



STATE SUPPLY ACT, 1985

No. 58 of 1985

SUMMARY OF PROVISIONS

PART I PRELIMINARY

Section

1. Short title
2. Commencement
3. Repeal of Public Supply and Tender Act, 1914
4. Interpretation
5. Act not to apply to certain bodies

PART II THE STATE SUPPLY BOARD

6. Establishment of the Board
7. Constitution of the Board
8. Terms and conditions of office
9. Meetings of the Board
10. Validity of acts of the Board and immunity of members
11. Disclosure of interest
12. Allowances and expenses

PART III FUNCTIONS OF THE BOARD

13. Functions of the Board
14. Public authorities bound by directions, etc., of the Board
15. The Board and prescribed public authorities
16. Acquisition, etc., for prescribed public authorities and other bodies
17. The Board and government policy

PART IV MISCELLANEOUS

18. Staff
19. Delegation
20. Financial provision
21. Accounts and audit
22. Annual report
23. Regulations.



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ELIZABETHAE II REGINAE

A.D. 1985

No. 58 of 1985

An Act to provide for and control the acquisition, distribution, management and disposal of goods for or by public authorities; to repeal the Public Supply and Tender Act, 1914; and for other purposes.

[Assented to 30 May 1985]

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**

Short title.

1. This Act may be cited as the "State Supply Act, 1985".

Commencement.

2. (1) This Act shall come into operation on a day to be fixed by proclamation.

(2) The Governor may, in a proclamation fixing a day for this Act to come into operation, suspend the operation of specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

Repeal of Public Supply and Tender Act, 1914.

3. The Public Supply and Tender Act, 1914, is repealed.

Interpretation.

4. In this Act, unless the contrary intention appears—

"appointed member" of the Board means a member of the Board appointed by the Governor under Part II:

"the Board" means the board continued in existence under Part II under the name the "State Supply Board":

"goods" includes any movable property and anything attached to or forming part of land that is capable of being severed for the purpose of its acquisition or disposal:

"local government body" means—

- (a) a council as defined in the Local Government Act, 1934;
- (b) a controlling body established under Part XIX of the Local Government Act, 1934;

or

- (c) any body whether corporate or unincorporate—
 - (i) established by a council or councils;
 - or
 - (ii) declared by regulation to be a local government body;

“management”, in relation to goods, means the care, custody, storage, inspection and stocktaking of the goods:

“prescribed public authority” means a body whether corporate or unincorporate established for a public purpose and declared by regulation to be a prescribed public authority:

“public authority” means—

- (a) a department of the public service or other instrumentality or agency of the Crown;
- (b) a body corporate established for a public purpose and comprised of or including, or having a governing body comprised of or including, a Minister or Ministers of the Crown or a person or persons appointed by the Governor or a Minister or other instrumentality or agency of the Crown;

or

- (c) any body whether corporate or unincorporate established for a public purpose and declared by regulation to be a public authority,

but does not include a prescribed public authority:

“the repealed Act” means the Public Supply and Tender Act, 1914, repealed by this Act.

5. This Act does not apply to or in relation to—

- (a) the Pipelines Authority of South Australia established under the Pipelines Authority Act, 1967;
- (b) the State Bank of South Australia constituted under the State Bank of South Australia Act, 1983;
- (c) the State Government Insurance Commission established under the State Government Insurance Commission Act, 1970;

or

- (d) a local government body.

Act not to apply to certain bodies.

PART II

THE STATE SUPPLY BOARD

6. (1) The board established under the repealed Act shall continue in existence under the name the “State Supply Board”.

Establishment of the Board.

(2) The Board—

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

- (b) shall be capable of suing and being sued;
 - (c) shall be capable of holding, acquiring, dealing with and disposing of real and personal property;
 - (d) shall be capable of acquiring or incurring any other rights or liabilities;
 - (e) shall be an agency of the Crown and hold its property on behalf of the Crown;
- and
- (f) shall have the powers, duties, functions and responsibilities conferred or imposed by or under this Act or any other Act.

(3) Where an apparently genuine document purports to bear the common seal of the Board, it shall be presumed in any legal proceedings, in the absence of proof to the contrary, that the common seal of the Board was duly affixed to the document.

(4) The change of name of the board established under the repealed Act and continued in existence under this Act shall not affect its rights or obligations and a reference to the Supply and Tender Board in any Act, statutory instrument, document or writing of any kind shall, so far as the context admits, be read as a reference to the State Supply Board.

Constitution of
the Board.

7. (1) The Board shall consist of five members of whom—
- (a) one (who shall be the chairman) shall be the person for the time being holding, or acting in the office of, Permanent Head of the Department of Services and Supply;
- and
- (b) the remainder shall be persons appointed by the Governor.
- (2) Of the members appointed by the Governor—
- (a) two shall be members or officers of public authorities or prescribed public authorities;
 - (b) one shall be a person who should, in the opinion of the Minister, be able to provide particular assistance to the Board through experience gained in private industry or commerce;
- and
- (c) one shall be a person nominated by the United Trades and Labor Council.

Terms and
conditions of
office.

8. (1) An appointed member of the Board shall be appointed for a period of 2 years upon such conditions as may be determined by the Governor, and, upon the expiration of his term of office, shall be eligible for re-appointment.

(2) The Governor may appoint a suitable person to be a deputy of a member of the Board and that person may, in the absence of that member, act as a member of the Board.

(3) The Governor may remove an appointed member of the Board from office for—

- (a) breach of, or non-compliance with, the conditions of his appointment;

(b) mental or physical incapacity to carry out satisfactorily the duties of his office;

(c) neglect of duty;

or

(d) dishonourable conduct.

(4) The office of an appointed member of the Board shall become vacant if—

(a) he dies;

(b) his term of office expires;

(c) he resigns by written notice addressed to the Minister;

or

(d) he is removed from office by the Governor pursuant to subsection (3).

(5) Upon the office of an appointed member of the Board becoming vacant, a person shall be appointed in accordance with this Act to the vacant office.

9. (1) The chairman shall preside at a meeting of the Board, and, in the absence of the chairman, the members present shall decide who is to preside at the meeting. Meetings of the Board.

(2) Three members of the Board shall constitute a quorum of the Board, and no business shall be transacted at a meeting unless a quorum is present.

(3) A decision carried by a majority of the votes cast by the members 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.

10. (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 of a member. Validity of acts of the Board and immunity of members.

(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, performance or discharge, or purported exercise, performance or discharge, of his or its powers, functions or duties under this Act.

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

11. (1) A member of the Board who is in any way directly or indirectly interested in a contract made by the Board, or a proposed contract in the contemplation of the Board— Disclosure of interest.

(a) shall, as soon as he becomes aware of the contract, or the proposal to make the 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.

(2) For the purposes of this section, a member of the Board who is a member or officer of a public authority or prescribed public authority shall not be regarded as having an interest in a contract or proposed contract by reason only of the fact that the contract or proposed contract may benefit or affect that authority.

(3) A disclosure 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 Board for any profits derived from the contract.

Allowances and expenses.

12. A member of the Board shall, if the Governor thinks fit, be entitled to such allowances and expenses as may be determined by the Governor.

PART III

FUNCTIONS OF THE BOARD

Functions of the Board.

13. (1) The functions of the Board are—

(a) to undertake, provide for or control the acquisition, distribution, management and disposal of goods for or by public authorities;

(b) to develop and issue policies, principles and guidelines and give directions relating to the acquisition, distribution, management and disposal of goods for or by public authorities;

(c) to direct the terms and conditions upon which goods may be acquired or disposed of for or by public authorities;

(d) to investigate and keep under review the practices of public authorities in relation to the acquisition, distribution, management and disposal of goods;

(e) to provide advice on any matter relating to the acquisition, distribution, management or disposal of goods for or by public authorities, including the training and development of persons engaged in such work.

(2) For the purpose of performing its functions the Board may—

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

(b) enter into any kind of contract or arrangement;

(c) acquire or incur any other rights or liabilities;

(d) direct a public authority to furnish to the Board documents or information relating to the operations of the authority;

and

- (e) exercise such other powers as are vested in it under this Act or are necessary for, or incidental to, the effective performance of its functions.

14. A public authority (including every member or officer of the authority) is bound to comply with any directions given or policies, principles or guidelines issued to the authority by the Board in the performance of its functions.

Public authorities bound by directions, etc., of the Board.

15. (1) The Board may, if it thinks fit, provide advice or make recommendations to the Minister responsible for a prescribed public authority upon any matter relating to the acquisition, distribution, management or disposal of goods by the authority.

The Board and prescribed public authorities.

(2) A prescribed public authority (including every member or officer of the authority) is bound to comply with any directions given by the Minister responsible for the authority upon the advice or recommendation of the Board.

16. The Board may, if it thinks fit—

- (a) with the approval of the Minister responsible for a prescribed public authority, undertake or provide for the acquisition or disposal of goods for the authority;

Acquisition, etc., for prescribed public authorities and other bodies.

or

- (b) with the approval of the Minister, undertake or provide for the acquisition of goods for a body other than a public authority or prescribed public authority.

17. (1) The Minister may require the Board to have regard to a particular policy, principle or matter in the exercise of its powers and performance of its functions under this Act.

The Board and government policy.

(2) Any requirement of the Minister under subsection (1) shall be addressed to the Board in writing.

(3) Except as provided by this Act, the Board is not subject to ministerial control or direction.

PART IV MISCELLANEOUS

18. (1) The Governor may, subject to and in accordance with the Public Service Act, 1967, appoint such officers as he considers necessary or expedient for the proper administration of this Act and an officer so appointed shall hold office subject to and in accordance with that Act.

Staff.

(2) The Board may, with the approval of the Minister administering any department of the public service, upon terms and conditions mutually arranged, make use of the services of an officer of that department.

(3) The Board may, with the approval of a public authority (being a body corporate), upon terms and conditions mutually arranged, make use of the services of an officer of that authority.

Delegation. 19. (1) The Board may delegate any of its powers or functions to a member of the Board or an officer engaged in the administration of this Act.

(2) A delegation under subsection (1)—

(a) may be made subject to conditions specified in the instrument of delegation;

(b) is revocable at will;

and

(c) does not derogate from the power of the Board to act itself in any matter.

Financial provision. 20. The moneys required for the purposes of this Act shall be paid out of moneys appropriated by Parliament for the purpose.

Accounts and audit. 21. (1) The Board shall cause proper accounts to be kept of its financial affairs.

(2) The accounts of the Board shall be audited at least once in every year by the Auditor-General.

(3) For the purposes of an audit under subsection (2), the Auditor-General may exercise in relation to the accounts of the Board and the persons engaged in the administration of this Act the powers that are vested in him by virtue of the Audit Act, 1921, in relation to public accounts and accounting officers.

Annual report. 22. (1) The Board shall, on or before the thirty-first day of October in each year, deliver to the Minister a report upon the administration of this Act during the preceding financial year.

(2) The report shall contain the audited statement of accounts of the Board for the financial year to which the report relates.

(3) The Minister shall cause a copy of the report to be laid before each House of Parliament within 14 sitting days of that House after his receipt of the report.

Report on operation and effectiveness of Act after 3 years. 23. (1) The Minister shall cause a report on the operation and effectiveness of this Act to be prepared within 3 months after the third anniversary of the date of commencement of this Act.

(2) The report shall be prepared by persons not involved in the administration of this Act.

(3) The Minister shall cause a copy of the report to be laid before each House of Parliament within 14 sitting days of that House after his receipt of the report.

Regulations. 24. The Governor may make such regulations as are contemplated by this Act or as are 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