

South Australia



**GOVERNMENT FINANCING AUTHORITY (AUTHORITY AND
ADVISORY BOARD) AMENDMENT ACT 1995**

No. 3 of 1995

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ELIZABETHAE II REGINAE

A.D. 1995

No. 3 of 1995

An Act to amend the Government Financing Authority Act 1982.

[Assented to 2 March 1995]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Government Financing Authority (Authority and Advisory Board) Amendment Act 1995*.

(2) The *Government Financing Authority Act 1982* is referred to in this Act as "the principal Act".

Commencement

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

Amendment of s. 4—Interpretation

3. Section 4 of the principal Act is amended—

(a) by striking out the definition of "appointed member" from subsection (1);

(b) by inserting after the definition of "the Authority" in subsection (1) the following definition:

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

(c) by inserting after the definition of "security" in subsection (1) the following definition:

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

Repeal of ss. 6, 7, 8, 9 and 10 and substitution of new sections

4. Sections 6, 7, 8, 9 and 10 of the principal Act are repealed and the following sections are substituted:

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.

Amendment of s. 11A—Validity of transactions of Authority

5. Section 11A of the principal Act is amended—

(a) by striking out "any member, employee" from paragraph (b) of subsection (1) and substituting "the Under Treasurer or of any officer, employee";

(b) by striking out "a member, employee" from paragraph (c) of subsection (1) and substituting "an officer, employee".

Insertion of Part 3A

6. The following Part is inserted after Part 3 of the principal Act:

**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.

(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.

Amendment of s. 19—Delegation by the Authority

7. Section 19 of the principal Act is amended by striking out from subsection (1) "the chairman of the Authority, or".

Substitution of s. 24

8. Section 24 of the principal Act is repealed and the following section is substituted:

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.

Insertion of s. 24A

9. The following section is inserted after section 24 of the principal Act:

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.

Amendment of s. 25—Accounts and audit

10. Section 25 of the principal Act is amended by striking out from subsection (3) "the members" and substituting "the Under Treasurer and the officers".

Amendment of s. 26—Annual Report

11. Section 26 of the principal Act is amended by inserting after subsection (1) the following subsections:

(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.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor