



# **Statutory Bodies Financial Arrangements Act 1982**

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Queensland

# Statutory Bodies Financial Arrangements Act 1982

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# Statutory Bodies Financial Arrangements Act 1982

**An Act to provide for the constitution of the Queensland Government Development Authority, to provide for guarantees by the Treasurer of statutory bodies' financial arrangements, to confer on statutory bodies power to enter into and perform financial arrangements, to confer on statutory bodies authority to invest moneys and for related purposes**

## Part 1 Preliminary

### 1 Short title

This Act may be cited as the *Statutory Bodies Financial Arrangements Act 1982*.

### 2 Object of Act

- (1) The object of this Act is to provide for the efficient and effective management of the powers of statutory bodies to enter into financial arrangements.
- (2) The object is achieved by a coordinated and prudent approach towards—
  - (a) the guarantees the Treasurer may give, for the State, for financial arrangements entered into by statutory bodies under this Act or another Act; and
  - (b) the general banking powers, and the borrowing and investment powers, of statutory bodies; and
  - (c) the way in which statutory bodies may, with the Treasurer's approval, enter into derivative transactions,

appoint funds managers and enter into other financial arrangements.

### **3 Act to bind Crown**

This Act binds the Crown.

### **3A Dictionary**

The dictionary in the schedule defines particular words used in this Act.

### **3B References to members of statutory bodies**

- (1) A reference in this Act to a statutory body's members is, for a body without members, a reference to the person or other entity that makes its decisions or controls its funds as mentioned in section 5(2)(c).
- (2) Subsection (1) does not apply to references to a statutory body's members in section 5.

## **Part 2 Queensland Government Development Authority**

### **4 Constitution of the authority**

The Under Treasurer is hereby constituted a corporation sole under the name and style 'The Queensland Government Development Authority' and under that name and style shall have perpetual succession and an official seal.

### **4A Continuation of the authority**

On and from the commencement of the *Queensland Treasury Corporation Act 1988*, as provided for in that Act, the

corporation sole constituted under section 4 of this Act shall have the name and style ‘Queensland Treasury Corporation’ given it by the first mentioned Act and such corporation sole is preserved and continues in existence in accordance with the provisions of that Act.

## **Part 2A                      Entities to which Act applies**

### **5            Act applies to statutory bodies**

- (1) This Act applies to statutory bodies.

*Note—*

Part 2A sets out whether an entity is a statutory body. An entity that is a statutory body within the meaning of another Act, for example, the *Financial Accountability Act 2009*, is not necessarily a statutory body under this Act.

- (2) A statutory body is an entity established under an Act that—
- (a) has control of funds and consists of only 1 person appointed under an Act; or
  - (b) has control of funds and has, or may have, at least 1 member appointed under an Act; or
  - (c) has funds, or from time to time may have funds, and even though it does not have any members appointed under an Act, its decisions are made, or its funds are controlled, by—
    - (i) another person appointed under the same Act; or
    - (ii) another entity established under the same Act that has, or may have, at least 1 member who is appointed under the Act; or
  - (d) is a corporation sole constituted by a Minister, or the chief executive or an officer of a department; or
  - (e) is a local government; or

- (f) is declared under the Act to be a statutory body for this Act.
- (3) A regulation may declare an entity to be a statutory body.
- (4) In this section—
  - appointed under an Act***, in relation to a person or member, means—
    - (a) a person or member, who is appointed under an Act; or
    - (b) a person or member, whose appointment is confirmed by the Governor in Council or a Minister under an Act.

## **6 Entities that are not statutory bodies**

- (1) The following entities are not statutory bodies—
  - (a) a company incorporated under the Corporations Act;
  - (b) a department or part of a department;
  - (c) a GOC;
  - (d) an entity whose only function under the Act under which it is established is to perform the role of a trustee of a superannuation fund;
  - (e) Australian Financial Institutions Commission;
  - (f) QTC;
  - (g) Queensland Office of Financial Supervision;
  - (h) The Public Trustee of Queensland as a corporation sole;
  - (i) The Treasurer of Queensland under the *Financial Accountability Act 2009*, section 53;
  - (j) an entity declared under a regulation not to be a statutory body.
- (2) Also, an entity is not a statutory body if—
  - (a) all or some of its income is paid into the consolidated fund; or

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- (b) all or some of its expenses are paid out of the consolidated fund, other than a payment in the nature of an endowment, grant-in-aid or subsidy from the consolidated fund.
  - (3) Subsection (2) is subject to a declaration about an entity under section 5(2)(f) or (3).

## **Part 2B Powers under this Act and relationship with other Acts**

### **7 Exercise of powers under this Act**

A statutory body may exercise a power under this Act only if the body is satisfied, on reasonable grounds, that exercising the power is necessary or convenient for performing its functions under its authorising Act or another Act.

### **8 Status of general banking powers under pt 4**

- (1) A statutory body's powers under part 4—
  - (a) are additional to—
    - (i) its powers under the other parts of this Act; and
    - (ii) its powers under its authorising Act or another Act to operate a basic institutional account; and
  - (b) do not affect its express powers under its authorising Act or another Act to operate an overdraft institutional account.
- (2) However, if there is no express power to operate an overdraft institutional account in the body's authorising Act or another Act, its powers to operate an overdraft institutional account are limited to the powers under this Act even though, for example, its authorising Act or another Act states the body has—

- (a) the powers of a body corporate or individual; or
  - (b) the power generally to enter into contracts; or
  - (c) the power to do all things necessary or convenient for, or in connection with, the performance of its functions.
- (3) In this section—

*basic institutional account* means a deposit and withdrawal account with a financial institution without an overdraft facility.

*overdraft institutional account* means a deposit and withdrawal account with a financial institution with an overdraft facility.

## **9 Statutory bodies' borrowing powers under pt 5 and other Acts**

- (1) A statutory body's borrowing powers under part 5 are additional to its powers under the other parts of this Act and its borrowing powers under its authorising Act or another Act.
- (2) However, if there is no express power to borrow in the body's authorising Act or another Act, its powers to borrow are limited to the powers under this Act even though, for example, its authorising Act or another Act states the body has—
  - (a) the powers of a body corporate or individual; or
  - (b) the power generally to enter into contracts; or
  - (c) the power to do all things necessary or convenient for, or in connection with, the performance of its functions.

## **10 Statutory bodies' investment powers under pt 6 and other Acts**

- (1) A statutory body's investment powers under part 6 are additional to its powers under the other parts of this Act and its investment powers under its authorising Act or another Act.

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- (2) However, if there is no express power to invest in the body's authorising Act or another Act, its powers to invest are limited to the powers under this Act even though, for example, its authorising Act or another Act states the body has—
- (a) the powers of a body corporate or individual; or
  - (b) the power generally to enter into contracts; or
  - (c) the power to do all things necessary or convenient for, or in connection with, the performance of its functions.

## **11 Relationship of pt 7 to other parts of Act and other Acts**

- (1) Subject to subsection (5), a statutory body's powers under part 7 are additional to its powers under the other parts of this Act, its authorising Act or another Act.
- (2) If there is no express power in the body's authorising Act or another Act to enter into a derivative transaction, the body's power to enter into a derivative transaction is limited to part 7, division 1.
- (3) If there is no express power in the body's authorising Act or another Act to appoint a funds manager, the body's power to appoint a funds manager is limited to part 7, division 2.
- (4) If there is no express power in the body's authorising Act or another Act to enter into a type 1 financial arrangement, the body's power to enter into the type 1 financial arrangement is limited to part 7, division 3.
- (5) Subsections (2) to (4) apply to the body even though its authorising Act or another Act states the body has—
- (a) the powers of a body corporate or individual; or
  - (b) the power generally to enter into contracts; or
  - (c) the power to do all things necessary or convenient for, or in connection with, the performance of its functions.
- (6) A statutory body's powers under this Act must not be construed as including—

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- (a) the power to enter into derivative transactions, other than its powers under part 7, division 1; and
  - (b) the power to appoint a funds manager, other than its powers under part 7, division 2; and
  - (c) the power to enter into a type 1 financial arrangement, other than its powers under part 7, division 3.
- (7) A statutory body may not enter into a derivative transaction under part 7, division 1 contrary to a restriction mentioned in this Act, its authorising Act or another Act.

### **11A Relationship of pt 7A with other parts of this Act and other Acts**

A statutory body's powers under part 7A are additional to its powers under the other parts of this Act, its authorising Act or another Act.

### **12 Statutory bodies acting as trustees or otherwise holding property**

- (1) This section applies to a statutory body if the body—
- (a) is acting as a trustee of property, whether under a trust or under an Act (a *trust-establishing Act*); or
  - (b) holds property on a condition but is not acting as a trustee in relation to the property.
- (2) The statutory body may exercise powers under this Act in relation to the property but the exercise of the powers is subject to—
- (a) if the body is acting as a trustee under a trust—the trust and any directions or restrictions under the trust; and
  - (b) if the body is acting as a trustee under a trust-establishing Act—the trust-establishing Act; and
  - (c) if the body holds property on a condition but is not acting as a trustee—the condition.



- (3) To remove any doubt, it is declared that nothing in this Act affects the body's powers when it is acting as a trustee.

### **13 Application of future laws to statutory bodies**

This Act has effect subject to a provision of an Act passed after the commencement that expressly provides that this Act, or a provision of this Act, is subject to it.

### **13A Excluded matter for Corporations legislation**

A statutory body is declared to be an excluded matter for the Corporations Act, section 5F, in relation to the following provisions of the Corporations Act—

- (a) parts 2D.1 and 2D.6;
- (b) chapters 2K and 2L;
- (c) parts 5.7, 5.7B, 5.9 and 5B.2.

### **14 Conditions precedent to financial arrangements and other matters**

- (1) If a statutory body's authorising Act, or another Act other than this Act, provides for it to perform or observe a condition before it may exercise a power to enter into a financial arrangement, the body must perform or observe the condition before it may exercise the power.
- (2) Without limiting subsection (1), if the body's authorising Act or the other Act states the way in which the body must decide to exercise the power, the body must decide, under its authorising Act or the other Act, to exercise the power in that way before exercising it.
- (3) However, if the body's authorising Act or the other Act does not state the way in which the body must decide to exercise the power, the body must decide to exercise the power and make a written record of the decision before exercising it.

- (4) If, under this Act, the body must obtain the Treasurer's approval for the exercise of the power, it must decide to enter into the arrangement before it asks for the approval.

## **Part 3                      Guarantee of statutory bodies' financial arrangements**

### **Division 1                Guarantees by Treasurer about obligations of statutory bodies**

#### **15            State guarantee may only be given under this division**

- (1) A guarantee, by or for the State, of the performance of a statutory body's obligations under a financial arrangement entered into by the body under this Act or another Act may be given only under section 16.
- (2) A provision in another Act requiring or allowing a Minister to guarantee the performance of a statutory body's obligations under a financial arrangement entered into by the body under this Act or another Act is taken to be a provision requiring or allowing the Treasurer only to guarantee the performance for the State under section 16.
- (3) However, this section must not be construed as limiting the effect of an Act that itself guarantees anything.

#### **16            Guarantees for the State**

- (1) For the State, the Treasurer may guarantee the performance of obligations of a statutory body under a financial arrangement entered into by the body under this Act or another Act.

*Editor's note—*

Under section 76, the Treasurer may delegate the Treasurer's powers under this part to another Minister.

- (2) The guarantee may—
  - (a) apply generally to all statutory bodies, powers and matters or be limited in its application to—
    - (i) particular bodies, powers or matters; or
    - (ii) particular classes of bodies, powers or matters; or
  - (b) otherwise apply generally or be limited in its application by reference to specified exceptions or factors.
- (3) Also, the guarantee may—
  - (a) make different provision for different statutory bodies, powers or matters, or different classes of bodies, powers or matters; or
  - (b) apply differently to stated exceptions or factors.
- (4) The guarantee must be in writing and, if it applies generally or the Treasurer considers it appropriate, may be given by gazette notice.
- (5) In giving a guarantee, the Treasurer may do all things necessary for, or incidental to, giving the guarantee.
- (6) To remove any doubt, it is declared that a guarantee under subsection (1) may apply to a statutory body even though the body was not established when the guarantee was given.

## **16A Treasurer may charge for a guarantee under s 16**

- (1) The Treasurer may charge a statutory body for providing a guarantee under section 16, if the guarantee is given other than to QTC, by imposing a fee—
  - (a) for each financial year, or part of a financial year, happening during the period of the guarantee; or
  - (b) at the end of the guarantee.
- (2) The amount a statutory body may be charged under subsection (1) for a guarantee must not be more than the attributed amounts for which the statutory body would have been liable if the financial arrangements to which the

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guarantee relates were entered into with QTC under the *Queensland Treasury Corporation Act 1988*, section 19(1).

- (3) The Treasurer may ask QTC to provide the Treasurer with a certificate about the rate that would have been applied to calculate the attributed amounts mentioned in subsection (2).

## **17 Appropriation**

All moneys payable by the Treasurer pursuant to a guarantee given under section 16 shall be a charge upon and be paid out of the consolidated fund, which is to the extent necessary appropriated accordingly.

## **18 Requirement for security**

- (1) Without limiting the power of the Treasurer with respect to the terms and conditions to which the Treasurer's guarantee may be subject, the Treasurer may require a person with whom a statutory body has entered into or desires to enter into any financial arrangements to take security of a description specified in the guarantee.
- (2) If a person required to take security pursuant to subsection (1)—
  - (a) fails to take security of the description specified; or
  - (b) having taken such security, releases in whole or in part that security without the Treasurer's consent in writing first had and obtained; or
  - (c) having taken such security, waives any right or remedy thereby secured to the person without the Treasurer's consent in writing first had and obtained;

the guarantee in connection with which the security was required shall be void and shall be deemed to have been void ab initio.

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## 19 Guarantee may include waiver of immunity and other provisions

- (1) A guarantee under section 16 may include an express provision waiving the State's or the Treasurer's immunity, if any, from proceedings under an Act or other law.
- (2) Also, the guarantee may include provisions that the guarantee continues to be enforceable despite an event that would or might at law—
  - (a) otherwise end, or permit the ending of, the guarantee; or
  - (b) excuse compliance with, or performance of, the guarantee; or
  - (c) provide a defence to a proceeding to enforce the guarantee.
- (3) A provision mentioned in subsection (1) or (2) operates in accordance with its terms, despite an Act or rule of law to the contrary, but is subject to an express provision in the guarantee.

## Division 2 Miscellaneous provisions about guarantees

### 20 Guarantee not affected by transfer of liability

- (1) This section applies if—
  - (a) an obligation of a statutory body under a financial arrangement entered into under this Act or another Act is guaranteed under a guarantee section; and
  - (b) the obligation is transferred from one statutory body to another statutory body (the *receiving body*).
- (2) The transfer does not affect the guarantee continuing in force and the guarantee must be construed as a guarantee of the obligation of the receiving body under the financial arrangement to which the guarantee relates.

## **21 Loans from QTC to statutory bodies**

- (1) If, under part 5, a statutory body borrows from QTC, the Treasurer is taken, for the State, to have guaranteed the body's obligations under the borrowing to make payments.
- (2) The conditions applicable to the guarantee are the conditions approved by the Treasurer, by gazette notice, for guarantees under subsection (1) at the time the body borrows from QTC.
- (3) However for a particular borrowing, the Treasurer may, by gazette notice—
  - (a) direct that the borrowing is not guaranteed; or
  - (b) change the conditions of the guarantee.

## **Division 3 Consequences if payment required under guarantee**

### **22 Application of division**

This division applies if, under a guarantee under a guarantee section, the Treasurer—

- (a) pays amounts payable under a financial arrangement entered into by a statutory body under this Act or another Act; or
- (b) otherwise incurs expenses in performing the obligations of the body under the financial arrangement.

### **23 Treasurer entitled to recover guarantee amount, interest etc.**

The Treasurer is entitled, under this division, to recover from the statutory body—

- (a) the guarantee amount; and
- (b) interest on the guarantee amount at the rate prescribed under a regulation; and

- (c) the costs and expenses of recovering the guarantee amount and interest.

## **24 Appointing a person to recover guarantee amount etc.**

- (1) A regulation may appoint a person as an appointee for the statutory body.
- (2) If the Treasurer considers urgent action in relation to the statutory body is necessary to prevent losses or mismanagement that would limit the recovery of the recovery amounts, the Treasurer may, by gazette notice, appoint a person as an appointee for the body.
- (3) The Treasurer may only recommend a person to the Governor in Council for appointment under subsection (1), or appoint a person under subsection (2), who, in the Treasurer's opinion, is a suitable person to exercise the powers of an appointee for the statutory body.
- (4) The appointment by the Treasurer may not be longer than 28 days after the date of the gazette notice.
- (5) However, if a regulation is made appointing an appointee for the statutory body before the appointment by the Treasurer ends, the appointment by the Treasurer is taken to have ended immediately before the appointment under the regulation starts.
- (6) The regulation or notice may provide for the appointee's remuneration including the way in which the remuneration is to be calculated.
- (7) Subsection (6) and section 25(3) do not limit the matters a regulation or notice may include.

## **25 Purpose of appointment and necessary powers of appointee**

- (1) The purpose of appointing an appointee is to ensure the Treasurer is paid all or part of the recovery amounts.

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- (2) An appointee for a statutory body may collect amounts payable to the statutory body and, for that purpose, is taken to be the body and may exercise the body's powers.
- (3) However, the regulation or notice may provide the appointee is to take over and manage the affairs, or a stated part of the affairs, of the statutory body.

## **26 Exercise of powers by members of statutory bodies**

- (1) The members of a statutory body for which there is an appointee may continue to exercise their powers as members, in the ordinary course of performing the body's functions, unless the exercise of the powers is inconsistent with the appointee exercising the appointee's powers.
- (2) Also, each member of the statutory body must help the appointee in the exercise of the appointee's powers if the appointee asks for the member's help.

## **27 Treasurer may give directions to appointee and members**

- (1) The Treasurer may give written directions to the appointee about the way the appointee may exercise the appointee's powers, including the powers of the statutory body.
- (2) The Treasurer may give written directions to the members of a statutory body about the way the members may exercise their powers as members.
- (3) A person to whom a written direction is given must comply with it.

## **28 Way amounts collected by appointee are to be dealt with**

The appointee must pay amounts collected under this division as follows—

- (a) firstly, in paying the costs and expenses of collecting the recovery amounts and the appointee's remuneration;
- (b) secondly, in paying the Treasurer the recovery amounts;



- (c) thirdly, in paying the remainder to the statutory body.

## **29 Recovery of amounts as debt from statutory body**

For a guarantee under a guarantee section, the Treasurer may recover the recovery amounts as a debt due and owing by the statutory body to the Treasurer by action in a court of competent jurisdiction.

## **30 Treasurer may take security held by person paid guarantee amount**

- (1) This section applies if—
- (a) a statutory body enters into a financial arrangement with a person under this Act or another Act and gives security to the person for the performance of the body's obligations under the arrangement; and
  - (b) the Treasurer, under a guarantee under a guarantee section for the financial arrangement, pays the person an amount payable by the body under the arrangement.
- (2) The Treasurer is entitled to the benefit of the security to the extent of the guarantee amount.
- (3) If the guarantee amount is the same as, or more than, the amount secured by the security—
- (a) the person must transfer and deliver the security to the Treasurer; and
  - (b) the Treasurer may exercise all the powers conferred on the person by the security.
- (4) If the guarantee amount is less than the amount secured by the security, the person must, as directed by the Treasurer, realise the security and from the proceeds of the sale—
- (a) firstly, pay the costs and expenses of realising the security; and
  - (b) secondly, pay to the person other amounts owing to the person under the financial arrangement; and

- (c) thirdly, pay the recovery amounts to the Treasurer; and
- (d) fourthly, pay any balance to the statutory body.

## Part 4                      General banking powers

### 31            General banking powers for day-to-day operations

- (1) A statutory body may, to the extent necessary or convenient for its day-to-day operations, operate a deposit and withdrawal account with a financial institution, other than an account with an overdraft facility.

*Example of a deposit and withdrawal account necessary or convenient for a statutory body's day-to-day operations—*

A statutory body may have a deposit and withdrawal account with a cheque book facility. It may be necessary or convenient for the statutory body's day-to-day operations to use the facility and pay for items by drawing a cheque.

- (2) However, with the Treasurer's approval, the account may be operated with an overdraft facility.
- (3) The account must be operated in Australian money.

## Part 5                      Borrowing powers

### Division 1                Interpretation

#### 32            Interpretation

- (1) In this Act—

*borrow* includes raise and obtain, in any way, money, credit and other financial accommodation.

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*other financial accommodation* includes—

- (a) finance leases primarily to raise amounts to buy, or to finance the purchase of, property the subject of the leases; and
  - (b) guarantees, letters of credit and any other form of undertaking, provided by a financial institution or other person to meet the liabilities or obligations of a statutory body.
- (2) Subject to a regulation under subsection (3), a statutory body does not borrow merely because, in the ordinary course of performing its functions, it enters into any of the following—
- (a) a hire-purchase agreement;
  - (b) an operating lease;
  - (c) a credit card facility.
- (3) A regulation may prescribe that something is, or is not, a form of financial accommodation for the definition *borrow*, including, for example, a particular type of hire-purchase agreement, operating lease or credit card facility.

## **Division 2                    Power to borrow**

### **33            Application of borrowing power by regulation**

This part applies to a statutory body declared under a regulation as a statutory body that may borrow under this part.

### **34            Statutory bodies may borrow with the Treasurer's approval**

- (1) A statutory body may borrow under this part with the Treasurer's approval.
- (2) The borrowing must be—
  - (a) in Australian money; and
  - (b) undertaken in Australia.

## **Division 3                      Creation of encumbrances over property and income**

### **35        Treasurer's approval before creating encumbrance etc.**

- (1) This section applies to a borrowing by a statutory body under this part.
- (2) Also, this section applies to—
  - (a) a derivative transaction entered into by the body under part 7, division 1; and
  - (b) a financial arrangement entered into by the body under part 7, division 3 or part 7A.
- (3) For the borrowing, transaction or arrangement, the statutory body may, with the Treasurer's approval—
  - (a) create an encumbrance; or
  - (b) otherwise transfer its property, or assign its income, by way of security.

### **36        Ranking of encumbrances on income and property**

- (1) This section applies if a statutory body, under section 35 or another Act creates—
  - (a) an encumbrance over all or part of its income (an *income encumbrance*) but only income; or
  - (b) an encumbrance over all or part of its property (a *property encumbrance*), whether or not the property encumbrance also encumbers income.
- (2) The Treasurer may, by gazette notice, direct that the body's income encumbrances rank in relation to each other in the way stated in the notice.
- (3) If there is no gazette notice for the body's income encumbrances, the encumbrances rank equally with each other.

- (4) A property encumbrance of the statutory body ranks with the body's other property encumbrances as provided by law.
- (5) A provision of another Act providing for an income encumbrance of a statutory body to rank in a way other than as stated in this section does not apply after the commencement.

## **Division 4                      Creditor remedies**

### **37            Creditor may only recover overdue amounts if notice given**

- (1) Subject to subsection (5), this section applies if a statutory body fails to make a payment of principal or interest under a debenture, bond or inscribed stock when it falls due to a person (the *creditor*).
- (2) The creditor may—
  - (a) apply to the Supreme Court for an order appointing a receiver of the statutory body and for other orders in relation to the powers of the receiver; or
  - (b) recover the amount owing as a debt due and owing by the body to the creditor by action in a court of competent jurisdiction.
- (3) However, the creditor may apply for an order under subsection (2)(a), or recover an amount under subsection (2)(b), only if—
  - (a) the creditor gives written notice of the default to the statutory body; and
  - (b) the body does not pay the amount owing under the debenture, bond or inscribed stock within 14 days after the day the notice is given to the body; and
  - (c) for a debenture, bond or inscribed stock guaranteed under section 16—

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- (i) the creditor gives a copy of the notice to the Treasurer after the 14 days after the day the notice is given to the body; and
  - (ii) the Treasurer does not pay the amounts owing within 14 days after the day the copy is given to the Treasurer.
- (4) A court-appointed receiver is an officer of the Supreme Court and must act under its direction and may be appointed only for the general, or for specific, revenue of the statutory body.
- (5) This section does not apply to a statutory body if—
  - (a) the body represents the Crown; or
  - (b) the relevant debenture, bond or inscribed stock provides for an alternative provision as mentioned in section 41.

### **38 Remuneration of receiver**

A court-appointed receiver is entitled to remuneration as ordered by the Supreme Court.

### **39 Receiver to collect revenue and may exercise powers of statutory body**

- (1) A court-appointed receiver may collect all amounts paid to, or all amounts payable to, the statutory body for which the receiver was appointed.
- (2) For the purpose of collecting the amounts, the receiver is taken to be the statutory body and may exercise the body's powers to the extent necessary or convenient for the purpose.
- (3) The receiver's powers under this section are subject to a direction under section 37(4).

### **40 Way amounts collected by receiver are to be dealt with**

A court-appointed receiver must pay all amounts collected as follows—

- (a) firstly, in paying the costs and expenses of collecting the amounts and the receiver's remuneration;
- (b) secondly, subject to an order of the Supreme Court, in paying the person with whom the statutory body entered into the debenture, bond or inscribed stock and to other persons generally, in the order of priority as the court orders;
- (c) thirdly, in paying the remainder to the statutory body.

#### **41 Debentures, bonds or inscribed stock may include alternative remedies**

- (1) A debenture, bond or inscribed stock may include a provision (an *alternative provision*) that applies if a statutory body does not fulfil an obligation under the debenture, bond or inscribed stock, including, for example, provisions about the appointment of a receiver of the body and the receiver's functions, powers and remuneration.
- (2) The alternative provision has effect under its terms in place of sections 37 to 40, or the provisions of another Act that provide a remedy if the statutory body does not fulfil the obligation.

## **Part 6 Investment powers**

### **Division 1 Categories of investment powers**

#### **42 Investment power depends on allocation under regulation**

- (1) A statutory body may invest under this part depending on whether a category 1, 2 or 3 investment power is allocated to the body.
- (2) A regulation may allocate to a statutory body 1 of the following powers—

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- category 1 investment power
  - category 2 investment power
  - category 3 investment power.
- (3) However, if a statutory body has control of more than 1 fund (including, for example, as a trustee), a different category of investment power for each fund may be allocated to it.
- (4) Also, if no category of investment power is allocated under a regulation to a statutory body, the body does not have power to invest under this part.

#### **43 Limitation on investment power**

An investment under this part must be—

- (a) in Australian money; and
- (b) undertaken in Australia.

## **Division 2 Particulars of categories**

#### **44 Category 1 investment power**

- (1) Category 1 investment power is the power to invest in all or any of the following—
- (a) deposits with a financial institution;
  - (b) investment arrangements accepted, guaranteed or issued by or for the Commonwealth or a State or a financial institution;
  - (c) other investment arrangements secured by investment arrangements accepted, guaranteed or issued by or for the Commonwealth or a State or a financial institution;
  - (d) investment arrangements, managed or offered by QIC or QTC, prescribed under a regulation for this paragraph;
  - (e) an investment arrangement with a rating prescribed under a regulation for this paragraph;



- 
- (f) other investment arrangements prescribed under a regulation for this paragraph.
- (2) However, the investment must be—
- (a) at call; or
  - (b) for a fixed time of not more than 1 year.

#### **45 Category 2 investment power**

Category 2 investment power is the power to invest in all or any of the following—

- (a) if the investment is at call or for a fixed time of not more than 1 year—an investment arrangement with a rating prescribed under a regulation for section 44(1)(e);
- (b) if the investment is at call or for a fixed time of not more than 3 years—
  - (i) deposits with a financial institution; or
  - (ii) investment arrangements accepted, guaranteed or issued by or for the Commonwealth or a State or a financial institution; or
  - (iii) other investment arrangements secured by investment arrangements accepted, guaranteed or issued by or for the Commonwealth or a State or a financial institution; or
  - (iv) investment arrangements, managed or offered by QIC or QTC, prescribed under a regulation for this subparagraph;
- (c) if the investment is for a fixed time of not less than 1 year and not more than 3 years—an investment arrangement with a rating prescribed under a regulation for this paragraph;
- (d) other investment arrangements prescribed under a regulation for this paragraph.

## 46 Category 3 investment power

- (1) Category 3 investment power includes category 2 investment power and the power to invest in all or any of the following, regardless of the period of the investment—
- (a) the first legal or first statutory mortgage of an estate in fee simple in land in any State;
  - (b) the purchase of—
    - (i) land in fee simple in any State; or
    - (ii) leasehold land in the State held under a lease that is for a term of 40 years or more and that is unexpired at the time of the purchase; or
    - (iii) subject to the *Land Act 1994*, a freeholding lease of land held from the State under that Act;
  - (c) debentures or other securities charged on the funds or property of a local government;
  - (d) an investment arrangement prescribed under a regulation for this paragraph.

- (2) In this section—

*freeholding lease* means—

- (a) a pre-Wolfe freeholding lease, or post-Wolfe freeholding lease, that was an agricultural farm under the repealed *Land Act 1962*; or
- (b) a grazing homestead freeholding lease.

*grazing homestead freeholding lease* see *Land Act 1994*, schedule 6.

*post-Wolfe freeholding lease* see *Land Act 1994*, schedule 6.

*pre-Wolfe freeholding lease* see *Land Act 1994*, schedule 6.

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## **Division 3                      Duties of statutory body when investing**

### **47                      Statutory body to try to invest at most advantageous rate**

- (1) A statutory body must use its best efforts to invest its funds—
  - (a) at the most advantageous interest rate available to it at the time of the investment for an investment of the proposed type; and
  - (b) in a way it considers is most appropriate in all the circumstances.
- (2) The statutory body must keep records that show it has invested in the way most appropriate in all the circumstances.

### **48                      Investment documents to be held by statutory body or as approved**

A security, safe custody acknowledgment or other document evidencing title accepted, guaranteed or issued for an investment arrangement must be held by the statutory body or in another way approved by the Treasurer.

## **Division 4                      Secured investments**

### **49                      Division applies to secured investments**

This division applies if a statutory body has invested in an investment arrangement as mentioned in section 44(1)(c), 45(b)(iii) or 46(1)(a) or (c).

### **50                      Security for investment arrangement at time of investment**

The security for the investment arrangement must, when the arrangement is entered into—

- (a) be unencumbered; and

- (b) have a value at least equal to the amount of the investment.

## **51 Regulations about valuations**

A regulation may provide for—

- (a) the way in which a statutory body must work out the value of a security when the investment arrangement is entered into; and
- (b) the way in which the body must decide whether the security continues to have a value equal to, or more than, the amount of the investment; and
- (c) the action the body must take if the security does not continue to have the value mentioned in paragraph (b).

## **Division 5 Rated investment arrangements**

### **52 Requirements if an investment arrangement's rating changes**

- (1) This section applies if a statutory body has invested in an investment arrangement as mentioned in section 44(1)(e) or 45(c) and the rating of the investment arrangement is changed so it is no longer a rating prescribed under a regulation for the investment arrangement.
- (2) As soon as practicable, but no later than 28 days, after the change becomes known to the statutory body, it must—
  - (a) obtain the Treasurer's approval for continuing with the investment arrangement; or
  - (b) liquidate the investment arrangement, including, for example, withdrawing a deposit.

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## **Part 7**                      **Derivative transactions, funds managers and type 1 financial arrangements**

### **Division 1**                      **Derivative transactions**

#### **53**                      **Derivative transactions permitted only for certain statutory bodies**

- (1) A statutory body may enter into a derivative transaction under this division—
  - (a) in its own name; or
  - (b) in the name of a person who, with the Treasurer's approval, has been appointed in writing by the body as its agent for this division.
- (2) The statutory body may enter into the derivative transaction only if—
  - (a) the body is prescribed, under a regulation, as a statutory body that may enter into derivative transactions; and
  - (b) the Treasurer's approval has been given for the body to enter into the derivative transaction, or derivative transactions of the type concerned.

#### **54**                      **Body to enter into derivative transaction only for hedging purposes**

Also, the statutory body may enter into the derivative transaction only if the body does so to hedge against a risk to which the body is or will be exposed.

#### **55**                      **Requirement to report to Treasurer about derivatives**

- (1) For each derivative transaction entered into under this division by a statutory body, the body must give the Treasurer a report

about the transaction at the times prescribed under a regulation.

- (2) Each report must contain the following—
  - (a) details sufficient to identify the derivative transaction;
  - (b) a statement about the underlying exposure against which the statutory body is trying to hedge;
  - (c) the stated purpose of the derivative transaction, including details of the Treasurer's approval under which the transaction was entered into and verification of compliance with the conditions of the approval;
  - (d) details of any realised or unrealised gains or losses from the derivative transaction.
- (3) However, if a statutory body satisfies the Treasurer that, because of the number of derivative transactions entered into by the body, it is an undue burden on it to prepare a report under subsection (2) for each transaction, the report for subsection (1) may be a statement summarising the matters mentioned in subsection (2) for all of the body's derivative transactions.

## **56 Requirement to report to relevant Minister about derivative**

- (1) On the day a statutory body must give the Treasurer a report about a derivative transaction, it must also give a copy of the report to the Minister who administers the body's authorising Act.
- (2) If the Minister is the Treasurer, subsection (1) does not apply.

## **57 Statutory bodies' Minister must monitor derivative transactions**

- (1) The Minister who administers the authorising Act of a statutory body that has entered into a derivative transaction must monitor the transaction.

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- (2) Subsection (1) applies whether the derivative transaction is entered into under this division or otherwise.

## Division 2                      Appointment of funds managers

### 58            Application of division

This division applies to a statutory body allocated a category of investment power under part 6.

### 59            Appointment of funds managers with Treasurer's approval

- (1) The statutory body may, in writing, appoint a person (the *funds manager*) to manage the investment of all or part of its funds if—
- (a) the body is satisfied, on reasonable grounds, the person is suitable to manage the investment of all or part of its funds; and
  - (b) before appointing the person, the body obtains the Treasurer's approval of the appointment.
- (2) The statutory body must ensure its appointment of the funds manager is subject to—
- (a) a condition to which the Treasurer's approval is subject (however expressed); and
  - (b) a subsequent amendment or repeal of the approval.

*Editor's note—*

Under the *Acts Interpretation Act 1954*, section 24AA, the power to make an instrument or decision includes power to amend or repeal the instrument or decision.

- (3) The appointment is subject to the conditions of the Treasurer's approval, and a subsequent amendment or repeal of the approval, despite a contrary provision of the appointment.

## **60 Management of statutory body's funds by funds manager**

- (1) Subject to a condition of the appointment, the funds manager may, for managing the investment of the statutory body's funds, enter into a type 1 financial arrangement, type 2 financial arrangement or derivative transaction.
- (2) Subsection (1) does not authorise a funds manager to enter into a financial arrangement that the manager may not lawfully enter into, including, for example, under the manager's trust deed or memorandum or articles of association.

## **Division 3 Type 1 financial arrangements**

### **60A Statutory body may enter into a type 1 financial arrangement**

A statutory body may, with the Treasurer's approval, enter into a type 1 financial arrangement.

## **Part 7A Power for type 2 financial arrangements**

### **61 Application of pt 7A**

This part applies to a statutory body if the statutory body does not have power to enter into a particular type 2 financial arrangement under another part of this Act, its authorising Act or another Act.

### **61A Statutory body may enter into a type 2 financial arrangement with Treasurer's approval**

- (1) The statutory body may, with the Treasurer's approval, enter into a type 2 financial arrangement.



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- (2) Without limiting subsection (1), the type 2 financial arrangement that the statutory body may be approved to enter into may include—
- (a) a type 2 financial arrangement necessary for, or incidental to, the exercise of another power under this Act; and
  - (b) a type 2 financial arrangement not otherwise allowed under this Act, including, for example—
    - (i) an investment for more than 3 years; and
    - (ii) an investment other than in Australian money; and
    - (iii) an investment undertaken outside Australia; and
    - (iv) a loan by a statutory body.
- (3) Parts 4, 5 and 6 do not limit the type 2 financial arrangements for which the Treasurer's approval may be given for subsection (1).

*Example for subsection (3)—*

The Treasurer may approve of a statutory body borrowing money even though the body is not prescribed under a regulation as a body that may borrow money under part 5.

## **Part 8                      Other provisions about financial arrangements**

### **Division 1                Documents for financial arrangements under this Act**

#### **62            Statutory body may sign necessary documents**

- (1) A statutory body may sign documents necessary for a financial arrangement that it may enter into under this Act.
- (2) However, a statutory body may not sign a document that—

- (a) creates an encumbrance; or
- (b) otherwise transfers its property, or assigns its income, by way of security;

unless the Treasurer approves the creation of the encumbrance, transfer of the property or assignment of the income.

- (3) Before signing a document mentioned in subsection (2), the statutory body must satisfy itself, on reasonable grounds, that the encumbrance, transfer or assignment does not prevent it from dealing with its property or income in the ordinary course of performing its functions.
- (4) However, subsection (3) does not prevent a statutory body signing a document that states the rights of other parties to the arrangement in relation to the body's income or property if the body breaches an express condition of the document.

### **63 Conditions waiving immunity, rules of contract etc.**

- (1) A document forming part of a financial arrangement entered into under this Act by a statutory body may include a provision—
  - (a) waiving an immunity of the body, if any, from proceedings under an Act or rule of law; and
  - (b) continuing in force a condition requiring the body to make a payment, despite an event that would or might at law—
    - (i) otherwise end, or permit the ending of, the arrangement; or
    - (ii) excuse compliance with, or performance of, the arrangement; or
    - (iii) provide a defence to a proceeding to enforce the arrangement.
- (2) Also, the document may include a provision that the financial arrangement must not be ended because of a matter or thing, or is enforceable despite a matter or thing, including, for

example, a default, an event amounting to an irresistible compulsion or coercion or another event that would, or might at law—

- (a) otherwise end, or permit the ending of, the arrangement; or
  - (b) excuse compliance with, or performance of, the arrangement; or
  - (c) provide a defence to a proceeding to enforce the arrangement.
- (3) The provisions mentioned in subsections (1) and (2) operate in accordance with their terms, despite an Act or rule of law to the contrary, but are subject to an express provision of the arrangement.

## **64 Conditions about buildings, structures or other fixtures**

- (1) A document forming part of a financial arrangement entered into under this Act by a statutory body may provide that in relation to buildings, structures or other fixtures stated in the arrangement—
- (a) their ownership does not vest in the owner of the land on which they are situated; and
  - (b) they are not realty; and
  - (c) they are transferable to a person under the arrangement or another financial arrangement under this Act or another Act.
- (2) A provision mentioned in subsection (1) operates in accordance with its terms, despite an Act or rule of law to the contrary, but is subject to an express provision of the arrangement.

## **Division 2                    Matters about trusts**

### **66        Notice of trusts not to be received**

- (1) A statutory body—
  - (a) must not receive, and must be taken to have not received, notice of a trust (whether express, implied or constructive) in relation to a financial arrangement entered into by the body under this Act or another Act; and
  - (b) is not bound to see to the execution of a trust that may affect the financial arrangement.
- (2) Subsection (1) applies to a person acting for a statutory body in relation to the financial arrangement.

## **Division 3                    Other parties to financial arrangements**

### **67        Protection of persons who enter into financial arrangements with statutory bodies**

A person (the *other party*) who enters into a financial arrangement under this Act with a statutory body—

- (a) is not bound to inquire into the application of the money, credit or other financial accommodation provided by the other party to the body; and
- (b) is not responsible for the non-application or misapplication of the money, credit or other financial accommodation by the body; and
- (c) if the other party receives, in consideration for entering into the financial arrangement, a document creating an encumbrance that is apparently properly signed by the body—is not bound to inquire whether the body properly decided to authorise the signing of the document.

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## 68 Illegal financial arrangements

- (1) A person does not have a remedy or right to recover an amount from a statutory body in relation to a financial arrangement (the *illegal financial arrangement*) that the body entered into with the person otherwise than under—
  - (a) this Act; or
  - (b) another Act that applies to the body in relation to the arrangement.
- (2) Subsection (1) does not limit the person's remedies or rights to recover from any other person, including, for example, the right to recover under another Act that provides that a member of a statutory body may be liable for an illegal financial arrangement.
- (3) Also, subsection (1) does not apply to a person who entered into a financial arrangement with a statutory body, including an arrangement under which the body created an encumbrance of its property or income, if the person received from the body a document stating that—
  - (a) if the arrangement was entered into under this Act—the Treasurer has approved the body entering into the arrangement and, if an encumbrance was created, creating the encumbrance; or
  - (b) if the arrangement was entered into under another Act that applied to the body—the body has obtained all approvals required under that Act for the body to enter into the arrangement and, if an encumbrance is created, to create the encumbrance.

## **Part 9                      Approvals by Treasurer**

### **Division 1                      Application**

#### **69                      Application of part**

- (1) This part applies if a power under this Act may be exercised by a statutory body only with the Treasurer's approval.
- (2) A statutory body may exercise the power only if—
  - (a) an approval under division 2 applies to the body; or
  - (b) the exercise is the subject of an approval under division 3.

### **Division 2                      General approvals**

#### **70                      Approval may be general in nature**

- (1) The Treasurer may, by gazette notice, approve the exercise of powers under this Act by statutory bodies.
- (2) The approval may—
  - (a) apply generally to all statutory bodies, powers and matters or be limited in its application to—
    - (i) particular bodies, powers or matters; or
    - (ii) particular classes of bodies, powers or matters; or
  - (b) otherwise apply generally or be limited in its application by reference to specified exceptions or factors.
- (3) Also, the approval may—
  - (a) make different provision for different statutory bodies, powers or matters, or different classes of bodies, powers or matters; or
  - (b) apply differently to stated exceptions or factors.

- (4) The approval may be on conditions the Treasurer considers necessary or desirable.
- (5) To remove any doubt, it is declared that an approval may apply to a statutory body even though the body was not established when the approval was given.

## **Division 3                      Specific approvals**

### **71            Way statutory body may apply for approval**

- (1) A statutory body may apply, in writing, for the Treasurer's approval of the exercise of a power under this Act.
- (2) The application may relate to the exercise of the power generally or in relation to a particular matter.
- (3) If the Treasurer considers the approval should be given under division 2 for all statutory bodies, particular bodies or particular classes of bodies, the Treasurer may deal with the application by giving an approval under the division that applies to the applicant.
- (4) The Treasurer may exercise the power to amend or repeal an approval under this division even if the statutory body does not apply for the amendment or repeal.

*Editor's note—*

Under the *Acts Interpretation Act 1954*, section 24AA, the power to make an instrument or decision includes power to amend or repeal the instrument or decision.

- (5) However, the amendment or repeal of an approval under this division does not affect its previous operation.

### **72            Treasurer may ask for documents**

The Treasurer may, by written notice to the statutory body, require it to give the Treasurer a document or information the Treasurer considers necessary for considering the body's application.

### **73 Approval to state conditions**

- (1) The Treasurer may approve the application, entirely or partly, or refuse the application.
- (2) An approval may be on written conditions the Treasurer considers necessary or desirable.
- (3) The Treasurer must inform the applicant, in writing, of the decision and, if the application is approved, the conditions of the approval.

### **74 Register about approvals for a statutory body**

A statutory body must keep a register of the Treasurer's approvals under this division for the body's exercise of a power.

## **Division 4 Offences in relation to certain documents**

### **75 False or misleading documents**

- (1) A person must not give a document under section 71 or 72 to the Treasurer containing information the person knows is false or misleading in a material particular.  
Maximum penalty—50 penalty units.
- (2) Subsection (1) does not apply to a person if the person, when giving the document—
  - (a) advises the Treasurer, in writing, to the best of the person's ability, how it is false or misleading; and
  - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.
- (3) It is enough for a complaint against a person for an offence against subsection (1) to state that the document was to the person's knowledge false or misleading, without stating which.



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## Part 10 Miscellaneous

### 76 Delegations by Treasurer

- (1) The Treasurer may delegate the Treasurer's powers under this Act to another Minister.
- (2) Also, the Treasurer may delegate the Treasurer's powers under this Act to the chief executive of a department, other than the Treasurer's power to give a guarantee under section 16.

### 78 Regulation-making power

The Governor in Council may make regulations under this Act.

## Part 11 Transitional provisions

### Division 1 Transitional provisions for Statutory Bodies Financial Arrangements Amendment Act 1996

#### 79 Interpretation for div 1

- (1) In this division—

*amended provision* means a provision as in force from time to time before the commencement, that is amended by the schedule of the *Statutory Bodies Financial Arrangements Amendment Act 1996*.

*commencement* means the commencement of this section.

*entity* means an entity that—

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- (a) was a statutory body under this Act as in force immediately before the commencement; or
- (b) under an amended provision—was able to exercise powers under this Act as in force immediately before the commencement;

whether or not the entity is a statutory body under the post-amended Act.

***existing arrangement*** means an arrangement entered into by an entity under the pre-amended Act, or an amended provision, and in effect immediately before the commencement, including, for example, a borrowing, financial arrangement, guarantee given by the entity, investment and overdraft facility.

***existing authority*** means an authority under the pre-amended Act, or an amended provision, relating to the entity for a financial arrangement entered into by the entity, that is an authority in force immediately before the commencement including, for example, an approval, direction, exemption from stamp duty and sanction.

***existing guarantee*** means a guarantee under the pre-amended Act, that applied to the obligations of an entity immediately before the commencement, and includes a guarantee made under the *Local Bodies' Loans Guarantee Act 1923* if it applied to the obligations of an entity immediately before the commencement.

***guarantee under another Act***, in relation to an entity, means a guarantee under an amended provision, that was given by or for the State and applied to the obligations of the entity immediately before the commencement.

***post-amended Act*** means this Act after the commencement.

***pre-amended Act*** means this Act as in force, from time to time, before the commencement.

***unchanged Act***, in relation to an amended provision, means the Act of which the provision is or was part, as in force immediately before the amendment of the provision commences.

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- (2) A reference to an existing arrangement or authority includes an arrangement or authority that was, under the pre-amended Act or an amended provision, the subject of a savings, transitional or validating provision in relation to a financial arrangement (whether or not the provision is expressed to be made for a purpose of that type) if the savings, transitional or validating provision applied to the arrangement or authority immediately before the commencement.

*Examples of savings, transitional or validating provisions—*

sections 25A, 27(2), (4) and (5), 28(4) and (5) and 40(4) of this Act as in force immediately before the commencement

## **80 Existing arrangements, existing authorities and guarantees under other Acts**

- (1) This section applies to the following—
- (a) an existing arrangement entered into by an entity;
  - (b) an existing authority in relation to an entity;
  - (c) a guarantee under another Act in relation to an entity.
- (2) The arrangement, authority or guarantee continues to have effect after the commencement.
- (3) If the arrangement or authority was under the pre-amended Act, this Act as in force immediately before the commencement continues to apply to the arrangement or authority.
- (4) If the arrangement, authority or guarantee was under an amended provision, the unchanged Act continues to apply to the arrangement, authority or guarantee.
- (5) Despite subsections (2) to (4), the arrangement, authority or guarantee may not be amended under this Act as in force immediately before the commencement or under the unchanged Act.
- (6) However, the arrangement, authority or guarantee may be dealt with as if it were—

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- (a) for the arrangement—another financial arrangement approved by the Treasurer for part 7, division 3; or
  - (b) for the authority—an approval by the Treasurer under part 9, division 3; or
  - (c) for the guarantee—a guarantee under section 16;  
even if the arrangement, authority or guarantee is not a type of matter that, except for this division, may be dealt with under this Act, or the entity is not a statutory body under this Act.
- (7) Also, this section is subject to a specific provision under this division about an existing arrangement, existing authority or guarantee under another Act.

## **81 Existing guarantees**

- (1) An existing guarantee applicable to the obligations of an entity under a financial arrangement entered into by the entity is taken to be a guarantee given under section 16 for the obligations of the entity under the arrangement.
- (2) The conditions of the guarantee include the conditions expressed in a document relating to the guarantee and to which it was subject immediately before the commencement, even if the conditions are contrary to a provision of this Act applying to guarantees under section 16.
- (3) If an existing guarantee is in relation to the obligations of an entity that is not a statutory body under the post-amended Act, the entity is taken to be a statutory body for part 3.
- (4) Despite subsection (1), the Treasurer has the rights, powers and entitlements as stated in this Act as in force immediately before the commencement for an existing guarantee if, before the commencement, the Treasurer has—
  - (a) paid money under the guarantee; and
  - (b) exercised a power of the Treasurer under section 20(1) of the Act as in force immediately before the commencement in relation to the payment.

- (5) For subsection (4), this Act, as in force immediately before the commencement, continues to apply to the guarantee and matters in relation to the guarantee, including, for example, the powers of a receiver appointed by the Treasurer.

## **82 Certain loans by QTC taken to be guaranteed**

- (1) This section applies to a loan made before the commencement by QTC to an entity if, at the commencement—
- (a) the loan has not been discharged; and
  - (b) there is no existing guarantee, or no guarantee under another Act, in relation to the entity's obligations under the loan.
- (2) On the commencement, the Treasurer is taken, for the State, to have guaranteed (a *special guarantee*) the entity's obligations under the loan to make payments.
- (3) The conditions of the special guarantee are the conditions prescribed under a regulation under section 78 for special guarantees.
- (4) However subsection (2), and the conditions prescribed for a special guarantee, are subject to an express provision in a document relating to the loan and signed before the commencement.

## **83 Debentures, bonds and inscribed stock issued, and charges over income created, before commencement**

- (1) Section 36(2) and (3) do not apply to, or otherwise affect—
- (a) debentures, bonds or inscribed stock issued by an entity before the commencement; or
  - (b) charges over an entity's income created by the entity before the commencement.
- (2) Debentures, bonds, inscribed stock and charges over income, as mentioned in subsection (1), rank in accordance with the law applicable to them at their date of issue or creation.

## **85 No automatic default for existing arrangements**

- (1) The amendment of a provision of this Act as in force immediately before the commencement or an unchanged Act—
  - (a) does not place the entity in breach of contract or otherwise make it guilty of a civil wrong; and
  - (b) is taken not to fulfil a condition—
    - (i) allowing a person to end a contract or obligation or change the operation or effect of a contract or obligation; or
    - (ii) requiring an amount to be paid before its stated maturity; and
  - (c) does not release a surety or other obligee from an obligation.
- (2) If, apart from this subsection, obtaining the consent of, or giving notice to, a person would be necessary under a financial arrangement to give effect to a matter dealt with under this division, the consent is taken to have been obtained or the notice is taken to have been given.

## **Division 2 Transitional provisions for Statutory Bodies Financial Arrangements Amendment Act 2003**

### **86 Definitions for div 2**

In this division—

*commencement* means the commencement of this section.

*pre-amended Act* means the *Statutory Bodies Financial Arrangements Act 1982* before the commencement.

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**87 Approval before commencement for arrangement that is a type 1 financial arrangement**

- (1) This section applies to a Treasurer's approval for section 61 of the pre-amended Act, as that approval was in force immediately before the commencement, to the extent the approval authorised a statutory body to enter into an arrangement that, if the statutory body were to enter into the arrangement after the commencement, would be a type 1 financial arrangement.
- (2) The approval continues to have effect, and may be dealt with, after the commencement as if it were a Treasurer's approval for section 60A.
- (3) An arrangement entered into before the commencement under the approval continues to have effect, and may be dealt with, after the commencement as if it were a type 1 financial arrangement.
- (4) If the approval provided that a further arrangement may be entered into that is a type 1 financial arrangement, the further arrangement—
  - (a) may be entered into under the approval after the commencement; and
  - (b) is to be dealt with as if it were a type 1 financial arrangement.

**88 Approval before commencement for arrangement that is a type 2 financial arrangement**

- (1) This section applies to a Treasurer's approval for section 61 of the pre-amended Act, as that approval was in force immediately before the commencement, to the extent the approval authorised a statutory body to enter into an arrangement that, if the statutory body were to enter into the arrangement after the commencement, would be an arrangement that is not a type 1 financial arrangement.
- (2) The approval continues to have effect, and may be dealt with, after the commencement as if it were a Treasurer's approval for section 61A.

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- (3) An arrangement entered into before the commencement under the approval continues to have effect, and may be dealt with, after the commencement as if it were a type 2 financial arrangement.
- (4) If the approval provided that a further arrangement may be entered into, other than an arrangement that would be a type 1 financial arrangement, the further arrangement—
  - (a) may be entered into under the approval after the commencement; and
  - (b) is to be dealt with as if it were a type 2 financial arrangement.
- (5) Subsections (3) and (4) apply even if the arrangement mentioned in either of those subsections is not a financial arrangement under this Act.

## **89 Approval on condition under s 70 before commencement**

An approval under, or purportedly under, section 70 that was given before the commencement and stated it was subject to a condition is, and always was, as valid as if it had been given after the commencement.



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## Schedule Dictionary

## section 3A

***appointee***, for a statutory body, means a person appointed as an appointee for the body under section 24.

***at call***, for an investment by a statutory body, means the body may, without penalty, obtain all amounts under the investment—

- (a) immediately it gives written or oral notice to the person with whom the investment is made; or
- (b) within 30 days after written or oral notice is given to the person with whom the investment is made.

***Australian money*** means an amount of money in, or expressed in, the lawful currency of Australia.

***authorising Act***, for a statutory body, means the Act under which the body is established.

***borrow*** see section 32.

***category 1 investment power*** see section 44.

***category 2 investment power*** see section 45.

***category 3 investment power*** see section 46.

***court-appointed receiver*** means a person appointed a receiver under section 37.

***decide*** includes resolve.

***derivative transactions*** means transactions entered into for—

- (a) managing or varying financial returns or financial or currency risks, including, for example, risks associated with the volatility of currency exchange, interest and discount rates; or
- (b) returning gains, or avoiding losses, by reference to financial or currency obligations or the movement of

currency exchange, interest and discount rates or commodity prices.

*Examples of derivative transactions—*

- 1 forward agreements, including, for example, forward bill agreements, forward commodity agreements, forward exchange agreements and forward rate agreements
- 2 futures contracts for bills, bonds, commodities, shares and the share price index
- 3 options, whether exchange traded or over-the-counter, including, for example, options on bonds, caps, collars, currencies, floors, interest rates and swaps
- 4 swaps, including, for example, commodity, CPI linked, currency exchange, equity linked and interest rate swaps

***encumbrance***, in relation to property or income, means—

- (a) a charge or security created over the property or income;  
or
- (b) the transfer of the property or income as security.

*Examples of encumbrances—*

bills of sale, liens and mortgages

***financial arrangement*** means—

- (a) a type 1 financial arrangement; or
- (b) a type 2 financial arrangement; or
- (c) a derivative transaction; or
- (d) the appointment of a funds manager.

***funds manager*** see section 59.

***guarantee*** includes an indemnity.

***guarantee amount***, for a guarantee under a guarantee section of the obligations of a statutory body for a financial arrangement, means—

- (a) the amount the Treasurer must pay under the guarantee as an amount payable by the body under the arrangement; and
- (b) the amount of other costs and expenses incurred by the Treasurer under the guarantee in performing other

obligations of the body under the arrangement that the Treasurer guaranteed.

**guarantee section** means section 16, 21 or 82.

**income**, of a statutory body, includes its receipts and revenue from any source.

**investment arrangements** means securities, investments and other similar arrangements, including, for example, bills of exchange, bonds, certificates of deposit and promissory notes.

**obligations**, of a statutory body under a financial arrangement under this Act or another Act, include the payment of amounts payable under the arrangement.

**QIC** means the Queensland Investment Corporation.

**QTC** means the Queensland Treasury Corporation.

**recovery amounts**, for a guarantee under a guarantee section, means the amounts the Treasurer is entitled to recover under section 23 in relation to the guarantee.

**remuneration** includes commission, fees and salary.

**sign**, a document, includes execute the document.

**statutory body** see part 2A.

**Treasurer's approval** means an approval of the Treasurer under part 9.

**type 1 financial arrangement** means an arrangement that provides for, relates to, is directed towards or includes 1 or more of the following—

- (a) entering into or performing a deferred payment arrangement if the payment period is more than 3 years;
- (b) entering into a joint venture, partnership or trust;
- (c) forming, or participating in forming, a corporation;
- (d) acquiring, consolidating, dealing with, disposing of, holding or issuing bonds, debentures, inscribed stock, shares, stock or other securities of any statutory body or corporation;

- (e) entering into an arrangement, covenant, guarantee, promise or undertaking to meet liabilities or obligations incurred by or to a person, whether or not the person is a party to the arrangement, covenant, guarantee, promise or undertaking;
- (f) underwriting an issue of debentures, shares or other securities;
- (g) entering into another arrangement prescribed under a regulation as a type 1 financial arrangement.

***type 2 financial arrangement*** means an arrangement, other than a type 1 financial arrangement, that provides for, relates to, is directed towards or includes 1 or more of the following—

- (a) borrowing an amount;
- (b) lending an amount;
- (c) investing an amount;
- (d) taking land or an interest in land;
- (e) acquiring, consolidating, dealing with, disposing of or holding buildings or other structures, for providing infrastructure or other facilities for the public or part of the public, including, for example, entertainment centres, light rail systems, port terminals, sporting stadiums, toll roads, transport infrastructure and waste treatment facilities;
- (f) granting or taking a lease, or letting or taking on hire for a period, a building, equipment, land, machinery, plant or other property, including a finance lease, as lessee, lessor, hirer, owner or tenant;
- (g) granting financial accommodation by or to a person, whether or not the person is a party to the arrangement;
- (h) accepting, discounting, drawing, endorsing or issuing a bill of exchange, promissory note, payment order or other negotiable instrument, other than a cheque within the meaning of the *Cheques Act 1986* (Cwlth), section 5(1) or 10;

- (i) holding property as a trustee or agent;
- (j) acquiring, consolidating, dealing with, disposing of, holding or reissuing foreign currency;
- (k) entering into another arrangement prescribed under a regulation as a type 2 financial arrangement.