

South Australia

Education and Early Childhood Services (Registration and Standards) Bill 2011

A BILL FOR

An Act to provide for a national legislative scheme regulating the provision of education and care services; to make provision for local matters associated with the provision of education and care services; to ensure the provision of quality education services to children in the State by providing for the registration of providers of such services; to regulate the provision of education services and early childhood services for the purpose of maintaining high standards of competence and conduct by providers; to make related amendments to other Acts; and for other purposes.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Interpretation
- 4 Early childhood services
- 5 Parts of Act not to apply in relation to certain services
- 6 Governing authority
- 7 Limitation of liability for volunteer members of governing authorities
- 8 Responsible authorities
- 9 Objects and principles

Part 2—Adoption of *Education and Care Services National Law*

- 10 Application of *Education and Care Services National Law*
- 11 Exclusion of legislation of this jurisdiction
- 12 Meaning of certain terms in *Education and Care Services National Law (South Australia)* for the purposes of this jurisdiction
- 13 Penalty at end of provision
- 14 Tabling of annual report

Part 3—Application of *Education and Care Services National Law (South Australia)* to residual early childhood services providers

- 15 Application of *Education and Care Services National Law (South Australia)* to residual early childhood services providers
- 16 Exemption from certain provisions of *Education and Care Services National Law (South Australia)*

Part 4—Administration

Division 1—The Minister

- 17 Functions of Minister
- 18 Ministerial directions
- 19 Power of delegation

Division 2—The Education and Early Childhood Services Registration and Standards Board of South Australia

Subdivision 1—The Board

- 20 Establishment of Board
- 21 Composition of Board
- 22 Conditions of membership
- 23 Casual vacancies
- 24 Allowances and expenses
- 25 Validity of acts

Subdivision 2—Registrars and staff

- 26 Registrars of Board
- 27 Staff of Board

Subdivision 3—Functions of Board

- 28 Functions of Board
- 29 Complaint made directly to Board to be referred to school
- 30 Committees
- 31 Power of delegation

Subdivision 4—Board's procedures

- 32 Board's procedures
- 33 Conflict of interest etc under *Public Sector (Honesty and Accountability) Act 1995*
- 34 Powers of Board in relation to witnesses etc
- 35 Principles governing proceedings
- 36 Representation at proceedings before Board
- 37 Costs

Subdivision 5—Financial matters, audit and annual report

- 38 Accounts and audit
- 39 Annual report

Part 5—Registration of schools

Division 1—Registers

- 40 Registers

Division 2—Registration on schools register

- 41 Schools to be registered
- 42 Registration on schools register
- 43 Board may impose conditions on registration
- 44 Certificates of registration
- 45 Removal from schools register
- 46 Board may cancel registration if education services not provided
- 47 Reinstatement on schools register
- 48 Endorsement of registration with approval to enrol full fee paying overseas students
- 49 Removal of endorsement

Division 3—Offences

- 50 Procurement of registration by fraud
- 51 Improper directions to another member of governing authority
- 52 Illegal holding out

Division 4—Review of registration

- 53 Review of registration

Part 6—Record keeping and information gathering

Division 1—Records to be kept by registered schools

- 54 Interpretation
- 55 Records to be kept by registered schools

Division 2—Information gathering

- 56 Board may require information

Part 7—Disciplinary proceedings

Division 1—Preliminary

- 57 Application of Part
- 58 Interpretation
- 59 Cause for disciplinary action

Division 2—Constitution of Board for purpose of proceedings

- 60 Constitution of Board for purpose of proceedings

Division 3—Proceedings before Board

- 61 Inquiries by Board as to matters constituting grounds for disciplinary action
- 62 Contravention etc of condition
- 63 Contravention of prohibition order
- 64 Register of prohibition orders
- 65 Variation or revocation of conditions imposed by Board
- 66 Further provisions as to proceedings before Board under this Part

Part 8—Enforcement

- 67 Authorised officers
- 68 Powers of authorised officers
- 69 Offence to hinder etc authorised officers

Part 9—Review and appeal

Division 1—Internal review

- 70 Internal review of certain decisions of Board

Division 2—Appeal

- 71 Right of appeal to District Court
- 72 Operation of order may be suspended
- 73 Variation or revocation of conditions imposed by District Court

Part 10—Miscellaneous

- 74 Use of certain terms or descriptions prohibited
- 75 Exemptions
- 76 Statutory declarations
- 77 False or misleading statement
- 78 Victimisation
- 79 Self-incrimination
- 80 Punishment of conduct that constitutes offence
- 81 Continuing offence
- 82 Offences by bodies corporate
- 83 General defence
- 84 Immunity of persons engaged in administration of Act
- 85 Application of fines
- 86 Confidentiality
- 87 Service
- 88 Evidentiary provision
- 89 Regulations

Schedule 1—Modifications to *Education and Care Services National Law (South Australia)* for purposes of Part 3

- 1 Interpretation
- 2 Exclusion of certain provisions
- 3 Certain provisions to apply as modified
- 4 National regulations not to apply

Schedule 2—Related amendments, repeal and transitional provisions

Part 1—Preliminary

- 1 Amendment provisions

Part 2—Amendment of *Child Sex Offenders Registration Act 2006*

- 2 Amendment of section 64—Interpretation

Part 3—Amendment of *Children's Protection Act 1993*

- 3 Amendment of section 31—Constitution of family care meeting

Part 4—Amendment of *Children's Services Act 1985*

- 4 Amendment of section 3—Interpretation
- 5 Repeal of sections 7 and 8
- 6 Repeal of Part 2 Divisions 3 and 4
- 7 Repeal of Part 3 Divisions 1, 2 and 3
- 8 Repeal of section 41
- 9 Amendment of section 42—Registration
- 10 Amendment of section 46—Appeal against decisions of the Director
- 11 Repeal of Part 3 Division 6
- 12 Repeal of section 49
- 13 Repeal of sections 54, 55 and 56
- 14 Amendment of section 57—Regulations

Part 5—Amendment of *Criminal Law Consolidation Act 1935*

- 15 Amendment of section 49—Unlawful sexual intercourse
- 16 Amendment of section 50—Persistent sexual exploitation of a child
- 17 Amendment of section 57—Consent no defence in certain cases

Part 6—Amendment of *Education Act 1972*

- 18 Amendment of section 5—Interpretation
- 19 Repeal of Part 5

Part 7—Amendment of *Intervention Orders (Prevention of Abuse) Act 2009*

- 20 Amendment of section 3—Interpretation

Part 8—Amendment of *Local Government Act 1999*

- 21 Amendment of section 165—Rebate of rates—educational purposes

Part 9—Amendment of *SACE Board of South Australia Act 1983*

- 22 Amendment of Schedule 1—Designated entities

Part 10—Amendment of *Sewerage Act 1929*

23 Amendment of section 66—Government lands to be assessed

Part 11—Amendment of *Summary Offences Act 1953*

24 Amendment of section 38A—Sale of books and educational matter

Part 12—Amendment of *Teachers Registration and Standards Act 2004*

25 Amendment of section 3—Interpretation

26 Amendment of section 20—Requirement to be registered

Part 13—Amendment of *Technical and Further Education Act 1975*

27 Amendment of section 5—Application of Act

Part 14—Transitional provisions

Division 1—Transitional provisions related to Part 3 of Act (residual early childhood services)

28 Interpretation

29 Certain persons etc taken to be approved providers

30 Certain residual early childhood services taken to hold service approval

31 Certain persons taken to be certified supervisors

32 Certain persons taken to be nominated supervisors

Division 2—Transitional provisions related to Part 5 of Act (registration of schools)

33 Government schools taken to be registered under Part 5 Division 2 of Act

34 Certain non-Government schools taken to be registered under Part 5 Division 2 of Act

35 Exemptions

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Education and Early Childhood Services (Registration and Standards) Act 2011*.

5 **2—Commencement**

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

(2) Section 7(5) of the *Acts Interpretation Act 1915* does not apply to this Act or to a provision of this Act.

3—Interpretation

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

authorised officer means a person who is authorised by the Board to be an authorised officer under section 67;

Board means the Education and Early Childhood Services Registration and Standards Board of South Australia established under this Act;

Catholic school—see subsection (2);

child means a person under the age of 18 years;

5 **Director-General** means the person for the time being holding, or acting in, the office of Director-General under the *Education Act 1972*;

District Court means the Administrative and Disciplinary Division of the District Court;

early childhood services—see section 4;

10 **Early Childhood Services Registrar** means the person holding or acting in the office of Registrar for the early childhood services sector—see section 26(1)(c);

Education and Care Services National Law (South Australia)—see section 10;

education services means—

- 15 (a) courses of instruction in primary or secondary education; and
(b) any other service declared by the regulations to be included in the ambit of this definition,

but does not include any service declared by the regulations not to be included in the ambit of this definition;

20 **endorsement**, of a school's registration, means an endorsement of the school's registration to enrol full fee paying overseas students under section 48;

governing authority of a school—see section 6;

Government school means a school established under the *Education Act 1972* or the repealed Act (within the meaning of that Act);

25 **Government Schools Registrar** means the person holding or acting in the office of Registrar for the Government sector—see section 26(1)(a);

incorporated services provider—see subsection (7)(a);

misconduct means—

- 30 (a) improper conduct in relation to the provision of education services; or
(b) incompetence or negligence in relation to the provision of education services;
or
(c) conduct that constitutes an offence punishable by imprisonment for 1 year or more under some other Act or law (whether or not a person has been charged with, or found guilty of, the offence);

non-Government school means a school that is not a Government school;

35 **non-Government Schools Registrar** means the person holding or acting in the office of Registrar for the non-Government sector—see section 26(1)(b);

proceedings before the Board—the following are proceedings before the Board:

- (a) an application for registration or reinstatement of registration;
(b) a review under Part 5 Division 4;

(c) proceedings under Part 7;

registered, in relation to a school, means registered on the schools register under Part 5;

relevant Registrar means—

- 5 (a) in relation to matters involving the early childhood services only—the Early Childhood Services Registrar;
- (b) in relation to matters involving education services only—
- 10 (i) in relation to matters involving Government schools only—the Government Schools Registrar;
- (ii) in relation to matters involving non-Government schools only—the non-Government Schools Registrar;
- (iii) in relation to matters involving both Government and non-Government schools—the Registrar specified by the Board in relation to the matter;
- 15 (c) in relation to matters involving both early childhood services and education services—the Registrar specified by the Board in relation to the matter;

responsible authority for a school—see section 8;

school means a provider of education services;

schools register—see section 40(1)(a);

20 **teacher** means a person registered as a teacher under the *Teachers Registration and Standards Act 2004* and includes a person who holds a special authority to teach under that Act;

trustee services provider—see subsection (7)(b).

25 (2) For the purposes of this Act, a reference to a **Catholic school** will be taken to be a reference to a non-Government school specified as such by the South Australian Commission for Catholic Schools Incorporated by notice in writing given to the non-Government Schools Registrar (and a reference to the **Catholic sector** will be taken to have a corresponding meaning).

30 (3) For the purposes of this Act, a student (other than a student or class of students declared by the regulations not to be a full fee paying overseas student) is to be regarded as a **full fee paying overseas student**—

- (a) if—
- 35 (i) the student holds a temporary entry permit in force under the *Migration Act 1958* of the Commonwealth; and
- (ii) the Commonwealth and the State disregard the student (or a class of students to which that student belongs) when calculating the amount of any assistance to the school at which the student is enrolled; or
- (b) in any other circumstances prescribed by the regulations.

-
- (4) Without limiting the generality of the expression, a person will be taken to ***carry on the business of providing education services*** if the person, in the course of carrying on a business—
- 5 (a) provides services to a school for which the person is entitled to receive a share in the profits or income of the school; or
- (b) engages in any other conduct declared by the regulations to be carrying on the business of providing education services.
- (5) A reference in this Act to ***misconduct*** extends to—
- 10 (a) misconduct committed before the commencement of this Act; and
- (b) misconduct committed within or outside South Australia or the Commonwealth.
- (6) A reference in this Act to ***engaging in conduct*** includes a reference to failing or refusing to engage in conduct.
- (7) For the purposes of this Act—
- 15 (a) an ***incorporated services provider*** is a school that is a body corporate and a person occupies a ***position of authority*** in such a provider if the person—
- (i) is a director of the body corporate; or
- (ii) exercises, or is in a position to exercise, control or substantial influence over the body corporate in the conduct of its affairs; or
- 20 (iii) manages, or is to manage, the business of the body corporate that consists of the provision of education services; or
- (iv) if the body corporate is a proprietary company—is a shareholder in the body corporate;
- (b) a ***trustee services provider*** is a provider acting as a school in the capacity of trustee of a trust and a person occupies a ***position of authority*** in such a provider if the person is a trustee or beneficiary of the trust.
- 25 (8) For the purposes of this Act, a person occupies a ***position of authority*** in a body corporate other than an incorporated services provider if the person—
- (a) is a director of the body corporate; or
- 30 (b) exercises, or is in a position to exercise, control or substantial influence over the body corporate in the conduct of its affairs; or
- (c) if the body corporate is a proprietary company—is a shareholder in the body corporate.
- (9) However—
- 35 (a) a minor who is a shareholder in a proprietary company, or a beneficiary under a trust, is not, for that reason, to be regarded as a person occupying a position of authority; and
- (b) a charitable organisation that is a beneficiary of a trust is not, for that reason, to be regarded as occupying a position of authority.

- (10) For the purposes of this Act, a person who holds more than 10% of the issued share capital of a public company will be regarded as a person occupying a position of authority in that company.

4—Early childhood services

- 5 (1) In this Act, *early childhood services* means services of the following kinds:
- (a) in-home care services;
 - (b) occasional care services;
 - (c) rural and mobile care services;
 - 10 (d) family day care services that are not education and care services within the meaning of the *Education and Care Services National Law (South Australia)*;
 - (e) any other service declared by the regulations to be included in the ambit of this definition,

but does not include a service declared by the regulations not to be included in the ambit of this subsection.

- 15 (2) In this section—

in-home care services means services of a kind specified by the regulations for the purposes of this definition;

occasional care services means services of a kind specified by the regulations for the purposes of this definition;

20 *rural and mobile care services* means services of a kind specified by the regulations for the purposes of this definition.

5—Parts of Act not to apply in relation to certain services

The following provisions of this Act do not apply to, or in relation to, services (however described) of a kind to which the *Education and Care Services National Law (South Australia)* applies (other than where that Law applies to residual early childhood services under Part 3):

- (a) sections 4 and 9;
- (b) Part 5 to Part 10 (inclusive).

6—Governing authority

30 For the purposes of this Act, the *governing authority* of a school means the person, board, committee or other authority by which the school is administered and, in the case of an incorporated or trustee services provider, includes each person who occupies a position of authority in the provider.

7—Limitation of liability for volunteer members of governing authorities

- 35 (1) Despite any other provision of this Act, a volunteer member of the governing authority of a school can only be guilty of a prescribed offence against this Act if the prosecution proves that—
- (a) the volunteer member knew, or ought reasonably to have known, that there was a significant risk that such an offence would be committed; and

- (b) the volunteer member was in a position to influence the conduct of the governing authority in relation to the commission of such an offence; and
- (c) the volunteer member failed to exercise due diligence to prevent the commission of the offence.

5 (2) In this section—

prescribed offence means—

- (a) an offence against section 41, 62(1), 74(2) or 75; or
- (b) any other offence prescribed by the regulations for the purposes of this section;

10 *volunteer member* of the governing authority of a school means a person who is acting as a member of the governing authority on a voluntary basis (whether or not the person receives out-of-pocket expenses).

8—Responsible authorities

- (1) The Director-General is the *responsible authority* for Government schools.
- 15 (2) The Executive Officer of the South Australian Commission for Catholic Schools Incorporated (including a person for the time being holding or acting in that position) is the *responsible authority* for all Catholic schools.
- (3) The Director of Lutheran Schools, South Australia (including a person for the time being holding or acting in that position) is the *responsible authority* for all Lutheran schools.
- 20 (4) The Director of Education, Seventh Day Adventist schools (including a person for the time being holding or acting in that position) is the *responsible authority* for all Seventh Day Adventist schools.
- (5) The Minister may, on the application of a school or class of schools (not being a school or class of schools contemplated by a preceding subsection) by notice in writing, appoint a person—
- 25 (a) who has been nominated by the school or class of schools; and
- (b) who has agreed in writing to the appointment,
- to be the *responsible authority* for the school or class of schools.
- 30 (6) The Minister may, by subsequent notice in writing, vary or revoke a notice under subsection (5).
- (7) In the case of a school in relation to which a responsible authority cannot be determined according to a preceding subsection, each member of the governing authority of the school will be taken to be a *responsible authority* for the school.

35 (8) In this section—

Lutheran school means a school that is a member of the Lutheran Schools Association;

Seventh Day Adventist school means a school operated by the Seventh Day Adventist Schools SA Trust.

9—Objects and principles

- (1) The objects of this Act include providing for the regulation of the provision of education and early childhood services in a manner that maintains high standards of competence and conduct by providers and—
- 5 (a) recognises that all children should have access to high quality education and early childhood facilities and services that—
- (i) address their developmental needs; and
- (ii) maximise their learning and development potential through an appropriate curriculum; and
- 10 (iii) support their educational achievement; and
- (iv) promote enthusiasm for learning; and
- (v) support, promote and contribute to their health, safety and well-being; and
- (b) provides for a diverse range of services; and
- 15 (c) recognises the rights of parents to access a diverse range of education and early childhood services providers; and
- (d) enhances public confidence in the operation of education and early childhood services providers.
- (2) The following principles should be taken into account in the administration of this Act:
- 20 (a) parents and guardians should have the right to choose the best services for their family;
- (b) parents and guardians, and members of school communities, should have access to relevant information concerning the regulation of their child's school;
- 25 (c) the welfare and best interests of children is the primary consideration in the performance of the Board's functions;
- (d) any person who works with children is obliged to protect them, respect their dignity and privacy and safeguard and promote their well-being;
- 30 (e) cooperation between the Minister, the Board and the school education sectors contributes to achieving the effective provision of education and early childhood services;
- (f) successful learning is built on a foundation of rich, engaging environments and meaningful interactions in which children's voices are listened to and acted on.
- 35
- (3) In exercising a power or performing a function under this Act, the Board should have regard to, and seek to give effect to, the following principles:
- (a) providers of education services and early childhood services should not be burdened by regulation more than is reasonably necessary;
- 40 (b) the actions of the Board in relation to minimising or responding to a particular risk should be proportionate to the potential harm posed by the risk;

- 5 (c) the Board should have regard to all of the circumstances of a particular provider of education services or early childhood services (including, without limiting this paragraph, the provider's history of compliance with this or any other relevant Act and any risk that the provider may not comply with this Act in the future).

Note—

The *Education and Care Services National Law (South Australia)* may contain further objects and principles in respect of services to which that Law applies.

Part 2—Adoption of *Education and Care Services National Law*

10—Application of *Education and Care Services National Law*

- 10 (1) The *Education and Care Services National Law*, as in force from time to time, set out in the schedule to the *Education and Care Services National Law Act 2010* of Victoria—
- 15 (a) applies as a law of this jurisdiction; and
- (b) as so applying may be referred to as the *Education and Care Services National Law (South Australia)*.
- (2) Subsection (1) applies subject to any modifications made to the *Education and Care Services National Law* by or under this Act.

11—Exclusion of legislation of this jurisdiction

- 20 (1) The following Acts do not apply to the *Education and Care Services National Law (South Australia)* or the national regulations:
- (a) the *Acts Interpretation Act 1915*;
- (b) the *Subordinate Legislation Act 1978*.
- 25 (2) The following Acts do not apply to the *Education and Care Services National Law (South Australia)* or the national regulations except to the extent that that Law or those instruments apply to the Regulatory Authority, or to the employees, decisions, actions and records of the Regulatory Authority:
- (a) the *Ombudsman Act 1972*;
- (b) the *Public Finance and Audit Act 1987*;
- 30 (c) the *Public Sector Act 2009*;
- (d) the *Public Sector (Honesty and Accountability) Act 1995*;
- (e) the *State Records Act 1997*.
- (3) The *Freedom of Information Act 1991* does not apply in relation to the National Quality Framework.
- 35 (4) In this section—
- National Quality Framework*, *national regulations* and *Regulatory Authority* have the same meanings as in the *Education and Care Services National Law (South Australia)*.

12—Meaning of certain terms in *Education and Care Services National Law* (South Australia) for the purposes of this jurisdiction

(1) In the *Education and Care Services National Law* (South Australia)—

child protection law means—

- (a) the *Children's Protection Act 1993*; and
- (b) the *Family and Community Services Act 1972*; and
- (c) the *Guardianship and Administration Act 1993*; and
- (d) any other Act declared by the regulations to be a child protection law;

court means the Magistrates Court;

local authority means a local council within the meaning of the *Local Government Act 1999*;

magistrate means a person holding office as a Magistrate under the *Magistrates Act 1983*;

public authority means a body established for a public purpose by or under an Act;

superior court means the Supreme Court;

this jurisdiction means South Australia.

- (2) For the purposes of the definition of **children's services law** in the *Education and Care Services National Law* (South Australia), this Act, the *Children's Services Act 1985* and any other Act prescribed by the regulations are declared to be children's services laws for this jurisdiction.
- (3) For the purposes of the definition of **children's services regulator** in the *Education and Care Services National Law* (South Australia), the Board is declared to be the children's services regulator for this jurisdiction.
- (4) For the purposes of the definition of **education law** in the *Education and Care Services National Law* (South Australia), this Act, the *Education Act 1972* and any other Act prescribed by the regulations are declared to be education laws for this jurisdiction.
- (5) For the purposes of the definition of **former education and care services law** in the *Education and Care Services National Law* (South Australia), the *Education Act 1972* and the *Children's Services Act 1985* are declared to be former education and care services laws for this jurisdiction.
- (6) For the purposes of the definition of **infringements law** in the *Education and Care Services National Law* (South Australia), the *Expiation of Offences Act 1996* is declared to be an infringements law for this jurisdiction.
- (7) For the purposes of the definition of **public sector law** in the *Education and Care Services National Law* (South Australia), the *Public Sector Act 2009* and the *Public Sector (Honesty and Accountability) Act 1995* are declared to be public sector laws for this jurisdiction.

- (8) For the purposes of the definition of ***relevant tribunal or court*** in the *Education and Care Services National Law (South Australia)*—
- (a) the Magistrates Court is declared to be the relevant tribunal or court for this jurisdiction for the purposes of section 181 of the *Education and Care Services National Law (South Australia)*; and
- (b) the District Court is declared to be the relevant tribunal or court for this jurisdiction for the purposes of Part 8 of the *Education and Care Services National Law (South Australia)*.
- (9) For the purposes of the definition of ***Regulatory Authority*** in the *Education and Care Services National Law (South Australia)*, the Board is declared to be the Regulatory Authority for this jurisdiction.
- (10) For the purposes of the definition of ***working with children law*** in the *Education and Care Services National Law (South Australia)*, the *Children's Protection Act 1993*, and any other Act prescribed by the regulations, are declared to be working with children laws for this jurisdiction.
- (11) For the purposes of the definition of ***declared approved family day care service*** in section 305 of the *Education and Care Services National Law (South Australia)*, a family day care scheme that was, immediately before the scheme commencement day, being operated by the administrative unit of the Public Service responsible under the Minister for the administration of the *Children's Services Act 1985* is declared to be a declared approved family day care service for this jurisdiction.
- (12) For the purposes of the definition of ***declared approved family day care venue*** in section 305 of the *Education and Care Services National Law (South Australia)*, premises that, immediately before the scheme commencement day, were the subject of an approval as family day care premises under section 33 of the *Children's Services Act 1985* are declared to be a declared approved family day care venue for this jurisdiction.
- (13) For the purposes of the definition of ***declared approved provider*** in section 305 of the *Education and Care Services National Law (South Australia)*, the following are declared to be declared approved providers for this jurisdiction:
- (a) the administrative unit of the Public Service that was, immediately before the scheme commencement day, responsible under the Minister for the administration of the *Children's Services Act 1985*;
- (b) a person or body who, immediately before the scheme commencement day, held a licence to conduct or control a child care centre under the *Children's Services Act 1985*;
- (c) a person or body who, immediately before the scheme commencement day, operated an out of school hours care service that was registered with the National Childcare Accreditation Council of Australia;
- (d) a person or body who, immediately before the scheme commencement day, operated a pre-school education service on the premises of, or in relation to, a non-Government school registered under the *Education Act 1972*;
- (e) a person or body who, immediately before the scheme commencement day, operated an out of school hours care service on the premises of, or in relation to, a non-Government school registered under the *Education Act 1972*;

- (f) any other person or body declared by the regulations to be included in the ambit of this subsection.
- 5 (14) For the purposes of the definition of ***declared approved service*** in section 305 of the *Education and Care Services National Law (South Australia)*, the following education and care services are declared to be declared approved services for this jurisdiction:
- (a) a family day care service;
- (b) a child care centre service;
- (c) an out of school hours care service;
- (d) a pre-school education service;
- 10 (e) any other service declared by the regulations to be included in the ambit of this subsection.
- (15) For the purposes of the definition of ***declared certified supervisor*** in section 305 of the *Education and Care Services National Law (South Australia)*, the following persons are declared to be declared certified supervisors for this jurisdiction:
- 15 (a) a natural person who was, immediately before the scheme commencement day and in accordance with regulation 18(1) of the *Children's Services (Child Care Centre) Regulations 1998*, a manager of a child care centre;
- (b) a person who was, immediately before the scheme commencement day, a qualified contact staff member (within the meaning of the *Children's Services (Child Care Centre) Regulations 1998*) in relation to a child care centre;
- 20 (c) a person who was, at any time in the 2 years immediately preceding the scheme commencement day, employed in a position of the following kinds in the administrative unit of the Public Service that was, at the relevant time, responsible under the Minister for the administration of the *Children's Services Act 1985*:
- 25 (i) a field worker in relation to the provision of family day care;
- (ii) a coordinator in relation to the provision of family day care;
- (iii) a team leader in relation to the provision of family day care;
- (iv) a manager in relation to the provision of family day care;
- 30 (d) a teacher who was, at any time in the 2 years immediately preceding the scheme commencement day, employed in relation to the provision of an education and care service of a kind contemplated by subsection (14);
- (e) any other person, or class of person, declared by the regulations to be included within the ambit of this subsection.
- 35 (16) For the purposes of the definition of ***declared nominated supervisor*** in section 305 of the *Education and Care Services National Law (South Australia)*, a person authorised in writing by the Minister for the purposes of this subsection is declared to be a declared nominated supervisor for this jurisdiction.

5 (17) For the purposes of the definition of **former approval** in section 305 of the *Education and Care Services National Law (South Australia)*, an authorisation (however described) under the *Education Act 1972* or the *Children's Services Act 1985* in force immediately before the scheme commencement day to provide a service of a kind contemplated by subsection (14) is declared to be a former approval for this jurisdiction.

(18) For the purposes of subsection (17), and without limiting any other way in which a person may be authorised under the *Education Act 1972* or the *Children's Services Act 1985* to provide a particular service—

10 (a) a person or body will be taken to have been authorised under the *Education Act 1972* or the *Children's Services Act 1985* (as the case requires) to provide a service of a kind contemplated by subsection (14) if the person or body was, immediately before the scheme commencement day, providing a service of the relevant kind; and

15 (b) that authorisation will be taken to have been in force immediately before the scheme commencement day.

(19) For the purposes of this section, a reference to an Act of this jurisdiction includes a reference to regulations made under that Act.

(20) In this section—

20 **scheme commencement day** has the same meaning as in the *Education and Care Services National Law (South Australia)*.

13—Penalty at end of provision

25 In the *Education and Care Services National Law (South Australia)*, a penalty specified at the end of a provision indicates that a contravention of the provision is punishable on conviction by a penalty not more than the specified penalty.

14—Tabling of annual report

30 (1) Without limiting section 280 of the *Education and Care Services National Law (South Australia)*, the Minister must cause copies of the annual report of the National Authority, and the report of the public sector auditor with respect to the financial statement in the report, to be laid before both Houses of Parliament.

(2) In this section—

National Authority has the same meaning as in the *Education and Care Services National Law (South Australia)*.

Part 3—Application of *Education and Care Services National Law (South Australia)* to residual early childhood services providers

15—Application of *Education and Care Services National Law (South Australia)* to residual early childhood services providers

(1) The *Education and Care Services National Law (South Australia)*, as modified by Schedule 1 and as in force from time to time, applies in relation to all residual early childhood services as if they were education and care services within the meaning of that law.

(2) In this section—

residual early childhood services means early childhood services of a kind to which the *Education and Care Services National Law (South Australia)* would not, but for this section, apply.

Note—

See section 4 for the definition of early childhood services.

16—Exemption from certain provisions of *Education and Care Services National Law (South Australia)*

(1) Subject to this section, the Minister may, by notice in writing—

(a) exempt a person, or class of persons, subject to such conditions as the Minister thinks fit and specifies in the notice, from specified provisions of the *Education and Care Services National Law (South Australia)* as they apply to, or in relation to, residual early childhood services; or

(b) vary or revoke an exemption, or a condition of an exemption, under this section or impose a further condition.

(2) The Minister must consult with the Board before making a notice under subsection (1).

(3) A person who contravenes a condition of an exemption is guilty of an offence.
Maximum penalty: \$10 000.

Part 4—Administration

Division 1—The Minister

17—Functions of Minister

(1) The functions of the Minister under this Act are—

(a) to support the delivery of the highest possible standard of education services and early childhood services;

(b) to work with the Board to ensure effective monitoring and evaluation of the delivery of education and early childhood services;

- (c) to support the promotion of, and public awareness on the availability and quality of, education and early childhood services;
- (d) such other functions assigned to the Minister by or under this or any other Act.

- 5 (2) For the purposes of this section, a reference to early childhood services includes a reference to an education and care service (within the meaning of the *Education and Care Services National Law (South Australia)*).

Note—

10 The *Education and Care Services National Law (South Australia)* may contain further functions in respect of services to which that Law applies.

18—Ministerial directions

- (1) Subject to this section, the Minister may give the Board a direction about any matter relevant to the performance or exercise of a function or power of the Board.
- (2) No Ministerial direction may be given—
 - 15 (a) in relation to the registration of a particular school, or the imposition of conditions on the registration of a particular school, or the suspension or cancellation of the registration of a particular school; or
 - (b) in relation to the determination of criteria for registration under this Act; or
 - (c) in relation to any particular proceedings before the Board; or
 - 20 (d) in relation to a particular complaint of a kind contemplated by section 29.
- (3) A direction given by the Minister under this section must be in writing.
- (4) If the Minister gives a direction under this section—
 - (a) the Minister must prepare a report on the matter and cause a copy of the report to be laid before each House of Parliament; and
 - 25 (b) the Board must cause details of the direction to be published in its next annual report.

19—Power of delegation

- (1) The Minister may delegate a function or power under this Act (other than a prescribed function or power) to a specified body or person (including a person for the time being holding or acting in a specified office or position).
- 30 (2) A delegation under this section—
 - (a) must be by instrument in writing; and
 - (b) may be absolute or conditional; and
 - (c) does not derogate from the ability of the Minister to act in any matter; and
 - 35 (d) is revocable at will.
- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

- (4) A person to whom a function has been delegated under subsection (1) who has a direct or indirect personal or pecuniary interest in any matter in relation to which the person proposes to perform the functions must disclose the nature of the interest in writing to the Minister.

5 Maximum penalty: \$20 000.

- (5) It is a defence to a charge of an offence against subsection (4) for the defendant to prove that he or she was not, at the time of the alleged offence, aware of his or her interest in the matter.

10 **Division 2—The Education and Early Childhood Services Registration and Standards Board of South Australia**

Subdivision 1—The Board

20—Establishment of Board

- (1) The *Education and Early Childhood Services Registration and Standards Board of South Australia* is established.

15 (2) The Board—

- (a) is a body corporate; and
(b) has perpetual succession and a common seal; and
(c) can sue and be sued in its corporate name; and
(d) has the functions and powers assigned or conferred by or under this or any
20 other Act.

- (3) If a document appears to bear the common seal of the Board, it will be presumed, in the absence of proof to the contrary, that the common seal of the Board was duly fixed to the document.

21—Composition of Board

25 (1) The Board consists of 13 members appointed by the Governor on the nomination of the Minister, being persons who collectively have, in the opinion of the Minister, the knowledge, skills and experience necessary to enable the Board to carry out its functions effectively.

(2) Of those members—

- 30 (a) 1 (who will be the presiding member) must be a person who has, in the opinion of the Minister, extensive knowledge and expertise in the education and care of children; and
(b) 2 must be nominated from a panel of 4 persons submitted by the Director-General; and
35 (c) 2 must be nominated from a panel of 4 persons submitted by the Association of Independent Schools of South Australia; and
(d) 2 must be nominated from a panel of 4 persons submitted by the South Australian Commission for Catholic Schools Incorporated; and

-
- (e) 2 must be nominated from a panel of 4 persons submitted by the prescribed child care bodies; and
- (f) 1 must be a legal practitioner.
- (3) If the Minister does not receive a submission from a body under subsection (2)(c), (d) or (e) within 2 months after requesting the submission of 4 names by that body, the Minister may, by notice in writing, request the relevant body to make a nomination within a time (being not less than 1 month) allowed in the notice and if a nomination is not made within that time, then the Minister may proceed to nominate a person or persons determined by the Minister in lieu of a person submitted by that body.
- (4) Subject to this section, the Minister should, before nominating a person for appointment to the Board (other than for the purposes of subsection (2)(c), (d) or (e)), under a scheme determined by the Minister for the purposes of this section—
- (a) call for expressions of interest; and
- (b) take into account any representations made by a prescribed designated entity.
- (5) In nominating the remaining members of the Board, the Minister should, as far as is reasonably practicable, endeavour to achieve a gender balance on the Board.
- (6) The requirements of qualification and nomination (if applicable) made by this section in relation to the appointment of a member extend to the appointment of a deputy of that member.
- (7) The Governor may, on the recommendation of the Minister, appoint a suitable person to be the deputy presiding member of the Board.
- (8) The Governor may, on the nomination of the Minister, appoint a suitable person to be the deputy of a member of the Board.
- (9) A deputy may act as a member of the Board during any period of absence of the member in relation to whom the deputy has been appointed.

22—Conditions of membership

- (1) Subject to this section, a member of the Board will hold office on conditions determined by the Governor for a term, not exceeding 3 years, specified in the instrument of appointment and is, at the expiration of a term of office, eligible for reappointment.
- (2) A member of the Board cannot hold office for consecutive terms that exceed 9 years in total.
- (3) The Governor may remove a member of the Board from office—
- (a) for breach of, or non-compliance with, a condition of appointment; or
- (b) for mental or physical incapacity to carry out duties of office satisfactorily; or
- (c) for neglect of duty; or
- (d) for dishonourable conduct.
- (4) The office of a member of the Board becomes vacant if the member—
- (a) dies; or
- (b) completes a term of office and is not reappointed; or

- (c) resigns by written notice addressed to the Minister; or
- (d) is found guilty of a prescribed offence; or
- (e) is removed from office by the Governor under subsection (3); or
- (f) accepts employment as a Registrar under this Act.

5 **23—Casual vacancies**

The following rules govern the appointment of a person to fill a casual vacancy that occurs in the office of a member appointed in accordance with section 21(2)(c), (d) or (e):

- 10 (a) if the vacancy occurs within 12 months after the member's appointment, the Governor must appoint on the nomination of the Minister 1 of the remaining persons from the panel submitted in relation to the member's appointment;
- (b) if—
 - 15 (i) none of the remaining persons are qualified for appointment; or
 - (ii) none of the remaining persons are available or willing to be appointed; or
 - 20 (iii) if the vacancy occurs later than 12 months after the member's appointment,

the Governor may appoint a person nominated by the Minister from a new panel of 4 persons submitted by the body referred to in the relevant paragraph (and, if the Minister does not receive a submission from the body within 14 days after requesting the submission of 4 names by that body, the Minister may proceed to nominate a person determined by the Minister in lieu of a person submitted by that body);

- 25 (c) the person appointed holds office for the balance of the term of that person's predecessor.

24—Allowances and expenses

A member of the Board (other than a member who is a member of the Public Service) is entitled to fees, allowances and expenses approved by the Governor.

25—Validity of acts

- 30 An act or proceeding of the Board is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

Subdivision 2—Registrars and staff

26—Registrars of Board

- (1) There will be the following Registrars of the Board:
 - 35 (a) the Registrar for the Government sector (the *Government Schools Registrar*);
 - (b) the Registrar for the non-Government sector (the *non-Government Schools Registrar*);

(c) the Registrar for the early childhood services sector (the *Early Childhood Services Registrar*).

(2) The Registrars will be appointed by the Board on terms and conditions determined by the Board.

5 **27—Staff of Board**

(1) The Board's staff consists of—

- (a) Public Service employees assigned to assist the Board; and
- (b) persons employed by the Board, on terms and conditions determined by the Board after consultation with the Minister, to assist the Board.

10 (2) If a person commences employment as a member of the staff of the Board after ceasing to be employed—

- (a) in the Public Service of the State; or
- (b) by a prescribed employing authority,

15 and that employment with the Board follows immediately on the cessation of that previous employment, then—

- (c) the person's existing and accruing rights immediately before the cessation of that previous employment in respect of recreation leave, sick leave and long service leave continue in full force and effect as if that previous employment had been employment by the Board; and
- (d) the person is not entitled to payment in lieu of those rights.

(3) Except where subsection (2) applies, if a person commences employment as a member of the staff of the Board within 3 months after ceasing to be employed—

- (a) in the Public Service of the State; or
- (b) by a prescribed employing authority; or
- (c) in prescribed employment,

25 the person's existing and accruing rights immediately before the cessation of that employment in respect of recreation leave, sick leave and long service leave continue, to the extent directed by the Board and subject to such conditions as may be determined by the Board, as if that previous employment had been employment by the Board.

30 (4) The Board may, under an arrangement established by the Minister administering an administrative unit of the Public Service, make use of the services or staff of that administrative unit.

(5) In this section—

35 *prescribed employing authority* means—

- (a) the employing authority under the *Education Act 1972*; or
- (b) the employing authority under the *Children's Services Act 1985*; or
- (c) any other person or body declared by the Minister to be included in the ambit of this definition.

Subdivision 3—Functions of Board

28—Functions of Board

- (1) The functions of the Board are as follows:
- (a) to regulate the provision of education services and early childhood services;
 - (b) to approve the requirements for endorsement of registration;
 - (c) to establish and maintain the registers contemplated by this Act;
 - (d) to prepare or endorse codes of conduct for registered schools;
 - (e) to provide advice to the Minister as the Board considers appropriate;
 - (f) to carry out other functions assigned to the Board under this or any other Act or by the Minister.
- (2) A code of conduct prepared or endorsed by the Board cannot come into operation except with the written approval of—
- (a) the Minister; and
 - (b) a majority of the peak bodies prescribed by the regulations for the purpose of this subsection.
- (3) The Board must, in relation to each code of conduct prepared or endorsed by the Board and that has been approved in accordance with subsection (2)—
- (a) cause a copy of the code to be published in the Gazette, together with a statement of the operative date of the code (which cannot be a date earlier than the date of publication); and
 - (b) take reasonable steps to send a copy of the code to each school to which it applies; and
 - (c) ensure that a copy of the code is published on the Internet and kept available for public inspection without charge during normal office hours at the principal office of the Board,
- (although proof of compliance with paragraphs (a), (b) and (c) is not necessary for the purposes of any proceedings that involve an alleged contravention of or failure to comply with a code of conduct).

29—Complaint made directly to Board to be referred to school

- (1) If a person makes a complaint to the Board or a Registrar in relation to the provision of education services by a registered school, the Board or Registrar must refer the complaint to the registered school to be dealt with in accordance with the procedures for handling complaints established by the school.
- (2) However, if the Board is of the opinion that the subject matter of a complaint—
- (a) would, if proved, constitute a proper cause for disciplinary action under Part 7; and
 - (b) is of such seriousness that the matter should instead be the subject of a complaint laid under section 61,

the Board may direct the relevant Registrar to lay a complaint under that section instead of referring the matter to the registered school.

30—Committees

- (1) The Board may establish committees—
 - (a) to advise the Board or a Registrar on any matter; or
 - (b) to carry out functions on behalf of the Board.
- 5 (2) The membership of a committee will be determined by the Board and may, but need not, consist of, or include, members of the Board.
- (3) The Board will determine who will be the presiding member of a committee.
- (4) The procedures to be observed in relation to the conduct of the business of a committee will be—
 - 10 (a) as determined by the Board; and
 - (b) insofar as a procedure is not determined under paragraph (a)—as determined by the committee.

31—Power of delegation

- 15 (1) The Board may delegate a function or power under this Act (other than a function or power under Part 7 or a prescribed function or power)—
 - (a) to a member of the Board, a Registrar or an employee of the Board; or
 - (b) to a committee established by the Board; or
 - (c) to a specified body or person (including a person for the time being holding or acting in a specified office or position).
- 20 (2) A delegation under this section—
 - (a) must be by instrument in writing; and
 - (b) may be absolute or conditional; and
 - (c) does not derogate from the ability of the Board to act in any matter; and
 - (d) is revocable at will.
- 25 (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (4) A person to whom a function has been delegated under subsection (1) who has a direct or indirect personal or pecuniary interest in any matter in relation to which the person proposes to perform the functions must disclose the nature of the interest in writing to the Board.
30 Maximum penalty: \$20 000.
- (5) It is a defence to a charge of an offence against subsection (4) to prove that the defendant was not, at the time of the alleged offence, aware of his or her interest in the matter.

35 Subdivision 4—Board's procedures

32—Board's procedures

- (1) Subject to this Act, a quorum of the Board consists of one half the total number of its members (ignoring any fraction resulting from the division) plus 1.

Education and Early Childhood Services (Registration and Standards) Bill 2011

Part 4—Administration

Division 2—The Education and Early Childhood Services Registration and Standards Board of South Australia

- (2) At least 1 member of the Board appointed in accordance with each of paragraphs (c), (d) and (e) of section 21 must be present at any meeting of the Board.
- (3) A meeting of the Board will be chaired by the presiding member or, in his or her absence, by the deputy presiding member and, in the absence of both the presiding member and the deputy presiding member, the members present at a meeting of the Board must choose 1 of their number to preside at the meeting.
- (4) A decision carried by a majority of the votes cast by members of the Board at a meeting is a decision of the Board.
- (5) Each member present at a meeting of the Board has 1 vote on any question arising for decision.
- (6) A conference by telephone or other electronic means between the members of the Board will, for the purposes of this section, be taken to be a meeting of the Board at which the participating members are present if—
- (a) notice of the conference is given to all members in the manner determined by the Board for the purpose; and
 - (b) each participating member is capable of communicating with every other participating member during the conference.
- (7) A proposed resolution of the Board becomes a valid decision of the Board despite the fact that it is not voted on at a meeting of the Board if—
- (a) notice of the proposed resolution is given to all members of the Board in accordance with procedures determined by the Board; and
 - (b) a majority of the members express concurrence in the proposed resolution by letter, telegram, telex, fax, email or other written communication setting out the terms of the resolution.
- (8) The Board must have accurate minutes kept of its meetings.
- (9) Subject to this Act, the Board may determine its own procedures.

33—Conflict of interest etc under *Public Sector (Honesty and Accountability) Act 1995*

A member of the Board 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 in the matter that is shared in common with persons involved in the provision of education services or early childhood services generally, or a substantial section of persons involved in the provision of education services or early childhood services.

Note—

The *Public Sector (Honesty and Accountability) Act 1995* imposes duties of honesty and accountability on public sector office holders, including members of the Board.

34—Powers of Board in relation to witnesses etc

- (1) For the purposes of proceedings before the Board (whether such proceedings are disciplinary proceedings or otherwise), the Board may—
- 5 (a) by summons signed on behalf of the Board by a member of the Board or the relevant Registrar, require the attendance before the Board of a person whom the Board thinks fit to call before it; or
- (b) by summons signed on behalf of the Board by a member of the Board or the relevant Registrar, require the production of relevant documents, records or equipment and, in the case of a document or record that is not in the English language—
- 10 (i) a written translation of the document or record into English; and
- (ii) a certificate signed by a translator approved by the Board certifying that the translation accurately reproduces in English the contents of the document or record; or
- 15 (c) inspect documents, records or equipment produced before it, and retain them for such reasonable period as it thinks fit, and make copies of the documents or records or their contents; or
- (d) require a person to make an oath or affirmation (which may be administered by a member of the Board) to answer truthfully questions put by a member of the Board or a person appearing before the Board; or
- 20 (e) require a person appearing before the Board (whether summoned to appear or not) to answer questions put by a member of the Board or by a person appearing before the Board.
- (2) On the receipt of an application for the issue of a summons under this section, a member of the Board or the relevant Registrar may, without referring the matter to the Board, issue a summons on behalf of the Board.
- 25 (3) A person who—
- (a) fails without reasonable excuse to comply with a summons issued to attend, or to produce documents, records or equipment, before the Board; or
- 30 (b) having been served with a summons to produce—
- (i) a written translation of the document or record into English; and
- (ii) a certificate signed by a translator approved by the Board certifying that the translation accurately reproduces in English the contents of the document or record,
- 35 fails, without reasonable excuse, to comply with the summons; or
- (c) refuses to be sworn or to affirm, or refuses or fails to answer truthfully a relevant question when required to do so by the Board,
- is guilty of an offence.
- Maximum penalty: \$10 000 or imprisonment for 6 months.
- 40 (4) A person who appears as a witness before the Board has the same protection as a witness in proceedings before the Supreme Court.

- (5) In the course of proceedings before the Board (whether such proceedings are disciplinary proceedings or otherwise), the Board may—
- (a) receive in evidence a transcript of evidence taken in proceedings before a court, tribunal or other body constituted under the law of South Australia or of any other State or a Territory of Australia or of another country, and draw any conclusions of fact from the evidence that it considers proper; and
 - (b) adopt, as in its discretion it considers proper, any findings, decision, judgment, or reasons for judgment, of any such court, tribunal or body that may be relevant to the proceedings.

35—Principles governing proceedings

- (1) In proceedings before the Board, the Board—
- (a) is not bound by the rules of evidence and may inform itself on any matter as it thinks fit; and
 - (b) must act according to the principles of natural justice and ensure procedural fairness; and
 - (c) must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.
- (2) In proceedings before the Board, the Board must keep the parties to the proceedings properly informed as to the progress and outcome of the proceedings.

36—Representation at proceedings before Board

- (1) A party to proceedings before the Board is entitled to be represented at the hearing of those proceedings.
- (2) The Board may be assisted by legal counsel at the hearing of proceedings.

37—Costs

- (1) The Board may award such costs against a party to proceedings before it as the Board considers just and reasonable.
- (2) A party who is dissatisfied with the amount of the costs awarded by the Board may request a Master of the District Court to tax the costs and, after taxing the costs, the Master may confirm or vary the amount of the costs awarded by the Board.
- (3) Costs awarded by the Board under this section may be recovered as a debt.

Subdivision 5—Financial matters, audit and annual report

38—Accounts and audit

- (1) The Board must keep proper accounting records in relation to its financial affairs, and must have annual statements of accounts prepared in respect of each financial year.
- (2) The accounts must be audited at least once in every year by an auditor approved by the Auditor-General and appointed by the Board.
- (3) The Auditor-General may at any time audit the accounts of the Board.

39—Annual report

- (1) The Board must, on or before 31 October in each year, deliver to the Minister a report on the administration of this Act and the work of the Board during the financial year ending on the preceding 30 June.
- 5 (2) The report must—
- (a) include the information prescribed by the regulations in relation to the relevant financial year; and
 - (b) incorporate the audited accounts of the Board for the relevant financial year.
- 10 (3) The Minister must, within 12 sitting days after receiving a report under this section, have copies of the report laid before both Houses of Parliament.

Part 5—Registration of schools

Division 1—Registers

40—Registers

- (1) The Board must keep the following registers:
- 15 (a) a *schools register*, comprised of the following parts:
- (i) Government schools;
 - (ii) non-Government schools;
- (b) a register of schools that have been removed from the schools register and who have not been reinstated to that register.
- 20 (2) The schools register must include the following information in relation to each school on the register:
- (a) the name of the school;
 - (b) the address of each campus of the school;
 - (c) the conditions (if any) of the registration;

25 (d) any endorsement of the registration;

 - (e) any other information required by the regulations.
- (3) The Registrars are responsible to the Board for the form and maintenance of the registers.
- (4) The Registrars must correct an entry in a register that is not, or has ceased to be, correct.
- 30 (5) The registers must be kept available for inspection by any person during ordinary office hours at the principal office of the Board and the registers, or extracts of the registers, may be made available to the public by electronic means.
- (6) A person may, on payment of the prescribed fee, obtain a copy of any part of a register.
- 35

Division 2—Registration on schools register

41—Schools to be registered

- (1) A school at which education services are provided, or students enrolled, must be registered under this Division.
- 5 (2) If a school provides education services or enrolls students in contravention of subsection (1)—
- (a) if the school is an incorporated or trustee services provider—the school; or
 - (b) in any other case—the responsible authority for the school,
- is guilty of an offence.
- 10 Maximum penalty: \$75 000.

42—Registration on schools register

- (1) Subject to this Act, a school is eligible for registration on the schools register if the Board, on application made in accordance with this Act, is satisfied that—
- 15 (a) the nature and content of the instruction offered, or to be offered, at the school is satisfactory; and
- (b) the school provides adequate protection for the safety, health and welfare of its students; and
- (c) the school satisfies any other requirements set out in the regulations for the purposes of this subsection.
- 20 (2) The Governor may only make regulations for the purposes of subsection (1) on the recommendation of the Board.
- (3) Before making a recommendation for the purposes of subsection (2), the Board must consult with the bodies prescribed by the regulations for the purposes of this subsection (and may consult with any other person or body the Board thinks fit).
- 25 (4) An application for registration must—
- (a) be made in a manner and form determined by the Board; and
 - (b) be accompanied by the prescribed fee.
- (5) An applicant for registration must provide the Board with such further information as the Board may reasonably require to determine the application.
- 30 (6) A school's registration remains in force until cancelled under this Act.

43—Board may impose conditions on registration

- (1) The Board may impose such conditions on the registration of a school as it thinks fit (including, to avoid doubt, a condition restricting the kind of education services that may be provided by the school).
- 35 (2) The Board may, by notice in writing, on application by the school concerned or of its own motion, vary the conditions of registration of the school by the addition, substitution or deletion of 1 or more conditions.

44—Certificates of registration

- 5
- (1) If the Board registers a school on the school's register, the Board must issue to the school a certificate of registration in the prescribed form (and if a registered school has more than 1 campus, the Board must issue a sufficient number of duplicate certificates of registration to enable the school to comply with this section).
- (2) A registered school must at all times and in a conspicuous place at each of the school's campuses, display—
- 10
- (a) the certificate of registration, or a duplicate certificate of registration, for the school; and
- (b) a copy of any notice under section 43 varying the conditions of registration of the school.

45—Removal from schools register

- (1) The Board must remove a school from the schools register—
- 15
- (a) on the application of the school; or
- (b) if the school ceases to be eligible for registration on the schools register; or
- (c) if the school's registration is suspended or cancelled under this Act.
- (2) The Board may act under subsection (1)(c) without giving prior notice to the school.

46—Board may cancel registration if education services not provided

20 The Board may cancel the registration of a registered school if the Board is satisfied that the school no longer provides education services pursuant to the registration.

47—Reinstatement on schools register

- (1) A school that has been removed from the schools register—
- 25
- (a) on application by the school; or
- (b) on account of the school ceasing to be eligible for registration on the schools register,
- may apply to the Board for reinstatement on the schools register.
- (2) Subject to subsection (3), a school whose registration has been suspended may apply to the Board for reinstatement on the schools register.
- 30
- (3) If in disciplinary proceedings the registration of a school is suspended for a specified period, the school may, with the consent of the Board, apply for reinstatement before the end of that period but such reinstatement does not have effect until after the expiration of the period.
- (4) A school that has been disqualified from being registered under this Act may, subject to the terms of the order for disqualification, apply to the Board for reinstatement on
- 35
- the schools register.
- (5) An application for reinstatement must—
- (a) be made to the Board in the manner and form approved by the Board; and
- (b) be accompanied by the reinstatement fee fixed under this Act.

- (6) An applicant for reinstatement must provide the Board with such further information as the Board may reasonably require to determine the application.
- (7) The Board may only reinstate on the schools register an applicant under this section if satisfied that the applicant is eligible for registration on that register.
- 5 (8) Without limiting the circumstances in which the Board may refuse to reinstate an applicant on the schools register, the Board may refuse to reinstate an applicant on the schools register until all complaints (if any) laid against the applicant under this Act, or a law of another State or a Territory of the Commonwealth providing for the registration or some other form of accreditation of persons who provide education
- 10 services, have been finally disposed of.

48—Endorsement of registration with approval to enrol full fee paying overseas students

- (1) If the Board is satisfied on application under this section that a registered school has satisfied the requirements set out in the regulations for the purposes of this subsection,
- 15 the Board must endorse the school's registration with an approval to enrol full fee paying overseas students.
- (2) An application for endorsement—
- (a) must be made in a manner and form determined by the Board; and
- (b) may be dealt with at the same time as an application for registration under
- 20 this Division; and
- (c) must be accompanied by the prescribed fee.
- (3) An applicant for endorsement must provide the Board with such further information as the Board may reasonably require to determine the application.
- (4) An endorsement—
- 25 (a) may be subject to such conditions as the Board thinks fit; and
- (b) has effect for the period specified by the Board in the endorsement.
- (5) The Board may, by notice in writing, on application by the school concerned—
- (a) vary the conditions of an endorsement by the addition, substitution or deletion of 1 or more conditions; or
- 30 (b) extend the period during which the endorsement has effect.

49—Removal of endorsement

- (1) The Board must remove an endorsement from a school's registration—
- (a) on the application of the school; or
- (b) if the endorsement is cancelled under this Act.
- 35 (2) The Board may act under subsection (1)(b) without giving prior notice to the school.
- (3) The Board may remove the endorsement from a school's registration if the Board is satisfied that the school no longer satisfies the requirements set out in the regulations for the purposes of section 48(1).

Division 3—Offences

50—Procurement of registration by fraud

A person who, by fraud or any other dishonest means, procures (whether for himself or herself or for another person or body)—

- 5 (a) registration, or reinstatement of registration, under this Act; or
 (b) endorsement of a registration,

is guilty of an offence.

Maximum penalty: \$75 000 or imprisonment for 6 months.

51—Improper directions to another member of governing authority

- 10 A person who occupies a position of authority in an incorporated or trustee services provider and who directs or pressures a member of the governing authority of the school, or the responsible authority for the school, to engage in misconduct is guilty of an offence.

Maximum penalty: \$75 000.

15 52—Illegal holding out

- (1) A person must not hold a school out as a registered school, or permit another person to do so, unless the school is a registered school.

Maximum penalty: \$50 000.

- 20 (2) A person must not hold a registered school out as having a registration that is subject to, or not subject to, a particular condition, or permit another person to do so, unless the school's registration is subject to, or not subject to, the condition (as the case requires).

Maximum penalty: \$50 000.

- 25 (3) A person must not hold a registered school out as having a registration that is endorsed with an approval to enrol full fee paying overseas students, or permit another person to do so, unless the registration of the school is so endorsed.

Maximum penalty: \$50 000.

Division 4—Review of registration

53—Review of registration

- 30 (1) The Board must review the registration of registered schools in accordance with any requirements set out in the regulations.
- (2) The Governor may only make regulations for the purposes of subsection (1) on the recommendation of the Board.
- 35 (3) Without limiting section 35, the Board must give a registered school at least 21 days notice of a proposed review under this section.

Part 6—Record keeping and information gathering

Division 1—Records to be kept by registered schools

54—Interpretation

In this Part—

- 5 (a) a reference to a *registered school* includes a reference to a person or body that is not but that was, at the relevant time, a registered school;
- (b) a reference to a *person who is a member of a governing authority* of a school includes a reference to a person who is not but who was, at the relevant time, a member of the governing authority for a school;
- 10 (c) a reference to a *person who occupies a position of authority* in an incorporated or trustee services provider includes a reference to a person who is not but who was, at the relevant time, a person who occupied a position of authority in an incorporated or trustee services provider;
- 15 (d) a reference to a *responsible authority* for a school includes a reference to a person who is not but who was, at the relevant time, a responsible authority for a school.

55—Records to be kept by registered schools

- (1) A registered school must keep the following records in relation to the provision of education services by the school:
- 20 (a) in relation to education services provided before the commencement of this section—any records required to be kept under section 72N of the *Education Act 1972* (as in force immediately before the commencement of this section);
- (b) in relation to education services provided after the commencement of this section—the records required by the regulations.
- 25 (2) The records required to be kept under subsection (1) must be retained in accordance with any requirement set out in the regulations.

Division 2—Information gathering

56—Board may require information

- (1) The Board may, by notice in writing, require—
- 30 (a) a registered school; or
- (b) in the case of an incorporated or trustee services provider—a person who occupies a position of authority in the provider,
- to provide such information in relation to the provision of education services by, or on behalf of, the school or person as the Board may reasonably require in relation to the administration of this Act.
- 35 (2) A registered school or person must not, without reasonable excuse, refuse or fail to comply with a notice under subsection (1).

Part 7—Disciplinary proceedings

Division 1—Preliminary

57—Application of Part

5 This Part does not apply to a teacher in respect of a matter that would constitute a proper cause for disciplinary action against the teacher under the *Teachers Registration and Standards Act 2004*.

58—Interpretation

In this Part—

- 10 (a) a reference to a *registered school* includes a reference to a school that is not but that was, at the relevant time, a registered school;
- (b) a reference to a *person who is a member of a governing authority* of a school includes a reference to a person who is not but who was, at the relevant time, a member of the governing authority for a school;
- 15 (c) a reference to a *person who occupies a position of authority* in an incorporated or trustee services provider includes a reference to a person who is not but who was, at the relevant time, a person who occupies a position of authority in an incorporated or trustee services provider;
- (d) a reference to a *responsible authority* for a school includes a reference to a person who is not but who was, at the relevant time, a responsible authority for a school.
- 20

59—Cause for disciplinary action

- (1) There is proper cause for disciplinary action against a registered school if—
- (a) the school's registration was improperly obtained; or
- (b) an endorsement on the school's registration was improperly obtained; or
- 25 (c) the school has contravened a condition of its registration; or
- (d) the school has contravened a condition of an endorsement on its registration; or
- (e) the school has contravened or failed to comply with a provision of this Act; or
- 30 (f) the school has contravened or failed to comply with a code of conduct applying to the school under this Act; or
- (g) the school has not provided adequate protection for the safety, health and welfare of students to whom it provides education services; or
- (h) a member of the governing authority of the school is not a fit and proper person to be a member of such a governing authority; or
- 35 (i) the school, or a member of the governing authority of the school, has engaged in misconduct.

- (2) There is proper cause for disciplinary action against a person who is a member of the governing authority of a registered school if—
- (a) the person has contravened or failed to comply with a provision of this Act; or
 - (b) the person has, in connection with the provision of education services by the registered school, engaged in misconduct; or
 - (c) the person is not a fit and proper person to be a member of the governing authority of a registered school.
- (3) There is proper cause for disciplinary action against a person who occupies a position of authority in an incorporated or trustee services provider if—
- (a) the person has contravened or failed to comply with a provision of this Act; or
 - (b) the person has, in connection with the provision of education services by the provider, engaged in misconduct; or
 - (c) the person is not a fit and proper person to occupy a position of authority in an incorporated or trustee services provider.
- (4) There is proper cause for disciplinary action against a responsible authority for a registered school if—
- (a) the person has contravened or failed to comply with a provision of this Act; or
 - (b) the person has, in connection with the provision of education services by the registered school, engaged in misconduct; or
 - (c) the person is not a fit and proper person to be the responsible authority for a registered school.

Division 2—Constitution of Board for purpose of proceedings

60—Constitution of Board for purpose of proceedings

- (1) The Governor may appoint a person as a special member of the Board under this Part (and a person so appointed may (but need not) act as a member of the Board for the purpose of any proceedings under this Part).
- (2) The Board will, for the purpose of hearing and determining proceedings under this Part, be constituted of not less than 3 members selected by the presiding member (or, in the absence of the presiding member, the deputy presiding member).
- (3) At least 1 of the members of the Board, as constituted for the purposes of particular proceedings under this Part, must be a legal practitioner.
- (4) At least 1 of the members of the Board, as constituted for the purposes of proceedings under this Part relating to a particular registered school or person, must be—
- (a) if the registered school, or the registered school or school education sector to which the alleged conduct of the person relates, is a Government school or the Government sector—a member of the Board appointed in accordance with section 21(2)(b); or

- 5 (b) if the registered school, or the registered school or school education sector to which the alleged conduct of the person relates, is a member of the Association of Independent Schools of South Australia or such part of the school education sector as may be relevant to that association—a member of the Board appointed in accordance with section 21(2)(c); or
- (c) if the registered school, or the registered school or school education sector to which the alleged conduct of the person relates, is a Catholic school or the Catholic sector—a member of the Board appointed in accordance with section 21(2)(d).
- 10 (5) Proceedings of the Board as constituted for the purposes of particular proceedings under this Part will be presided over by—
- (a) if a member of the Board as constituted under this section is appointed by the presiding member or deputy presiding member (as the case requires) to preside over the proceedings—that member; or
- 15 (b) in any other case—a member of the Board as constituted under this section who is a legal practitioner.
- (6) If a member of the Board as constituted for the purposes of particular proceedings under this Part (other than the member presiding over the proceedings) dies or is for any other reason unable to continue with the proceedings, the Board constituted of the remaining members may, if the member presiding over the proceedings so determines, 20 continue and complete the proceedings.
- (7) Any questions of law or procedure arising before the Board will be determined by the member presiding over the proceedings and any other questions by majority decision of the members.
- 25 (8) The Board constituted of the member presiding over the proceedings may, sitting alone—
- (a) deal with—
- (i) preliminary, interlocutory or procedural matters; or
- (ii) questions of costs; or
- 30 (iii) questions of law; or
- (b) enter consent orders,
- and may, for that purpose or as a consequence, while sitting alone, make any determination or order (including a final order) that the member considers appropriate.
- 35 (9) A member of the Board who is dealing with a question of law may refer the question for the opinion of the Supreme Court.

Division 3—Proceedings before Board

61—Inquiries by Board as to matters constituting grounds for disciplinary action

- 5 (1) A complaint setting out matters that are alleged to constitute grounds for disciplinary action against a registered school or person may be laid before the Board (in a manner and form approved by the Board) by—
- (a) the relevant Registrar; or
 - (b) the Minister.
- 10 (2) If a complaint is laid under this section, the Board must, subject to this section, inquire into the subject matter of the complaint.
- (3) If the complaint arises out of a review conducted under Part 5 Division 4, the Board may determine that the review constitutes an inquiry under this section.
- 15 (4) If, after conducting an inquiry under this section, the Board is satisfied on the balance of probabilities that there is proper cause for disciplinary action against the respondent, the Board may, by order, do 1 or more of the following:
- (a) if the respondent is a registered school—
 - (i) impose conditions on the respondent's registration restricting the respondent's right to provide education services; or
 - (ii) cancel any endorsement on the respondent's registration; or
 - 20 (iii) suspend the respondent's registration for a period not exceeding 1 year; or
 - (iv) cancel the respondent's registration; or
 - (v) disqualify the respondent from being registered under this Act;
 - (b) if the respondent is the responsible authority for a school appointed by notice under section 8—revoke the respondent's appointment as the responsible authority for the school;
 - (c) in any case—
 - (i) censure the respondent; or
 - (ii) prohibit the respondent from carrying on the business of providing education services; or
 - 30 (iii) prohibit the respondent from being a member of a governing authority of a school; or
 - (iv) prohibit the respondent from occupying a position of authority in a corporate or trustee services provider; or
 - 35 (v) prohibit the respondent from being a responsible authority for a school.
- (5) The Board may—
- (a) stipulate that a disqualification or prohibition under subsection (4) is to apply—

- (i) permanently; or
- (ii) for a specified period; or
- (iii) until the fulfilment of specified conditions; or
- (iv) until further order; or

5 (b) stipulate that an order relating to a registered school or person is to have effect at a specified future time and impose conditions as to the conduct of the school or person, or the person's business, until that time.

62—Contravention etc of condition

10 (1) If a registered school contravenes or fails to comply with a condition imposed by the Board under section 61—

- (a) if the registered school is an incorporated or trustee services provider—the registered school; or
- (b) in any other case—the responsible authority for the school,

is guilty of an offence.

15 Maximum penalty: \$75 000.

(2) A person who contravenes or fails to comply with a condition imposed by the Board under section 61 is guilty of an offence.

Maximum penalty: \$75 000.

63—Contravention of prohibition order

20 (1) A person who carries on the business of providing education services in contravention of an order of the Board under this Part is guilty of an offence.

Maximum penalty: \$75 000 or imprisonment for 6 months.

(2) A person who continues as or becomes a member of a governing authority of a school in contravention of an order of the Board under this Part is guilty of an offence.

25 Maximum penalty: \$75 000 or imprisonment for 6 months.

(3) A person who occupies a position of authority in a corporate or trustee services provider in contravention of an order of the Board under this Part is guilty of an offence.

Maximum penalty: \$75 000 or imprisonment for 6 months.

30 (4) A person who continues as or becomes the responsible authority for a school in contravention of an order of the Board under this Part is guilty of an offence.

Maximum penalty: \$75 000 or imprisonment for 6 months.

64—Register of prohibition orders

35 (1) The Board must keep a register of persons who have been prohibited by order of the Board under this Part from carrying on the business of providing education services, being a member of a governing authority of a school, occupying a position of authority in a corporate or trustee services provider or being the responsible authority for a school (as the case requires).

- (2) The register—
- (a) must not include any person who is dead;
 - (b) must include, in relation to each person on the register—
 - (i) the person's full name and business address; and
 - (ii) particulars of the order; and
 - (iii) any other information required by the regulations.
- (3) The Registrars are responsible to the Board for the form and maintenance of the register.
- (4) The Registrars must correct an entry in the register that is not, or has ceased to be, correct.
- (5) The register must be kept available for inspection by any person during ordinary office hours at the principal office of the Board and the register may be made available to the public by electronic means.
- (6) A person may, on payment of the prescribed fee, obtain a copy of any part of the register.

65—Variation or revocation of conditions imposed by Board

- (1) The Board may, by notice in writing, on application by a registered school, vary or revoke a condition imposed by the Board under section 61 in relation to the school's registration.
- (2) The relevant Registrar and the Minister are entitled to appear and be heard on an application under this section.

66—Further provisions as to proceedings before Board under this Part

- (1) Subject to this Act, the Board must give to all of the parties to proceedings before the Board under this Part at least 14 days written notice of the time and place at which it intends to conduct the proceedings, and must afford to the parties a reasonable opportunity to call and give evidence, to examine or cross-examine witnesses, and to make submissions to the Board.
- (2) However, the Board may, if it thinks special reasons exist for doing so, give a lesser period of written notice under subsection (1).
- (3) The requirement to give written notice under subsection (1) does not extend to adjournments.
- (4) If a party to whom notice has been given under subsection (1) does not attend at the time and place fixed by the notice, the Board may proceed to hear and determine the matter in the absence of that party.
- (5) A person who is aggrieved by the conduct of a person that is the subject-matter of proceedings before the Board under this Part is, subject to any direction of the Board to the contrary, entitled to be present at the hearing of the proceedings.

Note—

Other provisions relating to the procedures of the Board are set out in Part 4 Division 2 Subdivision 4.

Part 8—Enforcement

67—Authorised officers

- (1) The Board may, by notice in writing, authorise a person to be an authorised officer for the purposes of this Act.
- 5 (2) An authorisation may be made subject to conditions or limitations specified in the instrument of authorisation.
- (3) The Board may, by notice in writing to an authorised officer, vary or revoke an authorisation, or a condition or limitation of an authorisation, on any grounds it thinks fit.

10 68—Powers of authorised officers

- (1) If there are reasonable grounds for suspecting—
 - (a) that there is proper cause for disciplinary action against a school or person; or
 - (b) that a school or person has committed an offence against this Act,an authorised officer may investigate the matter.
- 15 (2) Subject to this Act, for the purposes of an investigation, or in relation to a review of the registration of a registered school under Part 5 Division 4, an authorised officer may—
 - (a) at any reasonable time, enter and inspect—
 - (i) the premises of a registered school; or
 - 20 (ii) any other premises on which the authorised officer reasonably suspects an offence against this Act has been or is being committed; or
 - (b) with the authority of a warrant issued by a magistrate or in circumstances in which the authorised officer reasonably believes that immediate action is
25 required, use reasonable force to break into or open any part of, or anything in or on any premises referred to in paragraph (a); or
 - (c) while on premises entered under paragraph (a) or (b), seize and retain anything found on the premises that the authorised officer reasonably believes may afford evidence relevant to the matters under investigation; or
 - 30 (d) require any person who has possession of documents or records relevant to the matters under investigation to produce those documents or records for inspection (including written documents or records that reproduce, in a readily understandable form, information kept by computer, microfilm or other process); or
 - 35 (e) inspect any documents or records produced to the authorised officer and retain them for such reasonable period as the authorised officer thinks fit, and make copies of the documents or records; or
 - 40 (f) require any person who is in a position to provide information relevant to the matters under investigation to answer any question put by the authorised officer in relation to those matters; or

- (g) take photographs, films or video or audio recordings; or
- (h) if the authorised officer reasonably suspects that an offence against this Act has been or is being committed, require the suspected offender to state his or her full name and address.

5 (3) An authorised officer must not exercise the power conferred by subsection (2)(a) in relation to any residential premises except with the permission of the occupier of the premises or on the authority of a warrant issued by a magistrate.

(4) A magistrate must not issue a warrant under this section unless satisfied, by
10 information given on oath, that the warrant is reasonably required in the circumstances.

69—Offence to hinder etc authorised officers

(1) Subject to this section, a person who—

(a) hinders or obstructs an authorised officer, or a person assisting an authorised officer, in the exercise of powers conferred by this Part; or

15 (b) uses abusive, threatening or insulting language to an authorised officer, or a person assisting an authorised officer; or

(c) when required by an authorised officer under this Part to answer a question, refuses or fails to answer the question to the best of the person's knowledge, information and belief; or

20 (d) falsely represents, by words or conduct, that he or she is an authorised officer, is guilty of an offence.

Maximum penalty: \$5 000.

(2) A person is not required to answer a question if the answer to the question would tend to incriminate the person or make the person liable to a penalty.

25 Part 9—Review and appeal

Division 1—Internal review

70—Internal review of certain decisions of Board

(1) This section applies to the following decisions of the Board:

30 (a) a refusal by the Board to register, or reinstate the registration of, a school under this Act;

(b) a refusal by the Board to endorse the registration of a school under section 48;

(c) the removal by the Board of an endorsement of registration under section 49(3);

35 (d) the imposition by the Board of conditions on a school's registration or endorsement of registration under this Act (other than where the conditions were imposed under Part 7);

(e) any other decision of a kind prescribed by the regulations.

-
- (2) A school or person who is the subject of a decision to which this section applies (the *original decision*) may apply to the Board for a review of the decision.
- (3) An application under subsection (2)—
- (a) must be made in a manner and form determined by the Board; and
- 5 (b) unless the Board allows otherwise, must be made within 14 days after—
- (i) if the school or person was notified of the original decision in accordance with this Act—the day on which the school or person was so notified; or
- (ii) if the school or person was not notified of the original decision in accordance with this Act—the school or person becomes aware of the decision.
- 10 (4) The member of the Board or person who conducts the review must not have been involved in, or in relation to, the original decision.
- (5) The person conducting the review may ask the applicant for further information.
- 15 (6) A review must be conducted within 30 days after the application is made.
- (7) However, the period specified in subsection (6) may be extended by up to 30 days—
- (a) if a request for further information is made under subsection (5); or
- (b) by agreement between the applicant and the Board.
- (8) On completion of a review, the Board—
- 20 (a) may—
- (i) confirm the original decision; or
- (ii) vary the original decision; or
- (iii) quash the original decision and substitute any decision that the Board could have made in the first instance; and
- 25 (b) must, as soon as is reasonably practicable, give the applicant written notice of the results of the review setting the reasons for the Board's decision under paragraph (a).

Division 2—Appeal

71—Right of appeal to District Court

- 30 (1) An appeal lies to the District Court against—
- (a) a refusal by the Board to register, or reinstate the registration of, a school under this Act; or
- (b) a refusal by the Board to endorse the registration of a school under section 48; or
- 35 (c) the removal by the Board of an endorsement of registration under section 49(3); or
- (d) the imposition by the Board of conditions on a school's registration or endorsement of registration under this Act; or

(e) a decision made by the Board in proceedings under Part 7.

(2) An appeal under subsection (1)(e) against a decision may be instituted—

(a) in the case of a decision made in disciplinary proceedings—by the complainant or the respondent in the proceedings in which the decision was made;

(b) in the case of a decision under section 65—by the applicant or a person entitled to be heard in the proceedings.

(3) An appeal must be instituted—

(a) if the decision is the subject of a review under section 70—within 28 days after written notice is given to the applicant under section 70(8); or

(b) in any other case—within 28 days after the date of the decision appealed against.

72—Operation of order may be suspended

(1) If an order has been made by the Board, and the Board or the District Court is satisfied that an appeal against the order has been instituted, or is intended, the Board or District Court (as the case requires) may suspend the operation of the order until the determination of the appeal.

(2) If the Board has suspended the operation of an order under subsection (1), the Board may terminate the suspension, and if the District Court has done so, the District Court may terminate the suspension.

73—Variation or revocation of conditions imposed by District Court

(1) The District Court may, on application by a registered school, vary or revoke a condition imposed by the District Court in relation to the registration of the school.

(2) The Board and the Minister are entitled to appear and be heard on an application under this section.

Part 10—Miscellaneous

74—Use of certain terms or descriptions prohibited

(1) A school that is not registered on the schools register must not use a prescribed term, or derivatives of the words comprising the term, to describe a service provided by the school.

(2) If a school contravenes subsection (1)—

(a) if the school is an incorporated or trustee services provider—the school; or

(b) in any other case—the responsible authority for the school,

is guilty of an offence.

Maximum penalty: \$50 000.

(3) A person who is not registered on the schools register must not use a prescribed term, or derivatives of the words comprising the term, to describe himself or herself or a service that he or she provides.

Maximum penalty: \$50 000.

- (4) A person must not, in the course of advertising or promoting a service that he or she provides, use a prescribed term, or derivatives of the words comprising the term, to describe a school that is engaged in the provision of the service unless the school is registered on the schools register.

5 Maximum penalty: \$50 000.

- (5) In this section—

prescribed term means—

- (a) registered school; or
(b) any other word or expression prescribed by the regulations.

10 **75—Exemptions**

- (1) Subject to this section, the Minister may, by notice in writing—

- (a) exempt a registered school or person, or a class of registered schools or persons, subject to such conditions as the Minister thinks fit and specifies in the notice, from specified provisions of this Act; or

15 (b) vary the conditions of an exemption by the addition, substitution or deletion of 1 or more conditions.

- (2) The Minister must consult with the Board before making a notice under subsection (1).

- (3) If a registered school or person contravenes a condition of an exemption—

20 (a) —

- (i) if the registered school is an incorporated or trustee services provider—the registered school; or

- (ii) in any other case—the responsible authority for the school; or

- (b) the person,

25 (as the case requires) is guilty of an offence.

Maximum penalty: \$10 000.

76—Statutory declarations

30 If a person is required under this Act to provide information to the Board, the Board may require that the information be verified by statutory declaration and, in that event, the person will not be taken to have provided the information as required unless it has been verified in accordance with the requirements of the Board.

77—False or misleading statement

35 A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information kept or provided under this Act.

Maximum penalty: \$20 000.

78—Victimisation

(1) A person commits an act of victimisation against another person (the *victim*) if he or she causes detriment to the victim on the ground, or substantially on the ground, that the victim—

- 5 (a) has disclosed or intends to disclose information; or
 (b) has made or intends to make an allegation,

that has given rise, or could give rise, to proceedings against the person under this Act.

(2) An act of victimisation under this Act may be dealt with—

- (a) as a tort; or
10 (b) as if it were an act of victimisation under the *Equal Opportunity Act 1984*,

but, if the victim commences proceedings in a court seeking a remedy in tort, he or she cannot subsequently lodge a complaint under the *Equal Opportunity Act 1984* and, conversely, if the victim lodges a complaint under that Act, he or she cannot subsequently commence proceedings in a court seeking a remedy in tort.

15 (3) If a complaint alleging an act of victimisation under this Act has been lodged with the Commissioner for Equal Opportunity and the Commissioner is of the opinion that the subject matter of the complaint has already been adequately dealt with by a competent authority, the Commissioner may decline to act on the complaint or to proceed further with action on the complaint.

20 (4) In this section—

detriment includes—

- (a) injury, damage or loss; or
 (b) intimidation or harassment; or
 (c) discrimination, disadvantage or adverse treatment in relation to the victim's
25 employment or business; or
 (d) threats of reprisal.

79—Self-incrimination

30 Subject to this Act, if a person is required to provide information or to produce a document, record or equipment under this Act and the information, document, record or equipment would tend to incriminate the person or make the person liable to a penalty, the person must nevertheless provide the information or produce the document, record or equipment, but the information, document, record or equipment so provided or produced will not be admissible in evidence against the person in proceedings for an offence, other than—

- 35 (a) an offence against Part 6 of this Act; or
 (b) an offence against this or any other Act relating to the provision of false or misleading information.

80—Punishment of conduct that constitutes offence

If conduct constitutes an offence and is also a ground for disciplinary action under this Act, the taking of disciplinary action under this Act is not a bar to conviction and punishment for the offence, nor is conviction and punishment for the offence a bar to disciplinary action under this Act.

81—Continuing offence

- (1) A person convicted of an offence against a provision of this Act in respect of a continuing act or omission—
 - (a) is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continued of not more than one tenth of the maximum penalty prescribed for that offence; and
 - (b) is, if the act or omission continues after the conviction, guilty of a further offence against the provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continued after the conviction of not more than one tenth of the maximum penalty prescribed for the offence.
- (2) If an offence consists of an omission to do something that is required to be done, the omission will be taken to continue for as long as the thing required to be done remains undone after the end of the period for compliance with the requirement.

82—Offences by bodies corporate

If a body corporate commits an offence against this Act, any person with management or control of the body corporate who failed to exercise due diligence to prevent the contravention that is the subject of the offence also commits that offence and is liable to the penalty for that offence applicable to an individual.

83—General defence

It is a defence to a charge of an offence against this Act if the defendant proves that the alleged offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

84—Immunity of persons engaged in administration of Act

- (1) No personal liability attaches to a person engaged in the administration of this Act for an act or omission in good faith in the exercise or discharge, or purported exercise or discharge, of official powers or functions.
- (2) A liability that would, but for subsection (1), lie against a person, lies instead against the Crown.

85—Application of fines

A fine imposed for an offence against this Act must be paid to the Board.

86—Confidentiality

- (1) A person engaged or formerly engaged in the administration of this Act or the repealed Act must not divulge or communicate personal information obtained (whether by that person or otherwise) in the course of official duties except—
- 5 (a) as required or authorised by or under this Act or any other Act or law; or
- (b) with the consent of the person to whom the information relates; or
- (c) in connection with the administration or enforcement of this or any other Act; or
- 10 (d) to an authority responsible under the law of a place outside this State for the registration or accreditation of persons who provide education services or early childhood services, where the information is required for the proper administration of that law; or
- (e) to an agency or instrumentality of this State, the Commonwealth or another State or a Territory of the Commonwealth for the purposes of the proper
- 15 performance of its functions.

Maximum penalty: \$10 000.

- (2) Subsection (1) does not prevent disclosure of statistical or other data that could not reasonably be expected to lead to the identification of any person to whom it relates.
- (3) Information that has been disclosed under subsection (1) for a particular purpose must
- 20 not be used for any other purpose by—
- (a) the person to whom the information was disclosed; or
- (b) any other person who gains access to the information (whether properly or improperly and whether directly or indirectly) as a result of that disclosure.

Maximum penalty: \$10 000.

- 25 (4) The regulations may make further provision in respect of the disclosure of information obtained in the course of the administration of this Act.

87—Service

- (1) A notice or document required or authorised to be given or sent to, or served on, a person for the purposes of this Act may—
- 30 (a) be given to the person personally; or
- (b) be posted in an envelope addressed to the person at the person's last known residential, business or (in the case of a corporation) registered address; or
- (c) be left for the person at the person's last known residential, business or (in the case of a corporation) registered address with someone apparently over the
- 35 age of 16 years; or
- (d) be transmitted by fax or email to a fax number or email address provided by the person (in which case the notice or document will be taken to have been given or served at the time of transmission).

- 5 (2) Without limiting the effect of subsection (1), a notice or other document required or authorised to be given or sent to, or served on, a person for the purposes of this Act may, if the person is a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth, be served on the person in accordance with that Act.

88—Evidentiary provision

- 10 (1) In proceedings for an offence against this Act or in disciplinary proceedings under Part 7, an allegation in the complaint—
- 10 (a) that a school named in the complaint is or is not, or was or was not on a specified date, registered on the schools register; or
 - (b) that the registration of a school named in the complaint is or is not, or was or was not on a specified date, subject to specified conditions; or
 - 15 (c) that the registration of a school named in the complaint is or is not, or was or was not on a specified date, endorsed with an approval to enrol full fee paying overseas students; or
 - (d) that a person named in the complaint is, or was on a specified date, the responsible authority for a specified school; or
 - (e) that a person named in the complaint is, or was on a specified date, a member of the governing authority of a specified school; or
 - 20 (f) that a person named in the complaint is, or was on a specified date, an authorised officer,

must be accepted as proved in the absence of proof to the contrary.

- 25 (2) In legal proceedings, a document apparently certified by a Registrar to be a copy of a register under this Act, or a copy of a code of conduct prepared or endorsed by the Board under this Act, must be accepted as such in the absence of proof to the contrary.

89—Regulations

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) Without limiting subsection (1), the regulations may—
- 30 (a) vary Schedule 1;
 - (b) prescribe fees or charges for the purposes of this Act (including, to avoid doubt, for the purposes of the *Education and Care Services National Law (South Australia)*) and may provide for the payment, recovery, reduction or waiver of such fees or charges;
 - 35 (c) exempt classes of persons or activities from the application of this Act or specified provisions of this Act, either unconditionally or subject to specified conditions;
 - (d) prescribe penalties, not exceeding \$10 000, for offences against the regulations;

- (e) modify the operation of the *Education and Care Services National Law* and the national regulations under the *Education and Care Services National Law (South Australia)* as they apply in this jurisdiction (whether to a residual early childhood service or otherwise);
- 5 (f) make provisions of a saving or transitional nature consequent upon—
- (i) the enactment of this Act; or
- (ii) amendments to the *Education and Care Services National Law*, as in force from time to time, set out in the schedule to the *Education and Care Services National Law Act 2010* of Victoria; or
- 10 (iii) amendments to the *Education and Care Services National Law (South Australia)*; or
- (iv) variations to the national regulations under the *Education and Care Services National Law (South Australia)*.
- (3) A provision of a regulation contemplated by subsection (2)(a), (e) or (f) may, if the regulation so provides, take effect from the commencement of this section or from a later day (but if a provision takes effect 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 decreasing the person's rights or imposing liabilities on the person).
- 15
- (4) The regulations may—
- 20 (a) be of general application or vary in their application according to prescribed factors;
- (b) refer to or incorporate, wholly or partially and with or without modification, a code, standard or other document prepared or published by a prescribed body, either as in force at the time the regulations are made or as in force from time to time;
- 25 (c) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister, the Board or other specified person or body.
- (5) If a code, standard or other document is referred to or incorporated in the regulations—
- 30 (a) a copy of the code, standard or other document must be kept available for public inspection, without charge and during ordinary office hours, at an office or offices specified in the regulations; and
- 35 (b) evidence of the contents of the code, standard or other document may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code, standard or other document.

Schedule 1—Modifications to *Education and Care Services National Law (South Australia)* for purposes of Part 3

1—Interpretation

In this Schedule—

5 *national regulations* has the same meaning as in the *Education and Care Services National Law (South Australia)*;

residual early childhood service has the same meaning as in section 15.

2—Exclusion of certain provisions

- 10 (1) The following provisions of the *Education and Care Services National Law (South Australia)* do not apply to, or in relation to, a residual early childhood service:
- (a) section 42;
 - (b) Part 3 Divisions 5 to 8 (inclusive);
 - (c) section 131;
 - (d) Part 5;
 - 15 (e) sections 168 and 169;
 - (f) section 198;
 - (g) Part 10;
 - (h) Part 11;
 - (i) section 266;
 - 20 (j) Part 14 Divisions 1, 2 and 8;
 - (k) Part 15 (other than sections 314 and 322).
- (2) A provision of the *Education and Care Services National Law (South Australia)*, to the extent that it applies to an associated children's service (within the meaning of that Law), does not apply to, or in relation to, a residual early childhood service.
- 25 (3) A provision of the *Education and Care Services National Law (South Australia)*, to the extent that it relates to rating an education and care service (including a provisional rating), does not apply to, or in relation to, a residual early childhood service.
- 30 (4) A provision of the *Education and Care Services National Law (South Australia)*, to the extent that it imposes a fee (however described), does not apply to, or in relation to, a residual early childhood service.

3—Certain provisions to apply as modified

- 35 (1) The following provisions of the *Education and Care Services National Law (South Australia)* apply to, or in relation to, a residual early childhood service as modified by this clause:
- (a) Section 5(1), definition of *national education and care services quality framework*, (d)—delete paragraph (d)

Education and Early Childhood Services (Registration and Standards) Bill 2011

Schedule 1—Modifications to *Education and Care Services National Law (South Australia)* for purposes of Part 3

-
- (b) Section 19(1)—delete "that are prescribed in the national regulations or"
- (c) Section 47(1)(a) and (g)—delete paragraphs (a) and (g)
- (d) Section 51(5)—delete "prescribed in the national regulations or"
- 5 (e) Section 112(c)—delete "prescribed minimum requirements for qualifications, experience and management capability" and substitute:
- the minimum requirements (if any) set out in the regulations for a supervisor of a residual early childhood service
- (f) Section 114(1)—delete "prescribed class of persons" and substitute:
- 10 (g) belonging to a class of persons prescribed by the regulations for the purposes of this subsection
- (g) Section 172(e) and (f)—delete paragraphs (e) and (f)
- (h) Section 175(1)—delete "the prescribed documents" and substitute:
- the documents specified by the regulations
- (i) Section 260(e)—delete paragraph (e)
- 15 (j) Section 261(2)(d) and (f)—delete paragraphs (d) and (f)
- (k) Section 268—delete "National Authority" wherever occurring and substitute in each case:
- Regulatory Authority
- (l) Section 270(1)—delete "National Authority and the"
- 20 (m) Section 270(2)—delete "National Authority" and substitute:
- Regulatory Authority
- (n) Section 270(2)(b)—delete paragraph (b)
- (o) Section 270(4)—delete subsection (4)
- (p) Section 273(2)(f)—delete paragraph (f)
- 25 (q) Section 314(1)—delete "section 306" and substitute:
- clause 29 of Schedule 2 of the *Education and Early Childhood Services (Registration and Standards) Act 2011*
- (r) Section 314(2)—delete "section 307(1)" and substitute:
- 30 (s) clause 30 of Schedule 2 of the *Education and Early Childhood Services (Registration and Standards) Act 2011*
- (2) A reference in the *Education and Care Services National Law (South Australia)* to the National Quality Standard will, to the extent that it applies to, or in relation to, a residual early childhood service, be taken to be a reference to the standard prescribed by the regulations for the purposes of this subclause.
- 35 (3) A reference in the *Education and Care Services National Law (South Australia)* to a prescribed element or elements of the National Quality Standard will be taken to be a reference to the corresponding provision (if any) of the standard applying to, or in relation to, residual early childhood services pursuant to subclause (2).

-
- (4) A reference in the *Education and Care Services National Law (South Australia)* to a service waiver or temporary waiver will be taken to be a reference to an exemption under section 16 of this Act.

4—National regulations not to apply

- 5 (1) The national regulations do not apply to, or in relation to, a residual early childhood service.
- (2) A reference in the *Education and Care Services National Law (South Australia)* to the national regulations will be taken to be a reference to regulations made by the Governor under this Act.

Schedule 2—Related amendments, repeal and transitional provisions

Part 1—Preliminary

1—Amendment provisions

- 15 In this Schedule, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Child Sex Offenders Registration Act 2006*

2—Amendment of section 64—Interpretation

- 20 Section 64(1), definition of *educational institutions for children*—delete "Government schools within the meaning of the *Education Act 1972* and non-Government schools registered under Part 5 of that Act" and substitute:

Government and non-Government schools within the meaning of the
Education and Early Childhood Services (Registration and Standards)
Act 2011

25 Part 3—Amendment of *Children's Protection Act 1993*

3—Amendment of section 31—Constitution of family care meeting

- Section 31(d)(i)—delete "*Education Act 1972*" and substitute:

Education and Early Childhood Services (Registration and Standards)
Act 2011

30 Part 4—Amendment of *Children's Services Act 1985*

4—Amendment of section 3—Interpretation

- (1) Section 3(1), definition of *baby sitting agency*—delete the definition
- (2) Section 3(1), definition of *child*—delete the definition
- (3) Section 3(1), definition of *children's services*—delete the definition
- 35 (4) Section 3(1), definition of *the Committee*—delete the definition
- (5) Section 3(1), definition of *family day care agency*—delete the definition

(6) Section 3(1), definition of *guardian*—delete the definition

(7) Section 3(1), definition of *parent*—delete the definition

(8) Section 3(1), definition of *regional advisory committee*—delete the definition

(9) Section 3(1), definition of *young child*—delete the definition

5 **5—Repeal of sections 7 and 8**

Sections 7 and 8—delete the sections

6—Repeal of Part 2 Divisions 3 and 4

Part 2 Divisions 3 and 4—delete Divisions 3 and 4

7—Repeal of Part 3 Divisions 1, 2 and 3

10 Part 3 Divisions 1, 2 and 3—delete Divisions 1, 2 and 3

8—Repeal of section 41

Section 41—delete the section

9—Amendment of section 42—Registration

Section 42(1) and (2)—delete subsections (1) and (2) and substitute:

15 (1) Subject to this Act, the registration of a Children's Services Centre in force immediately before the commencement of this subsection continues in force.

10—Amendment of section 46—Appeal against decisions of the Director

(1) Section 46(1)(a)—delete paragraph (a)

20 (2) Section 46(1)(b)—delete "licence or"

11—Repeal of Part 3 Division 6

Part 3 Division 6—delete Division 6

12—Repeal of section 49

Section 49—delete the section

25 **13—Repeal of sections 54, 55 and 56**

Sections 54, 55 and 56—delete sections 54, 55 and 56

14—Amendment of section 57—Regulations

(1) Section 57(2)(e) and (f)—delete paragraphs (e) and (f)

(2) Section 57(2)(d)—delete "licence,"

Part 5—Amendment of *Criminal Law Consolidation Act 1935*

15—Amendment of section 49—Unlawful sexual intercourse

Section 49(5a)(a)—delete "*Education Act 1972*" and substitute:

*Education and Early Childhood Services (Registration and Standards)
Act 2011*

5

16—Amendment of section 50—Persistent sexual exploitation of a child

Section 50(8)(a)—delete "*Education Act 1972*" and substitute:

*Education and Early Childhood Services (Registration and Standards)
Act 2011*

10

17—Amendment of section 57—Consent no defence in certain cases

Section 57(4)(a)—delete "*Education Act 1972*" and substitute:

*Education and Early Childhood Services (Registration and Standards)
Act 2011*

Part 6—Amendment of *Education Act 1972*

15

18—Amendment of section 5—Interpretation

- (1) Section 5(1), definition of *Government school*—delete the definition and substitute:

Government school has the same meaning as in the *Education and Early
Childhood Services (Registration and Standards) Act 2011*;

- (2) Section 5(1), definition of *non-Government school*—delete the definition and
substitute:

20

non-Government school has the same meaning as in the *Education and Early
Childhood Services (Registration and Standards) Act 2011*;

- (3) Section 5(1), definition of *recognised kindergarten*—delete the definition

- (4) Section 5(1), definition of *registered non-Government school*—delete the definition
and substitute:

25

registered school means a school registered under the *Education and Early
Childhood Services (Registration and Standards) Act 2011*;

- (5) Section 5(1), definition of *school*—delete the definition and substitute:

school has the same meaning as in the *Education and Early Childhood
Services (Registration and Standards) Act 2011*;

30

19—Repeal of Part 5

Part 5—delete the Part

Part 7—Amendment of *Intervention Orders (Prevention of Abuse) Act 2009*

20—Amendment of section 3—Interpretation

5 Section 3(1), definition of *relevant public sector agency*, (b)—delete "*Education Act 1972*" and substitute:

Education and Early Childhood Services (Registration and Standards) Act 2011

Part 8—Amendment of *Local Government Act 1999*

21—Amendment of section 165—Rebate of rates—educational purposes

10 Section 165(1)—delete "Part 5 of the *Education Act 1972*" and substitute:

the *Education and Early Childhood Services (Registration and Standards) Act 2011*

Part 9—Amendment of *SACE Board of South Australia Act 1983*

22—Amendment of Schedule 1—Designated entities

15 Schedule 1 clause 1(a)—delete "*Education Act 1972*" and substitute:

Education and Early Childhood Services (Registration and Standards) Act 2011

Part 10—Amendment of *Sewerage Act 1929*

23—Amendment of section 66—Government lands to be assessed

20 Section 66(1)—delete "consisting of schoolhouses situated within the drainage area which are used pursuant to the *Education Act 1972*, as amended, or pursuant to any corresponding previous enactment, as Government schools or public schools" and substitute:

25 within the drainage area used as Government schools (within the meaning of the *Education and Early Childhood Services (Registration and Standards) Act 2011*)

Part 11—Amendment of *Summary Offences Act 1953*

24—Amendment of section 38A—Sale of books and educational matter

(1) Section 38A(1)—before "*Education Act 1972*" insert:

30 *Education and Early Childhood Services (Registration and Standards) Act 2011* or the

(2) Section 38A(1)—delete "that Act" and substitute:

those Acts

Part 12—Amendment of *Teachers Registration and Standards Act 2004*

25—Amendment of section 3—Interpretation

(1) Section 3, definition of *director*—delete the definition and substitute:

director, of a prescribed service, means the person responsible for providing educational leadership in, and managing the day-to-day operations of, the prescribed service;

(2) Section 3—after the definition of *practising teacher* insert:

prescribed service means—

- (a) a kindergarten registered as a Children's Services Centre under Part 3 Division 4 of the *Children's Services Act 1985*; or
- (b) a pre-school education centre established by the Minister under the *Education Act 1972*; or
- (c) an education and care service under the *Education and Care Services National Law (South Australia)* consisting of or including pre-school education; or
- (d) any other service of a kind prescribed by the regulations for the purposes of this definition;

(3) Section 3, definition of *recognised kindergarten*—delete the definition

26—Amendment of section 20—Requirement to be registered

Section 20—delete "recognised kindergarten" wherever occurring and substitute in each case:

prescribed service

Part 13—Amendment of *Technical and Further Education Act 1975*

27—Amendment of section 5—Application of Act

Section 5(a)—delete "maintained by the Minister under the *Education Act 1972*" and substitute:

(within the meaning of the *Education and Early Childhood Services (Registration and Standards) Act 2011*)

Part 14—Transitional provisions

Division 1—Transitional provisions related to Part 3 of Act (residual early childhood services)

28—Interpretation

In this Division—

residual early childhood service has the same meaning as in section 15 of this Act.

29—Certain persons etc taken to be approved providers

The following persons or bodies will be taken to be approved providers for the purposes of the *Education and Care Services National Law (South Australia)* as it applies to residual early childhood services:

- 5
- (a) the administrative unit of the Public Service responsible under the Minister for the administration of the *Children's Services Act 1985*;
- (b) a person or body who, immediately before the scheme commencement day, held a licence to conduct or control a child care centre under the *Children's Services Act 1985*;
- 10
- (c) a person or body who, immediately before the scheme commencement day, held a licence to carry on the business of a baby sitting agency under the *Children's Services Act 1985*;
- (d) a person or body who, immediately before the scheme commencement day, operated an out of school hours care service that was registered with the
- 15
- National Childcare Accreditation Council of Australia;
- (e) a person or body who, immediately before the scheme commencement day, operated a pre-school education service on the premises of, or in relation to, a non-Government school registered under the *Education Act 1972*;
- (f) a person or body who, immediately before the scheme commencement day, operated an out of school hours care service on the premises of, or in relation
- 20
- to, a non-Government school registered under the *Education Act 1972*;
- (g) any other person or body declared by the regulations to be included in the ambit of this clause.

30—Certain residual early childhood services taken to hold service approval

- 25
- (1) The following residual early childhood services will be taken to hold a service approval for that service for the purposes of the *Education and Care Services National Law (South Australia)* as it applies to residual early childhood services:
- (a) a rural and mobile care service (however described) provided immediately before the scheme commencement day by—
- 30
- (i) the administrative unit of the Public Service responsible under the Minister for the administration of the *Children's Services Act 1985*;
- or
- (ii) that was wholly or partly funded by the Commonwealth Government through its Budget Based Funding program;
- 35
- (b) an occasional care service (however described) provided immediately before the scheme commencement day by the administrative unit of the Public Service responsible under the Minister for the administration of the *Children's Services Act 1985*;
- (c) an occasional care service (however described) provided immediately before
- 40
- the scheme commencement day pursuant to a licence under the *Children's Services Act 1985*;

(d) an in-home care service (however described) provided immediately before the scheme commencement day by, or on behalf of, a baby-sitting agency licensed under Part 3 Division 2 of the *Children's Services Act 1985*;

(e) any other service declared by the regulations to be included in the ambit of this clause.

(2) In this section, *in-home care service*, *occasional care service* and *rural and mobile care service* have the same meanings as in section 4 of this Act.

31—Certain persons taken to be certified supervisors

(1) The following persons will be taken to be certified supervisors for the purposes of the *Education and Care Services National Law (South Australia)* as it applies to residual early childhood services:

(a) a natural person who was, immediately before the scheme commencement day and in accordance with regulation 18(1) of the *Children's Services (Child Care Centre) Regulations 1998*, a manager of a child care centre;

(b) a person who was, immediately before the scheme commencement day, a qualified contact staff member (within the meaning of the *Children's Services (Child Care Centre) Regulations 1998*) in relation to a child care centre;

(c) an approved provider under the *Education and Care Services National Law (South Australia)* or under a corresponding law;

(d) a person who holds a supervisor certificate under the *Education and Care Services National Law (South Australia)* or under a corresponding law;

(e) a teacher who was, at any time in the 2 years immediately preceding the scheme commencement day, employed in relation to the provision of an education and care service of a kind contemplated by clause 30;

(f) any other person, or class of person, declared by the regulations to be included within the ambit of this subsection.

(2) In this clause—

corresponding law means a law of another State or Territory that applies in that jurisdiction the *Education and Care Services National Law*, as in force from time to time, set out in the schedule to the *Education and Care Services National Law Act 2010* of Victoria.

32—Certain persons taken to be nominated supervisors

A person authorised in writing by the Minister for the purposes of this clause will be taken to be a nominated supervisor for the purposes of the *Education and Care Services National Law (South Australia)* as it applies to residual early childhood services.

Division 2—Transitional provisions related to Part 5 of Act (registration of schools)

33—Government schools taken to be registered under Part 5 Division 2 of Act

- 5 (1) Subject to this Act, each Government school at which education services were being provided, or at which students were enrolled, immediately before the commencement of this clause will be taken to be registered under Part 5 Division 2 of this Act.
- 10 (2) Subject to this Act, the registration of each Government school will be taken to be endorsed under section 48 of this Act if that school was, immediately before the commencement of this clause, authorised by the Department (within the meaning of the *Education Act 1972*) to enrol full fee paying overseas students.
- 15 (3) Subject to this Act, the endorsement of registration of a Government school pursuant to this clause will be taken to be subject to any condition that applied in relation to the authorisation to enrol full fee paying overseas students immediately before the commencement of this clause.

34—Certain non-Government schools taken to be registered under Part 5 Division 2 of Act

- 20 (1) Subject to this Act, each non-Government school that was registered under Part 5 of the *Education Act 1972* (as in force immediately before the commencement of this clause) and at which education services were being provided, or at which students were enrolled, immediately before the commencement of this clause will be taken to be registered under Part 5 Division 2 of this Act.
- 25 (2) If the registration of a non-Government school was, immediately before the commencement of this clause, endorsed with an approval to enrol full fee paying overseas students under the *Education Act 1972*, then the registration of the school pursuant to this clause will, subject to this Act, be taken to be endorsed under section 48.
- 30 (3) Subject to this Act, the registration, or endorsement of registration, of a non-Government school pursuant to this clause will be taken to be subject to any condition that applied in relation to the registration, or endorsement of registration, of the school under the *Education Act 1972* immediately before the commencement of this clause.

35—Exemptions

35 An exemption under section 81A of the *Education Act 1972* in force immediately before the commencement of this clause and relating to a provision of that Act repealed by Part 6 of this Schedule—

- (a) will be taken to be an exemption under section 74 of this Act; and
- (b) will continue in force according to its terms.