

SOUTH AUSTRALIA

SOUTH AUSTRALIAN TOURISM COMMISSION ACT 1993

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SOUTH AUSTRALIAN TOURISM COMMISSION ACT 1993

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South Australian Tourism Commission Act 1993 No. 26 of 1993
[Assented to 29 April 1993]¹

¹ Came into operation 1 July 1993: *Gaz.* 27 May 1993, p. 1753.

N.B. The amendments effected to this Act by the *Financial Sector Reform (South Australia) Act 1999* have not been brought into operation.

An Act to promote tourism and the tourism industry in the State; to establish the South Australian Tourism Commission; 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 *South Australian Tourism Commission Act 1993*.

Commencement

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

Object

3. The object of this Act is to establish a statutory corporation to assist in securing economic and social benefits for the people of South Australia through—

- (a) the promotion of South Australia as a tourist destination; and
- (b) the further development and improvement of the State's tourism industry.

Interpretation

4. In this Act, unless the contrary intention appears—

"**board**" means the board of directors established as the governing body of the Commission under Part 2;

"**Commission**" means the *South Australian Tourism Commission* established under Part 2;

"**CEO**" means the Chief Executive Officer of the Commission;

"**director**" means a person appointed or holding office as a member of the board under Part 2.

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

3.

PART 2
SOUTH AUSTRALIAN TOURISM COMMISSION

DIVISION 1—ESTABLISHMENT OF COMMISSION

Establishment of Commission

5. (1) The *South Australian Tourism Commission* is established.

(2) The Commission—

(a) is a body corporate; and

(b) has perpetual succession and a common seal; and

(c) is capable of suing and being sued in its corporate name; and

(d) has the functions and powers assigned or conferred by or under this Act.

(3) The Commission is an instrumentality of the Crown and holds its property on behalf of the Crown.

DIVISION 2—BOARD

Board to be governing body of Commission

6. (1) A board of directors is established as the governing body of the Commission.

(2) Anything done by the board in the administration of the Commission's affairs is binding on the Commission.

Ministerial control

7. (1) The board is subject to control and direction by the Minister.

(2) No Ministerial direction can be given to suppress information or recommendations from a report by the Commission under this Act.

(3) The board must, in relation to each financial year, enter into a performance agreement with the Minister setting performance targets for the Commission that the board is to pursue in that financial year.

(4) A Ministerial direction given during a particular financial year and the performance agreement for a particular financial year must be published in the report of the Commission for that financial year.

DIVISION 3—CHIEF EXECUTIVE OFFICER

Chief Executive Officer

8. (1) The office of Chief Executive Officer (*CEO*) of the Commission is established.

(2) The CEO is, subject to the control and direction of the board, responsible for—

(a) managing the staff and resources of the Commission; and

4.

(b) giving effect to the policies and decisions of the board.

(3) The CEO is to be appointed by the Governor, on the recommendation of the Minister and the board, on terms and conditions determined by the Governor.

DIVISION 4—BOARD'S MEMBERSHIP AND PROCEDURES

Composition of board

9. (1) The board is to consist of not less than 7 and not more than 10 directors.

(2) The CEO is to be a director *ex officio* and the remaining directors are to be appointed by the Governor.

(3) The board's membership must include persons who have, in the Minister's opinion, appropriate expertise in the operation of tourism businesses, regional tourism, business and financial management, marketing, environmental management and industrial relations.

(4) At least two directors must be women and at least two must be men.

(5) One director will be appointed by the Governor to chair meetings of the board.

(6) The Governor may appoint a person to be the deputy of a director, and a person so appointed may act as a director in the absence of that director.

Conditions of membership

10. (1) A director (other than the CEO) will be appointed for a term, not exceeding three years, specified in the instrument of appointment and, at the expiration of a term of appointment, will be eligible for reappointment.

(2) The Governor may remove a director (other than the CEO) from office—

(a) for misconduct; or

(b) for failure or incapacity to carry out the duties of his or her office satisfactorily; or

(c) if serious irregularities have occurred in the conduct of the Commission's affairs or the board has failed to carry out its functions satisfactorily and the board's membership should, in the opinion of the Governor, be reconstituted for that reason.

(3) The office of a director (other than the CEO) becomes vacant if the director—

(a) dies; or

(b) completes a term of office and is not reappointed; or

(c) resigns by written notice to the Minister; or

(d) is convicted of an indictable offence; or

(e) is removed from office under subsection (2).

Vacancies or defects in appointment of directors

11. An act of the board is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a director.

Remuneration

12. A director is entitled to such remuneration, allowances and expenses as may be determined by the Governor.

Proceedings

13. (1) A quorum of the board consists of one half the total number of its members (ignoring any fraction resulting from the division) plus one.

(2) The director appointed to chair meetings of the board will preside at meetings of the board or, in the absence of that director, a director chosen to preside by those present.

(3) A decision carried by a majority of the votes cast by directors at a meeting is a decision of the board.

(4) Each director present at a meeting of the board has one vote on any question arising for decision and, if the votes are equal, the director presiding at the meeting may exercise a casting vote.

(5) A telephone or video conference between directors will, for the purposes of this section, be taken to be a meeting of the board at which the participating directors are present.

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

(7) The board must have accurate minutes kept of its proceedings.

(8) Subject to this Act, the board may determine its own procedures.

Disclosure of interest

14. (1) A director who has a direct or indirect pecuniary or personal interest in a matter 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 decision of the board in relation to that matter.

Penalty: Division 5 fine or division 5 imprisonment.

6.

(2) A director will not be taken to have a direct or indirect interest in a matter for the purposes of this section by reason only of the fact that the director has an interest in the matter that is shared in common with the public or the tourism industry generally or a substantial section of the public or the tourism industry.

(3) 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.

(4) A disclosure under this section must be recorded in the minutes of the board and reported to the Minister.

(5) If, in the Minister's opinion, a particular interest or office is of such significance that the holding of the interest or office is not consistent with the proper discharge of the duties of a director, the Minister may direct the director either to divest himself or herself of the interest or office or to resign from the board (and non-compliance with the direction constitutes misconduct and hence a ground for removal of the director from the board).

(6) If a director discloses an interest in a proposed contract under this section and takes no part in any deliberations or decision of the board on the contract—

(c) the contract is not liable to be avoided by the Commission; and

(d) the member is not liable to account for profits derived from the contract.

Members' duties of honesty, care and diligence

15. (1) A director must at all times act honestly in the performance of official functions.

Penalty: Division 4 fine or division 4 imprisonment or both.

(2) A director must at all times exercise a reasonable degree of care and diligence in the performance of official functions.

(3) If a director is culpably negligent in the performance of official functions, the director is guilty of an offence.

Penalty: Division 4 fine.

(4) A director is not culpably negligent for the purposes of subsection (3) unless the court is satisfied the director's conduct fell sufficiently short of the standard required of the director to warrant the imposition of a criminal sanction.

(5) A director or former director must not make improper use of information acquired through his or her official position to gain directly or indirectly a personal advantage for himself, herself or another, or to cause detriment to the Commission or the State.

Penalty: Division 4 fine or division 4 imprisonment or both.

7.

(6) A director must not make improper use of his or her official position to gain directly or indirectly a personal advantage for himself, herself or another or to cause detriment to the Commission or the State.

Penalty: Division 4 fine or division 4 imprisonment or both.

(7) This section—

- (a) operates both inside and outside the State; and
- (b) is in addition to, and does not derogate from, other laws.

Common seal and execution of documents

16. (1) The common seal of the Commission must not be affixed to a document except in pursuance of a decision of the board, and the affixing of the seal must be attested by the signatures of two directors.

(2) The board may, by instrument under the common seal of the Commission, authorise a director, the CEO, an employee of the Commission (whether nominated by name or by office or title) or any other person to execute documents on behalf of the Commission subject to conditions and limitations (if any) specified in the instrument of authority.

(3) Without limiting subsection (2), an authority may be given so as to authorise two or more persons to execute documents jointly on behalf of the Commission.

(4) A document is duly executed by the Commission if—

- (a) the common seal of the Commission is affixed to the document in accordance with this section; or
- (b) the document is signed on behalf of the Commission by a person or persons in accordance with authority conferred under this section.

Delegation

17. (1) The board may, by instrument in writing, delegate any of its functions or powers.

(2) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

(3) A delegation—

- (a) may be made subject to conditions and limitations specified in the instrument of delegation; and
- (b) is revocable at will and does not derogate from the power of the delegator to act in any matter.

(4) A delegate must not act in any matter pursuant to the delegation in which the delegate has a direct or indirect pecuniary or personal interest.

Penalty: Division 5 fine or division 5 imprisonment.

8.

(5) It is a defence to a charge of an offence against subsection (4) to prove that the defendant was, at the time of the alleged offence, unaware of his or her interest in the matter.

Immunity of directors

18. (1) A director incurs no civil liability for an honest act or omission in the performance or purported performance of functions or duties under this Act.

(2) The immunity conferred by subsection (1) does not extend to culpable negligence.

(3) A civil liability that would, but for this section, attach to a director attaches instead to the Crown.

**PART 3
OPERATIONS OF COMMISSION**

Functions of Commission

19. (1) The Commission has the following functions:

- (a) to promote South Australia (internationally and domestically) as a tourist destination;
- (b) to identify tourism opportunities for the State (including opportunities for regional tourism and cultural tourism);
- (c) to contribute to the preparation and implementation of economic development plans for or relating to the tourism industry of the State;
- (d) to prepare a plan or series of plans (consistent with relevant economic development plans) for tourism promotion for the State and formulate policies and strategies for implementation of the plan or plans by government, industry and community action;
- (e) to encourage industry participation in and financial support for co-operative tourism marketing programmes;
- (f) to assist regional bodies engaged in tourism promotion;
- (g) to ensure the provision of appropriate tourism and travel information and booking services;
- (h) to work with and provide advice to operators for improvement of the quality of tourism services and products;
- (i) to encourage government, industry and community action to enhance visitors' experiences of the State;
- (j) to advise and provide reports to the Minister on matters relating to tourism and the tourism industry of the State;
- (k) to carry out any other functions assigned to the Commission by the Minister that are consistent with the objects of this Act.

(2) The Commission must carry out its functions—

- (a) in consultation with the Minister; and
- (b) in co-operation with other Government agencies, industry, local government and relevant regional and community bodies or groups.

(3) The Commission must ensure that its plans and initiatives are consistent with and give effect to the Government's economic development, social, employment and environmental objectives.

Powers of Commission

20. (1) The Commission has the powers necessary or incidental to the performance of its functions.

10.

(2) The Commission may, for example—

- (a) enter into any form of contract or arrangement; and
- (b) employ staff or make use of the services of staff employed in the public or private sector; and
- (c) engage consultants or other contractors; and
- (d) provide services within areas of the Commission's expertise on terms and conditions with respect to the payment of fees or any other matter as determined by the Commission; and
- (e) establish committees (consisting of directors, other persons or a combination of directors and others) and assign to the committees advisory functions or delegated powers.

(3) An employee of the Commission is not, as such, a member of the Public Service (but the Commission may employ a person who is on leave from employment in the Public Service or with an instrumentality or agency of the Crown).

Banking and investment

21. (1) The Commission may establish and operate bank accounts.

(2) Any money of the Commission that is not immediately required for the purposes of the Commission may be invested in a manner approved by the Treasurer.

**PART 4
MISCELLANEOUS**

Budgets

22. (1) The Commission must, as required by the Minister, submit to the Minister budgets setting out estimates of the Commission's future income and expenditure.

(2) The Minister may approve a budget submitted under this section with or without modification.

(3) The Commission may not expend money unless provision for the expenditure is made in a budget approved under this section or unless the expenditure is approved by the Minister.

Accounts and audit

23. (1) The Commission must cause proper accounting records to be kept in relation to its financial affairs, and must have annual statements of account prepared in respect of each financial year.

(2) The accounting records and the statements of account must comply with—

(a) any instructions of the Treasurer under section 41 of the *Public Finance and Audit Act 1987*; and

(b) any further requirements imposed by the Auditor-General.

(3) The Auditor-General may at any time audit the accounts of the Commission and must audit the annual statements of account.

Annual report

24. (1) The Commission must, on or before 30 September in every year, forward to the Minister a report on the Commission's operations for the preceding financial year.

(2) The report must contain—

(a) the audited statements of account of the Commission for the preceding financial year; and

(b) a report on—

(i) the state of tourism and the tourism industry in the State; and

(ii) the Commission's plans and the extent to which they have been implemented; and

(iii) the extent to which the Commission met the targets set in the performance agreement for the preceding financial year; and

(c) any other information required by or under the provisions of this Act or any other Act.

(3) The Minister must, within 12 sitting days after receiving a report under this section, have copies of the report laid before both Houses of Parliament.

Protection of names

25. (1) The Commission may, if it so determines, conduct its operations or any part of its operations under a name (other than the "South Australian Tourism Commission") prescribed by regulation.

(2) The Commission has a proprietary interest in—

(a) the name "South Australian Tourism Commission"; and

(b) any other name prescribed by regulation for the purposes of this section.

(3) A person who, without the consent of the Commission, in the course of a trade or business, uses a name in which the Commission has a proprietary interest under this section for the purpose of promoting the sale of services or the provision of any benefits is guilty of an offence.

Penalty: Division 5 fine.

(4) A consent under subsection (3) may be given with or without conditions.

(5) The Supreme Court may, on the application of the Commission, grant an injunction to restrain a breach of this section.

(6) The court by which a person is convicted of an offence against this section may, on the application of the Commission, order the convicted person to pay compensation to the Commission of an amount fixed by the court.

(7) Subsections (5) and (6) do not derogate from any civil remedy that may be available to the Commission apart from those subsections.

Regulations

26. (1) The Governor may make regulations for the purposes of this Act.

(2) A regulation may impose a fine, not exceeding a division 7 fine for breach of the regulation.

APPENDIX**DIVISIONAL PENALTIES AND EXPIATION FEES**

At the date of assent to this Act 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.