

BORROWINGS FOR AUTHORITIES ACT 1981.

(No. 61 of 1981.)

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BORROWINGS FOR AUTHORITIES.

No. 61 of 1981.

AN ACT to facilitate the borrowing of moneys by certain semi-government authorities by empowering the Treasurer of the State to borrow moneys for their benefit and to provide for matters incidental thereto or connected therewith.

[Assented to 13 October 1981.]

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.

1. This Act may be cited as the *Borrowings for Authorities Act 1981*. Short title.

Interpreta-
tion.

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

“Account” means the Borrowings for Authorities Account established by section 11 (1);

“authority” means a body corporate which—

(a) is constituted by or under a law of the State; and

(b) is empowered by or under a law of the State to borrow moneys,

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

“bank” means a bank situated inside or outside Australia;

“borrow” includes—

(a) reborrow;

(b) obtain credit; and

(c) arrange for financial accommodation;

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

“debt paper” means inscribed stock or any instrument evidencing indebtedness;

“expenses” means expenses incurred by or on behalf of the Treasurer in the exercise or performance of the powers, authorities, duties and functions conferred or imposed on the Treasurer by or under this Act;

“law of the State” means—

(a) an Act for the time being in force; or

(b) a regulation, rule or by-law made, and for the time being in force, under an Act;

“paragraph” means paragraph of the section or subsection in which the term appears;

“section” means section of this Act;

“subsection” means subsection of the section in which the term appears;

“Treasurer” means the Treasurer of the State.

(2) The Governor may from time to time by Order in Council published in the *Gazette* amend the Schedule to this Act by adding a class of body corporate to the classes of body corporate specified in that Schedule.

(3) On the publication in the *Gazette* of an Order in Council made under subsection (2), the Schedule to this Act is amended accordingly and, as so amended, has the same force and effect as if the amendment effected by that Order in Council had been effected by an Act amending this Act.

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

Act to prevail over certain laws of the State.

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

(a) borrow amounts lent to it by the Treasurer under section 7 (1) instead of borrowing moneys in accordance with that law of the State; and

(b) do or suffer all things necessary or convenient for giving effect to this Act.

PART II.—BORROWING BY TREASURER FOR BENEFIT OF AUTHORITIES.

4. (1) Subject to this Act, the Treasurer may, with the approval of the Governor, borrow moneys for the benefit of any one authority or of any two or more authorities from any person.

Power of Treasurer to borrow moneys for benefit of authorities.

(2) The Treasurer may, for the purposes of subsection (1)—

- (a) borrow moneys on such terms and conditions and in such manner as the Treasurer thinks fit;
- (b) enter into an agreement with any person;
- (c) create such debt paper at such rates of interest and on such terms and conditions relating to repayment, redemption and other matters as the Treasurer thinks fit;
- (d) 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;
- (e) enter into agreements for varying the terms and conditions on which moneys have been borrowed, or on which debt paper has been created, under this section, and may create debt paper under this section for the purposes of any such agreement;
- (f) create debt paper under this section for the purpose of carrying out any arrangement made by the Treasurer for the exchange, whether on or before maturity and whether with or without any further payment, of any other debt paper so created;
- (g) cancel any debt paper surrendered to him and undertake to make payments, on such terms and conditions as he thinks fit, to holders of debt paper so surrendered, or otherwise as part of an agreement entered into or arrangement made under this section;
- (h) aggregate or divide the moneys to be borrowed for the benefit of—
 - (i) one authority; or
 - (ii) two or more authorities,

and borrow those moneys by raising one loan or two or more loans;

- (i) open and maintain accounts with banks;
- (j) from time to time and on such terms and conditions as he thinks fit enter into an agreement with a bank, financial institution or other person providing for the bank, financial institution or other person to act as underwriter, manager, trustee, or paying, fiscal or other agent, for or in connection with the borrowing of moneys inside or outside Australia; and
- (k) do any thing, in addition to any thing referred to in paragraphs (a) to (j), necessary or convenient for the purpose of borrowing moneys under subsection (1).

5. (1) The payment of—

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

Payment of
debts
incurred by
Treasurer.

under section 4 is guaranteed by the State to the extent, and in the manner provided by, subsection (3).

(2) The Treasurer shall, subject to subsection (3), pay the debt referred to in paragraph (a) of subsection (1), together with any amount referred to in paragraph (b) of that subsection, out of moneys credited to the Account.

(3) If at any time there are insufficient moneys, or no moneys, credited to the Account to enable the Treasurer to make the payment referred to in subsection (2) out of moneys credited to the Account, there shall be charged on and paid out of the Consolidated Revenue Fund, which is hereby appropriated to the extent necessary for the purpose, moneys sufficient to enable him to make that payment.

Authorities
for benefit
of which
moneys
borrowed
not
parties to
borrowing.

6. (1) The Treasurer may sue and be sued in respect of the debt referred to in paragraph (a), or any amount referred to in paragraph (b), of section 5 (1) as if the Treasurer had borrowed the moneys concerned for his own benefit and not for the benefit of an authority or authorities.

(2) An authority or authorities for the benefit of which moneys have been borrowed under section 4 shall not sue, or be sued by, any person other than the Treasurer in respect of the debt referred to in paragraph (a), or any amount referred to in paragraph (b), of section 5 (1).

PART III.—ON LENDING BY TREASURER
TO AUTHORITIES.

Disposal of
moneys
borrowed
by
Treasurer.

7. (1) When the Treasurer receives moneys borrowed under section 4, he shall—

- (a) as soon as is practicable after their receipt by him, credit those moneys to the Account; and
- (b) as soon as is practicable after crediting those moneys to the Account, lend in such manner and on such terms and conditions as he thinks fit to the authority or authorities for the benefit of which those moneys were so borrowed such amount as is, or such amounts as are in the aggregate, equivalent to the amount of those moneys after deducting from the amount of those moneys any expenses incurred for the benefit of that authority or those authorities.

(2) Notwithstanding anything in subsection (1), the Treasurer may recover from—

- (a) the authority or authorities to which he lends an amount or amounts, as the case requires, under that subsection in accordance with the terms and conditions of the loan or loans concerned; or
- (b) moneys credited to the Account,

or from both the authority or authorities referred to in paragraph (a) in accordance with the terms and conditions of the loan or loans concerned and moneys credited to the Account, as the case requires, any expenses which have been incurred for the benefit of that authority or those authorities and which have not been met by a deduction under subsection (1) (b).

8. (1) An authority to which an amount or amounts has or have been lent under section 7 (1) shall repay that amount or those amounts, as the case requires, pay interest thereon and pay any expenses which have not been met by a deduction under section 7 (1) (b) or recovered under section 7 (2) to the Treasurer in accordance with the terms and conditions of the loan or loans concerned.

Authorities to repay amounts lent to them by Treasurer.

(2) The Treasurer shall credit all amounts, interest and expenses repaid or paid to him under subsection (1) to the Account.

9. If moneys have been paid out of the Consolidated Revenue Fund under section 5 (3), the Treasurer shall, as soon as the relevant authority or authorities to which an amount or amounts has or have been lent under section 7 (1) has or have complied with section 8 (1) and there are in consequence sufficient moneys credited to the Account to enable him to do so, pay into the Consolidated Revenue Fund out of moneys credited to the Account an amount equal to the amount of the moneys so paid out of the Consolidated Revenue Fund.

Repayment of moneys paid out of Consolidated Revenue Fund.

PART IV.—GENERAL.

10. (1) Subject to subsection (2), the authority or authorities for the benefit of which the Treasurer borrows moneys under section 4 shall indemnify the Treasurer in respect of—

Indemnity of Treasurer.

- (a) any act done or omitted to be done; or
- (b) any losses, costs or damage incurred,

in relation to that borrowing by the Treasurer in the exercise or performance of the powers, authorities, duties and functions conferred or imposed on the Treasurer by or under this Act.

(2) When the Treasurer borrows moneys for the benefit of two or more authorities under section 4, each of those authorities shall indemnify the Treasurer under subsection (1) in an amount which bears the same proportion to the total amount in which the Treasurer is required by that subsection to be indemnified as the moneys so borrowed for the benefit of that authority bear to the sum of the moneys so borrowed for the benefit of both or all of those authorities.

Borrowings
for
Authorities
Account.

11. (1) There is hereby established an account at the Treasury to be called the Borrowings for Authorities Account.

(2) The Treasurer may—

- (a) temporarily invest in the manner in which public moneys may under the Public Moneys Investment Act 1961 be invested any moneys credited to the Account which are not immediately required for the purposes of this Act;
- (b) from time to time realise or vary any investments made under this subsection; and
- (c) credit the amount of any interest received as a result of an investment made under this subsection to the authority or authorities for the benefit of which the moneys invested in that investment were borrowed under section 4.

(3) Moneys credited to the Account are not public moneys within the meaning of the Audit Act 1904.

12. (1) The Under Treasurer or Deputy Under Treasurer or the person for the time being acting in his office may for the purposes of this Act, if he is satisfied that any requirement made by or under this Act has been complied with, by writing signed by him certify that that requirement has been complied with.

Certificates
of
compliance
with Act.

(2) A certificate made under subsection (1) is, as between the parties to the transaction in relation to which that certificate was made or their successors or assigns, conclusive proof that the requirement specified in that certificate has been complied with in the manner specified therein.

13. (1) The Treasurer may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him delegate to any person any of his powers and duties under this Act, other than this power of delegation.

Delegation
by Treasurer.

(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 Treasurer.

(3) A delegation under this section may be made to a specified person or to persons of a specified class.

(4) A delegation under this section may be—

(a) made subject to such conditions, exceptions and qualifications as are set out in the instrument of delegation;

(b) revoked or varied by instrument in writing signed by the Treasurer.

(5) The Treasurer may exercise a power or perform a duty notwithstanding that he has delegated its exercise or performance under this section.

(6) When, under this Act, the exercise of a power or the performance of a duty by the Treasurer is dependent on the opinion, belief or state of mind of the Treasurer in relation to a matter, and that power or duty has been delegated under this section, that power or duty may be exercised or performed by the delegate on the opinion, belief or state of mind of the delegate in relation to the matter.

(7) 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.

Accounts
and records.

14. (1) The Treasurer shall cause to be kept proper accounts and records in respect of the exercise of his powers and the performance of his duties under this Act.

(2) The Auditor General shall inspect and audit the accounts and records kept under subsection (1) and shall forthwith draw the attention of the Treasurer to any irregularity disclosed by that inspection and audit that is, in the opinion of the Auditor General, of sufficient importance to justify his so doing.

(3) The Auditor General may dispense with all or any part of the inspection and audit referred to in subsection (2) and shall make such arrangements as he considers necessary to inspect and audit such accounts and records referred to in that subsection as are maintained outside the State.

(4) The Auditor General shall, at least once in each financial year, report to each House of the Parliament the results of the inspection and audit carried out under this section.

(5) The Auditor General has in respect of the accounts, records, documents and papers of the Treasurer relating directly or indirectly to the

receipt, crediting or payment of moneys by the Treasurer or to the acquisition, receipt, custody or disposal of assets by the Treasurer all the powers conferred on him by the Audit Act 1904 but, subject to those powers, that Act does not apply to the exercise of the powers conferred, or the performance of the duties imposed, on the Treasurer by or under this Act.

(6) The Auditor General or a person authorized by him may, in relation to any of the accounts, records, documents and papers referred to in subsection (5), require a person to furnish him with such information in the possession of the person or to which the person has access as the Auditor General or the person so authorized considers necessary for the purposes of the functions of the Auditor General under this Act.

(7) A person of whom a requirement has been made under subsection (6) shall comply with the requirement.

Penalty: \$200.

(8) In this section—

“Auditor General” means the Auditor General appointed, or the person appointed to act as the deputy of the Auditor General, under the Audit Act 1904.

15. The Governor may make regulations 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 and, in particular, providing for the creation of debt paper under section 4 and for the exchange or surrender of debt paper.

SCHEDULE. (Section 2)

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

- | <i>Item.</i> | <i>Class of body corporate.</i> |
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| 1. | Municipalities, county councils or regional councils constituted under the Local Government Act 1960. |
| 2. | Associations incorporated under the Associations Incorporation Act 1895. |
| 3. | Companies as defined by section 5 of the Companies Act 1961. |
| 4. | Credit unions as defined by section 4 of the Credit Unions Act 1979. |
| 5. | Societies as defined by section 5 of the Building Societies Act 1976. |
| 6. | Registered societies as defined by section 2 of the Co-operative and Provident Societies Act 1903. |
| 7. | Co-operative companies within the meaning of Part VI of the Companies (Co-operative) Act 1943. |
| 8. | Bodies corporate which— <ul style="list-style-type: none">(a) are constituted by or under a law of the State;(b) are empowered by or under a law of the State to borrow moneys; and(c) are of a religious character. |
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