

(Reprint No. 1)

SOUTH AUSTRALIA

LOCAL GOVERNMENT FINANCE AUTHORITY ACT, 1983

This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 1 October 1991.

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

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LOCAL GOVERNMENT FINANCE AUTHORITY ACT, 1983

being

Local Government Finance Authority Act, 1983, No. 106 of 1983 [Assented to 22 December 1983]¹

as amended by

Local Government Finance Authority Act Amendment Act, 1986, No. 59 of 1986 [Assented to 2 October 1986]
Local Government Finance Authority Act Amendment Act, 1988, No. 46 of 1988 [Assented to 5 May 1988]²

Note: Asterisks indicate repeal or deletion of text. For further explanation see Appendix.

An Act to establish a corporation to be known as the “Local Government Finance Authority of South Australia”; to make provision relating to the financial powers and relations of the Authority, councils and other bodies; 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 Local Government Finance Authority Act, 1983.

* * * * *

Interpretation

3. In this Act, unless the contrary intention appears:

“the Authority” means the Local Government Finance Authority of South Australia established under Part II:

“the Board” means the Board of Trustees of the Authority established under Part II:

“council” means a council as defined in the Local Government Act, 1934:

“council representative” means a person appointed by a council under Part II to represent it at a general meeting of the Authority:

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

“the Local Government Association” means the Local Government Association of South Australia:

¹Came into operation 26 January 1984: *Gaz.* 26 January 1984, p. 176.

²Came into operation 23 June 1988: *Gaz.* 23 June 1988, p. 1980.

“prescribed local government body” means—

(a) a controlling authority established under Part XIX of the Local Government Act, 1934;

(b) the Local Government Association;

or

(c) any other body—

(i) established by or for councils or for local government purposes;

and

(ii) prescribed for the purposes of this paragraph:

“representative member” of the Board means a member of the Board—

(a) elected to the Board;

or

(b) appointed to the Board upon the nomination of the Local Government Association,

under Part II;

“security” includes any document evidencing indebtedness.

PART II

THE LOCAL GOVERNMENT FINANCE AUTHORITY OF SOUTH AUSTRALIA

DIVISION I—ESTABLISHMENT OF THE AUTHORITY

Establishment of the Authority

4. (1) The *Local Government Finance Authority of South Australia* 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 in its corporate name;
- and
- (d) has the powers, authorities, duties and functions prescribed by or under this or any other Act.

(3) In any legal proceedings, an apparently genuine document purporting to bear the common seal of the Authority will be presumed, in the absence of proof to the contrary, to have been duly executed by the Authority.

Councils to be members of the Authority

5. Every council is a member of the Authority.

DIVISION II—THE BOARD OF TRUSTEES OF THE AUTHORITY

Authority to be managed by Board of Trustees

6. (1) The Authority is managed and administered by a Board of Trustees constituted in accordance with this Division.

(2) An act done or decision made by the Board in the management or administration of the affairs of the Authority is an act or decision of the Authority.

Constitution of the Board

7. (1) The Board is constituted of seven members of whom—
- (a) two are persons elected in accordance with the rules of the Authority;
 - (b) two are persons appointed by an annual general meeting of the Authority upon the nomination of the Local Government Association;
 - (c) one is the person for the time being holding or acting in the office of permanent head of the Department of Local Government, or any other office of that department from time to time nominated by the permanent head;
 - (d) one is the person for the time being holding or acting in the office of Under Treasurer, or any other office in the Treasury Department from time to time nominated by the Under Treasurer;
 - (e) one is the person for the time being holding or acting in the office of Secretary-General of the Local Government Association.

* * * * *

(3) A person is not eligible for election as a member of the Board under subsection (1)(a) unless that person is—

(a) a member of a council;

or

(b) an officer of a council.

(4) Subject to subsection (5), a member of the Board may appoint a suitable person to act as his or her deputy and that person may, in the absence of that member, act as a member of the Authority.

(5) The appointment of a deputy under subsection (4) by a representative member of the Board is subject to the approval of the Board.

Terms and conditions of office of representative members

8. (1) Subject to this section, a representative member of the Board holds office for a term of two years commencing on the first day of January in the year next succeeding the year in which he or she was elected or appointed.

* * * * *

(3) A representative member of the Board is eligible for re-election or re-appointment.

(4) A representative member of the Board may be removed from office by resolution passed at a general meeting of the Authority if the member—

(a) becomes mentally or physically incapable of satisfactorily carrying out official duties;

or

(b) is guilty of neglect of duty or dishonourable conduct.

(5) The office of a representative member of the Board becomes vacant if the member—

(a) dies;

(b) completes a term of office;

(c) resigns by written notice to the Board;

or

(d) is removed from office pursuant to subsection (4).

(6) Where a casual vacancy occurs in the office of a representative member of the Board, the Board may appoint a suitable person to fill the vacancy and that person will hold office for the balance of the term of his or her predecessor.

Appointment of Chairman and Deputy Chairman

9. The Chairman and Deputy Chairman of the Board will be appointed by the Board from amongst the representative members of the Board.

Procedures, etc., of the Board

10. (1) Four members of the Board constitute a quorum at a meeting of the Board.

(2) The Chairman of the Board will, if present at a meeting of the Board, preside at that meeting and, in the Chairman's absence, the Deputy Chairman will preside, and, in the absence of both the Chairman and the Deputy Chairman, the members who are 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 Board present at a meeting is a decision of the Board.

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

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

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

(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 Board will be conducted in a manner determined by the Board.

Validity of acts of the Board and immunity of members

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

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

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

Disclosure of interest

12. (1) A member of the Board who is directly or indirectly interested in a contract, or proposed contract, 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 Board;

and

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

Penalty: \$500.

(2) Notwithstanding subsection (1), where a member of the Board is a member, officer, ratepayer or elector of a council with which the Authority has contracted or proposes to contract, the member is not, by reason of that fact, prevented from taking part in any deliberations or decisions of the Board that have common application to that contract or proposed contract and contracts or proposed contracts with other councils.

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

(4) 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, 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.

Allowances and expenses for members

13. (1) The Authority must pay such allowances and expenses (if any) as may be approved by a general meeting of the Authority in respect of the services of the members of the Board.

(2) Any amount payable by way of allowances in respect of a member *ex officio* of the Board must be paid to the department or body of which the member is an officer.

DIVISION III—GENERAL MEETINGS OF THE AUTHORITY

Annual general meetings and special general meetings

14. (1) The Board must convene annual general meetings of the Authority.

(2) A special general meeting of the Authority must be held—

(a) upon request in writing made to the Board by not less than one-quarter of the total number of councils;

or

(b) upon a resolution of the Board requiring the convening of such a meeting.

(3) General meetings of the Authority will be held at such times and places as are fixed by the Board by at least six weeks notice, in writing, delivered or posted to each council.

(4) Where a request is made for a special general meeting under subsection (2)(a), a special general meeting must be held in response to the request within ten weeks of the making of the request.

Representation at meetings

15. (1) Every council is entitled to appoint a person to represent it at a general meeting of the Authority.

(2) Each council representative is entitled to have one vote on any motion before a general meeting of the Authority.

Quorum, etc.

16. (1) The prescribed number of council representatives constitutes a quorum for a general meeting of the Authority and no business will be transacted at a general meeting of the Authority unless a quorum is present.

(2) In this section, a reference to the prescribed number of council representatives means a number ascertained by dividing the total number of councils by two, ignoring any fraction resulting from the division, and adding one.

Procedure at general meetings

17. (1) Subject to this section, the Chairman of the Board will preside at a general meeting of the Authority.

(2) Where the Chairman of the Board is absent from a general meeting of the Authority, the Deputy Chairman will preside, or, in the absence of both the Chairman and the Deputy Chairman, a person chosen by the council representatives present at the meeting will preside.

(3) A motion is passed at a general meeting of the Authority if carried by a majority of the votes of the council representatives present at the meeting.

Business of general meetings

18. The business of a general meeting of the Authority is as follows:

- (a) to receive and consider any report of the Board presented to the meeting;
- (b) to consider and approve or disapprove any proposals submitted to the meeting by the Board;
- (c) to consider and pass resolutions with respect to any matter relating to the Authority or its affairs raised for consideration at the meeting (whether by the Board or a council or otherwise);
- (d) in the case of an annual meeting—to declare elected and appoint the representative members of the Board as contemplated by Division II (if any such members are to be elected or appointed in that year).

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Resolutions of general meetings

20. Where a resolution is passed at a general meeting of the Authority, the Board must, at its next meeting after the passing of the resolution, give due consideration to the resolution and take such action (if any) as it considers appropriate in relation to the matters raised by the resolution.

PART III

THE AUTHORITY AND LOCAL GOVERNMENT FINANCING

Functions and powers of the Authority

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

(a) to develop and implement borrowing and investment programmes for the benefit of councils and prescribed local government bodies;

and

(b) to engage in such other financial activities as are determined by the Minister to be in the interests of local government.

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

(a) borrow money within or outside Australia;

* * * * *

(c) accept money on deposit or loan from a council or prescribed local government body;

(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.

(2a) The Authority must not—

(a) make a loan, other than one to a council or prescribed local government body;

(b) make an investment;

or

(c) enter into a partnership or joint venture or form a company,

except with the approval of the Treasurer.

(3) The Authority may, at the request of a council or prescribed local government body, provide advice or assistance to the council or body in relation to the management of its financial affairs.

Financial management

22. (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 deduction or allowance for the costs of the Authority may—

(a) be retained and invested by the Authority;

(b) be distributed amongst the councils and prescribed local government bodies with which the Authority has entered into financial arrangements;

or

(c) be applied, with the approval of the Minister, for the benefit of any council or prescribed local government body or for any other local government purpose,

as the Authority thinks fit.

Money provided by Treasurer

23. (1) The Treasurer may, on behalf of the State, provide funds to the Authority on such terms and conditions as may be agreed between the Treasurer and the Authority.

(2) The amount of \$10 000 000 is appropriated by this section from the Consolidated Account for application pursuant to subsection (1).

Guarantee by Treasurer, etc.

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

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(3) A borrowing of the Authority (other than by way of acceptance of money on deposit or loan from a council or prescribed local government body) requires the approval of the Treasurer (which may be absolute or conditional).

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

(5) The Authority is liable to pay to the Treasurer such fees in respect of guarantees arising by virtue of subsection (1) as are agreed, in writing, between the Authority and the Treasurer or as are prescribed upon the recommendation of the Treasurer made after consultation with the Authority.

Approvals by Minister or Treasurer

25. A transaction under this Act for which the approval of the Minister or the Treasurer is required will be regarded as having that approval—

(a) whether the approval is given in respect of that particular transaction or a class of transactions to which it belongs;

and

(b) whether the approval is given by the Minister or Treasurer or by a person acting with the authority of the Minister or Treasurer.

Power of councils, etc., to borrow money from or deposit money with Authority

26. Notwithstanding the provisions of any other Act, a council or a prescribed local government body may—

- (a) borrow money from the Authority;
 - (b) deposit with, or lend to, the Authority any money of the council or body not immediately required for the purposes of the council or body;
- or
- (c) enter into such other financial transactions or arrangements with the Authority as are contemplated by this Act or approved by the Minister.

Power of Minister to effect rearrangement of borrowing by council, etc.

27. (1) The Minister may, if the Authority and a council or prescribed local government body so request, by notice published in the *Gazette*—

- (a) transfer to the Authority the liabilities of the council or body in respect of a borrowing of the council or body;

and

- (b) determine that the money remaining payable by the council or body under the loan will be regarded for all purposes as having been borrowed by the council or body from the Authority upon terms and conditions agreed between the Authority and the council or body.

(2) A notice published by the Minister under subsection (1) has effect according to its terms.

(3) Terms and conditions agreed by the Authority and a council or prescribed local government body in pursuance of subsection (1) may be varied by subsequent agreement between the Authority and the council or body.

(4) Where a borrowing of a council or prescribed local government body is secured on the general rates of a council and the money remaining payable under the loan is, pursuant to subsection (1), regarded as having been borrowed by the council or prescribed local government body from the Authority, the payment of that money to the Authority is secured on the general rates of the council.

PART IV
MISCELLANEOUS

Delegation by the Board

28. (1) The Authority may, by instrument in writing, delegate to the Chairman of the Board, an officer of the Authority or any other person 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

29. (1) The Authority may appoint such officers and employees as it considers necessary or expedient for the purposes of this Act.

(2) The Authority may enter into arrangements with one or more of the following:

(a) the Local Government Association;

(b) a council;

(c) the Minister administering a department of the Public Service of the State,

under which, upon terms mutually arranged, the Authority makes use of the services of officers or use of facilities of the Association, council or department.

(3) The Governor may, at the request of the Authority, subject to and in accordance with Part III of the *Government Management and Employment Act, 1985*, appoint officers for the purposes of this Act and an officer so appointed holds office subject to and in accordance with that Act.

Council, etc., to furnish certain information

30. A council or prescribed local government body must, if so required by the Minister, furnish information to the Authority relating to the financial affairs of the council or prescribed local government body.

Authority may charge fees

31. (1) The Authority may charge a fee of such amount as it thinks fit in respect of any transaction entered into or thing done for the benefit of a council, prescribed local government body 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 to the council, prescribed local government body or other person charged.

Exemption of Authority from State taxes, etc.

32. (1) 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, a council or a prescribed local government body is a party;

(c) instruments which arise from or are connected with a transaction to which the Authority, a council or a prescribed local government body is a party.

- (2) 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

32a. In any legal proceedings, an apparently genuine document purporting to be a certificate under the hand of the Chairman of the Board (or where the Chairman is unavailable, the Deputy Chairman) certifying that a decision is a decision of the Board made in accordance with 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

- 33.** (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

- 34.** (1) The Authority must, on or before the thirtieth day of September in each year, deliver to the Minister, each council and the Local Government Association 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 period to which the report relates.
- (3) The Minister must cause a copy of the report to be laid before each House of Parliament.

Summary procedure

- 35.** The offences constituted by this Act are summary offences.

Regulations

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

Rules of the Authority

- 37.** (1) Subject to this Act, the Authority must have rules that—
- (a) make provision for the nomination and election of persons as elected members of the Board;
 - and
 - (b) set out—
 - (i) the procedures for placing items of business on the agenda for general meetings of the Authority;
 - and
 - (ii) the procedures to be followed at general meetings of the Authority.

(2) The Authority may—

(a) make provision in its rules for matters other than those referred to in subsection (1);

and

(b) amend its rules in accordance with procedures set out in the rules.

(3) The rules, and any amendments to the rules, have no force or effect unless and until approved by the Minister.

APPENDIX

Legislative History

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 4(3):	amended by 59, 1986, s. 2
Section 7(1):	amended by 46, 1988, s. 3
Section 7(2):	deleted in pursuance of the <i>Acts Republication Act, 1967</i> , as its function is now exhausted
Section 8(1):	amended by 46, 1988, s. 4
Section 8(2):	deleted in pursuance of the <i>Acts Republication Act, 1967</i> , as its function is now exhausted
Section 10(5a) and (5b):	inserted by 59, 1986, s. 3
Section 18:	amended by 46, 1988, s. 5
Section 19:	repealed by 46, 1988, s. 6
Section 21(1):	amended by 59, 1986, s. 4(a)
Section 21(2)(b):	repealed by 59, 1986, s. 4(b)
Section 21(2):	amended by 59, 1986, s. 4(c) - (g)
Section 21(2a):	inserted by 59, 1986, s. 4(h)
Section 22(2):	amended by 59, 1986, s. 5
Section 24(1):	substituted by 59, 1986, s. 6(a)
Section 24(2):	repealed by 59, 1986, s. 6(a)
Section 24(4):	amended by 59, 1986, s. 6(b)
Section 24(5):	amended by 59, 1986, s. 6(c)
Section 27(4):	inserted by 59, 1986, s. 7
Section 32(1):	substituted by 59, 1986, s. 8
Section 32a:	inserted by 59, 1986, s. 9
Section 37:	inserted by 46, 1988, s. 7