

**Legislative Council—No 19A**

As reported with amendments, recommitted, reported with a further amendment,  
reports adopted, Standing Orders suspended and passed remaining stages,  
31 July 2018

South Australia

**South Australian Productivity Commission  
Bill 2018**

A BILL FOR

An Act to establish the South Australian Productivity Commission, and for other purposes.

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**The Parliament of South Australia enacts as follows:**

## **Part 1—Preliminary**

### **1—Short title**

This Act may be cited as the *South Australian Productivity Commission Act 2018*.

### **5 2—Commencement**

This Act will come into operation on a day to be fixed by proclamation.

### 3—Interpretation

In this Act—

*Chair* means the person appointed as the Chair of the Commission under Part 2;

*Commission* means the South Australian Productivity Commission established under Part 2;

*Commissioner* means the Chair or another Commissioner appointed to the Commission under Part 2;

*inquiry* means an inquiry by the Commission under Part 3;

*principles of competitive neutrality* has the same meaning as in the *Government Business Enterprises (Competition) Act 1996*;

*referring authority*, in relation to a matter referred to the Commission for inquiry, means the Minister or a House of Parliament (as the case may be).

## Part 2—South Australian Productivity Commission

### 4—South Australian Productivity Commission

- (1) The *South Australian Productivity Commission* is established.
- (2) The Commission—
  - (a) is a body corporate; and
  - (b) has perpetual succession and a common seal; and
  - (c) is capable of suing and being sued in its corporate name.
- (3) The Commission has all the powers of a natural person together with powers conferred on the Commission by or under this or any other Act.

### 5—Objects and functions of Commission

- (1) The objects of the Commission are as follows:
  - (a) to improve the rate of economic growth and productivity of the South Australian economy in order to achieve higher living standards for South Australians;
  - (b) to improve the accessibility, efficiency and quality of services delivered or funded by government;
  - (c) to improve South Australia's competitiveness for private sector investment;
  - (d) to reduce the cost of regulation;
  - (e) to facilitate structural economic changes whilst minimising the social and economic hardship that may result from those changes;
  - (f) to take into account the interests of industries, employees, consumers and the community;
  - (g) to increase employment;
  - (h) to promote regional development;
  - (i) to develop South Australia in a way that is ecologically sustainable.

- (2) The Commission has the following functions to further its objects:
- (a) to hold inquiries and report to the Minister on matters referred by the Minister;
  - (ab) to hold inquiries and report on matters referred, by resolution, by either House of Parliament;
  - (b) to advise the Minister on any matter referred by the Minister;
  - (c) to promote public understanding of the objects of the Commission;
  - (d) to conduct, on its own initiative or on the referral of the Minister, research and policy development;
  - (da) to hold inquiries, either on referral by the Minister or on its own initiative, on the implementation of the principles of competitive neutrality in relation to South Australian government businesses and business activities and to report to the Minister on such inquiries;
  - (e) to administer this Act;
  - (f) to perform any other function conferred on the Commission under this or any other Act;
  - (g) to do anything incidental to any of the preceding functions.

## 6—Independence

Except as provided under this or any other Act, the Commission is not subject to Ministerial direction in the performance of its functions.

## 7—Commission may publish statements, reports and guidelines

The Commission may publish statements, reports and guidelines relating to the performance of its functions.

## 8—Membership of Commission

- (1) The Commission will be constituted of—
- (a) a Commissioner appointed by the Governor as the Chair; and
  - (b) at least 1 and not more than 4 additional Commissioners, full-time or part-time, as appointed by the Governor.
- (2) A person may only be appointed as a Commissioner if, following referral by the Minister of the proposed appointment to the Statutory Authorities Review Committee established under the *Parliamentary Committees Act 1991*—
- (a) the appointment has been approved by the Committee; or
  - (b) the Committee has not, within 21 days of the referral, or such longer period as is allowed by the Minister, notified the Minister in writing that it does not approve the appointment.

## 9—Commissioners

- (1) A person may be appointed as a Commissioner who is qualified for appointment because of the person's knowledge of, or experience in, 1 or more of the fields of industry, commerce, economics, law or public administration.

- (2) A Commissioner will be appointed—
- (a) for a term not exceeding 5 years; and
  - (b) on terms and conditions as to remuneration and other matters determined by the Governor.
- 5 (3) At the expiration of a term of appointment, a Commissioner will be eligible for reappointment.
- (4) The conditions of appointment of a Commissioner must not, without the consent of the Commissioner, be varied while the Commissioner is in office so as to become less favourable to the Commissioner.
- 10 (5) A Commissioner must not engage, without the consent of the Minister, in any other remunerated employment.
- (6) The office of a Commissioner becomes vacant if the Commissioner—
- (a) dies; or
  - 15 (b) resigns by written notice to the Minister or is not re-appointed at the end of a term of appointment; or
  - (c) is removed from office under this section; or
  - (d) is convicted of an indictable offence or sentenced to imprisonment for an offence; or
  - 20 (e) becomes bankrupt or applies to take the benefit of a law for the relief of bankrupt or insolvent debtors; or
  - (f) becomes a member, or a candidate for election as a member, of the Parliament of the State, the Commonwealth, or any other State or Territory of the Commonwealth.
- (7) The Governor may remove a Commissioner from office for—
- 25 (a) misconduct; or
  - (b) incapacity to perform satisfactorily the Commissioner's functions; or
  - (c) material contravention of, or failure to comply with, the requirements of this or any other Act.

### **10—Acting Chair**

- 30 (1) The Governor may appoint an Acting Chair to act in the office of the Chair and a person so appointed has, while so acting, all the functions and powers of the Chair.
- (2) An Acting Chair may act in the office of the Chair—
- (a) while—
    - 35 (i) the Chair is unable to perform official functions; or
    - (ii) the office of the Chair is vacant,  
but not on a continuous basis for more than 6 months; or
  - (b) if the Chair is disqualified from acting in relation to a particular matter—in relation to that matter.

- (3) The terms and conditions of appointment of an Acting Chair will be as determined by the Governor.

### 11—Staff

- (1) The staff of the Commission may comprise—

- 5           (a) persons employed in the Public Service of the State and assigned to assist the Commission; and
- (b) persons appointed by the Commission on terms and conditions determined by the Commission.

- 10       (2) The Commission may, by arrangement with the relevant body, make use of the services, facilities or staff of an administrative unit or an instrumentality or agency of the Crown.

### 12—Consultants

The Commission may engage consultants on terms and conditions considered appropriate by the Commission.

### 13—Delegation

- 15       (1) Subject to this section, the Commission may delegate functions or powers to a Commissioner or any person or body of persons that is, in the Commission's opinion, competent to perform or exercise the relevant functions or powers.

- (2) A delegation under this section—

- 20           (a) must be in writing; and
- (b) may be conditional or unconditional; and
- (c) is revocable at will; and
- (d) does not prevent the delegator from acting in any matter.

### 14—Disclosure of pecuniary or personal interest

- 25       (1) A Commissioner who has a pecuniary or personal interest in a matter being considered or about to be considered by the Commission must, as soon as possible after the relevant facts have come to the Commissioner's knowledge, disclose the nature of the interest at a meeting of the Commission.

Maximum penalty: \$25 000.

- 30       (2) A Commissioner who has a pecuniary or personal interest in a matter being considered or about to be considered by the Commission—

- (a) must not vote, whether at a meeting or otherwise, on the matter; and
- (b) must not be present while the matter is being considered at the meeting.

- (3) Subsection (2) does not apply if—

- 35           (a) a Commissioner has disclosed an interest in a matter under subsection (1); and

- (b) the Commission has at any time passed a resolution that—

- (i) specifies the Commissioner, the interest and the matter; and

- (ii) states that the Commissioners voting for the resolution are satisfied that the interest is so trivial or insignificant as to be unlikely to influence the disclosing Commissioner's conduct and should not disqualify the Commissioner from considering or voting on the matter.
- 5
- (4) Despite section 15, if a Commissioner is disqualified under subsection (2) in relation to a matter, a quorum is present during the consideration of the matter if at least half the number of members who are entitled to vote on any motion that may be moved at the meeting in relation to the matter are present.
- 10
- (5) The Minister may by instrument in writing declare that subsection (2) or subsection (4), or both, do not apply in relation to a specified matter either generally or in voting on particular resolutions.
- (6) The Minister must cause a copy of a declaration under subsection (5) to be laid before both Houses of Parliament within 14 sitting days after the declaration is made.
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- (7) Particulars of a disclosure made under subsection (1) at a meeting of the Commission must be recorded—
- (a) in the minutes of the meeting; and
- (b) in a register kept by the board which must be reasonably available for inspection by any person.
- 20
- (8) A reference in subsection (2) to a matter includes a reference to a proposed resolution under subsection (3) in respect of the matter, whether relating to that member or a different member.
- (9) A contravention of this section does not invalidate any decision of the Commission.
- 25
- (10) Section 8 of the *Public Sector (Honesty and Accountability) Act 1995* does not apply to a Commissioner.

### **15—Meetings of Commission**

- (1) The Chair may convene as many meetings of the Commission as the Chair considers necessary for the efficient conduct of its affairs.
- (2) The Chair must preside at a meeting of the Commission.
- 30
- (3) A quorum of the Commission consists of a majority of the Commissioners in office for the time being.
- (4) A decision arising at a meeting of the Commission is a decision of the Commission if carried by a majority of the votes cast by Commissioners at the meeting.
- (5) Each Commissioner present at a meeting of the Commission has 1 vote on any question arising for decision and, if the votes are equal, the Chair may exercise a casting vote.
- 35
- (6) Subject to this Act, the Commission may regulate its own procedures.

### **16—Common seal and execution of documents**

- (1) The common seal of the Commission must not be affixed to a document except under a decision of the Commission and the affixing of the seal must be attested by the signatures of 1 or more Commissioners.
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(2) The Commission may, by instrument under its common seal, authorise a Commissioner, an employee of the Commission (whether nominated by name or by office or title) or any other person to execute documents on behalf of the Commission subject to conditions and limitations (if any) specified in the instrument of authority.

5 (3) Without limiting subsection (2), an authority may be given so as to authorise 2 or more persons to execute documents jointly on behalf of the Commission.

(4) A document is duly executed by the Commission if—

(a) the common seal of the Commission is affixed to the document in accordance with this section; or

10 (b) the document is signed on behalf of the Commission by a person or persons in accordance with an authority conferred under this section.

(5) Where an apparently genuine document purports to bear the common seal of the Commission, it will be presumed in any legal proceedings, in the absence of proof to the contrary, that the common seal of the Commission has been duly affixed to that document.

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### **17—Application of money received by Commission**

Except as otherwise directed by the Treasurer, fees or other amounts received by the Commission under this or any other Act will be paid into the Consolidated Account.

### **18—Annual performance plan and budget**

20 (1) The Commission must, from time to time, prepare and submit to the Minister a performance plan and budget for the next financial year or for some other period determined by the Minister.

25 (2) The performance plan must set out the Commission's major projects, and its goals and priorities with respect to the full range of the Commission's functions, for the period to which the plan relates.

(3) The budget must set out estimates of the Commission's receipts and expenditures for the period to which the budget relates.

(4) The plan and the budget must conform with any requirements of the Minister as to the form of the plan or budget or the matters to be addressed by the plan or budget.

30 (5) The Minister may approve a plan or budget submitted under this section with or without modification.

### **19—Accounts and audit**

(1) The Commission must ensure that proper accounting records are kept of the Commission's receipts and expenditures.

35 (2) The Auditor-General may at any time, and must at least once in each year, audit the accounts of the Commission.

## Part 3—Inquiries and reports

### 20—Minister may refer matter for inquiry

- (1) The Commission must conduct an inquiry into any matter that—
- (a) the Minister, by written notice, refers to the Commission; or
  - (b) either House of Parliament, by resolution, refers to the Commission.
- (2) The written notice or resolution (as the case requires) must specify the terms of reference for the inquiry.
- (3) The referring authority may do 1 or more of the following:
- (a) require that a report on the inquiry be delivered to the referring authority within a specified period;
  - (b) require the Commission to make a draft report publicly available or available to specified persons or bodies during the inquiry;
  - (c) require the Commission to consider specified matters;
  - (d) give the Commission specific directions in respect of the conduct of the inquiry.
- (4) The referring authority may, by written notice, vary the terms of reference or a requirement or direction under subsection (3).

### 21—Notice of inquiry

- (1) The Commission must publish notice of an inquiry on the Commission's website.
- (2) The notice must specify—
- (aa) the referring authority; and
  - (a) the purpose of the inquiry; and
  - (b) the period during which the inquiry is to be held; and
  - (c) the period within which, and the form in which, members of the public may make submissions, including details of public hearings; and
  - (d) the matters that the Commission would like submissions to deal with.
- (3) The notice must include the terms of reference and any requirements or directions of the referring authority relating to the inquiry.
- (4) The Commission must publish a further notice if the terms of reference or any requirement or direction relating to the inquiry are varied.

### 22—Conduct of inquiry

- (1) Subject to any requirement or direction of the referring authority under this Part, an inquiry—
- (a) may be conducted in such manner as the Commission considers appropriate; and
  - (b) may (but need not) involve public hearings.

- (2) The Commission is not, in the conduct of an inquiry, bound by the rules of evidence.

### 23—Reports

- (1) The Commission must deliver a copy of the Commission's final report on an inquiry—
- (a) in the case of an inquiry referred by the Minister—to the Minister; or
  - (b) in the case of an inquiry referred by a House of Parliament—to the presiding member of the relevant referring House.
- (2) The Commission must ensure that the report is available on its website—
- (a) within 90 days of delivering the report to the Minister; or
  - (b) if the Minister specifies a shorter period—within the period specified by the Minister.
- (3) The Minister must, within 90 days of receiving a report delivered to the Minister by the Commission under subsection (1), provide a response to the Commission on its report and the Commission must publish the Minister's response on its website.
- (4) The Chair must, at least once in each year and at such other times as is required, appear before the Economic and Finance Committee established under the *Parliamentary Committees Act 1991* in relation to a report on any inquiry conducted by the Commission.

## Part 4—Miscellaneous

### 24—Annual report

- (1) The Commission must, within 3 months after the end of each financial year, deliver to the Minister a report on the administration of this Act during that financial year.
- (2) The Minister must cause a copy of the report to be laid before both Houses of Parliament within 12 sitting days after receipt of the report.

### 25—Regulations

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) Without limiting subsection (1), the regulations may—
- (a) prescribe, or provide for the calculation of, fees to be paid in respect of any matter under this Act and the recovery, refund, waiver or reduction of such fees; and
  - (b) prescribe penalties not exceeding \$5 000 for contravention of a regulation.
- (3) The regulations may—
- (a) be of general application or limited in application according to the persons, areas, times or circumstances to which it is expressed to apply;
  - (b) provide that a matter or thing in respect of which regulations may be made is to be determined, regulated or prohibited according to the discretion of the Minister or the Commission.

## **26—Review of Act**

- (1) The Minister must cause a review of this Act and its administration and operation to be conducted on the expiry of 3 years from its commencement.
- 5 (2) The review must be completed within 6 months and the results of the review embodied in a written report.
- (3) The Minister must cause a copy of the report to be laid before both Houses of Parliament within 12 sitting days after receiving the report.