

Victorian Debt Retirement Fund Bill

No.

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LEGISLATIVE ASSEMBLY

Read 1° 31 October 1990

(Brought in by Mr Crabb and Mr Kennan)

A BILL

to make provision in relation to State Debt and for other purposes.

Victorian Debt Retirement Fund Act 1990

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. Purpose

5 The purpose of this Act is to make provision in relation
to State Debt.

2. Commencement

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

3. Definitions

In this Act—

10 “**appointed member**” means a member of the Authority
appointed by the Governor in Council;

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

- “**arrangement**” means any agreement, arrangement, understanding, promise or undertaking, whether express or implied, or any transaction;
- “**Authority**” means the Victorian Debt Retirement Authority established by this Act; 5
- “**bank**” means a bank within the meaning of the **Banking Act 1959** of the Commonwealth as amended and in force for the time being or a bank constituted by a law of a State or of the Commonwealth;
- “**Capital Works Authority**” means the body constituted by Order of the Governor in Council on 28 May 1985; 10
- “**designated authority**” means a public authority declared by Order of the Governor in Council to be an authority whose debt is part of the budget sector debt; 15
- “**financial accommodation**” means a financial benefit or assistance to obtain a financial benefit arising from or as a result of—
- (a) a loan; 20
 - (b) issuing, endorsing or otherwise dealing in promissory notes;
 - (c) drawing, accepting, endorsing or otherwise dealing in bills of exchange;
 - (d) issuing, purchasing or otherwise dealing in securities; 25
 - (e) granting or taking a lease of any real or personal property for financing but not for operating purposes;
 - (f) any other arrangement that the Governor in Council on the recommendation of the Treasurer approves; 30
- “**Financial Agreement**” means the Agreement a copy of which is set out in the Schedule to the **Financial Agreement Act 1928** of the Commonwealth, as varied and in force for the time being; 35

5 “**financial arrangement**” means an arrangement entered into for the purpose of managing, lessening, hedging or protecting against movements in currency exchange, interest or discount rates or other costs of obtaining financial accommodation;

“**Fund**” means the Victorian Debt Retirement Fund;

“**member**” means member of the Authority;

“**State Debt**” means—

10 (a) liability of the State to the Commonwealth—

(i) under the Financial Agreement;

(ii) in respect of financial accommodation provided to the State under any Agreement between the Commonwealth and the State relating to Housing;

15 (iii) under a loan to the State under the **States (Works and Housing) Assistance Act 1982** of the Commonwealth;

(b) liability of the State to the State Development Account under the **Public Account Act 1958**;

20 (c) liability of the Capital Works Authority in respect of financial accommodation provided to, or assumed by, it;

(d) liability of a designated authority in respect of financial accommodation provided to it;

25 (e) liability of the State in respect of financial accommodation declared by Order of the Governor in Council to be State Debt for the purposes of this Act;

30 “**VicFin**” means the Victorian Public Authorities Finance Agency.

PART 2—VICTORIAN DEBT RETIREMENT AUTHORITY

4. *Establishment of Authority*

- (1) There is established a Victorian Debt Retirement Authority.

- (2) The Authority—
- (a) is a body corporate with perpetual succession;
 - (b) has a common seal;
 - (c) may sue and be sued;
 - (d) may acquire, hold and dispose of personal property; 5
 - (e) may do and suffer all acts and things that a body corporate may by law do and suffer.
- (3) The common seal of the Authority must be kept in such custody as the Authority directs and must not be used except as authorised by the Authority. 10
- (4) All courts, judges and persons acting judicially must take judicial notice of the seal of the Authority affixed to a document and must presume that it was duly affixed.
- 5. *Authority holds property for and on behalf of Crown***
- The Authority holds its property for and on behalf of the Crown. 15
- 6. *Functions and powers***
- The Authority has the functions and powers conferred on it by this Act.
- 7. *Directions of Treasurer*** 20
- In the exercise of its powers and performance of its functions, the Authority is subject to the general direction and control of the Treasurer.
- 8. *Annual debt retirement strategy***
- The Authority must, before a date to be fixed by the Treasurer each year, submit to the Treasurer for his or her approval a debt retirement strategy for the year. 25
- 9. *Members***
- (1) The Authority consists of—
- (a) the Director-General of the Treasury; and 30

(b) an officer employed in the Treasury appointed by the Governor in Council on the recommendation of the Treasurer; and

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(c) two persons with experience in banking, finance or law appointed by the Governor in Council on the recommendation of the Treasurer.

(2) An appointed member of the Authority is not subject to the **Public Service Act 1974** by reason only of being such a member.

10 **10. Age**

A person is not eligible to be appointed or to continue as a member if the person has attained the age of 70 years.

11. Chairperson

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The Director-General of the Treasury is the chairperson of the Authority.

12. Term of office

(1) A member of the Authority is appointed for such term, not exceeding 3 years, as is specified in the member's instrument of appointment.

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(2) A member is eligible for re-appointment.

13. Remuneration

A member of the Authority, unless an officer of the public service, is entitled to the remuneration and allowances (if any) fixed by the Treasurer.

25 **14. Vacancies, resignation and removal from office**

(1) An appointed member ceases to be a member if he or she—

(a) becomes bankrupt; or

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(b) is absent, without leave first granted by the Authority, from 3 consecutive meetings of which

- reasonable notice has been given to that member personally or by post; or
- (c) attains the age of 70 years.
- (2) An appointed member may resign by writing delivered to the Treasurer. 5
- (3) The Treasurer may remove an appointed member from office if the member—
- (a) becomes incapable of performing his or her duties;
- (b) is negligent in the performance of those duties;
- (c) engages in improper conduct; 10
- (d) fails to disclose a pecuniary interest as required by section 15.

15. *Pecuniary interests of members*

- (1) A member who has a pecuniary interest in a matter being considered or about to be considered by the Authority must, as soon as practicable after the relevant facts have come to his or her knowledge, declare the nature of the interest at a meeting. 15
- (2) A person presiding at a meeting at which a declaration is made must cause a record of the declaration to be made in the minutes of the meeting. 20
- (3) After a declaration is made by a member—
- (a) unless the Authority otherwise directs, the member must not be present during any deliberation with respect to that matter; and 25
- (b) the member is not entitled to vote on the matter; and
- (c) if the member does vote on the matter, the vote must be disallowed.

16. *Chairperson* 30

The Chairperson of the Authority or, in his or her absence, a member appointed by the Authority, shall preside at a meeting of the Authority.

17. Proceedings of the Authority

- (1) Three members constitute a quorum of the Authority.
- (2) A question arising at a meeting shall be determined by a majority of votes of members present and voting on that question, and if voting is equal, the Director-General of the Treasury, if present, has a casting, as well as a deliberative, vote.
- (3) Subject to this Act, the Authority may regulate its own proceedings.

18. Validity of decisions

An act or decision of the Authority is not invalid by reason only—

- (a) of a defect or irregularity in, or in connection with, the appointment of a member; or
- (b) of a vacancy in membership, including a vacancy arising out of the failure to appoint an original member.

19. Staff

Subject to the **Public Service Act 1974**, there shall be appointed such officers and employees as are necessary for the purposes of this Act.

20. Delegation and agency

- (1) The Authority may, by instrument under its common seal, delegate to any person any function or power of the Authority, other than this power of delegation.
- (2) The Authority—
 - (a) may, by instrument, appoint a person to be an agent of the Authority on such terms and conditions as are specified in the instrument; and

(b) may, by instrument, terminate any such appointment.

PART 3—VICTORIAN DEBT RETIREMENT FUND

21. *The Fund*

- (1) The Authority must establish and maintain a Victorian Debt Retirement Fund. 5
- (2) There must be paid into the Fund—
- (a) such amounts from money appropriated by the Parliament for payment into the Fund as the Treasurer determines; 10
 - (b) money received from the Debt Retirement Trust Account;
 - (c) money received from the Government of the Commonwealth for payment into the Fund;
 - (d) any income from the investment of money standing to the credit of the Fund and the proceeds of sale of any such investment; 15
 - (e) any other money required or permitted to be paid into the Fund by or under any other Act.
- (3) There must be paid out of the Fund such amounts as the Authority determines are payable— 20
- (a) for the acquisition of securities issued or assumed by, or otherwise held by, VicFin;
 - (b) to reduce or cancel State Debt;
 - (c) to pay amounts owing under financial arrangements relating to State Debt which has been, or is to be, reduced or cancelled; 25
 - (d) into the State's account in the National Debt Sinking Fund;
 - (e) to meet the costs and expenses of the audit of the Authority's accounts; 30
 - (f) to meet any other costs or expenses incurred by the Authority under this Act.
- (4) The Authority may invest any money standing to the credit of the Fund— 35

- (a) in securities issued or guaranteed by the Commonwealth or any State;
- (b) in bills of exchange accepted by any bank;
- 5 (c) in promissory notes or certificates of deposit issued by a bank;
- (d) on deposit with a bank;
- (e) in the Cash Management Account under the **Public Account Act 1958**.

- 10 (5) The Authority may enter into and perform financial arrangements.
- (6) The Authority may transfer money standing to the credit of the Fund or investments held by the Authority to a trustee of a trust the object of which is to pay interest payments on, or to reduce or cancel, State Debt.

15 **22. *Additional payments to the Fund***

20 There may be paid to the Fund from the Consolidated Fund such amounts as the Treasurer from time to time determines, in addition to amounts payable under section 21 and the Consolidated Fund is hereby to the necessary extent appropriated accordingly.

PART 4—DEBT RETIREMENT TRUST ACCOUNT

23. *Trust Account*

- 25 (1) There shall be established in the Public Account as part of the Trust Fund an account to be known as the “Debt Retirement Trust Account”.
- (2) There must be paid into the Account the net proceeds of sales of property declared to be designated assets under section 24.
- 30 (3) There must be paid out of the Account to the Victorian Debt Retirement Fund in each financial year amounts equal to amounts paid into the Account under subsection (2) in that year.

24. Designated assets

The Governor in Council, on the recommendation of the Treasurer, may declare any real or personal property of the State to be a designated asset for the purposes of section 23.

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PART 5—REPORTS AND ACCOUNTS**25. Accounts and records**

- (1) The Authority must ensure that there are kept proper accounts and records of the transactions and affairs of the Authority and any other records as will sufficiently explain the financial operations and financial position of the Authority and the Fund. 10
- (2) The Authority must do all things necessary to —
- (a) ensure that all money payable to the Authority is properly collected; and 15
 - (b) ensure that all money expended by the Authority is properly expended and properly authorised; and
 - (c) ensure that adequate control is maintained over assets owned by or in the custody of the Authority; and 20
 - (d) ensure that all liabilities incurred by the Authority are properly authorised; and
 - (e) ensure efficiency and economy of operations and the avoidance of waste and extravagance; and
 - (f) develop and maintain an adequate budgeting and accounting system; and 25
 - (g) develop and maintain an adequate internal audit system.

26. Annual report

- (1) The Authority must, in respect of each financial year, prepare an annual report containing— 30
- (a) report of its operations during the financial year; and

(b) financial statements for the financial year—

and submit the report to the Treasurer not later than 30 September next following the financial year.

5 (2) The report of operations referred to in sub-section (1) (a) must—

(a) be prepared in a form and contain information determined by the Authority to be appropriate; and

(b) contain any further information required by the Treasurer.

10 (3) The financial statements referred to in sub-section (1) (b) must—

(a) contain information determined by the Treasurer to be appropriate; and

15 (b) be prepared in a manner and form approved by the Treasurer; and

(c) present fairly the results of the financial transactions of the Authority during the financial year to which they relate and the financial position as at the end of that year; and

20 (d) be signed by the principal accounting officer (by whatever name called) of the Authority and by the Chairperson and one other member of the Authority who must—

25 (i) state whether, in their opinion, the financial statements present fairly the results of the financial transactions of the Authority during the financial year to which they relate and whether they sufficiently explain the financial position of the Authority as at the end of the financial year; and

30 (ii) state whether, at the date of signing the financial statements, they were aware of any circumstances that render any particulars included in the statements misleading or inaccurate and, if so, particulars of the circumstances; and

35 (e) be audited as required by section 27 (1).

(4) The Treasurer must cause each annual report submitted

to the Treasurer under this section to be laid before the Legislative Council and the Legislative Assembly before the expiration of the seventh sitting day of the Legislative Council or the Legislative Assembly, as the case may be, after the annual report has been received by the Treasurer. 5

- (5) If the Authority fails to submit an annual report to the Treasurer by 30 September in each year, the Treasurer must report or cause to be reported that failure and the reasons for the failure to each House of the Parliament. 10
- (6) This section does not apply to the Authority if, as a result of an order made under the **Annual Reporting Act 1983**, the Authority is required to submit an annual report under that Act.

27. Audit 15

- (1) The financial statements referred to in section 26 must be audited by the Auditor-General.
- (2) The Auditor-General has, in respect of the audit of those financial statements, all the powers conferred on the Auditor-General by any law relating to the audit of the public accounts. 20
- (3) Without limiting the generality of sub-section (2), the Auditor-General and each officer of the Auditor-General—
- (a) has right of access at all times to the books of the Authority; and 25
- (b) may require from a member of staff of the Authority any information, assistance and explanations necessary for the performance of the duties of the Auditor-General in relation to the audit. 30
- (4) The Authority must pay to the Consolidated Fund an amount to be determined by the Auditor-General to defray the costs and expenses of any audit by the Auditor-General under this section.

PART 6—MISCELLANEOUS

28. *Reference to Debt Retirement Fund*

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A reference in the **Appropriation (1990–91, No. 1) Act 1990** to the Debt Retirement Fund is taken to be a reference to the Victorian Debt Retirement Fund under this Act.

