



SOUTH AUSTRALIAN OFFICE OF FINANCIAL SUPERVISION ACT 1992

No. 21 of 1992

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ELIZABETHAE II REGINAE

A.D. 1992

No. 21 of 1992

An Act to establish the South Australian Office of Financial Supervision.

[Assented to 14 May 1992]

The Parliament of South Australia enacts as follows:

PART 1

PRELIMINARY

Short title

1. This Act may be cited as the *South Australian Office of Financial Supervision Act 1992*.

Commencement

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

Definitions

3. In this Act—

“**Board**” means the management board of SAOFS;

“**chief executive officer**” means the chief executive officer of SAOFS;

“**employee**” in relation to SAOFS, includes—

(a) a person whose services are made available to SAOFS;

and

(b) a person engaged by SAOFS under a contract of service;

“**member**” means a member of the Board;

“**presiding member**” means the member appointed to preside at meetings of the Board or, if that member is absent or unavailable, that member’s deputy;

“**SAOFS**” means the South Australian Office of Financial Supervision.

Interpretation—words, etc., used in Financial Institutions (South Australia) Code

4. Unless the contrary intention appears, words and expressions used in the Financial Institutions (South Australia) Code have the same respective meanings in this Act.

PART 2

SAOFS AND ITS BOARD

DIVISION 1—ESTABLISHMENT AND GENERAL FUNCTIONS AND POWERS OF SAOFS

Establishment of SAOFS

5. (1) A body called the South Australian Office of Financial Supervision (SAOFS) is established.

(2) SAOFS is a body corporate.

Functions

6. SAOFS—

(a) is the State Supervisory Authority for the purposes of the financial institutions legislation;

and

(b) is to carry out the functions conferred on it by the financial institutions legislation and this Act.

General powers

7. (1) SAOFS has power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions.

(2) Without limiting subsection (1), SAOFS has such powers as are conferred on it by or under the financial institutions legislation.

SAOFS independent body

8. Except as expressly provided in the financial institutions legislation or this Act, SAOFS is not subject to direction by the Minister or the Ministerial Council.

SAOFS to comply with financial institutions agreement, etc.

9. In performing its functions and exercising its powers, SAOFS must—

(a) comply with any applicable provisions of the financial institutions agreement;

and

(b) strive to ensure that the principal objects of the financial institutions scheme are achieved.

SAOFS does not represent Crown

10. SAOFS does not represent the Crown.

SAOFS exempt public authority under Corporations Law

11. SAOFS is an exempt public authority for the purposes of the Corporations Law.

DIVISION 2—ESTABLISHMENT AND COMPOSITION OF SAOFS'S BOARD

The Board

12. There is to be a management board of SAOFS.

Role of the Board

13. It is the role of the Board to ensure that SAOFS performs its functions in a proper and efficient way.

Composition of the Board

14. (1) The Board consists of not less than four nor more than five members appointed by the Governor on the nomination of the Minister.

(2) One member of the Board must be a person employed under the *Government Management and Employment Act 1985* and there may not be more than one such member.

(3) The Minister must, before nominating a person for appointment as a member of the Board, consult with industry bodies in relation to the proposed nomination.

(4) One member of the Board is to be appointed by the Governor to preside at meetings of the Board and another may be appointed by the Governor to be that member's deputy.

Restriction on appointments

15. A person who holds an office or appointment with a financial institution must not be appointed as a member.

Government Management and Employment Act not to apply

16. The *Government Management and Employment Act 1985* does not apply to the appointment of a member.

Appointment not invalid because of appointment defect, etc.

17. (1) A member holds office, subject to this Act, for such term (not longer than three years) as is specified in the instrument of appointment.

(2) An appointment of a member is not invalidated by a defect or irregularity in the appointment.

Terms and conditions of appointment

18. (1) A member is to be paid such remuneration and allowances as are determined by the Governor.

(2) A member holds office on such terms and conditions as are determined by the Governor.

(3) The remuneration and allowances are to be paid out of the Supervision Fund.

Leave of absence

19. The Board may grant leave of absence to a member on such terms and conditions as the Board, subject to any determination of the Minister, considers appropriate.

Resignation

20. A member may resign by written notice to the Governor.

Termination of appointment

21. The Governor may terminate the appointment of a member if the member—

- (a) is guilty of misbehaviour;
- (b) is, in the opinion of the Governor, physically or mentally incapable of continuing as a member;
- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (d) contravenes this Act without reasonable excuse;

(e) is absent, without the Board's leave and without reasonable excuse, from three consecutive meetings of the Board;

or

(f) accepts an office or appointment with a financial institution.

Acting appointments

22. The Governor may, on the nomination of the Minister, appoint a person to act as a member of the Board—

(a) during a vacancy in the office of a member;

or

(b) during any period, or all periods, when a member is absent from duty or from Australia or is, for any other reason, unable to perform the functions of the office.

DIVISION 3—MEETINGS OF THE BOARD

Times and places of meetings

23. (1) Subject to subsection (2), meetings of the Board are to be held at such times and places as the Board determines.

(2) The member appointed to preside—

(a) may at any time convene a meeting;

and

(b) must convene a meeting when requested by at least two other members of the Board.

Presiding at meetings

24. (1) The member appointed to preside must preside at all meetings of the Board at which that member is present.

(2) If the member appointed to preside is absent from a meeting of the Board—

(a) the member (if any) appointed as that member's deputy must, if present, preside;

and

(b) in any other case—a member chosen by the members present at the meeting must preside.

Quorum and voting at meetings

25. (1) At a meeting of the Board—

(a) subject to subsection (2), three members constitute a quorum; -

(b) a question is to be decided by a majority of votes of the members present and voting;

and

(c) the member presiding has a deliberative vote and, if there is an equality of votes, also has a casting vote.

(2) If, because of section 29 (2) (Disclosure of interests), a member is not present at a meeting of the Board during a deliberation of the Board in relation to a matter, but there would be a quorum if the member were present, the remaining members present constitute a quorum for the purpose of any deliberation or decision of the Board at the meeting in relation to the matter.

Conduct of meetings

26. (1) The Board may, subject to this Division, regulate its proceedings as it considers appropriate.

(2) Without limiting subsection (1), the Board may permit members to participate in a particular meeting, or all meetings, by—

- (a) telephone;
- (b) closed-circuit television;
- or
- (c) any other means of communication.

(3) A member who participates in a meeting of the Board under a permission under subsection (2) is taken to be present at the meeting.

(4) Without limiting subsection (1), the Board may invite a person to attend a meeting for the purpose of advising or informing it on any matter.

Resolutions without meetings

27. (1) If—

- (a) notice of a proposed resolution of the Board is given to all members of the Board; and
- (b) at least three members of the Board sign a document stating that they are in favour of the proposed resolution,

a resolution in those terms will be taken to have been passed at a meeting of the Board on the day the document is signed, or if the members do not sign on the same day, on the day the document is last signed by a member of the Board.

(2) For the purposes of subsection (1), two or more separate documents containing a statement in identical terms, each of which is signed by one or more members, is taken to constitute one document.

Minutes

28. The Board must keep minutes of its proceedings.

Disclosure of interests

29. (1) If—

- (a) a member has a direct or indirect personal or pecuniary interest in a matter being considered, or about to be considered, by the Board;
- and
- (b) the interest could conflict with the proper performance of the member's duties in relation to consideration of the matter,

the member must, as soon as practicable after the relevant facts come to the member's knowledge, disclose the nature of the interest to a meeting of the Board.

(2) A disclosure under subsection (1) must be recorded in the minutes of the meeting and, unless the Board otherwise determines, the member must not—

- (a) be present during any deliberation of the Board in relation to the matter;
- or
- (b) take part in any decision of the Board in relation to the matter.

(3) For the purpose of the making of a determination by the Board under subsection (2) in relation to a member who has made a disclosure under subsection (1), a member who has a direct or indirect personal or pecuniary interest in the matter to which the disclosure relates must not—

(a) be present during any deliberation of the Board for the purpose of making the determination;

or

(b) take part in the making by the Board of the determination.

PART 3

THE STAFF OF SAOFS

SAOFS's employees

30. (1) SAOFS may engage such employees as it considers necessary for the performance of its functions.

(2) A person is to be employed as SAOFS's chief executive officer.

(3) The chief executive officer is responsible to the presiding member of the Board for managing the administrative affairs of the Board.

Terms and conditions of employment

31. (1) Subject to any relevant award or industrial agreement, the terms and conditions of employment of SAOFS's employees are as determined by the Minister.

(2) The *Government Management and Employment Act 1985* does not apply to SAOFS or its employees.

(3) In this section—

“terms and conditions of employment” includes terms and conditions relating to duration of employment and termination of employment.

Arrangements relating to staff

32. (1) SAOFS may, with the Minister's approval, arrange with the chief executive of a department, administrative unit or statutory authority, for the services of officers or employees of the department, administrative unit or authority to be made available to it.

(2) SAOFS may, with the Minister's approval, arrange with the appropriate authority of the Commonwealth or another State, for the services of officers or employees of the public service of the Commonwealth or State, or of the authority, to be made available to it.

(3) SAOFS may, with the Minister's approval, arrange for the services of an employee of SAOFS to be made available to the Commonwealth or a State or to an authority of the Commonwealth or a State.

PART 4

MISCELLANEOUS

Financial interests of members and employees

33. (1) A person is not eligible to be a member of the Board of SAOFS, or an employee of SAOFS if—

(a) that person, or an associate of that person, has an amount invested, or deposited, with a financial institution, or a related body corporate exceeding a limit prescribed by the regulations for the purposes of this paragraph;

or

(b) that person, or an associate of that person, is indebted to a financial institution, or a related body corporate—

(i) in an amount exceeding a limit prescribed by the regulations for the purposes of this paragraph;

or

(ii) in consequence of the financial institution having granted a loan or other financial accommodation on terms that are more favourable than those ordinarily available on a commercial basis.

(2) A regulation made for the purposes of this section may prescribe different limits for different classes of transactions.

Members and employees to act honestly, etc.

34. (1) This section applies to a member, or an employee of SAOFS.

(2) A person to whom this section applies who, in the course of his or her official duties, is required to consider any matter concerning—

(a) a person or body with whom that person is associated;

or

(b) a person or body by whom that person is employed or has been employed at any time during the previous three years, or a related body,

must immediately inform SAOFS of that fact in writing.

Maximum penalty—\$2 000.

(3) A person to whom this section applies must at all times act honestly in the exercise of official powers and functions.

Maximum penalty—\$2 000.

(4) A person to whom this section applies must not make improper use of an office held for the purposes of this Act or the financial institutions legislation—

(a) to gain, directly or indirectly, an advantage for himself, herself or any other person;

or

(b) to cause detriment to SAOFS or a financial institution.

Maximum penalty—\$10 000, imprisonment for two years or both.

(5) A person to whom this section applies, or a person who was formerly one to whom this section applies, must not make improper use of information acquired by virtue of an office held for the purposes of this Act or the financial institutions legislation—

(a) to gain, directly or indirectly, an advantage for himself, herself or any other person;

or

(b) to cause detriment to SAOFS or a financial institution.

Maximum penalty—\$10 000, imprisonment for two years or both.

(6) It is a defence to a contravention of subsection (2) if the defendant establishes that, when required to consider the matter to which the contravention relates, he or she was not aware of the fact the existence of which obliged him or her to inform SAOFS.

(7) The question whether a person is associated with another person or a body for the purposes of this section is to be determined as prescribed.

Liability of members

35. (1) A member incurs no liability for an honest act or omission in the performance or purported performance of functions, or exercise of powers, under this Act.

(2) A liability that would, but for this section, attach to a member attaches to SAOFS.

(3) This section does not apply to—

(a) wilful misconduct;

(b) wilful neglect;

or

(c) wilful failure to comply with this Act.

Liability of staff

36. (1) An employee of SAOFS incurs no liability for an honest act or omission in the course of the employee's employment.

(2) A liability that would but for this section, attach to an employee of SAOFS attaches to SAOFS.

(3) This section does not apply to—

(a) wilful misconduct;

(b) wilful neglect;

or

(c) wilful failure to comply with this Act.

SAOFS's seal

37. (1) SAOFS's seal is to be kept in such custody as the Board directs and may be used only as authorized by the Board.

(2) Judicial notice must be taken of the imprint of SAOFS's seal appearing on a document and the document must be presumed to have been properly sealed unless the contrary is proved.

Judicial notice of certain signatures

38. Judicial notice must be taken of—

(a) the signature of a member of the Board or the chief executive officer, in his or her official capacity;

and

(b) the fact that the signatory holds or has held the office concerned.

Delegation of SAOFS's powers

39. (1) Subject to subsection (2), SAOFS may, by resolution of the Board, delegate its powers under or in relation to the financial institutions legislation to—

(a) a member;

(b) the chief executive officer;

(c) any other employee of SAOFS;

or

(d) with the Minister's approval—

- (i) the SSA of another participating State that, under the law of that State, is authorized to accept the delegation;
 - (ii) a department or administrative unit of the Public Service or an officer or employee of such a department or administrative unit;
- or
- (iii) any other person.

(2) The powers under section 95 (Supervision levy) of the Financial Institutions (South Australia) Code may not be delegated.

(3) A certificate signed by a member of the Board stating any matter in relation to a delegation of a power under subsection (1) is evidence of the matter.

(4) A document purporting to be a certificate under subsection (3) is, unless the contrary is established, taken to be such a certificate and to have been properly given.

SAOFS may act as delegate

40. SAOFS may, with the Minister's approval, act as the delegate of the SSA of another participating State in relation to the SSA's powers under or in relation to the financial institutions legislation.

Accounts and audit

41. (1) SAOFS must keep proper accounting records so as to enable—

- (a) the preparation from time to time of accounts presenting fairly the results of SAOFS's operations (including operations affecting the Supervision Fund or the Contingency Fund);

and

- (b) the accounts to be conveniently and properly audited.

(2) Annual accounts must be prepared in respect of each financial year on the basis of those accounting records.

(3) In preparing its accounts, SAOFS—

- (a) must comply with any requirements prescribed by the regulations;

and

- (b) must have regard to accounting standards published by the Australian Accounting Standards Board.

(4) The annual accounts must be audited by the Auditor-General and the Auditor-General may at any other time conduct an audit of SAOFS's operations.

(5) A reference in this section to accounts includes an account of receipts and payments, an account of income and expenditure, and a balance sheet, together with statements, reports and notes attached to, and intended to be read with, the accounts.

Annual report

42. (1) SAOFS must, on or before 31 October in each year, submit to the Minister a report on the administration of the financial institutions legislation in this State during the financial year ending on the preceding 30 June.

(2) The report must include the audited accounts for that financial year.

(3) The Minister must, within six sitting days after receiving the report, cause copies to be laid before each House.

Regulations

43. The Governor may make regulations for the purposes of this Act.

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

ROMA MITCHELL Governor