

# **Borrowing and Investment Powers (Port Authorities) Bill**

No.

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By Authority L V North, Government Printer Melbourne



# LEGISLATIVE ASSEMBLY

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Read 1<sup>o</sup> 10 October 1991

*(Brought in by Mr Roper and Mr Spyker)*

## A BILL

to amend the **Borrowing and Investment Powers Act 1987** and for other purposes.

### **Borrowing and Investment Powers (Port Authorities) Act 1991**

The Parliament of Victoria enacts as follows:

#### 1. *Purpose*

5 The purpose of this Act is to make new provisions for borrowings and investment by the Port of Melbourne Authority, the Port of Geelong Authority and the Port of Portland Authority.

#### 2. *Commencement*

This Act comes into operation on a day to be proclaimed.

#### 3. *Principal Act*

10 In this Act, the **Borrowing and Investment Powers Act 1987** is called the Principal Act.

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Section headings appear in bold italics and are not part of the Act (see **Interpretation of Legislation Act 1984**).

No. 13/1987.  
Reprinted t  
No. 49/1989  
and  
subs qu ntly  
amend d by  
N s 81/1989  
and 31/1991.

**4. Amendment of sections 3-11**

In the Principal Act—

- (a) in section 3 (1), in the definition of “**authority**”, for “1, 2 or 3” **substitute** “1, 1A, 1B, 1C, 2, 2A or 3”;
- (b) in section 5, before “or 2” **insert** “, 1C”; 5
- (c) in section 6 (1), before “2” **insert** “1C or”;
- (d) in section 8 (1), before “or 2” **insert** “, 1C”;
- (e) in section 10, before “or 2” **insert** “, 1C”;
- (f) in section 11, before “2” **insert** “1C or”.

**5. Limited validation of certain transactions** 10

After section 11AA (2) of the Principal Act **insert**—

“(3) If—

- (a) an authority specified in Schedule 1C entered into, or purported to enter into, a financial transaction that was not, or may not have been a financial arrangement of a kind that the authority was authorised to enter into under section 11; and 15
- (b) another party to the financial transaction entered into the financial transaction in good faith and with no reason to suspect, at the time of entering into the financial transaction, that the transaction was not a financial arrangement of a kind that the authority was authorised to enter into under section 11— 20 25

the financial transaction may be enforced as if it were a financial arrangement which the authority had been authorised to enter into.”.

**6. Limits on financial accommodation**

In section 11A of the Principal Act—

(a) in sub-section (1), for “Schedule 2A” substitute  
“Schedule 1C or 2A”;

5 (b) after sub-section 2 (c) insert—

“or

(d) in the case of the Port of Geelong Authority,  
\$25 000 000; or

10 (e) in the case of the Port of Melbourne Authority,  
\$375 000 000; or

(f) in the case of the Port of Portland Authority,  
\$50 000 000.”;

(c) after sub-section (3) (c) insert—

“and

15 (d) in relation to the Port of Geelong Authority,  
money borrowed before the commencement  
of section 8 of the **Borrowing and Investment  
Powers (Port Authorities) Act 1991** under  
section 87 of the **Port of Geelong Authority  
Act 1958**; and

20 (e) in relation to the Port of Melbourne Authority,  
money borrowed before the commencement  
of section 8 of the **Borrowing and Investment  
Powers (Port Authorities) Act 1991** under  
section 120 of the **Port of Melbourne authority  
Act 1958**; and

25 (f) in relation to the Port of Portland Authority,  
money borrowed before the commencement  
of section 8 of the **Borrowing and Investment  
Ports (Port Authorities) Act 1991** under section  
30 31 of the **Port of Portland Authority Act 1958**.”.

**7. New section 11B inserted**

After section 11A of the Principal Act insert—

**“11B. Limits on overdraft**

35 (1) This section applies to an authority specified in  
Schedule 1C.

- (2) An authority specified in Schedule 1C must not at any time obtain a financial benefit or assistance to obtain a financial benefit by way of overdraft of account at any bank or other financial institution in Australia if, at that time, its liability in respect of financial accommodation obtained by way of such overdrafts exceeds or, if the financial benefit or assistance were obtained, would exceed—
- (a) in the case of the Port of Geelong Authority, \$2 000 000;
  - (b) in the case of the Port of Melbourne Authority, \$8 000 000;
  - (c) in the case of the Port of Portland Authority, such sum as is fixed for the time being by the Treasurer.”.

### **8. Limited validation of certain investments**

After section 20A (2) of the Principal Act insert—

“(3) If—

- (a) an authority specified in Schedule 1C entered into, or purported to enter into, a transaction or arrangement in the exercise of a power of investment that was not, or may not have been, a power of a kind that the authority was authorised to exercise under section 20; and
- (b) another party to the transaction or arrangement entered into the transaction or arrangement in good faith and with no reason to suspect, at the time of entering into the transaction or arrangement, that the transaction or arrangement was not entered into by the authority in the exercise of a power of investment of a kind that the authority was authorised to exercise under section 20—

the transaction or arrangement may be enforced as if it had been entered into by the authority in the exercise of a power of investment under section 20.”.

**9. Amendment of sections 13–21**

In the Principal Act—

- (a) in section 13 (1), after “Schedule” insert “1C or”;
- (b) in section 14 (1), before “or 2” insert “, 1C”;
- 5 (c) in section 15 (1), before “2” insert “1C or”;
- (d) in section 20, before “or 2” insert “, 1C”;
- (e) in section 21, before “or 2” insert “, 1C”.

**10. New Schedule inserted**

Before Schedule 2 to the Principal Act insert—

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**“SCHEDULE 1C**

Authorities to which sections 5, 6, 8, 10, 11, 13, 14, 15, 20 and 21 apply  
Port of Geelong Authority  
Port of Melbourne Authority  
Port of Portland Authority”.

**11. New sections 87 and 88 inserted in Port of Geelong Authority Act 1958**

For sections 86A, 87 and 88 of the **Port of Geelong Authority Act 1958** substitute—

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**“87. Financial accommodation**

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The Authority may obtain financial accommodation in accordance with the powers conferred on it by the **Borrowing and Investment Powers Act 1987** for and in relation to the exercise of its functions and powers other than its functions and powers in respect of any associated port.

**88. Security**

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Financial accommodation obtained under this Act or the **Borrowing and Investment Powers Act 1987** may be secured on the revenues of the Authority, on the fixed and floating assets of the

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Authority or in such other manner as the Treasurer approves.”.

**12. Amendment of Port of Geelong Authority Act 1958**

In the **Port of Geelong Authority Act 1958**—

- (a) in section 3AA(4), for “section 86A” substitute “section 87”; 5
- (b) sections 88 and 90 (1) and (2) are **repealed**;
- (c) in section 90 (3), paragraphs (a) and (b) are **repealed**;
- (d) sections 94 and 94A are **repealed**;
- (e) in section 90 (6), after “debenture” insert “issued under this Act”; 10
- (f) in section 90 (7), after “debenture” insert “issued under this Act”;
- (g) in section 99 (2), for paragraph (ba) substitute—  
“*(ba)* the management and control of debentures and inscribed stock issued under this Act;” 15
- (h) the Sixth Schedule is **repealed**.

**13. New sections 120 and 121 inserted in Port of Melbourne Authority Act 1958**

For sections 120 and 121 of the **Port of Melbourne Authority Act 1958** substitute— 20

**“120. Financial accommodation**

The Authority may obtain financial accommodation in accordance with the powers conferred on it by the **Borrowing and Investment Powers Act 1987** for and in relation to the exercise of its functions and powers other than its functions and powers in respect of any associated port. 25

**121. Security 30**

Financial accommodation obtained under this Act or the **Borrowing and Investment Powers**



Act 1987 may be secured on the revenues or other assets of the Authority or in such other manner as the Treasurer approves.”.

**14. Amendment of Port of Melbourne Authority Act 1958**

5 In the **Port of Melbourne Authority Act 1958**—

- 10 (a) in section 122, for “such security is made or who are entitled to the moneys thereby secured” **substitute** “security under this Act was given before the commencement of section 8 of the **Borrowing and Investment Powers (Port Authorities) Act 1991** or who are entitled to moneys so secured”;
- (b) in section 123, after “securities given by the Authority” **insert** “under this Act”;
- 15 (c) in section 124, after “secured” **insert** “before the commencement of section 8 of the **Borrowing and Investment Powers (Port Authorities) Act 1991**”;
- (d) in section 125, the third paragraph is **repealed**;
- (e) in section 125A, after “Authority” **insert** “under this Act”;
- 20 (f) in section 126, sub-sections (1), (1A) and (1B) are **repealed**;
- (g) in section 129, after “or inscribed stock” **insert** “issued under this Act”;
- 25 (h) in section 130, after “debentures” **insert** “issued under this Act”;
- (i) section 133 is **repealed**;
- (j) in section 133A, sub-section (1) is **repealed**;
- 30 (k) in section 133A (2), after “obtained” **insert** “before the commencement of section 8 of the **Borrowing and Investment Powers (Port Authorities) Act 1991**”;
- 35 (l) after section 134B (1)—
  - (i) for “placed by the Authority” **substitute** “by the Authority in accordance with its powers under the **Borrowing and Investment Powers Act 1987**”;
  - (ii) paragraphs (a) to (g) are **repealed**.

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- (m) in section 134B (2), for “invested or placed in accordance with the provisions of this section” substitute “referred to in sub-section (1)”;
- (n) the Fifth Schedule and the Seventh Schedule are repealed.

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**15. *New sections 31 and 31A inserted in Port of Portland Authority Act 1958***

For section 31 of the **Port of Portland Authority Act 1958** substitute—

**“31. *Financial accommodation***

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The Authority may obtain financial accommodation in accordance with the powers conferred on it by the **Borrowing and Investment Powers Act 1987** for and in relation to the exercise of its functions and powers other than its functions and powers in respect of any associated port.

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**31A. *Security***

Financial accommodation obtained under this Act or the **Borrowing and Investment Powers Act 1987** may be secured on the revenues or other assets of the Authority or in such other manner as the Treasurer approves.”.

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**16. *Amendment of Port of Portland Authority Act 1958***

In the **Port of Portland Authority Act 1958**—

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- (a) in section 32, sub-sections (1) and (2) are repealed;
- (b) in section 32 (3), for “such debentures and stock” substitute “debentures and stock issued under this Part”;
- (c) in section 32 (4), for “such debentures or stock” substitute “debentures or stock issued under this Part”;

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(d) in section 33 (1), after “Part” insert “or the **Borrowing and Investment Powers Act 1987**”;

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(e) in section 33 (1A) for “in such securities as trustees are by law for the time being authorised to invest in” substitute “in accordance with its powers under the **Borrowing and Investment Powers Act 1987**”;

(f) in section 33(1B), after “enactment” insert “or under the **Borrowing and Investment Powers Act 1987**”;

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(g) in section 33 (3), after “Part” insert “or under the **Borrowing and Investment Powers Act 1987**”;

(h) sections 38 and 39 are **repealed**.

**17. Transitional provisions**

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(1) A provision of an Act amended by section 11, 12, 13, 14, 15 or 16 continues to apply to or in respect of—

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(a) moneys borrowed or re-borrowed, loans, advances and financial accommodation obtained and financial arrangements entered into and any other thing done under borrowing powers or powers to obtain financial accommodation conferred by the Act before the commencement of that section; and

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(b) moneys borrowed or re-borrowed, loans, advances and financial accommodation obtained and any other thing done under borrowing powers or powers to obtain financial accommodation conferred by the Act after that commencement, pursuant to arrangements entered into before that commencement—

as if those sections had not been enacted.

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(2) A provision of an Act amended by section 11, 12, 13, 14, 15 or 16 continues to apply to or in respect of the investment of moneys or exercise of powers made before the commencement of that section as if those sections had not been enacted.

**18. *Enforcement of guarantees given before commencement of section***

A guarantee given by or on behalf of the Government or State of Victoria or by the Treasurer and in force before the commencement of this section under an Act amended by section 11, 12, 13, 14, 15 or 16 has effect and may be enforced as if the guarantee were a contract made on behalf of the Crown and section 23 (1) (a) of the **Crown Proceedings Act 1958** applied accordingly. 5