

NORTHERN TERRITORY OF AUSTRALIA

NORTHERN TERRITORY TREASURY CORPORATION BILL 1994

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## NORTHERN TERRITORY OF AUSTRALIA

### A BILL for AN ACT

to establish the Northern Territory Treasury Corporation and to enable the Corporation to borrow and lend money, and for related purposes

**B**E it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

#### PART 1 - PRELIMINARY

##### 1. SHORT TITLE

This Act may be cited as the *Northern Territory Treasury Corporation Act 1994*.

##### 2. COMMENCEMENT

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

##### 3. DEFINITIONS

In this Act, unless the contrary intention appears -

"advisory board" means the advisory board established under this Act;

"Agency" has the same meaning as in the *Public Sector Employment and Management Act*;

"bank" means -

- (a) a bank authorised under an Act of the Commonwealth or a State or a Territory of the Commonwealth to carry on banking business; or

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- (b) a bank, other than a bank referred to in paragraph (a), which carries on banking business outside Australia;

"Corporation" means the Northern Territory Treasury Corporation established by section 4;

"local government council" means a council or community government council within the meaning of the *Local Government Act*;

"money" means the lawful currency of Australia or any other country;

"statutory corporation" has the same meaning as in the *Financial Administration and Audit Act*;

"Under Treasurer" means the Chief Executive Officer, within the meaning of the *Public Sector Employment and Management Act*, of the Agency responsible under the Treasurer for the administration of the *Financial Administration and Audit Act*.

PART 2 - NORTHERN TERRITORY TREASURY CORPORATION

4. NORTHERN TERRITORY TREASURY CORPORATION

(1) There is established by this section a corporation to be known as the Northern Territory Treasury Corporation.

(2) The Corporation -

(a) is a body corporate with perpetual succession;

(b) shall have a common seal; and

(c) is capable, in its corporate name, of acquiring, holding, dealing with and disposing of real and personal property (including an interest in such real or personal property) and of suing and being sued.

(3) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Corporation affixed to a document and shall assume that it was duly affixed.

(4) The Corporation shall consist of the Under Treasurer.

5. MINISTERIAL DIRECTION

(1) The Corporation, in the exercise of its powers and the performance of its functions under this Act, is subject to the directions of the Treasurer.

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(2) A record of all directions given under subsection (1) in a financial year shall be included in the annual report of the Corporation for that year prepared under section 31.

6. CORPORATION REPRESENTS CROWN

The Corporation represents the Crown in right of the Territory and, subject to this Act, has and may exercise and claim all the powers, privileges, rights and remedies of the Crown.

7. COMMON SEAL OF CORPORATION

(1) The common seal of the Corporation shall be in the custody of the Under Treasurer and may be affixed by him or her or any other person authorised by the Corporation.

(2) An authorisation under subsection (1) shall be in writing under the common seal.

8. ADVISORY BOARD

(1) The Corporation may, with the approval of the Treasurer, establish an advisory board to exercise such powers and perform such functions as are determined, from time to time, by the Treasurer.

(2) The advisory board shall be constituted by the Under Treasurer and not more than 5 other persons appointed by the Treasurer.

9. EMPLOYEES OF CORPORATION

(1) The Corporation may employ such number of employees as it thinks necessary for the administration of the Corporation.

(2) The employment of an employee under subsection (1) may be made under the *Public Sector Employment and Management Act*.

10. ASSIGNMENT OF EMPLOYEES TO CORPORATION

(1) The Under Treasurer may designate and assign employees of the Agency of which he or she is the Chief Executive Officer to perform duties which, in the opinion of the Corporation, are required for the exercise of its powers and the performance of its functions under this Act.

(2) A person who is required to perform duties on behalf of the Corporation under subsection (1) may perform those duties in conjunction with any other duties the person is required to perform by reason of the person being an employee of the Agency referred to in subsection (1).

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11. DELEGATION

(1) The Corporation may, in writing under its common seal, delegate to a member of the advisory board, an employee of the Corporation or an employee, within the meaning of the *Public Sector Employment and Management Act*, any of its powers and functions under this Act.

(2) A power delegated under this section may be exercised by the delegate in accordance with the instrument of delegation and, where so exercised, shall, for the purposes of this Act, be deemed to have been exercised by the Corporation.

(3) A delegation under this section to an employee may be to an employee from time to time holding, acting in or performing the duties of an office, designation or position.

(4) A delegation under this section is revocable at will and does not prevent the Corporation exercising a power or performing a function so delegated.

12. PROFITS AND LOSSES OF CORPORATION

All profits made by the Corporation, except those profits which the Treasurer, from time to time, determines may be retained by the Corporation, shall accrue to the benefit of the Consolidated Fund and all losses shall be the responsibility of the Consolidated Fund.

PART 3 - FUNCTIONS AND POWERS OF CORPORATION

13. FUNCTIONS OF CORPORATION

- (1) The functions of the Corporation are -
- (a) to act as a financial institution for the benefit of and the provision of financial resources and services to the Territory, statutory corporations, local government councils and other persons approved by the Treasurer;
  - (b) to enhance the financial position of the Corporation, the Territory, statutory corporations, local government councils and other persons approved by the Treasurer; and
  - (c) to enter into and perform financial and other arrangements that, in the opinion of the Corporation, have as their objective either -
    - (i) the advancement of the financial interests of the Territory;

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- (ii) the development of the Territory or a part of the Territory; or
- (iii) the benefit of persons or a class of persons resident in, or having or likely to have an association with, the Territory.

(2) For the purposes of subsection (1), the Corporation may -

- (a) borrow or raise money or otherwise obtain financial accommodation in Australia or elsewhere for itself, the Territory, statutory corporations, local government councils and other persons approved by the Treasurer;
- (b) loan or advance money or otherwise make financial accommodation available to the Territory, statutory corporations, local government councils and other persons approved by the Treasurer;
- (c) act as a central borrowing authority and capital raising authority for the Territory, statutory corporations, local government councils and other persons approved by the Treasurer;
- (d) act as agent for the Territory, statutory corporations, local government councils and other persons approved by the Treasurer in negotiating, entering into and performing financial and other arrangements;
- (e) accept money on deposit from the Territory, statutory corporations, local government councils and other persons;
- (f) manage the funds, and invest the funds, of the Territory in accordance with section 33 of the *Financial Administration and Audit Act*;
- (g) manage the funds, and invest the funds, of the Corporation, statutory corporations, local government councils and other persons approved by the Treasurer;
- (h) manage or cause to be managed, or give advice concerning the management of, the financial rights and obligations of the Territory, statutory corporations, local government councils and other persons approved by the Treasurer; and
- (j) undertake such other activities as the Treasurer may, from time to time, direct.

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14. POWERS OF CORPORATION

(1) The Corporation, in performing its functions under this Act, has, in addition to any other power given under this Act, both within and outside the Territory -

- (a) the powers conferred on a company under the Corporations Law;
- (b) without limiting paragraph (a), power to issue debentures, bonds, inscribed stock and other securities and power to redeem, buy back, hold, cancel, re-issue, re-sell or otherwise deal with the same; and
- (c) such other powers as may be conferred on it by the Treasurer.

(2) Without limiting the generality of subsection (1), the Corporation may -

- (a) enter into contracts;
- (b) grant security for performance of obligations or repayment of the Corporation or any other person;
- (c) grant guarantees and indemnities in respect of, or otherwise assume responsibility for, the obligations of any person;
- (d) assume a liability incurred by a person;
- (e) form, or participate in the formation of, a body corporate, association, partnership, trust or other body;
- (f) be a member of, or acquire an interest in, a body corporate, partnership, trust or other body;
- (g) enter into a joint venture with another person or persons;
- (h) appoint agents and attorneys for the purpose of exercising any of its powers or performing any of its functions, and act as agent for any person;
- (j) accept money on deposit;
- (k) open an account or accounts with any bank, within Australia or elsewhere;
- (m) issue, draw, accept, endorse or discount bills of exchange, promissory notes or other negotiable instruments; or



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- (n) enter into interest rate swaps, currency swaps, hedge agreements, financial options, futures contracts or options, forward exchange rate agreements or analogous transactions, whether or not the transaction is entered into for the purpose of managing or protecting against any financial or currency risk.

15. LIMITATION ON POWERS

(1) Notwithstanding section 13 or 14, the Corporation may not -

- (a) grant security for the performance of the obligations of any person, other than the Corporation, without the approval of the Treasurer; or
- (b) exercise a power specified in section 14(2)(c), (d), (e), (f) or (g) without the approval of the Treasurer.

(2) Notwithstanding section 13 or 14, the Corporation may only invest funds of or under the control of the Corporation -

- (a) in securities of or guaranteed by the Government of the Territory, the Commonwealth or a State or another Territory of the Commonwealth;
- (b) in or with a statutory body whose obligations are guaranteed by the Government of the Territory, the Commonwealth or a State or another Territory of the Commonwealth;
- (c) in any body corporate that maintains such minimum credit rating specified by the Treasurer as is published from time to time by a credit rating agency approved by the Treasurer;
- (d) by way of an advance to a bank;
- (e) on deposit with a bank, or merchant bank wholly owned by an Australian bank or a statutory body referred to in paragraph (b) or a body corporate referred to in paragraph (c);
- (f) whether secured or unsecured -
  - (i) in capital market investments;
  - (ii) in debentures, securities or other obligations of governments, government authorities or statutory bodies;

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- (iii) in promissory notes made by a body corporate referred to in paragraph (c) or a statutory body whether constituted under an Act of the Territory, the Commonwealth or a State or another Territory of the Commonwealth;
- (iv) in certificates of deposit issued by a bank; and
- (v) in negotiable instruments (including, without limitation, bills of exchange and promissory notes) issued, drawn, accepted or endorsed by a bank;
- (g) in the secondary mortgage market, being a market in Australia where mortgages of land or securities representing interests in mortgages of land are bought, sold or issued;
- (h) on loan to any person or body authorised by an Act to borrow money when that Act expressly authorises the borrowing of money from the Territory or the Treasurer;
- (j) with a dealer in the short term money market with established lines of credit with the Reserve Bank of Australia or a lender of last resort; or
- (j) in such other investments as the Treasurer, from time to time, determines.

(4) Money received by the Corporation as a result of an investment made under this section shall be paid to the official bank account, within the meaning of the *Financial Administration and Audit Act*, from which the money the subject of the investment was drawn.

PART 4 - FINANCIAL PROVISIONS AND GUARANTEES

16. ENFORCEMENT OF OBLIGATIONS IN AGREEMENTS

Where a provision in a document entered into by the Corporation -

- (a) prevents or restricts termination of that, or any other, document by the Corporation;
- (b) states that an obligation of the Corporation is absolute and unconditional in all, or in specified, circumstances;
- (c) prevents the Corporation from making any set off or raising any defence or counterclaim, or restricts the ability of the Corporation to do so;

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- (d) states that the Corporation shall not be released, relieved or discharged from an obligation owed by it by reason of any, or any specified, matter or thing;
- (e) states that an obligation of the Corporation shall not be prejudiced or affected by reason of any, or any specified, matter or thing; or
- (f) states that an item which is or may become affixed to land will not constitute a fixture or otherwise be or become part of that land,

that provision shall operate, and be enforceable, in accordance with its terms notwithstanding any Act or rule of law to the contrary.

17. NOTICE OF TRUST NOT TO BE RECEIVED

Unless the Corporation otherwise expressly agrees in writing in a particular case, the Corporation and persons acting on its behalf shall -

- (a) not receive and shall be deemed to have not received notice of any trust (express, implied or constructive) in relation to an transaction entered into by the Corporation under this Act; and
- (b) not be bound to see to the execution of any trust that may affect the transaction.

18. INVESTMENT WITH CORPORATION TO BE AUTHORISED INVESTMENT

Unless expressly prohibited by the instrument (if any) creating the trust, an investment by a trustee of trust funds -

- (a) by the provision of money or other financial accommodation to; or
- (b) on deposit with, or in securities issued by,

the Corporation shall be an authorised investment, for the purposes of the Trustee Act, by the trustee.

19. INSCRIBED STOCK ISSUED BY CORPORATION

- (1) All inscribed stock of the Corporation -
  - (a) shall be issued in such series, at such times and places in or outside the Territory and in such manner as the Corporation thinks fit;

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- (b) shall bear interest at such rate or rates (if any) and be redeemable at such date or dates and at such place or places in or outside the Territory as advised by the Corporation;
- (c) may, with the consent of the registered owner, be paid off at any time prior to the due date at not more than the amount of the principal remaining unpaid at the time or, at the discretion of the Corporation, at a premium with interest to the date of payment only; and
- (d) shall rank equally unless the Corporation otherwise expressly determines in respect of particular inscribed stock.

(2) Unless the Corporation expressly provides in respect of particular inscribed stock, no inscribed stock of the Corporation shall entitle the registered owner to a charge or other security in respect of the income, revenue or other assets of the Corporation.

(3) In the case of an application to purchase inscribed stock -

- (a) the Corporation may require the applicant to lodge, as security, all or part of the purchase consideration;
- (b) where an application is accepted, the inscribed stock that is issued shall bear interest at the rate or rates advised in accordance with this section on the amount lodged as security from the date of lodgement; or
- (c) where an application is not accepted, the Corporation shall refund to the applicant the amount lodged as security, together with such amount of interest as the Corporation considers appropriate.

20. STATUTORY GUARANTEE

All obligations incurred or assumed by the Corporation under this Act are guaranteed by the Treasurer on behalf of the Territory.

21. APPROPRIATION

Money payable by the Treasurer under a guarantee arising by virtue of section 20 is a charge on and shall be paid out of the Consolidated Fund, which is appropriated to the extent necessary.

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22. PROTECTION OF PERSONS DEALING WITH CORPORATION

(1) A person who enters into a transaction with the Corporation -

- (a) is not required to enquire into the application of money, credit or other financial accommodation provided by the person; and
- (b) is not responsible in any way for any non-application or mis-application of the money, credit or other financial accommodation.

(2) A person who enters into a transaction with the Corporation is entitled to assume that the Corporation -

- (a) has power to enter in to the transaction;
- (b) is entering into the transaction in the performance of its functions under this Act;
- (c) has obtained all approvals required under this Act to enable it to enter into the transaction; and
- (d) in entering into the transaction, has otherwise complied with this Act and with any direction given by the Treasurer under this Act,

unless, at the time the transaction is entered into, the person has -

- (e) actual knowledge to the contrary; or
- (f) a connection or relationship with the Corporation which is such that the person ought to know that the contrary is in fact the case.

(3) A person who enters into a transaction with the Corporation is entitled to make an assumption under subsection (2) at the time the transaction is entered into and the Corporation may not subsequently assert that the contrary is the case and that the transaction is not binding on the Corporation.

23. FEES AND COMMISSIONS

The Corporation may charge a fee or commission in respect of any transaction entered into or thing done by the Corporation in carrying out its functions under this Act.

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PART 5 - ACCOUNTS AND AUDIT OF CORPORATION

24. ESTABLISHMENT OF TRUST ACCOUNTS

The Treasurer may establish an account or accounts within the Trust Fund, within the meaning of the *Financial Administration and Audit Act*, for the Corporation for purposes consistent with the powers and functions of the Corporation under this Act.

25. VARIATION OF TRUST ACCOUNT PURPOSES

(1) Where the powers and functions of the Corporation are varied by an amendment of this Act, the Treasurer may vary, in a like manner, the purposes of the relevant trust account or trust accounts established under section 24.

(2) The balance standing to the credit of a trust account immediately before its purposes are varied under subsection (1) shall be the opening balance standing at the credit of the trust account as varied.

26. CLOSURE OF TRUST ACCOUNTS

A trust account established under section 24 shall not be closed nor money represented by the balance standing to its credit at the time of closure be disposed of without the approval of the Treasurer.

27. ESTIMATES

The Corporation shall prepare estimates, in such form as the Treasurer directs, of its receipts and expenditures for each financial year and, if so directed by the Treasurer, for any other period and shall submit those estimates to the Treasurer not later than such date as the Treasurer directs.

28. PAYMENT OF MONEY INTO AND FROM AN OFFICIAL BANK ACCOUNT

(1) The Corporation shall pay all money received by it into an official bank account established by the Treasurer under section 8 of the *Financial Administration and Audit Act*.

(2) All payments by the Corporation shall be drawn on the official bank account established under subsection (1) but no such payment shall be made unless money sufficient for the payment stands to the credit of the account.

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(3) The Treasurer shall make such transactions as are necessary with the Corporation for the recording and processing of the receipts and payments of the Corporation in the official bank account established under subsection (1) and in any trust account established under section 24.

29. PROPER ACCOUNTS TO BE KEPT

(1) The Corporation shall cause to be kept proper accounts and records of its transactions and affairs in accordance with the accounting principles generally applied in commercial practice and shall do all things necessary to ensure that all payments out of its money are correctly made and properly authorised and that adequate control is maintained over the property of, or in the custody of, the Corporation and over the commitment of money by the Corporation.

(2) Where the Treasurer is satisfied that the activities of the Corporation are such that it is not necessary for it to keep accounts and records in the manner required by subsection (1), the Treasurer may in writing notify the Corporation of the accounting principles that it should apply in keeping its accounts and records and the Corporation shall comply with such notification accordingly.

30. AUDIT

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

(2) The Auditor-General may, at his or her discretion, dispense with all or any part of the detailed inspection and audit of accounts or records referred to in subsection (1).

(3) The Auditor-General shall, not less than once each year, report to the Treasurer the results of the inspection and audit carried out under subsection (1).

(4) The Auditor-General or an authorised auditor is entitled at all reasonable times to full and free access to all accounts and records of the Corporation and to make copies of, or take extracts from, any such accounts or records.

(5) The Auditor-General or a person authorised in writing by the Auditor-General may require a person to furnish him or her with such information in the possession

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of the person or to which the person has access, as the Auditor-General or authorised person considers necessary for the purposes of the functions of the Auditor-General under this section, and the person shall comply with the requirement.

31. ANNUAL REPORT AND FINANCIAL STATEMENTS

(1) The Corporation shall not later than 6 months after the end of each financial year, or within such other period of time as the Treasurer determines, prepare for submission to the Treasurer a report of its operations during the financial year, together with financial statements in respect of the year in such form as the Treasurer approves.

(2) Before submitting financial statements referred to in subsection (1) to the Treasurer, the Corporation shall submit them to the Auditor-General who shall, not later than 3 months after receipt of each financial statement or within such further period as the Administrator allows, report to the Treasurer -

(a) whether, in the Auditor-General's opinion -

- (i) the statements are based on proper accounts and are in agreement with the accounts and have been properly drawn up so as to present a true and fair view of the transactions for the financial year of the Corporation and the financial position at the end of that year; and
- (ii) the receipt and expenditure of money and the acquisition and disposal of property by the Corporation during the year have been in accordance with this Act; and

(b) such other matters and things arising out of the statements as the Auditor-General considers should be reported to the Treasurer.

(3) The Treasurer shall cause a copy of the report and financial statements referred to in subsection (1) together with a copy of the report of the Auditor-General to be laid before the Legislative Assembly within 6 sitting days after their receipt by the Treasurer.

PART 6 - MISCELLANEOUS

32. DUTIES AND TAXES

The Corporation, in the exercise of its powers and the performance of its functions under this Act, shall pay such duties and taxes as the Treasurer, from time to time, determines



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33. STATUTORY CORPORATIONS, &c., MAY DEAL WITH CORPORATION

A statutory corporation or local government council may -

- (a) borrow or raise money or otherwise obtain financial accommodation from the Corporation;
- (b) invest moneys on deposit with, or in securities issued by, the Corporation; or
- (c) enter into any other transaction which the Corporation proposes to enter into with it in the performance of the Corporation's functions under this Act,

notwithstanding anything in any other law in force in the Territory which prohibits or may prohibit the statutory corporation or local government council from so doing.

34. REGULATIONS

(1) The Administrator may make regulations not inconsistent with this Act, prescribing matters -

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting the generality of subsection (1), the Regulations -

- (a) may prescribe the form of and the manner of issuing securities by the Corporation;
- (b) may provide for the keeping and inspection of and the taking of copies of or extracts from the register of inscribed stock ledgers of the Corporation; and
- (c) may provide for lost or defaced debentures, coupons, bonds, stock certificates and other securities issued by the Corporation and the destruction of discharged debentures, coupons, bonds, stock certificates and other securities.

35. TRANSITIONAL

(1) The Treasurer may, in writing, declare that assets and liabilities of the Territory (including rights and obligations of the Territory under any document issued or entered into by it) identified, or of a class identified, in the determination shall, as from the date specified in the determination, be transferred to and become assets and liabilities of the Corporation.

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(2) On the date specified in a determination under subsection (1), the assets and liabilities the subject of the determination shall be transferred to and become assets and liabilities of the Corporation.

(3) A transfer of assets and liabilities under this section does not -

(a) give rise to any claim for breach of contract or breach of any other legal or equitable obligation; or

(b) be used as a ground for terminating a contract or other instrument or exercising any other right, power or remedy.

(4) The holder of a security issued by the Territory and affected by a determination under subsection (1) is entitled, on surrender of the security, to be issued in exchange with a corresponding security of the Corporation, at which time the original security is cancelled.

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