

**House of Assembly—No 57A**

As reported with amendments, report agreed to and passed remaining stages,  
15 November 2006

South Australia

**Statutes Amendment (Public Sector  
Employment) Bill 2006**

A BILL FOR

An Act to amend various Acts in order to provide for new employment arrangements within the public sector on account of the enactment of Commonwealth legislation relating to workplace relations.

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

## **Part 1—Preliminary**

### **1—Short title**

This Act may be cited as the *Statutes Amendment (Public Sector Employment) Act 2006*.

### **5 2—Commencement**

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

### **3—Amendment provisions**

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

## Part 2—Amendment of *Aboriginal Lands Trust Act 1966*

### 4—Amendment of section 3—Interpretation

- (1) Section 3—after the definition of *chairman* insert:

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

- (2) Section 3—after its present contents as amended by this section (now to be designated as subsection (1)) insert:

(2) A proclamation made for the purposes of the definition of *employing authority*—

- (a) may apply by reference to a specified person, or by reference to the person for the time being holding or acting in a specified office or position; and
- (b) may, from time to time as the Governor thinks fit, be varied or substituted by a new proclamation.

### 5—Amendment of section 11A—Delegation by Trust

Section 11A(2)(d)—delete paragraph (d)

### 6—Substitution of section 15

Section 15—delete the section and substitute:

#### 15—Staffing arrangements

- (1) The employing authority may employ staff to perform functions in connection with the operations or activities of the Trust.
- (2) The terms and conditions of employment of a person under subsection (1) will be determined by the employing authority.
- (3) A person employed under this section will be taken to be employed by or on behalf of the Crown (but will not be employed in the Public Service of the State unless brought into an administrative unit under the *Public Sector Management Act 1995*).
- (4) The employing authority may direct a person employed under this section to perform functions in connection with the operations or activities of a public sector agency specified by the employing authority (and the person must comply with that direction).
- (5) The employing authority is, in acting under this section, subject to direction by the Minister.
- (6) However, no Ministerial direction may be given by the Minister relating to the appointment, transfer, remuneration, discipline or termination of a particular person.
- (7) The employing authority may delegate a power or function under this section.

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- (8) A delegation under subsection (7)—
    - (a) must be by instrument in writing; and
    - (b) may be made to a body or person (including a person for the time being holding or acting in a specified office or position); and
    - (c) may be unconditional or subject to conditions; and
    - (d) may, if the instrument of delegation so provides, allow for the further delegation of a power or function that has been delegated; and
    - (e) does not derogate from the power of the employing authority to act personally in any matter; and
    - (f) may be revoked at any time by the employing authority.
  - (9) A change in the person who constitutes the employing authority under this Act will not affect the continuity of employment of a person under this section.
  - (10) The Trust must, at the direction of the Minister, the Treasurer or the employing authority, make payments with respect to any matter arising in connection with the employment of a person under this section (including, but not limited to, payments with respect to salary or other aspects of remuneration, leave entitlements, superannuation contributions, taxation liabilities, workers compensation payments, termination payments, public liability insurance and vicarious liabilities).
  - (11) The Trust does not have the power to employ any person.
  - (12) The Trust may, under an arrangement established by a Minister administering an administrative unit, make use of the services or staff of that administrative unit.
  - (13) The Trust may, after consultation with the employing authority, appoint a person employed under this section to the position of Secretary or Manager (and the same person may hold both positions).
  - (14) In this section—

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

## Part 3—Amendment of *Adelaide Cemeteries Authority Act 2001*

### 7—Amendment of section 3—Interpretation

- (1) Section 3—after the definition of *director* insert:

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



(2) Section 3—after its present contents as amended by this section (now to be designated as subsection (1)) insert:

(2) A proclamation made for the purposes of the definition of *employing authority*—

- (a) may apply by reference to a specified person, or by reference to the person for the time being holding or acting in a specified office or position; and
- (b) may, from time to time as the Governor thinks fit, be varied or substituted by a new proclamation.

### **8—Amendment of section 11—Common seal and execution of documents**

Section 11(2)—delete "an employee of the Authority" and substitute:  
a person employed under this Act

### **9—Substitution of section 18**

Section 18—delete the section and substitute:

#### **18—Staffing arrangements**

- (1) The employing authority may employ staff to perform functions in connection with the operations or activities of the Authority.
- (2) The terms and conditions of employment of a person under subsection (1) will be determined by the employing authority.
- (3) A person employed under this section will be taken to be employed by or on behalf of the Crown (but will not be employed in the Public Service of the State unless brought into an administrative unit under the *Public Sector Management Act 1995*).
- (4) The employing authority may direct a person employed under this section to perform functions in connection with the operations or activities of a public sector agency specified by the employing authority (and the person must comply with that direction).
- (5) The employing authority is, in acting under this section, subject to direction by the Minister.
- (6) However, no Ministerial direction may be given by the Minister relating to the appointment, transfer, remuneration, discipline or termination of a particular person.
- (7) The employing authority may delegate a power or function under this section.
- (8) A delegation under subsection (7)—
  - (a) must be by instrument in writing; and
  - (b) may be made to a body or person (including a person for the time being holding or acting in a specified office or position); and
  - (c) may be unconditional or subject to conditions; and

(d) may, if the instrument of delegation so provides, allow for the further delegation of a power or function that has been delegated; and

(e) does not derogate from the power of the employing authority to act personally in any matter; and

(f) may be revoked at any time by the employing authority.

(9) A change in the person who constitutes the employing authority under this Act will not affect the continuity of employment of a person under this section.

(10) The Authority must, at the direction of the Minister, the Treasurer or the employing authority, make payments with respect to any matter arising in connection with the employment of a person under this section (including, but not limited to, payments with respect to salary or other aspects of remuneration, leave entitlements, superannuation contributions, taxation liabilities, workers compensation payments, termination payments, public liability insurance and vicarious liabilities).

(11) The Authority does not have the power to employ any person.

(12) The Authority may, under an arrangement established by the Minister administering an administrative unit, make use of the services or staff of that administrative unit.

(13) In this section—

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

## Part 4—Amendment of *Adelaide Festival Centre Trust Act 1971*

### 10—Amendment of section 4—Interpretation

(1) Section 4(1)—after the definition of *the Council* insert:

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

(2) Section 4—after subsection (2) insert:

(3) A proclamation made for the purposes of the definition of *employing authority*—

(a) may apply by reference to a specified person, or by reference to the person for the time being holding or acting in a specified office or position; and

(b) may, from time to time as the Governor thinks fit, be varied or substituted by a new proclamation.

## 11—Substitution of sections 21 and 22

Sections 21 and 22—delete the sections and substitute:

### 21—Staffing arrangements

- 5
- (1) The employing authority may employ staff to perform functions in connection with the operations or activities of the Trust.
- (2) The terms and conditions of employment of a person under subsection (1) will be determined by the employing authority.
- 10
- (3) A person employed under this section will be taken to be employed by or on behalf of the Crown (but will not be employed in the Public Service of the State unless brought into an administrative unit under the *Public Sector Management Act 1995*).
- (4) The employing authority may direct a person employed under this section to perform functions in connection with the operations or activities of a public sector agency specified by the employing authority (and the person must comply with that direction).
- 15
- (5) The employing authority is, in acting under this section, subject to direction by the Minister.
- (6) However, no Ministerial direction may be given by the Minister relating to the appointment, transfer, remuneration, discipline or termination of a particular person.
- 20
- (7) The employing authority may delegate a power or function under this section.
- (8) A delegation under subsection (7)—
- 25
- (a) must be by instrument in writing; and
- (b) may be made to a body or person (including a person for the time being holding or acting in a specified office or position); and
- (c) may be unconditional or subject to conditions; and
- (d) may, if the instrument of delegation so provides, allow for the further delegation of a power or function that has been delegated; and
- 30
- (e) does not derogate from the power of the employing authority to act personally in any matter; and
- (f) may be revoked at any time by the employing authority.
- 35
- (9) A change in the person who constitutes the employing authority under this Act does not affect the continuity of employment of a person under this section.

(10) The Trust must, at the direction of the Minister, the Treasurer or the employing authority, make payments with respect to any matter arising in connection with the employment of a person under this section (including, but not limited to, payments with respect to salary or other aspects of remuneration, leave entitlements, superannuation contributions, taxation liabilities, workers compensation payments, termination payments, public liability insurance and vicarious liabilities).

(11) The Trust does not have the power to employ any person.

(12) The Trust may, under an arrangement established by a Minister administering an administrative unit, make use of the services or staff of that administrative unit.

(13) In this section—

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

## **22—Related staffing issues**

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

(2) The employing authority may enter into arrangements contemplated by section 5 of the *Superannuation Act 1988*.

## **Part 5—Amendment of *Adelaide Festival Corporation Act 1998***

### **12—Amendment of section 3—Interpretation**

(1) Section 3(1)—after the definition of *Corporation* insert:

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

(2) Section 3—after subsection (2) insert:

(3) A proclamation made for the purposes of the definition of *employing authority*—

(a) may apply by reference to a specified person, or by reference to the person for the time being holding or acting in a specified office or position; and

(b) may, from time to time as the Governor thinks fit, be varied or substituted by a new proclamation.

### **13—Amendment of section 6—Powers of the Corporation**

Section 6(2)(a)—delete paragraph (a)

## 14—Insertion of new Division

After section 20 insert:

### Division 5—Staffing arrangements

#### 20A—Staffing arrangements

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

5 (10) The Corporation must, at the direction of the Minister, the Treasurer or the employing authority, make payments with respect to any matter arising in connection with the employment of a person under this section (including, but not limited to, payments with respect to salary or other aspects of remuneration, leave entitlements, superannuation contributions, taxation liabilities, workers compensation payments, termination payments, public liability insurance and vicarious liabilities).

(11) The Corporation does not have the power to employ any person.

10 (12) The Corporation may, under an arrangement established by a Minister administering an administrative unit, make use of the services or staff of that administrative unit.

(13) In this section—

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

## Part 6—Amendment of *Ambulance Services Act 1992*

### 15—Amendment of section 4—Interpretation

(1) Section 4—after the definition of *ambulance service* insert:

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

(2) Section 4—after its present contents as amended by this section (now to be designated as subsection (1)) insert:

(2) A proclamation made for the purposes of the definition of *employing authority*—

25 (a) may apply by reference to a specified person, or by reference to the person for the time being holding or acting in a specified office or position; and

(b) may, from time to time as the Governor thinks fit, be varied or substituted by a new proclamation.

### 30 16—Insertion of section 13A

After section 13 insert:

#### 13A—Staffing arrangements

(1) The employing authority may employ persons to perform functions in connection with the operations or activities of SAAS.

35 (2) The terms and conditions of employment of a person under subsection (1) will be determined by the employing authority.

(3) A person employed under this section will be taken to be employed by or on behalf of the Crown (but will not be employed in the Public Service of the State unless brought into an administrative unit under the *Public Sector Management Act 1995*).

- 5
- (4) The employing authority may direct a person employed under this section to perform functions in connection with the operations or activities of a public sector agency specified by the employing authority (and the person must comply with that direction).
- (5) The employing authority is, in acting under this section, subject to direction by the Minister.
- (6) However, no Ministerial direction may be given by the Minister relating to the appointment, transfer, remuneration, discipline or termination of a particular person.
- 10
- (7) The employing authority may delegate a power or function under this section.
- (8) A delegation under subsection (7)—
- (a) must be by instrument in writing; and
- (b) may be made to a body or person (including a person for the time being holding or acting in a specified office or position); and
- 15
- (c) may be unconditional or subject to conditions; and
- (d) may, if the instrument of delegation so provides, allow for the further delegation of a power or function that has been delegated; and
- 20
- (e) does not derogate from the power of the employing authority to act personally in any matter; and
- (f) may be revoked at any time by the employing authority.
- (9) A change in the person who constitutes the employing authority under this Act will not affect the continuity of employment of a person under this section.
- 25
- (10) SAAS must, at the direction of the Minister, the Treasurer or the employing authority, make payments with respect to any matter arising in connection with the employment of a person under this section (including, but not limited to, payments with respect to salary or other aspects of remuneration, leave entitlements, superannuation contributions, taxation liabilities, workers compensation payments, termination payments, public liability insurance and vicarious liabilities).
- 30
- (11) SAAS does not have the power to employ any person.
- (12) SAAS may, under an arrangement established by a Minister administering an administrative unit, make use of the services or staff of that administrative unit.
- 35
- (13) In this section—
- 40
- public sector agency*** has the same meaning as in the *Public Sector Management Act 1995*.

## Part 7—Amendment of *Children's Services Act 1985*

### 17—Amendment of section 3—Interpretation

- (1) Section 3—after the definition of "*the Director*" insert:

*employing authority* means—

- (a) unless paragraph (b) applies—the Director;
- (b) if the Governor thinks fit, a person, or a person holding or acting in an office or position, designated by proclamation made for the purposes of this definition;

- (2) Section 3—after its present contents as amended by this section (now to be designated as subsection (1)) insert:

- (2) The Governor may, from time to time as the Governor thinks fit, vary or revoke a proclamation made for the purposes of the definition of *employing authority*, or make a new proclamation for the purposes of that definition.

### 18—Amendment of section 9—Delegation

Section 9—after subsection (2) insert:

- (3) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.

### 19—Amendment of section 10—Director and other staff may be referred to as the Children's Services Office

- (1) Section 10(1)—delete "other staff of the Minister under this Act" and substitute:

members of the staff employed by the employing authority for the purposes of this Act

- (2) Section 10(2)—delete "of the Minister under this Act" and substitute:

of the Children's Services Office

### 20—Amendment of section 11—Director of Children's Services

- (1) Section 11(4)—delete "The *Public Service Act 1967* shall" and substitute:

The *Public Sector Management Act 1995* will

- (2) Section 11—after subsection (4) insert:

- (5) The Director may delegate to any other person any of his or her powers or functions under this Act.
- (6) A delegation under this section is revocable at will and does not derogate from the power of the Director to act personally in any matter.
- (7) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.



## 21—Substitution of section 12

Section 12—delete the section and substitute:

### 12—Staff

- 5
- (1) The employing authority may employ staff for the purposes of this Act.
- (2) The terms and conditions of employment of a person under subsection (1) will be determined by the employing authority.
- 10
- (3) A person employed under this section will be taken to be employed by or on behalf of the Crown but, subject to subsection (4), the *Public Sector Management Act 1995* will not apply to the person.
- (4) The provisions of the *Public Sector Management Act 1995* with respect to long service leave apply in relation to persons employed under this section with such modification as may be prescribed.
- 15
- (5) The employing authority may direct a person employed under this section to perform functions in connection with the operations or activities of a public sector agency specified by the employing authority (and the person must comply with that direction).
- (6) The employing authority is, in acting under this section, subject to direction by the Minister.
- 20
- (7) However, no Ministerial direction may be given by the Minister relating to the appointment, transfer, remuneration, discipline or termination of a particular person.
- (8) The employing authority may delegate a power or function under this section.
- 25
- (9) A delegation under subsection (8)—
- (a) must be by instrument in writing; and
- (b) may be made to a body or person (including a person for the time being holding or acting in a specified office or position); and
- 30
- (c) may be unconditional or subject to conditions; and
- (d) may, if the instrument of delegation so provides, allow for the further delegation of a power or function that has been delegated; and
- (e) does not derogate from the power of the employing authority to act personally in any matter; and
- 35
- (f) may be revoked at any time by the employing authority.
- (10) A change in the person constituting the employing authority under this Act will not affect the continuity of employment of a person under this section.

(11) The Minister may, in connection with the operation of this Act, with the approval of another Minister administering an administrative unit, make use of the services or staff of that administrative unit.

(12) The Minister may, in connection with the operation to this Act, with the approval of the Minister responsible for the administration of the *Education Act 1972*, make use of services of any member of the teaching service constituted under that Act.

(13) In this section—

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

## 22—Substitution of section 13

Section 13—delete the section and substitute:

### 13—Superannuation

(1) The employing authority may enter into arrangements contemplated by section 5 of the *Superannuation Act 1988*.

(2) Any person employed as a member of the Children's Services Office under this Act who was, immediately before becoming such an employee, a contributor under the *Superannuation Act 1988* may, subject to that Act, remain a contributor.

## 23—Amendment of section 14—Transfer of staff from public service or prescribed employment

(1) Section 14(1)—delete "becomes an officer or employee of the Minister under this Act" and substitute:

becomes a member of the Children's Services Office

(2) Section 14(1)—delete "with the Minister" and substitute:

with the Children's Services Office

(3) Section 14(2)—delete "becomes an officer or employee of the Minister under this Act" and substitute:

becomes a member of the Children's Services Office

(4) Section 14(2)—delete "directed by the Minister and subject to such conditions as may be imposed by the Minister" and substitute:

directed by the employing authority and subject to such conditions as may be determined by the employing authority

## 24—Amendment of section 51—Recognised organisations

(1) Section 51(1)—delete "Where the Minister" and substitute:

Where the employing authority

(2) Section 51(1)—delete "his officers and employees under this Act" and substitute:

the members of the Children's Services Office

(3) Section 51(2)—delete "to the Minister" and substitute:  
to the employing authority

(4) Section 51(2)—delete "by the Minister of his" and substitute:  
by the employing authority of

## 5 **Part 8—Amendment of *Commercial Arbitration Act 1986***

### **25—Amendment of section 1—Short title**

Section 1—delete "*Commercial Arbitration Act 1986*" and substitute:

*Commercial Arbitration and Industrial Referral Agreements Act 1986*

### **26—Amendment of section 3—Application provisions**

10 (1) Section 3(7)—delete "This" and substitute:

Subject to subsection (8), this

(2) Section 3—after subsection (7) insert:

(8) Subsection (7)(a) does not limit the operation of Schedule 1.

15 (9) Subject to the operation of Schedule 1, nothing in the other provisions of this Act, including subsections (2) to (6) (inclusive) of this section, applies to a referral agreement.

(10) In this section—

*referral agreement* means an agreement under Schedule 1.

### **27—Insertion of Schedule**

20 After section 57 insert:

## **Schedule 1—Industrial Relations Commission may act on a referral of a matter by agreement**

### **1—Interpretation**

25 (1) A word or expression used in this Schedule that is the subject of a definition under section 4 of the *Fair Work Act 1994* when used in that Act will have the same meaning in this Schedule as it has in that Act.

(2) To avoid doubt, a reference to *the Court* in this Schedule is a reference to the Industrial Relations Court of South Australia.

## 2—Referral of matter to Industrial Relations Commission by agreement

- 5 (1) This clause applies to an industrial matter or an industrial dispute if 2 or more parties have entered into an agreement in writing (a *referral agreement*) to seek the assistance of the Commission by making a referral to the Commission in order to obtain (as the case may be)—
- 10 (a) the resolution of an industrial matter arising between the parties (including by making a determination about levels of remuneration, conditions of employment or other industrial matters);
- 15 (b) the resolution of an industrial dispute between the parties (including by settling a dispute about whether appropriate remuneration has been paid to a person under a contract of employment or whether there has been a breach of a condition of employment);
- (c) the resolution of the question whether, on the balance of probabilities, the dismissal of an employee was harsh, unjust or unreasonable.
- 20 (2) A referral agreement may relate to a particular matter or dispute, or to matters or disputes of a specified class.
- (3) The parties to a referral agreement may be—
- 25 (a) an employer, or group of employers;
- (b) an employee, or group of employees;
- (c) a registered association;
- (d) the United Trades and Labor Council.
- (4) The parties to a referral agreement may agree that the Commission is—
- 30 (a) to act as a conciliator, mediator or arbitrator;
- (b) to make recommendations to the parties;
- (c) to make determinations or orders that the parties agree to accept or observe,
- as specified in the referral agreement.
- (5) A party seeking the assistance of the Commission under a referral agreement will do so in accordance with the rules.
- 35 (6) On a referral under this Schedule, the Commission has and may perform or exercise such functions or powers with respect to the matter as the Commission might exercise in the exercise of its jurisdiction under section 26 of the *Fair Work Act 1994*, subject to any limitation or exclusion specified in the referral agreement and not so as to give any form of relief outside the referral agreement.
- 40

- 5
- (7) The regulations may make provision for or with respect to the application of the provisions of the *Fair Work Act 1994* (with such modifications, if any, as may be prescribed by the regulations) to the performance or exercise of functions or powers under this Schedule.
- (8) Subject to any regulations made for the purposes of subclause (7) or unless the Commission is hearing an appeal, the Commission is to be constituted of a single member of the Commission.
- 10
- (9) Subject to the *Fair Work Act 1994* and any regulations made for the purposes of subclause (7), and without limiting section 178 of the *Fair Work Act 1994*, rules of the Commission may be made in connection with the practice and procedure of the Commission in the performance or exercise of functions or powers conferred by referral agreements.
- 15
- (10) A determination, order or other decision of the Commission on a referral under this Schedule—
- (a) is binding on the parties to the referral agreements; and
- (b) may be enforced under the *Fair Work Act 1994* in the same way as a determination, order or other decision of the Commission or the Court to the same effect.
- 20
- (11) For the purposes of subclause (10), the regulations may make provision for the entry of a determination, order or other decision of the Commission as a determination, order or other decision of the Commission or the Court (as the case requires) under the *Fair Work Act 1994*.
- 25
- (12) The Commission may, in acting under this Schedule, make any determination as to the scope or operation of the relevant referral agreement, or as to the meaning of any provision of the referral agreement, and any such determination will then have effect according to its terms.
- 30
- (13) The Commission may, at any time after a matter or dispute has been referred to the Commission under this Schedule, determine to take no action on the referral, or to suspend or discontinue any action on the referral, if the Commission considers or is satisfied that—
- 35
- (a) the matter or dispute should be determined in some other manner; or
- (b) proceedings that relate to the subject matter of the referral have been commenced under the *Fair Work Act 1994*, or before some other body or person; or
- 40
- (c) there is some other reasonable cause that justifies a decision not to proceed, or to suspend or discontinue any action under this section,
- (and such a determination will have effect according to its terms).

- 5
- (14) A party to a matter in respect of which the Commission has made a determination under this section may appeal against that determination in accordance with section 207 of the *Fair Work Act 1994* unless the referral agreement provides that a determination will be final and conclusive and not subject to appeal.
- (15) If an appeal is made, it will be taken to be part of the referral to the Commission under the referral agreement.
- 10
- (16) The functions and powers conferred on the Commission by or under this Schedule are in addition to, and do not derogate from, any other function or power of the Commission under the *Fair Work Act 1994*.
- (17) A referral agreement may be amended from time to time by agreement between the parties to the referral agreement.
- 15
- (18) Once a referral has been made a party cannot withdraw from the referral agreement without the agreement in writing of the other party or parties to the agreement.

## Part 9—Amendment of *Education Act 1972*

### 28—Amendment of section 5—Interpretation

- (1) Section 5(1)—after the definition of *the Director-General* insert:

*employing authority* means—

- 20
- (a) unless paragraph (b) applies—the Director-General; or
- (b) if the Governor thinks fit, a person, or a person holding or acting in an office or position, designated by proclamation made for the purposes of this definition;

- (2) Section 5—after subsection (3) insert:

- 25
- (4) The Governor may, from time to time as the Governor thinks fit, vary or revoke a proclamation made for the purposes of the definition of *employing authority*, or make a new proclamation for the purposes of that definition.

- (5) If—

- 30
- (a) the Director-General is the employing authority under this Act; and
- (b) a provision of this Act—
- 35
- (i) requires that a matter be referred to the employing authority by the Director-General; or
- (ii) provides that the Director-General will make a recommendation to the employing authority,

the provision will be taken to allow for the Director-General, in his or her capacity as the employing authority, to take action without an actual referral or recommendation.

**29—Amendment of section 8—Power of delegation**

- (1) Section 8(1)—delete "except his power to dismiss an officer of the teaching service"
- (2) Section 8—after subsection (2) insert:
- 5                   (3) A power, duty, responsibility or function delegated under this section may, if the instrument of delegation so provides, be further delegated.

**30—Amendment of section 9—General powers of Minister**

Section 9(4)—delete subsection (4)

**31—Amendment of section 15—Appointment to teaching service**

- 10           (1) Section 15(1)—delete subsection (1) and substitute:
- (1) Subject to this Act, the employing authority may appoint such teachers to be officers of the teaching service as the employing authority considers appropriate.
- (2) Section 15(4)—delete "the Minister" and substitute:
- 15                   the employing authority
- (3) Section 15(6)—delete "the Minister" and substitute:
- the employing authority
- (4) Section 15—after subsection (6) insert:
- 20                   (7) If the Director-General is not the employing authority, the employing authority must, in acting under this section, consult with the Director-General.

**32—Amendment of section 15B—Appointment to promotional level positions**

- (1) Section 15B(1)—delete "The Minister" and substitute:
- The employing authority
- 25           (2) Section 15B(2)—delete "The Minister" and substitute:
- The employing authority

**33—Amendment of section 16—Retrenchment of officers of the teaching service**

- (1) Section 16(1)—delete "Where the Minister" and substitute:
- 30                   Where the employing authority
- (2) Section 16(1)—delete "the Minister may, by a written determination under his hand" and substitute:
- the employing authority may, by written determination
- (3) Section 16—after subsection (4) insert:
- 35                   (5) If the Director-General is not the employing authority, the employing authority must, in acting under this section, consult with the Director-General.

**34—Amendment of section 17—Incapacity of members of the teaching service**

- (1) Section 17(1)(b)—delete paragraph (b) and substitute:
- (b) determine to take steps to transfer the officer to some other  
employment in the Government of the State;
- 5 (2) Section 17(1)(d)—delete "the Minister" and substitute:  
the employing authority
- (3) Section 17(1c)—delete subsection (1c) and substitute:
- (1c) The Director-General may, in acting under subsection (1)(b),  
10 recommend to the employing authority that the officer be appointed  
to an office or position pursuant to section 101B or attempt to secure  
for the officer some other appropriate employment in the  
Government of the State.
- (4) Section 17(2)—delete "The Minister" and substitute:  
The employing authority
- 15 (5) Section 17(3)—delete "made by the Minister to transfer or retire him in accordance  
with a recommendation" and substitute:  
to transfer or retire him or her

**35—Amendment of section 21—Payment in lieu of long service leave**

- (1) Section 21(2)—delete "the Minister must pay" and substitute:
- 20 the employing authority must ensure that there is paid
- (2) Section 21(2)(b)—delete "the Minister" and substitute:  
the employing authority, with the approval of the Minister,
- (3) Section 21(4)—delete "The Minister" and substitute:  
The employing authority

**36—Amendment of section 22—Interruption of service**

- (1) Section 22(3)—delete "the Minister" and substitute:  
the employing authority
- (2) Section 22(4)—delete "the Minister" and substitute:  
the employing authority

**37—Amendment of section 24—Rights of persons transferred to the teaching  
service**

- Section 24(5)—delete "the Minister may, if he thinks" and substitute:  
the employing authority may, if in the opinion of the authority

**38—Amendment of section 26—Disciplinary action**

- 35 (1) Section 26(2)(b)—delete "the Minister" and substitute:  
the employing authority



- (2) Section 26(3)—delete "The Minister" and substitute:

The employing authority

- (3) Section 26(4)—delete "the Minister" and substitute:

the employing authority

5 **39—Amendment of section 27—Suspension**

- Section 27(3)—delete "the Minister otherwise directs" and substitute:

the employing authority otherwise determines

**40—Amendment of section 53—Appeals in respect of appointments to promotional level positions**

- 10 (1) Section 53(3)—delete "to the Minister" and substitute:

to the employing authority

- (2) Section 53(6)—delete "the Minister" and substitute:

the employing authority

- (3) Section 53(7)(a)(ii)—delete "the Minister" and substitute:

15 the employing authority

- (4) Section 53(7)(b)(ii)—delete "the Minister" and substitute:

the employing authority

**41—Insertion of sections 101B and 101C**

After section 101A insert:

20 **101B—Other staffing arrangements**

- (1) The employing authority may appoint such other officers and employees (in addition to the employees and officers of the Department and the teaching service) as appear to the employing authority to be necessary for the proper administration of this Act or the welfare of the students of any school.
- (2) The employing authority is, in acting under this section, subject to direction by the Minister.
- (3) However, no Ministerial direction may be given by the Minister relating to the appointment, transfer, remuneration, discipline or termination of a particular person.
- (4) In addition, if the Director-General is not the employing authority, the employing authority must, in acting under this section, consult with the Director-General.

30 **101C—Employing authority—related matters**

- 35 (1) The employing authority may delegate a power or function under this Act.

- (2) A delegation under subsection (1)—
- (a) must be by instrument in writing; and
  - (b) may be made to a body or person (including a person for the time being holding or acting in a specified office or position); and
  - (c) may be unconditional or subject to conditions; and
  - (d) does not derogate from the power of the employing authority to act personally in any matter; and
  - (e) may be revoked at any time by the employing authority.
- (3) A power or function delegated under subsection (1) may, if the instrument of delegation so provides, be further delegated.
- (4) A change in the person who constitutes the employing authority under this Act will not affect the continuity of employment or appointment of a person under this Act.

## **Part 10—Amendment of *Electricity Act 1996***

### **42—Amendment of section 4—Interpretation**

- (1) Section 4(1)—after the definition of *electricity supply industry* insert:

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

- (2) Section 4—after subsection (2) insert:

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

### **43—Amendment of section 6F—Common seal and execution of documents**

Section 6F(2)—delete "or employee of the Planning Council" and substitute:

or a person employed under section 6L or 6LA

### **44—Substitution of section 6L**

Section 6L—delete the section and substitute:

#### **6L—Chief executive**

- (1) The employing authority may employ a chief executive of the Planning Council on terms and conditions determined by the employing authority.

- (2) However, a person may not be employed as chief executive of the Planning Council, and may not be removed from that office, except with the approval of the Minister.

**6LA—Staffing arrangements**

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

5 (10) The Planning Council must, at the direction of the Minister, the Treasurer or the employing authority, make payments with respect to any matter arising in connection with the employment of a person under this Division (including, but not limited to, payments with respect to salary or other aspects of remuneration, leave entitlements, superannuation contributions, taxation liabilities, workers compensation payments, termination payments, public liability insurance and vicarious liabilities).

10 (11) The Planning Council does not have the power to employ any person.

(12) The Planning Council may, under an arrangement established by the Minister administering an administrative unit, make use of the services or staff of that administrative unit.

15 (13) In this section—

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

## **Part 11—Amendment of *Fair Work Act 1994***

### **45—Amendment of section 44—Protection for officers**

Section 44—after "or the Commission" insert:

20 (including on a referral to the Commission under another Act)

## **Part 12—Amendment of *Fire and Emergency Services Act 2005***

### **46—Amendment of section 17—Staff**

(1) Section 17(a)—delete "the Commission on terms and conditions determined by the Commission" and substitute:

25 the Chief Executive of the Commission on terms and conditions determined by the Chief Executive

(2) Section 17(a)—after "Commissioner for Public Employment" insert:

(on the basis that the Chief Executive (and any successor) is the employer)

30 (3) Section 17—after its present contents as amended by this section (now to be designated as subsection (1)) insert:

(2) The Commission is responsible for any costs or expenses associated with the employment of a person under subsection (1)(a).

### **47—Amendment of section 28—Deputy Chief Officer and Assistant Chief Officers**

35 Section 28(1)—after "Assistant Chief Officers" insert:

(on the basis that the Chief Officer (and any successor) is the employer)

**48—Amendment of section 29—Other officers and firefighters**

Section 29(5)—before "subject to" insert:

on the basis that the Chief Officer (and any successor) is the employer and

**49—Amendment of section 30—Employees**

5 Section 30(1)—after "SAMFS" insert:

(on the basis that the Chief Officer (and any successor) is the employer)

**50—Amendment of section 31—Staff**

Section 31—after subsection (3) insert:

10 (4) SAMFS is responsible for any costs or expenses associated with the employment of a member of the staff of SAMFS.

**51—Amendment of section 61—Deputy Chief Officer and Assistant Chief Officers**

Section 61(1)—after "Assistant Chief Officers" insert:

(on the basis that the Chief Officer (and any successor) is the employer)

15 **52—Amendment of section 62—Other officers**

Section 62(1)—after "to appoint" insert:

(on the basis that the Chief Officer (and any successor) is the employer)

**53—Amendment of section 63—Employees**

Section 63(1)—after "SACFS" insert:

20 (on the basis that the Chief Officer (and any successor) is the employer)

**54—Amendment of section 64—Staff**

Section 64—after subsection (3) insert:

(4) SACFS is responsible for any costs or expenses associated with the employment of a member of the staff of SACFS.

25 **55—Amendment of section 110—Deputy Chief Officer and Assistant Chief Officers**

Section 110(1)—after "Assistant Chief Officers" insert:

(on the basis that the Chief Officer (and any successor) is the employer)

**56—Amendment of section 111—Other officers**

30 Section 111(1)—after "to appoint" insert:

(on the basis that the Chief Officer (and any successor) is the employer)

**57—Amendment of section 112—Employees**

Section 112(1)—after "SASES" insert:

(on the basis that the Chief Officer (and any successor) is the employer)

### 58—Amendment of section 113—Staff

Section 113—after subsection (3) insert:

- (4) SASES is responsible for any costs or expenses associated with the employment of a member of the staff of SASES.

## 5 Part 13—Amendment of *History Trust of South Australia Act 1981*

### 59—Amendment of section 4—Interpretation

- (1) Section 4—before the definition of *member* insert:

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

- (2) Section 4—after its present contents as amended by this section (now to be designated as subsection (1)) insert:

- (2) A proclamation made for the purposes of the definition of *employing authority*—

- (a) may apply by reference to a specified person, or by reference to the person for the time being holding or acting in a specified office or position; and
- (b) may, from time to time as the Governor thinks fit, be varied or substituted by a new proclamation.

### 60—Substitution of section 16

Section 16—delete the section and substitute:

#### 16—Staffing arrangements

- (1) The employing authority may employ staff to perform activities in connection with the operations or activities of the Trust.
- (2) The terms and conditions of employment of a person under subsection (1) will be determined by the employing authority.
- (3) A person employed under this section will be taken to be employed by or on behalf of the Crown (but will not be employed in the Public Service of the State unless brought into an administrative unit under the *Public Sector Management Act 1995*).
- (4) The employing authority may direct a person employed under this section to perform functions in connection with the operations or activities of a public sector agency specified by the employing authority (and the person must comply with that direction).
- (5) The employing authority is, in acting under this section, subject to direction by the Minister.
- (6) However, no Ministerial direction may be given by the Minister relating to the appointment, transfer, remuneration, discipline or termination of a particular person.

- (7) The employing authority may delegate a power or function under this section.
- (8) A delegation under subsection (7)—
- (a) must be by instrument in writing; and
  - 5 (b) may be made to a body or person (including a person for the time being holding or acting in a specified office or position); and
  - (c) may be unconditional or subject to conditions; and
  - 10 (d) may, if the instrument of delegation so provides, allow for the further delegation of a power or function that has been delegated; and
  - (e) does not derogate from the power of the employing authority to act personally in any matter; and
  - (f) may be revoked at any time by the employing authority.
- 15 (9) A change in the person who constitutes the employing authority under this Act will not affect the continuity of employment of a person under this section.
- (10) The Trust must, at the direction of the Minister, the Treasurer or the
- 20 employing authority, make payments with respect to any matter arising in connection with the employment of a person under this section (including, but not limited to, payments with respect to salary or other aspects of remuneration, leave entitlements, superannuation contributions, taxation liabilities, workers compensation payments, termination payments, public liability insurance and vicarious
- 25 liabilities).
- (11) The Trust does not have the power to employ any person.
- (12) The Trust may, under an arrangement established by the Minister administering an administrative unit, make use of the services or staff of that administrative unit.
- 30 (13) In this section—
- public sector agency* has the same meaning as in the *Public Sector Management Act 1995*.

## **Part 14—Amendment of *Institute of Medical and Veterinary Science Act 1982***

### **61—Amendment of section 3—Interpretation**

- (1) Section 3—after the definition of *the Director* insert:

*employing authority* means—

- (a) unless paragraph (b) applies—the Chief Executive of the Department; or

- (b) if the Governor thinks fit, a person, or a person holding or acting in an office or position, designated by proclamation made for the purposes of this definition;

(2) Section 3—after its present contents as amended by this section (now to be designated as subsection (1)) insert:

- (2) The Governor may, from time to time as the Governor thinks fit, vary or revoke a proclamation made for the purposes of the definition of *employing authority*, or make a new proclamation for the purposes of that definition.

## **62—Amendment of section 14—Functions and powers of Institute**

Section 14(2)(b)(i)—delete "an officer or employee of the Institute" and substitute:  
a person employed under this Act

## **63—Amendment of section 16—Director of Institute**

Section 16(2), (3) and (4)—delete subsections (2), (3) and (4) and substitute:

- (2) The Director will be appointed by the employing authority after consultation with the Institute on terms and conditions fixed by the Minister and approved by the Commissioner for Public Employment.
- (3) In addition, a person may not be appointed to the office of Director, and may not be removed from that office, except with the approval of the Minister.

## **64—Substitution of section 17**

Section 17—delete the section and substitute:

### **17—Staff of Institute**

- (1) The employing authority may employ other staff for the purposes of this Act.
- (2) The terms and conditions of employment of a person will be determined by the employing authority after complying with any recommendation of the Commissioner for Public Employment.
- (3) A person employed under this section will be taken to be employed by or on behalf of the Crown but, subject to subsection (4), the *Public Sector Management Act 1995* will not apply to the person.
- (4) The Governor may, by regulation, declare that specified provisions of the *Public Sector Management Act 1995* will apply, with such modifications as may be prescribed, in relation to any person or class of persons employed under this section.
- (5) The employing authority may direct a person employed under this section to perform functions in connection with the operations of a public sector agency specified by the employing authority (and the person must comply with that direction).
- (6) The employing authority is, in acting under this section, subject to direction by the Minister.



- 5
- (7) However, no Ministerial direction may be given by the Minister relating to the appointment, transfer, remuneration, discipline or termination of a particular person.
- (8) The employing authority may delegate a power or function under this section.
- 10
- (9) A delegation under subsection (8)—
- (a) must be by instrument in writing; and
  - (b) may be made to a body or person (including a person for the time being holding or acting in a specified office or position); and
  - (c) may be unconditional or subject to conditions; and
  - (d) may, if the instrument of delegation so provides, allow for the further delegation of a power or function that has been delegated; and
  - 15 (e) does not derogate from the power of the employing authority to act personally in any matter; and
  - (f) may be revoked at any time by the employing authority.
- 20
- (10) A change in the person who constitutes the employing authority under this Act will not affect the continuity of employment of a person under this section.
- 25
- (11) The Institute must, at the direction of the Minister, the Treasurer or the employing authority, make payments with respect to any matter arising in connection with the employment of a person under this Act (including, but not limited to, payments with respect to salary or other aspects of remuneration, leave entitlements, superannuation contributions, taxation liabilities, workers compensation payments, termination payments, public liability insurance and vicarious liabilities).
- 30
- (12) The Institute does not have the power to employ any person.
- (13) The Institute may, under an arrangement established by a Minister administering an administrative unit, make use of the services or staff of that administrative unit.
- 35
- (14) In this section—
- public sector agency* has the same meaning as in the *Public Sector Management Act 1995*.

**65—Amendment of section 18—Superannuation, accrued leave rights etc**

- (1) Section 18(1)—delete subsection (1) and substitute:
- (1) The employing authority may enter into arrangements contemplated by section 5 of the *Superannuation Act 1988*.

(1a) Any person employed under this Act who was, immediately before entering into that employment, a contributor under the *Superannuation Act 1988* may, subject to that Act, remain a contributor.

5 (2) Section 18(2)—delete "becomes an officer or employee of the Institute" and substitute:

commences employment under this Act

(3) Section 18(2)—delete "with the Institute" and substitute:

under this Act

10 (4) Section 18(2)(b), (c) and (d)—delete paragraphs (b), (c) and (d) and substitute:

(b) under the *South Australian Health Commission Act 1976*,

(5) Section 18(2)(e)—delete "by the Institute" and substitute:

under this Act

15 (6) Section 18(3)—delete "becomes an officer or employee of the Institute" and substitute:

commences employment under this Act

(7) Section 18(3)(b), (c) and (d)—delete paragraphs (b), (c) and (d) and substitute:

(b) under the *South Australian Health Commission Act 1976*; or

20 (8) Section 18(3)—delete "directed by the Institute and subject to such conditions as may be imposed by the Institute, as if that previous employment had been employment by the Institute" and substitute:

directed by the employing authority and subject to such conditions as may be determined by the employing authority, as if that previous employment had been employment under this Act

25 **66—Amendment of section 21—Accounts, audit etc**

Section 21(3)—delete "the officers and employees of the Institute" and substitute:

the persons employed under this Act

**67—Repeal of section 27**

Section 27—delete the section

30 **68—Amendment of section 28—Recognised organisations**

(1) Section 28(2)—delete "Where the Minister" and substitute:

Where the employing authority

(2) Section 28(2)—delete "officers or employees of the Institute, the Minister" and substitute:

35 persons employed under this Act, the employing authority

(3) Section 28(3)—delete "the Minister" and substitute:

the employing authority

**69—Repeal of section 29**

Section 29—delete the section

**70—Amendment of section 30—Duty to maintain confidentiality**

Section 30(1)—delete "an officer or employee of the Institute" and substitute:

5 a person employed under this Act

**Part 15—Amendment of *Natural Resources Management Act 2004***

**71—Amendment of section 3—Interpretation**

(1) Section 3(1)—after the definition of *effluent* insert:

10 *employing authority* means—

- (a) unless paragraph (b) applies—the Chief Executive of the Department;
- (b) if the Governor thinks fit, a person, or a person holding or acting in an office or position, designated by proclamation made for the purposes of this definition;

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(2) Section 3—after subsection (11) insert:

- (12) The Governor may, from time to time as the Governor thinks fit, vary or revoke a proclamation made for the purposes of the definition of *employing authority*, or make a new proclamation for the purposes of that definition.

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**72—Amendment of section 34—Staff**

Section 34(3) and (4)—delete subsections (3) and (4) and substitute:

- (3) The employing authority may, after consultation with a regional NRM board, employ a person to perform functions in connection with the operations or activities of the board.
- (4) The terms and conditions of employment of a person under subsection (3) will be determined by the employing authority after consultation with the board and after obtaining the approval of the Commissioner for Public Employment.
- (5) A person employed under subsection (3) will be taken to be employed by or on behalf of the Crown (but will not be employed in the Public Service of the State unless brought into an administrative unit under the *Public Sector Management Act 1995*).
- (6) The employing authority may direct a person employed under subsection (3) to perform functions in connection with the operations of a public sector agency specified by the employing authority (and the person must comply with that direction).
- (7) The employing authority is, in acting under this section, subject to direction by the Minister.

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- (8) However, no Ministerial direction may be given by the Minister relating to the appointment, transfer, remuneration, discipline or termination of a particular person.
- (9) The employing authority may delegate a power or function under this section.
- 10
- (10) A delegation under subsection (9)—
- (a) must be by instrument in writing; and
  - (b) may be made to a body or person (including a person for the time being holding or acting in a specified office or position); and
  - (c) may be unconditional or subject to conditions; and
  - (d) may, if the instrument of delegation so provides, allow for the further delegation of a power or function that has been delegated; and
  - 15 (e) does not derogate from the power of the employing authority to act personally in any matter; and
  - (f) may be revoked at any time by the employing authority.
- 20
- (11) A change in the person who constitutes the employing authority under this Act will not affect the continuity of employment of a person under this section.
- 25
- (12) A regional NRM board must, at the direction of the Minister, the Treasurer or the employing authority, make payments with respect to any matter arising in connection with the employment of a person under this section (including, but not limited to, payments with respect to salary or other aspects of remuneration, leave entitlements, superannuation contributions, taxation liabilities, workers compensation payments, termination payments, public liability insurance and vicarious liabilities).
- 30
- (13) A regional NRM board does not have the power to employ any person.
- (14) In this section—
- public sector agency* has the same meaning as in the *Public Sector Management Act 1995*.

## Part 16—Amendment of *Public Sector Management Act 1995*

### 73—Amendment of Schedule 1—Persons excluded from Public Service

- 35
- (1) Schedule 1, clause 1(1)(i)—delete "the Minister" and substitute:  
the employing authority
- (2) Schedule 1, clause 1(1)(j)—delete "the Minister" and substitute:  
the employing authority

## **Part 17—Amendment of *Senior Secondary Assessment Board of South Australia Act 1983***

### **74—Amendment of section 4—Interpretation**

(1) Section 4—after the definition of *Chief Executive Officer* insert:

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

(2) Section 4—after its present contents as amended by this section (now to be designated as subsection (1)) insert:

(2) A proclamation made for the purposes of the definition of *employing authority*—

(a) may apply by reference to a specified person, or by reference to the person for the time being holding or acting in a specified office or position; and

(b) may, from time to time as the Governor thinks fit, be varied or substituted by a new proclamation.

### **75—Amendment of section 9A—Chief Executive Officer**

Section 9A(3) and (4)—delete subsections (3) and (4) and substitute:

(3) The Chief Executive Officer is to be appointed by the employing authority on terms and conditions determined by the employing authority.

(4) However, a person may not be employed as Chief Executive Officer, and may not be removed from that office, unless or until the employing authority—

(a) has consulted with the Board; and

(b) has obtained the approval of the Minister.

### **76—Amendment of section 12—Delegation**

Section 12(1)(a)—delete paragraph (a) and substitute:

(a) to a member of the Board, a person employed under this Act, or a person appointed by the Board to assess students; or

### **77—Substitution of section 18**

Section 18—delete the section and substitute:

#### **18—Staffing arrangements**

(1) The employing authority may employ staff to perform activities in connection with the operations or activities of the Board.

(2) The terms and conditions of employment of a person under subsection (1) will be determined by the employing authority.

(3) A person employed under this section will be taken to be employed by or on behalf of the Crown (but will not be employed in the Public Service of the State unless brought into an administrative unit under the *Public Sector Management Act 1995*).

5 (4) The employing authority may direct a person employed under this section to perform functions in connection with the operations or activities of a public sector agency specified by the employing authority (and the person must comply with that direction).

10 (5) The employing authority is, in acting under this section, subject to direction by the Minister.

(6) However, no Ministerial direction may be given by the Minister relating to the appointment, transfer, remuneration, discipline or termination of a particular person.

15 (7) The employing authority may delegate a power or function under this section.

(8) A delegation under subsection (7)—

(a) must be by instrument in writing; and

20 (b) may be made to a body or person (including a person for the time being holding or acting in a specified office or position); and

(c) may be unconditional or subject to conditions; and

(d) may, if the instrument of delegation so provides, allow for the further delegation of a power or function that has been delegated; and

25 (e) does not derogate from the power of the employing authority to act personally in any matter; and

(f) may be revoked at any time by the employing authority.

30 (9) A change in the person who constitutes the employing authority under this Act will not affect the continuity of employment of a person under this section.

35 (10) The Board must, at the direction of the Minister, the Treasurer or the employing authority, make payments with respect to any matter arising in connection with the employment of a person under this Act (including, but not limited to, payments with respect to salary or other aspects of remuneration, leave entitlements, superannuation contributions, taxation liabilities, workers compensation payments, termination payments, public liability insurance and vicarious liabilities).

(11) The Board does not have the power to employ any person.

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

(13) In this section—

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

## **Part 18—Amendment of *South Australian Country Arts Trust Act 1992***

### **5 78—Amendment of section 3—Interpretation**

- (1) Section 3—after the definition of *Country Arts Board* insert:

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

- 10 (2) Section 3—after its present contents as amended by this section (now to be designated as subsection (1)) insert:

- (2) A proclamation made for the purposes of the definition of *employing authority*—

- 15 (a) may apply by reference to a specified person, or by reference to the person for the time being holding or acting in a specified office or position; and
- (b) may, from time to time as the Governor thinks fit, be varied or substituted by a new proclamation.

### **79—Substitution of section 13**

Section 13—delete the section and substitute:

#### **20 13—Staffing arrangements**

- (1) The employing authority may employ staff to perform functions in connection with the operations or activities of the Trust.
- (2) The terms and conditions of employment of a person under subsection (1) will be determined by the employing authority.
- 25 (3) A person employed under this section will be taken to be employed by or on behalf of the Crown (but will not be employed in the Public Service of the State unless brought into an administrative unit under the *Public Sector Management Act 1995*).
- (4) The employing authority may direct a person employed under this section to perform functions in connection with the operations or activities of a public sector agency specified by the employing authority (and the person must comply with that direction).
- 30 (5) The employing authority is, in acting under this section, subject to direction by the Minister.
- (6) However, no Ministerial direction may be given by the Minister relating to the appointment, transfer, remuneration, discipline or termination of a particular person.
- 35 (7) The employing authority may delegate a power or function under this section.

- 5
- (8) A delegation under subsection (7)—
- (a) must be by instrument in writing; and
  - (b) may be made to a body or person (including a person for the time being holding or acting in a specified office or position); and
  - (c) may be unconditional or subject to conditions; and
  - (d) may, if the instrument of delegation so provides, allow for the further delegation of a power or function that has been delegated; and
  - 10 (e) does not derogate from the power of the employing authority to act personally in any matter; and
  - (f) may be revoked at any time by the employing authority.
- 15
- (9) A change in the person who constitutes the employing authority under this Act will not affect the continuity of employment of a person under this section.
- 20
- (10) The Trust must, at the direction of the Minister, the Treasurer or the employing authority, make payments with respect to any matter arising in connection with the employment of a person under this section (including, but not limited to, payments with respect to salary or other aspects of remuneration, leave entitlements, superannuation contributions, taxation liabilities, workers compensation payments, termination payments, public liability insurance and vicarious liabilities).
- 25
- (11) The Trust does not have the power to employ any person.
- (12) The Trust may, under an arrangement established by the Minister administering an administrative unit, make use of the services or staff of that administrative unit.
- 30
- (13) In this section—  
*public sector agency* has the same meaning as in the *Public Sector Management Act 1995*.

## Part 19—Amendment of *South Australian Film Corporation Act 1972*

### 80—Amendment of section 4—Interpretation

- 35
- (1) Section 4—after the definition of *council* insert:

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



(2) Section 4—after its present contents as amended by this section (now to be designated as subsection (1)) insert:

(2) A proclamation made for the purposes of the definition of *employing authority*—

(a) may apply by reference to a specified person, or by reference to the person for the time being holding or acting in a specified office or position; and

(b) may, from time to time as the Governor thinks fit, be varied or substituted by a new proclamation.

## **81—Substitution of section 9**

Section 9—delete the section and substitute:

### **9—Appointment of Chief Executive Officer**

(1) The Chief Executive Officer of the Corporation is to be appointed by the employing authority on terms and conditions determined by the employing authority.

(2) However, a person may not be employed as Chief Executive Officer, and may not be removed from office, unless or until the employing authority—

(a) has consulted with the Corporation; and

(b) has obtained the approval of the Minister.

(3) The Chief Executive Officer is, subject to the control of the Corporation, responsible for the management of the operations of the Corporation.

### **9A—Staffing arrangements**

(1) The employing authority may employ other staff to perform functions in connection with the operations or activities of the Corporation.

(2) The terms and conditions of employment of a person under subsection (1) will be determined by the employing authority.

(3) A person employed under this section will be taken to be employed by or on behalf of the Crown (but will not be employed in the Public Service of the State unless brought into an administrative unit under the *Public Sector Management Act 1995*).

(4) The employing authority may direct a person employed under this section to perform functions in connection with the operations or activities of a public sector agency specified by the employing authority (and the person must comply with that direction).

(5) The employing authority is, in acting under this section, subject to direction by the Minister.

- 5
- (6) However, no Ministerial direction may be given by the Minister relating to the appointment, transfer, remuneration, discipline or termination of a particular person.
- (7) The employing authority may delegate a power or function under this section.
- 10
- (8) A delegation under subsection (7)—
- (a) must be by instrument in writing; and
  - (b) may be made to a body or person (including a person for the time being holding or acting in a specified office or position); and
  - (c) may be unconditional or subject to conditions; and
  - (d) may, if the instrument of delegation so provides, allow for the further delegation of a power or function that has been delegated; and
  - 15 (e) does not derogate from the power of the employing authority to act personally in any matter; and
  - (f) may be revoked at any time by the employing authority.
- 20
- (9) A change in the person who constitutes the employing authority under this Act will not affect the continuity of employment of a person under this section.
- 25
- (10) The Corporation must, at the direction of the Minister, the Treasurer or the employing authority, make payments with respect to any matter arising in connection with the employment of a person under this Act (including, but not limited to, payments with respect to salary or other aspects of remuneration, leave entitlements, superannuation contributions, taxation liabilities, workers compensation payments, termination payments, public liability insurance and vicarious liabilities).
- 30
- (11) The Corporation does not have the power to employ any person.
- (12) The Corporation may, under an arrangement established by the Minister administering an administrative unit, make use of the services or staff of that administrative unit.
- 35
- (13) In this section—
- public sector agency* has the same meaning as in the *Public Sector Management Act 1995*.

## 82—Amendment of section 12—Power of Corporation to delegate powers

Section 12(1)—delete "or employee of the Corporation" and substitute:  
of the Corporation or a person employed under this Act

**83—Substitution of section 26**

Section 26—delete the section and substitute:

**26—Superannuation**

The employing authority may enter into arrangements contemplated  
by section 5 of the *Superannuation Act 1988*.

**84—Amendment of section 33—Regulations**

Section 33(2)(c)—delete "of the Corporation" and substitute:  
under this Act

**Part 20—Amendment of *South Australian Health Commission Act 1976***

**85—Amendment of section 6—Interpretation**

(1) Section 6—after the definition of *Department* insert:

*employing authority* means—

- (a) subject to paragraph (b), the Chief Executive of the Department; or
- (b) if the Governor thinks fit, a person, or a person holding or acting in an office or position, designated by proclamation made for the purposes of this definition;

(2) Section 6—after its present contents as amended by this section (now to be designated as subsection (1)) insert:

(2) The Governor may, for the purposes of the definition of *employing authority*—

- (a) designate different persons as employing authorities with respect to different classes of employees (or potential employees);
- (b) in making a designation under paragraph (a), include the Chief Executive of the Department;
- (c) from time to time as the Governor thinks fit, vary or revoke a proclamation, or make a new proclamation for the purposes of the definition.

**86—Amendment of section 19—Staff and facilities**

Section 19(1) and (2)—delete subsections (1) and (2) and substitute:

- (1) The Commission does not have the power to employ any person.

**87—Amendment of section 29—Management of hospital**

Section 29(2)—delete "officer or employee of the hospital" and substitute:  
to a person employed at the hospital

## 88—Substitution of section 30

Section 30—delete the section and substitute:

### 30—Staff

- 5
- (1) An employing authority may employ persons to perform functions in connection with the operations or activities of an incorporated hospital.
- (2) The terms and conditions of employment of a person under subsection (1) will be fixed by the employing authority and approved by the Commissioner for Public Employment.
- 10
- (3) A person employed under this section will be taken to be employed by or on behalf of the Crown (but will not be employed in the Public Service of the State unless brought into an administrative unit under the *Public Sector Management Act 1995*).
- 15
- (4) An employing authority may direct a person employed under this section to perform functions in connection with the operations or activities of another incorporated hospital, an incorporated health centre, or any other public sector agency, specified by the employing authority (and the person must comply with that direction).
- 20
- (5) An employing authority is, in acting under this section, subject to direction by the Minister.
- (6) However, no Ministerial direction may be given by the Minister relating to the appointment, transfer, remuneration, discipline or termination of a particular person.
- 25
- (7) An employing authority may delegate a power or function under this section.
- (8) A delegation under subsection (7)—
- 30
- (a) must be by instrument in writing; and
- (b) may be made to a body or person (including a person for the time being holding or acting in a specified office or position); and
- (c) may be unconditional or subject to conditions; and
- (d) may, if the instrument of delegation so provides, allow for the further delegation of a power or function that has been delegated; and
- 35
- (e) does not derogate from the power of the employing authority to act personally in any matter; and
- (f) may be revoked at any time by the employing authority.
- 40
- (9) A change in a person who constitutes an employing authority under this Act will not affect the continuity of employment of a person under this section.

- 5 (10) An incorporated hospital must, at the direction of the Minister, the Treasurer or an employing authority, make payments with respect to any matter arising in connection with the employment of a person under this section (including, but not limited to, payments with respect to salary or other aspects of remuneration, leave entitlements, superannuation contributions, taxation liabilities, workers compensation payments, termination payments, public liability insurance and vicarious liabilities).
- 10 (11) An incorporated hospital does not have the power to employ any person.
- (12) An incorporated hospital may, under an arrangement established by the Minister administering an administrative unit, make use of the services or staff of that administrative unit.
- 15 (13) On the incorporation of a hospital under this Part, any Public Service employees who had, before the date of incorporation, been assigned by the Chief Executive of the Department to work in the hospital and have been designated by the Chief Executive as employees to whom this subsection applies will become persons employed by an employing authority designated by the Chief Executive under this section on terms and conditions fixed by the Chief Executive (without reduction of salary or status).
- 20 (14) In this section—  
*public sector agency* has the same meaning as in the *Public Sector Management Act 1995*.

25 **89—Amendment of section 31—Superannuation, accrued leave rights, etc**

- (1) Section 31—before subsection (2) insert:
- (1) An employing authority may enter into arrangements contemplated by section 5 of the *Superannuation Act 1988* with respect to a person employed at an incorporated hospital.
- 30 (2) Section 31(2)—delete "becomes an officer or employee of an incorporated hospital" and substitute:
- commences employment by an employing authority at an incorporated hospital
- (3) Section 31(2)(b), (c) and (d)—delete paragraphs (b), (c) and (d) and substitute:
- 35 (b) by the employing authority or another employing authority at another incorporated hospital; or
- (c) by the employing authority or another employing authority at an incorporated health centre,
- (4) Section 31(2)—delete "with the incorporated hospital" and substitute:
- 40 at the incorporated hospital
- (5) Section 31(2)(e)—delete "by the incorporated hospital" and substitute:
- by the employing authority at the incorporated hospital

- (6) Section 31(3)—delete "becomes an officer or employee of an incorporated hospital" and substitute:

commences employment by an employing authority at an incorporated hospital

- 5 (7) Section 31(3)(b), (c) and (d)—delete paragraphs (b), (c) and (d) and substitute:

(b) by the employing authority or another employing authority at another incorporated hospital; or

(c) by the employing authority or another employing authority at an incorporated health centre; or

- 10 (8) Section 31(3)—delete "directed by the board of the hospital and subject to such conditions as may be imposed by that board, as if that previous employment had been employment by the hospital" and substitute:

15 directed by the employing authority and subject to such conditions as may be determined by the employing authority, as if that previous employment had been employment by the employing authority at the hospital

## **90—Substitution of section 51**

Section 51—delete the section and substitute:

### **51—Staff**

20 (1) An employing authority may employ persons to perform functions in connection with the operations or activities of an incorporated health centre.

(2) The terms and conditions of employment of a person under subsection (1) will be fixed by the employing authority and approved by the Commissioner for Public Employment.

25 (3) A person employed under this section will be taken to be employed by or on behalf of the Crown (but will not be employed in the Public Service of the State unless brought into an administrative unit under the *Public Sector Management Act 1995*).

30 (4) An employing authority may direct a person employed under this section to perform functions in connection with the operations or activities of another incorporated health centre, an incorporated hospital, or any other public sector agency, specified by the employing authority (and the person must comply with that direction).

35 (5) An employing authority is, in acting under this section, subject to direction by the Minister.

(6) However, no Ministerial direction may be given by the Minister relating to the appointment, transfer, remuneration, discipline or termination of a particular person.

40 (7) An employing authority may delegate a power or function under this section.

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- (8) A delegation under subsection (7)—
    - (a) must be by instrument in writing; and
    - (b) may be made to a body or person (including a person for the time being holding or acting in a specified office or position); and
    - (c) may be unconditional or subject to conditions; and
    - (d) may, if the instrument of delegation so provides, allow for the further delegation of a power or function that has been delegated; and
    - (e) does not derogate from the power of the employing authority to act personally in any matter; and
    - (f) may be revoked at any time by the employing authority.
  - (9) A change in a person who constitutes an employing authority under this Act will not affect the continuity of employment of a person under this section.
  - (10) An incorporated health centre must, at the direction of the Minister, the Treasurer or an employing authority, make payments with respect to any matter arising in connection with the employment of a person under this section (including, but not limited to, payments with respect to salary or other aspects of remuneration, leave entitlements, superannuation contributions, taxation liabilities, workers compensation payments, termination payments, public liability insurance and vicarious liabilities).
  - (11) An incorporated health centre does not have the power to employ any person.
  - (12) An incorporated health centre may, under an arrangement established by the Minister administering an administrative unit, make use of the services or staff of that administrative unit.
  - (13) In this section—

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

### **91—Amendment of section 52—Superannuation, accrued leave rights, etc**

- (1) Section 52—before subsection (2) insert:
  - (1) An employing authority may enter into arrangements contemplated by section 5 of the *Superannuation Act 1988* with respect to a person employed at an incorporated health centre.
- (2) Section 52(2)—delete "becomes an officer or employee of an incorporated health centre" and substitute:

commences employment by an employing authority at an incorporated health centre

- (3) Section 52(2)(b), (c) and (d)—delete paragraphs (b), (c) and (d) and substitute:
- (b) by the employing authority or another employing authority at an incorporated hospital; or
  - (c) by the employing authority or another employing authority at another incorporated health centre,
- (4) Section 52(2)—delete "with the incorporated health centre" and substitute:  
at the incorporated health centre
- (5) Section 52(2)(e)—delete "by the incorporated health centre" and substitute:  
by the employing authority at the incorporated health centre
- (6) Section 52(3)—delete "becomes an officer or employee of an incorporated health centre" and substitute:  
commences employment at an incorporated health centre
- (7) Section 52(3)(b), (c) and (d)—delete paragraphs (b), (c) and (d) and substitute:
- (b) by the employing authority or another employing authority at an incorporated hospital; or
  - (c) by the employing authority or another employing authority at another incorporated health centre; or
- (8) Section 52(3)—delete "directed by the board of the health centre and subject to such conditions as may be imposed by the board, as if that previous employment had been employment by the health centre" and substitute:  
directed by the employing authority and subject to such conditions as may be determined by the employing authority, as if that previous employment had been employment by the employing authority at the health centre

**92—Amendment of section 59—Application of Public Sector Management Act to employees**

Section 59(1)—delete subsection (1) and substitute:

- (1) The Governor may, by proclamation, declare that specified provisions of the *Public Sector Management Act 1995* will apply, with such modifications as may be specified in the proclamation, in relation to persons employed by an employing authority at designated incorporated hospitals or designated incorporated health centres, or any class of such persons.

**93—Repeal of section 60**

Section 60—delete the section

**94—Amendment of section 61—Recognised organisations**

- (1) Section 61(2)—delete "Where the Minister" and substitute:  
Where an employing authority



- (2) Section 61(2)—delete "officers or employees of incorporated hospitals or incorporated health centres, the Minister" and substitute:

persons employed under this Act, the employing authority

- (3) Section 61(3)—delete "the Minister" and substitute:

the employing authority

### 95—Amendment of section 63A—Conflict of interest

Section 63A(3), definition of *health employee*—delete "an officer or employee of" and substitute:

a person employed at

### 96—Amendment of section 64—Duty to maintain confidentiality

Section 64(1)—delete subsection (1) and substitute:

- (1) Subject to subsection (2), an officer or employee of the Department, a person employed by an employing authority under this Act, or a person working at an incorporated hospital or an incorporated health centre under any other arrangement, must not divulge personal information relating to a patient obtained in the course of employment or while so working except to the extent that he or she may be authorised or required to divulge that information—

- (a) by law; or
- (b) by the Department or the employing authority; or
- (c) in the case of a person employed or working at an incorporated hospital or an incorporated health centre—by the relevant hospital or health centre.

Maximum penalty: \$10 000.

## Part 21—Amendment of *South Australian Motor Sport Act 1984*

### 97—Amendment of section 3—Interpretation

- (1) Section 3(1)—after the definition of *declared period* insert:

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

- (2) Section 3—after subsection (3) insert:

- (4) A proclamation made for the purposes of the definition of *employing authority*—

- (a) may apply by reference to a specified person, or by reference to the person for the time being holding or acting in a specified office or position; and
- (b) may, from time to time as the Governor thinks fit, be varied or substituted by a new proclamation.

## 98—Substitution of Part 2 Division 3

Part 2 Division 3—delete Division 3 and substitute:

### Division 3—Chief Executive and staff

#### 13—Chief Executive

- 5
- (1) There will be a Chief Executive of the Board.
  - (2) A person may be appointed to be Chief Executive—
    - (a) subject to and in accordance with the *Public Sector Management Act 1995*; or
    - (b) on terms and conditions determined by the Governor,  
10 as the Governor thinks fit.
  - (3) The Chief Executive may hold office in conjunction with another office of the Public Service of the State.

#### 14—Staffing arrangements

- 15
- (1) The employing authority may employ staff to perform functions in connection with the operations or activities of the Board.
  - (2) The terms and conditions of employment of a person under subsection (1) will be determined by the employing authority.
  - (3) A person employed under this section will be taken to be employed by or on behalf of the Crown but, subject to subsection (4), the  
20 *Public Sector Management Act 1995* will not apply to such a person.
  - (4) The Governor may, by regulation, declare that specified provisions of the *Public Sector Management Act 1995* will apply, with such modifications as may be prescribed, in relation to persons employed under this section, or any class of such persons.
  - (5) The employing authority may direct a person employed under this  
25 section to perform functions in connection with the operations or activities of a public sector agency specified by the employing authority (and the person must comply with that direction).
  - (6) The employing authority is, in acting under this section, subject to  
30 direction by the Minister and must not employ a person for the purposes of this Act except under an approval of the Minister.
  - (7) However, no Ministerial direction may be given by the Minister relating to the transfer, remuneration, discipline or termination of a particular person.
  - (8) The employing authority may delegate a power or function under this  
35 section.
  - (9) A delegation under subsection (8)—
    - (a) must be by instrument in writing; and

- (b) may be made to a body or person (including a person for the time being holding or acting in a specified office or position); and
- (c) may be unconditional or subject to conditions; and
- 5 (d) may, if the instrument of delegation so provides, allow for the further delegation of a power or function that has been delegated; and
- (e) does not derogate from the power of the employing authority to act personally in any matter; and
- 10 (f) may be revoked at any time by the employing authority.
- (10) A change in the person who constitutes the employing authority under this Act will not affect the continuity of employment of a person under this section.
- (11) The Board must, at the direction of the Minister, the Treasurer or the  
15 employing authority, make payments with respect to any matter arising in connection with the employment of a person under this Act (including, but not limited to, payments with respect to salary or other aspects of remuneration, leave entitlements, superannuation contributions, taxation liabilities, workers compensation payments, termination payments, public liability insurance and vicarious liabilities).
- (12) The Board does not have the power to employ any person.
- (13) The Board may, under an arrangement established by the Minister  
25 administering an administrative unit, make use of the services or staff of that administrative unit.
- (14) In this section—  
*public sector agency* has the same meaning as in the *Public Sector Management Act 1995*.

## 30 **Part 22—Amendment of *South Australian Tourism Commission Act 1993***

### **99—Amendment of section 4—Interpretation**

- (1) Section 4—after the definition of *director* insert:
- employing authority* means the person designated by proclamation as being the employing authority for the purposes of this definition.
- 35 (2) Section 4—after its present contents as amended by this section (now to be designated as subsection (1)) insert:
- (2) A proclamation made for the purposes of the definition of *employing authority*—
- (a) may apply by reference to a specified person, or by  
40 reference to the person for the time being holding or acting in a specified office or position; and

- (b) may, from time to time as the Governor thinks fit, be varied or substituted by a new proclamation.

### **100—Amendment of section 16—Common seal and execution of documents**

Section 16(2)—delete "an employee of the Commission" and substitute:

5 a person employed under this Act

### **101—Insertion of Part 2 Division 5**

Part 2—after Division 4 insert:

## **Division 5—Staffing arrangements**

### **18A—Staffing arrangements**

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

(f) may be revoked at any time by the employing authority.

(9) A change in the person who constitutes the employing authority under this Act will not affect the continuity of employment of a person under this section.

5 (10) The Commission must, at the direction of the Minister, the Treasurer or the employing authority, make payments with respect to any matter arising in connection with the employment of a person under this section (including, but not limited to, payments with respect to  
10 salary or other aspects of remuneration, leave entitlements, superannuation contributions, taxation liabilities, workers compensation payments, termination payments, public liability insurance and vicarious liabilities).

(11) The Commission does not have the power to employ any person.

15 (12) The Commission may, under an arrangement established by the Minister administering an administrative unit, make use of the services or staff of that administrative unit.

(13) In this section—

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

20 **102—Amendment of section 20—Powers of Commission**

(1) Section 20(2)(b)—delete paragraph (b)

(2) Section 20(3)—delete subsection (3)

**Part 23—Amendment of *State Opera of South Australia Act 1976***

**103—Amendment of section 4—Interpretation**

25 (1) Section 4—after the definition of *the Board* insert:

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

(2) Section 4—after its present contents as amended by this section (now to be designated as subsection (1)) insert:

30 (2) A proclamation made for the purposes of the definition of *employing authority*—

(a) may apply by reference to a specified person, or by reference to the person for the time being holding or acting in a specified office or position; and

35 (b) may, from time to time as the Governor thinks fit, be varied or substituted by a new proclamation.

**104—Amendment of section 7—Staff participation on Board**

Section 7—delete "an employee of the State Opera" and substitute:

a person employed under this Act

## 105—Repeal of section 20

Section 20—delete the section

## 106—Amendment of heading to Part 3

Heading to Part 3—delete "Employees" and substitute:

5                                   Staffing arrangements

## 107—Substitution of section 21

Section 21—delete the section and substitute:

### 21—Staffing arrangements

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

(9) A change in the person who constitutes the employing authority under this Act will not affect the continuity of employment of a person under this section.

5 (10) The State Opera must, at the direction of the Minister, the Treasurer or the employing authority, make payments with respect to any matter arising in connection with the employment of a person under this section (including, but not limited to, payments with respect to salary or other aspects of remuneration, leave entitlements, superannuation contributions, taxation liabilities, workers  
10 compensation payments, termination payments, public liability insurance and vicarious liabilities).

(11) The State Opera does not have the power to employ any person.

15 (12) The State Opera may, under an arrangement established by the Minister administering an administrative unit, make use of the services or staff of that administrative unit.

(13) In this section—

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

#### **21A—Related staffing issues**

20 (1) The employing authority may, with the approval of the Minister, determine that, for the purposes of the accrual of, or a payment of a lump sum in lieu of the grant of, long service leave or for the purposes of the accrual of leave on account of illness, previous  
25 service of a person employed under this Act with an employer other than the employing authority may be regarded, to the extent approved by the Minister, as service with the employing authority.

(2) The employing authority may enter into arrangements contemplated by section 5 of the *Superannuation Act 1988*.

#### **108—Amendment of section 22—Secretary to the Board**

30 Section 22(2)—delete "an employee of the State Opera" and substitute:

a person employed under this Act

### **Part 24—Amendment of *State Theatre Company of South Australia Act 1972***

#### **109—Amendment of section 4—Interpretation**

35 (1) Section 4—before the definition of *financial year* insert:

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

(2) Section 4—after its present contents as amended by this section (now to be designated as subsection (1)) insert:

(2) A proclamation made for the purposes of the definition of *employing authority*—

(a) may apply by reference to a specified person, or by reference to the person for the time being holding or acting in a specified office or position; and

(b) may, from time to time as the Governor thinks fit, be varied or substituted by a new proclamation.

### **110—Amendment of section 6—Board of Governors**

(1) Section 6(2)(c)—delete paragraph (c) and substitute:

(c) of whom one will be a person employed under Part 3 elected, in accordance with this Act, by those persons employed under that Part.

(2) Section 6(10)—delete subsection (10) and substitute:

(10) A governor elected under subsection (2)(c) will, subject to this Act, hold that office until the next election of a governor by the relevant employees under this Act.

(3) Section 6(11)—delete "by the employees of the Company" wherever occurring and substitute in each case:

under subsection (2)(c)

### **111—Amendment of section 9—Casual vacancies**

Section 9(f)—delete paragraph (f) and substitute:

(f) being a governor elected under section 6(2)(c), he or she ceases to be employed under this Act;

### **112—Amendment of section 16—Declaration of interest**

Section 16(2)—delete "of the Company" and substitute:

under this Act

### **113—Repeal of section 19**

Section 19—delete the section

### **114—Amendment of heading to Part 3**

Heading to Part 3—delete "Employees" and substitute:

Staff

### **115—Substitution of sections 20 and 21**

Sections 20 and 21—delete the sections and substitute:

#### **20—Staffing arrangements**

(1) The employing authority may employ staff to perform functions in connection with the operations or activities of the Company.



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

(12) The Company may, under an arrangement established by the Minister administering an administrative unit, make use of the services or staff of that administrative unit.

(13) In this section—

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

#### **20A—Related staffing issues**

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

(2) The employing authority may enter into arrangements contemplated by section 5 of the *Superannuation Act 1988*.

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

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

#### **116—Amendment of section 22—Secretary to the Board**

Section 22(1)—delete subsection (1) and substitute:

(1) The Board must appoint a person employed under this Part to be the secretary to the Board.

### **Part 25—Amendment of *Technical and Further Education Act 1975***

#### **117—Amendment of section 4—Interpretation**

(1) Section 4(1), definition of *employee*—delete the definition and substitute:

*employing authority* means—

- (a) unless paragraph (b) applies—the Chief Executive Officer; or
- (b) if the Governor thinks fit, a person, or a person holding or acting in an office or position, designated by proclamation made for the purposes of this definition;

(2) Section 4(1), definition of *officer*—delete "by the Minister"

(3) Section 4(2)(b)—delete "the Minister" wherever occurring and substitute in each case:  
the employing authority

(4) Section 4(3)—delete "The Minister" and substitute:  
The employing authority

(5) Section 4—after subsection (3) insert:

(4) The Governor may, from time to time as the Governor thinks fit, vary or revoke a proclamation made for the purposes of the definition of *employing authority*, or make a new proclamation for the purposes of that definition.

(5) If—

(a) the Chief Executive Officer is the employing authority under this Act; and

(b) a provision of this Act—

(i) requires that a matter be referred to the employing authority by the Chief Executive Officer; or

(ii) provides that the Chief Executive Officer make a recommendation to the employing authority,

the provision will be taken to allow for the Chief Executive Officer, in his or her capacity as the employing authority, to take action without an actual referral or recommendation.

### **118—Amendment of section 8—Delegation by Minister**

(1) Section 8(1)(b)—delete paragraph (b) and substitute:

(b) the person for the time being holding or acting in a position or office established for the purposes of this Act; or

(2) Section 8(1)—delete ", except the power to dismiss a person from office"

(3) Section 8—after subsection (3) insert:

(4) A power, duty or function delegated under this section may, if the instrument of delegation so provides, be further delegated.

### **119—Amendment of section 9—General powers of Minister**

Section 9(6)—delete subsection (6)

### **120—Amendment of section 13—Delegation by Chief Executive Officer**

(1) Section 13(1)(a)—delete "by the Minister under section 9 or 15" and substitute:  
under this Act

(2) Section 13—after subsection (3) insert:

(4) A power, function or duty delegated under this section may, if the instrument of delegation so provides, be further delegated.

### **121—Amendment of section 15—Appointment of officers**

(1) Section 15(1)—delete subsection (1) and substitute:

(1) Subject to this Act, the employing authority may appoint such officers to provide technical and further education and undertake related functions pursuant to this Act as the employing authority thinks fit.

(2) Section 15(4)—delete "the Minister" and substitute:  
the employing authority

(3) Section 15(6)—delete "the Minister" and substitute:  
the employing authority

5 (4) Section 15—after subsection (6) insert:

(7) If the Chief Executive Officer is not the employing authority, the employing authority must, in acting under this section, consult with the Chief Executive Officer.

### 10 **122—Amendment of section 15A—Termination of appointment of officers on probation**

(1) Section 15A—delete "The Minister" and substitute:  
The employing authority

(2) Section 15A—after its present contents, as amended by this section (now to be designated as subsection (1)) insert:

15 (2) If the Chief Executive Officer is not the employing authority, the employing authority must, in acting under this section, consult with the Chief Executive Officer.

### **123—Amendment of section 16—Retrenchment of officers**

(1) Section 16(1)—delete "Where the Minister" and substitute:

20 Where the employing authority

(2) Section 16(1)—delete "the Minister may, by a written determination under his or her hand" and substitute:

the employing authority may, by written determination

(3) Section 16—after subsection (2) insert:

25 (3) If the Chief Executive Officer is not the employing authority, the employing authority must, in acting under this section, consult with the Chief Executive Officer.

### **124—Amendment of section 17—Incapacity of officers**

(1) Section 17(1)(b)—delete paragraph (b) and substitute:

30 (b) determine to take steps to transfer the officer to some other employment in the Government of the State;

(2) Section 17(1)(d)—delete "the Minister" and substitute:

the employing authority

(3) Section 17(4)—delete subsection (4) and substitute:

(4) The Chief Executive Officer may, in acting under subsection (1)(b), recommend to the employing authority that the officer be appointed to an office or position under section 39AAB or attempt to secure for the officer some other appropriate employment in the Government of the State.

(4) Section 17(5)—delete "The Minister" and substitute:

The employing authority

### **125—Amendment of section 21—Payment in lieu of long service leave**

(1) Section 21(2)—delete "the Minister must pay" and substitute:

the employing authority must ensure that there is paid

(2) Section 21(2)(b)—delete "the Minister" and substitute:

the employing authority, with the approval of the Minister,

(3) Section 21(4)—delete "The Minister" and substitute:

The employing authority

### **126—Amendment of section 22—Interruption of service**

(1) Section 22(2)—delete "the Minister" and substitute:

the employing authority

(2) Section 22(3)—delete "the Minister" and substitute:

the employing authority

### **127—Amendment of section 23—Recognition of previous employment**

Section 23(5)—delete "the Minister" and substitute:

the employing authority

### **128—Amendment of section 26—Disciplinary action**

(1) Section 26(2)(b)—delete "the Minister" and substitute:

the employing authority

(2) Section 26(3)—delete "The Minister" and substitute:

The employing authority

(3) Section 26(4)—delete "the Minister" and substitute:

the employing authority

### **129—Amendment of section 27—Suspension**

Section 27(3)—delete "the Minister otherwise directs" and substitute:

the employing authority otherwise determines

**130—Amendment of section 39AA—Operation of industrial relations legislation**

Section 39AA—delete "by the Minister"

**131—Insertion of sections 39AAB and 39AAC**

5 After section 39AA insert:

**39AAB—Other staffing arrangements**

- 10
- (1) The employing authority may employ such other persons (in addition to officers appointed under this Act and employees in the Department) as appear to the employing authority to be necessary for the proper administration of this Act.
- (2) The employing authority is, in acting under this section, subject to direction by the Minister.
- 15 (3) However, no Ministerial direction may be given by the Minister relating to the appointment, transfer, remuneration, discipline or termination of a particular person.
- (4) In addition, if the Chief Executive Officer is not the employing authority, the employing authority must, in acting under this section, consult with the Chief Executive Officer.

**39AAC—Employing authority—related matters**

- 20 (1) The employing authority may delegate a power or function under this Act.
- (2) A delegation under subsection (1)—
- 25 (a) must be by instrument in writing; and
- (b) may be made to a body or person (including a person for the time being holding or acting in a specified office or position); and
- (c) may be unconditional or subject to conditions; and
- (d) does not derogate from the power of the employing authority to act personally in any matter; and
- 30 (e) may be revoked at any time by the employing authority.
- (3) A power or function delegated under subsection (1) may, if the instrument of delegation so provides, be further delegated.
- 35 (4) A change in the person who constitutes the employing authority under this Act will not affect the continuity of employment or appointment of a person under this Act.

## Schedule 1—Transitional provisions

### 1—Interpretation

In this Part, unless the contrary intention appears—

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

**employing authority** means—

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

**Industrial Commission** means the Industrial Relations Commission of South Australians;

**prescribed body** means—

- (a) the Aboriginal Lands Trust;
- (b) the Adelaide Cemeteries Authority;
- (c) the Adelaide Festival Centre Trust;
- (d) the Adelaide Festival Corporation;
- (e) SA Ambulance Service Inc;
- (f) the Minister to whom the administration of the *Children's Services Act 1985* is committed;
- (g) the Minister to whom the administration of the *Education Act 1972* is committed;
- (h) the Electricity Supply Industry Planning Council;
- (i) a body constituted under the *Fire and Emergency Services Act 2005*;
- (j) the History Trust of South Australia;
- (k) the Institute of Medical and Veterinary Science;
- (l) a regional NRM board constituted under the *Natural Resources Management Act 2004*;
- (m) the Senior Secondary Assessment Board of South Australia;
- (n) the South Australian Country Arts Trust;
- (o) the South Australian Film Corporation;
- (p) the South Australian Health Commission;
- (q) an incorporated hospital under the *South Australian Health Commission Act 1976*;
- (r) an incorporated health centre under the *South Australian Health Commission Act 1976*;

- (s) the South Australian Motor Sport Board;
- (t) the South Australian Tourism Commission;
- (u) The State Opera of South Australia;
- (v) the State Theatre Company of South Australia;
- 5 (w) the Minister to whom the administration of the *Technical and Further Education Act 1975* is committed;

*relevant Act* means—

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

## 15 2—Transfer of employment

- (1) Subject to this clause, a person who, immediately before the commencement of this clause, was employed by a prescribed body under a relevant Act will, on that commencement, be taken to be employed by the employing authority under that Act (as amended by this Act).
- 20 (2) The following persons will, on the commencement of this clause, be taken to be employed as follows:
  - (a) a person who, immediately before the commencement of this clause, was employed under section 6L(1) of the *Electricity Act 1996* will, on that commencement, be taken to be employed by the employing authority under that Act (as amended by this Act);
  - 25 (b) a person who, immediately before the commencement of this clause, was employed by the South Australian Fire and Emergency Services Commission will, on that commencement, be taken to be employed by the Chief Executive of that body;
  - 30 (c) a person who, immediately before the commencement of this clause, was employed by an emergency services organisation under the *Fire and Emergency Services Act 2005* will, on that commencement, be taken to be employed by the Chief Officer of that body;
  - 35 (d) a person who, immediately before the commencement of this clause, was employed by an incorporated hospital or an incorporated health centre under the *South Australian Health Commission Act 1976* will, on that commencement, be taken to be employed by an employing authority under that Act (as amended by this Act) designated by the Governor by proclamation made for the purposes of this paragraph.



- 5 (3) Subject to this clause, the Governor may, by proclamation, provide that a person employed by a subsidiary of a public corporation under the *Public Corporations Act 1993* will be taken to be employed by a person or body designated by the Governor (and the arrangement so envisaged by the proclamation will then have effect in accordance with its terms).
- (4) Subject to subclause (5), an employment arrangement effected by subclause (1), (2) or (3)—
- 10 (a) will be taken to provide for continuity of employment without termination of the relevant employee's service; and
- (b) will not affect—
- (i) existing conditions of employment or existing or accrued rights to leave; or
- (ii) a process commenced for variation of those conditions or rights.
- 15 (5) If, immediately before the commencement of this clause, a person's employment within the ambit of subclause (1), (2) or (3) was subject to the operation of an award or certified agreement (but not an Australian Workplace Agreement) under the Commonwealth Act, then, on that commencement, an award or enterprise agreement (as the case requires) will be taken to be created under the *Fair Work Act 1994*—
- 20 (a) with the same terms and provisions as the relevant industrial instrument under the Commonwealth Act; and
- (b) with any terms or provisions that existed under an award or enterprise agreement under the *Fair Work Act 1994*, that applied in relation to employment of the kind engaged in by the person, immediately before 27 March 2006, and that ceased to apply by virtue of the operation of
- 25 provisions of the Commonwealth Act that came into force on that day, subject to any modification or exclusion prescribed by regulations made for the purposes of this subclause and subject to the operation of subclause (6).
- (6) Where an award or enterprise agreement is created by virtue of the operation of subclause (5)—
- 30 (a) the award or enterprise agreement will be taken to be made or approved (as the case requires) under the *Fair Work Act 1994* on the day on which this clause commences; and
- (b) the *Fair Work Act 1994* will apply in relation to the award or enterprise agreement subject to such modifications or exclusions as may be prescribed
- 35 by regulations made for the purposes of this subclause; and
- (c) the Industrial Commission may, on application by the Minister to whom the administration of the *Fair Work Act 1994* is committed, or an application by a person or body recognised by regulations made for the purposes of this subclause, vary or revoke any term or provision of the award or enterprise agreement if the Industrial Commission is satisfied that it is fair and
- 40 reasonable to do so in the circumstances.

### 3—Superannuation

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

### 4—Interpretative provision

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

### 5—Related matters

- (1) A notice in force under section 51 of the *Children's Services Act 1985* immediately before the commencement of this clause will continue to have effect for the purposes of that section, as amended by this Act.
- 30 (2) A notice in force under section 28 of the *Institute of Medical and Veterinary Science Act 1982* immediately before the commencement of this clause will continue to have effect for the purposes of that section, as amended by this Act.
- (3) A notice in force under section 61 of the *South Australian Health Commission Act 1976* immediately before the commencement of this clause will continue to have effect for the purposes of that section, as amended by this Act.
- 35 (4) A notice in force under section 13(6) of the *South Australian Motor Sport Act 1984* immediately before the commencement of this clause will continue to have effect after that commencement but may, pursuant to this subclause, be varied from time to time, or revoked, by the Minister to whom the administration of that Act is committed.

- 5 (5) The fact that a person becomes an employer in his or her capacity as an employing authority under an Act amended by this Act does not affect the status of any body or person as an employer of public employees for the purposes of the *Fair Work Act 1994* (unless or until relevant regulations are made under the provisions of that Act).

## **6—Other provisions**

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