

(Reprint No. 1)

SOUTH AUSTRALIA

GOVERNMENT FINANCING AUTHORITY ACT, 1982

This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 11 March 1993.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision since its last reprinting on 1 April 1987.

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GOVERNMENT FINANCING AUTHORITY ACT, 1982

being

Government Financing Authority Act, 1982, No. 96 of 1982 [Assented to 23 December 1982]¹

as amended by

Government Financing Authority Act Amendment Act, 1986, No. 52 of 1986 [Assented to 11 September 1986]
Public Finance and Audit (Miscellaneous) Amendment Act 1993 No. 6 of 1993 [Assented to 11 March 1993]²

An Act to establish a corporation to be known as the South Australian Government Financing Authority; to make provision relating to the financial powers and relations of the Authority, semi-government authorities and the Treasurer; and for other purposes.

The Parliament of South Australia enacts as follows:

PART I PRELIMINARY

Short title

1. This Act may be cited as the *Government Financing Authority Act, 1982*.

* * * * *

Interpretation

4. (1) In this Act, unless the contrary intention appears:

“appointed member” in relation to the Authority means a member of the Authority appointed by the Governor under Part II:

“the Authority” means the South Australian Government Financing Authority established under Part II:

“loan” means any form of financial accommodation (not being a grant) and “lend” and “borrow” have corresponding meanings:

¹Came into operation 13 January 1983: *Gaz.* 13 January 1983, p. 41.

²Came into operation on assent: s. 2(3).

Note: 1. Asterisks indicate repeal or deletion of text.

2. For the legislative history of the Act see Appendix. Entries appearing in the Appendix in bold type indicate the amendments incorporated since the last reprint.

“the Minister responsible” in relation to a semi-government authority means the Minister having the administration of the Act by or under which the semi-government authority is constituted and includes a Minister who is a semi-government authority:

“semi-government authority” means a body corporate—

(a) that—

(i) is constituted of a Minister of the Crown;

(ii) has a governing body comprised of or including persons or a person appointed by the Governor or a Minister or other instrumentality of the Crown;

or

(iii) is financed wholly or in part out of public funds;

and

(b) that is declared by proclamation to be a semi-government authority for the purposes of this Act,

but does not include a council as defined in the *Local Government Act, 1934*:

“security” includes any document evidencing indebtedness.

(2) The Governor may, by proclamation, declare a body corporate to be a semi-government authority for the purposes of this Act.

(3) The Governor may, by proclamation, vary or revoke a declaration under subsection (2).

PART II

ESTABLISHMENT OF THE AUTHORITY

Establishment of the Authority

5. (1) The *South Australian Government Financing Authority* is established.

(2) The Authority—

(a) is a body corporate with perpetual succession and a common seal;

(b) is capable in its corporate name of acquiring, holding, dealing with and disposing of real and personal property;

(c) is capable of acquiring or incurring any other rights or liabilities, and of suing and being sued;

(d) holds its property on behalf of the Crown;

and

(e) has the powers, authorities, duties and functions prescribed by or under this or any other Act.

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

Constitution of the Authority

6. The Authority will consist of a minimum of three members and a maximum of six members, as the Governor determines, of whom—

(a) one (the chairman) will be the person for the time being holding the office of Under Treasurer;

and

(b) the remainder will be persons appointed by the Governor, upon the nomination of the Treasurer.

Terms and conditions of office

7. (1) An appointed member of the Authority will be appointed for such term of office, not exceeding three years, and upon such conditions, as may be determined by the Governor, and, upon the expiration of the term of office, will be eligible for reappointment.

(2) The Governor may appoint a suitable person to be a deputy of a member of the Authority and that person, while acting in the absence of that member, will be regarded as a member of the Authority with all the powers, rights and duties of that member.

(3) The Governor may remove an appointed member of the Authority from office for—

(a) breach of, or non-compliance with, conditions of appointment;

(b) mental or physical incapacity to carry out official duties satisfactorily;

(c) neglect of duty;

or

(d) dishonourable conduct.

(4) The office of an appointed member of the Authority becomes vacant if the member—

(a) dies;

(b) completes his or her term of office;

(c) resigns by written notice addressed to the Treasurer;

or

(d) is removed from office by the Governor pursuant to subsection (3).

(5) Upon the office of an appointed member of the Authority becoming vacant, a person must be appointed in accordance with this Act to the vacant office.

Quorum, etc.

8. (1) Where the Authority consists of three members, two members constitute a quorum and where the Authority consists of more than three members, three members constitute a quorum.

(2) The chairman of the Authority, or, in the chairman's absence, his or her deputy will preside at a meeting of the Authority, and in the absence of both the chairman and his or her deputy from a meeting, the members present will decide who is to preside at the meeting.

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

(4) Each member of the Authority is entitled to one vote on a matter arising for decision by the Authority, and the person presiding at the meeting has, in the event of an equality of votes, a second or casting vote.

(5) The Authority must cause accurate minutes to be kept of the business conducted at meetings of the Authority.

(5a) A decision in which all members of the Authority concur is a decision of the Authority notwithstanding that it is not made at a meeting of the Authority.

(5b) The Authority must cause a record to be kept of any decision made under subsection (5a).

(6) Subject to this Act, the business of the Authority will be conducted in a manner determined by the Authority.

Validity of acts of the Authority and immunity of members

9. (1) 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.

(2) No personal liability attaches to a member of the Authority for an act or omission by that member or the Authority in good faith in the exercise or discharge by the member or the Authority of powers, duties or functions under this Act.

(3) A liability that would, but for subsection (2), lie against a member of the Authority lies against the Crown.

Disclosure of interest

10. (1) A member of the Authority who is directly or indirectly interested in a contract, or proposed contract, made by, or in the contemplation of, the Authority—

(a) shall, as soon as he or she becomes aware of the contract or proposed contract, disclose the nature of the interest to the Authority and to the Treasurer;

and

(b) shall not take part in any deliberations or decision of the Authority with respect to that contract.

Penalty: \$500.

(2) A disclosure made under this section must be recorded in the minutes of the Authority.

(3) Where a member makes a disclosure of interest in respect of a contract or proposed contract in accordance with this section—

(a) the contract is not void, or liable to be avoided by the Authority, on any ground arising from the member's interest in the contract;

and

(b) the member is not liable to account to the Authority for any profits derived from the contract.

PART III

FINANCIAL POWERS AND RELATIONS OF THE AUTHORITY,
SEMI-GOVERNMENT AUTHORITIES AND THE TREASURER**Functions and powers of the Authority**

11. (1) The functions of the Authority are—

(a) to develop and implement borrowing and investment programmes for the benefit of semi-government authorities;

and

(b) to engage in such other financial activities as are determined by the Treasurer to be in the interests of the State.

(2) For the purposes of this Act, the Authority may, with the approval of the Treasurer—

(a) borrow money within or outside Australia;

* * * * *

(c) accept money on deposit or loan from the Treasurer or a semi-government authority;

(d) lend or invest money held by the Authority;

(e) issue, sell, purchase, pay-off, repurchase, redeem, convert or otherwise deal in or with securities or shares;

(f) open and maintain accounts with banks;

(g) appoint a bank, financial institution or other person to act as underwriter, manager, trustee, attorney or agent in connection with any transaction within or outside Australia;

(h) enter into contracts of guarantee or indemnity;

(i) acquire, hold, deal with and dispose of real and personal property;

(ia) enter into partnerships and joint ventures and form companies;

(j) enter into any agreement or arrangement of a kind not previously mentioned in this subsection or acquire or incur any other rights or liabilities;

or

(k) exercise any other powers that are necessary or expedient for the performance of its functions.

(3) The approval of the Treasurer under this section—

(a) may be conditional;

(b) may relate to a proposed transaction or may relate to transactions of a particular kind, or transactions generally, that the Authority may wish to enter into in the future;

and

(c) may be varied or revoked by the Treasurer at any time in respect of transactions not yet entered into.

Validity of transactions of Authority

11a. (1) Subject to subsection (2), a transaction to which the Authority is a party or apparently a party (whether made or apparently made under the Authority's common seal or by a person with authority to bind the Authority) is not invalid because of—

- (a) any deficiency of power on the part of the Authority;
- (b) any procedural irregularity on the part of any member, employee or agent of the Authority;
- (c) any procedural irregularity affecting the appointment of a member, employee or agent of the Authority.

(2) This section does not validate a transaction in favour of a party—

- (a) who enters into the transaction with actual knowledge of the deficiency or irregularity;

or

- (b) who has a connection or relationship with the Authority such that the person ought to know of the deficiency or irregularity.

Financial management

12. (1) The Authority must, in the exercise and performance of its powers and functions, act in accordance with proper principles of financial management and with a view to avoiding a loss.

(2) Any surplus of funds remaining after the costs of the Authority have been met in any financial year must be paid into the General Revenue of the State or otherwise dealt with as the Treasurer may determine.

Authority subject to control and direction of Treasurer

13. The Authority is, in the exercise and performance of its powers and functions, subject to the control and direction of the Treasurer.

Terms and conditions applying in relation to money provided by the Treasurer

14. Money provided by the Treasurer to the Authority will be regarded for all purposes as having been provided upon such terms and conditions as the Treasurer may from time to time determine.

Government guarantee

15. (1) Liabilities incurred or assumed by the Authority in pursuance of this Act are guaranteed by the Treasurer.

(1a) Where a transaction to which the Authority is a party or apparently a party is valid by virtue of section 11a, liabilities incurred or assumed by the Authority in respect of the transaction will be taken for the purposes of subsection (1), to have been incurred or assumed in pursuance of this Act.

(2) A liability of the Treasurer under a guarantee arising by virtue of subsection (1) will be satisfied out of the General Revenue of the State which is appropriated by this section to the necessary extent.

Power of semi-government authorities to borrow money from or deposit money with the Authority

16. (1) Notwithstanding the provisions of any other Act, a semi-government authority—

(a) may borrow money from the Authority, and, if the Treasurer so directs, must borrow money from the Authority rather than from any other lender;

and

(b) may, and, if the Treasurer so directs, must, deposit with or lend to the Authority any money of the semi-government authority that is not immediately required for the purposes of the semi-government authority.

(2) The Treasurer must not give a direction under subsection (1) except as authorized by the regulations and such a direction must not be given, in any event, to either of the following authorities:

(a) the Local Government Finance Authority of South Australia;

or

(b) the State Bank of South Australia.

(3) The terms and conditions of a transaction under subsection (1) will be as determined by the Treasurer after consultation with the Minister responsible for the semi-government authority.

(4) Subject to subsections (1) and (3), this section does not limit or affect the powers of a semi-government authority to borrow otherwise than from the Authority or to deposit, invest or otherwise deal with money.

Treasurer may deposit public money with the Authority

17. Notwithstanding the provisions of the *Public Finance Act, 1936*, any money under the control of the Treasurer (including any money that may be issued and applied only under the authority of an Act of Parliament) may be deposited with or lent to the Authority by the Treasurer upon such terms and conditions as the Treasurer may determine.

Treasurer may rearrange finances of semi-government authorities

18. (1) If the Treasurer, after consultation with the Minister responsible for a semi-government authority, thinks fit, the Treasurer may rearrange the finances of the semi-government authority in either of the following ways:

(a) where the semi-government authority has borrowed money from a source other than the Treasurer or the Government of the State, the Treasurer may—

(i) by determination published in the *Gazette*, transfer to the Authority the liabilities of the semi-government authority in respect of the loan;

and

(ii) determine that the money outstanding under the loan will be regarded for all purposes as having been borrowed by the semi-government authority from the Authority upon terms and conditions specified in the determination;

or

(b) where the semi-government Authority has borrowed money from the Treasurer or the Government of the State, the Treasurer may determine that all or a specified part of the money outstanding under the loan will be regarded for all purposes as having been borrowed by the semi-government authority from the Authority upon terms and conditions specified in the determination.

(2) In subsection (1)(b) a reference to money borrowed or received by a semi-government authority from the Treasurer or the Government of the State includes a reference to money that was provided to the State by the Commonwealth for the semi-government authority or for the purposes of an activity engaged in by the semi-government authority.

(3) The Treasurer may, after consultation with the Minister responsible for the semi-government authority, vary any terms and conditions applying in relation to the semi-government authority by virtue of a determination under subsection (1).

(4) Where a determination is made under subsection (1)(b) in respect of money, the money will be regarded as having been previously provided to the Authority by the Treasurer.

(5) The Treasurer may from time to time determine the terms and conditions upon which money is to be regarded as having been provided to the Authority by virtue of subsection (4).

(6) Where—

(a) money has been appropriated by Parliament for the purpose of meeting the liabilities of a semi-government authority in respect of a loan to the semi-government authority;

and

(b) the liabilities of the semi-government authority are transferred to the Authority pursuant to subsection (1),

any balance remaining of that money must, if the Treasurer so determines, be paid to the Authority and applied by the Authority for the same purpose or otherwise as the Treasurer may determine.

(7) A determination made by the Treasurer under this section has effect according to its terms.

(8) In this section—

(a) a reference to money borrowed by a semi-government authority includes a reference—

(i) to money borrowed by the South Australian Meat Corporation the liabilities in respect of which have been assumed by the Minister of Agriculture pursuant to the *South Australian Meat Corporation Act, 1936*;

(ii) to money borrowed by the former Monarto Development Commission the liabilities in respect of which have been vested in the Minister of Lands pursuant to the *Monarto Legislation Repeal Act, 1980*;

and

(iii) to money borrowed by the former South Australian Development Corporation the liabilities in respect of which have been vested in the Crown pursuant to the *Industries Development Act, 1941*;

and

(b) a reference to the liabilities of a semi-government authority in respect of a loan includes a reference to liabilities referred to in paragraph (a).

PART IV
MISCELLANEOUS

Delegation by the Authority

19. (1) The Authority may, by instrument in writing, delegate to the chairman of the Authority, or an officer of the Authority or the Public Service of the State, any of its powers or functions under this Act.

(2) A delegation under subsection (1) may be revoked by the Authority by instrument in writing and does not derogate from the power of the Authority to act itself in any matter.

(3) In any legal proceedings an apparently genuine document purporting to be a certificate under the seal of the Authority containing particulars of a delegation under this section will, in the absence of proof to the contrary, be accepted as proof of the particulars.

Staff

20. (1) The Governor may, subject to and in accordance with Part III of the *Government Management and Employment Act, 1985*, appoint such officers as the Governor considers necessary or expedient for the proper administration of this Act and an officer so appointed will hold office subject to and in accordance with that Act.

(2) The Treasurer may, by notice published in the *Gazette*, determine—

(a) that specified provisions of Part III of the *Government Management and Employment Act, 1985*, will not apply to or in relation to an officer appointed under subsection (1);

and

(b) that provisions contained, or referred to, in the notice will apply to and in relation to the officer instead of those provisions,

and the notice will have effect according to its terms.

(3) The Treasurer may, by notice published in the *Gazette*, vary or revoke a notice published under subsection (2).

(4) The Authority may, with the approval of the Treasurer, appoint upon terms and conditions from time to time determined by the Governor such officers and employees as it considers necessary or expedient for the proper administration of this Act, and Part III of the *Government Management and Employment Act, 1985*, will not apply to or in relation to persons so appointed.

(5) The Authority may, with the approval of the Minister administering a department of the Public Service of the State, upon terms mutually arranged, make use of the services of an officer or use any facilities of the department.

Semi-government authority to furnish certain information

21. A semi-government authority must, if so required by the Treasurer, furnish information to the Authority relating to the financial affairs of the semi-government authority.

Authority and Treasurer may charge fees

22. (1) The Authority or the Treasurer may charge a fee of such amount as the Treasurer thinks fit in respect of any transaction entered into or thing done for the benefit of a semi-government authority or other person in pursuance of this Act.

(2) A fee charged under subsection (1) may be deducted from an amount payable by the Authority or the Treasurer to the semi-government authority or other person charged.

Liability of Authority to State taxes, etc.

23. (1) Subject to this section, the Authority and instruments to which the Authority is a party are liable to all taxes, duties and imposts under the law of the State as if the Authority were not an agency of the Crown.

(2) The Treasurer may, by notice published in the *Gazette*, exempt from a tax, duty or other impost, to the extent specified in the notice, any of the following:

- (a) the Authority;
 - (b) instruments to which the Authority or a semi-government authority is a party;
 - (c) instruments that arise from or are connected with a transaction to which the Authority or a semi-government authority is a party.
- (3) A notice published in the *Gazette* pursuant to this section—
- (a) has effect according to its terms;
- and
- (b) may be varied or revoked by a further such notice.

Evidentiary provision

24. In any legal proceedings, an apparently genuine document purporting to be a certificate under the hand of the chairman of the Authority certifying—

- (a) that a decision is a decision of the Authority made in accordance with this Act;
- or
- (b) that anything done by the Authority has been done pursuant to this Act,

will be accepted as proof of the matters stated in the certificate in the absence of proof to the contrary.

Accounts and audit

25. (1) The Authority must cause proper accounts to be kept of its financial affairs.

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

(3) For the purposes of an audit under subsection (2), the Auditor-General may exercise in relation to the accounts of the Authority and the members and employees of the Authority the powers that are vested in the Auditor-General by the *Audit Act, 1921*, in respect of public accounts and accounting officers.

Annual report

26. (1) The Authority must, on or before the thirtieth day of September in each year, deliver to the Treasurer a report upon the administration of this Act during the period of twelve months ending on the preceding thirtieth day of June.

(2) The report must incorporate the audited statement of accounts of the Authority for the periods to which the report relates.

(3) The Treasurer must cause a copy of the report to be laid before each House of Parliament.

Summary procedure

27. The offences constituted by this Act are summary offences.

Regulations

28. The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.

APPENDIX

LEGISLATIVE HISTORY

(entries in bold type indicate amendments incorporated since the last reprint)

Certain textual alterations were made to this Act by the Commissioner of Statute Revision when preparing the reprint of the Act that incorporated all amendments in force as at 1 April 1987. A schedule of these alterations was laid before Parliament on 31 March 1987

Section 2:	deleted in pursuance of the Acts Republication Act, 1967, as its function is now exhausted
Section 3:	deleted in pursuance of the Acts Republication Act, 1967: <i>see</i> Summary of Provisions
Section 6:	amended by 52, 1986, s. 2
Section 8(1):	substituted by 52, 1986, s. 3(a)
Section 8(5a) and (5b):	inserted by 52, 1986, s. 3(b)
Section 11(1):	amended by 52, 1986, s. 4(a)
Section 11(2):	amended by 52, 1986, s. 4(b)-(g)
Section 11(3):	inserted by 6, 1993, s. 20(a)
Section 11a:	inserted by 6, 1993, s. 20(b)
Section 15(1a):	inserted by 6, 1993, s. 20(c)
Section 16(2):	amended by 52, 1986, s. 5
Section 17:	amended by 52, 1986, s. 6
Section 23(2):	substituted by 52, 1986, s. 7
Section 24:	substituted by 52, 1986, s. 8