



Local Government Finance Authority Act, 1983

No. 106 of 1983

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A.D. 1983

No. 106 of 1983

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.

[Assented to 22 December 1983]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PRELIMINARY

1. This Act may be cited as the “Local Government Finance Authority Act, 1983”. Short title.
2. This Act shall come into operation on a day to be fixed by proclamation. Commencement.
3. In this Act, unless the contrary intention appears: Interpretation.
 - “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:
 - “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) There shall be an authority entitled the “Local Government Finance Authority of South Australia”.

(2) The Authority—

(a) shall be a body corporate with perpetual succession and a common seal;

(b) shall be capable in its corporate name of acquiring, holding, dealing with and disposing of real and personal property;

(c) shall be capable of acquiring or incurring any other rights or liabilities and of suing and being sued in its corporate name;

and

(d) shall have 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 and the signatures of four members of the Board attesting the affixing of the seal shall 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 shall be 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.

7. (1) The Board shall be constituted of seven members of whom—

Constitution of
the Board.

- (a) two shall be persons elected by an annual general meeting of the Authority;
- (b) two shall be persons appointed by an annual general meeting of the Authority upon the nomination of the Local Government Association;
- (c) one shall be 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 shall be 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 shall be the person for the time being holding or acting in the office of Secretary-General of the Local Government Association.

(2) Notwithstanding the provisions of subsection (1), the Board shall, until the thirty-first day of December next succeeding the first annual general meeting of the Authority, be constituted of seven members of whom—

- (a) four shall be persons appointed by the Minister upon the nomination of the Local Government Association;

and

- (b) the remaining three shall be the persons referred to in paragraphs (c), (d) and (e) of that subsection.

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

- (a) he is a member of a council;

or

- (b) he is an officer of a council.

(4) Subject to subsection (5), a member of the Board may appoint a suitable person to act as his deputy and that person may, in the absence of the member by whom he was appointed, act as a member of the Authority.

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

8. (1) Subject to this section, a representative member of the Board shall hold office for a term of one year commencing on the first day of January in the year next succeeding the year in which he is elected or appointed.

Terms and
conditions of
office of
representative
members.

(2) A representative member of the Board appointed pursuant to section 7 (2) shall, subject to this section, hold office from the date of his appointment until the thirty-first day of December next succeeding the holding of the first annual general meeting of the Authority.

(3) A representative member of the Board shall be eligible for re-election or reappointment.

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

(a) he becomes mentally or physically incapable of carrying out satisfactorily the duties of his office;

or

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

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

(a) he dies;

(b) his term of office expires;

(c) he resigns by written notice to the Board;

or

(d) he 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 shall hold office for the balance of the term of his predecessor.

Appointment of
Chairman and
Deputy
Chairman.

9. The Chairman of the Board and the Deputy Chairman of the Board shall 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 shall constitute a quorum at a meeting of the Board.

(2) The Chairman of the Board shall preside at a meeting of the Board at which he is present and in his absence the Deputy Chairman shall preside, or, in the absence of both the Chairman and the Deputy Chairman, the members who are present shall 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 shall be a decision of the Board.

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

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

(6) Subject to this Act, the business of the Board shall 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 shall not be 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 shall attach to a member of the Board for an act or omission by that person or the Board in good faith in the exercise or discharge of his or its powers, duties or functions under this Act.

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

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

Disclosure of interest.

(a) shall, as soon as he becomes aware of the contract or proposed contract, disclose the nature of his interest to the Board;

and

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

Penalty: Five hundred dollars.

(2) Notwithstanding the provisions of 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 shall 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.

13. (1) The Authority shall 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.

Allowances and expenses for members.

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

DIVISION III—GENERAL MEETINGS OF THE AUTHORITY

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

Annual general meetings and special general meetings.

(2) A special general meeting of the Authority shall 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 shall 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 shall constitute a quorum for a general meeting of the Authority and no business shall 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 shall 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 shall preside, or, in the absence of both the Chairman and the Deputy Chairman, a person chosen by the council representatives present at the meeting shall 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 shall be 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 elect and appoint the representative members of the Board as contemplated by Division II.

Rules for general meetings.

19. (1) Subject to this Act, the procedure for general meetings of the Authority shall be governed by such rules as are for the time being approved by the Minister.

(2) The rules must include procedures for the nomination and election of persons as representative members of the Board and procedures for placing items of business on the agenda for general meetings of the Authority.

Resolutions of general meetings.

20. Where a resolution is passed at a general meeting of the Authority, the Board shall, at its next meeting after the passing of the resolution, give all 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 activities relating to the finances of councils and prescribed local government bodies as are contemplated by this Act or approved by the Minister.

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

(a) borrow moneys within or outside Australia;

(b) lend moneys to councils and prescribed local government bodies;

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

(d) invest moneys held by the Authority in such investments as are approved by the Treasurer;

(e) issue, sell, purchase, pay-off, repurchase, redeem, convert or otherwise deal in or with securities;

(f) open and maintain accounts with banks;

(g) appoint a bank, financial institution or other person to act as underwriter, manager, trustee or agent in connection with any transaction within or outside Australia;

(h) enter into contracts of guarantee;

(i) acquire, hold, deal with and dispose of real and personal property;

(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.

(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.

22. (1) The Authority shall, 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.

Financial
management.

(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 dealt with partly under paragraph (a) and partly under paragraph (b),

as the Authority thinks fit.

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.

Moneys provided
by Treasurer.

(2) The amount of ten million dollars is appropriated by this section from the Consolidated Account for application pursuant to subsection (1).

Guarantee by
Treasurer, etc.

24. (1) The liabilities of the Authority in respect of all borrowings of the Authority in pursuance of this Act (including its liabilities in respect of moneys accepted on deposit) are guaranteed by the Treasurer.

(2) The Treasurer may, if he thinks fit, guarantee any other liability incurred by the Authority in pursuance of this Act.

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

(4) A liability of the Treasurer under a guarantee arising by virtue of subsection (1) or provided in pursuance of subsection (2) shall be satisfied out of the Consolidated Account which is appropriated by this section to the necessary extent.

(5) The Authority shall be liable to pay to the Treasurer such fees in respect of guarantees arising by virtue of subsection (1) or provided in pursuance of subsection (2) 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 shall 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 moneys
from or deposit
moneys with
Authority.

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

(a) borrow moneys from the Authority;

(b) deposit with, or lend to, the Authority any moneys 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 re-
arrangement 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 moneys remaining payable by the council or body under the loan shall 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) shall have 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.

PART IV MISCELLANEOUS

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.

Delegation by the Board.

(2) A delegation under subsection (1) may be revoked by the Authority by instrument in writing and shall 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 shall, in the absence of proof to the contrary, be accepted as proof of the particulars.

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

Staff.

(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 the provisions of the Public Service Act, 1967, appoint officers for the purposes of this Act and an officer so appointed shall hold office subject to and in accordance with that Act.

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

Council, etc., to furnish certain information.

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.

Authority may charge fees.

(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 the Authority or instruments to which the Authority is a party from a tax, duty or other impost to the extent specified in the notice.

(2) A notice published in the *Gazette* pursuant to this section—

(a) may be varied or revoked by a further such notice;

and

(b) shall have effect according to its terms.

Accounts and
audit.

33. (1) The Authority shall cause proper accounts to be kept of its financial affairs.

(2) The Auditor-General may at any time, and shall 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 shall, 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 shall cause a copy of the report to be laid before each House of Parliament.

Summary
proceedings.

35. Proceedings for an offence against this Act shall be disposed of summarily.

Regulations.

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

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

D. B. DUNSTAN, Governor