Act) to enter into a “financial arrangement”, as defined in the SBFA Act, with the Treasurer’s approval.

It was originally intended that statutory bodies would only require approval under part 7, division 3 where it was considered the general competence powers (such as the power of a body corporate or individual; power generally to enter contracts; or power to do things necessary, convenient or in connection with the performance of its functions) under its authorising Act were insufficient to allow the body to enter into a particular financial arrangement. This was intended, as there are many activities a statutory body should be able to perform under its general competence powers in its authorising Act, without needing approval under part 7, division 3 of the SBFA Act. However, the lack of a mandatory approval requirement for every transaction or arrangement that comes within the definition of financial arrangement has led to inconsistency and uncertainty in the application of part 7 division 3, particularly where higher risk transactions have been involved.

To overcome the current uncertainty surrounding the application of part 7 division 3, the SBFA Act has been amended by taking a risk management approach. A number of specific types of financial arrangements have been identified as involving a high degree of financial risk and defined as a type 1 financial arrangement. These type 1 financial arrangements come from the original definition of financial arrangement in the SBFA Act and will be subject to a mandatory approval requirement from the Treasurer. The only exception will be where a statutory body has, in its authorising Act, an express power to undertake a financial arrangement that is within the definition of a type 1 financial arrangement. A statutory body will not be able to rely on its general competence powers to enter into a type 1 financial arrangement. The amendments to part 7 division 3 and section 11, part 2B, reflect this.

Part 7A is a new part to the SBFA Act that deals with the remaining arrangements contained in the original definition of financial arrangements. These arrangements will become type 2 financial arrangements. The new section 11A, in part 2B, provides that a statutory body's powers under part 7A are additional to its powers in its authorising Act and any other parts of the SBFA Act. For a statutory body to undertake a type 2 financial arrangement, the Treasurer's approval is required where it has not been allocated express borrowing or investment powers under part 5 or 6 of the SBFA Act, or if it does not consider its general competence powers are sufficient for the remaining non borrowing and investment arrangements that are defined as type 2 financial arrangements.

Definition of financial arrangements

The definition of financial arrangements has been amended to reflect the two types of financial arrangements under parts 7 and 7A. The definition also now specifically refers to entering into derivative transactions and appointing a funds manager. In reviewing the original definition of financial arrangements certain financial arrangements have been amended or removed from the definitions, as these are arrangements that a statutory body should be able to enter into under its general competence powers.

Part 6 - Investment products

There are also amendments to the permitted range of investments outlined in sections 44 and 45 of the SBFA Act. Sections 44 and 45 set out the types of investments that may be entered into under category one and two investment powers and include references to investments provided by QIC and QTC. The QIC and QTC products have had name changes and so the SFBA Act is to be amended to incorporate this. To ensure the product details are kept up to date, the specific references to the QIC and QTC products will be replaced with a general reference and the specific products will be prescribed in the *Statutory Bodies Financial Arrangements Regulation 1997*. There will be no impact on what statutory bodies can invest in, rather this amendment will simplify the structure of the SBFA Act and allow future product developments to be more readily dealt with by regulation.

Part 9 division 2 – General Approvals

The amendment to part 9, division 2 of the SBFA Act will ensure the Treasurer has power to attach conditions to any general approvals issued under section 70. At present, part 9 provides the Treasurer with power to issue general approvals under division 2 and specific approvals under division 3. Whilst section 73, which is contained in part 9, division 3, provides the Treasurer with power to grant a specific approval on conditions considered necessary or desirable, section 70 is silent in respect to general approvals. Amending part 9, division 2 will provide certainty regarding the Treasurer's power to issue a general approval subject to conditions and will align division 2 with division 3.

Alternatives to the Bill

The policy objectives can only be achieved by legislative enactment.

Estimated Cost for Government Implementation

It is not expected the Bill will result in any cost to Government.

Consistency with Fundamental Legislative Principles

The Bill is generally consistent with fundamental legislative principles.

There are sections that enable matters to be dealt with by regulation, namely sections 44(1)(d) and 45(b)(iv) for investment powers and the definition of type 1 and type 2 financial arrangements contained in the Schedule to the SBFA Act. These amendments simply allow for the types of investment products managed by QIC and QTC and the terms of a definition to be further clarified by subordinate legislation. The objectives of the SBFA Act are not amended and the section still reads the same way.

Competition in the finance industry and the consequent rapid rate of innovation regarding investment products and financial arrangements prevents legislators from comprehensively determining and predicting the nature of the available investment products and financial arrangements in the future. It is also important to recognise the central role of the Treasurer in the management of State finances, in which financial arrangements and investments by statutory bodies are included as an integral part. The regulation power is also consistent with the current SBFA Act, in particular the current sections 44(1) and 45 and the definition of financial arrangements contained in the Schedule.

The use of subordinate legislation is essential to ensure that the objectives of the Bill are maintained and that an efficient means is provided to enable people with the requisite expertise to have input into the making and refining of the law. This is not denying the role of Parliament or failing to give it sufficient regard because ultimately, all subordinate legislation may be subject to a disallowance motion.

In view of the objectives of the Bill, Parliament's disallowance power for regulations and the Treasurer's integral role in the management of State finances, the provisions mentioned above are not considered to constitute inappropriate delegations of legislative power.

Consultation

The Bill was drafted by the Office of Parliamentary Counsel.

Extensive consultation on the Bill has been undertaken with all administering departments and through the administering departments, with the majority of statutory bodies. In addition, Queensland Treasury Corporation, Queensland Investment Corporation and the Local Government Association of Queensland were also consulted.

The consultation process has revealed support for the Bill.

NOTES ON PROVISIONS

Clause 1 provides for the short title of the Act.

Clause 2 provides for the commencement of the Act on a day to be fixed by proclamation.

Clause 3 states that the Act amends the SBFA Act.

Clause 4 effects a minor amendment to section 9(1) of the SBFA Act to omit the word ‘express’.

Clause 5 effects a minor amendment to section 10(1) of the SBFA Act to omit the word ‘express’.

Clause 6 amends section 11 of the SBFA Act by amending section 11(1), omitting sections 11(2) and (3) and inserting new sections 11(2) – (6), and renumbering section 11(4) as section 11(7).

Section 11(1) is amended by inserting words to make it subject to the new subsection (5).

The new section 11(2) provides that where a statutory body has no express power in its authorising Act or another Act to enter derivative transactions, then its power to enter these arrangements is limited to part 7 division 1.

The new section 11(3) provides that where a statutory body has no express power in its authorising Act or another Act to appoint a funds manager, then its power to do so is limited to part 7 division 2.

The new section 11(4) provides that where a statutory body has no express power in its authorising Act or another Act to enter a type 1 financial arrangement, then its power to enter a type 1 financial arrangement is limited to part 7 division 3.

The new section 11(5) provides that subsections (2) to (4) apply even though a statutory body has general competence powers, such as the powers of a body corporate or individual; power generally to enter contracts; or power to do things necessary, convenient or in connection with the performance of its functions.

The new section 11(6) provides that a statutory body's powers under the SBFA Act do not provide it with power to enter derivative transactions, appoint a fund manager, or enter into a type 1 financial arrangement except as allowed under part 7 divisions 1, 2 or 3 respectively.

The amended section 11 clarifies that part 7 is the sole source of a statutory body's powers, under the SBFA Act, to enter into a derivative transaction, appoint a fund manager, or enter into a type 1 financial arrangement and that a statutory body cannot rely upon a general competence power under its authorising Act to undertake any of these transactions.

Clause 7 inserts a new section 11A which provides that the powers given to a statutory body under part 7A are additional to its powers under other parts of the SBFA Act, its authorising Act or another Act. The new section 11A is a redraft of the provision appearing in section 11(1) of the current SBFA Act.

Clause 8 amends section 31 by inserting an example of something necessary or convenient for a statutory body's day-to-day operations after section 31(1). The example confirms that a statutory body may have a deposit and withdrawal account with a cheque book facility attached to enable the statutory body to draw cheques.

Clause 9 amends section 35(2)(b) by inserting after division 3 the words – 'or part 7A'.

Clause 10 amends section 44(1)(d) by removing specific references to QIC and QTC investment products and replacing them with a general reference, which enables these products to be prescribed by regulation.

Clause 11 amends section 45(b)(iv) by removing specific references to QIC and QTC investment products and replacing them with a general reference, which enables these products to be prescribed by regulation.

Clause 12 amends section 49 to cross-reference all the secured investments mentioned in the SBFA Act, namely sections 45(b)(iii), 46(1)(a), and 46(1)(c).

Clause 13 amends the heading to part 7 by omitting the word ‘OTHER’ and replacing with ‘TYPE 1’.

Clause 14 amends section 60 to insert in section 60(1) before ‘financial arrangement’, the words – ‘type 1 financial arrangement, type 2’. Section 60(2) is also amended to omit the words – ‘or derivative transaction’.

Clause 15 replaces the part 7 division 3 heading, inserts a new section 60A, and inserts a new part 7A.

The new section 60A is in part 7 division 3 and provides that a statutory body may, with the Treasurer’s approval, enter into an arrangement that is a type 1 financial arrangement. When read with section 11 in the amended SBFA Act, this will be a mandatory approval requirement for these types of financial arrangements, unless the statutory body has express powers in their authorising Act to enter into a financial arrangement that comes within type 1.

The new part 7A includes an application provision in section 61. Part 7A will apply to a statutory body if the statutory body does not have power to enter into a particular arrangement under another part of the SBFA Act, its authorising Act or another Act.

The new section 61A, in part 7A, is a redraft of the provisions appearing in section 61 of the current SBFA Act, with slight changes made to reflect that approval may be given by the Treasurer for type 2 financial arrangements in this section. The Treasurer’s approval is required, where a statutory body has not been allocated express borrowing or investment powers under parts 5 or 6 of the SBFA Act, or if they do not consider their general competence powers are sufficient for the remaining non borrowing and investment arrangements that are defined as type two financial arrangements. Part 7A is to be read with the new section 11A with the effect that powers under part 7A are additional to any powers a statutory body may have in its authorising Act and any other parts of the SBFA Act.

Clause 16 amends section 70 of the SBFA Act by renumbering section 70(4) as section 70(5) and inserting a new section 70(4), which provides for an approval issued by the Treasurer to be on conditions the Treasurer considers necessary or desirable.

Clause 17 inserts a new part 11, division 1 heading.

Clause 18 amends section 79 by omitting from its heading the words – ‘pt 11’, and inserting – ‘div1’. Section 79(1) is also amended by omitting the words – ‘In this part’, and inserting – ‘In this division’.

Clause 19 amends section 80(6) and (7) by omitting the words – ‘this part’ and inserting – ‘this division’.

Clause 20 amends section 85(2) by omitting the words – ‘this part’ and inserting – ‘this division’.

Clause 21 inserts a new part 11, division 2, which provides for transitional provisions regarding the amendments to the SBFA Act contained in this Bill. Section 86 inserts definitions for the new part 11 division 2. The definitions are for commencement and pre-amended Act. Sections 87 and 88 preserve the effect of any approvals issued under section 61 of the pre-amended SBFA Act.

The new section 87 provides that existing arrangements and approvals under section 61 of the pre-amended SBFA Act will continue to have effect under the amended SBFA Act as if they were a type 1 financial arrangement, where the arrangement would have been a financial arrangement under the pre-amended SBFA Act and it will be a type 1 financial arrangement under the amended SBFA Act.

The new section 88 provides that existing arrangements and approvals under section 61 of the pre-amended SBFA Act will continue to have effect under the amended SBFA Act as if they were a type 2 financial arrangement where :

- i they are either a type 2 financial arrangement or a financial arrangement under the pre-amended SBFA Act that has been omitted from the definition of financial arrangements in the amended SBFA Act; and
- ii they are not a type 1 financial arrangement.

The new section 89 contains a general transitional and saving provision to preserve the effect of general approvals issued with conditions under the pre-amended SBFA Act.

Clause 22 amends the schedule to the SBFA Act, which contains the dictionary.

The definition of financial arrangements has been omitted and replaced with a new definition of financial arrangement. The new definition of financial arrangement means a type 1 financial arrangement, a type 2 financial arrangement, a derivative transaction, or the appointment of a funds manager.

A new definition item of type 1 financial arrangement has been included. The types of arrangements included in this definition are those where it is

deemed there is a high degree of financial risk involved for the State. These arrangements will come under part 7 division 3 of the amended SBFA Act and will require the Treasurer's approval, unless the statutory body has an express power to undertake a type 1 financial arrangement in its authorising Act.

A new definition item of type 2 financial arrangement has been included. Type 2 financial arrangements are made up of the remaining arrangements from the original definition of financial arrangements. Type 2 financial arrangements will come under the new part 7A. There have been some slight changes, deletions and rearranging of these arrangements.

Paragraph (a) was amended to remove the examples as these did not fall within the definition of borrow in section 32. The examples fall within the definition of paragraph (d) in type 1 financial arrangements.

Paragraph (e) was amended to remove the reference to property, plant, machinery and equipment. It was replaced with buildings or other structures for the provision of infrastructure or facilities for the public or part of the public. Some specific examples have also been included to identify the types of arrangements that it is intended should come within this definition.

Paragraph (h) was amended to exclude cheques that come within the meaning of the *Cheques Act 1986* (Cwlth). Dealing with cheques is specifically referenced as an example to section 31 as a necessary or convenient day-to-day operation of a statutory body.

Paragraph (j) was amended to remove the reference to Australian money.