

WESTERN AUSTRALIAN TREASURY CORPORATION  
AMENDMENT BILL 1998

CLAUSE NOTES

Clause 1

Short title and citation.

Clause 2

The Act will come into operation by proclamation.

Clause 3

Defines the principal Act.

Clause 4

Amends the long title of the principal Act to properly reflect the amendments proposed in the Bill and the role fulfilled by the Corporation in public sector finance in Western Australia.

Clause 5

Provides additional definitions for the purpose of interpretation of the principal Act as amended by the Bill.

Clause 6

Repeals Section 5(2) of the principal Act which established the Under Treasurer as the Corporation and establishes the Corporation as a body corporate in its own right under the control of a Board of Directors (see Clause 7). This gives the Corporation the same legal structure as other corporatised statutory authorities.



Repeals section 5(3) of the principal Act which stated that the Corporation is not an agent of the Crown and does not enjoy the status, immunities and privileges of the Crown. This clause should be read in conjunction with clause 7 which proposes that this section be replaced by a new section 5A.

#### Clause 7

This clause makes certain amendments to the corporate structure of the Corporation and provides for the transition by providing that the changes do not affect its corporate identity or its rights and obligations.

- **Agent of Crown**

When the Act was introduced, section 5(3) was included because there were legal concerns that the establishment of the Corporation may breach the Financial Agreement Act of 1927 if it was seen to be the State borrowing under another name.

As the Corporation is clearly the financing arm of the State, section 5(3) in a sense denies the realities of the situation. With the repeal of the Financial Agreement Act of 1927, the Crown Solicitor's Office has advised that the primary purpose of inserting the Section has disappeared and that it may be appropriate to review this relationship. It is the Corporation's view that there are significant advantages in identifying the Corporation more closely with the State in view of the role it has in financing the State public sector. The main benefit being the status this gives the Corporation in overseas capital markets.

- **Board of Directors**

Establishes a Board of Directors chaired by the Under Treasurer and up to 5 other directors including another Treasury officer appointed by the Under Treasurer as deputy chairperson, the Corporation's Chief Executive officer and up to 3 independent directors appointed by the Treasurer.

- **Constitution and proceedings of the board**

These are set out in Schedule 2 and deal with terms of office, meetings and matters relating to disclosure of interests and the consequential operation of meetings.

- **Remuneration of directors and committee members**

Provides for appointed directors and members of Board committees to be remunerated as determined by the Treasurer on the recommendation of the Minister for Public Sector Management.

Clause 8

This clause makes a consequential amendment to section 6(4) necessitated by the change in the corporate structure of the Corporation from a corporate sole comprising the Under Treasurer.

Clause 9

- **Liability of the Corporation for duties, taxes etc.**

In accordance with the competitive neutrality principles, clause 9 repeals section 7 of the principal Act exempting the Corporation from all State taxes and duties. Nevertheless, it was deemed prudent to give the Treasurer the discretion to exempt the Corporation from certain taxes or duties to ensure that the Corporation and the securities it issues are subject to the same taxation regime as other Australian government securities. As agreed with Treasury, in order to ensure that any exemptions comply with the competitive neutrality principles, this clause includes the proviso that an exemption will only be granted if the Treasurer considers it to be in the public interest.

This clause includes a transition provision ensuring that deeds or other instruments entered into before the commencement of the Act is not affected by this clause.

#### Clause 10

Repeals section 8 which enabled the Corporation to use the staff and facilities of the Treasury.

- **Chief Executive Officer**

Formalises the role of the Chief Executive Officer and vests the power for his or her appointment and terms and conditions of service in the board. Any action by the board relating to the appointment and terms and conditions of service of the Chief Executive Officer is subject to the prior concurrence of the Treasurer.

Under this clause the board can appoint a person to act in the position of Chief Executive Officer in the event of a vacancy in this office or his or her absence.

This clause also provides for the transition to the new arrangements by declaring that the Chief Executive Officer holding office immediately prior to the commencement of the Act shall continue in that role as if appointed under the new section.

- **Staff**

Vests the power for the engagement and remuneration of staff in the board. This clause also provides for transition to the new arrangements by declaring that staff employed by the Corporation immediately prior to the commencement of the Act shall continue as if engaged under the new section.

- **Use of other government staff etc.**

Enables the Corporation to arrange to use the services of any employees or facilities of public sector departments or agencies on mutually agreeable terms.

## Clause 11

Amends the heading to Part III of the principal Act.

## Clause 12

- **Functions of the Corporation**

Expands the Corporation's functions under section 9 to provide statutory support to the roles which Corporation officers have been fulfilling for the State and its agencies.

For some time following its establishment as a separate corporate entity in 1986, the Corporation operated as an administrative Division of Treasury despite being a separate legal entity and reporting to Parliament in its own right. However as markets and the requirements of the State and its authorities continued to develop, it was considered appropriate for the funding activities of the Corporation to be seen to be independent of the policy-making and budgetary functions of Treasury.

In 1994, the Corporation relocated to Central Park and began to operate independently of Treasury in regard to its day-to-day operations. It should be noted that the Corporation with the Under Treasurer being the corporate sole and performing the function similar to a chairman and policy maker, has continued to work closely with Treasury not only in its borrowing and lending activities but also with its investment of the Public Bank Account and providing financial advice to other public sector agencies.

Many of these functions currently fall outside the Corporation's charter under the Act. However with the market exposure of the Corporation coupled with its knowledge and the experience of its staff in domestic and international capital markets, it is logical that the role the Corporation now fulfils as the State's financing and investment agency and adviser should be formalised. During this time, the Corporation has shown that it is able to carry out this role not only very effectively but at a lower cost than its sister central financing authorities. This will ensure that

the State can continue to fully utilise the financial expertise within the Corporation to assist with management of public sector assets and liabilities.

These functions include:

- (i) advising on financial matters including debt management, asset management and project and structured financing;
- (ii) managing investments for the Treasury and other government agencies;

The Corporation's officers have managed the investment of the Public Bank Account ("PBA") under delegation since the termination of the arrangements with the Western Australian Development Corporation. Prior to this, the Corporation's predecessor, the Loans and Investment Division of Treasury carried out this function. This change in the Corporation's functions, together with the consequential amendment to the Financial Administration and Audit Act proposed in clause 26, will bring greater efficiency to the management of the investment of the PBA whilst ensuring that the same level of prudential control is maintained by Treasury.

Section 9(1)(e) and (f) will allow the Corporation's other client authorities to similarly use the Corporation to invest their funds either directly or in trust.

- (iii) enabling the Corporation to assist authorities with managing their financial exposures; and
- (iv) assuming any liabilities the State has incurred from borrowings or financial accommodation (see clause 13).

Under the Act, the term "authorities" is restricted to those with borrowing powers. However many government departments and other public sector agencies are also involved in financial transactions and have sought the Corporation's assistance. Accordingly, this clause proposes to expand the definition of "authorities" to cover these bodies and enable the Corporation to use its new functions to assist these agencies.

The Corporation's exposure and daily involvement in financial markets through its borrowing and investment activities will bring greater efficiencies to the management of the State's assets and liabilities by being able to fulfil the role of the State's in-house corporate treasury, not unlike the role carried out by any large company for its subsidiaries.

This clause also proposes to replace the current wording in section 9(2) to better reflect normal commercial practice.

#### Clause 13

- **Further Provision as to assumption of liabilities on behalf of the State**

Enables the Corporation to assume and manage any liabilities of the State with the approval of the Treasurer. This will facilitate more effective management of the State's liabilities.

#### Clause 14

Amends section 10(2) of the Act to:

- (i) place the responsibility for all borrowings with the Corporation's board of directors and remove the need for the Corporation to obtain the Governor's approval to borrow and the Treasurer's approval to the terms and conditions of each individual borrowing. This clause should be read in conjunction with the amendment proposed in clause 15 which enables the Treasurer to place borrowing limits on the Corporation; and
- (ii) introduce the necessary powers to give effect to the Corporation's new functions and enable it to charge fees for its services to all its clients. At present, it is restricted to only charging its 'borrowing' clients. The Corporation is a self-funding agency and does not receive any funds from the Consolidated Fund.

#### Clause 15

- **Borrowing Limits**

Enables the Treasurer to impose limits on the Corporation's borrowings. This will ensure that the Corporation's borrowing activities are undertaken within the limits set by government policy.

#### Clause 16

- **State guarantee**

Adds the words "and paid out of" to section 13(2) to give practical and legal effect to the potential payment of funds should the guarantee be ever called upon.

Amends the guarantee fee provisions to place the liability for the payment of a guarantee fee on the beneficiaries of the Corporation's activities i.e. the authorities to whom funds are lent. Any guarantee fees collected by the Corporation are paid into the Consolidated Fund.

#### Clause 17

Repeals section 14(2)(b) of the principal Act which required the Corporation's borrowers to pay guarantee or administration fees to the Corporation. Any guarantee fees collected by the Corporation are paid to Treasury. This section becomes redundant with the introduction of section 10(2)(k) in clause 14 and section 13(3) in clause 16.



## Clause 18

- **Corporate Planning Documents**

Introduces a new Part IIIA to the Act requiring the Corporation to prepare corporate planning documents including a strategic development plan and statement of corporate intent. These provisions are similar to those of other corporatised statutory authorities. These documents must be revised annually, and in the case of the statement of corporate intent, must be tabled in Parliament.

## Clause 19

- **Western Australian Treasury Corporation Account**

Amends the provisions dealing with the Corporation's Account under section 17 by:

- (i) Enabling Parliament to appropriate funds to the Corporation; and
- (ii) Amending the Corporation's investment powers by placing the responsibility for the Corporation's investment policies with the board as is the case with other statutory authorities.

## Clause 20

- **Dividends**

Inserts a new section which enables the Corporation to pay a dividend to the Consolidated Fund out of any surplus it may have at the end of the financial year.

#### Clause 21

- **Delegation by the Corporation**

Enables the Corporation to delegate its powers to the chief executive officer, a director or an officer of the Corporation. This is a consequential amendment to the delegation provisions of section 18(1) resulting from the establishment of a Board of Directors and the Corporation's staffing arrangements.

#### Clause 22

- **Directions by the Treasurer**

Subjects section 20 to the Statutory Corporations (Liability of Directors) Act 1996. No changes have been made to the Treasurer's authority to give directions to the Corporation or the requirement for any directions so given to be included in the Corporation's annual report.

#### Clause 23

- **Quarterly Reports**

Introduces a new section 21A requiring the Corporation to provide the Treasurer with quarterly reports on its operations.

#### Clause 24

Renames the heading of the Schedule in the principal Act.

## Clause 25

- **Constitution and Proceedings of the Board**

Introduces Schedule 2 which prescribes the constitution and proceedings of the board including the terms of office of directors, meetings and disclosure of interests. These have been drafted in accordance with the standards set for other corporatised statutory authorities whilst giving cognisance to the particular structure of the Corporation's board and the statutory roles of the Under Treasurer and nominated Treasury officer as Chairperson and Deputy Chairperson respectively.

## Clause 26

- **Consequential Amendment to Financial Administration and Audit Act**

Makes a consequential amendment to section 38 of Financial Administration and Audit Act which prescribes the Treasurer's powers to invest monies standing the credit of the PBA by also enabling the Treasurer to invest by placing funds with the Corporation. This clause also makes provision for the Treasurer to give directions to the Corporation on the investment of these funds. This gives effect to the Corporation's investment function in clause 12.