

South Australia

Aboriginal Lands Trust Act 1966

An Act to establish an Aboriginal Lands Trust, to define the powers and functions thereof, for purposes incidental thereto and for other purposes.

Contents

Part 1—Preliminary

- 1 Short title
- 3 Interpretation

Part 2—The Aboriginal Lands Trust

- 5 Constitution of Aboriginal Lands Trust
- 6 Membership of Trust
- 7 Casual vacancies
- 8 Remuneration of Trust
- 9 Validity of acts of Trust
- 9A Minister's Representative
- 10 Meetings and quorum
- 11 Quorum of Trust
- 11A Delegation by Trust
- 12 Trust not to represent Crown
- 13 Annual reports

Part 3—Secretary and staff of the Trust

- 15 Staffing arrangements

Part 4—Provisions with respect to Aboriginal lands

- 16 Power to transfer lands to Trust
- 16AAA Native title
- 16AA Appointment of manager or management committee in respect of land leased by Trust
- 16A Application of the *Public Intoxication Act 1984* to the lands
- 17 Assets of Trust
- 18 Power to grant assistance

Part 5—Finance

- 19 Banking and finance
- 20 Audit

Part 6—Miscellaneous

- 20A Business Advisory Panel
- 21 Regulations

Legislative history

Appendix—Divisional penalties and expiation fees

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Aboriginal Lands Trust Act 1966*.

3—Interpretation

- (1) In this Act, unless the context otherwise requires—

Aboriginal Lands Parliamentary Standing Committee means the committee of that name established under the *Aboriginal Lands Parliamentary Standing Committee Act 2003*;

chairman means the chairman of the Trust;

employing authority means the person designated by proclamation as being the employing authority for the purposes of this definition;

the lands means the lands vested in the Trust in pursuance of this Act;

member means member of the Trust and includes the chairman;

Minister's Representative means the Minister's Representative appointed pursuant to section 9A of this Act and includes a deputy, appointed under that section, while acting as the Minister's Representative;

native title, native title holder—see *Native Title (South Australia) Act 1994*;

Secretary means the Secretary to the Trust;

Trust means the Aboriginal Lands Trust constituted under this Act.

- (2) A proclamation made for the purposes of the definition of *employing authority*—
- (a) may apply by reference to a specified person, or by reference to the person for the time being holding or acting in a specified office or position; and
 - (b) may, from time to time as the Governor thinks fit, be varied or substituted by a new proclamation.

Note—

For definition of divisional penalties (and divisional expiation fees) see Appendix.

Part 2—The Aboriginal Lands Trust

5—Constitution of Aboriginal Lands Trust

- (1) There shall be constituted a body to be known as the *Aboriginal Lands Trust*.

- (2) The Trust shall be a body corporate with perpetual succession and a common seal and, subject to this Act, shall have power in its corporate name to receive, accept, hold, acquire by means of agreement, or exchange, possess, and to dispose of property of every kind and be a party to any legal proceedings.
- (3) Every court and every person acting judicially shall take judicial notice of the seal of the Trust and when the seal appears on any document shall presume that it was properly affixed thereto.

6—Membership of Trust

- (1) The Trust shall consist of a chairman and at least two other members appointed by the Governor: Provided that the Governor may whenever he thinks it fit so to do appoint additional members upon the recommendation of Aboriginal councils established pursuant to regulations made under the *Community Welfare Act 1972*, as amended, and of such Aboriginal communities as are recognised as such by the Minister and the members of which ordinarily reside on land owned by the Trust; but no such council or community may recommend more than one member for the Trust at any one time and thereafter shall only recommend a member to fill a vacancy caused by the vacation of office by or retirement of a person whom it has previously recommended. Each member of the Trust shall be an Aboriginal within the meaning of the *Community Welfare Act 1972*, as amended.
- (2) The chairman and other members of the Trust shall, subject to this Act, hold office for three years.
- (3) Any member of the Trust may at the expiration of his term of office be re-appointed.
- (4) Whenever a vacancy occurs in the office of a member of the Trust whether by expiration of his term of office or otherwise the Governor may, subject to subsection (1) of this section, appoint a person to fill the vacancy: Provided that the person appointed to fill a vacancy caused otherwise than by the expiration of the term of office of a member shall hold office only for the unexpired portion of the term of office of the member in whose place he is appointed: Provided further that any retiring member whose term of office expires by effluxion of time shall hold office until his successor is appointed.
- (5) The Governor may appoint a person as the deputy of a member of the Trust and a person so appointed may, in the absence of the member of whom he or she is deputy, act as a member of the Trust and exercise and perform the powers and functions of that member.
- (6) Where the appointment of a member of the Trust is on the recommendation of a community, the appointment of a person as the deputy of the member must also be on the recommendation of that community.
- (7) An act done or purported to have been done by a person as a deputy of a member may not be called into question on the ground that the occasion for the person's so acting had not arisen or had ceased.

7—Casual vacancies

- (1) The seat of a member shall become vacant on—
 - (a) his death, lunacy or his being convicted of an indictable offence;

- (b) his resignation by notice in writing posted or delivered to the Minister or his absence from three consecutive meetings of the Trust without leave of the Trust;
 - (c) his ceasing to reside in the State;
 - (d) his becoming bankrupt or making an assignment of his property for the benefit of his creditors or compounding with his creditors for less than one hundred cents in the dollar;
 - (e) his removal from the Trust by the Governor pursuant to this section.
- (2) The Governor may remove any member from office for neglect of duty, incapacity to perform his duties, dishonourable conduct or other cause deemed sufficient by the Governor.

8—Remuneration of Trust

Each member of the Trust shall be paid out of the funds of the Trust such remuneration for his services and such travelling and other allowances, if any, as the Governor approves.

9—Validity of acts of Trust

- (1) An act or proceeding of the Trust shall not be invalid or illegal by reason only of the fact that at the time of the act or proceeding there was a vacancy in the office of any member or that any person who had been appointed as an additional member by the Governor before the commencement of the *Aboriginal Lands Trust Act Amendment Act 1975* was not properly qualified for appointment when he was so appointed.
- (2) All acts and proceedings of the Trust shall notwithstanding the subsequent discovery of any defect in the appointment of any member or that any member was disqualified or disentitled to act or that any person who had been appointed as an additional member by the Governor before the commencement of the *Aboriginal Lands Trust Act Amendment Act 1975* was not properly qualified for appointment when he was so appointed be as valid as if such member had been duly appointed and was qualified and entitled to act and had acted as a member and as if the Trust had been properly and fully constituted.

9A—Minister's Representative

- (1) The Minister shall by notice in writing appoint a person to be the Minister's Representative for the purposes of this Act and the Minister may by a like notice appoint another person as deputy of the Minister's Representative.
- (2) A deputy appointed under subsection (1) of this section may, in the absence, incapacity or inability of the Minister's Representative, act as the Minister's Representative.
- (3) An act done or purported to have been done as Minister's Representative by a deputy appointed under subsection (1) of this section shall not be called in question on the ground that the occasion for the doing of the act had not arisen or had ceased.

10—Meetings and quorum

- (1) At any meeting of the Trust the chairman if present shall preside and in the absence of the chairman the members present at any meeting of the Trust shall elect one of their number to preside at that meeting.
- (2) The person presiding at any meeting of the Trust shall have both a deliberative and a casting vote.
- (3) The Minister's Representative is entitled (but is not required) to be present at a meeting of the Trust.

11—Quorum of Trust

One half of the members of the Trust if the number be even plus one, and if the number be uneven the number nearest to but more than half the total number of members, shall constitute a quorum of the Trust.

11A—Delegation by Trust

- (1) Subject to this section, the Trust may delegate any of its functions or powers to a member or committee of members of the Trust.
- (2) The Trust may not delegate any of the following functions or powers:
 - (a) the granting of a lease in respect of any land vested in the Trust pursuant to this Act;
 - (b) the appointment under section 16AA of a manager or management committee in respect of land the subject of a lease granted by the Trust;
 - (c) the approval of expenditure in an amount exceeding \$5 000;
 - (e) the making of any recommendation to the Minister as to legislative amendment;
 - (f) the power of delegation conferred by this section.
- (3) A delegation under this section—
 - (a) must be by instrument in writing; and
 - (b) may be unconditional or subject to conditions (including, where the delegation is to a committee, conditions governing the procedures of the committee); and
 - (c) does not derogate from the power of the Trust to act itself in any matter; and
 - (d) may be revoked at any time by the Trust.

12—Trust not to represent Crown

The Trust shall not be a department of the Government of the State or represent or except as expressly authorised by the Governor with the consent of the Trust be an agent or servant of the Crown.

13—Annual reports

- (1) The Trust shall, on or before the first day of October in every year, report to the Governor on the working of this Act during the preceding financial year and shall in any such report set out a summary of the receipts and expenditure during the said period and any other particulars which the Trust may from time to time consider fit to be included in the report.
- (2) All such reports shall be laid before Parliament.

Part 3—Secretary and staff of the Trust

15—Staffing arrangements

- (1) The employing authority may employ staff to perform functions in connection with the operations or activities of the Trust.
- (2) The terms and conditions of employment of a person under subsection (1) will be determined by the employing authority.
- (3) A person employed under this section will be taken to be employed by or on behalf of the Crown (but will not be employed in the Public Service of the State unless brought into an administrative unit under the *Public Sector Management Act 1995*).
- (4) The employing authority may direct a person employed under this section to perform functions in connection with the operations or activities of a public sector agency specified by the employing authority (and the person must comply with that direction).
- (5) The employing authority is, in acting under this section, subject to direction by the Minister.
- (6) However, no Ministerial direction may be given by the Minister relating to the appointment, transfer, remuneration, discipline or termination of a particular person.
- (7) The employing authority may delegate a power or function under this section.
- (8) A delegation under subsection (7)—
 - (a) must be by instrument in writing; and
 - (b) may be made to a body or person (including a person for the time being holding or acting in a specified office or position); and
 - (c) may be unconditional or subject to conditions; and
 - (d) may, if the instrument of delegation so provides, allow for the further delegation of a power or function that has been delegated; and
 - (e) does not derogate from the power of the employing authority to act personally in any matter; and
 - (f) may be revoked at any time by the employing authority.
- (9) A change in the person who constitutes the employing authority under this Act will not affect the continuity of employment of a person under this section.

- (10) The Trust must, at the direction of the Minister, the Treasurer or the employing authority, make payments with respect to any matter arising in connection with the employment of a person under this section (including, but not limited to, payments with respect to salary or other aspects of remuneration, leave entitlements, superannuation contributions, taxation liabilities, workers compensation payments, termination payments, public liability insurance and vicarious liabilities).
- (11) The Trust does not have the power to employ any person.
- (12) The Trust may, under an arrangement established by a Minister administering an administrative unit, make use of the services or staff of that administrative unit.
- (13) The Trust may, after consultation with the employing authority, appoint a person employed under this section to the position of Secretary or Manager (and the same person may hold both positions).
- (14) In this section—

public sector agency has the same meaning as in the *Public Sector Management Act 1995*.

Part 4—Provisions with respect to Aboriginal lands

16—Power to transfer lands to Trust

- (1) Notwithstanding anything in the *Community Welfare Act 1972*, as amended, or any other Act or in any regulation contained, the Governor may by proclamation transfer any Crown lands or any lands for the time being reserved for Aborigines to the Trust for an estate in fee simple or for such lesser estate or interest as is vested in the Crown: Provided that no such proclamation shall be made in respect of any land that is an Aboriginal reserve or part of any Aboriginal reserve within the meaning of the *Community Welfare Act 1972*, as amended, and in respect of which an Aboriginal council has been established and is in existence pursuant to regulations made under the *Community Welfare Act 1972*, as amended, without the consent of that council:

Provided further that no such proclamation shall be made in respect of any Crown lands (not being lands at the time of the passing of this Act reserved for Aborigines) except upon the recommendation of the Minister of Lands or the Minister of Irrigation as the case may require and the recommendation of both Houses of Parliament by resolution passed during the same or different sessions of the same Parliament.
- (2) Upon the making of any such proclamation such lands shall be vested for an estate in fee simple or, as the case may be, for such lesser estate or interest, as is vested in the Crown free of all encumbrances in the Trust except and reserved unto Her Majesty, Her heirs and successors, all gold, silver, copper, tin and other metals, ore, minerals and other substances containing metal and all gems and precious stones, coal and mineral oil in and upon any such lands and the Governor may issue such land grants or other instruments as may be required under any Act or law to give effect to the transfer effected by the proclamation and that land grant or other instrument shall form part of the records of title to land kept under the *Real Property Act 1886*.
- (3) Notwithstanding the provisions of the *Real Property Act 1886*, the Registrar-General shall make such entries in the Register Book and do such other acts and things under that Act as are necessary to give effect to the transfer.

- (4) The Treasurer shall from time to time pay to the Trust such amounts as may be appropriated by Parliament for the purpose up to but not exceeding the amount of royalties paid to the Crown or a Minister of the Crown in any financial year in respect of any lease or licence, subject to this section, granted or issued under the *Mining Act 1971* or the *Petroleum Act 1940*, in respect of any lands vested in the Trust.
- (5) The Trust may—
- (a) with the consent of the Minister, sell, lease, mortgage or otherwise deal with land vested in it pursuant to this Act; or
 - (b) develop such land subject to compliance with the provisions of any Act or law relating thereto,

as it thinks fit: Provided that neither the Trust nor any lessee or assign of the Trust shall depasture any stock on any lands situate within the pastoral area of the State as defined in the *Pastoral Act 1936* and vested in the Trust without the approval of, and upon such conditions (including the number of stock to be depastured on any such land) as may be specified by the Pastoral Board. The Minister shall not withhold his consent unless he is satisfied that the sale, lease, mortgage or dealing fails to preserve to the Aboriginal people of South Australia the benefits and value of the land in question: Provided that no land vested in the Trust may be sold unless both Houses of Parliament during the same or different sessions of any Parliament have by resolution authorised such sale.

- (6) Notwithstanding the provisions of subsection (5) of this section, the Trust shall not sell, lease nor in any way alienate any portion of the North-West Reserve (as defined in the proclamation of His Excellency the Governor dated the thirteenth day of February, 1964 as land reserved for Aborigines) from use by Aborigines within the meaning of the *Community Welfare Act 1972*, as amended, nor shall the Trust encumber any portion of the said Reserve unless both Houses of Parliament during the same or different sessions of any Parliament have by resolution authorised such alienation or encumbering.
- (7) No lease or licence granted by the Trust under subsection (5) of this section shall be assigned nor shall any lessee or licensee sublet or part with the possession of the land the subject thereof without the consent in writing of the Minister first had and obtained. A lease or licence shall be forfeit upon any breach of this provision.
- (8) Subject to subsection (9) of this section, the *Mining Act 1971* and the *Petroleum Act 1940* shall, on and after the commencement of the *Aboriginal Lands Trust Act Amendment Act 1973*, not confer any right of entry, prospecting, exploration or mining in respect of land vested in the Trust.
- (9) The Governor may declare by proclamation that on and after the commencement of the *Aboriginal Lands Trust Act Amendment Act 1973*, the rights of entry, prospecting, exploration or mining conferred by the *Mining Act 1971* and the *Petroleum Act 1940*, shall be exercisable, subject to such conditions and modifications (if any) as may be specified in the proclamation in relation to land vested in the Trust or any part of that land and those conditions and modifications shall apply and have effect accordingly and the Governor may, by subsequent proclamation, vary or revoke any such proclamation.

16AAA—Native title

- (1) The vesting of land in the Trust does not extinguish or affect native title in the land.
- (2) No dealing by the Trust with land vested in it extinguishes or affects native title in the land.
- (3) However, the Trust may, by agreement with the Minister and the holders of native title in land, deal with the land so as to extinguish or affect native title in the land.
- (4) This section operates despite the *Real Property Act 1886* or any other law.

16AA—Appointment of manager or management committee in respect of land leased by Trust

- (1) The Trust may—
 - (a) at the request of the lessee under a lease granted by the Trust in respect of land vested in it pursuant to this Act; or
 - (b) with the consent of the Minister, where the Trust is satisfied that land the subject of such a lease is not being properly managed by the lessee for the benefit of the Aboriginal community for whose benefit the lease was granted, appoint a manager or management committee in respect of the land.
- (2) Where the Trust appoints a manager or management committee in respect of land the subject of a lease, the manager or management committee—
 - (a) has all the powers, functions and duties of the lessee in respect of the land and may act in the name of and on behalf of the lessee; and
 - (b) must report regularly to the Trust on the management of the land.
- (3) Subject to any directions of the Trust, a management committee appointed under this section may determine its own procedures.
- (4) A manager or member of a management committee appointed under this section is, if the Trust so determines, entitled to remuneration of an amount determined by the Trust.
- (5) The remuneration of the manager or a member of the management committee and all other costs and expenses arising out of the management of the land are payable by the Trust but are recoverable by the Trust as a debt from the lessee.
- (6) The manager or management committee may, by notice in writing, require the lessee or any person who has been involved in the management of the land to report (orally or in writing) on such matters relating to the management of the land as may be specified in the notice.
- (7) A person who fails to comply with a requirement made under subsection (6) is guilty of a summary offence.
Penalty: Division 6 fine.
- (8) A manager or management committee appointed by the Trust must, on the termination of the appointment, fully account to the Trust for the management of the land.
- (9) The Governor may, by regulation, make any provision in relation to the management of land by a manager or management committee appointed under this section.

16A—Application of the *Public Intoxication Act 1984* to the lands

- (1) The *Public Intoxication Act 1984* applies to the lands with the following qualifications and modifications—
 - (a) a reference in that Act to a public place shall be construed as a reference to a part of the lands declared under this section to be a public place;
 - (b) a reference in that Act to an authorised officer shall be construed as a reference to an authorised officer—
 - (i) appointed with the concurrence of the Trust; and
 - (ii) exercising his powers within a part of the lands approved by the Trust in relation to that authorised officer;
 - (c) a member of the police force or an authorised officer appointed with the concurrence of the Commissioner of Police may, in addition to his powers under that Act, but subject to any limitation prescribed under this section, exercise any of the following powers on any part of the lands declared by proclamation under subsection (2) to be a part of the lands in relation to which those powers are exercisable:
 - (i) the power, on reasonable suspicion that alcohol or a drug is in any premises or vehicle, to enter and search those premises or that vehicle, using such force as is necessary for the purpose;
 - (ii) the power to stop any vehicle for the purpose of carrying out a search under subparagraph (i);
 - (iii) the power to confiscate and dispose of alcohol or a drug.
- (2) The Governor may, by proclamation made on the recommendation of the Trust—
 - (a) declare any part of the lands to be a public place for the purposes of the *Public Intoxication Act 1984*; or
 - (b) declare that the powers referred to in subsection (1)(c) are exercisable in relation to a specified part of the lands; or
 - (c) impose limitations on the exercise of the power referred to in subsection (1)(c) in a specified part of the lands; or
 - (d) vary or revoke any proclamation previously made under this subsection.
- (3) The Trust shall not recommend the making of a proclamation under subsection (2) unless—
 - (a) a proposal for making the proclamation has been initiated from within the Aboriginal communities that would be affected by the proclamation; and
 - (b) the Trust is satisfied that those communities are in general agreement that the proclamation should be made.

17—Assets of Trust

All moneys held by the Trust including the proceeds of any sale or lease or other dealing with any land vested in the Trust shall, subject to payment thereout of the costs of administration of this Act, be held by the Trust and used by it for the development and improvement of lands the property of the Trust and the acquisition and development of further lands for the purposes of the Trust and for the purposes of section 18.

18—Power to grant assistance

Subject to the approval of the Minister the Trust may grant technical or other assistance or advance moneys to Aboriginals within the meaning of the *Community Welfare Act 1972*, as amended, or to recognised Aboriginal groups for such purposes and upon such conditions as the Trust thinks fit: Provided that no assistance shall be granted and no moneys shall be advanced under this section to any member of the Trust or, except with the consent of the Minister, to any relative of a member of the Trust.

Part 5—Finance

19—Banking and finance

- (1) For the purposes of this Act the Trust shall open and maintain an account or accounts at an ADI trading in Adelaide and with the approval of the Minister may arrange with that ADI for overdrafts or advances.
- (2) The Minister may from time to time out of moneys provided by Parliament for the purpose pay to the Trust by way of grant or by way of loan or both such sums as he thinks proper.
- (3) There shall be paid into the account of the Trust all such sums as the Treasurer and the Minister pay to the Trust and all other money received by the Trust from any source.

20—Audit

The Auditor-General shall, without fee, audit the accounts of the Trust annually. For the purposes of any such audit the *Audit Act 1921*, as amended, shall apply as if the Trust were a department of the Public Service.

Part 6—Miscellaneous

20A—Business Advisory Panel

- (1) The *Aboriginal Lands Business Advisory Panel* is established.
- (2) The functions of the Panel are to advise and assist Aboriginal communities and Aboriginal persons ordinarily residing on the lands in the establishment and management of business or community enterprises and in the development of skills required for the effective operation of such enterprises.
- (3) The Panel is to consist of seven members of whom—
 - (a) one must be the person for the time being holding or acting in the office of chairman of the Trust; and

- (b) five must be persons appointed by the Governor on the nomination of the Minister, being persons with business and other knowledge and experience that will, in the Minister's opinion, contribute to the effective performance by the Panel of its functions; and
 - (c) one must be the chief executive officer of the Department of Technical and Further Education or his or her nominee.
- (4) The Minister must consult with the Aboriginal Lands Parliamentary Standing Committee before nominating a person for appointment under subsection (3)(b).
 - (5) The members appointed to the Panel by the Governor are to be appointed for a term of office and on terms and conditions determined by the Governor.
 - (6) Subject to any directions of the Minister, the Panel may conduct its business in such manner as the Panel determines from time to time.

21—Regulations

- (1) The Governor may, on the recommendation of an Aboriginal community, make regulations—
 - (a) regulating, restricting or prohibiting the consumption, possession, sale or supply of alcoholic liquor on a specified part of the lands;
 - (b) prohibiting the inhalation or consumption of any regulated substance on a specified part of the lands;
 - (c) prohibiting the possession, sale or supply of any regulated substance on a specified part of the lands for the purpose of inhalation or consumption;
 - (d) providing for the confiscation, in circumstances in which a contravention of a regulation under paragraph (a), (b) or (c) is reasonably suspected, of alcoholic liquor or any regulated substance to which the suspected contravention relates;
 - (e) providing for the treatment or rehabilitation (or both) of any person affected by the misuse of alcoholic liquor or any regulated substance;
 - (f) prescribing fines (not exceeding a division 7 fine) for contravention of, or non-compliance with, a regulation.
- (2) A regulation under subsection (1) may not be varied or revoked except on the recommendation of the Aboriginal community on whose recommendation the regulation was made.
- (3) A member of the police force may seize and impound any vehicle reasonably suspected of having been used in connection with the supply of alcoholic liquor to any person on the lands in contravention of a regulation.
- (4) If a vehicle is seized pursuant to subsection (3), the matter must be referred at the next available opportunity to a magistrate.
- (5) A magistrate may make an order for the forfeiture of a vehicle seized pursuant to subsection (3) if the magistrate is satisfied—
 - (a) that the vehicle has been used in connection with the supply of alcoholic liquor to a person on the lands in contravention of a regulation; and

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- (b) that any person who so used the vehicle has, on at least one previous occasion, been found guilty of the offence of supplying alcoholic liquor to a person on the lands in contravention of a regulation; and
- (c) that in the circumstances of the case it is appropriate that the vehicle be confiscated.
- (6) A court by which a person is found to have been unlawfully in possession of alcoholic liquor or a regulated substance for his or her own use in contravention of a regulation may, subject to the regulations, order that person to undergo treatment or participate in a prescribed rehabilitation programme.
- (7) Subject to subsection (8), a person who contravenes or fails to comply with a regulation is guilty of a summary offence and liable to a penalty as follows:
- (a) if the regulation specifies a penalty—the penalty so specified; or
- (b) if no penalty is specified—a division 7 fine.
- (8) A person who contravenes—
- (a) a regulation regulating, restricting or prohibiting the sale or supply of alcoholic liquor on the lands; or
- (b) a regulation prohibiting the sale or supply of a regulated substance on the lands for the purpose of inhalation or consumption,
- is guilty of a summary offence and liable to a division 7 fine or division 7 imprisonment.
- (9) In this section—
- Aboriginal community*** means an Aboriginal community—
- (a) that is recognised as such by the Minister; and
- (b) the members of which ordinarily reside on land owned by the Trust;
- member of the police force*** includes a special constable authorised by a member of the police force to seize a vehicle under this section;
- regulated substance*** means—
- (a) petrol; or
- (b) any other substance declared by the regulations to be a regulated substance for the purposes of this section.

Legislative history

Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1966	87	<i>Aboriginal Lands Trust Act 1966</i>	8.12.1966	8.12.1966 (<i>Gazette 8.12.1966 p2152</i>)
1968	41	<i>Aboriginal Lands Trust Act Amendment Act 1968</i>	19.12.1968	19.12.1968
1973	10	<i>Aboriginal Lands Trust Act Amendment Act 1973</i>	6.9.1973	8.11.1973 (<i>Gazette 8.11.1973 p2795</i>)
1975	100	<i>Aboriginal Lands Trust Act Amendment Act 1975</i>	20.11.1975	20.11.1975
1984	65	<i>Aboriginal Lands Trust Act Amendment Act 1984</i>	27.9.1984	27.9.1984
1990	6	<i>Aboriginal Lands Trust Act Amendment Act 1990</i>	5.4.1990	5.4.1990
1991	58	<i>Aboriginal Lands Trust (Parliamentary Committee and Business Advisory Panel) Amendment Act 1991</i>	28.11.1991	16.1.1992 (<i>Gazette 16.1.1992 p126</i>)
1993	16	<i>Aboriginal Lands Trust (Miscellaneous) Amendment Act 1993</i>	8.4.1993	17.6.1993 (<i>Gazette 17.6.1993 p1969</i>)
1998	3	<i>Aboriginal Lands Trust (Native Title) Amendment Act 1998</i>	26.3.1998	26.3.1998
1999	33	<i>Financial Sector Reform (South Australia) Act 1999</i>	17.6.1999	Sch (item 1)—1.7.1999 being the date specified under s 3(16) of the <i>Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999</i> of the Commonwealth as the transfer date for the purposes of that Act: s 2(2)
2003	24	<i>Aboriginal Lands Parliamentary Standing Committee Act 2003</i>	24.7.2003	Sch (cll 2—4)—18.9.2003 (<i>Gazette 18.9.2003 p3599</i>)
2006	41	<i>Statutes Amendment (Public Sector Employment) Act 2006</i>	14.12.2006	Pt 2 (ss 4—6)—1.4.2007 (<i>Gazette 29.3.2007 p930</i>)

2009 84 *Statutes Amendment (Public Sector Consequential Amendments) Act 2009* 10.12.2009 Pt 3 (ss 6—8)—1.2.2010 (*Gazette* 28.1.2010 p320)

Provisions amended since 3 February 1976

- Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 1 of The Public General Acts of South Australia 1837-1975 at page 44.

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	18.9.2003
s 3		
s 3(1)	s 3 redesignated as s 3(1) by 41/2006 s 4(2)	1.4.2007
Aboriginal Lands Parliamentary Standing Committee	inserted by 24/2003 Sch cl 2	18.9.2003
employing authority	inserted by 41/2006 s 4(1)	1.4.2007
the lands	inserted by 65/1984 s 2	27.9.1984
native title, native title holder	inserted by 3/1998 s 2	26.3.1998
s 3(2)	inserted by 41/2006 s 4(2)	1.4.2007
s 4	<i>omitted under Legislation Revision and Publication Act</i>	18.9.2003
Pt 2		
s 6		
s 6(5)	substituted by 16/1993 s 3	17.6.1993
s 6(6) and (7)	inserted by 16/1993 s 3	17.6.1993
s 10		
s 10(3)	substituted by 16/1993 s 4	17.6.1993
s 11A	inserted by 16/1993 s 5	17.6.1993
s 11A(2)	(d) deleted by 41/2006 s 5	1.4.2007
Pt 3		
s 15	substituted by 41/2006 s 6	1.4.2007
Pt 4		
s 16AAA	inserted by 3/1998 s 3	26.3.1998
s 16AA	inserted by 16/1993 s 6	17.6.1993
s 16A	inserted by 65/1984 s 3	27.9.1984
Pt 5		
s 19		

s 19(1)	amended by 33/1999 Sch (item 1(a))	1.7.1999
s 19(3)	amended by 33/1999 Sch (item 1(b))	1.7.1999
Pt 6	inserted by 6/1990 s 2	5.4.1990
s 20A	inserted by 58/1991 s 3	16.1.1992
s 20A(4)	amended by 24/2003 Sch cl 3	18.9.2003
s 20B	<i>inserted by 58/1991 s 3</i>	<i>16.1.1992</i>
	<i>deleted by 24/2003 Sch cl 4</i>	<i>18.9.2003</i>

Transitional etc provisions associated with Act or amendments

Statutes Amendment (Public Sector Employment) Act 2006, Sch 1—Transitional provisions

Note—

Also see *Statutes Amendment (Public Sector Employment) (Transitional Provisions) Regulations 2007*.

1—Interpretation

In this Part, unless the contrary intention appears—

Commonwealth Act means the *Workplace Relations Act 1996* of the Commonwealth;

employing authority means—

- (a) subject to paragraph (b)—the person who is the employing authority under a relevant Act;
- (b) in a case that relates to employment under the *Fire and Emergency Services Act 2005*—the Chief Executive of the South Australian Fire and Emergency Services Commission, or the Chief Officer of an emergency services organisation under that Act, as the case requires;

Industrial Commission means the Industrial Relations Commission of South Australia;

prescribed body means—

- (a) the Aboriginal Lands Trust;
- (b) the Adelaide Cemeteries Authority;
- (c) the Adelaide Festival Centre Trust;
- (d) the Adelaide Festival Corporation;
- (e) SA Ambulance Service Inc;
- (f) the Minister to whom the administration of the *Children's Services Act 1985* is committed;
- (g) the Minister to whom the administration of the *Education Act 1972* is committed;
- (h) the Electricity Supply Industry Planning Council;
- (i) a body constituted under the *Fire and Emergency Services Act 2005*;
- (j) the History Trust of South Australia;

- (k) the Institute of Medical and Veterinary Science;
- (l) a regional NRM board constituted under the *Natural Resources Management Act 2004*;
- (m) the Senior Secondary Assessment Board of South Australia;
- (n) the South Australian Country Arts Trust;
- (o) the South Australian Film Corporation;
- (p) the South Australian Health Commission;
- (q) an incorporated hospital under the *South Australian Health Commission Act 1976*;
- (r) an incorporated health centre under the *South Australian Health Commission Act 1976*;
- (s) the South Australian Motor Sport Board;
- (t) the South Australian Tourism Commission;
- (u) The State Opera of South Australia;
- (v) the State Theatre Company of South Australia;
- (w) the Minister to whom the administration of the *Technical and Further Education Act 1975* is committed;

relevant Act means—

- (a) in a case that relates to employment with a prescribed body established under an Act being amended by this Act—that Act;
- (b) in a case that relates to employment with a prescribed body who is a Minister to whom the administration of an Act being amended by this Act is committed—that Act;
- (c) in a case that relates to employment with a body constituted under the *Fire and Emergency Services Act 2005*—that Act.

2—Transfer of employment

- (1) Subject to this clause, a person who, immediately before the commencement of this clause, was employed by a prescribed body under a relevant Act will, on that commencement, be taken to be employed by the employing authority under that Act (as amended by this Act).
- (2) The following persons will, on the commencement of this clause, be taken to be employed as follows:
 - (a) a person who, immediately before the commencement of this clause, was employed under section 6L(1) of the *Electricity Act 1996* will, on that commencement, be taken to be employed by the employing authority under that Act (as amended by this Act);
 - (b) a person who, immediately before the commencement of this clause, was employed by the South Australian Fire and Emergency Services Commission will, on that commencement, be taken to be employed by the Chief Executive of that body;

- (c) a person who, immediately before the commencement of this clause, was employed by an emergency services organisation under the *Fire and Emergency Services Act 2005* will, on that commencement, be taken to be employed by the Chief Officer of that body;
 - (d) a person who, immediately before the commencement of this clause, was employed by an incorporated hospital or an incorporated health centre under the *South Australian Health Commission Act 1976* will, on that commencement, be taken to be employed by an employing authority under that Act (as amended by this Act) designated by the Governor by proclamation made for the purposes of this paragraph.
- (3) Subject to this clause, the Governor may, by proclamation, provide that a person employed by a subsidiary of a public corporation under the *Public Corporations Act 1993* will be taken to be employed by a person or body designated by the Governor (and the arrangement so envisaged by the proclamation will then have effect in accordance with its terms).
- (4) Subject to subclause (5), an employment arrangement effected by subclause (1), (2) or (3)—
 - (a) will be taken to provide for continuity of employment without termination of the relevant employee's service; and
 - (b) will not affect—
 - (i) existing conditions of employment or existing or accrued rights to leave; or
 - (ii) a process commenced for variation of those conditions or rights.
- (5) If, immediately before the commencement of this clause, a person's employment within the ambit of subclause (1), (2) or (3) was subject to the operation of an award or certified agreement (but not an Australian Workplace Agreement) under the Commonwealth Act, then, on that commencement, an award or enterprise agreement (as the case requires) will be taken to be created under the *Fair Work Act 1994*—
 - (a) with the same terms and provisions as the relevant industrial instrument under the Commonwealth Act; and
 - (b) with any terms or provisions that existed under an award or enterprise agreement under the *Fair Work Act 1994*, that applied in relation to employment of the kind engaged in by the person, immediately before 27 March 2006, and that ceased to apply by virtue of the operation of provisions of the Commonwealth Act that came into force on that day,subject to any modification or exclusion prescribed by regulations made for the purposes of this subclause and subject to the operation of subclause (6).
- (6) Where an award or enterprise agreement is created by virtue of the operation of subclause (5)—
 - (a) the award or enterprise agreement will be taken to be made or approved (as the case requires) under the *Fair Work Act 1994* on the day on which this clause commences; and

- (b) the *Fair Work Act 1994* will apply in relation to the award or enterprise agreement subject to such modifications or exclusions as may be prescribed by regulations made for the purposes of this subclause; and
- (c) the Industrial Commission may, on application by the Minister to whom the administration of the *Fair Work Act 1994* is committed, or an application by a person or body recognised by regulations made for the purposes of this subclause, vary or revoke any term or provision of the award or enterprise agreement if the Industrial Commission is satisfied that it is fair and reasonable to do so in the circumstances.

3—Superannuation

- (1) If a prescribed body under a relevant Act is, immediately before the commencement of this clause, a party to an arrangement relating to the superannuation of one or more persons employed by the prescribed body, then the relevant employing authority under that Act will, on that commencement, become a party to that arrangement in substitution for the prescribed body.
- (2) Nothing that takes effect under subclause (1)—
 - (a) constitutes a breach of, or default under, an Act or other law, or constitutes a breach of, or default under, a contract, agreement, understanding or undertaking; or
 - (b) terminates an agreement or obligation or fulfils any condition that allows a person to terminate an agreement or obligation, or gives rise to any other right or remedy,and subclause (1) may have effect despite any other Act or law.
- (3) An amendment effected to another Act by this Act does not affect a person's status as a contributor under the *Superannuation Act 1988* (as it may exist immediately before the commencement of this Act).

4—Interpretative provision

- (1) The Governor may, by proclamation, direct that a reference in any instrument (including a statutory instrument) or a contract, agreement or other document to a prescribed body, or other specified agency, instrumentality or body, will have effect as if it were a reference to an employing authority under a relevant Act, the Minister to whom the administration of a relevant Act is committed, or some other person or body designated by the Governor.
- (2) A proclamation under subclause (1) may effect a transfer of functions or powers.

5—Related matters

- (1) A notice in force under section 51 of the *Children's Services Act 1985* immediately before the commencement of this clause will continue to have effect for the purposes of that section, as amended by this Act.
- (2) A notice in force under section 28 of the *Institute of Medical and Veterinary Science Act 1982* immediately before the commencement of this clause will continue to have effect for the purposes of that section, as amended by this Act.

- (3) A notice in force under section 61 of the *South Australian Health Commission Act 1976* immediately before the commencement of this clause will continue to have effect for the purposes of that section, as amended by this Act.
- (4) A notice in force under section 13(6) of the *South Australian Motor Sport Act 1984* immediately before the commencement of this clause will continue to have effect after that commencement but may, pursuant to this subclause, be varied from time to time, or revoked, by the Minister to whom the administration of that Act is committed.
- (5) The fact that a person becomes an employer in his or her capacity as an employing authority under an Act amended by this Act does not affect the status of any body or person as an employer of public employees for the purposes of the *Fair Work Act 1994* (unless or until relevant regulations are made under the provisions of that Act).

6—Other provisions

- (1) The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on the enactment of this Act.
- (2) A provision of a regulation made under subclause (1) may, if the regulation so provides, take effect from the commencement of this Act or from a later day.
- (3) To the extent to which a provision takes effect under subclause (2) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person by—
 - (a) decreasing the person's rights; or
 - (b) imposing liabilities on the person.
- (4) The *Acts Interpretation Act 1915* will, except to the extent of any inconsistency with the provisions of this Schedule (or regulations made under this Schedule), apply to any amendment or repeal effected by this Act.

Historical versions

Reprint No 1—1.7.1991

Reprint No 2—16.1.1992

Reprint No 3—17.6.1993

Reprint No 4—26.3.1998

Reprint No 5—1.7.1999

Reprint No 6—18.9.2003

Appendix—Divisional penalties and expiation fees

At the date of publication of this version divisional penalties and expiation fees are, as provided by section 28A of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—

Division	Maximum imprisonment	Maximum fine	Expiation fee
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	—	\$500	\$100
10	—	\$200	\$75
11	—	\$100	\$50
12	—	\$50	\$25

Note: This appendix is provided for convenience of reference only.