

South Australia

# South Australian Local Government Grants Commission Act 1992

An Act to provide for the continued existence of the South Australian Local Government Grants Commission; to provide for the exercise and performance by it of its powers and functions; and for other purposes.

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

## Part 1—Preliminary

### 1—Short title

This Act may be cited as the *South Australian Local Government Grants Commission Act 1992*.

### 4—Interpretation

In this Act, unless the contrary intention appears—

**the Account** means the South Australian Local Government Grants Commission Account continued in existence under section 5 of this Act;

**area** means the area in relation to which a council is constituted;

**the Commission** means the South Australian Local Government Grants Commission continued in existence under section 8 of this Act;

**the Commonwealth Act** means the *Local Government (Financial Assistance) Act 1986* of the Commonwealth as amended and in force for the time being (and includes an Act (if any) passed in substitution for that Act);

**Commonwealth funds** means any amount received under the Commonwealth Act in respect of allocations that have been approved under that Act;

**council** means a council under the *Local Government Act 1934* and includes any person or body (not being a person or body exercising any powers within the area of a council as defined for the purposes of that Act) prescribed as a council for the purposes of this Act;

**grant** means a grant payable under this Act;

**member** means a member of the Commission.

#### Note—

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

## Part 2—The Account

### 5—The Account

- (1) The *South Australian Local Government Grants Commission Account*, established at Treasury, continues in existence.
- (2) The Account will consist of—
  - (a) amounts received from the Government of the Commonwealth for the purposes of this Act;
  - (b) such amounts as are appropriated by the Parliament for the purposes of this Act;

- (c) any income and accretions produced by the investment of money from the Account;
  - (d) any other money received by the Commission for the purposes of this Act;
  - (e) amounts paid into the Account for the purposes of the Commission's functions under any other Act.
- (3) The Account may be applied towards—
- (a) payments to councils under this Act;
  - (b) administrative costs and other expenses related to the administration of this Act or the performance of the Commission's functions under any other Act.
- (4) The Treasurer may, after consultation with the Commission, invest money that is not immediately required for the purposes of the Account.

### **6—Available moneys**

The Minister must, after consultation with the Commission, as soon as practicable after the commencement of each financial year, by notice in the Gazette, specify the total amount that will be available from the Account for payment of grants under this Act.

### **7—Payment of amounts**

When Commonwealth funds are paid into the Account, the Commission must ensure that appropriate payments are made without undue delay from the Account to councils in accordance with any relevant approval obtained under the Commonwealth Act.

## **Part 3—The Commission**

### **8—Establishment of Commission**

- (1) The South Australian Local Government Grants Commission continues in existence.
- (2) The Commission consists of the following members appointed by the Governor—
  - (a) a member nominated jointly by the Minister and the Local Government Association of South Australia to be the presiding member of the Commission; and
  - (b) a member nominated by the Minister; and
  - (c) a member nominated by the Local Government Association of South Australia.

### **9—Conditions of membership**

- (1) A member of the Commission will be appointed on such conditions and for such term, not exceeding five years, as the Governor may determine and on the expiration of a 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 Commission and that person may, in the absence of that member from the duties of office, act as a member of the Commission.
- (3) The provisions of this Act relating to nomination of a member of the Commission extend to the appointment of a deputy of that member.

- (4) The Governor may remove a member of the Commission from office if the member—
  - (a) contravenes, or does not comply with, a condition of appointment; or
  - (b) becomes mentally or physically incapable of carrying out satisfactorily the duties of office; or
  - (c) is guilty of neglect of duty or dishonourable conduct; or
  - (d) is absent, without leave of the Commission, from three or more consecutive meetings of the Commission.
- (5) The office of a member of the Commission becomes vacant if the member—
  - (a) dies; or
  - (b) completes a term of office and is not reappointed; or
  - (c) resigns by written notice addressed to the Minister; or
  - (d) is removed from office by the Governor pursuant to subsection (4).
- (6) On the office of a member of the Commission becoming vacant, a person must be appointed in accordance with this Act to the vacant office.

## **10—Remuneration and expenses**

The members of the Commission (and any deputy) are entitled to such fees, allowances and expenses as the Governor may approve.

## **11—Proceedings of the Commission**

- (1) The presiding member of the Commission will, if present at a meeting of the Commission, preside at the meeting and in the absence of that member a member chosen by those present will preside.
- (2) Two members constitute a quorum of the Commission and no business may be transacted at a meeting of the Commission unless a quorum is present.
- (3) Each member present at a meeting of the Commission is entitled to one vote on a matter arising for decision at the meeting and the person presiding at the meeting has, in the event of an equality of votes, a second or casting vote.
- (4) A decision carried by a majority of the votes cast by the members present at a meeting of the Commission is a decision of the Commission.
- (5) The Commission must cause minutes to be kept of its proceedings.
- (6) Subject to this Act, the proceedings of the Commission may be conducted as it thinks fit.

## **12—Validity of acts of Commission**

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

### **13—Misuse of confidential information**

A member of the Commission must not use confidential information gained by virtue of the member's official position for the purpose of securing a private benefit for the member personally or for some other person.

Penalty: Division 5 fine or division 5 imprisonment.

### **14—Staff**

- (1) The Commission will have such staff (comprised of persons employed in the Public Service of the State) as is necessary for the purposes of the performance of the Commission's functions under this and any other Act.
- (2) The Commission may, by arrangement with the appropriate authority, make use of the services, facilities or employees of a government department, agency or instrumentality.

### **15—Functions of Commission**

- (1) The functions of the Commission are as follows:
  - (a) to make recommendations to the Minister as to the amounts that should be paid to councils by way of grants under this Act;
  - (b) to perform other functions assigned to the Commission by or under this or any other Act or by the Minister.
- (2) The Commission will have the power to do all things necessary or expedient for the efficient and proper performance of the Commission's functions.

### **16—Inquiries and investigations**

- (1) In the exercise of its functions the Commission may hold such inquiries and make such investigations as it considers necessary.
- (2) For the purpose of an inquiry the Commission has and may exercise the powers of a commission as defined in the *Royal Commissions Act 1917* and that Act will apply and have effect in all respects, as if—
  - (a) the Commission were a commission as so defined; and
  - (b) the subject matter of the inquiry were set out in a commission of inquiry issued by the Governor under his or her hand and the public seal of the State.
- (3) Subsection (2) does not prevent the Commission from inquiring into any matter in such other manner as it sees fit.

### **17—Principles to be applied by the Commission**

- (1) The Commission must, when formulating a recommendation to the Minister as to the amounts that should be paid to councils by way of grants under this Act—
  - (a) ensure that the total amount of grants recommended in any financial year equals the total amount specified under section 6 for that financial year; and
  - (b) ensure that the recommended allocation of amounts to councils accords with principles formulated by the State for the purposes of the Commonwealth Act; and
  - (c) comply with any relevant provision of the Commonwealth Act.

- (2) The Commission may, in relation to a particular council, take into account any special needs of, or problems experienced by, that council.
- (3) The Commission must forward any recommendation to the Minister as soon as practicable after completing its formulation of the recommendation.

## **18—Consideration of recommendations**

- (1) On receipt of a recommendation of the Commission, the Minister may—
  - (a) approve the recommendation; or
  - (b) refer the recommendation back to the Commission with a request to the Commission to consider such matters and take such other steps as are specified in the direction either in relation to the whole or any part of the recommendation.
- (2) A request under subsection (1)(b) must contain a statement of the reasons for the request.
- (3) The Commission must, after considering the request under subsection (1)(b), reconsider its recommendation in view of that request and make such amendments, if any, to its recommendation as it appears necessary or desirable.
- (4) The Commission must then resubmit its recommendation with or without amendment to the Minister and the Minister must thereupon approve the recommendation.

## **Part 4—Councils**

### **19—Information to be supplied to Commission**

- (1) The Commission must in respect of each financial year, by notice in writing to each council, require that council within the time specified in the notice to provide the Commission with such information as to the affairs of the council in such form as is specified in the notice.
- (2) The Commission may from time to time, by notice in writing, require a council within the time specified in the notice to provide the Commission with such further or other information as to the affairs of the council in such form as is specified in the notice.
- (3) Subject to any relevant provision of the Commonwealth Act or an instrument under that Act, if a council fails to comply with a requirement under subsection (1) or (2) in relation to a financial year, the Commission is not bound to make a recommendation as to the payment of a grant to that council.

## **Part 5—Miscellaneous**

### **20—Financial report**

- (1) The Minister may, either on his or her own initiative or at the request of the Local Government Association of South Australia, refer to the Commission for inquiry and report any matter relating to local government finance.
- (2) The Commission must comply with such a request as soon as it is reasonably practicable after it is made.

## **21—Reports**

- (1) The Commission must, on or before 30 September in each year, submit a report to the Minister on the activities of the Commission during the previous financial year.
- (2) The Minister must, within 12 sitting days after receipt of a report under subsection (1), cause copies of that report to be laid before each House of Parliament.

## **22—Statement of payments to be furnished**

As soon as practicable after the end of the financial year, the Minister must furnish to the Treasurer of the Commonwealth—

- (a) a statement, in accordance with a form approved by the Treasurer, specifying the payments made by the State during that financial year in accordance with the Commonwealth Act and the dates of those payments; and
- (b) a certificate by the Auditor-General certifying that, in the opinion of the Auditor-General, the contents of the statement are correct.

## **23—Regulations**

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

## **24—Transitional provision**

The members of the Commission holding office immediately before the commencement of this Act will continue to hold office for the balance of their respective terms.

## 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 repealed by principal Act

The *South Australian Local Government Grants Commission Act 1992* repealed the following:

*South Australian Local Government Grants Commission Act 1976*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1992	30	<i>South Australian Local Government Grants Commission Act 1992</i>	21.5.1992	4.6.1992 ( <i>Gazette</i> 4.6.1992 p1598)
2009	84	<i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>	10.12.2009	Pt 139 (s 318)—1.2.2010 ( <i>Gazette</i> 28.1.2010 p320)
2017	32	<i>Local Government (Boundary Adjustment) Amendment Act 2017</i>	22.8.2017	Sch 1 (cll 1—3)—1.1.2019 ( <i>Gazette</i> 7.11.2017 p4514)
<b>2021</b>	<b>26</b>	<b><i>Statutes Amendment (Local Government Review) Act 2021</i></b>	<b>17.6.2021</b>	<b>Pt 10 (s 207)—20.9.2021 (<i>Gazette</i> 16.9.2021 p3548)</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>	1.2.2010
Pt 1		
<i>ss 2 and 3</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>1.2.2010</i>
Pt 2		
s 5		
s 5(2)	amended by 32/2017 Sch 1 cl 1(1)	1.1.2019
s 5(3)	amended by 32/2017 Sch 1 cl 1(2)	1.1.2019
Pt 3		

s 12		
s 12(2) and (3)	deleted by 84/2009 s 318	1.2.2010
s 14		
s 14(1)	amended by 32/2017 Sch 1 cl 2	1.1.2019
s 15		
s 15(1)	amended by 32/2017 Sch 1 cl 3	1.1.2019
<b>Pt 4</b>		
<b>s 19</b>		
s 19(3)	amended by 26/2021 s 207	20.9.2021

## Historical versions

1.2.2010

1.1.2019

## Appendix—Divisional penalties and expiation fees

At the date of publication of this version 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

*Note: This appendix is provided for convenience of reference only.*