

South Australia

State Opera of South Australia Act 1976

An Act to establish The State Opera of South Australia; to constitute a Board of Management thereof and for matters incidental thereto.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *State Opera of South Australia Act 1976*.

4—Interpretation

- (1) In this Act, unless the contrary intention appears—

the Board means the Board of Management constituted under section 6;

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

financial year means any period of twelve months concluding on the thirtieth day of June in a year;

Member means a Member of the Board and includes the Member for the time being appointed to chair the Board;

the State Opera means The State Opera of South Australia established under section 5;

subscriber means a person for the time being a subscriber to the State Opera within the meaning of the regulations.

- (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.

Part 2—The State Opera and the Board

5—The State Opera

- (1) For the purposes of this Act, a body by the name of *The State Opera of South Australia* is hereby established.

- (2) The State Opera—

- (a) is a body corporate with perpetual succession and a common seal; and
- (b) subject to this Act, is capable of acquiring, taking or letting out on lease, holding, selling and otherwise disposing of real and personal property; and
- (c) is capable of suing and being sued; and
- (d) has the powers, duties, functions and authorities conferred, imposed or prescribed by or under this Act.

- (3) Where an apparently genuine document purports to bear the common seal of the State Opera, it is to be presumed, in the absence of proof to the contrary, that the common seal of the State Opera was duly affixed to that document.

6—The Board of Management

- (1) The powers, duties, functions and authorities of the State Opera conferred, imposed or prescribed by or under this Act may be exercised, performed and discharged by the Board of Management.
- (2) The Board of Management is to consist of eight Members appointed by the Governor, of whom two must be subscribers elected, in the manner provided for by the regulations, by subscribers.
- (3) The Governor may appoint a Member to chair the Board and another Member to be the deputy of that Member.
- (4) Subject to this Act, a Member holds office for a term, not exceeding three years, specified in the instrument of appointment, except for a Member elected, in the manner prescribed by the regulations, by subscribers, who holds office for the term for which he or she is elected.
- (5) A Member appointed, or elected and appointed, to fill a casual vacancy in the office of a Member holds office only for the balance of the term of the Member in whose place he or she is appointed, or elected and appointed.
- (6) A Member is eligible for reappointment, or re-election and reappointment, as the case may be, but may not be reappointed, or re-elected and reappointed, for more than three consecutive terms.

7—Staff participation on Board

Notwithstanding any other Act or law, a person employed under this Act is not disqualified from being a Member of the Board or from accepting or retaining any fees or other remuneration provided for by or under this Act, or otherwise, in respect of his or her service as a Member.

8—Removal from office of Member

The Governor may remove a Member from office for—

- (a) mental or physical incapacity; or
- (b) neglect of duty; or
- (c) dishonourable conduct; or
- (d) any other cause considered sufficient by the Governor.

9—Casual vacancies

The office of a Member becomes vacant if—

- (a) the Member dies; or
- (b) the Member's term of office expires; or
- (c) the Member resigns by written notice to the Minister; or
- (d) the Member is removed from office by the Governor pursuant to section 8.

10—Common seal, meetings and quorum

- (1) The common seal of the State Opera must not be affixed to any instrument except in pursuance of a resolution of the Board.
- (2) Any instrument executed in pursuance of such a resolution must be attested by the signature of any two Members.
- (3) The procedure for the calling of meetings of the Board and for the conduct of business at such meetings must, subject to this Act, be as determined by the Board.
- (4) Any four Members constitute a quorum at any meeting of the Board and any duly convened meeting at which a quorum is present is competent to transact any business of the State Opera.
- (5) A decision carried by the majority of the votes cast by the Members present at a meeting of the Board is a decision of the Board.
- (6) The Board must cause accurate minutes to be kept of its proceedings at meetings.

11—Chairing of meetings

- (1) The Member appointed to chair the Board must chair all meetings of the Board at which he or she is present.
- (2) If the Member appointed to chair the Board is absent from a meeting of the Board, the Member appointed as his or her deputy must, if present at the meeting, chair the meeting, and, if both are absent, the Members present at the meeting must choose one of their number to chair the meeting.
- (3) The Member chairing a meeting of the Board has, in the event of an equality of votes, a second or casting vote in addition to a deliberative vote.

12—Remuneration of Members

A Member may, if the Governor thinks fit, be paid such fees or other remuneration as may from time to time be fixed by the Governor and is entitled to receive such travelling and other expenses as are from time to time approved by the Minister.

13—Delegation of powers to Members

- (1) The Board may by instrument in writing delegate to any Member any of the powers and functions conferred on the Board by or under this Act (except this power of delegation) so that the delegated powers and functions may be exercised by the delegate with respect to the matters or in relation to a locality specified in the instrument of delegation.
- (2) A delegation under subsection (1) is revocable in writing at will and no delegation prevents the exercise of any power or function by the Board conferred on it by or under this Act.

14—Validity of act etc of Board

No act, proceedings or determination of the Board is invalid on the ground only of any vacancy in the office of any Member or of any defect in the appointment of any Member.

16—Conflict of interest under Public Sector (Honesty and Accountability) Act

A Member will not be taken to have a direct or indirect interest in a matter for the purposes of the *Public Sector (Honesty and Accountability) Act 1995* by reason only of the fact that the Member has an interest as a subscriber or an interest in a matter that is shared in common with those engaged in or associated with the arts industry generally, or a substantial section of those engaged in or associated with the arts industry.

17—Board subject to general control and direction of the Minister

The Board is, in the performance of its powers and functions, subject to the general control and direction of the Minister.

18—Objects, powers etc of State Opera

- (1) Subject to this Act, the State Opera may—
- (a) present, produce, manage and conduct theatrical and operatic performances of any kind as may in its opinion tend to promote the art of the opera and related theatrical arts; and
 - (b) promote or commission the scoring and writing of operas and other theatrical works for operatic or theatrical performance; and
 - (c) promote the training of all persons concerned in the production, presentation or performance of operatic or other related theatrical presentations; and
 - (d) assist financially or otherwise in the presentation, production, management or conduct of any theatrical or operatic production in this State; and
 - (e) promote public interest and participation in the art of the opera and related theatrical arts; and
 - (f) establish and conduct schools, courses, lectures, seminars and discussions on the art of the opera and related theatrical arts; and
 - (g) contract for the performance of services with artists, entertainers, performers, writers, composers, choreographers, designers and directors; and
 - (h) buy or build any theatre or purchase and install any fittings or equipment in any theatre; and
 - (i) make charges for admission to any operatic or theatrical performance; and
 - (j) grant or dispose of rights to televise, broadcast or record any operatic or theatrical performances undertaken under its auspices; and
 - (k) enter into agreements or arrangements with any other person or body for the promotion of any operatic or theatrical activity; and
 - (l) acquire patents or licences to use any inventions or devices that may be used in connection with any operatic or related activity and dispose of such patents or licences for the use of any such inventions or devices; and
 - (m) undertake any business which is ancillary to its objects and powers; and
 - (n) do all things which in its opinion are necessary for or incidental to the exercise and performance of any of its powers or to the fulfilment of any of its objects.

19—Power to acquire land compulsorily

- (1) The State Opera may, with the consent of the Minister, compulsorily acquire land for the purposes of this Act.
- (2) The *Land Acquisition Act 1969* applies to the acquisition of land under this section.

Part 3—Staffing arrangements of the State Opera

21—Staffing arrangements

- (1) The employing authority may employ staff to perform functions in connection with the operations or activities of the State Opera.
- (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 Act 2009*).
- (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 State Opera 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 State Opera does not have the power to employ any person.
- (12) The State Opera may, under an arrangement established by the Minister administering an administrative unit, make use of the services or staff of that administrative unit.
- (13) In this section—
public sector agency has the same meaning as in the *Public Sector Act 2009*.

21A—Related staffing issues

- (1) The employing authority may, with the approval of the Minister, determine that, for the purposes of the accrual of, or a payment of a lump sum in lieu of the grant of, long service leave or for the purposes of the accrual of leave on account of illness, previous service of a person employed under this Act with an employer other than the employing authority may be regarded, to the extent approved by the Minister, as service with the employing authority.
- (2) The employing authority may enter into arrangements contemplated by section 5 of the *Superannuation Act 1988*.

22—Secretary to the Board

- (1) There must be a secretary to the Board.
- (2) The secretary must be a person employed under this Act.
- (3) The secretary to the Board may exercise, perform and carry out such powers, functions and duties as are conferred on the secretary by or under this Act or as are directed by the Board to be exercised, performed or carried out.

Part 4—Financial

23—State Opera to keep proper accounts

- (1) The State Opera must keep proper accounts of its financial affairs.
- (2) The State Opera must—
 - (a) ensure that all money payable to the State Opera is properly collected; and
 - (b) ensure that all liabilities and expenditures of the State Opera are properly authorised; and
 - (c) ensure that adequate control is maintained over its assets; and
 - (d) ensure efficiency and economy of operations and the avoidance of waste and extravagance; and
 - (e) develop and maintain an adequate budgeting and accounting system; and
 - (f) develop and maintain an adequate internal audit system.
- (3) The Auditor-General must, in respect of each financial year of the State Opera, audit the accounts of the State Opera.

24—Power to borrow

- (1) The State Opera may with the consent of the Treasurer, for the purposes of exercising or performing its powers and functions under this Act, borrow money at interest from any person upon such security (if any) by way of mortgage or charge over any of the assets of the State Opera as the State Opera may think fit to grant.
- (2) The Treasurer may upon such terms and conditions as the Treasurer thinks fit guarantee the repayment on any moneys (together with interest thereon) borrowed by the State Opera under this section.
- (3) Any moneys required to be paid in satisfaction of a guarantee given pursuant to subsection (2) may be paid out of the General Revenue of the State which is hereby to the necessary extent appropriated accordingly.

25—Funds of the State Opera

- (1) The moneys required by the State Opera for the purposes of the exercise and performance of its powers and functions under this Act are—
 - (a) all moneys received by the State Opera in the exercise and performance of its powers or functions; and
 - (b) all moneys borrowed by the State Opera pursuant to section 24; and
 - (c) all moneys being gifts to the State Opera or derived from the disposition by the State Opera of gifts to the State Opera; and
 - (d) all moneys paid to the State Opera by way of grants by the Treasurer out of moneys to be provided by Parliament for the purpose.
- (2) Such of the moneys of the State Opera as are not immediately required by the State Opera may be lodged on deposit with the Treasurer or invested in any other manner approved of by the Treasurer.

26—Budget

- (1) The State Opera must, on or before 31 August in each year, present to the Minister a budget showing its estimates of its receipts and payments for the current financial year.
- (2) The Minister may approve of any budget presented pursuant to subsection (1) or may direct or allow the State Opera to amend a budget before so approving of the budget.
- (3) The State Opera must not, without the consent of the Minister, make any expenditure that is not authorised by an approved budget.
- (4) In this section—

approved budget means a budget that has been approved of by the Minister or a budget that, having been amended, has been approved of by the Minister.

Part 5—Miscellaneous

28—Annual report

- (1) The State Opera must, on or before 30 September in each year, present a report to the Minister on the activities of the State Opera during the preceding financial year.

- (2) A report under this section must incorporate the audited statement of accounts of the State Opera for the financial year to which the report relates.
- (3) The Minister must, within 12 sitting days after receipt of a report under this section, cause copies of the report to be laid before both Houses of Parliament.

29—Gifts etc

- (1) The State Opera may accept—
 - (a) grants, conveyances, transfers and leases of land whether from the Crown or any instrumentality thereof or any other person; and
 - (b) rights to the use, control, management or occupation of any land; and
 - (c) gifts of personal property of any kind to be used or applied by it for the purposes of this Act.
- (2) Notwithstanding anything contained in the *Stamp Duties Act 1923*, no stamp duty is payable on any instrument by which land or any interest in or right over land is granted or assured to or vested in the State Opera.

30—Summary offences

Proceedings for offences against this Act must be disposed of summarily.

31—Regulations

- (1) The Governor may make such regulations as are necessary or expedient for the purposes of this Act.
- (2) Without limiting the generality of the provisions of subsection (1), the regulations may—
 - (a) provide for the disposition by the State Opera of any unclaimed property left in or on any premises owned or controlled by the State Opera; and
 - (b) provide for—
 - (i) the manner in which a person may become, and the conditions under which he or she may remain, a subscriber to the State Opera;
 - (ii) the subscriptions or other moneys to be paid by subscribers;
 - (iii) the election of Members of the Board by subscribers, and the term of office of Members so elected;
 - (iv) the rights and privileges to be enjoyed by subscribers; and
 - (c) provide for the securing of order in or on any premises owned or controlled by the State Opera; and
 - (d) prescribe fines not exceeding a division 9 fine for contravention of, or non-compliance with, any regulation.

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
1976	73	<i>The State Opera of South Australia Act 1976</i>	2.12.1976	24.3.1977 (<i>Gazette</i> 24.3.1977 p885)
1987	13	<i>Statutes Amendment (Finance and Audit) Act 1987</i>	9.4.1987	1.10.1987 (<i>Gazette</i> 17.9.1987 p886)
1989	71	<i>State Opera of South Australia Act Amendment Act 1989</i>	29.10.1989	1.12.1989 (<i>Gazette</i> 23.11.1989 p1562)
2006	41	<i>Statutes Amendment (Public Sector Employment) Act 2006</i>	14.12.2006	Pt 23 (ss 103—108)—1.4.2007 (<i>Gazette</i> 29.3.2007 p930)
2009	84	<i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>	10.12.2009	Pt 147 (ss 336—338)—1.2.2010 (<i>Gazette</i> 28.1.2010 p320)
2010	19	<i>Statutes Amendment (Arts Agencies Governance and Other Matters) Act 2010</i>	28.10.2010	Pt 11 (ss 85—89) & Sch 1 (Pt 7 & Pt 9 cl 11)—uncommenced

Provisions amended

New entries appear in bold.

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

Provision	How varied	Commencement
Pt 1		
<i>ss 2 and 3</i>	<i>deleted by 71/1989 Sch</i>	<i>1.12.1989</i>
s 4		
s 4(1)	s 4 redesignated as s 4(1) by 41/2006 s 103(2)	1.4.2007
the Board	amended by 71/1989 Sch	1.12.1989
<i>appointed Member</i>	<i>deleted by 71/1989 s 3(a)</i>	<i>1.12.1989</i>
<i>elected Member</i>	<i>deleted by 71/1989 s 3(a)</i>	<i>1.12.1989</i>
employing authority	inserted by 41/2006 s 103(1)	1.4.2007

Member	amended by 71/1989 s 3(b)	1.12.1989
the State Opera	amended by 71/1989 Sch	1.12.1989
s 4(2)	inserted by 41/2006 s 103(2)	1.4.2007
Pt 2		
s 5		
s 5(2) and (3)	amended by 71/1989 Sch	1.12.1989
s 6		
s 6(2)—(6)	substituted by 71/1989 s 4	1.12.1989
s 6(7)	<i>deleted by 71/1989 s 4</i>	<i>1.12.1989</i>
s 7		
	amended by 71/1989 Sch	1.12.1989
	amended by 41/2006 s 104	1.4.2007
ss 9 and 10		
	amended by 71/1989 Sch	1.12.1989
s 11		
	substituted by 71/1989 s 5	1.12.1989
s 12		
	amended by 71/1989 Sch	1.12.1989
s 13		
s 13(2)	amended by 71/1989 Sch	1.12.1989
s 14		
	amended by 71/1989 Sch	1.12.1989
s 15		
	<i>deleted by 71/1989 Sch</i>	<i>1.12.1989</i>
s 16		
	amended by 71/1989 Sch	1.12.1989
	substituted by 84/2009 s 336	1.2.2010
s 17		
	substituted by 71/1989 s 6	1.12.1989
s 18		
s 18(1)	amended by 71/1989 Sch	1.12.1989
s 19		
s 19(2)	amended by 71/1989 Sch	1.12.1989
s 20		
	<i>deleted by 41/2006 s 105</i>	<i>1.4.2007</i>
Pt 3		
Pt 3 heading		
	amended by 41/2006 s 106	1.4.2007
<i>s 21 before substitution by 41/2006</i>		
s 21(2) and (3)	<i>amended by 71/1989 Sch</i>	<i>1.12.1989</i>
s 21		
	substituted by 41/2006 s 107	1.4.2007
s 21(3)	amended by 84/2009 s 337	1.2.2010
s 21(13)		
public sector agency	amended by 84/2009 s 337	1.2.2010
s 21A		
	inserted by 41/2006 s 107	1.4.2007
s 22		
s 22(1)	amended by 71/1989 Sch	1.12.1989
s 22(2)		
	amended by 71/1989 Sch	1.12.1989
	amended by 41/2006 s 108	1.4.2007
s 22(3)		
	amended by 71/1989 Sch	1.12.1989
Pt 4		

s 23		
s 23(1)	amended by 71/1989 Sch	1.12.1989
s 23(2)	substituted by 13/1987 s 11	1.10.1987
	substituted by 71/1989 s 7	1.12.1989
s 23(3)	deleted by 13/1987 s 11	1.10.1987
	inserted by 71/1989 s 7	1.12.1989
s 24		
s 24(2) and (3)	amended by 71/1989 Sch	1.12.1989
s 25		
s 25(1)	amended by 71/1989 Sch	1.12.1989
s 26		
s 26(1)	substituted by 71/1989 s 8	1.12.1989
s 26(2) and (3)	amended by 71/1989 Sch	1.12.1989
Pt 5		
s 27	<i>amended by 71/1989 Sch</i> <i>deleted by 84/2009 s 338</i>	<i>1.12.1989</i> <i>1.2.2010</i>
s 28	substituted by 71/1989 s 9	1.12.1989
s 29		
s 29(2)	amended by 71/1989 Sch	1.12.1989
s 29(3) and (4)	<i>deleted by 71/1989 Sch</i>	<i>1.12.1989</i>
s 30	amended by 71/1989 Sch	1.12.1989
s 31		
s 31(2)	amended by 71/1989 Sch	1.12.1989

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

15.12.1989

1.4.2007