

(Reprint No. 1)

SOUTH AUSTRALIA

**SOUTH AUSTRALIAN OFFICE OF FINANCIAL SUPERVISION
ACT 1992**

This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 1 December 1994.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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SOUTH AUSTRALIAN OFFICE OF FINANCIAL SUPERVISION ACT 1992

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South Australian Office of Financial Supervision Act 1992
No. 21 of 1992 [Assented to 14 May 1992]¹

as amended by

South Australian Office of Financial Supervision (Register of Financial Interests) Amendment Act 1994
No. 61 of 1994 [Assented to 27 October 1994]²

¹ Came into operation 1 July 1992: *Gaz.* 25 June 1992, p. 1883.

² Came into operation 1 December 1994: *Gaz.* 17 November 1994, p. 1514.

NOTE:

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

An Act to establish the South Australian Office of Financial Supervision.

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *South Australian Office of Financial Supervision Act 1992*.

Commencement

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

Definitions

3. In this Act—

"**Board**" means the management board of SAOFS;

"**chief executive officer**" means the chief executive officer of SAOFS;

"**employee**" in relation to SAOFS, includes—

(a) a person whose services are made available to SAOFS; and

(b) a person engaged by SAOFS under a contract of service;

"**member**" means a member of the Board;

"**presiding member**" means the member appointed to preside at meetings of the Board or, if that member is absent or unavailable, that member's deputy;

"**SAOFS**" means the South Australian Office of Financial Supervision.

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

Interpretation—words, etc., used in Financial Institutions (South Australia) Code

4. Unless the contrary intention appears, words and expressions used in the Financial Institutions (South Australia) Code have the same respective meanings in this Act.

**PART 2
SAOFS AND ITS BOARD**

**DIVISION 1—ESTABLISHMENT AND GENERAL FUNCTIONS AND
POWERS OF SAOFS**

Establishment of SAOFS

5. (1) A body called the South Australian Office of Financial Supervision (SAOFS) is established.

(2) SAOFS is a body corporate.

Functions

6. SAOFS—

- (a) is the State Supervisory Authority for the purposes of the financial institutions legislation; and
- (b) is to carry out the functions conferred on it by the financial institutions legislation and this Act.

General powers

7. (1) SAOFS has power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions.

(2) Without limiting subsection (1), SAOFS has such powers as are conferred on it by or under the financial institutions legislation.

SAOFS independent body

8. Except as expressly provided in the financial institutions legislation or this Act, SAOFS is not subject to direction by the Minister or the Ministerial Council.

SAOFS to comply with financial institutions agreement, etc.

9. In performing its functions and exercising its powers, SAOFS must—

- (a) comply with any applicable provisions of the financial institutions agreement; and
- (b) strive to ensure that the principal objects of the financial institutions scheme are achieved.

SAOFS does not represent Crown

10. SAOFS does not represent the Crown.

SAOFS exempt public authority under Corporations Law

11. SAOFS is an exempt public authority for the purposes of the Corporations Law.

DIVISION 2—ESTABLISHMENT AND COMPOSITION OF SAOFS'S BOARD

The Board

12. There is to be a management board of SAOFS.

Role of the Board

13. It is the role of the Board to ensure that SAOFS performs its functions in a proper and efficient way.

Composition of the Board

14. (1) The Board consists of not less than four nor more than five members appointed by the Governor on the nomination of the Minister.

(2) One member of the Board must be a person employed under the *Government Management and Employment Act 1985* and there may not be more than one such member.

(3) The Minister must, before nominating a person for appointment as a member of the Board, consult with industry bodies in relation to the proposed nomination.

(4) One member of the Board is to be appointed by the Governor to preside at meetings of the Board and another may be appointed by the Governor to be that member's deputy.

Restriction on appointments

15. A person who holds an office or appointment with a financial institution must not be appointed as a member.

Government Management and Employment Act not to apply

16. The *Government Management and Employment Act 1985* does not apply to the appointment of a member.

Appointment not invalid because of appointment defect, etc.

17. (1) A member holds office, subject to this Act, for such term (not longer than three years) as is specified in the instrument of appointment.

(2) An appointment of a member is not invalidated by a defect or irregularity in the appointment.

Terms and conditions of appointment

18. (1) A member is to be paid such remuneration and allowances as are determined by the Governor.

(2) A member holds office on such terms and conditions as are determined by the Governor.

(3) The remuneration and allowances are to be paid out of the Supervision Fund.

Leave of absence

19. The Board may grant leave of absence to a member on such terms and conditions as the Board, subject to any determination of the Minister, considers appropriate.

Resignation

20. A member may resign by written notice to the Governor.

Termination of appointment

21. The Governor may terminate the appointment of a member if the member—

(a) is guilty of misbehaviour; or

(b) is, in the opinion of the Governor, physically or mentally incapable of continuing as a member; or

(c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or

- (d) contravenes this Act without reasonable excuse; or
- (e) is absent, without the Board's leave and without reasonable excuse, from three consecutive meetings of the Board; or
- (f) accepts an office or appointment with a financial institution.

Acting appointments

22. The Governor may, on the nomination of the Minister, appoint a person to act as a member of the Board—

- (a) during a vacancy in the office of a member; or
- (b) during any period, or all periods, when a member is absent from duty or from Australia or is, for any other reason, unable to perform the functions of the office.

DIVISION 3—MEETINGS OF THE BOARD

Times and places of meetings

23. (1) Subject to subsection (2), meetings of the Board are to be held at such times and places as the Board determines.

(2) The member appointed to preside—

- (a) may at any time convene a meeting; and
- (b) must convene a meeting when requested by at least two other members of the Board.

Presiding at meetings

24. (1) The member appointed to preside must preside at all meetings of the Board at which that member is present.

(2) If the member appointed to preside is absent from a meeting of the Board—

- (a) the member (if any) appointed as that member's deputy must, if present, preside; and
- (b) in any other case—a member chosen by the members present at the meeting must preside.

Quorum and voting at meetings

25. (1) At a meeting of the Board—

- (a) subject to subsection (2), three members constitute a quorum; and
- (b) a question is to be decided by a majority of votes of the members present and voting; and
- (c) the member presiding has a deliberative vote and, if there is an equality of votes, also has a casting vote.

(2) If, because of section 29(2) (Disclosure of interests), a member is not present at a meeting of the Board during a deliberation of the Board in relation to a matter, but there would be a quorum if the member were present, the remaining members present constitute a quorum for the purpose of any deliberation or decision of the Board at the meeting in relation to the matter.

Conduct of meetings

26. (1) The Board may, subject to this Division, regulate its proceedings as it considers appropriate.

(2) Without limiting subsection (1), the Board may permit members to participate in a particular meeting, or all meetings, by—

- (a) telephone; or
- (b) closed-circuit television; or
- (c) any other means of communication.

(3) A member who participates in a meeting of the Board under a permission under subsection (2) is taken to be present at the meeting.

(4) Without limiting subsection (1), the Board may invite a person to attend a meeting for the purpose of advising or informing it on any matter.

Resolutions without meetings

27. (1) If—

- (a) notice of a proposed resolution of the Board is given to all members of the Board; and
- (b) at least three members of the Board sign a document stating that they are in favour of the proposed resolution,

a resolution in those terms will be taken to have been passed at a meeting of the Board on the day the document is signed, or if the members do not sign on the same day, on the day the document is last signed by a member of the Board.

(2) For the purposes of subsection (1), two or more separate documents containing a statement in identical terms, each of which is signed by one or more members, is taken to constitute one document.

Minutes

28. The Board must keep minutes of its proceedings.

Disclosure of interests

29. (1) If—

- (a) a member has a direct or indirect personal or pecuniary interest in a matter being considered, or about to be considered, by the Board; and
- (b) the interest could conflict with the proper performance of the member's duties in relation to consideration of the matter,

the member must, as soon as practicable after the relevant facts come to the member's knowledge, disclose the nature of the interest to a meeting of the Board.

(2) A disclosure under subsection (1) must be recorded in the minutes of the meeting and, unless the Board otherwise determines, the member must not—

- (a) be present during any deliberation of the Board in relation to the matter; or

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(b) take part in any decision of the Board in relation to the matter.

(3) For the purpose of the making of a determination by the Board under subsection (2) in relation to a member who has made a disclosure under subsection (1), a member who has a direct or indirect personal or pecuniary interest in the matter to which the disclosure relates must not—

(a) be present during any deliberation of the Board for the purpose of making the determination; or

(b) take part in the making by the Board of the determination.

**PART 3
THE STAFF OF SAOFS**

SAOFS's employees

30. (1) SAOFS may engage such employees as it considers necessary for the performance of its functions.

(2) A person is to be employed as SAOFS's chief executive officer.

(3) The chief executive officer is responsible to the presiding member of the Board for managing the administrative affairs of the Board.

Terms and conditions of employment

31. (1) Subject to any relevant award or industrial agreement, the terms and conditions of employment of SAOFS's employees are as determined by the Minister.

(2) The *Government Management and Employment Act 1985* does not apply to SAOFS or its employees.

(3) In this section—

"terms and conditions of employment" includes terms and conditions relating to duration of employment and termination of employment.

Arrangements relating to staff

32. (1) SAOFS may, with the Minister's approval, arrange with the chief executive of a department, administrative unit or statutory authority, for the services of officers or employees of the department, administrative unit or authority to be made available to it.

(2) SAOFS may, with the Minister's approval, arrange with the appropriate authority of the Commonwealth or another State, for the services of officers or employees of the public service of the Commonwealth or State, or of the authority, to be made available to it.

(3) SAOFS may, with the Minister's approval, arrange for the services of an employee of SAOFS to be made available to the Commonwealth or a State or to an authority of the Commonwealth or a State.

**PART 4
MISCELLANEOUS**

Register of financial interests of members and employees

33. (1) In this section—

"Register" means the register of financial interests in financial institutions maintained under subsection (5);

"relevant particulars" of a financial interest in a financial institution for inclusion in a statement under this section means—

- (a) the name of the person in whose name the interest is held and, if that person is not the person by whom the statement is given, details of the relationship between them; and
- (b) the nature of the financial interest; and
- (c) the name of the financial institution; and
- (d) if the financial interest consists of securities issued by a financial institution—
 - (i) the nominal value of the securities; and
 - (ii) the nature and number of the securities and, where the securities are marketable securities, the market value of the securities at the time of delivery of the written statement; and
- (e) if the financial interest consists of a deposit with a financial institution—
 - (i) the amount of the deposit; and
 - (ii) details of the terms of the deposit; and
- (f) if the financial interest consists of a liability under a loan or other financial accommodation from a financial institution—
 - (i) the amount of the outstanding liability to the financial institution; and
 - (ii) details of the terms of the loan or financial accommodation; and
- (g) if the financial interest consists of membership of a financial institution—details of the membership; and
- (h) any other information prescribed by regulation;

"SAOFS officer" means—

- (a) a member of SAOFS; or
- (b) the chief executive officer; or
- (c) an employee of SAOFS;

"spouse" includes putative spouse (whether or not a declaration of the relationship has been made under the *Family Relationships Act 1975*).

(2) For the purposes of this Act, each of the following is an **associate** of a person:

- (a) the person's spouse; or
- (b) a parent or child of the person or the person's spouse where the parent or child lives with the person on a genuine domestic basis; or
- (c) a trustee of a trust of which the person is a beneficiary, in his or her capacity as the trustee of that trust; or
- (d) a body corporate (whether inside or outside Australia) of which the person holds, or associates of the person, or the person together with associates, hold a legal or equitable interest in more than 20 per cent of the issued share capital; or
- (e) a body corporate (whether inside or outside Australia) that is, or the directors of which are, accustomed or under an obligation (formal or informal) to act in accordance with the person's directions, instructions or wishes; or
- (f) where a relationship or chain of relationships can be traced under any one or more of paragraphs (c), (d) or (e) between a trustee or a body corporate and—
 - (i) the person; or
 - (ii) the person's spouse; or
 - (iii) a parent or child of the person or the person's spouse where the parent or child lives with the person on a genuine domestic basis,

the trustee or body corporate.

(3) For the purposes of subsection (2), a **beneficiary** of a trust includes an object of a discretionary trust.

(4) A person holds a financial interest in a financial institution if the person or an associate of the person—

- (a) owns securities of a financial institution; or
- (b) has money on deposit with a financial institution; or
- (c) has a liability to a financial institution because of a loan or financial accommodation granted by the financial institution; or
- (d) is a member of a financial institution.

(5) SAOFS must maintain a register of financial interests of SAOFS officers in financial institutions.

(6) SAOFS must appoint one of its employees (the "**Registrar**") to be responsible for maintaining the Register.

(7) A person who becomes a SAOFS officer must, within 14 days, give the Registrar a written statement setting out—

- (a) the date on which he or she became a SAOFS officer (the "relevant date"); and
- (b) the relevant particulars of financial interests held by the officer in financial institutions on the relevant date; and
- (c) if the officer held no financial interest in a financial institution on the relevant date—a statement to that effect.

Penalty: Division 7 fine.

(8) A SAOFS officer who acquires or ceases to hold a financial interest in a financial institution must, within 14 days, give the Registrar a written statement setting out—

- (a) the date on which the officer acquired or ceased to hold the interest; and
- (b) the relevant particulars of the interest.

Penalty: Division 7 fine.

(9) A SAOFS officer must, within 14 days after 31 March and 30 September in each year (the "half-yearly reporting dates"), give the Registrar a written statement setting out—

- (a) the relevant particulars of financial interests held by the officer in financial institutions on the relevant half-yearly reporting date; or
- (b) if the officer held no financial interest in a financial institution on the relevant half-yearly reporting date—a declaration to that effect.

Penalty: Division 7 fine.

(10) It is a defence to a charge of an offence against subsection (7), (8) or (9) for the defendant to prove—

- (a) that the act or omission alleged to constitute the offence arose out of a lack of knowledge of, or a mistaken belief about, the existence or particulars of a financial interest; or
- (b) that, in giving the relevant particulars of a financial interest, the defendant overstated the extent of the financial interest.

(11) The Registrar must, on receipt of a statement under this section, include the statement in the Register.

(12) SAOFS must keep the Register at its principal office and must allow members of the public to inspect the Register during normal business hours without fee.

Members and employees to act honestly, etc.

34. (1) This section applies to a member, or an employee of SAOFS.

(2) A person to whom this section applies who, in the course of his or her official duties, is required to consider any matter concerning—

- (a) a person or body with whom that person is associated; or
- (b) a person or body by whom that person is employed or has been employed at any time during the previous three years, or a related body,

must immediately inform SAOFS of that fact in writing.

Maximum penalty—\$2 000.

(3) A person to whom this section applies must at all times act honestly in the exercise of official powers and functions.

Maximum penalty—\$2 000.

(4) A person to whom this section applies must not make improper use of an office held for the purposes of this Act or the financial institutions legislation—

- (a) to gain, directly or indirectly, an advantage for himself, herself or any other person; or
- (b) to cause detriment to SAOFS or a financial institution.

Maximum penalty—\$10 000, imprisonment for two years or both.

(5) A person to whom this section applies, or a person who was formerly one to whom this section applies, must not make improper use of information acquired by virtue of an office held for the purposes of this Act or the financial institutions legislation—

- (a) to gain, directly or indirectly, an advantage for himself, herself or any other person; or
- (b) to cause detriment to SAOFS or a financial institution.

Maximum penalty—\$10 000, imprisonment for two years or both.

(6) It is a defence to a contravention of subsection (2) if the defendant establishes that, when required to consider the matter to which the contravention relates, he or she was not aware of the fact the existence of which obliged him or her to inform SAOFS.

(7) The question whether a person is associated with another person or a body for the purposes of this section is to be determined as prescribed.

Liability of members

35. (1) A member incurs no liability for an honest act or omission in the performance or purported performance of functions, or exercise of powers, under this Act.

(2) A liability that would, but for this section, attach to a member attaches to SAOFS.

(3) This section does not apply to—

- (a) wilful misconduct; or
- (b) wilful neglect; or
- (c) wilful failure to comply with this Act.

Liability of staff

36. (1) An employee of SAOFS incurs no liability for an honest act or omission in the course of the employee's employment.

(2) A liability that would but for this section, attach to an employee of SAOFS attaches to SAOFS.

(3) This section does not apply to—

- (a) wilful misconduct; or
- (b) wilful neglect; or
- (c) wilful failure to comply with this Act.

SAOFS's seal

37. (1) SAOFS's seal is to be kept in such custody as the Board directs and may be used only as authorised by the Board.

(2) Judicial notice must be taken of the imprint of SAOFS's seal appearing on a document and the document must be presumed to have been properly sealed unless the contrary is proved.

Judicial notice of certain signatures

38. Judicial notice must be taken of—

- (a) the signature of a member of the Board or the chief executive officer, in his or her official capacity; and
- (b) the fact that the signatory holds or has held the office concerned.

Delegation of SAOFS's powers

39. (1) Subject to subsection (2), SAOFS may, by resolution of the Board, delegate its powers under or in relation to the financial institutions legislation to—

- (a) a member; or
- (b) the chief executive officer; or
- (c) any other employee of SAOFS; or
- (d) with the Minister's approval—
 - (i) the SSA of another participating State that, under the law of that State, is authorised to accept the delegation; or
 - (ii) a department or administrative unit of the Public Service or an officer or employee of such a department or administrative unit; or
 - (iii) any other person.

(2) The powers under section 95 (Supervision levy) of the Financial Institutions (South Australia) Code may not be delegated.

(3) A certificate signed by a member of the Board stating any matter in relation to a delegation of a power under subsection (1) is evidence of the matter.

(4) A document purporting to be a certificate under subsection (3) is, unless the contrary is established, taken to be such a certificate and to have been properly given.

SAOFS may act as delegate

40. SAOFS may, with the Minister's approval, act as the delegate of the SSA of another participating State in relation to the SSA's powers under or in relation to the financial institutions legislation.

Accounts and audit

41. (1) SAOFS must keep proper accounting records so as to enable—

- (a) the preparation from time to time of accounts presenting fairly the results of SAOFS's operations (including operations affecting the Supervision Fund or the Contingency Fund); and
- (b) the accounts to be conveniently and properly audited.

(2) Annual accounts must be prepared in respect of each financial year on the basis of those accounting records.

(3) In preparing its accounts, SAOFS—

- (a) must comply with any requirements prescribed by the regulations; and
- (b) must have regard to accounting standards published by the Australian Accounting Standards Board.

(4) The annual accounts must be audited by the Auditor-General and the Auditor-General may at any other time conduct an audit of SAOFS's operations.

(5) A reference in this section to accounts includes an account of receipts and payments, an account of income and expenditure, and a balance sheet, together with statements, reports and notes attached to, and intended to be read with, the accounts.

Annual report

42. (1) SAOFS must, on or before 31 October in each year, submit to the Minister a report on the administration of the financial institutions legislation in this State during the financial year ending on the preceding 30 June.

(2) The report must include the audited accounts for that financial year.

(3) The Minister must, within six sitting days after receiving the report, cause copies to be laid before each House.

Regulations

43. The Governor may make regulations for the purposes of this Act.

APPENDIX 1

LEGISLATIVE HISTORY

Transitional Provisions

(Transitional provision from South Australian Office of Financial Supervision (Register of Financial Interests) Amendment Act 1994, s. 4)

4. A person who is, on the commencement of this Act, a member, chief executive officer or an employee of SAOFS will, for the purposes of section 33(7) of the principal Act, be taken to have become a SAOFS officer on the day on which this Act commences.

Legislative History

Section 33:

substituted by 61, 1994, s. 3

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

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