

Legislative Council—No 125

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South Australia

South Australian Multicultural Bill 2020

A BILL FOR

An Act to advance multiculturalism and interculturalism in South Australia, to establish the South Australian Multicultural Commission, to provide for the South Australian Multicultural Charter, to repeal the *South Australian Multicultural and Ethnic Affairs Commission Act 1980*, and for other purposes.

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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 *South Australian Multicultural Act 2020*.

2—Commencement

5 This Act comes into operation on a day to be fixed by proclamation.

3—Interpretation

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

South Australian Multicultural Charter means the South Australian Multicultural Charter prepared under section 19, as in force from time to time;

10 *South Australian Multicultural Commission* or *Multicultural Commission* means the South Australian Multicultural Commission established under section 5;

State authority means—

- (a) a person who holds an office established by an Act; or
- (b) a public sector agency; or
- 15 (c) an agency or instrumentality of the Crown; or
- (d) a local council constituted under the *Local Government Act 1999*; or
- (e) any incorporated or unincorporated body—
 - (i) established for a public purpose by an Act; or
 - 20 (ii) established for a public purpose under an Act (other than an Act providing for the incorporation of companies or associations, co-operatives, societies or other voluntary organisations); or
 - (iii) established, or subject to control or direction, by the Governor, a Minister of the Crown or any instrumentality or agency of the Crown or a local council (whether or not established by or under an Act or
 - 25 an enactment); or

(f) any other person or body declared by the regulations to be a State authority, but does not include a person or body declared by the regulations to be excluded from the ambit of this definition.

30 (2) For the purposes of this Act, a reference to *diversity* will be taken to be a reference to cultural, linguistic, racial and religious diversity.

(3) For the purposes of this Act, a reference to *multiculturalism* will be taken to be a reference to policies and practices that recognise and respond to the diversity of the South Australian community, and that have as their primary objects the creation of conditions under which all members of the South Australian community, and groups

35 within the community, may—

- (a) live and work together harmoniously; and

- (b) fully and effectively participate in, and employ their skills and talents for the benefit of, the economic, social and cultural life of the State; and
 - (c) maintain and give expression to their distinctive cultural heritages.
- (4) For the purposes of this Act, a reference to *interculturalism* will be taken to be a reference to policies and practices that recognise and promote in the community—
- (a) a deep understanding of, and respect for, all cultures; and
 - (b) a dynamic, inclusive interaction between diverse groups within the community.

Part 2—Parliamentary declaration

4—Parliamentary declaration

The Parliament of South Australia recognises and acknowledges—

- (a) that Aboriginal peoples are South Australia's first peoples and nations, and the traditional owners and occupants of land and waters in South Australia;
- (b) the cultural, linguistic, racial and religious diversity of the people of South Australia;
- (c) that all people have a right to express and celebrate their cultural, linguistic and religious diversity;
- (d) that South Australia's diversity should be reflected in a whole of government approach to policy development, implementation and evaluation;
- (e) that all South Australians should be able to participate in the cultural, economic, political and social life of South Australia to the maximum extent possible;
- (f) that State authorities are responsible for giving effect to principles of multiculturalism in the course of their official functions and responsibilities;
- (g) that all people are entitled to mutual respect and understanding regardless of their background;
- (h) that diversity is an asset and a valuable resource benefitting South Australia;
- (i) that diversity brings richness to the South Australian community;
- (j) the valuable contribution of South Australians from diverse backgrounds to South Australia,

and wishes to promote South Australia as a unified, harmonious and inclusive community.

Part 3—South Australian Multicultural Commission

5—South Australian Multicultural Commission

- (1) The South Australian Multicultural Commission is established.
- (2) The Multicultural Commission—
 - (a) is a body corporate with perpetual succession and a common seal; and

- (b) is capable of suing and being sued; and
 - (c) has the powers of a natural person; and
 - (d) holds its property on behalf of the Crown.
- (3) Where an apparently genuine document purports to bear the common seal of the Multicultural Commission, it will be presumed in any legal proceedings, in the absence of proof to the contrary, that the common seal of the Multicultural Commission has been duly affixed to that document.
- (4) Except in relation to the formulation of advice and reports to the Minister, the Multicultural Commission is subject to the direction and control of the Minister.

6—Resources of Multicultural Commission

The Minister must ensure that the Multicultural Commission is provided with such resources as may reasonably be required to carry out its functions under this Act.

7—Constitution of Multicultural Commission

- (1) The Multicultural Commission consists of up to 15 persons appointed by the Minister who together have, in the Minister's opinion, the abilities, knowledge and experience required for the effective performance of the Multicultural Commission's functions.
- (2) The Minister must, before appointing a member to the Multicultural Commission, call for expressions of interest under a scheme determined by the Minister for the purposes of this subsection.
- (3) In appointing members to the Multicultural Commission, the Minister should, as far as is reasonably practicable, ensure that the membership of the Multicultural Commission reflects an appropriate diversity of cultural backgrounds, gender, lived experiences, age and geographic location, and should have regard to—
- (a) the knowledge; and
 - (b) the sensitivity; and
 - (c) the enthusiasm and personal commitment; and
 - (d) the experience and involvement with culturally diverse groups,
- of each person to be so appointed.
- (4) Of the members appointed to the Multicultural Commission, at least half (rounded down to the nearest whole number) must be women.
- (5) A member of the Multicultural Commission will be appointed for a term not exceeding 3 years and on conditions determined by the Minister and specified in the instrument of appointment.
- (6) A member of the Multicultural Commission will, at the expiration of a term of appointment, be eligible for reappointment (however, a member cannot hold office for more than 3 consecutive terms).
- (7) The Minister may remove a member from office—
- (a) for misconduct; or
 - (b) for failure or incapacity to carry out the duties of the member's office satisfactorily; or

- (c) for contravention of a condition of the member's appointment; or
- (d) for dishonourable conduct; or
- (e) if the member has, without leave of the Multicultural Commission, been absent from 4 consecutive meetings of the Multicultural Commission.

5 (8) The Minister may remove all members of the Multicultural Commission from office if, in the opinion of the Minister, the Multicultural Commission has failed to carry out its functions satisfactorily and its membership should, in the opinion of the Minister, be reconstituted for that reason.

10 (9) The office of a member of the Multicultural Commission becomes vacant if the member—

- (a) dies; or
- (b) completes a term of office and is not reappointed; or
- (c) resigns by written notice to the Minister; or
- (d) is convicted of an indictable offence or sentenced to imprisonment for an offence; or
- (e) is removed from office under this section.

15 (10) On the office of a member of the Multicultural Commission becoming vacant, the Minister may appoint a person to the vacant office (and the person will hold office for the remainder of the member's term of office).

20 **8—Presiding member and deputy presiding member**

The Minister must appoint a member (the *presiding member*) to preside at meetings of the Multicultural Commission and may appoint another member (the *deputy presiding member*) to preside at meetings of the Multicultural Commission in the absence of the presiding member.

25 **9—Meetings of Multicultural Commission etc**

- (1) Subject to this Act, a quorum of the Multicultural Commission consists of one half the total number of its members (ignoring any fraction resulting from the division) plus 1.
- (2) The Multicultural Commission must meet at least 4 times in any calendar year.
- (3) The presiding member will preside at a meeting of the Multicultural Commission and, in the absence of that person, or, in that member's absence, by the deputy presiding member (if any) and, in the absence of both the presiding member and the deputy presiding member (if any), the members present at a meeting of the Multicultural Commission must choose 1 of their number to preside at the meeting.
- (4) A decision carried by a majority of the votes cast by members of the Multicultural Commission at a meeting is a decision of the Multicultural Commission.
- (5) Each member present at a meeting of the Multicultural Commission has 1 vote on any question arising for decision (and the member presiding at the meeting will have a casting vote if the votes are equal).

- (6) A conference by telephone or other electronic means between the members of the Multicultural Commission will, for the purposes of this section, be taken to be a meeting of the Multicultural Commission at which the participating members are present if—
- 5 (a) notice of the conference is given to all members in the manner determined by the Multicultural Commission for the purpose; and
- (b) each participating member is capable of communicating with every other participating member during the conference.
- (7) A proposed resolution of the Multicultural Commission becomes a valid decision of the Multicultural Commission despite the fact that it is not voted on at a meeting of the Multicultural Commission if—
- 10 (a) notice of the proposed resolution is given to all members of the Multicultural Commission in accordance with procedures determined by the Multicultural Commission; and
- 15 (b) a majority of the members express concurrence in the proposed resolution by letter, email or other written communication setting out the terms of the resolution.
- (8) The Multicultural Commission must have accurate minutes kept of its meetings.
- (9) Subject to this Act and any direction of the Minister, the Multicultural Commission may determine its own procedures.
- 20

10—Remuneration

A member of the Multicultural Commission is entitled to remuneration, allowances and expenses determined by the Minister.

11—Functions

- 25 The Multicultural Commission has the following functions under this Act:
- (a) to advise the Minister in relation to the operation of this Act, and multiculturalism generally;
- (b) to advise and consult with State authorities through the Minister to ensure that there is a coordinated approach to the advancement of multicultural affairs;
- 30 (c) to advise the Minister in relation to the needs, aspirations and contributions of South Australians from diverse backgrounds;
- (d) to advise State authorities through the Minister on the extent to which services and facilities are available to, and meet the needs of, diverse communities of South Australia;
- 35 (e) to increase awareness and understanding of the diversity of the South Australian community and the implications of that diversity;
- (f) to promote unity, understanding and harmony among all communities;
- (g) to raise awareness, and promote understanding, of multiculturalism and interculturalism;
- 40 (h) to promote the South Australian Multicultural Charter and the advantages of a multicultural and intercultural society;

- (i) to undertake such consultation as may required by or under this Act, or by the Minister;
- (j) to keep under review and report on the extent to which government funded services and programs are achieving and furthering the purposes of this Act;
- 5 (k) such other functions as may be assigned to the Multicultural Commission under this or any other Act, or by the Minister.

12—Delegation

- (1) The Multicultural Commission may delegate a function or power of the Multicultural Commission under this Act—

- 10 (a) to a specified person or body; or
- (b) to a person for the time being occupying a specified office or position.

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

- (3) A delegation—

- 15 (a) must be made by instrument in writing; and
- (b) may be made subject to conditions specified in the instrument of delegation; and
- (c) is revocable at will and does not prevent the delegator from acting in a matter.

13—Committees

- 20 (1) The Multicultural Commission may, with the approval of the Minister, establish committees—

- (a) to advise the Multicultural Commission; or
- (b) to carry out functions on behalf of the Multicultural Commission.

- 25 (2) The membership of a committee will be determined by the Multicultural Commission and may, but need not, consist of, or include, members of the Multicultural Commission (however, the Multicultural Commission should, if it is reasonably practicable to do so, ensure that the membership of the committee also reflects the matters set out in section 7(3)).

- 30 (3) The Multicultural Commission will determine who will be the presiding member of a committee.

- (4) The procedures to be observed in relation to the conduct of the business of a committee will be—

- 35 (a) as determined by the Multicultural Commission; and
- (b) insofar as a procedure is not determined under paragraph (a)—as determined by the committee.

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

5 A member of the Multicultural Commission will not be taken to have a direct or indirect interest in a matter for the purposes of the *Public Sector (Honesty and Accountability) Act 1995* by reason only of the fact that the member has an interest in the matter that is shared in common with people from a particular cultural group generally or a substantial section of such people in this State.

15—Annual reporting

- 10 (1) The Multicultural Commission must, on or before 31 October in each year, report to the Minister on the operations of the Multicultural Commission during the preceding financial year.
- (2) The Minister must, within 6 sitting days after receiving a report under this section, have copies of the report laid before both Houses of Parliament.
- 15 (3) A report under this section may be combined with the annual report of the administrative unit of the Public Service that is, under a Minister, responsible for the administration of this Act.

16—Use of staff etc of Public Service

The Multicultural Commission may, by agreement with the Chief Executive of an administrative unit of the Public Service, make use of the services of the staff, equipment or facilities of that administrative unit.

17—Principles guiding consultation under Act

- 20 (1) In undertaking consultation for the purposes of this Act, the Multicultural Commission must—
- (a) establish and maintain processes to ensure the participation of South Australians from diverse backgrounds in the consultation; and
- 25 (b) comply with any other requirement of the Minister in respect of a particular consultation; and
- (c) comply with any other requirements set out in the regulations for the purposes of this paragraph.
- 30 (2) Nothing in this section prevents the Minister from directing the Multicultural Commission to undertake consultation in a specified matter in accordance with the directions of the Minister (and, in such a case, this section will be taken not to apply to the extent of any inconsistency with the Minister's directions).

18—Multicultural Commission to provide report to Minister etc

- 35 (1) The Multicultural Commission must, at the request of the Minister, provide a report to the Minister on the performance of its functions or on any other matter specified by the Minister.
- (2) A report under subsection (1) must be provided in the form, and within the period, specified by the Minister.

(3) Without limiting subsection (1), the Multicultural Commission may prepare and provide to the Minister such other reports on matters related to the functions of the Multicultural Commission under this Act as the Multicultural Commission considers appropriate.

5 (4) The Minister must, within 6 sitting days after receiving a report under this section, cause a copy of the report to be laid before both Houses of Parliament.

Part 4—South Australian Multicultural Charter

19—South Australian Multicultural Charter

10 (1) The Minister must, in consultation with the Multicultural Commission, prepare and maintain the South Australian Multicultural Charter.

(2) The Charter must contain the following provisions:

(a) provisions setting out the principles of multiculturalism in relation to South Australia;

15 (b) provisions recognising the Aboriginal peoples of South Australia and their role in the diversity of the people of South Australia;

(c) such other provisions as may be required by the regulations,
and may contain any other provisions as the Minister thinks appropriate.

(3) The Minister—

(a) may vary or substitute the Charter from time to time; and

20 (b) must review the Charter at least every 5 years.

(4) In preparing, varying or substituting the Charter, the Minister—

(a) must, after consultation with the Multicultural Commission and the Commissioner for Aboriginal Engagement, prepare a draft version of the Charter or variation and publish the draft Charter on a website determined by the Minister; and

25 (b) invite submissions on the draft Charter with a view to obtaining a wide range of views in relation to the matters under consideration; and

(c) cause the Multicultural Commission to undertake consultation in accordance with this Act in relation to the draft Charter or variation; and

30 (d) comply with any other requirements set out in the regulations for the purposes of this subsection.

(5) The Minister must, once the requirements under subsection (4) have been met, cause the Charter, or the Charter as varied (as the case requires)—

(a) to be published in the Gazette; and

35 (b) to be published on a website determined by the Minister.

(6) The Charter, as varied from time to time, has effect from the day on which it is published in the Gazette.

- (7) The Minister must, within 6 sitting days after the Charter, as varied from time to time, is published in the Gazette, cause a copy of the Charter, or the Charter as varied, (as the case requires) to be laid before both Houses of Parliament.
- (8) The Charter is an expression of policy and does not create legally enforceable rights or entitlements.

20—Statutory duty of State authorities in respect of Charter

- (1) Every State authority must, in carrying out its functions or exercising its powers, have regard to, and seek to give effect to, the South Australian Multicultural Charter.
- (2) A State authority will be taken not to be in breach of subsection (1) if the State authority is acting—
- (a) in accordance with a requirement under this or any other Act; or
 - (b) in circumstances prescribed by the regulations.
- (3) A failure by a State authority to comply with this section does not, of itself, give rise to any civil liability against the Crown, the State authority or any other person.

Part 5—Miscellaneous

21—Regulations

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), the regulations may provide for the exemption of a person, or a class of persons, from the operation of a specified provision or provisions of this Act.
- (3) The regulations may—
- (a) be of general or limited application; and
 - (b) make different provision according to the matters or circumstances to which they are expressed to apply; and
 - (c) make provisions of a saving or transitional nature; and
 - (d) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of a specified person or body; and
 - (e) apply or incorporate, wholly or partially and with or without modification, a code, standard, policy or other document prepared or published by the Minister or another specified person or body.
- (4) If a code, standard or other document is referred to or incorporated in the regulations—
- (a) a copy of the code, standard or other document must be kept available for public inspection, without charge and during ordinary office hours, at an office or offices specified in the regulations; and

- (b) evidence of the contents of the code, standard or other document may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code, standard or other document.

5 **Schedule 1—Repeal and transitional provisions etc**

Part 1—Preliminary

1—Amendment provisions

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

10 **Part 2—Repeal of *South Australian Multicultural and Ethnic Affairs Commission Act 1980***

2—Repeal of *South Australian Multicultural and Ethnic Affairs Commission Act 1980*

15 The *South Australian Multicultural and Ethnic Affairs Commission Act 1980* is repealed.

Part 3—Transitional and savings etc provisions

3—South Australian Multicultural and Ethnic Affairs Commission dissolved

- (1) The South Australian Multicultural and Ethnic Affairs Commission is dissolved on the day on which clause 2 of this Schedule comes into operation.
- 20 (2) Despite subclause (1) (and sections 7(1) and (8)), the members of the South Australian Multicultural and Ethnic Affairs Commission in office immediately before the day on which clause 2 of this Schedule comes into operation will be taken to be appointed under this Act as the members of the Multicultural Commission and—
 - 25 (a) each member will hold office for the remainder of their term of office (being the term for which they were appointed to the South Australian Multicultural and Ethnic Affairs Commission before its dissolution) and on the conditions of that appointment; and
 - (b) the member appointed to chair the South Australian Multicultural and Ethnic Affairs Commission will be taken to be appointed as the presiding member of the Multicultural Commission.
- 30 (3) Any rights, assets and liabilities of the South Australian Multicultural and Ethnic Affairs Commission will, by force of this subclause, vest in the Minister on the day on which clause 2 of this Schedule comes into operation.