

South Australia

ANZAC Day Commemoration Act 2005

An Act to continue and enhance the commemoration of ANZAC Day as a day of national significance; to make a related amendment to the *Lottery and Gaming Act 1936*; and for other purposes.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *ANZAC Day Commemoration Act 2005*.

2—Commencement

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

3—Interpretation

In this Act, unless the contrary intention appears—

ANZAC Day means 25 April in any year;

Council means the ANZAC Day Commemoration Council;

Fund means the ANZAC Day Commemoration Fund;

RSL means The Returned & Services League of Australia (S.A. Branch) Incorporated;

veteran means a person who has served in the defence forces of Australia in a war or armed conflict, or in international peace-keeping operations, in which Australia has been involved.

4—Object of Act

The object of this Act is to ensure that the contribution of all men and women who have served Australia in time of war or armed conflict, or in international peace-keeping operations, in which Australia has been involved, is recognised and commemorated in this State.

Part 2—ANZAC Day Commemoration Council

5—Establishment of Council

- (1) The *ANZAC Day Commemoration Council* is established.
- (2) The Council—
 - (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; and
 - (d) has all the powers of a natural person that are capable of being exercised by a body corporate; and
 - (e) has the functions and powers assigned or conferred by or under this Act.

- (3) If a document appears to bear the common seal of the Council, it will be presumed, in the absence of proof to the contrary, that the common seal of the Council was duly affixed to the document.

6—Membership of Council

- (1) The Council consists of 9 members appointed by the Governor on the nomination of the Premier made after consultation with the RSL.
- (2) The Premier must, as far as practicable, nominate equal numbers of men and women for appointment to the Council.

7—Terms and conditions of membership

- (1) A member of the Council will be appointed on conditions determined by the Governor and for a term, not exceeding 3 years, specified in the instrument of appointment and, at the expiration of a term of appointment, is eligible for reappointment.
- (2) The Governor may appoint a suitable person to be the deputy of a member of the Council and the deputy may act as a member of the Council during any period of absence of the member.
- (3) The Governor may remove a member of the Council from office—
 - (a) for breach of, or non-compliance with, a condition of appointment; or
 - (b) for misconduct; or
 - (c) for failure or incapacity to carry out official duties satisfactorily.
- (4) The office of a member of the Council becomes vacant if the member—
 - (a) dies; or
 - (b) completes a term of office and is not reappointed; or
 - (c) resigns by written notice to the Premier; or
 - (d) is removed from office under subsection (3).
- (5) If a casual vacancy occurs in the office of a member, the Governor may appoint a suitable person to fill the vacancy, and that person will hold office for the balance of the term of his or her predecessor.

8—Presiding member

The Premier must appoint a member of the Council (the *presiding member*) to preside at meetings of the Council.

9—Vacancies or defects in appointment of members

An act or proceeding of the Council is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

10—Remuneration

A member of the Council is entitled to remuneration, allowances and expenses determined by the Governor.

11—Functions of Council

The Council has the following functions:

- (a) to keep and administer the Fund established by this Act;
- (b) to carry out such other functions as may be assigned to the Council by the Premier.

12—Council's procedures

- (1) Subject to this Act, 5 members constitute a quorum of the Council.
- (2) A meeting of the Council will be chaired by the presiding member or, in his or her absence, the members present at a meeting of the Council must choose 1 of their number to preside at the meeting.
- (3) A decision carried by a majority of the votes cast by members of the Council at a meeting is a decision of the Council.
- (4) Each member present at a meeting of the Council has 1 vote on any question arising for decision and the member presiding at the meeting may exercise a casting vote if the votes are equal.
- (5) A conference by telephone or other electronic means between the members of the Council will, for the purposes of this section, be taken to be a meeting of the Council at which the participating members are present if—
 - (a) notice of the conference is given to all members in the manner determined by the Council for the purpose; and
 - (b) each participating member is capable of communicating with every other participating member during the conference.
- (6) A proposed resolution of the Council becomes a valid decision of the Council despite the fact that it is not voted on at a meeting of the Council if—
 - (a) notice of the proposed resolution is given to all members of the Council in accordance with procedures determined by the Council; and
 - (b) a majority of the members express concurrence in the proposed resolution by letter, telegram, telex, facsimile transmission, electronic mail or other written communication setting out the terms of the resolution.
- (7) The Council must have accurate minutes kept of its meetings.
- (8) Subject to this Act, the Council may determine its own procedures.

13—Staff

- (1) The Council may, in the performance of its functions under this Act, be assisted by employees in the Public Service who are assigned to the staff of the Council by the Premier.
- (2) The Council may, by agreement with the Minister responsible for an administrative unit of the Public Service, make use of the services of the staff, equipment or facilities of that administrative unit.

14—Annual report

- (1) The Council must, on or before 30 September in each year, prepare and submit to the Premier a report on the operations of the Council during the preceding financial year.
- (2) The report must incorporate the audited accounts of the Fund for the relevant financial year.
- (3) The Premier must, within 12 sitting days after receiving a report under this section, cause a copy of the report to be laid before both Houses of Parliament.

Part 3—ANZAC Day Commemoration Fund

15—Establishment of Fund

- (1) The ANZAC Day Commemoration Fund is established.
- (2) The Fund consists of—
 - (a) any money provided by Parliament for the purposes of the Fund; and
 - (b) any grants, gifts and bequests made to the Council for payment into the Fund; and
 - (c) any money that is required or authorised by law to be paid into the Fund; and
 - (d) any income from investment of money belonging to the Fund.
- (3) The Council may, with the approval of the Treasurer, invest any of the money belonging to the Fund that is not immediately required for the purposes of the Fund in such manner as is approved by the Treasurer.

16—Application of Fund

- (1) The Fund may be applied by the Council for any of the following purposes:
 - (a) payments to any organisation for the purpose of educating the community about the significance of ANZAC Day;
 - (b) payments for aged veterans to maintain, alter and improve their homes;
 - (c) payments to maintain and care for aged veterans in homes;
 - (d) payments for the welfare of spouses and children of deceased veterans;
 - (e) payments to any organisation established for the purpose of helping or supporting, or having a membership consisting or including, veterans or the spouses, children or other dependants of veterans;
 - (f) payments to any organisation for the purpose of conducting commemoration services on ANZAC Day;
 - (g) payment of the expenses of administering the Fund.
- (2) The Council must consider applications made to the Council for payments out of the Fund under subsection (1).
- (3) A person making an application for payment of money out of the Fund must—
 - (a) provide the Council with specified information to enable the Council to determine the application; and

- (b) verify, by statutory declaration, information furnished for the purposes of the application.

17—Accounts and audit

- (1) The Council must keep proper accounts of receipts and payments in relation to the Fund.
- (2) The Auditor-General may at any time, and must at least once in each year, audit the accounts of the Fund.

Part 4—Regulation of public sports and entertainment on ANZAC Day

18—Restriction on public sports and entertainment before 12 noon on ANZAC Day

- (1) Despite any other Act or law, the holding of a public sporting or entertainment event between the hours of 5.00 a.m. and 12 noon on ANZAC Day in any year is unlawful unless authorised in writing by the Premier.
- (2) If a public sporting or entertainment event is held unlawfully, the organiser of the event is guilty of an offence.
Maximum penalty: \$1 250.
Expiation fee: \$160.
- (3) The Premier may grant an authorisation under subsection (1) if satisfied that, in all the circumstances of the case, it is in the public interest to do so.
- (4) However, before granting an authorisation under subsection (1), the Premier must—
 - (a) cause a copy of the application and supporting affidavit to be given to the RSL; and
 - (b) have regard to any comments made by the RSL in relation to the application received on or before the date specified by the Premier for receipt of such comments.
- (5) An applicant for an authorisation under subsection (1) must—
 - (a) provide the Premier with specified information to enable the Premier to determine the application; and
 - (b) verify, by statutory declaration, information furnished for the purposes of the application.
- (6) An authorisation under subsection (1) may be made subject to such conditions as the Premier thinks fit and specifies in the instrument of authorisation.
- (7) A person who contravenes, or fails to comply with, a condition of an authorisation under this section is guilty of an offence.
Maximum penalty: \$1 250.
Expiation fee: \$160.

- (8) If a body corporate is guilty of an offence against this section, each member of the governing body and the manager of the body corporate are guilty of an offence and liable to the same penalty as may be imposed for the principal offence, unless it is proved that the person could not, by the exercise of reasonable care, have prevented the commission of the offence by the body corporate.
- (9) In this section—
- public sporting or entertainment event*** means a sporting or entertainment event or activity to which tickets for admission (or similar devices)—
- (a) are made available for purchase by a member of the public prior to the holding of the event or activity; and
 - (b) are required for entry to the event or activity.

19—Two up on ANZAC Day

- (1) Despite the *Lottery and Gaming Act 1936*, but subject to this section—
- (a) the game commonly known as “two up” is not an unlawful game when played on ANZAC Day on the premises of a branch or sub-branch of The Returned & Services League of Australia Limited and any premises owned or occupied by the Defence Forces of Australia; and
 - (b) no such place is a common gaming-house within the meaning of that Act by reason only that two up is played in that place on ANZAC Day; and
 - (c) no offence is committed and no other liability will be incurred by any person by reason only of the playing of two up on ANZAC Day in such a place.
- (2) Subsection (1) does not apply if—
- (a) any payment or other benefit is given or sought, directly or indirectly, for the right to participate in the game (otherwise than by the placing of bets); or
 - (b) any commission on, percentage of or fee for bets or winnings is given or sought by any person, whether or not a participant in the game.
- (3) This section does not affect any offence relating to betting by or with a person under the age of 18 years.
- (4) In this section—
- bet*** has the same meaning as in the *Lottery and Gaming Act 1936*.

Part 5—Miscellaneous

20—False or misleading statement

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided under this Act.

Maximum penalty: \$5 000.

Schedule 1—Related amendment

1—Amendment of *Lottery and Gaming Act 1936*

Section 59AA—delete the section

Schedule 2—Further provisions relating to Council

1—Duty of members of Council with respect to conflict of interest

- (1) A member of the Council who has a direct or indirect personal or pecuniary interest in a matter decided or under consideration by the Council—
- (a) must, as soon as reasonably practicable, disclose in writing to the Council full and accurate details of the interest; and
 - (b) must not take part in any discussion by the Council relating to that matter; and
 - (c) must not vote in relation to that matter; and
 - (d) must be absent from the meeting room when any such discussion or voting is taking place.

Maximum penalty: \$20 000.

- (2) If a member of the Council makes a disclosure of interest and complies with the other requirements of subclause (1) in respect of a proposed contract—
- (a) the contract is not liable to be avoided by the Council; and
 - (b) the member is not liable to account to the Council for profits derived from the contract.
- (3) If a member of the Council fails to make a disclosure of interest or fails to comply with any other requirement of subclause (1) in respect of a proposed contract, the contract is liable to be avoided by the Council or the Minister.
- (4) A contract may not be avoided under subclause (3) if a person has acquired an interest in property the subject of the contract in good faith for valuable consideration and without notice of the contravention.
- (5) Where a member of the Council has or acquires a personal or pecuniary interest, or is or becomes the holder of an office, such that it is reasonably foreseeable that a conflict might arise with his or her duties as a member of the Council, the member must, as soon as reasonably practicable, disclose in writing to the Council full and accurate details of the interest or office.

Maximum penalty: \$20 000.

- (6) A disclosure under this clause must be recorded in the minutes of the Council and reported to the Minister.

- (7) If, in the opinion of the Minister, a particular interest or office of a member of the Council is of such significance that the holding of the interest or office is not consistent with the proper discharge of the duties of the member, the Minister may require the member either to divest himself or herself of the interest or office or to resign from the Council (and non-compliance with the requirement constitutes misconduct and hence a ground for removal of the member from the Council).
- (8) Without limiting the effect of this clause, a member of the Council will be taken to have an interest in a matter for the purposes of this clause if an associate of the member has an interest in the matter.
- (9) This clause does not apply in relation to a matter in which a member of the Council has an interest while the member remains unaware that he or she has an interest in the matter, but in any proceedings against the member the burden will lie on the member to prove that he or she was not, at the material time, aware of his or her interest.
- (10) In this clause—
associate has the same meaning as in the *Public Corporations Act 1993*.

2—Protection from personal liability

- (1) No personal liability is incurred for an act or omission by—
 - (a) a member of the Council; or
 - (b) a member of the staff of the Council,in good faith in the performance or purported performance of a power, function or duty under this Act.
- (2) A civil liability that would, but for subclause (1), lie against a person, lies instead against the Crown.

3—Expiry of Schedule

This Schedule will expire on the commencement of section 6H of the *Public Sector Management Act 1995* (as inserted by the *Statutes Amendment (Honesty and Accountability in Government) Act 2003*), or if that section has come into operation before the commencement of this Schedule, will be taken not to have been enacted.

Legislative history

Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal Act

Year	No	Title	Assent	Commencement
2005	12	<i>ANZAC Day Commemoration Act 2005</i>	21.4.2005	uncommenced