

**Reprint  
as at 1 December 2014**



**Local Government Borrowing Act  
2011**

Public Act    2011 No 77  
Date of assent    19 September 2011  
Commencement    see section 2

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**Note**

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

**This Act is administered by the Department of Internal Affairs.**

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Local Government Borrowing Act 2011.

**2 Commencement**

- (1) This Act comes into force on the day after the Funding Agency is registered under the Companies Act 1993.
- (2) However, this Act is repealed on the day that is 12 months after the date on which it receives the Royal assent if the Funding Agency has not been registered by that date.

Section 2(1): this Act brought into force, on 2 December 2011, being the day after the Funding Agency was registered under the Companies Act 1993.

*Preliminary provisions*

**3 Purpose**

- (1) The purpose of this Act is to facilitate the operation of the New Zealand Local Government Funding Agency Limited.
- (2) To this end, this Act—

- (a) exempts the Funding Agency from certain regulatory or taxation criteria that would otherwise apply to it; and
- (b) applies certain regulatory or taxation criteria to the Funding Agency that would otherwise not apply to it; and
- (c) authorises local authorities to deal with the Funding Agency in a manner in which they would otherwise not be authorised to do so; and
- (d) authorises or requires local authorities, in certain situations, to act in a manner in which they would otherwise not be authorised or required to act.

#### **4 Interpretation**

- (1) In this Act, unless the context requires another meaning,—  
**Funding Agency** means the New Zealand Local Government Funding Agency Limited, a limited liability company registered under Part 2 of the Companies Act 1993  
**Minister** has the meaning given by section 2(1) of the Public Finance Act 1989.
- (2) A term defined in the Local Government Act 2002 that is used but not defined in this Act has the same meaning as in the Local Government Act 2002.

#### **5 Application**

This Act applies to the Funding Agency only while the Funding Agency is a council-controlled organisation.

#### **6 Act binds the Crown**

This Act binds the Crown.

#### *Application of Non-bank Deposit Takers Act 2013*

Heading: replaced, on 1 May 2014, by section 92(2) of the Non-bank Deposit Takers Act 2013 (2013 No 104).

**7 Funding Agency not a non-bank deposit taker**

The Funding Agency is not an NBDT (a non-bank deposit taker) for the purposes of the Non-bank Deposit Takers Act 2013.

Section 7: replaced, on 1 May 2014, by section 92(2) of the Non-bank Deposit Takers Act 2013 (2013 No 104).

*Application of Financial Markets Conduct Act 2013*

Heading: replaced, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

**8 Financial Markets Conduct Act 2013 applies to Funding Agency as if it were local authority**

The Financial Markets Conduct Act 2013 applies to the Funding Agency as if it were a local authority.

Section 8: replaced, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

*Application of Local Government Act 2002***9 Exemption from prohibitions and restrictions applying to council-controlled trading organisations**

- (1) This section applies only if the Funding Agency is also a council-controlled trading organisation.
- (2) Despite section 62 of the Local Government Act 2002, a local authority may give a guarantee, an indemnity, or a security in respect of the performance of any obligation by the Funding Agency.
- (3) Despite section 63 of the Local Government Act 2002, a local authority may lend money, or provide any other financial accommodation, to the Funding Agency on terms and conditions that are more favourable to the Funding Agency than those that would apply if the local authority were (without charging any rate or rate revenue as security) borrowing the money or obtaining the financial accommodation.
- (4) Subsection (5) applies if a local authority gives a guarantee, an indemnity, or a security, or lends money or provides any other financial accommodation, under subsection (2) or (3) while the Funding Agency is a council-controlled trading organisation

and, subsequently, the Funding Agency ceases to be a council-controlled trading organisation.

- (5) The guarantee, indemnity, security, loan, or other financial accommodation continues subject to its terms, and the obligations and rights of the local authority in respect of the guarantee, indemnity, security, loan, or other financial accommodation continue to apply, despite the Funding Agency no longer being a council-controlled trading organisation.

#### **10 Additional requirements to be specified in local authority's financial strategy**

- (1) This section applies to a local authority if it has adopted a financial strategy under section 101A of the Local Government Act 2002 and it gives a guarantee in relation to—
- (a) any indebtedness of the Funding Agency;
  - (b) another local authority's indebtedness to the Funding Agency.
- (2) The local authority must specify in its financial strategy its policy on the giving of any securities that secure obligations under the guarantee.

#### **11 Exemption from prohibition on borrowing in foreign currency**

Section 113(1) of the Local Government Act 2002 does not apply in relation to a guarantee by a local authority of any indebtedness of the Funding Agency.

#### **12 Certain arrangements and transactions to be treated as incidental arrangements and protected transactions under Local Government Act 2002**

- (1) This section applies to the following arrangements:
- (a) a guarantee by a local authority of any indebtedness owed by another local authority to the Funding Agency;
  - (b) a guarantee by a local authority of any indebtedness of the Funding Agency;
  - (c) a commitment by a local authority to contribute equity to the Funding Agency;
  - (d) a commitment by a local authority to lend money to the Funding Agency.

- (2) The arrangements are—
- (a) incidental arrangements for the purposes of sections 114 and 115 of the Local Government Act 2002; and
  - (b) protected transactions for the purposes of sections 117 to 120 of the Local Government Act 2002.

*Amendments to Income Tax Act 2007*

**13 Principal Act amended**

Section 14 amends the Income Tax Act 2007.

**14 Definitions**

- (1) Paragraph (b) of the definition of **council-controlled organisation** in section YA 1 is amended by adding “or the New Zealand Local Government Funding Agency Limited”.
- (2) The definition of **local authority** in section YA 1 is amended by adding the following subparagraph:
- “(ix) the New Zealand Local Government Funding Agency Limited while it is a council-controlled organisation within the meaning of section 6(1) of the Local Government Act 2002”.

*Crown relationship with Funding Agency*

**15 Crown may lend money to Funding Agency**

- (1) The Minister, on behalf of the Crown, may lend money to the Funding Agency if—
- (a) the Minister considers that—
    - (i) it is necessary or expedient in the public interest to do so; and
    - (ii) it is necessary to meet an exceptional and temporary liquidity shortfall affecting the Funding Agency; and
  - (b) the money is lent on commercial terms.
- (2) The Minister may lend money under subsection (1) without further appropriation than this section as long as the lending occurs not later than 10 years after the commencement of this Act.

**16 No Crown guarantee for debts of Funding Agency**

- (1) No debt of the Funding Agency is guaranteed by the Crown.
  - (2) If the Funding Agency enters into any loan agreement or incidental arrangement, the agreement or arrangement must include a statement that the loan or liability under the agreement or arrangement is not guaranteed by the Crown.
  - (3) In this section, **incidental arrangement** means an arrangement that would, if the Funding Agency were a local authority, come within the meaning of that term in section 112 of the Local Government Act 2002.
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## Reprints notes

### **1** *General*

This is a reprint of the Local Government Borrowing Act 2011 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### **2** *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### **3** *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### **4** *Amendments incorporated in this reprint*

Non-bank Deposit Takers Act 2013 (2013 No 104): section 92(2)

Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70): section 150

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