

South Australia

# Primary Industry Funding Schemes Act 1998

An Act to make provision for schemes establishing funds for primary industry purposes; and for other purposes.

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## Legislative history

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

#### 1—Short title

This Act may be cited as the *Primary Industry Funding Schemes Act 1998*.

#### 3—Interpretation

In this Act, unless the contrary intention appears—

***approved society or association***—see section 5;

***auditor*** means a registered company auditor within the meaning of the *Corporations Law*;

***industry member***, in relation to a fund established under the regulations, means a member of the sector of primary industry for which the fund is established;

***record*** includes information kept by computer, microfilm or other process.

#### 4—Establishment of fund

- (1) The Governor may make regulations establishing a fund for a particular sector of primary industry.
- (2) Before regulations are made under subsection (1), the Minister must consult widely with industry members and give proper consideration to any representations made by industry members.
- (3) The regulations will assign a distinctive name to a fund for the purposes of identifying the primary industry sector for which the fund is established.
- (4) The regulations may provide that a fund is to be administered by—
  - (a) the Minister; or
  - (b) an approved society or association in accordance with the rules of the society or association; or
  - (c) a board of trustees (of whom there must be at least three appointed by the Minister after consultation with industry members) in accordance with a trust deed, as amended from time to time, incorporated or referred to in the regulations.
- (5) The regulations may establish a consultative committee within a primary industry sector for the purposes of providing advice to the person or body administering a fund established for that sector.
- (6) A fund is to consist of—
  - (a) contributions paid or collected in accordance with the regulations for the purposes of the fund; and
  - (b) income of the fund from investment; and
  - (c) any other contributions received by the person or body administering the fund for payment into the fund.
- (7) Money not immediately required for the purposes of a fund may be invested.

#### 5—Approval of society or association to administer fund

The Minister may approve a society or association to administer a fund under this Act if—

- (a) the society or association is incorporated under the *Associations Incorporation Act 1985*; and
- (b) the society or association has as its object or one of its objects promoting the development of the primary industry sector for which the fund is established; and
- (c) in the opinion of the Minister, the rules of the society or association make appropriate provision for the administration of any fund for which the society or association is or will be responsible under this Act; and
- (d) the rules of the society or association provide that the rules may not be varied without approval of the Minister; and
- (e) the society or association complies with any other requirements of the regulations.

## **6—Contributions to fund**

- (1) A scheme may be prescribed by regulation requiring or facilitating the payment of contributions to a fund established under the regulations.
- (2) A scheme may provide for—
  - (a) industry members to make contributions to the fund annually or at other intervals; or
  - (b) the collection of contributions to the fund when livestock or products are sold; or
  - (c) contributions to the fund from fees collected under the *Livestock Act 1997* or any other Act relating to primary industry; or
  - (d) the collection of contributions to the fund in any other manner or on any other basis.
- (3) The scheme may allow for the costs of collecting contributions to be deducted from or paid out of those contributions.

## **7—Application of fund**

- (1) A fund established under the regulations may be applied for any purpose set out in the regulations or in a trust deed (as amended from time to time) incorporated or referred to in the regulations or in the rules of a society or association administering the fund.
- (2) Without limiting the generality of subsection (1), the purposes may include—
  - (a) the payment of compensation to industry members in relation to the control or eradication of disease, pest or contamination in accordance with a scheme set out in the regulations;
  - (b) the provision of services to industry members;
  - (c) any other purpose for the benefit of individual industry members, or for the general benefit, of the primary industry sector for which the fund is established;
  - (d) the payment of the expenses of administering the fund.
- (3) The regulations may—
  - (a) require part of the fund (determined from time to time by the Minister) to be set aside for compensation;
  - (b) exclude an industry member from participating in a compensation scheme or receiving other benefits if the member is, according to the regulations, trust deed or rules, in default.

## **8—Advances if fund insufficient to meet compensation payments**

- (1) If the amount standing to the credit of a fund established under the regulations is not sufficient to meet payments of compensation in accordance with a scheme set out in the regulations, the Treasurer may, at the request of the person or body administering the fund, advance from the Consolidated Account (which is appropriated to the necessary extent) such amount as is necessary to cover the insufficiency.
- (2) The Treasurer may impose such conditions on an advance under subsection (1) as the Treasurer considers appropriate.

## **9—Management plan for fund**

- (1) The person or body administering a fund established under the regulations must ensure that, in accordance with this section—
  - (a) management plans are prepared for the fund; and
  - (b) the plans are presented at public meetings convened for the purpose.
- (2) The management plans must be prepared and presented as follows:
  - (a) the first plan must cover a five year period and be prepared and presented within 12 months after the commencement of the regulations establishing the fund;
  - (b) a revised plan must be prepared and presented at least once every 12 months after presentation of the first plan and must, in each case, cover the ensuing period of five years.
- (3) A management plan must contain—
  - (a) an estimate of the contributions to the fund likely to be received over the relevant period;
  - (b) proposals for the investment of the fund;
  - (c) proposals for the application of the fund;
  - (d) any other matters considered appropriate to be included by the person or body administering the fund.
- (4) The person or body administering the fund must ensure that industry members are consulted during preparation of a management plan.
- (5) The person or body administering the fund must ensure that, at least two weeks before the date of a public meeting to be convened under this section, a notice of the date, time, place and purpose of that meeting is published in a newspaper circulating generally throughout the State.
- (6) The person or body administering the fund may revise and update its management plan at any time.
- (7) The person or body administering the fund must cause a copy of its current management plan to be kept available for inspection by members of the public, without charge and during normal office hours, at a place determined by the Minister.

## **10—Audit of fund**

- (1) The person or body administering a fund established under the regulations must cause proper accounts to be kept of all money received and dealt with under this Act, showing the purposes for which that money has been received or dealt with.
- (2) The person or body administering the fund must cause the accounts to be audited by an auditor at least once in each year.

## **11—Annual report for fund**

- (1) The person or body administering a fund established under the regulations must ensure that, on or before 30 September in every year—
  - (a) a report is prepared on the operation of the fund during the previous financial year; and
  - (b) in the case of a fund administered by a board of trustees or an approved society or association—the report is submitted to the Minister.
- (2) The report must incorporate—
  - (a) the audited statement of accounts of the fund for the period to which the report relates; and
  - (b) the current management plan prepared for the fund under this Act.
- (3) The Minister must cause copies of reports prepared under this section to be laid before each House of Parliament as follows:
  - (a) in the case of a report on the operation of a fund administered by the Minister—within 12 sitting days after 30 September following the financial year to which the report relates;
  - (b) in the case of a report on the operation of a fund administered by a board of trustees or an approved society or association—within 12 sitting days after receipt of the report.

## **12—Appointment of examiner of fund**

- (1) The Minister may, at any time, appoint a person—
  - (a) to examine, either generally or in a particular case, the accounts and records kept in relation to a fund established under the regulations or in relation to the collection of contributions to such a fund; and
  - (b) to examine, either generally or in a particular case, the audit program, working papers and other documents used or prepared by an auditor in the course of auditing the accounts of a fund established under the regulations; and
  - (c) to confer with an auditor in relation to audits of the accounts of a fund established under the regulations.
- (2) An examiner may, and must if required by the Minister to do so, provide the Minister with a report as to the state of any accounts or records subject to examination by the examiner.
- (3) The Minister must, as soon as practicable, cause a copy of a report provided by an examiner to be given or sent by post to the person or body administering the fund.

## **13—Winding up of fund**

- (1) If the Minister is satisfied that it is in the best interests of the primary industry sector for which a fund is established that the fund be wound up, the Minister may appoint an administrator for the purpose of winding up the fund.
- (2) An administrator may exercise such powers of the person or body administering the fund as may be necessary for the purposes of the winding up.

- (3) The person or body administering the fund may not exercise any functions or powers in that capacity while a person holds office as an administrator of the fund.
- (4) The Minister may, by notice in the Gazette, direct the distribution of any money remaining in a fund that is being wound up and any remaining assets of the fund to bodies or organisations representing the primary industry sector for which the fund was established.

#### **14—Obtaining information for purposes of audit, examination or winding up**

- (1) An auditor employed by the person or body administering a fund established under the regulations, or an examiner or administrator appointed by the Minister under this Act, may require the person or body administering the fund concerned or any other person in a position to do so—
  - (a) to produce all the accounts relating to the fund and all documents and records relating to those accounts or to the collection of contributions to the fund, including written records that reproduce in a readily understandable form information kept by computer, microfilm or other process; and
  - (b) to provide any relevant information relating to the operation of the accounts or the keeping of the documents or records.

- (2) The manager or other principal officer of an ADI or other financial institution with which a person or body administering a fund has deposited money must, on being required to do so by the auditor, examiner or administrator, disclose every account in which money has been so deposited and all documents and records relating to the operation of the accounts to the auditor, examiner or administrator.

Maximum penalty: \$20 000.

- (3) A person who is required by this section to produce documents or other records to an auditor, examiner or administrator must permit the auditor, examiner or administrator to make a copy of the whole, or any part, of those documents or other records.

Maximum penalty: \$20 000.

- (4) A person must not—
  - (a) refuse or fail to comply with a requirement of an auditor, examiner or administrator under this Act; or
  - (b) hinder, delay or obstruct an auditor, examiner or administrator in the performance of functions under this Act by altering or destroying relevant documents or records or by any other means.

Maximum penalty: \$20 000.

- (5) In this section—

*person or body administering a fund* includes a person or body who formerly administered a fund.

#### **15—Board of trustees or society or association administering fund not agent of Crown**

The board of trustees of a fund established under the regulations or a society or association administering such a fund—

- (a) is not an instrumentality or agency of the Crown; and

- (b) does not have the privileges and immunities of the Crown; and
- (c) does not represent the Crown; and
- (d) is not a public or government authority.

## **16—Regulations**

- (1) The Governor may make such regulations as are contemplated by, or as are necessary or expedient for the purposes of, this Act.
- (2) The regulations may—
  - (a) impose fines, not exceeding \$5 000, for offences against the regulations;
  - (b) fix expiation fees for alleged offences against the regulations.
- (3) Regulations under this Act may—
  - (a) be of general application or limited application;
  - (b) make different provision according to the matters or circumstances to which they are expressed to apply;
  - (c) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister or the person or body administering a fund established under the regulations.
- (4) The regulations may confer jurisdiction on the South Australian Civil and Administrative Tribunal to review any determination under the regulations.

## Legislative history

### Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- 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](http://www.legislation.sa.gov.au).

### Legislation amended by principal Act

The *Primary Industry Funding Schemes Act 1998* amended the following:

*Livestock Act 1997*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1998	57	<i>Primary Industry Funding Schemes Act 1998</i>	3.9.1998	1.10.1998 ( <i>Gazette 24.9.1998 p930</i> )
1999	33	<i>Financial Sector Reform (South Australia) Act 1999</i>	17.6.1999	Sch (item 40)—1.7.1999 being the date specified under s 3(16) of the <i>Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999</i> of the Commonwealth as the transfer date for the purposes of that Act: s 2(2)
<b>2017</b>	<b>51</b>	<b><i>Statutes Amendment (SACAT No 2) Act 2017</i></b>	<b>28.11.2017</b>	<b>Pt 38 (ss 208 &amp; 209)—22.2.2018 (<i>Gazette 30.1.2018 p524</i>)</b>

### Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	
s 14		
s 14(2)	amended by 33/1999 Sch (item 40)	1.7.1999
s 16		
<b>s 16(4)</b>	<b>inserted by 51/2017 s 208</b>	<b>22.2.2018</b>



*Sch* omitted under *Legislation Revision and Publication Act 2002*

## **Transitional etc provisions associated with Act or amendments**

### ***Statutes Amendment (SACAT No 2) Act 2017, Pt 38***

#### **209—Transitional provisions**

- (1) Any objection being considered by the Minister under a regulation under the principal Act immediately before the relevant day will be dealt with as if this Act had not been enacted.
- (2) In this section—  
*principal Act* means the *Primary Industry Funding Schemes Act 1998*;  
*relevant day* means the day on which this Part comes into operation.

## **Historical versions**

Reprint No 1—1.7.1999