



Statutory Bodies Financial Arrangements Act 1982

Operational Guidelines

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STATUTORY BODIES FINANCIAL ARRANGEMENTS ACT 1982
OPERATIONAL GUIDELINES

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1. Introduction

The *Statutory Bodies Financial Arrangements Act 1982* (the “SBFA Act”) has been amended significantly by the *Statutory Bodies Financial Arrangements Amendment Act 1996*, which commenced on 1 June 1997 and the *Statutory Bodies Financial Arrangements Amendment Act 2003*, which commenced on 23 May 2003.

The purpose of these guidelines is to provide a general outline of the impact of the SBFA Act on the operations of statutory bodies. In this regard, it is not intended that the guidelines be a substitute for reading and understanding the SBFA Act as a whole. It remains the responsibility of each statutory body and each department responsible for administering statutory bodies to familiarise themselves with the amended SBFA Act.

2. Why was the SBFA Act amended?

The amendments were made to achieve a number of objectives, including to clarify, centralise and standardise the powers of statutory bodies to enter into financial arrangements.

3. How does the SBFA Act relate to the authorising Acts of statutory bodies?

The objective of centralising statutory bodies’ financial powers was achieved by consequentially amending statutory bodies’ authorising Acts. In all but a few cases, the authorising Acts were amended by removing any explicit borrowing and investment powers and replacing them with a reference to the SBFA Act. This process was not intended to either reduce or expand the powers of statutory bodies but to reflect, as closely as possible, the powers that already were derived from their authorising Acts.

Part 2B of the SBFA Act is an important part of the Act which sets out the way in which the powers under the SBFA Act relate to the powers of a statutory body under its authorising Act. Part 2B should be referred to when reading other parts of the SBFA Act.

Section 7 provides that a statutory body may exercise a power under the SBFA Act only if the exercise of the power is consistent with that statutory body’s functions.

Sections 8, 9, 10, 11 and 11A deal specifically with the relationship between parts 4, 5, 6, 7 and 7A respectively of the SBFA Act and statutory bodies' authorising Acts.

Section 12 deals with the situation where a statutory body holds property on trust or subject to a condition, and section 14 deals with the requirement for a statutory body to satisfy any relevant condition precedent before exercising a power to enter into a financial arrangement.

4. Guarantees

Guarantees are dealt with in part 3 of the SBFA Act. This part provides the Treasurer, on behalf of the State, with exclusive power to guarantee the obligations of a statutory body under a financial arrangement entered into under the SBFA Act or another Act.

It will be necessary for a statutory body seeking a State Government guarantee to approach its administering department in the first instance. The department then will make a recommendation to Treasury as to whether a guarantee should be provided. An actual guarantee document must be given by the Treasurer either in writing, or by gazette notice.

Note that part 3, section 21 provides an automatic State Government guarantee of statutory bodies' borrowings from QTC, but only where the statutory body is borrowing under part 5 of the SBFA Act.

5. General Banking Powers

General banking powers are dealt with in part 4 of the SBFA Act. The majority of statutory bodies derive the power to operate a bank account for their day to day operations under their authorising Acts. For those statutory bodies that do not derive such power, part 4 provides power for a body to operate a bank account subject to:

- the account being operated in Australian dollars; and
- the Treasurer's approval being obtained for the account to operate with an overdraft facility.

6. Borrowing Powers

Part 5 of the SBFA Act deals with borrowings and requires a relevant statutory body to obtain the Treasurer's approval for borrowings, including finance leases, letters of credit, bank guarantees and, in the absence of a Regulation to the contrary, those credit card facilities, operating leases or hire-purchase agreements which the body is not clearly empowered to enter into under its authorising Act in the ordinary course of performing its functions.

In limited circumstances, a statutory body may have the power to enter into credit card facilities, operating leases or hire-purchase agreements under its authorising Act or another Act. Should a statutory body wish to enter into these types of transactions, it should contact its administering department to clarify its powers and approval requirements.

A statutory body may seek the Treasurer's approval to borrow only if it is declared under a regulation to be a body that may borrow under part 5. Schedule 2 of the *Statutory Bodies Financial Arrangements Regulation 2007* (the "SBFA Regulation") lists those bodies allocated the power to borrow.

It should be noted that under part 2B, section 9, general competence powers (for example, the power generally to enter into contracts, or the powers of a body corporate) are not sufficient to enable a statutory body to enter into a borrowing under its authorising Act.

Part 5 provides that the creation of an encumbrance (i.e. creating a charge over property or income such as executing a bill of mortgage) also requires the Treasurer's approval.

Where a statutory body is not listed in schedule 2 as an entity that may borrow, the statutory body may apply on a case by case basis for the Treasurer's approval under part 7A of the SBFA Act.

7. QTC Borrowings

A general approval was granted by the Treasurer, dated 4 December 1997, for all statutory bodies to which part 5 applies to borrow from QTC subject to certain conditions.

This was amended by gazette notice dated 23 May 2003. Under the general approval, all statutory bodies to which part 5 applies can borrow from QTC via its generic debt pools, fixed rate loans, client specific debt pools or Working Capital Facility, subject in each case to:

- the statutory body providing QTC with evidence that its administering department has approved the borrowing; and
- the borrowing complying with the State Borrowing Program.

This approval also allows a statutory body to provide an indemnity to QTC, which is a type 1 financial arrangement under part 7, division 3 (refer to section 9 of these guidelines).

8. Investment Powers

Part 6 of the SBFA Act deals with investments by statutory bodies. This part enables one of three categories of investment power to be allocated to a statutory body, in which case the body may undertake the investments permitted under the category, without requiring further approvals.

Schedules 3, 4 and 5 of the SBFA Regulation set out those statutory bodies allocated categories 1, 2 or 3 investment powers respectively.

Category 1 investment power allows investment in a range of highly secure investments either at call¹, or for a fixed term of no more than one year. Category 2 investment power allows investment in a range of highly secure investments either at call, or for a fixed term of no more than three years. Category 3 investment power includes Category 2 investment powers and the power to undertake a range of other investments, regardless of the period of investment, including:

- purchase of land in fee simple in any State;
- leasehold land in the State held under a lease that is for a term of 40 years or more and that is unexpired at the time of the purchase; and

¹The term 'at call' refers to simple investments where the investment can be redeemed and the moneys invested can be retrieved by the investor from the financial institution within 30 days without penalty. It does not contemplate the trade of investments such as floating rate notes and bonds in the secondary securities market.

- debentures or other securities charged on the funds or property of a local government.

Details of the investments are contained in sections 44, 45 and 46 of the SBFA Act. In each case, the permitted range of investments may be added to by regulation.

The range of investments includes investments with a financial institution (i.e. a bank, building society or credit union), investments in a number of QTC and QIC investment products and investments in products with a rating prescribed by regulation. Schedules 6 and 7 of the SBFA Regulation outline the QTC and QIC investment products permitted for the investment power categories and sections 8 and 10 of the SBFA Regulation contain the ratings which are prescribed for sections 44(1)(e) and 45(c) of the SBFA Act. Section 52 of the SBFA Act outlines a statutory body's obligations if an investment arrangement's rating changes.

It should be noted that investments not permitted for a statutory body under its category of investment power (for example investments in certain managed funds) may be considered on a case by case basis and that the Treasurer's approval is required and may be sought under part 7A of the SBFA Act.

It also should be noted that under part 2B, general competence powers (for example, the power generally to enter into contracts, or the powers of a body corporate) are not sufficient to enable a statutory body to enter into an investment under its authorising Act.

Part 6 of the SBFA Act requires a statutory body to use its best efforts to invest in a prudent and appropriate manner and to keep records to show that it has done so.

9. Derivatives, Funds Managers and Type 1 Financial Arrangements

Part 7 of the SBFA Act deals with derivative transactions, funds managers and type 1 financial arrangements.

Derivative Transactions

Part 7, division 1 provides that certain statutory bodies may, in limited circumstances, enter into derivative transactions. The term “derivative transactions” is defined in the dictionary contained in the schedule to the SBFA Act.

A statutory body may enter into derivatives only if it is prescribed by regulation to be a body that may enter into derivative transactions and the Treasurer’s approval has been given to enter the derivative transaction. The majority of statutory bodies have not been allocated this power.

Appointment of Funds Managers

For a statutory body which has been allocated a category of investment power under the SBFA Regulation, part 7, division 2 allows that body, with the Treasurer’s approval, to appoint a funds manager to manage the investment of all, or part of its investment funds. Where the Treasurer’s approval is given subject to conditions, the body must ensure the appointment is made subject to those conditions.

Type 1 Financial Arrangements

Part 7, division 3 requires a statutory body to obtain the Treasurer’s approval to enter into “Type 1 Financial Arrangements”. Type 1 financial arrangements are defined in the dictionary of the SBFA Act as follows:

- entering into or performing a deferred payment arrangement if the payment period is more than 3 years;
- entering into a joint venture, partnership or trust;
- forming, or participating in forming, a corporation;
- acquiring, consolidating, dealing with, disposing of, holding or issuing bonds, debentures, inscribed stock, shares, stock or other securities of any statutory body or corporation;
- entering into an arrangement, covenant, guarantee, promise or undertaking to meet liabilities or obligations incurred by or to a person, whether or not the person is a party to the arrangement, covenant, guarantee, promise or undertaking;
- underwriting an issue of debentures, shares or other securities.

This amendment to the SBFA Act was designed to capture the high risk financial arrangements that a statutory body may undertake.

It should be noted that under part 2B, general competence powers (for example, the power generally to enter into contracts, or the powers of a body corporate) are not sufficient to enable a statutory body to enter into a type 1 financial arrangement. The only exception is where the authorising Act provides express powers for the particular type 1 financial arrangement.

10. Type 2 Financial Arrangements

Part 7A is a new part to the SBFA Act and deals with those financial arrangements not covered by parts 4-7. Part 7A enables a statutory body to seek the Treasurer's approval to enter a "Type 2 Financial Arrangement", which is defined in the dictionary of the SBFA Act.

However, unlike parts 5, 6, and 7, part 7A does not impose a mandatory approval requirement for every transaction or arrangement that comes within the definition. Under part 2B, the power to enter into a type 2 financial arrangement with the Treasurer's approval, is additional to any power contained in a statutory body's authorising Act.

Accordingly, if it is determined that a statutory body has sufficient power to enter into the arrangement under its authorising Act, it will not be necessary to seek approval under the SBFA Act. But if the statutory body has only limited or no general competence powers it can still enter into a type 2 financial arrangement by seeking the Treasurer's prior approval.

Type 2 financial arrangements tend to cover most of the financial arrangements that a statutory body would undertake as part of its general business functions, such as taking an interest in land, holding property as trustee or agent, granting or taking a lease, or hiring buildings/ equipment.

Statutory bodies should contact their administering department for further advice if they are unsure as to whether a particular arrangement requires Treasurer's approval under part 7A.

11. Seeking the Treasurer's Approval

A statutory body proposing to enter into a financial arrangement which requires approval under the SBFA Act should first check whether it has been allocated appropriate power under the SBFA Regulation or its Authorising Act, and then approach its administering department with complete details of the proposal and a request that the department seek any necessary approvals on behalf of the body.

The administering department is responsible for considering and assessing the proposal and for determining (having regard to the requirements of prudent financial management) whether it is appropriate for the approval to be given. This determination then will form the basis of a suitable application for approval under the SBFA Act and a suitable recommendation by the department to Treasury regarding the application.

Treasury will liaise and correspond with the relevant department regarding the application and any approval given. The relevant department generally will be responsible for any direct liaison with the statutory body.

In most cases, the approval sought would be the Treasurer's specific approval to enter into a particular financial arrangement. However, in appropriate circumstances, the SBFA Act allows the Treasurer to grant general approvals by gazette notice (eg. the general approval for statutory bodies to which part 5 applies, to borrow from QTC).

The SBFA Act allows the Treasurer to either approve an application entirely, or partly, or refuse the application. Further, the Treasurer may grant an approval subject to certain conditions and may amend or repeal an approval.

The SBFA Act requires that a statutory body keep a register of the Treasurer's approvals. There is no prescribed form for the register and it is considered that a binder with a copy of the Treasurer's approvals would be sufficient.

Finally, it should be noted that the SBFA Act allows the Treasurer, in considering a statutory body's application, to require the body to provide further relevant documents or information

and that it is an offence for a person to provide documents or information which the person knows to be false or misleading.

12. State Borrowing Program

It should be noted that any approvals under the SBFA Act are additional to approvals that may be required under the State Borrowing Program.