

House of Assembly—No 99

As laid on the table and read a first time, 12 November 2020

South Australia

**Education and Children's Services (Miscellaneous)
Amendment Bill 2020**

A BILL FOR

An Act to amend the *Education and Children's Services Act 2019*.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

Part 2—Amendment of *Education and Children's Services Act 2019*

- 4 Amendment of section 3—Interpretation
 - 5 Amendment of section 26—Continuation of registered children's services centres
 - 6 Insertion of section 26A
 - 26A Minister may declare certain stand-alone preschools or children's services centres to have been established under Act
 - 7 Amendment of section 29—Closure of stand-alone preschools and children's services centres
 - 8 Amendment of section 41—Functions and powers of governing councils and affiliated committees
 - 9 Insertion of section 56A
 - 56A Minister may declare existing school to be special purpose school
 - 10 Amendment of section 67—Principal may require other principal to provide report in respect of specified child
 - 11 Amendment of section 75—Principal etc to report persistent non-attendance or non-participation
 - 12 Insertion of section 89A
 - 89A Delegation
 - 13 Amendment of section 90—Application of Part
 - 14 Amendment of section 91—Offensive or threatening behaviour
 - 15 Amendment of section 93—Power to bar person from premises
 - 16 Amendment of section 94—Review of barring notice by Minister
 - 17 Amendment of section 101—Probation
 - 18 Amendment of section 110—Interruption of service where officer leaves teaching service
 - 19 Insertion of section 110A
 - 110A Special provisions relating to interruption of service of certain term employees
 - 20 Amendment of section 111—Special provisions relating to certain temporary officers of the teaching service
 - 21 Amendment of section 113—Entitlement of persons transferred to the teaching service
 - 22 Amendment of section 121—Chief Executive may employ other persons for purposes of Act
 - 23 Amendment of section 129—Materials and services charges for schools
 - 24 Amendment of section 138—Protections, privileges and immunities
 - 25 Amendment of section 141—Regulations
-

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Education and Children's Services (Miscellaneous) Amendment Act 2020*.

2—Commencement

This Act comes 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 *Education and Children's Services Act 2019*

4—Amendment of section 3—Interpretation

- (1) Section 3(1), definition of *approved learning program*, (c)—delete "a college (within the meaning of the *Technical and Further Education Act 1975*)" and substitute:

TAFE SA

- (2) Section 3(1), definition of *parent*, (a)—delete paragraph (a)

5—Amendment of section 26—Continuation of registered children's services centres

- (1) Section 26(1)(c)—delete "governing council of the"

- (2) Section 26—after subsection (2) insert:

(2a) A reference in this Act to a stand-alone preschool or children's services centre continued under this section (being a reference that contemplates the stand-alone preschool or children's services centre being unincorporated) will be taken to be a reference to the body corporate comprising the stand-alone preschool or children's services centre (as the case requires).

(2b) A reference in this Act to the governing council of a stand-alone preschool or children's services centre continued under this section (being a reference that contemplates or requires the governing council being, or to be, a body corporate) will be taken to be a reference to the body corporate comprising the stand-alone preschool or children's services centre (as the case requires).

Example—

Section 24 contemplates the governing council of a stand-alone preschool or children's services centre entering into a transaction, or borrowing money.

6—Insertion of section 26A

After section 26 insert:

26A—Minister may declare certain stand-alone preschools or children's services centres to have been established under Act

- (1) Despite any other provision of this Act, the Minister may, by notice in the Gazette, declare that, from the date specified in the notice, a specified stand-alone preschool or children's services centre continued by section 26 will be taken to be a stand-alone preschool or children's services centre established under this Act.
- (2) Before making a declaration under this section in relation to a stand-alone preschool or children's services centre, the Minister must consult with the governing council of the stand-alone preschool or children's services centre.
- (3) On the day specified in the notice under subsection (1)—
 - (a) sections 19 (other than subsection (1)) and 20 will apply to the governing council of the stand-alone preschool or children's services centre; and
 - (b) section 26 ceases to apply to the stand-alone preschool or children's services centre; and
 - (c) the incorporation of the stand-alone preschool or children's services centre is dissolved; and
 - (d) the property (including, to avoid doubt, real property), assets and liabilities of the stand-alone preschool or children's services centre (as existing immediately before the day specified in the notice) will vest in the Minister; and
 - (e) the stand-alone preschool or children's services centre will be taken to be a stand-alone preschool or children's services centre (as the case requires) established under section 18.
- (4) The Minister may, by notice in the Gazette, transfer specified property, assets or liabilities vested in the Minister under this section to a specified person or body.
- (5) No stamp duty is payable under a law of the State in respect of a transfer under subsection (4).
- (6) To avoid doubt, a declaration may be made under this section in relation to a stand-alone preschool or children's services centre without the need to close the stand-alone preschool or children's services centre in accordance with section 29.
- (7) The regulations may make further provision in relation to declarations under this section.

7—Amendment of section 29—Closure of stand-alone preschools and children's services centres

(1) Section 29(5)—delete "(or both)"

(2) Section 29—after subsection (5) insert:

5 (5a) If the governing council of a stand-alone preschool or children's services centre is dissolved under this section—

(a) the Minister may, by notice in the Gazette, transfer specified assets or liabilities (or both) of the governing council to a specified person or body; and

10 (b) any remaining assets and liabilities of the governing council vest in the Minister.

(5b) No stamp duty is payable under a law of the State in respect of a transfer under subsection (5a).

8—Amendment of section 41—Functions and powers of governing councils and affiliated committees

15 Section 41(1)(b)—after subparagraph (ii) insert:

(iia) the education, care, development, recreation, health or welfare of students outside of school hours; and

9—Insertion of section 56A

20 After section 56 insert:

56A—Minister may declare existing school to be special purpose school

(1) Despite any other provision of this Act, the Minister may, by notice in the Gazette, declare that, from the date specified in the notice, a specified school will be taken to be a special purpose school.

(2) Before making a declaration under this section in relation to a school, the Minister must consult with the governing council of the school.

(3) To avoid doubt, a declaration may be made under this section in relation to a school without the need to close the school in accordance with section 52.

(4) The regulations may make further provision in relation to declarations under this section.

10—Amendment of section 67—Principal may require other principal to provide report in respect of specified child

35 (1) Section 67(2)(a)—after "may" insert:

, subject to the regulations,

(2) Section 67(3)—delete subsection (3) and substitute:

(3) A report under subsection (1)—

- (a) must be provided in a manner and form determined by the Minister; and
- (b) must be provided within the period specified in the notice (being not less than the period determined by the Minister for the purposes of this paragraph); and
- (c) must be accompanied by copies of such records or documents as may be specified in the notice; and
- (d) must contain such information as may be specified in the notice.

11—Amendment of section 75—Principal etc to report persistent non-attendance or non-participation

(1) Section 75(1)—after "Executive" insert:

, or cause the Chief Executive to be notified,

(2) Section 75—after subsection (2) insert:

(2a) However, a principal of a school will be taken to have notified the Chief Executive under subsection (1) if—

- (a) the school records information relating to the persistent non-attendance of students on a record management system (however described); and
- (b) a report relating to persistent non-attendance of students at the school containing any information required by the regulations is provided to the Chief Executive at least once in each school term.

(2b) To avoid doubt, a report under subsection (2a)(b)—

- (a) may relate to more than 1 school or approved learning program; and
- (b) without limiting that paragraph, may consist of an extract of the record management system.

12—Insertion of section 89A

After section 89 insert:

89A—Delegation

- (1) The Board may delegate a function or power under this Division (other than a prescribed function or power) to a specified body or person (including a person for the time being holding or acting in a specified office or position).
- (2) A delegation under this section—
 - (a) must be by instrument in writing; and

- (b) may be absolute or conditional; and
- (c) does not derogate from the ability of the Board to act in any matter; and
- (d) is revocable at will.

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

13—Amendment of section 90—Application of Part

(1) Section 90—after paragraph (d) insert:

(da) prescribed departmental premises;

10 (2) Section 90—after its present contents (now to be designated as subsection (1)) insert:

(2) In this section—

prescribed departmental premises means—

- (a) any premises occupied by the Department; or
- (b) any other premises prescribed by the regulations for the purposes of this paragraph.

15

14—Amendment of section 91—Offensive or threatening behaviour

Section 91(3)(a)—delete "or approved education and care service" and substitute:
, approved education and care service or prescribed departmental premises

15—Amendment of section 93—Power to bar person from premises

20 Section 93(7), definition of *designated person*—after paragraph (c) insert:

or

(d) in the case of prescribed departmental premises—

- (i) the Chief Executive; or
- (ii) a person authorised in writing by the Chief Executive in respect of the premises for the purposes of this section.

25

16—Amendment of section 94—Review of barring notice by Minister

Section 94(5)—after paragraph (c) insert:

(ca) prescribed departmental premises.

17—Amendment of section 101—Probation

30 Section 101(9)—delete subsection (9)

18—Amendment of section 110—Interruption of service where officer leaves teaching service

(1) Section 110(1)—delete "or a repealed Act" and substitute:
, a repealed Act or the *Children's Services Act 1985*

- (2) Section 110(2)—delete "teaching service was" and substitute:

teaching service is, or was,

- (3) Section 110(2)—delete "within 2 years after the date of that interruption, the officer's service before the interruption and service after the interruption will, for the purposes of this Division be taken into account as though that service were continuous." and substitute:

within—

(a) in the case of an officer who was employed before the interruption as an ongoing employee—2 years after the date of that interruption;

(b) in the case of an officer who was employed before the interruption as a term employee—3 months after the date of that interruption (disregarding any period of school vacation occurring after the interruption but before the reappointment),

the officer's service before the interruption and service after the interruption will, for the purposes of this Division, be taken into account as though that service were continuous.

- (4) Section 110(3)—delete subsection (3) and substitute:

(3) Subsections (1) and (2) apply in relation to—

(a) a retirement occurring before or after the commencement of this section; and

(b) an interruption in service commencing before or after the commencement of this section.

- (5) Section 110(5)—delete "exceeding 2 years, the Chief Executive may grant a certificate under this section (and, if a certificate is issued, the service of the officer will be regarded as continuous despite the interruption, but the period of the interruption will not be taken into account in determining the period of the officer's service)." and substitute:

exceeding—

(a) in the case of an officer who was employed before the interruption as an ongoing employee—2 years;

(b) in the case of an officer who was employed before the interruption as a term employee—3 months,

the Chief Executive may grant a certificate under this section (and, if a certificate is issued, the service of the officer will be regarded as continuous despite the interruption, but the period of the interruption will not be taken into account in determining the period of the officer's service).

- (6) Section 110(6)—delete subsection (6)

(7) Section 110—after subsection (7) insert:

(7a) For the purposes of this section, a reference to an officer who was employed as a term employee will be taken to include a reference to—

- (a) a person employed as a temporary employee under the *Education Act 1972* or the *Children's Services Act 1985*; or
- (b) a person employed as a casual employee under the *Education Act 1972* or the *Children's Services Act 1985* who is eligible to accrue long service leave.

(8) Section 110(8), definition of *prescribed employment*, (f)—delete "a college (within the meaning of the *Technical and Further Education Act 1975*)" and substitute:

TAFE SA under the *TAFE SA Act 2012*

(9) Section 110(8), definition of *prescribed employment*, (g)—delete "Minister" and substitute:

Chief Executive

19—Insertion of section 110A

After section 110 insert:

110A—Special provisions relating to interruption of service of certain term employees

(1) This section applies to an officer of the teaching service where—

- (a) the service of the officer was, before the commencement of this section, interrupted other than by resignation or termination for misconduct (whether or not the interruption in service occurred before or after the commencement of this Act); and
- (b) the officer was, before the interruption, employed as a term employee; and
- (c) the officer was, on or after 1 July 2020, reappointed as an officer of the teaching service; and
- (d) the reappointment occurred more than 3 months after the date of the interruption.

(2) In determining whether a reappointment occurred more than 3 months after the date of an interruption, any period of school vacation occurring after the interruption but before the reappointment is to be disregarded.

(3) On the commencement of this section, the following provisions apply in relation to an officer of the teaching service to whom this section applies:

- (a) subject to section 110(5), the service of the officer after reappointment will be taken not to be continuous with their service before the interruption;

(b) any entitlements in respect of long service leave and skills and experience retention leave accrued or purportedly accrued by the officer—

(i) on or after 1 July 2020; but

(ii) before the commencement of this section,

are, by force of this section, extinguished;

(c) subject to section 110(5), the entitlements accrued by the officer during the period referred to in paragraph (b) are to be determined on the basis that the officer's appointment after the interruption was a new appointment to the teaching service.

(4) To the extent that a matter relating to the long service leave or skills and experience retention leave of an officer to whom this section applies is not able to be determined under subsection (3), the matter is to be determined in accordance with a determination of the Chief Executive.

(5) Nothing in this section affects the validity of—

(a) a period of long service leave or skills and experience retention leave; or

(b) a payment of a monetary amount in lieu of long service leave or skills and experience retention leave,

taken or made under this or any other Act before the commencement of this section.

(6) This section has effect despite—

(a) any other provision of this Act or a provision of any other Act or law; or

(b) a term of a contract, enterprise bargaining agreement, undertaking or other instrument or agreement (however described) that was in force immediately before the commencement of this section.

(7) For the purposes of this section, a reference to an officer who was employed as a term employee will be taken to include a reference to—

(a) a person employed as a temporary employee under the *Education Act 1972* or the *Children's Services Act 1985*; or

(b) a person employed as a casual employee under the *Education Act 1972* or the *Children's Services Act 1985* who is eligible to accrue long service leave.

(8) To avoid doubt, a reference to a reappointment of an officer will, in the case of an officer who was originally appointed under a repealed Act or the *Children's Services Act 1985*, be taken to include an appointment of the officer under this Act following an interruption in service.

- (9) The regulations may make provisions of a saving or transitional nature in respect of the operation of this section.

20—Amendment of section 111—Special provisions relating to certain temporary officers of the teaching service

5 Section 111(1)—delete "immediately" first occurring

21—Amendment of section 113—Entitlement of persons transferred to the teaching service

- (1) Section 113(7), definition of *prescribed employment*, (f)—delete "a college (within the meaning of the *Technical and Further Education Act 1975*)" and substitute:

10 TAFE SA under the *TAFE SA Act 2012*

- (2) Section 113(7), definition of *prescribed employment*, (g)—delete "Minister" and substitute:

Chief Executive

22—Amendment of section 121—Chief Executive may employ other persons for purposes of Act

15

Section 121(2)—delete "and" and substitute:

, preschools or

23—Amendment of section 129—Materials and services charges for schools

- (1) Section 129—after subsection (1) insert:

20

(1a) A materials and services charge may consist of 1 or both of the following:

(a) an amount that must be paid and is recoverable under this section (the *compulsory component*);

25

(b) an amount consisting of a voluntary contribution towards materials and services to be provided to or for the student (the *voluntary component*).

- (2) Section 129(2)(c)—delete "in an amount exceeding" and substitute:

where the compulsory component exceeds

- (3) Section 129(2)(e)—delete "calender" and substitute:

30

calendar

- (4) Section 129(4)—delete "for a" and substitute:

for the compulsory component of a

- (5) Section 129(5)—delete "a materials" and substitute:

the compulsory component of a materials

35

- (6) Section 129(8), definition of *person who is responsible for the student*—delete "a step-parent or"

24—Amendment of section 138—Protections, privileges and immunities

- (1) Section 138(1)—delete subsection (1)
- (2) Section 138(2)—delete "and without negligence"

25—Amendment of section 141—Regulations

- 5 (1) Section 141(2)—after paragraph (e) insert:
 - (ea) provisions relating to interruptions of service of officers of the teaching service (including provisions reducing or increasing a period of interruption referred to in section 110 or 110A within
10 which an officer's service will be taken to be continuous on reappointment);
- (2) Section 141(2)—after paragraph (h) insert:
 - (ha) the education, care, development, recreation, health or welfare of students outside of school hours;