

## ATTACHMENT A – LOCAL GOVERNMENT ACT

### LOCAL GOVERNMENT ACT 1993 – SECTION 625

#### **625 How may councils invest?**

- (1) A council may invest money that is not, for the time being, required by the council for any other purpose.
- (2) Money may be invested only in a form of investment notified by order of the Minister published in the Gazette.

Editorial note. See Gazettes No 152 of 24.11.2000, p 12041; No 94 of 29.7.2005, p 3977 and No 97 of 15.8.2008, p 7638.

- (3) An order of the Minister notifying a form of investment for the purposes of this section must not be made without the approval of the Treasurer.
- (4) The acquisition, in accordance with section 358, of a controlling interest in a corporation or an entity within the meaning of that section is not an investment for the purposes of this section.

## ATTACHMENT B – INVESTMENT ORDER

### LOCAL GOVERNMENT ACT 1993 – INVESTMENT ORDER

(Relating to investments by councils)

I, the Hon. Barbara Perry MP, Minister for Local Government, in pursuance of section 625(2) of the *Local Government Act 1993* and with the approval of the Treasurer, do, by this my Order, notify for the purposes of section 625 of that Act that a council or county council may only invest money (on the basis that all investments must be denominated in Australian Dollars) in the following forms of investment:

- (a) any public funds or securities issued by or guaranteed by, the Commonwealth, any State of the Commonwealth or a Territory;
- (b) any debentures or securities issued by a council (within the meaning of the *Local Government Act 1993* (NSW));
- (c) interest bearing deposits with, or any debentures or bonds issued by, an authorised deposit-taking institution (as defined in the *Banking Act 1959* (Cwth)), but excluding subordinated debt obligations;
- (d) any bill of exchange which has a maturity date of not more than 200 days; and if purchased for value confers on the holder in due course a right of recourse against a bank which has been designated as an authorised deposit-taking institution by the Australian Prudential Regulation Authority;
- (e) a deposit with the New South Wales Treasury Corporation or investments in an Hour-Glass investment facility of the New South Wales Treasury Corporation;

All investment instruments (excluding short term discount instruments) referred to above include both principal and investment income.

#### Transitional Arrangements

- (i) Subject to paragraph (ii) nothing in this Order affects any investment made before the date of this Order which was made in compliance with the previous Ministerial Orders, and such investments are taken to be in compliance with this Order.
- (ii) Paragraph (i) only applies to those investments made before the date of this Order and does not apply to any restructuring or switching of investments or any re-investment of proceeds received on disposal or maturity of such investments, which for the avoidance of doubt must comply with this Order.

#### Key Considerations

An investment is not in a form of investment notified by this order unless it also complies with an investment policy of council adopted by a resolution of council.

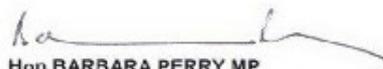
All councils should by resolution adopt an investment policy that is consistent with this Order and any guidelines issued by the Chief Executive (Local Government), Department of Premier and Cabinet, from time to time.

The General Manager, or any other staff member, with delegated authority by a council to invest funds on behalf of a council must do so in accordance with the council's adopted investment policy.

Councils have a fiduciary responsibility when investing. Councils should exercise the care, diligence and skill that a prudent person would exercise in managing the affairs of other persons.

When exercising the power of investment councils should consider, but not be limited by, the risk of capital or income loss or depreciation, the likely income return and the timing of income return, the length of the term of the proposed investment, the liquidity and marketability of the proposed investment, the likelihood of inflation affecting the value of the proposed investment and the costs (including commissions, fees, charges and duties payable) of making the proposed investment.

Dated this 12<sup>th</sup> day of January 2011

  
Hon BARBARA PERRY MP  
Minister for Local Government

## ATTACHMENT C – LOCAL GOVERNMENT (GENERAL) REGULATION

### LOCAL GOVERNMENT (GENERAL) REGULATION 2005 – CLAUSE 212

#### **212 Reports on council investments**

- (1) The responsible accounting officer of the council:
  - (a) must provide the council with a written report (setting out details of all money that the council has invested under section 625 of the Act) to be presented:
    - (i) if only one ordinary meeting of the council is held in a month, at that meeting, or
    - (ii) if more than one such meeting is held in a month, at whichever of those meetings the council by resolution determines, and
  - (b) must include in the report a certificate as to whether or not the investment has been made in accordance with the Act, the regulations and the Council's investment policies.
- (2) The report must be made up to the last day of the month immediately preceding the meeting.

**Note.** Section 625 of the Act specifies the way in which a council may invest its surplus funds.

## ATTACHMENT D – THE TRUSTEE ACT

### THE TRUSTEE ACT 1925 SECTIONS 14A (2), 14C (1) & (2)

#### 14 Powers of investment

A trustee may, unless expressly forbidden by the instrument (if any) creating the trust:

- (a) invest trust funds in any form of investment, and
- (b) at any time vary any investment.

#### 14A Duties of trustee in respect of power of investment

- (1) This section has effect subject to the instrument (if any) creating the trust.
  - (2) A trustee must, in exercising a power of investment:
    - (a) if the trustee's profession, business or employment is or includes acting as a trustee or investing money on behalf of other persons, exercise the care, diligence and skill that a prudent person engaged in that profession, business or employment would exercise in managing the affairs of other persons, or
    - (b) if the trustee is not engaged in such a profession, business or employment, exercise the care, diligence and skill that a prudent person would exercise in managing the affairs of other persons.
- Some Acts deem investments under the Acts to be investments that satisfy the prudent person test. See, for example, section 39 of the *Public Authorities (Financial Arrangements) Act 1987*.
- (3) A trustee must exercise a power of investment in accordance with any provision of the instrument (if any) creating the trust that is binding on the trustee and requires the obtaining of any consent or approval with respect to trust investments.
  - (4) A trustee must, at least once in each year, review the performance (individually and as a whole) of trust investments.

#### 14C Matters to which trustee is to have regard when exercising power of investment

- (1) Without limiting the matters that a trustee may take into account when exercising a power of investment, a trustee must, so far as they are appropriate to the circumstances of the trust, if any, have regard to the following matters:
  - (a) the purposes of the trust and the needs and circumstances of the beneficiaries,
  - (b) the desirability of diversifying trust investments,
  - (c) the nature of, and the risk associated with, existing trust investments and other trust property,
  - (d) the need to maintain the real value of the capital or income of the trust,
  - (e) the risk of capital or income loss or depreciation,

- (f) the potential for capital appreciation,
- (g) the likely income return and the timing of income return,
- (h) the length of the term of the proposed investment,
- (i) the probable duration of the trust,
- (j) the liquidity and marketability of the proposed investment during, and on the determination of, the term of the proposed investment,
- (k) the aggregate value of the trust estate,
- (l) the effect of the proposed investment in relation to the tax liability of the trust,
- (m) the likelihood of inflation affecting the value of the proposed investment or other trust property,
- (n) the costs (including commissions, fees, charges and duties payable) of making the proposed investment,
- (o) the results of a review of existing trust investments in accordance with section 14A (4).

(2) A trustee may, having regard to the size and nature of the trust, do either or both of the following:

- (a) obtain and consider independent and impartial advice reasonably required for the investment of trust funds or the management of the investment from a person whom the trustee reasonably believes to be competent to give the advice,
- (b) pay out of trust funds the reasonable costs of obtaining the advice.

(3) A trustee is to comply with this section unless expressly forbidden by the instrument (if any) creating the trust.

## ATTACHMENT E – INVESTMENT INSTRUMENT DESCRIPTION

### **BANK BILL**

Bank-accepted bills are bills of exchange drawn by a company or individual (borrower) usually for periods between 30 and 180 days. The bill is accepted by the bank, which in turn accepts the liability for payment at maturity. It is a short-term investment issued at a discount to the face value and is of a very high credit standing, consequently trades at the lowest yields of all commercially issued bills.

### **CALL DEPOSITS**

Cash invested on an overnight basis. Funds can be recalled or re-invested before 11am on the following business day.

### **FIXED INTEREST SECURITIES (BONDS)**

Securities issued by Commonwealth, State or corporate institutions that pay a fixed rate of interest (coupon) and mature at a fixed point in time. The interest (coupon) is paid at regular intervals (semi-annually, but can be paid monthly, quarterly, or annually). These securities are generally issued for a period of greater than one year.

### **FLOATING RATE NOTE/BOND (FRN)**

The FRN is a longer-term debt security issued for a fixed period of time but has a variable (floating) coupon on a monthly or quarterly basis. The coupon reflects current interest rates, which is determined as a margin over the BBSW rate set. FRNs appeal to investors who are reluctant to commit funds to fixed interest investments for longer periods in times of fluctuating interest rates. Typical issuers are banks, corporates, financial institutions and securitised vehicles. Only Senior FRNs issued by an Australian Authorised Deposit Taking Institution such as a bank, credit union or building society are an eligible form of FRN investment.

### **HOUR-GLASS INVESTMENT FACILITY OF THE NEW SOUTH WALES TREASURY CORPORATION**

The current ministerial order dated 12 January 2011 allows investments in NSW Treasury Corp (TCorp) Hourglass Facilities. The hourglass facilities are now referred to by TCorp as TCorpIM Core Funds and consists of Cash and Growth Funds.

### **NEGOTIABLE CERTIFICATE OF DEPOSIT (NCD)**

These are short-term bearer securities issued by banks for up to 180-days. They are sold at a discount to face value and are highly liquid discount securities; representing the bank's debt, therefore trade at similar yields to bank bills. Creditworthiness of the bank will determine where the bank's NCD trades, relative to the BBSW.

### **POOLED MANAGED FUNDS**

#### **Sector Specific Funds**

These funds invest in one particular asset sector. A Cash Management Fund is an example of Sector Specific Funds as they predominately invest in the single asset sector of fixed/floating income securities with the aim of outperforming the UBS 90 day Bank Bill Index benchmark. They are designed to enhance returns on short-term holdings as an alternative to short-dated bank bill and term deposit portfolios. They provide easy access to holdings and are usually redeemable within 24 to 48 hours.

These types of funds tend to have no fixed maturity date. Only funds managed by NSW Treasury Corporation are currently eligible pooled managed fund investments.

## **Diversified Funds**

These funds invest in a range of asset classes including one or more of cash, fixed interest, property, and Australian & international shares. The weighting among the various asset classes will differ depending upon the type of diversified fund chosen, e.g. Conservative Funds (TCorpIM's Medium Term Growth) have a higher weighting in cash and fixed interest than Balanced Funds (TCorpIM's Long Term Growth) that have higher weightings in growth assets such as property and shares. Investments with higher potential returns involve higher potential risk. Likewise, investments with capital growth potential are typically more risky than those which offer stable income.

These types of funds tend to have no fixed maturity date. Only funds managed by NSW Treasury Corporation are currently eligible pooled managed fund investments.

## **TERM DEPOSIT**

Funds invested with a financial institution at a predetermined rate that applies to the duration of the deposit. The principal is held on deposit for a fixed term with interest payable at set periods during the term and/or on maturity. It is not a tradeable security and the investor is penalised when funds are prepaid.

## **ATTACHMENT F – DEFINITIONS**

### **AUTHORISED DEPOSIT TAKING INSTITUTIONS**

ADIs (Authorised Deposit-taking Institutions) are financial institutions which are authorised under the Banking Act 1959 and are subject to the prudential standards set out in the Act and regulated by APRA.

### **AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY**

APRA (Australian Prudential Regulation Authority) is the prudential regulator of the Australian financial services industry. APRA enforces prudential standards and practices (e.g. capital adequacy and other risk management issues) of banks, credit unions, building societies, insurance companies and friendly societies

### **AUSTRACLEAR**

Austraclear is a clearing and settlement facility, licensed by the Australian Securities and Investments Commission and subject to certain financial stability standards administered by the Reserve Bank of Australia.

### **BILL OF EXCHANGE**

A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand, or at a fixed or determinable future time, a sum certain in money to or to the order of the specified person, or to the bearer.

### **CODE**

Code means the *Local Government Code of Accounting Practice and Financial Reporting* published by the Division of Local Government (as in force from time to time).

### **CREDIT RATING**

Credit Rating refers to a short or long term summary assessment of the credit worthiness of a debt issuer or of a specific issue.

### **CREDIT RISK**

Credit risk is the risk of loss to an investor due to the failure of the institution / entity with which an investment is held to pay the interest and/or repay the principal of an investment.

### **DIRECT DEPOSITS**

Direct deposits refer to investments made by Council (or on behalf of Council) directly with financial institutions.

### **FITCH RATINGS**

Fitch Ratings is a credit rating agency that assigns credit ratings to corporate issues based on the prospects of default.

### **GOVERNMENT GUARANTEE**

A guarantee by the Australian Government to reimburse account holders the value of their investment up to \$250,000 per Authorised Deposit-Taking Institution. This initiative was initially \$1,000,000.

### **INVESTMENT PORTFOLIO**

The total pool of Council's invested funds.

**MINISTER'S ORDER**

Minister's Order refers to the Order of the Minister for Local Government relating to Investments made by Councils dated 12 January 2011.

**MOODY INVESTOR SERVICES**

Moody Investor Services is a credit rating agency that assigns credit ratings to corporate issues based on the prospects of default.

**PRUDENT PERSON STANDARD**

Prudent person standard is a legal standard restricting the investing and managing of a client's account to what a prudent person seeking reasonable income and preservation of capital might exercise for his or her own investment.

**RESPONSIBLE ACCOUNTING OFFICER**

Responsible Accounting Officer (RAO) of a council means a member of the staff of the council designated by the General Manager, or if no such member has been designated, then the General Manager.

**STANDARD & POOR'S**

Standard & Poor's is a credit rating agency that assigns credit ratings to corporate issues based on the prospects of default.

**SURPLUS FUNDS**

Surplus Funds refers to money that is not, for the time being, required by the council for any other purpose.

**TCORP**

New South Wales Treasury Corporation.

## ATTACHMENT G – CREDIT RATING AGENCIES SCALE

### Credit Rating Scales by Agency, Long-Term

Moody's	S&P	Fitch			
Aaa	AAA	AAA	Prime		
Aa1	AA+	AA+	High grade		
Aa2	AA	AA			
Aa3	AA-	AA-			
A1	A+	A+	Upper medium grade		
A2	A	A			
A3	A-	A-			
Baa1	BBB+	BBB+	Lower medium grade		
Baa2	BBB	BBB			
Baa3	BBB-	BBB-			
Ba1	BB+	BB+	Non-investment grade speculative	"Junk" 	
Ba2	BB	BB			
Ba3	BB-	BB-			
B1	B+	B+	Highly speculative		
B2	B	B			
B3	B-	B-			
Caa1	CCC+	CCC	Substantial risk		
Caa2	CCC		Extremely speculative		
Caa3	CCC-		Default imminent with little prospect for recovery		
Ca	CC	CC			
	C	C			
C	D	D	In default		
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## ATTACHMENT H – STANDARD & POOR’S RATINGS DESCRIPTION

### CREDIT RATINGS

Standard & Poor’s (S&P) is a professional organisation that provides analytical services. An S&P rating is an opinion of the general creditworthiness of an obligor with respect to particular debt security or other financial obligation — based on relevant risk factors.

Credit ratings are based, in varying degrees, on the following considerations:

- Likelihood of payment.
- Nature and provisions of the obligation.
- Protection afforded by, and relative position of, the obligation in the event of bankruptcy, reorganisation or other laws affecting creditors’ rights.

The issue rating definitions are expressed in terms of default risk.

### SHORT-TERM OBLIGATION RATINGS:

- **A-1:** This is the highest short-term category used by S&P. The obligor’s capacity to meet its financial commitment on the obligation is strong. Within this category, certain obligations are designated with a plus sign (+). This indicates that the obligor’s capacity to meet its financial commitment on these obligations is extremely strong.
- **A-2:** A short-term obligation rated A-2 is somewhat more susceptible to the adverse effects of changes in circumstances and economic conditions than obligations in higher rating categories. However, the obligor’s capacity to meet its financial commitment on the obligation is satisfactory.
- **A-3:** A short-term obligation rated A-3 exhibits adequate protection parameters. However, adverse economic conditions or changing circumstances are more likely to lead to a weakened capacity of the obligor to meet its financial commitment on the obligation.

### LONG-TERM OBLIGATIONS RATINGS:

- **AAA:** An obligation/obligor rated AAA has the highest rating assigned by S&P. The obligor’s capacity to meet its financial commitment on the obligation is extremely strong.
- **AA:** An obligation/obligor rated AA differs from the highest rated obligations only in a small degree. The obligor’s capacity to meet its financial commitment on the obligations is very strong.
- **A:** An obligation/obligor rated A is somewhat more susceptible to the adverse effects of changes in circumstances and economic conditions than Obligations / obligor in higher rated categories. However, the obligor’s capacity to meet its financial commitment on the obligation is still strong.
- **BBB:** An obligation/obligor rated BBB exhibits adequate protection parameters. However, adverse economic conditions or changing circumstances are more likely to lead to a weakened capacity to the obligor to meet its financial commitment on the obligation.
- **Unrated:** Financial institutions do not necessarily require a credit rating from the various ratings agencies such as Standard and Poor’s and these institutions are classed as “Unrated”. Most Credit Unions and Building Societies fall into this category. These institutions nonetheless must adhere to the capital maintenance requirements of the Australian Prudential Regulatory Authority (APRA) in line with all Authorised Deposit Taking Institutions (Banks, Building Societies and Credit Unions).

**Plus (+) or Minus (-):** The ratings from “AA” to “BBB” may be modified by the addition of a plus or minus sign to show relative standing within the major rating categories.

**CreditWatch** highlights an emerging situation, which may materially affect the profile of a rated corporation and can be designed as positive, developing or negative. Following a full review the rating may either be affirmed or changed in the direction indicated.

**A Rating Outlook** assesses the potential direction of an issuer’s long-term debt rating over the intermediate-to-long term. In determining a Rating Outlook, consideration is given to possible changes in the economic and/or fundamental business conditions. An outlook is not necessarily a precursor of a ratings change or future CreditWatch action. A “Rating Outlook – Positive” indicates that rating may be raised. “Negative” means a rating may be lowered. “Stable” indicates that ratings are not likely to change. “Developing” means ratings may be raised or lowered.

### S&P RATINGS CORRELATIONS

The standard correlation of long-term ratings with short-term ratings is shown below.

