South Australia

Outback Communities (Administration and Management) Act 2009

An Act to establish the Outback Communities Authority and to facilitate the administration and management of outback communities; to repeal the *Outback Areas Community Development Trust Act 1978*; 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 *Outback Communities (Administration and Management) Act 2009*.

2—Commencement

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

3—Interpretation

In this Act—

Authority means the Outback Communities Authority established under section 5;

outback means the area of the State outside council areas under the *Local Government Act 1999*, excluding any area declared by regulation not to be part of the outback;

rates means the asset sustainability levy and the community contribution—see section 21.

4—Objects of Act

The objects of this Act are—

(a) to provide for efficient and accountable administration and management of outback communities; and

(b) to promote participation of outback communities in their administration and management; and

(c) to raise revenue for public services and facilities in the outback.

Part 2—Outback Communities Authority

Division 1—Establishment

5—Establishment

(1) The Outback Communities Authority is established.

(2) The Authority is the same body corporate as the Outback Areas Community Development Trust established under the *Outback Areas Community Development Trust Act 1978*.

(3) The Authority—

(a) has perpetual succession and a common seal; and

(b) is capable of suing and being sued in its corporate name; and

(c) has all the powers of a natural person that are capable of being exercised by a body corporate.

(4) The Authority is an instrumentality of the Crown and holds its property on behalf of the Crown.

(5) The Authority is subject to the control and direction of the Minister except in relation to—

(a) the enforcement of this or any other Act; and

(b) the preparation of reports under this or any other Act.

(6) If a document appears to bear the common seal of the Authority, it will be presumed, in the absence of proof to the contrary, that the document was duly executed by the Authority.

6—Functions and objectives

(1) The functions of the Authority are—

(a) to manage the provision of public services and facilities to outback communities; and

(b) to promote improvements in the provision of public services and facilities to outback communities; and

(c) to articulate the views, interests and aspirations of outback communities.

(2) In performing its functions, the Authority is—

(a) primarily to foster and support the provision of public services and facilities to outback communities by community organisations, including by making grants and loans to such organisations; and

(b) to consider long-term requirements for maintenance, replacement and development of infrastructure for public services and facilities for outback communities; and

(c) to consider State and national objectives and strategies that are relevant to outback communities; and

(d) to seek ongoing collaboration with local, State and national governments in the planning and delivery of public services and facilities to outback communities; and

(e) to ensure that there are systems in place to further its understanding of the views, interests and aspirations of outback communities; and

(f) to facilitate decision making by others on a basis that is well informed in relation to the views, interests and aspirations of outback communities, including by participating in appropriate local, State and national forums; and

(g) to provide services with a high level of efficiency and effectiveness, manage resources effectively, prudently and in a fully accountable manner and maintain and enhance the value of public assets.

Division 2—Administration

7—Membership

(1) The Authority consists of 7 members appointed by the Governor of whom at least 4 are to be members of different outback communities.

(2) In selecting a member of an outback community for appointment to the Authority, nominations for appointment must be sought by notice in a newspaper circulating generally throughout the outback and on the website of the Authority.

(3) At least 1 member of the Authority must be a woman and 1 a man.

(4) The Governor will appoint 1 of the members to be the presiding member of the Authority.

(5) The Governor may appoint a person to be the deputy of a member of the Authority and the deputy may act as a member of the Authority during any period of absence of the member.

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

8—Conditions of membership

(1) A member of the Authority will be appointed on conditions determined by the Governor for a term, not exceeding 3 years, specified in the instrument of appointment and will, at the expiration of a term of office, be eligible for reappointment.

(2) The Governor may remove a member of the Authority 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.

(3) The office of a member of the Authority 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 Minister; or

(d) is disqualified from managing corporations under Chapter 2D Part 2D.6 of the *Corporations Act 2001* of the Commonwealth; or

(e) is removed from office under subsection (2).

(4) A member of the Authority is entitled to fees, allowances and expenses determined by the Governor.

9—Application of Public Sector Management Act

A member of the Authority will not be taken to have a direct or indirect interest in a matter for the purposes of the *Public Sector (Honesty and Accountability) Act 1995* by reason only of the fact that the member has an interest in a matter that is shared in common with members of an outback community or a substantial section of members of an outback community.

10—Proceedings

(1) A quorum of the Authority consists of 4 members.

(2) In the absence of the presiding member from a meeting of the Authority a member chosen by those present will preside at the meeting.

(3) A decision carried by a majority of the votes cast by the members at a meeting of the Authority is a decision of the Authority.

(4) Each member present at a meeting of the Authority has 1 vote on a matter arising for decision and, if the votes are equal, the member presiding at the meeting may exercise a casting vote.

(5) A conference by telephone or other electronic means between the members of the Authority will, for the purposes of this section, be taken to be a meeting of the Authority at which the participating members are present if—

(a) notice of the conference is given to all members in the manner determined by the Authority 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 Authority becomes a valid decision of the Authority despite the fact that it is not voted on at a meeting of the Authority if—

(a) notice of the proposed resolution is given to all members of the Authority in accordance with procedures determined by the Authority; and

(b) a majority of the members express concurrence in the proposed resolution by letter, telegram, telex, fax, e-mail or other written communication setting out the terms of the resolution.

(7) Notice of a proposed resolution for the submission of a strategic management plan, annual business plan or budget or a variation of a strategic management plan, annual business plan or budget to the Minister must be given to all members of the Authority, together with a copy of the proposed plan, budget or variation, at least 21 days before a vote is to be taken on the resolution.

(8) A meeting of the Authority is to be open to the public unless the Authority considers it to be necessary and appropriate to close the meeting to the public in order to receive, discuss or consider in confidence any information or matter of the kind that could lead to the closure of a council meeting under the *Local Government Act 1999*.

(9) The Authority must have accurate minutes kept of its proceedings and, subject to the exclusion of matters considered in a meeting closed to the public, make them available for inspection free of charge on a website and at its principal place of business during normal office hours.

(10) Subject to this Act, the Authority may determine its own procedures.

11—Committees

(1) The Authority may establish committees to assist it in the performance of its functions.

(2) A committee may consist of or include persons who are not members of the Authority.

(3) Subject to direction by the Authority, a committee may determine its own procedures.

(4) The *Public Sector (Honesty and Accountability) Act 1995* applies to a member of a committee in the same way as to an advisory body member within the meaning of that Act (as if a reference to the relevant Minister were a reference to the Minister responsible for the administration of this Act).

12—Staff

The Authority's staff consists of Public Service employees assigned to assist the Authority.

13—Delegation

(1) The Authority or the presiding member of the Authority may delegate a function or power under this or any other Act to—

(a) a particular person or committee; or

(b) the person for the time being performing particular duties or holding or acting in a particular position.

(2) If a person to whom a function or power is delegated is not a member of the Authority or a member of the staff of the Authority, or a committee to which a function or power is delegated includes a person who is not a member of the Authority or a member of the staff of the Authority, the prior approval of the Minister must be obtained to the delegation (but failure to obtain the approval will not make the delegation invalid).

(3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

(4) A delegation under this section—

(a) must be by instrument in writing; and

(b) may be absolute or conditional; and

(c) does not derogate from the power of the delegator to act in any matter; and

(d) is revocable at will.

Division 3—Management practices

14—Public consultation policy

(1) The Authority must prepare and adopt a public consultation policy for use in connection with—

(a) strategic management plans (see section 15); and

(b) annual business plans and budgets (see section 16); and

(c) community affairs resourcing and management agreements (see section 17); and

(d) the making of decisions or the taking of action by the Authority under a provision of the *Local Government Act 1999* applied by this Act that requires the following of a public consultation policy (see Part 3 Division 2); and

(e) the making of regulations applying the provisions of an Act (see Part 3 Division 3); and

(f) the making by the Authority of decisions of a kind prescribed by the regulations.

(2) The public consultation policy—

(a) must provide interested persons with a reasonable opportunity to make submissions on the matters subject to consultation and require the Authority to consider submissions made in accordance with the policy; and

(b) must comply, in respect of the making of decisions or the taking of action by the Authority under a provision of the *Local Government Act 1999* applied by this Act that requires the following of a public consultation policy, with any applicable requirements of that Act as if it were a public consultation policy of a council; and

(c) may provide for any other matter considered appropriate by the Authority; and

(d) may provide for processes that vary according to the classes of decisions that are within the scope of the policy.

(3) The Authority may, from time to time, vary or substitute the public consultation policy.

(4) However, before the Authority adopts, varies or substitutes a public consultation policy, the Authority must—

(a) prepare a document that sets out its proposal in relation to the matter; and

(b) make the document publicly available (including on a website) and invite submissions to be made within a specified period (of at least 1 month); and

(c) consider submissions made in response to the invitation.

(5) The Authority is not required to do so for a variation or substitution that the Authority determines is of only minor significance that would attract little (or no) community interest.

15—Strategic management plan

(1) The Authority must submit to the Minister for approval a strategic management plan for the period of 5 financial years commencing on 1 July next following commencement of this section and for each subsequent period of 5 financial years.

(2) The first strategic management plan is to be submitted as soon as practicable after the commencement of this section.

(3) The second and each subsequent strategic management plan is to be submitted on or before 30 April in the financial year preceding the first financial year to which it relates.

(4) A strategic management plan must be prepared in consultation with outback communities in accordance with the Authority's public consultation policy (see section 14).

(5) A strategic management plan must include—

(a) a statement of the Authority's objectives for the provision of public services and facilities to outback communities for the 5 year period; and

(b) a clear indication of the extent to which the Authority has given consideration to State and national objectives and strategies relevant to outback communities; and

(c) an assessment of—

(i) the extent or levels of public services and facilities that will be required to be provided to achieve its objectives; and

(ii) the extent to which infrastructure for public services and facilities will need to be maintained, replaced or developed to achieve its objectives; and

(d) a statement of—

(i) the principal activities that the Authority intends to undertake to achieve its objectives; and

(ii) the means by which its activities are to be carried out, including the extent to which it is intended that public services and facilities will be provided to outback communities by community organisations; and

(e) a statement of the extent to which the Authority intends to collaborate with local, State and national governments in the planning and delivery of public services and facilities to outback communities; and

(f) a long-term financial plan; and

(g) a long-term plan for the maintenance, replacement and development of infrastructure for public services and facilities for outback communities; and

(h) any other matter prescribed by regulation.

(6) A strategic management plan or a component of a strategic management plan may relate to a period beyond the 5 year period to which the plan relates.

(7) The Minister may approve a strategic management plan submitted under this section with or without modification.

(8) If a strategic management plan is not approved by the Minister (with or without modification) before the commencement of the period to which it relates, the Authority may proceed as if it were approved (but is bound by any modification subsequently required by the Minister).

(9) The Authority may review its strategic management plan at any time, but must undertake a review of its long-term financial plan as soon as practicable after approval by the Minister of its annual business plan and budget for a financial year.

(10) A variation of a strategic management plan (other than a variation consequential on an annual business plan and budget) must be prepared in consultation with outback communities in accordance with the Authority's public consultation policy (see section 14) and be submitted to the Minister for the Minister's approval (and the variation may be approved with or without modification).

16—Annual business plan and budget

(1) The Authority must, on or before 31 May in each year, submit to the Minister for approval a business plan and budget for the next financial year.

(2) The plan and budget must be prepared in consultation with outback communities in accordance with the Authority's public consultation policy (see section 14).

(3) The plan must include—

(a) a statement of the Authority's objectives for the provision of public services and facilities to outback communities for the financial year; and

(b) a statement of—

(i) the activities that the Authority intends to undertake to achieve its objectives; and

(ii) the means by which its activities are to be carried out, including the extent to which it is intended that public services and facilities will be provided to outback communities by community organisations; and

(c) an assessment of the financial requirements of the Authority for the financial year and a summary of its proposed operating expenditure, capital expenditure and sources of revenue having regard to those requirements; and

(d) a statement of the rates proposed to be declared for the financial year; and

(e) an assessment of the impact of the rates on outback communities; and

(f) any other matter required by the Minister or prescribed by regulation.

(4) The budget must—

(a) be prepared in accordance with any requirements prescribed by regulation; and

(b) be submitted to the Minister for approval in conjunction with the Authority's annual business plan; and

(c) be approved after the annual business plan is approved.

(5) The Minister may approve an annual business plan and budget submitted under this section with or without modification.

(6) If an annual business plan is not approved by the Minister (with or without modification) before the commencement of the financial year to which it relates, the Authority may proceed as if it were approved (but is bound by any modifications subsequently required by the Minister).

(7) The Authority must not, without the consent of the Minister, make any expenditure that is not authorised by an approved budget.

(8) The Authority may, at any time, and must, if the regulations so require, submit a variation of its annual business plan or budget to the Minister for the Minister's approval (and the variation may be approved with or without modification).

(9) A variation must be prepared in consultation with outback communities in accordance with the Authority's public consultation policy (see section 14).

17—Community affairs resourcing and management agreements

(1) The Authority may enter into a memorandum of understanding (a ***community affairs resourcing and management agreement***) with an incorporated body representing an outback community relating to any or all of the following:

(a) the financial and other support to be provided to the outback community by the Authority;

(b) the provision of public services and facilities by community organisations and the governance of those organisations;

(c) the participation of community organisations in an insurance scheme arranged by the Authority;

(d) procedures to be followed by community organisations claiming reimbursements from the Authority;

(e) the authorisation of community contributions for a specified purpose (see section 21);

(f) any other matter related to the management and administration of the outback community.

(2) A community affairs resourcing and management agreement remains in force for the financial year specified in the agreement.

(3) A community affairs resourcing and management agreement may be varied or substituted from time to time.

(4) However, before a community affairs resourcing and management agreement is entered into, varied or substituted, the Authority must consult with the outback community concerned in accordance with the Authority's public consultation policy (see section 14).

18—Annual report

(1) The Authority must, on or before 30 September in each year, present a report to the Minister on the Authority's operations during the previous financial year.

(2) A report under this section must include, in relation to the financial year to which the report relates—

(a) a summary of the activities undertaken by the Authority; and

(b) an assessment of those activities against its business plan for that financial year; and

(c) an audited statement of the income and expenditure of the Authority, together with details of the items of income and expenditure; and

(d) any direction given to the Authority by the Minister.

(3) The Minister must, within 12 sitting days after receipt of a report under this section, cause copies of the report to be laid before each House of Parliament.

19—Publication of documents

The Authority must ensure that a copy of its current public consultation policy, strategic management plan, annual business plan and annual budget, its latest annual report and each current community affairs resourcing and management agreement are available—

(a) for inspection free of charge on a website and at its principal place of business during normal office hours; and

(b) for purchase on payment of a fee fixed by the Authority.

Part 3—Application of certain Acts

Division 1—Preliminary

20—Interpretation

Provisions of an Act applied by this Part are applied together with any definitions contained in the Act of terms used in those provisions.

Division 2—Local Government Act

21—Rates on land—asset sustainability levies and community contributions

(1) The Authority may impose—

(a) asset sustainability levies on land in the outback to raise revenue for the maintenance of public services and facilities in the outback; and

(b) community contributions on land in an area of the outback to raise revenue for the purposes of planning, carrying out, making available, supporting, maintaining or improving an activity that is, or is intended to be, of particular benefit to the outback community in that area or to visitors to that community.

(2) An asset sustainability levy is to be imposed in the same way as a council imposes general rates on land in its council area, except that the levy must be based on a fixed charge approved by the Minister.

(3) A community contribution is to be imposed in the same way as a council imposes separate rates on land in its council area, except that—

(a) a contribution may only be imposed if it is authorised by a community affairs resourcing and management agreement; and

(b) a contribution must be based on a fixed charge approved by the Minister.

(4) The fixed charge approved by the Minister for an asset sustainability levy or community contribution may vary according to the use of the land, the locality of the land or any other factor (but not one based on a valuation of the land).

(5) The Minister must not approve a fixed charge for an asset sustainability levy for a financial year that will result in an increase in the levy from the previous financial year (other than a CPI increase) unless—

(a) a notice of the proposed fixed charge has been laid before both Houses of Parliament, together with an explanation of the reasons for the increase; and

(b) after 6 sitting days (which need not fall within the same Parliament or the same session of Parliament) no resolution has been passed by either House of Parliament prohibiting the approval.

(6) For the purposes of this section, Chapter 10 Part 1 of the *Local Government Act 1999* applies as if it formed part of this Part, subject to the following modifications:

(a) a reference to a council is to be read as a reference to the Authority;

(b) a reference to the area of a council is to be read as a reference to the outback;

(c) a reference to local government purposes is to be read as a reference to the purposes of the Authority;

(d) a reference to a general rate is to be read as a reference to an asset sustainability levy;

(e) a reference to a separate rate is to be read as a reference to a community contribution;

(f) a reference to the chief executive of a council is to be read as a reference to the presiding member of the Authority;

(g) any other modifications prescribed by regulation.

(7) The revenue raised from asset sustainability levies and community contributions in respect of a particular financial year need not be completely expended in that year.

(8) The first asset sustainability levy notice for a financial year must be accompanied by—

(a) a summary of the Authority's business plan for the financial year; and

(b) an assessment of the activities of the Authority against its business plan for the previous financial year.

(9) Asset sustainability levies and community contributions cannot be challenged on a ground based on non-compliance with this section, or on a ground based on the contents of a plan, budget or assessment prepared under this Act.

(10) In this section—

CPI increase means an increase reflecting the all groups consumer price index for Adelaide published by the Australian Bureau of Statistics.

22—Anti-pollution measures

Chapter 11 Part 3 of the *Local Government Act 1999* applies as if it formed part of this Part, subject to the following modifications:

(a) a reference to a council is to be read as a reference to the Authority;

(b) a reference to a public road is to be read as a reference to an area that is open to or used by the public and is developed for, or has as 1 of its main uses, the driving of motor vehicles;

(c) a reference to local government land is to be read as a reference to land vested in the Authority;

(d) any other modifications prescribed by regulation.

23—Anti-nuisance measures

Chapter 12 Part 2 of the *Local Government Act 1999* applies as if it formed part of this Part, subject to the following modifications:

(a) a reference to a council is to be read as a reference to the Authority;

(b) a reference to the area of a council is to be read as a reference to the outback;

(c) a reference to this Act (meaning the *Local Government Act 1999*) or this Part (meaning Chapter 12 Part 2 of the *Local Government Act 1999*) is to be read as a reference to this Act or Part, respectively;

(d) section 257 is to be read as if subsections (4) and (7) were deleted;

(e) any other modifications prescribed by regulation.

24—Authorised persons

(1) The Authority may appoint authorised persons as if it were a council and those persons may administer and enforce this and any other Act that applies in relation to the Authority or the outback as if the Authority were a council and the outback its council area.

(2) For that purpose, Chapter 12 Part 3 of the *Local Government Act 1999* applies as if it formed part of this Part, subject to the following modifications:

(a) a reference to a council is to be read as a reference to the Authority;

(b) a reference to this Act (meaning the *Local Government Act 1999*) is to be read as a reference to this Act;

(c) any other modifications prescribed by regulation.

25—Miscellaneous powers

Sections 294, 295, 297 and 298 of the *Local Government Act 1999* apply as if they formed part of this Part, subject to the following modifications:

(a) a reference to a council is to be read as a reference to the Authority;

(b) a reference to the area of a council is to be read as a reference to the outback;

(c) any other modifications prescribed by regulation.

Division 3—Other Acts

26—Regulations may apply other Acts

(1) The Governor may, by regulation, declare that specified provisions of an Act that apply in relation to a council or council area apply to the Authority or the outback as if the Authority were a council and the outback its council area, subject to any specified modifications.

(2) A regulation may not be made under this section unless the Authority has—

(a) prepared a report for public consultation setting out the substance and effect of the proposed regulation; and

(b) consulted on the report in accordance with its public consultation policy (see section 14).

Part 4—Miscellaneous

27—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 the generality of subsection (1), the regulations may impose fines, not exceeding $5 000, for offences against the regulations.

(3) The regulations may—

(a) be of general application or vary in their application according to prescribed factors;

(b) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Authority or the Minister.

Schedule 1—Repeal and transitional provisions

Part 1—Repeal

1—Repeal of *Outback Areas Community Development Trust Act 1978*

The *Outback Areas Community Development Trust Act 1978* is repealed.

Part 2—Transitional provisions

2—First members of Authority

On the commencement of this clause, the members of the Outback Areas Community Development Trust vacate their offices so that fresh appointments may be made to the Authority.

3—First annual business plans and budget of Authority

If this Act commences on a date that makes it impracticable or impossible to comply with a requirement of this Act to submit an annual business plan and budget for a period commencing on 1 July next following that commencement, this Act is to be read as requiring the plan and budget to be submitted to the Minister for that period as soon as practicable after that commencement.

4—Budget

Until the first budget is approved under this Act, a reference in section 17(4) to an approved budget includes a reference to a budget approved under the *Outback Areas Community Development Trust Act 1978* repealed by this Act.

5—Regulations

The regulations may make other provisions of a savings or transitional nature consequent on the enactment of this Act.

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
2009	75	*Outback Communities (Administration and Management) Act 2009*	10.12.2009	1.7.2010 (*Gazette 24.6.2010 p3156*)