

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 8 June 1995.

It should be noted that the Act has not been revised (for obsolete references, etc.) by the Commissioner of Statute Revision since the reprint published 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
State Bank (Corporatisation) Act 1994 No. 17 of 1994 [Assented to 12 May 1994]³
Government Financing Authority (Authority and Advisory Board) Amendment Act 1995 No. 3 of 1995 [Assented to 2 March 1995]⁴

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

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

³ Came into operation 1 July 1994: *Gaz.* 23 June 1994, p. 1784.

⁴ Came into operation 8 June 1995: *Gaz.* 1 June 1995, p. 2528.

NOTE:

- Asterisks indicate repeal or deletion of text.
- For the legislative history of the Act see Appendix 1. Entries appearing in the Appendix in bold type indicate the amendments incorporated since the last reprint.

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 1
PRELIMINARY**

Short title

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

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Interpretation

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

"**the Authority**" means the South Australian Government Financing Authority established under Part 2;

"**the Board**" means the South Australian Government Financing Advisory Board established by Part 3A;

"**loan**" means any form of financial accommodation (not being a grant) and "**lend**" and "**borrow**" have corresponding meanings;

"**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; or

(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;

"**the Under Treasurer**" means the person for the time being holding or acting in the office of Under Treasurer.

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(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).

Note: For definition of divisional penalties (and divisional expiation fees) see Appendix 2.

PART 2
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; and
- (b) is capable in its corporate name of acquiring, holding, dealing with and disposing of real and personal property; and
- (c) is capable of acquiring or incurring any other rights or liabilities, and of suing and being sued; and
- (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 is constituted of the Under Treasurer.

Immunity from liability of Under Treasurer

7. (1) No personal liability attaches to the Under Treasurer for an act or omission by the Under Treasurer or the Authority in good faith in the exercise or performance or the purported exercise or performance of the Under Treasurer's or the Authority's powers, functions or duties under this Act.

(2) A liability that would, but for subsection (1), have attached to the Under Treasurer attaches instead to the Crown.

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**PART 3
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; or

* * * * *

- (c) accept money on deposit or loan from the Treasurer or a semi-government authority; or
- (d) lend or invest money held by the Authority; or
- (e) issue, sell, purchase, pay-off, repurchase, redeem, convert or otherwise deal in or with securities or shares; or
- (f) open and maintain accounts with banks; or
- (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; or
- (h) enter into contracts of guarantee or indemnity; or
- (i) acquire, hold, deal with and dispose of real and personal property; or
- (ia) enter into partnerships and joint ventures and form companies; or
- (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; and
- (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 the Under Treasurer or of any officer, employee or agent of the Authority;
- (c) any procedural irregularity affecting the appointment of an officer, 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.

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(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 authorised by the regulations and such a direction must not be given, in any event, to the Local Government Financing Authority 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*; and
 - (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).

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PART 3A
THE SOUTH AUSTRALIAN GOVERNMENT FINANCING ADVISORY BOARD

Establishment of the Board

18A. The *South Australian Government Financing Advisory Board* is established.

Membership of the Board

18B. (1) The Board consists of five or six members of whom—

- (a) one is the Under Treasurer; and
- (b) the remaining four or five are persons appointed by the Governor (one of whom must be a person employed by a semi-government authority).

(2) At least one member of the Board must be a man and one must be a woman.

(3) The Governor may appoint a suitable person to be the deputy of a member of the board and the deputy may act in the member's place during the member's absence.

(4) A member of the Board who is appointed by the Governor (an "**appointed member**") is appointed for the term (which must not exceed three years) stated in the instrument of appointment and, at the end of the term of appointment, is eligible for re-appointment.

(5) The Governor may remove an appointed member from office if the member—

- (a) is guilty of misconduct or neglect of duty; or
- (b) is incapable of carrying out the duties of his or her office satisfactorily.

(6) An appointed member's office becomes vacant if the member—

- (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) resigns by written notice to the Treasurer; or
- (d) is removed from office under subsection (5).

(7) When an appointed member's office becomes vacant, a person must be appointed to the vacancy if the number of members of the Board is less than five or if there is no member of the Board employed by a semi-government authority.

Allowances and expenses

18C. An appointed member of the Board is entitled to allowances and expenses on a basis decided by the Governor.

Proceedings of the Board

18D. (1) The Under Treasurer must preside at meetings of the Board and in the Under Treasurer's absence his or her deputy must preside.

(2) Four members constitute a quorum for meetings of the Board.

(3) The Board may act despite a vacancy in its membership or the defective appointment of a member.

(4) A decision carried by a majority of the votes cast by the members present at a meeting is a decision of the Board.

(5) Each member present at a meeting has one vote on a matter arising for decision and, if the votes are equal, the person presiding at the meeting may exercise a casting vote.

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

- (a) notice of the conference is given to all members in the manner determined by the Board for that purpose; and
- (b) each participating member is capable of communicating with every other participating member during the conference.

(7) A proposed resolution of the Board becomes a valid decision of the Board despite the fact that it is not voted on at a meeting of the Board if—

- (a) a notice of the proposed resolution is given to all members in accordance with procedures determined by the Board; and
- (b) a majority of the members expresses concurrence in the proposed resolution by letter, telex, facsimile transmission or other written communication setting out the terms of the resolution.

(8) The Board may, subject to this Act, decide its own procedures.

(9) The Board must keep minutes of its proceedings.

Conflict of interest

18E. (1) A member of the Board who has a direct or indirect pecuniary or personal interest in a matter decided or under consideration by the Board—

- (a) must disclose the nature of the interest to the Board; and
- (b) must not take part in any deliberations or decisions of the Board on the matter.

Penalty: Division 6 fine.

(2) It is a defence to a charge of an offence against subsection (1) to prove that the defendant was not, at the time of the alleged offence, aware of his or her interest in the matter.

(3) A disclosure under this section must be recorded in the minutes of the Board.

Immunity from liability of Board members

18F. (1) No personal liability attaches to a member of the Board for an act or omission in good faith in the exercise or performance or the purported exercise or performance of his or her powers, functions or duties under this Act.

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(2) A liability that would, but for subsection (1), have attached to a member of the Board attaches instead to the Crown.

Functions of the Board

18G. (1) The functions of the Board are—

- (a) at the request of the Treasurer or the Authority, to provide advice to the Treasurer or the Authority on any question relating to the exercise by the Authority of its powers, functions or duties under this Act;
- (b) if, in the opinion of the Board, it should provide advice to the Treasurer or the Authority on any matter relating to the exercise by the Authority of its powers, functions or duties under this Act—to provide that advice even though a request has not been made by the Treasurer or the Authority.

(2) The Board must provide its advice to the Treasurer in writing and its advice to the Authority either orally or in writing.

(3) The Board must record its advice in the minutes of its meetings and must give the Treasurer a copy of the minutes that record advice that is to be provided to the Authority but not the Treasurer.

**PART 4
MISCELLANEOUS**

Delegation by the Authority

19. (1) The Authority may, by instrument in writing, delegate to 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 3 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 3 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 3 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.

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(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 Under Treasurer certifying that—

- (a) a particular decision is a decision of the Authority; or
- (b) a thing done by the Authority has been done pursuant to this Act,

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

Records to be kept

24A. (1) The Authority must keep a record of its decisions other than decisions made on its behalf by a delegate.

(2) The record must be certified by the Under Treasurer to be an accurate record.

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 Under Treasurer and the officers 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.

(1a) Subject to subsection (1c), the report must include details of any advice of the Board that the Treasurer or Authority has decided not to follow and the Treasurer's or Authority's reasons for that decision.

(1b) If the Treasurer decides not to follow the Board's advice, he or she must give the Authority details of the advice and the reasons for the decision so that the Authority can include them in the report.

(1c) The Authority is not bound to comply with subsection (1a) if, in its opinion, the advice of the Board or the reasons for not following the advice should remain confidential for commercial reasons.

(1d) If the Authority relies on subsection (1c) when preparing a report it must state in the report that advice was given by the Board but not followed and that the Authority relies on subsection (1c) in not including details of the advice or the reasons in the report.

(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.

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APPENDIX 1**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 <i>Acts Republication Act 1967</i> as its function is now exhausted
Section 3:	deleted in pursuance of the <i>Acts Republication Act 1967</i>
Section 4(1):	definition of "appointed member" repealed by 3, 1995, s. 3(a) definition of "the Board" inserted by 3, 1995, s. 3(b) definition of "the Under Treasurer" inserted by 3, 1995, s. 3(c)
Section 6:	amended by 52, 1986, s. 2; substituted by 3, 1995, s. 4
Section 7:	substituted by 3, 1995, s. 4
Section 8:	amended by 52, 1986, s. 3; repealed by 3, 1995, s. 4
Sections 9 and 10:	repealed by 3, 1995, s. 4
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 11A(1):	amended by 3, 1995, s. 5
Section 15(1a):	inserted by 6, 1993, s. 20(c)
Section 16(2):	amended by 52, 1986, s. 5; 17, 1994, Sched. 4 cl. 2
Section 17:	amended by 52, 1986, s. 6
	Part 3A comprising ss. 18A - 18G and heading inserted by 3, 1995, s. 6
Section 19(1):	amended by 3, 1995, s. 7
Section 23(2):	substituted by 52, 1986, s. 7
Section 24:	substituted by 52, 1986, s. 8; 3, 1995, s. 8
Section 24A:	inserted by 3, 1995, s. 9
Section 25(3):	amended by 3, 1995, s. 10
Section 26(1a) - (1d):	inserted by 3, 1995, s. 11

APPENDIX 2

DIVISIONAL PENALTIES AND EXPIATION FEES

At the date of publication of this reprint divisional penalties and expiation fees are, as provided by section 28A of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	-	\$500	\$100
10	-	\$200	\$75
11	-	\$100	\$50
12	-	\$50	\$25