

South Australia

# State Theatre Company of South Australia Act 1972

An Act to establish the South Australian Theatre Company, to constitute a Board of Governors thereof and for matters incidental thereto.

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**The Parliament of South Australia enacts as follows:**

## Part 1—Preliminary

### 1—Short title

This Act may be cited as the *State Theatre Company of South Australia Act 1972*.

### 4—Interpretation

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

*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;

*governor* means a governor referred to in section 6 of this Act and includes such a governor for the time being appointed chairman of the Board;

*subscriber* means a person for the time being a subscriber to the Company within the meaning of the regulations;

*the Board* means the Board of Governors comprised of the governors appointed or elected under section 6 of this Act;

*the Company* means the State Theatre Company of South Australia.

(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 Company and the Board

### Division 1—General

#### 5—The Company

(1) There shall be a body entitled the *State Theatre Company of South Australia*.

- (2) The Company—
- (a) shall be a body corporate with perpetual succession and a common seal; and
  - (b) subject to this Act, shall be capable of acquiring, taking or letting out on lease, holding, selling and otherwise disposing of real and personal property; and
  - (c) may in its corporate name and capacity sue and be sued; and
  - (d) shall have the powers, duties, functions and authorities conferred, imposed or prescribed by or under this Act.
- (3) Where a document purporting to bear the common seal of the Company is produced before any court or person acting judicially the court or the person, as the case may be, shall, unless the contrary is proved, presume—
- (a) that the document purporting to bear the common seal of the Company bears the common seal of the Company; and
  - (b) that the common seal was duly affixed and properly attested to.

## **6—Board of Governors**

- (1) The powers, duties, functions and authorities of the Company conferred, imposed or prescribed by or under this Act may be exercised, performed and discharged by the Board of Governors.
- (2) Subject to this section the Board shall consist of eight governors—
- (a) of whom five shall be persons appointed as such by the Governor; and
  - (b) of whom two shall be subscribers elected, in accordance with this Act, by the subscribers; and
  - (c) of whom one will be a person employed under Part 3 elected, in accordance with this Act, by those persons employed under that Part.
- (3) From amongst the persons referred to in paragraph (a) of subsection (2) of this section the Governor may appoint a governor to be chairman of the Board.
- (6) Every governor appointed by the Governor shall, subject to this Act, hold office as such until the day expressed in the instrument of his appointment (not being more than three years from the day on which he was last appointed) as being the day on which he shall cease to hold office, but such a governor appointed to fill a casual vacancy in the office of a governor shall hold office only for the unexpired portion of the term of office of the governor in whose place he was appointed.
- (7) A governor elected by subscribers shall, subject to this Act, hold office as such until the conclusion of the next election (not being a by-election) of governors by the subscribers.
- (8) Where a casual vacancy occurs in the office of a governor elected by the subscribers and there is not to be an election under subsection (9) of this section within six months of the occurrence of the vacancy, a governor shall be elected by the subscribers, at a by-election, to fill the vacancy.

- (9) Where a period determined by the Board of not less than two years and not more than two years and six months has elapsed since the last election (not being a by-election) of governors by the subscribers, an election of governors by the subscribers shall be held.
- (10) A governor elected under subsection (2)(c) will, subject to this Act, hold that office until the next election of a governor by the relevant employees under this Act.
- (11) Where—
- (a) a casual vacancy occurs in the office of the governor elected under subsection (2)(c); or
  - (b) a period determined by the Board of not less than twelve months and not more than eighteen months has elapsed since the last election of a governor under subsection (2)(c),
- an election of a governor under subsection (2)(c) shall be held.
- (12) An appointed governor shall, subject to this Act, be eligible for re-appointment and an elected governor shall, subject to this Act, be eligible for re-election.

### **7—Acceptance of office as a governor not to be a bar to the holding of any other office**

Notwithstanding any other Act or law, a person shall not be disqualified by appointment as a governor from holding office as a governor and also any other office or place or from accepting or retaining any fees or other remuneration provided for by or under this Act, or otherwise, in respect of his service as a governor.

### **8—Removal from office of governor**

The Governor may, by notice in writing served on a governor, remove the governor from office on grounds of misconduct or incapacity to perform his duties and functions as a governor.

### **9—Casual vacancies**

The office of a governor shall become vacant if—

- (a) he dies; or
- (b) he resigns by written notice given to the Minister; or
- (c) he is removed from office by the Governor pursuant to section 8 of this Act; or
- (d) he is absent without leave of the Minister from three consecutive meetings of the Board; or
- (e) he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors or compounds with his creditors for less than one hundred cents in the dollar; or
- (ea) being a governor elected by subscribers, he ceases to be a subscriber; or
- (f) being a governor elected under section 6(2)(c), he or she ceases to be employed under this Act; or

- (g) he is convicted of any offence and receives notice in writing from the Minister discharging him from office on the ground of that conviction.

## **10—Procedures of the Board**

- (1) The common seal of the Company shall 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 shall be attested by the signature of any two governors.
- (3) The procedure for the calling of meetings of the Board and for the conduct of business at such meetings shall, subject to this Act, be as determined by the Board.
- (4) Any four governors shall constitute a quorum at any meeting of the Board and any duly convened meeting at which a quorum is present shall be competent to transact any business of the Company and shall have and may discharge all the powers, duties and functions of the Company.
- (5) A decision carried by the majority of the votes cast by the governors present at a meeting of the Board shall be the decision of the Board.
- (6) The Board shall cause accurate minutes to be kept of its proceedings at meetings.

## **11—Remuneration of governors**

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

## **12—Delegation of powers to governors**

- (1) The Board may by instrument over its common seal delegate to not less than two governors 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 delegates with respect to the matters or matters of a class or in relation to a locality specified in the instrument of delegation.
- (2) A delegation under subsection (1) of this section is revocable in writing at will and no delegation shall prevent the exercise of any power or function by the Board conferred on it by or under this Act.
- (3) Notwithstanding anything in this Act, where the delegates are unanimous in the exercise or performance of any power or function delegated under subsection (1) of this section the exercise or performance of that power or function by the delegates shall for the purposes of this Act or of any proceedings under this Act be deemed to be an exercise or performance of that power or function by the Board.

## **13—Chairman and presiding governor**

- (1) The chairman of the Board shall preside at all meetings of the Board at which he is present and in addition to a deliberative vote, shall, in the event of equality of votes, have a second or casting vote.

- (2) In the absence of the chairman of the Board from any meeting of the Board the governors present shall, from amongst their own number, elect a governor to preside at that meeting and at that meeting the Governor so elected shall have and may exercise the powers and functions conferred on the chairman of the Board by this section.

#### **14—Validity of act etc of board**

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

#### **15—Governors not, as such, subject to Public Service Act**

A governor shall not, as such, be subject to the *Public Service Act 1967*, as amended, but this section does not affect the rights, duties and obligations under that Act of any governor who is otherwise an officer in the public service of the State.

#### **16—Declaration of interest**

- (1) A governor who has any direct or indirect financial interest in a contract, or proposed contract, made by, or in contemplation of, the Company—
- (a) shall, as soon as he becomes aware of the contract or proposed contract, disclose the nature of his interest to the secretary of the Board; and
  - (b) shall not take part in any deliberations or decision of the Board with respect to that contract.

Penalty: Five hundred dollars.

- (2) Subsection (1) of this section does not apply in respect of a financial interest that exists only by virtue of the fact—
- (a) that the governor is an employee under this Act; or
  - (b) that the governor is a subscriber; or
  - (c) that the governor has contracted or may contract with the Company to attend Company performances.
- (3) Where a governor discloses a financial interest in a contract or proposed contract in accordance with this section, or his financial interest in a contract or proposed contract is not such as need be disclosed under this section—
- (a) the contract is not liable to be avoided by the Company on any ground arising from the fiduciary relationship between the governor and the Company; and
  - (b) the governor is not liable to account to the Company for profits derived from the contract.

### **Division 2—Powers and functions etc of Company**

#### **17—Company to absorb former company**

- (1) In this section the *former company* means the South Australian Theatre Company Incorporated being an association incorporated under the *Associations Incorporation Act 1956*, as amended.

- (2) On the day of commencement of this Act the former company shall for all purposes be wound up and dissolved and thereafter all claims, actions or proceedings which—
- (a) but for that dissolution, could have been made or commenced by or against the former company may be made or commenced by or against the Company in all respects as if the former company had not been dissolved and the Company were the former company; and
  - (b) before that dissolution had been made or commenced by or against the former company may be continued by or against the Company in all respects as if the former company had not been dissolved and the Company were the former company,
- and the name of the Company shall be substituted for the name of the former company in any such claim, action or proceeding.
- (3) All real and personal property vested in, belonging to or under the control of the former company shall on and from the day of commencement of this Act cease to vest in, belong to or be under the control of the former company and vest in, belong to or be under the control of the Company.

## **18—Objects, powers etc of Company**

- (1) Subject to this Act, the Company may—
- (a) present, produce, manage and conduct theatrical performances, operas, plays, dramas, ballets and entertainments of any kind as may in its opinion tend to promote the art of theatre; and
  - (b) promote or commission the writing of plays or dramas, the scoring and writing of operas, the scoring, writing and choreography of ballets and other works for theatrical performance; and
  - (c) promote the training of all persons concerned in the production, presentation or performance of theatrical presentations; and
  - (d) assist financially or otherwise in the presentation, production, management or conduct of any art of the theatre in this State; and
  - (e) do all things necessary or expedient to promote public interest and participation in the art of the theatre; and
  - (ea) establish and maintain a collection of objects of public interest relating to the past and present practice of the performing arts in this State and, for that purpose, purchase, hire, accept by way of gift or loan, or otherwise acquire any such objects; and
  - (f) establish and conduct schools, courses, lectures, seminars and discussions on the art of the theatre; and
  - (g) enter into contracts or agreements with artists, entertainers and performers or employ such persons; and
  - (h) employ writers, composers, choreographers, designers and directors; and
  - (i) purchase and install any fittings or equipment in any theatre; and
  - (j) make charges for admission to any theatrical performance; and

- (k) grant or dispose of rights to televise, broadcast or record any theatrical performances undertaken under its auspices; and
- (l) enter into agreement or arrangements with any other person or body for the promotion of any theatrical activity; and
- (m) acquire patents to use any inventions or devices that may be used in connection with any theatrical activity and dispose of such patents or licence for the use of any such inventions or devices; 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.

## **Part 3—Staff of the Company**

### **20—Staffing arrangements**

- (1) The employing authority may employ staff to perform functions in connection with the operations or activities of the Company.
- (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 Company 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 Company does not have the power to employ any person.
- (12) The Company 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 Management Act 1995*.

## **20A—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*.

## **21—Artistic director of the Company**

The Board must appoint a suitably qualified person employed under this Part to be the artistic director of the Company.

## **22—Secretary to the Board**

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

## **Part 5—Financial**

### **26—Company to keep proper accounts**

- (1) The Company shall keep proper accounts showing accurately and in detail all its financial transactions, assets and liabilities.
- (2) The Auditor-General must, in respect of each financial year of the Company, audit the accounts of the Company.

## 27—Power to borrow

- (1) The Company 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 Company as the Company may think fit to grant.
- (2) The Treasurer may upon such terms and conditions as he thinks fit guarantee the repayment of any moneys (together with interest thereon) borrowed by the Company under this section.
- (3) Any moneys required to be paid in satisfaction of a guarantee given pursuant to subsection (2) of this section may be paid out of the general revenue of the State which is hereby to the necessary extent appropriated accordingly.

## 28—Funds of the Company

- (1) The moneys required by the Company for the purposes of the exercise and performance of its powers and functions under this Act shall be—
  - (a) all moneys received by the Company in the exercise and performance of its powers or functions; and
  - (b) all moneys borrowed by the Company pursuant to section 27 of this Act; and
  - (c) all moneys being gifts to the Company or derived from the disposition by the Company of gifts to the Company; and
  - (d) all moneys paid to the Company 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 Company as are not immediately required by the Company may be lodged on deposit with the Treasurer or invested in any other manner approved of by the Treasurer.

## 29—Budget

- (1) As soon as practicable after the commencement of this Act the Company shall present to the Minister a budget showing its estimates of revenue and expenditure over the balance of the financial year within which the budget is presented and thereafter the Company shall before the commencement of each succeeding financial year present to the Minister a budget showing its estimates of its revenue and expenditure for that succeeding financial year.
- (2) The Minister may approve of any budget presented to him pursuant to subsection (1) of this section or may direct or allow the Company to amend a budget before so approving of the budget.
- (3) The Company shall not, without the consent of the Minister, incur 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 6—Miscellaneous

### 30—Protection of governors

No action, suit or proceeding shall be brought or maintained against any governor in respect of any act or thing done or omitted to be done in his capacity as such in the exercise or purported exercise in good faith of his powers or functions under this Act.

### 31—Reports

- (1) As soon as practicable after the end of each financial year the Company shall present a report to the Minister on its activities during the year and setting out in a form approved by the Minister a statement as to its financial position.
- (2) The Minister shall cause every report of the Company made in accordance with subsection (1) of this section to be laid before each House of Parliament within fourteen days of his receipt thereof if Parliament is then in session or if Parliament is not then in session within fourteen days of the commencement of the next session of Parliament.

### 32—Gifts etc

- (1) The Company 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*, as amended, no stamp duty shall be payable on any instrument by which land or any interest in or right over land is granted or assured to or vested in the Company or on any contract or instrument executed by the Company for the purpose of disposing of any property.
- (3) Notwithstanding anything contained in the *Succession Duties Act 1929*, as amended, no succession duty shall be payable in respect of any property or interest passing to the Company on or by reason of the death of any person, and any such property shall not be subject to succession duty under that Act.
- (4) Notwithstanding anything in the *Gift Duty Act 1968*, as amended, no gift duty under that Act shall be payable in respect of the gift of any real or personal property to the Company.

### 33—Summary procedure for offences

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

### 34—Regulations

- (1) The Governor may, on the recommendation of the Company, make such regulations as are necessary or expedient for the purposes of giving effect to the provisions or objects of this Act.

- (2) Without limiting the generality of the provisions of subsection (1) of this section, the regulations may—
- (a) provide for the disposition by the Company of any unclaimed property left in or on any premises owned or controlled by the Company; and
  - (b) prescribe the manner in which persons become, and cease to be, subscribers to the Company, provide for the payment of subscriptions by the subscribers, and make any other provision in relation to the rights and obligations of the subscribers; and
  - (c) provide for the holding of elections and by-elections for the purposes of this Act; and
  - (d) provide for and prescribe penalties, in each case, not exceeding two hundred dollars, for a contravention of or failure to comply with any provision of the regulations.

## 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](http://www.legislation.sa.gov.au).

### Formerly

*South Australian Theatre Company Act 1972*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1972	38	<i>South Australian Theatre Company Act 1972</i>	13.4.1972	1.7.1972 ( <i>Gazette</i> 29.6.1972 p2690)
1979	34	<i>South Australian Theatre Company Act Amendment Act 1979</i>	15.3.1979	26.4.1979 ( <i>Gazette</i> 26.4.1979 p1226)
1981	104	<i>State Theatre Company of South Australia Act Amendment Act 1981</i>	23.12.1981	7.1.1982 ( <i>Gazette</i> 7.1.1982 p4)
1987	13	<i>Statutes Amendment (Finance and Audit) Act 1987</i>	9.4.1987	1.10.1987 ( <i>Gazette</i> 17.9.1987 p886)
<b>2006</b>	<b>41</b>	<b><i>Statutes Amendment (Public Sector Employment) Act 2006</i></b>	<b>14.12.2006</b>	<b>Pt 24 (ss 109—116)—1.4.2007 (<i>Gazette</i> 29.3.2007 p930)</b>
2009	84	<i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>	10.12.2009	Pt 150 (ss 343—345)—1.2.2010 ( <i>Gazette</i> 28.1.2010 p320)

### Provisions amended since 3 February 1976

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>	
s 3	<i>amended by 34/1979 s 3</i>	26.4.1979
	<i>omitted under Legislation Revision and Publication Act 2002</i>	
s 4		

s 4(1)	s 4 redesignated as s 4(1) by 41/2006 s 109(2)	1.4.2007
employing authority	inserted by 41/2006 s 109(1)	1.4.2007
the Company	substituted by 34/1979 s 4(a)	26.4.1979
<i>the company of players</i>	<i>deleted by 34/1979 s 4(b)</i>	26.4.1979
s 4(2)	inserted by 41/2006 s 109(2)	1.4.2007
Pt 2		
s 5		
s 5(1)	substituted by 34/1979 s 5	26.4.1979
s 6		
s 6(2)	amended by 34/1979 s 6(a)	26.4.1979
	amended by 104/1981 s 3	7.1.1982
	amended by 41/2006 s 110(1)	1.4.2007
s 6(4) and (5)	<i>deleted by 34/1979 s 6(b)</i>	26.4.1979
s 6(7)—(9)	substituted by 34/1979 s 6(c)	26.4.1979
s 6(10)	inserted by 34/1979 s 6(c)	26.4.1979
	substituted by 41/2006 s 110(2)	1.4.2007
s 6(11)	inserted by 34/1979 s 6(c)	26.4.1979
	amended by 41/2006 s 110(3)	1.4.2007
s 6(12)	inserted by 34/1979 s 6(c)	26.4.1979
s 9	amended by 34/1979 s 7	26.4.1979
	amended by 41/2006 s 111	1.4.2007
s 10		
s 10(4)	amended by 104/1981 s 4	7.1.1982
s 16	substituted by 34/1979 s 8	26.4.1979
s 16(2)	amended by 41/2006 s 112	1.4.2007
s 18		
s 18(1)	amended by 34/1979 s 9	26.4.1979
s 19	<i>deleted by 41/2006 s 113</i>	1.4.2007
Pt 3	heading amended by 41/2006 s 114	1.4.2007
s 20	substituted by 41/2006 s 115	1.4.2007
s 20A	inserted by 41/2006 s 115	1.4.2007
s 21	substituted by 41/2006 s 115	1.4.2007
s 22		
s 22(1)	substituted by 41/2006 s 116	1.4.2007
Pt 4	<i>deleted by 34/1979 s 10</i>	26.4.1979
Pt 5		
s 26		
s 26(2)	substituted by 13/1987 s 10	1.10.1987
s 26(3)	<i>deleted by 13/1987 s 10</i>	1.10.1987
s 34		
s 34(2)	amended by 34/1979 s 11	26.4.1979

## 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;

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- (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.

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- (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

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