

WESTERN AUSTRALIA

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# WESTERN AUSTRALIAN TREASURY CORPORATION ACT

(No. 16 of 1986)

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CLASSES OF BODY CORPORATE NOT INCLUDED  
IN DEFINITION OF "AUTHORITY"

# WESTERN AUSTRALIAN TREASURY CORPORATION ACT

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No. 16 of 1986

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AN ACT to establish a Western Australian Treasury Corporation; to enable the borrowing of moneys by the Western Australian Treasury Corporation and the lending by it of moneys to certain statutory authorities and others; to repeal the *Borrowings for Authorities Act 1981* and to amend the *Financial Administration and Audit Act 1985*; and to provide for matters incidental thereto or connected therewith.

[Assented to 25 July 1986.]

**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

## PART I—PRELIMINARY

### Short title

1. This Act may be cited as the *Western Australian Treasury Corporation Act 1986*.

**Commencement**

2. This Act shall be deemed to have come into operation on 1 July 1986.

**Interpretation**

3. (1) In this Act, unless the contrary intention appears—

“authority” means body corporate which—

- (a) is constituted by or under a written law; and
- (b) is empowered by or under a written law to borrow moneys,

but does not include body corporate belonging to any of the classes of body corporate specified in the Schedule;

“borrow” includes—

- (a) reborrow;
- (b) obtain advances, credit or deposits; and
- (c) arrange for financial accommodation;

“create”, in relation to debt paper, includes issue and sell;

“debt paper” means inscribed stock, bonds, debentures, debentures with coupons annexed, bills of exchange, promissory notes or other bearer securities, or other similar instruments evidencing indebtedness;

“financial institution” means financial institution situated inside or outside Australia;

“the Account” means the Western Australian Treasury Corporation Account referred to in section 17 (1);

“the Corporation” means the Western Australian Treasury Corporation established by section 5 (1);

“the repealed Act” means the *Borrowings for Authorities Act 1981*.

(2) The Governor may from time to time by order amend the Schedule by adding a class of body corporate to the classes of body corporate specified in the Schedule.

(3) When the Schedule is amended under subsection (2), this Act continues to apply to any thing done under this Act before that amendment by or to or in relation to a body corporate belonging to the class of body corporate added by that amendment to the classes of body corporate specified in the Schedule as if that amendment had not been made.

#### **Act to prevail over certain written laws**

4. (1) If there is an inconsistency between this Act and a written law by or under which an authority is constituted or is empowered to borrow moneys, this Act prevails to the extent of that inconsistency.

(2) An authority may, notwithstanding anything in a written law referred to in subsection (1)—

- (a) borrow amounts lent to it by the Corporation under section 14 (2) instead of borrowing moneys in accordance with that written law; and
- (b) do or suffer all things necessary or convenient for giving effect to this Act.

(3) An authority shall, notwithstanding anything in a written law referred to in subsection (1)—

- (a) permit the Corporation, within the State or elsewhere, to establish and conduct, or to arrange for the establishment and conduct of, registries, marking facilities, agencies and other offices for dealing in debt paper created by the authority;
- (b) if the Corporation establishes, or arranges for the establishment of, any registry, marking facility, agency or other office for dealing in debt paper created by the authority, cause any such office formerly maintained by or on behalf of the authority to be

discontinued and furnish to the Corporation on request all accounts, books, records, documents, papers, information and other things formerly pertaining thereto; and

- (c) if the surrender of any debt paper created by the authority is accepted by the Corporation under an agreement made under section 10 (4), on request by the Corporation cause that debt paper to be cancelled.

## PART II—WESTERN AUSTRALIAN TREASURY CORPORATION

### **Western Australian Treasury Corporation established as body corporate**

5. (1) There is hereby established a body corporate to be called the Western Australian Treasury Corporation.

(2) The Corporation—

- (a) consists of the person for the time being holding or acting in the office of Under Treasurer; and
- (b) under its corporate name—
  - (i) has perpetual succession and a common seal;
  - (ii) may sue and be sued in any court; and
  - (iii) subject to this Act, is capable of doing and suffering all such acts and things as bodies corporate may lawfully do and suffer.

(3) The Corporation is not an agent of the Crown in right of the State and does not enjoy the status, immunities and privileges of the Crown.

### **Common seal, agents, attorneys and facsimiles of Corporation**

6. (1) The common seal of the Corporation shall—

- (a) be kept in such custody as the Corporation directs; and
- (b) not be used except as authorized by the Corporation.

(2) When a document purporting to bear the common seal of the Corporation is produced before any court, judge or person acting judicially, that court, judge or person shall, unless the contrary is proved, presume that—

- (a) that document bears that common seal; and
- (b) that common seal was duly affixed to that document.

(3) The Corporation may, by writing under its common seal, empower a person, either generally or in respect of a specified matter or specified matters, as its agent or attorney to execute deeds or other instruments on its behalf, and a deed or other instrument executed by such an agent or attorney on behalf of the Corporation binds the Corporation and has the same effect as if it were under the common seal of the Corporation.

(4) For the purposes of this Act, the Corporation may make use of a facsimile of—

- (a) its common seal; or
- (b) the signature of the person referred to in section 5 (2) (a) or of an agent or attorney empowered to execute deeds or other instruments on its behalf under subsection (3),

and a deed or other instrument purporting to evidence indebtedness on the part of the Corporation and to be endorsed with such a facsimile shall, until the contrary is shown, be deemed to have been sealed by it or signed by the person, or by an agent or attorney, referred to in paragraph (b), as the case requires.

### **Corporation exempt from State duties, etc.**

7. Notwithstanding section 5 (3), the Corporation and deeds or other instruments to which it is a party are not liable to any duties, imposts or taxes under a written law.

### **Use of staff and facilities of Treasury Department**

8. The Corporation may by arrangement made between it and the Treasurer, and on such terms and conditions as may be mutually arranged by it with the Treasurer and, if appropriate, with the Public Service Board, make use, either full time or part time, of the services of any officer, or of any facilities, of the Treasury Department.

## PART III—BORROWING AND LENDING BY CORPORATION

**Functions of Corporation**

**9.** (1) Subject to this Act, the functions of the Corporation are—

(a) to borrow moneys from any person and to lend moneys—

(i) to authorities; or

(ii) if a power to borrow moneys from the Corporation is conferred by a written law, so as to enable the exercise of that power;

and

(b) to develop and implement borrowing programmes for the purposes of this Act.

(2) The Corporation shall in the performance of its functions under this section act in accordance with proper principles of financial management and with a view to avoiding a loss.

**General powers of Corporation**

**10.** (1) The Corporation may, subject to this Act, do any thing necessary or convenient for the performance of its functions under section 9.

(2) Without limiting the generality of subsection (1), the Corporation may, for the purpose of performing its functions under section 9 and subject to this section—

(a) enter into an agreement with any person;

(b) borrow moneys—

(i) inside or outside Australia; and

(ii) in Australian currency or in any other currency or medium of exchange, whether national or international,

on such terms and conditions and in such manner, whether by the creation of debt paper or otherwise, as the Treasurer approves;

- (c) enter into agreements for varying the terms and conditions on which moneys have been borrowed, and may create debt paper for the purposes of any such agreement;
- (d) create debt paper for the purpose of carrying out any arrangement made by the Corporation for the exchange, whether on or before maturity and whether with or without any further payment, of any other debt paper created under this section;
- (e) cancel any debt paper surrendered to it and undertake to make payments, on such terms and conditions as it thinks fit, to holders of debt paper so surrendered, or otherwise as part of an agreement entered into or arrangement made under this section;
- (f) purchase, resell, hold or otherwise deal in debt paper created by the Corporation on such terms and conditions as it thinks fit, and may cancel any debt paper so purchased;
- (g) with the approval of the Treasurer, open and maintain accounts with financial institutions inside or outside Australia;
- (h) from time to time and on such terms and conditions as it thinks fit enter into an agreement with a financial institution or other person, which agreement provides for the financial institution or other person to act as underwriter, manager or trustee, or paying, fiscal or other agent, for or in connection with the borrowing of moneys inside or outside Australia;
- (i) within the State or elsewhere establish and conduct, or arrange for the establishment and conduct of, registries, marking facilities, agencies and other offices for dealing in debt paper created by the Corporation or an authority; and
- (j) within the State or elsewhere appoint persons to act as registrars, deputy registrars, agents or otherwise for the purposes of paragraph (i).

(3) The Corporation shall not borrow moneys under this Part (otherwise than under section 12) unless the Governor has on the recommendation of the Treasurer approved—

- (a) the amount of the moneys to be so borrowed; or
- (b) the manner in which the amount referred to in paragraph (a) is to be ascertained.

(4) The Corporation may, on behalf of an authority which has created and issued any debt paper in respect of which the State guarantees the repayment of principal and the payment of interest thereon, agree to accept from any person the surrender of that debt paper on such terms and conditions as the Corporation thinks fit, including, without limiting the generality of those terms and conditions, a condition that the Corporation in consideration of that surrender create and issue to the person effecting that surrender debt paper—

- (a) of a like value; or
- (b) agreed by the Corporation and that person, notwithstanding differences in principal amount, rate of interest, maturity date or otherwise, to be of like value,

to the value of the debt paper surrendered, and thereupon the amount of the debt incurred as a result of the issue to that person of debt paper created and issued under this subsection, together with the amount of any expenses thereby incurred, shall be deemed to be an amount lent by the Corporation to that authority under section 14 (2) on such terms and conditions, if any, as the Corporation specifies.

(5) Neither a borrower of moneys lent under section 14 (2) nor the Corporation nor any officer of whose services it is making use under section 8—

- (a) shall receive notice of any trust, whether express, implied or constructive, in relation to any debt paper created under this section; or
- (b) is bound to see to the execution of any trust, whether express, implied or constructive, to which any debt paper created under this section may be subject.

(6) Neither a person appointed under subsection (2) (j) to act as a registrar, deputy registrar, agent or otherwise for the purposes of subsection (2) (i) nor the Corporation nor any officer of whose services it is making use under section 8—

- (a) shall receive notice of any trust, whether express, implied or constructive, in relation to any debt paper or, in the case of a person so appointed, enter any such notice in any stock ledger or other book kept by such a person; or
- (b) is bound to see to the execution of any trust, whether express, implied or constructive, to which any part of any debt paper may be subject.

(7) A person lending moneys to the Corporation is not bound to inquire into the application of the moneys so lent or in any way responsible for the non-application or misapplication thereof.

### **Payment of debts incurred by Corporation**

11. The Corporation shall, subject to this Act, pay—

- (a) the debt incurred as a result of the borrowing of moneys by the Corporation; and
- (b) any amount, other than the debt referred to in paragraph (a), required to be paid by the Corporation by the terms and conditions on which it borrowed the moneys concerned,

out of moneys credited to the Account.

### **Advances to Corporation from Treasurer**

12. (1) The Corporation may borrow from the Treasurer advances of such amounts and for such reasons as the Treasurer approves on such terms and conditions as the Treasurer imposes.

(2) When an advance is made under subsection (1), the Corporation shall—

- (a) repay the amount of the advance; and
- (b) pay interest,

in accordance with the terms and conditions imposed under that subsection and shall comply with any other terms and conditions so imposed.

### **State guarantee**

13. (1) Financial liabilities incurred or assumed by the Corporation under this Act (otherwise than under section 12) are guaranteed by the Treasurer on behalf of the State.

(2) A financial liability of the Treasurer under a guarantee arising by virtue of subsection (1) shall be paid out of the Consolidated Revenue Fund, which is hereby appropriated to the necessary extent.

(3) The Treasurer may in writing served on the Corporation require the Corporation to pay to him such fees, if any, in respect of a guarantee arising by virtue of subsection (1) as he thinks fit, and shall pay any such fees recovered or received by him from the Corporation into the Consolidated Revenue Fund.

### **Disposal of moneys borrowed by Corporation**

14. (1) When the Corporation receives moneys borrowed by it under this Part, it shall as soon as is practicable credit those moneys to the Account.

(2) The Corporation may—

(a) lend in such manner and on such terms and conditions as it thinks fit—

(i) to an authority or authorities; or

(ii) so as to enable the exercise of a power to borrow moneys from the Corporation conferred by a written law,

any of the moneys credited to the Account; and

(b) require a borrower of moneys lent under this subsection to pay to the Corporation at such times as are specified in that requirement—

(i) such fees, if any, as the Corporation considers appropriate in the case of that borrower for the purpose of meeting the cost of any fees required to be paid to the Treasurer under section 13 (3) in respect of a guarantee arising by virtue of section 13 (1) in relation to those moneys; and

(ii) such fees as the Treasurer from time to time approves for the purpose of meeting wholly or in part the estimated costs of the performance by the Corporation of its functions under section 9.

### **Borrowers to pay certain amounts to Corporation**

15. (1) Each borrower of moneys lent under section 14 (2) shall repay the amount of those moneys, and pay interest thereon, to the Corporation or to such other person as the Corporation directs in accordance with the terms and conditions of that lending, and pay to the Corporation any fees required to be paid under that section in connection with that lending in accordance with that requirement.

(2) The Corporation shall credit to the Account all amounts, interest and fees repaid or paid to it under subsection (1) or under any agreement entered into by the Corporation under section 10 (4).

### **Repayment of guarantee moneys**

16. If moneys have been paid out of the Consolidated Revenue Fund under section 13, any moneys received or recovered by the Treasurer from the Corporation or otherwise in respect of that payment shall be paid by him into the Consolidated Revenue Fund.

## **PART IV—GENERAL**

### **Western Australian Treasury Corporation Account**

17. (1) The Borrowings for Authorities Account established by section 11 of the repealed Act is hereby continued in existence subject to this Act under the name of the Western Australian Treasury Corporation Account.

(2) The Corporation may—

- (a) temporarily invest, in the manner in which public moneys may under the *Financial Administration and Audit Act 1985* be invested, any moneys credited to the Account which are not immediately required for the purposes of this Act;
- (b) from time to time realize or vary any investments made under this subsection or section 11 of the repealed Act, as the case requires; and
- (c) at the end of each financial year apply any surplus remaining after the costs of the operations of the Corporation have been taken into account by crediting to each borrower to which moneys have been lent under section 14 (2) during that financial year an amount calculated by the Corporation, having regard to the participation of each such borrower in the achievement of that surplus.

**Delegation by Corporation**

**18.** (1) The Corporation may, either generally or as otherwise provided by the instrument of delegation, delegate in writing to any officer of whose services it is making use under section 8 all or any of its powers and duties under this Act, other than this power of delegation.

(2) For the purposes of this Act, the exercise of a power or the performance of a duty by a delegate under this section shall be deemed to be the exercise of the power or the performance of the duty by the Corporation.

(3) A person purporting to exercise a power or perform a duty under a delegation under this section is presumed to do so, in the absence of evidence to the contrary, in accordance with the terms of that delegation.

**Delegation by Treasurer of power of approval**

**19.** (1) The Treasurer may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him delegate to a person any power of approval conferred on him by this Act.

(2) For the purposes of this Act, the giving of an approval under this Act by a delegate under this section shall be deemed to be the giving of the approval under this Act by the Treasurer.

(3) A person purporting to give an approval under a delegation under this section is presumed to do so, in the absence of evidence to the contrary, in accordance with the terms of that delegation.

**Directions by Treasurer**

**20.** (1) The Treasurer may give directions to the Corporation in relation to the exercise of the powers, or of any specified power, conferred on the Corporation by Part III, including a direction that the Corporation shall not exercise such a power without the prior approval in writing of the Treasurer, and the Corporation shall give effect to any such direction.

(2) The approval in writing referred to in subsection (1) may be given on, or subject to, such terms and conditions as the Treasurer thinks fit.

## Financial administration, audit and reporting

**21.** The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Corporation and its operations.

## Regulations

**22.** (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for giving effect to the purposes of this Act.

(2) Without limiting the generality of subsection (1), regulations made under that subsection may—

- (a) in the case of the first regulations so made after the coming into operation of this Act, provide that those regulations, except for any regulation or subregulation creating an offence, shall be deemed to have come into operation on 1 July 1986 and that any regulation or subregulation creating an offence shall come into operation on the day on which those regulations are published in the *Gazette*;
- (b) provide for the creation of debt paper under section 10 and for the cancellation, exchange, redemption, registration, surrender, transfer or transmission of debt paper or for any other procedure or matter relating thereto;
- (c) prohibit persons from divulging information coming to their knowledge by reason of or in the course of their duties under this Act except in circumstances specified in those regulations; and
- (d) create offences and provide a penalty not exceeding \$2 500 in respect of any such offence.

(3) The Corporation may—

- (a) if it enters into an agreement under section 10 to borrow moneys and, in accordance with that agreement, creates any separate debt paper under that section, stipulate in that agreement that regulations referred to in subsection (2) (a) do not apply at all, or apply only to the extent specified in that agreement; or

- (b) if it borrows moneys under Part III (otherwise than under section 12) by means of the creation under section 10 of debt paper without entering into a separate agreement under that section to borrow moneys, stipulate in that debt paper that regulations referred to in subsection (2) (a) do not apply at all, or apply only to the extent specified in that debt paper,

to that debt paper, whereupon those regulations shall not apply to that debt paper at all or shall apply thereto only to the extent so specified, as the case requires.

#### PART V—TRANSITIONAL, VALIDATION AND CONSEQUENTIAL AMENDMENT

##### Repeal

23. The *Borrowings for Authorities Act 1981* is repealed.

##### Transitional provisions

24. (1) On the coming into operation of this Act—

- (a) all rights, liabilities and obligations of the Treasurer under the repealed Act that were in existence immediately before that coming into operation shall devolve on the Corporation and section 13 of this Act applies accordingly to any such liability which is a financial liability;
- (b) all contracts, agreements and undertakings made by or with the Treasurer under the repealed Act and having effect immediately before that coming into operation shall have effect as contracts, agreements and undertakings made by or with the Corporation and may be enforced by or against the Corporation accordingly; and
- (c) any legal or other proceedings or any remedies that might, but for section 23 of this Act, have been commenced or continued or available by or against or to the Treasurer under the repealed Act may be commenced or continued, or shall be available, by or against or to the Corporation, as the case requires.

- (2) Without limiting the generality of subsection (1)—

- (a) any moneys borrowed by the Treasurer under section 4 of the repealed Act and not repaid, together with any amount referred to in section 5 (1) (b) of the repealed Act, related to that borrowing and unpaid, before the coming into operation of this Act shall be repaid or paid, as the case requires, by the Corporation in accordance with the terms and conditions of, and in the manner envisaged by, that borrowing;

- (b) any debt paper created by the Treasurer under the repealed Act and not cancelled or otherwise extinguished before the coming into operation of this Act shall be deemed to have been created by the Corporation under section 10 of this Act and shall be dealt with accordingly; and
- (c) any moneys lent by the Treasurer under section 7 (1) of the repealed Act and not repaid, together with any interest on those moneys, and any expenses connected with that lending, not paid, to the Treasurer under section 8 of the repealed Act before the coming into operation of this Act shall be repaid or paid, as the case requires, to the Corporation in accordance with the terms and conditions of that lending, but otherwise those moneys shall be deemed for the purposes of this Act to have been lent under section 14 (2) of this Act and that interest and those expenses shall be deemed for the purposes of this Act to be interest on those moneys, and fees required to be paid under section 14 (2) of this Act to the Corporation in connection with that lending, respectively.

(3) Notwithstanding anything in this section, the Corporation may, after having consulted the authority or authorities concerned, alter the terms and conditions on which any amount or amounts lent by the Treasurer under section 7 (1) of the repealed Act was or were so lent to that authority or those authorities and those terms and conditions as so altered shall in respect of the period commencing on the date of that alteration be deemed to be those on which that amount or those amounts was or were so lent and shall have effect accordingly.

(4) For the purposes of this section, a reference to the Treasurer under the repealed Act or to the Treasurer as the central borrowing authority in the State under the repealed Act, as the case requires, in an account, book, record, document or paper in existence immediately before the coming into operation of this Act shall on that coming into operation be construed as a reference to the Corporation.

## **Validation**

**25.** Any thing done—

- (a) on or after 1 July 1986; but
- (b) before the day on which this Act receives the Royal Assent,

that would have been lawful if this Act had been in force at the time when that thing was done is hereby validated and declared to have been lawfully done.

***Financial Administration and Audit Act 1985*** amended

26. Schedule 1 to the *Financial Administration and Audit Act 1985*\* is amended by inserting after "Western Australian Tourism Commission." the following—

“ Western Australian Treasury Corporation. ”.

[\*Act No. 117 of 1985].

## SCHEDULE

(Section 3)

CLASSES OF BODY CORPORATE NOT INCLUDED  
IN DEFINITION OF "AUTHORITY"

- | <i>Item</i> | <i>Class of body corporate</i>   |
|-------------|--|
| 1.          | Associations incorporated under the <i>Associations Incorporation Act 1895</i> .   |
| 2.          | Corporations as defined by section 5 of the <i>Companies (Western Australia) Code</i> .  |
| 3.          | Credit unions as defined by section 4 of the <i>Credit Unions Act 1979</i> .   |
| 4.          | Societies as defined by section 5 of the <i>Building Societies Act 1976</i> .  |
| 5.          | Registered societies as defined by section 2 of the <i>Co-operative and Provident Societies Act 1903</i> .   |
| 6.          | Co-operative companies within the meaning of Part VI of the <i>Companies (Co-operative) Act 1943</i> .   |
| 7.          | Bodies corporate which— <ol style="list-style-type: none"><li>are constituted by or under a written law;</li><li>are empowered by or under a written law to borrow moneys; and</li><li>are of a religious character.</li></ol> |
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