

**TASMANIAN PUBLIC FINANCE CORPORATION
ACT 1985**

No. 59 of 1985

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TASMANIAN PUBLIC FINANCE CORPORATION
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No. 59 of 1985

AN ACT relating to the provision of finance for public purposes.

[Royal Assent 23 May 1985]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

PART I

PRELIMINARY

1—This Act may be cited as the *Tasmanian Public Finance Corporation Act 1985*. Short title.

2—(1) This section and section 1 shall commence on the day on which this Act receives the Royal assent. Commencement.

(2) Except as provided in subsection (1), this Act shall commence on such day as may be fixed by proclamation.

Interpretation.

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

“appointed member” means a member other than the chairman;

“chairman” means the person for the time being holding office under section 5 as the chairman of the Corporation;

“the Corporation” means the Tasmanian Public Finance Corporation established under Part II;

“loan” means any form of financial accommodation (not being a grant) and “lend” and “borrow” have corresponding meanings;

“local government authority” means—

(a) the corporation of a municipality, within the meaning of the *Local Government Act 1962*; or

(b) a board, within the meaning of the *Marine Act 1976*;

“member” means a person for the time being holding office under section 5 as a member of the Corporation;

“the Minister responsible”, in relation to a State authority, means the Minister having the administration of the Act by or under which the State authority is constituted;

“security” includes any document evidencing indebtedness;

“State authority” means—

(a) a body corporate which, or of which the governing authority, wholly or partly comprises—

(i) a Minister; or

(ii) a person or persons appointed by the Governor, a Minister, or another State authority;

(b) a body corporate which is financed wholly or in part out of public funds; or

(c) a local government authority that is declared by the Treasurer, by notice published in the *Gazette*, to be a State authority for the purposes of this Act.

(2) The Treasurer shall not exercise his power to declare a local government authority to be a State authority for the purposes of this Act otherwise than at the request of that local government authority.

PART II

ESTABLISHMENT, COMPOSITION, &C., OF THE CORPORATION

4—(1) There is established by this Act a body corporate with the corporate name of the Tasmanian Public Finance Corporation. Establishment of the Corporation.

(2) The Corporation—

- (a) has perpetual succession;
- (b) shall have a common seal;
- (c) may take proceedings, and be proceeded against, in its corporate name;
- (d) may do, and be subject to, all other things that a body corporate may by law do and be subject to and that may be necessary for, or incidental to, the purposes of this Act; and
- (e) has the functions imposed, and the powers conferred, on it by, or under, this or any other Act.

(3) The common seal of the Corporation shall not be affixed to a document except in pursuance of a resolution of the Corporation and every sealing shall be authenticated by the signature of 2 members.

(4) All courts, judges, and persons acting judicially shall take judicial notice of the common seal of the Corporation affixed to a document and, unless the contrary is established, shall presume that it was duly affixed.

5—The Corporation shall consist of 4 members, as the Governor determines, of whom— Constitution of the Corporation.

- (a) one (who shall be the chairman) shall be the person for the time being holding the office of Under Treasurer;
- (b) two shall be persons, each of whom is a Commissioner of, or a person employed in a permanent capacity by, the Hydro-Electric Commission, appointed by the Governor, upon the nomination of the Treasurer; and
- (c) one shall be a director, associate director, or officer of the Tasmanian Development Authority appointed by the Governor, upon the nomination of the Treasurer.

6—(1) An appointed member shall be appointed for such term of office, not exceeding 3 years, and upon such conditions, as are specified in the instrument of his appointment and shall, if otherwise Terms and conditions of office of appointed members.

qualified, be eligible for re-appointment from time to time for such term, not exceeding 3 years, as may be specified in the instrument of his re-appointment.

(2) The provisions of the *Tasmanian State Service Act 1984* do not apply to, or in respect of, the appointment of a member and an appointed member shall not, in his capacity as such, be subject to the provisions of that Act during his term of office.

(3) An appointed member shall be deemed to have vacated his office—

- (a) when he dies;
- (b) if he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors, or makes an assignment of his remuneration or estate for their benefit;
- (c) if he is absent from 3 consecutive ordinary meetings of the Corporation of which reasonable notice has been given to him, either personally or in the ordinary course of post, unless on leave granted by the Corporation or unless, before the expiration of 3 weeks after the last of those meetings, he is excused by the Corporation for his absence from those meetings;
- (d) if he is convicted in Tasmania of a crime or an offence which is punishable by imprisonment for a period of not less than 12 months, or if he is convicted elsewhere than in Tasmania of an offence which, if committed in Tasmania, would be a crime or an offence so punishable; or
- (e) if he resigns his office by writing under his hand addressed to the Governor and the Governor accepts the resignation.

(4) The Governor may remove an appointed member from office for misbehaviour or incompetence or if the Governor is satisfied that the appointed member—

- (a) has voted at any meeting of the Corporation in respect of any matter in which he was at that time interested (otherwise than as a member of the public or as an elector of, or ratepayer to, any municipality, or as a shareholder in a company in which there were at that time more than 20 members and of which he was not at that time a director or officer); or

(b) is unable to perform adequately the duties of his office.

(5) On the occurrence of a vacancy in the office of an appointed member, the Governor may appoint a person nominated by the Minister to the vacant office for the balance of his predecessor's term of office.

7—The Governor may appoint a suitable person to be a deputy of a member and that person, while acting in the absence of that member, shall be deemed to be a member with all the powers, rights, and duties of that member. Deputies of members.

8—(1) Such number of members as is one less than the number of persons for the time being holding office as members shall constitute a quorum of the Corporation, and no business shall be transacted at a meeting of the Corporation unless a quorum is present. Meetings.

(2) The chairman or, in his absence, his deputy shall preside at a meeting of the Corporation, and in the absence of both the chairman and his deputy from a meeting, a member elected by the members present shall preside at that meeting.

(3) A decision carried by a majority of the votes of the members present at a meeting of the Corporation shall be a decision of the Corporation.

(4) Each member shall be entitled to one vote on a matter arising for decision by the Corporation and the person presiding at the meeting shall, in the event of an equality of votes, have a second or casting vote.

(5) The Corporation shall cause accurate minutes to be kept of the business conducted at meetings of the Corporation.

(6) Subject to this Act, the business of the Corporation shall be conducted in a manner determined by the Corporation.

9—(1) An act or proceeding of the Corporation shall not be invalid by reason only of a vacancy in its membership or a defect in the appointment of a member. Validity of acts of the Corporation and immunity of members.

(2) No personal liability shall attach to a member for an act or omission by that member or the Corporation in good faith in the exercise or discharge of his or its powers, duties, or functions under this Act.

(3) A liability that would, but for subsection (2), lie against a member shall lie against the Corporation.

Disclosure of interest.

10—(1) A member who is directly or indirectly interested in a contract, or proposed contract, made by, or in the contemplation of, the Corporation—

- (a) shall, as soon as he becomes aware of the contract or proposed contract, disclose the nature of his interest to the Corporation and to the Treasurer; and
- (b) shall not take part in any deliberations or decision of the Corporation with respect to that contract.

(2) A disclosure made under this section shall be recorded in the minutes of the Corporation.

(3) Where a member makes a disclosure of interest in respect of a contract or proposed contract in accordance with this section—

- (a) the contract is not void, or liable to be avoided by the Corporation, on any ground arising from the member's interest in the contract; and
- (b) the member is not liable to account to the Corporation for any profits derived from the contract.

PART III

OPERATIONS OF THE CORPORATION

Functions and powers of the Corporation.

11—(1) The functions of the Corporation are—

- (a) to develop and implement borrowing and investment programmes for the benefit of State authorities; and
- (b) to engage in such other activities relating to the finances of the Government of the State or State authorities as are contemplated by this Act or approved by the Treasurer.

(2) For the purposes of this Act, the Corporation may, with the approval of the Treasurer—

- (a) borrow money within or outside Australia;
- (b) lend money to State authorities;
- (c) accept money on deposit or loan from the Treasurer or a State authority;

- (d) place on deposit with the Treasurer, a bank, or a financial institution money held by the Corporation;
- (e) invest money held by the Corporation;
- (f) issue, sell, purchase, pay-off, re-purchase, redeem, convert, or otherwise deal in or with securities;
- (g) open and maintain accounts with banks;
- (b) appoint a bank, financial institution, or other person to act as underwriter, manager, trustee, or agent in connection with any transaction within or outside Australia;
- (i) enter into contracts of guarantee;
- (j) acquire, hold, deal with, and dispose of real and personal property;
- (k) enter into any agreement or arrangement of a kind not previously mentioned in this subsection or acquire or incur any other rights or liabilities; or
- (l) exercise any other powers that are necessary or expedient for the performance of its functions.

(3) The Corporation is a prescribed public authority for the purposes of the *Public Authorities (Overseas Borrowing) Act 1979*.

12—The Corporation shall, in the exercise and performance of its powers and functions, act in accordance with proper principles of financial management and with a view to avoiding a loss. Financial management.

13—(1) Any surplus of funds remaining after the costs of the Corporation have been met in any financial year shall, subject to subsection (2), be dealt with in such manner as the Corporation, with the approval of the Treasurer, determines. Distribution of surplus funds.

(2) In the exercise of their powers under subsection (1), the Corporation and the Treasurer shall have due regard to—

- (a) the contingent liabilities of the Corporation; and
- (b) the extent to which the surplus of funds is attributable to the various transactions entered into by the Corporation with individual State authorities and the Treasurer.

Terms and conditions applying in relation to money provided by the Treasurer.

14—Money provided by the Treasurer to the Corporation shall be regarded for all purposes as having been provided upon such terms and conditions as the Treasurer may from time to time determine.

Government guarantee.

15—(1) Liabilities incurred or assumed by the Corporation in pursuance of this Act are guaranteed by the State, and any liability of the Crown arising by virtue of this subsection shall be a charge on the Consolidated Revenue, and shall be payable out of the Consolidated Revenue without further appropriation than this section.

(2) Where an amount is paid by the State under the guarantee created by subsection (1), the Corporation is liable to pay an amount equal to that amount to the Treasurer, for credit of the Consolidated Revenue, by such instalments, at such times, and with such interest, as the Treasurer determines.

Borrowing of money from, and deposit of money with, the Corporation by State authorities.

16—(1) Notwithstanding any other Act, a State authority—

(a) may borrow money from the Corporation, and, if the Treasurer, by notice published in the *Gazette*, so directs, shall, to the extent specified in the notice, borrow money from the Corporation rather than from any other lender; and

(b) may and, if the Treasurer, by notice published in the *Gazette*, so directs, shall deposit with or lend to the Corporation money of the State authority that is not immediately required for the purposes of the State authority.

(2) The terms and conditions (including, in particular, terms and conditions as to principal, interest, administrative charges, and other charges and fees) of a transaction under subsection (1) shall be as determined by the Corporation with the approval of the Treasurer given after consultation by him with the Minister responsible for the State authority.

Treasurer may deposit money with the Corporation.

17—Notwithstanding the *Public Account Act* 1957, any money under the control of the Treasurer may be deposited with or lent to the Corporation by the Treasurer upon such terms and conditions as the Treasurer may determine.

18—(1) The Treasurer may, if he thinks fit, after consultation with the Minister responsible for a State authority that has borrowed money from a source other than the Treasurer or the Government of the State, by notice published in the *Gazette*—

Treasurer may re-arrange finances of State authorities.

- (a) transfer to the Corporation the liabilities of the State authority in respect of the loan; and
- (b) direct that the money outstanding under the loan shall be regarded for all purposes as having been borrowed by the State authority from the Corporation upon terms and conditions specified in the notice.

(2) The Treasurer may, after consultation with the Minister responsible for a State authority, vary any terms and conditions applying in relation to the State authority by virtue of a notice under subsection (1).

PART IV

MISCELLANEOUS

19—(1) The Corporation may, by instrument in writing under the seal of the Corporation, delegate to the chairman, to a member, to an employee made available to the Corporation under section 20 (1), or to an officer or employee appointed under section 20 (2) all or any of its powers or functions under this Act (except this power of delegation).

Delegation by the Corporation.

(2) A delegation under subsection (1) is revocable at will and does not prevent the exercise of a power or the performance of a function by the Corporation.

20—(1) The Corporation may make arrangements with the Head of an Agency, within the meaning of the *Tasmanian State Service Act* 1984, or with a State authority the employees of which are not employees, within the meaning of that Act, for such employees employed in that Agency or State authority as may be considered necessary to be made available to the Corporation to enable it to perform its functions under this Act, and such an employee may serve the Corporation in any capacity in conjunction with his position in the State Service or with the State authority by which he is employed, as the case requires.

Staff.

(2) Subject to the approval of the Treasurer—

- (a) the Corporation may appoint and employ such officers and employees, in addition to any employees made available to it under subsection (1), as may be necessary for the performance of its functions, or the exercise of its powers, under this Act; and
- (b) such an officer or employee shall hold office on such terms and conditions, including terms and conditions as to remuneration, as are specified in the instrument of his appointment.

State authorities to provide certain information.

21—A State authority shall, if so required by the Treasurer, furnish the Corporation with information relating to the financial affairs of the State authority.

Liability of Corporation to State taxes, &c.

22—(1) Subject to this section, the Corporation and instruments to which the Corporation is a party shall be liable to all taxes, duties, and imposts under the law of the State as if the Corporation were not an agency of the Crown.

(2) The Treasurer may, by notice published in the *Gazette*, exempt the Corporation or instruments to which the Corporation is a party from a tax, duty, or other impost to the extent specified in the notice.

Certificates of compliance with this Act.

23—(1) The Treasurer may, if he is so satisfied, certify that anything done by the Corporation has been done in pursuance of this Act.

(2) In any legal proceedings, an apparently genuine document purporting to be a certificate under subsection (1) shall be accepted as proof of the matters stated in the certificate in the absence of proof to the contrary.

Accounts and audit.

24—(1) The Corporation shall cause to be kept proper accounts and records in relation to all of its transactions under this or any other Act and shall, as soon as practicable after 1st July and not later than 31st October in each year, prepare financial statements exhibiting a true and correct record of its financial position and transactions with respect to the preceding financial year.

(2) The accounts of the Corporation kept for the purposes of this Act or any other Act are subject to the *Audit Act* 1918.

25—(1) The Corporation shall, before 31st October in each year, prepare a report of its affairs and activities under this or any other Act for the preceding financial year and submit the report to the Treasurer. Annual report.

(2) A report under subsection (1) shall include—

- (a) a copy of the financial statements prepared under section 24 (1) in respect of the financial year to which the report relates; and
- (b) a copy of the Auditor-General's report with respect to those financial statements.

(3) The Treasurer shall lay, or cause to be laid, before each House of Parliament a copy of a report submitted to him in accordance with subsection (1) within 14 sitting days of the House after the date on which he receives that report.

26—(1) If the day fixed by proclamation under section 2 (2) of this Act (in this section referred to as “the commencing day”) is earlier than the day fixed by proclamation under section 2 (2) of the *Tasmanian State Service Act* 1984, a reference in this Act to the *Tasmanian State Service Act* 1984, to an employee within the meaning of that Act, or to the Head of the Agency in which such an employee is employed shall be read during the period commencing on the commencing day and ending on the day immediately preceding the second-mentioned day as a reference to the *Public Service Act* 1973, to an officer within the meaning of that Act, or to the Public Service Board, as the case requires. Transitional.

(2) The first report under section 25 (1) shall relate to the period commencing on the commencing day and ending on 30th June 1986.

