



PUBLIC FINANCE AND AUDIT (MISCELLANEOUS) AMENDMENT ACT 1993

No. 6 of 1993

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A.D. 1993

No. 6 of 1993

An Act to amend the Public Finance and Audit Act 1987 and to make related amendments to the Government Financing Authority Act 1982.

[Assented to 11 March 1993]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Public Finance and Audit (Miscellaneous) Amendment Act 1993*.

(2) The *Public Finance and Audit Act 1987* is referred to in this Act as “the principal Act”.

Commencement

2. (1) Sections 8, 9, 10 and 11 will be taken to have come into operation when the principal Act came into operation.

(2) Paragraphs (c) and (e) of section 3 will be taken to have come into operation on 1 July 1992.

(3) The remaining provisions of this Act will come into operation on the day on which the Governor gives her assent to this Act.

Amendment of s. 4—Interpretation

3. Section 4 of the principal Act is amended—

(a) by striking out paragraph (c) of the definition of “Chief Executive Officer” in subsection (1) and substituting the following paragraph:

(c) where the public authority is a statutory authority (not being a natural person or a corporation sole) or some other body—the chief executive officer of the authority or other body or, if there is no chief executive officer, the person entitled to preside at meetings of the governing body of the authority or other body;

(b) by striking out paragraph (d) of the definition of “public authority” in subsection (1) and substituting the following paragraph:

(d) such other body or person as is prescribed,;

(c) by striking out from the definition of "public authority" "but does not include a statutory authority" and substituting "but, subject to any other provision of this Act, does not include a statutory authority";

(d) by striking out "corporate" from paragraph (b) of the definition of "publicly funded body" in subsection (1) and substituting "or person";

and

(e) by inserting after subsection (2) the following subsections:

(3) For the purposes of this Act the Group Asset Management Division of the State Bank of South Australia will be taken to be a public authority and the chairperson of the board of that division of the Bank will be taken to be the Chief Executive Officer of the division.

(4) The Treasurer must cause separate accounts to be kept in respect of the Group Asset Management Division of the State Bank of South Australia and the revenue of that division of the Bank must be credited to those accounts.

Amendment of s. 8—Special deposit accounts

4. Section 8 of the principal Act is amended—

(a) by striking out from subsection (4) "Subject to subsection (5), the" and substituting "The";

(b) by striking out subsection (5) and substituting the following subsection:

(5) Any surplus of income over expenditure standing to the credit of a special deposit account must, at the direction of the Treasurer, be credited to the Consolidated Account.;

(c) by striking out subsection (7) and substituting the following subsection:

(7) The Treasurer may approve a purpose of, or relating to, a government department for the purposes of this section and may vary or revoke such an approval at any time.;

and

(d) by inserting after subsection (8) the following subsection:

(9) In this section—

"approved purpose" means a purpose of, or relating to, a government department approved for the time being by the Treasurer under subsection (7).

Amendment of s. 9—Imprest accounts

5. Section 9 of the principal Act is amended by inserting after "appropriated" in subsection (4) "or set aside".

Amendment of s. 15—Appropriation by Treasurer for additional salaries, wages, etc.

6. Section 15 of the principal Act is amended—

(a) by striking out "salaries or wages" twice occurring and substituting, in each case, "salaries, wages or allowances";

and

(b) by inserting after “salaries, wages,” “allowances,”.

Amendment of s. 16—Power to borrow

7. Section 16 of the principal Act is amended by inserting after “annual Appropriation Act” in subsection (3) “or a Supply Act”.

Amendment of heading

8. The heading to Part II Division IV is amended by striking out “CREDIT ARRANGEMENTS” and substituting “FINANCIAL ARRANGEMENTS”.

Amendment of s. 17—Interpretation

9. Section 17 of the principal Act is amended—

(a) by striking out the definition of “credit arrangement” in subsection (1) and substituting the following definition:

“financial arrangement” means—

(a) a contract or arrangement under which a semi-government authority immediately or prospectively—

(i) borrows money or obtains any other form of financial accommodation;

or

(ii) obtains the use or benefit of any other property owned by another person;

(b) a contract or arrangement entered into by a semi-government authority for the purpose of—

(i) managing, protecting against or reducing risks arising from changes in currency exchange rates, interest rates or discount rates or managing, protecting against or reducing any other financial risks;

or

(ii) managing, obtaining or increasing financial returns from movements in currency exchange rates, interest rates or discount rates;

or

(c) a contract or arrangement entered into by a semi-government authority for any other purpose relating to its financial affairs that is of a kind declared by the Treasurer, by notice published in the *Gazette*, to be included in the ambit of this definition,

but does not include a contract or arrangement of a kind excluded by the Treasurer, by notice published in the *Gazette*, from the ambit of this definition;

and

(b) by inserting after subsection (1) the following subsection:

(1a) A notice published by the Treasurer in the *Gazette* for the purposes of the definition of "financial arrangement" may be varied or revoked by the Treasurer by subsequent notice published in the *Gazette*.

Substitution of s. 18

10. Section 18 of the principal Act is repealed and the following section is substituted:

Financial arrangements

18. (1) Notwithstanding the provisions of any other Act, a semi-government authority may, with the consent of the Treasurer, enter into a financial arrangement.

(2) Notwithstanding the provisions of any other Act, a semi-government authority must not enter into a financial arrangement without the consent of the Treasurer.

(3) The consent of the Treasurer under this section—

(a) may be conditional;

(b) may relate to a proposed financial arrangement or may relate to financial arrangements of a particular kind or financial arrangements generally, that the semi-government authority may wish to enter into in the future;

and

(c) may be varied or revoked by the Treasurer at any time in respect of financial arrangements not yet entered into.

(4) The Treasurer's consent is not required under this section to financial arrangements entered into by the State Bank of South Australia or SAFA.

(5) Subject to any express agreement to the contrary, a person who has entered into a financial arrangement with a semi-government authority is under no obligation—

(a) to enquire into—

(i) the manner in which the semi-government authority applies the money or other property provided under the arrangement;

or

(ii) the actions of the semi-government authority in relation to any other benefit provided under the arrangement;

or

(b) to take any action—

(i) in relation to any misapplication of such money or property by the authority;

or

(ii) in relation to the actions of the authority in relation to any such benefit.

(6) Where under another Act a semi-government authority is not permitted to enter into a financial arrangement without the consent or approval of the Treasurer, the consent of the Treasurer under this section will be taken to be consent or approval for the purposes of the other Act even though the other Act may require consent or approval to the specific financial arrangement.

Amendment of s. 19—Guarantees and indemnities

11. Section 19 of the principal Act is amended—

(a) by striking out paragraph (a) of subsection (1) and substituting the following paragraphs:

- (a) guarantee performance of obligations by a semi-government authority;
- (ab) guarantee performance of obligations by any other person if, in the opinion of the Treasurer, the guarantee will facilitate the carrying out by a semi-government authority of its functions;;

(b) by inserting after subsection (1) the following subsections:

(1a) A guarantee under subsection (1) may—

- (a) guarantee performance of existing or contingent obligations;
- (b) guarantee performance of obligations for the benefit of a person who does not exist or who cannot be ascertained when the guarantee is given;

or

(c) guarantee performance of obligations that the semi-government authority incurs or assumes in the future.

(1b) A guarantee under subsection (1) may—

- (a) refer specifically to the obligations guaranteed or refer to a class to which they belong;
- (b) be given by the Treasurer by notice in the *Gazette* or by written contract between the parties to the guarantee;
- (c) be varied or revoked by the Treasurer in respect of obligations not yet incurred or assumed by the semi-government authority.

(1c) A guarantee given by notice in the *Gazette* may be varied or revoked under subsection (1b)(c) by notice in the *Gazette*.

and

(c) by striking out subsection (5) and substituting the following subsection:

(5) This section—

- (a) applies in addition to the provisions of any other Act relating to guarantees and indemnities for the benefit of a body corporate that is a semi-government authority;
- (b) does not operate to exclude or diminish obligations of the Treasurer under any other Act or law.

Insertion of s. 20a

12. The following section is inserted in Part II Division IV after section 20 of the principal Act.

Validity of transactions of semi-government authorities

20a. (1) Subject to subsection (2), a transaction to which a semi-government authority is a party or apparently a party (whether made or apparently made under the authority's common seal or by a person with authority to bind the semi-government authority) is not invalid because of—

- (a) any deficiency of power on the part of the authority;
- (b) any procedural irregularity on the part of the governing body or any member of the governing body of the authority or on the part of an employee or agent of the authority;
- (c) any procedural irregularity affecting the appointment of a member of the governing body of the authority or an employee or agent of the authority.

(2) This section does not validate a transaction in favour of a party—

- (a) who enters into the transaction with actual knowledge of the deficiency or irregularity;

or

- (b) who has a connection or relationship with the semi-government authority such that the person ought to know of the deficiency or irregularity.

Amendment of s. 22—Treasurer's statements

13. Section 22 of the principal Act is amended by striking out sub-subparagraph (C) of subparagraph (v) of paragraph (a) and substituting the following sub-subparagraph:

- (C) the balance of each special deposit account at the end of the financial year;

Insertion of s. 30a

14. The following section is inserted in Part III Division I after section 30 of the principal Act:

Protection from liability

30a. The Auditor-General incurs no liability for an honest act or omission in the exercise or discharge, or purported exercise or discharge, of powers, functions or duties under this Act or any other Act or law.

Substitution of s. 32

15. Section 32 of the principal Act is repealed and the following section is substituted:

Examination of accounts of publicly funded body

32. (1) The Auditor-General must, if requested by the Treasurer, examine the accounts of a publicly funded body and examine the efficiency and economy with which the body conducts its affairs.

(2) After making an examination under subsection (1), the Auditor-General must prepare a report setting out the results of the examination.

(3) The Auditor-General must deliver copies of the report to the Treasurer and to the President of the Legislative Council and the Speaker of the House of Assembly.

Amendment of s. 33—Audit of other accounts

16. Section 33 of the principal Act is amended by striking out subsection (2) and substituting the following subsections:

(2) The Auditor-General may audit the accounts of a trustee, partner or other person (whether a body corporate or not) relating to functions carried out on behalf of, or in partnership or jointly with, a public authority or relating to functions carried out as the delegate or agent of a public authority, and may examine the efficiency and economy with which the body corporate, trustee, partner or other person carries out those functions.

(3) Where a public authority is the legal or beneficial owner of shares in a company and the company, or a subsidiary of the company, is the instrument used by the public authority to carry out some or all of its functions, the Auditor-General may audit the accounts of—

(a) the company in which the public authority owns shares;

(b) the subsidiary of the company;

and

(c) the companies (if any) in a chain of holding companies and subsidiaries between the company referred to in paragraph (a) and the subsidiary.

(4) Where the Auditor-General is entitled under subsection (3) to audit the accounts of a company that is the instrument used by a public authority to carry out some or all of its functions, the Auditor-General may examine the efficiency and economy with which the company carries out those functions.

(5) For the purposes of subsection (3)—

(a) a company is the holding company of another if it is the legal or beneficial owner of shares in the other company;

(b) a company is the subsidiary of another company if any of its shares are owned legally or beneficially by the other company;

- (c) a group of companies form a chain of holding companies and subsidiaries if they can be arranged in a line with each company being the holding company of the company following it in the line.
- (6) The Auditor-General may audit the accounts of a company and examine the efficiency and economy with which it conducts its affairs if—
- (a) a public authority is the legal or beneficial owner of more than 40 per cent of the issued share capital of the company;
- and
- (b) the Treasurer has given his or her consent to the audit and examination;.
- (7) The Auditor-General must audit the accounts of a company referred to in subsection (6) and examine the efficiency and economy with which it conducts its affairs if requested to do so by the Treasurer.
- (8) This section—
- (a) is in addition to the provisions of any other Act or law requiring the accounts of a company or other body corporate to be audited;
- and
- (b) is not in derogation of any such provisions.

Amendment of s. 34—Powers of the Auditor-General to obtain information

17. Section 34 of the principal Act is amended—

- (a) by striking out from subsection (2) “that person is guilty of an offence and liable to a penalty of \$5 000 or imprisonment for a term not exceeding 3 months” and substituting the following words and paragraphs:
- “the following provisions apply:
- (f) the person is guilty of an offence and is liable to a penalty of \$5 000 or imprisonment for a term not exceeding three months;
- and
- (g) the Supreme Court may, on the application of the Auditor-General or an authorized officer, order the person to take such action, or to refrain from taking such action, as is necessary in the Court’s opinion for compliance by the person with this section.”;
- (b) by striking out from subsection (3) “, a written note of that objection shall be made by the Auditor-General or the authorized officer and”;
- and

(c) by inserting after subsection (3) the following subsections:

(4) The Supreme Court need only be satisfied of the facts on which it bases an order under subsection (2)(g) on the balance of probabilities.

(5) Where, in the opinion of the Auditor-General, a person has contravened, or failed to comply with, a requirement of this section, the Auditor-General must, if in his or her opinion the matter is sufficiently serious, prepare a report setting out details of the contravention or failure and deliver copies of the report to the Treasurer and to the President of the Legislative Council and the Speaker of the House of Assembly.

Amendment of s. 36—Auditor-General’s annual report

18. Section 36 of the principal Act is amended by striking out from paragraph (b) of subsection (2) “the public authorities” and substituting “public authorities that are, in the Auditor-General’s opinion, of sufficient importance to warrant publication”.

Amendment of s. 38—Reports and other documents to be tabled before Parliament

19. Section 38 of the principal Act is amended by striking out “under this Division” and substituting “under this Part”.

Amendment of Government Financing Authority Act 1982

20. The *Government Financing Authority Act 1982* is amended—

(a) by inserting after subsection (2) of section 11 the following subsection:

(3) The approval of the Treasurer under this section—

(a) may be conditional;

(b) may relate to a proposed transaction or may relate to transactions of a particular kind, or transactions generally, that the Authority may wish to enter into in the future;

and

(c) may be varied or revoked by the Treasurer at any time in respect of transactions not yet entered into.;

(b) by inserting after section 11 the following section:

Validity of transactions of Authority

11a. (1) Subject to subsection (2), a transaction to which the Authority is a party or apparently a party (whether made or apparently made under the Authority’s common seal or by a person with authority to bind the Authority) is not invalid because of—

(a) any deficiency of power on the part of the Authority;

(b) any procedural irregularity on the part of any member, employee or agent of the Authority;

(c) any procedural irregularity affecting the appointment of a member, employee or agent of the Authority.

(2) This section does not validate a transaction in favour of a party—

(a) who enters into the transaction with actual knowledge of the deficiency or irregularity;

or

(b) who has a connection or relationship with the Authority such that the person ought to know of the deficiency or irregularity.;

and

(c) by inserting after subsection (1) of section 15 the following subsection:

(1a) Where a transaction to which the Authority is a party or apparently a party is valid by virtue of section 11a, liabilities incurred or assumed by the Authority in respect of the transaction will be taken for the purposes of subsection (1), to have been incurred or assumed in pursuance of this Act.

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

ROMA MITCHELL Governor