

South Australia

# Adelaide Cemeteries Authority Act 2001

An Act to establish the Adelaide Cemeteries Authority; to provide for the administration and maintenance of Cheltenham Cemetery, Enfield Memorial Park and West Terrace Cemetery; and for other purposes.

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## Legislative history

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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 *Adelaide Cemeteries Authority Act 2001*.

### 3—Interpretation

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

*Authority* means the *Adelaide Cemeteries Authority* established under Part 2;

*Authority cemetery* means a cemetery administered by the Authority under this Act;

*board* means the board of directors established as the governing body of the Authority under Part 2;

*burial* of human remains includes placement of the remains in a tomb, mausoleum or vault;

*director* means a member of the board under Part 2;

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

*human remains* has the same meaning as in the *Births, Deaths and Marriages Registration Act 1996*.

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

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

## Part 2—Adelaide Cemeteries Authority

### Division 1—Establishment of Authority

#### 4—Establishment of Adelaide Cemeteries Authority

- (1) The *Adelaide Cemeteries Authority* is established.
- (2) The Authority—
  - (a) is a body corporate; and

- (b) has perpetual succession and a common seal; and
- (c) is capable of suing and being sued in its corporate name; and
- (d) has the functions and powers assigned or conferred by or under this Act.

### **5—Application of *Public Corporations Act 1993***

The Authority is a statutory corporation to which the provisions of the *Public Corporations Act 1993* apply.

### **6—Functions**

- (1) The Authority's primary functions are—
  - (a) the administration and maintenance of the following as public cemeteries:
    - (i) Cheltenham Cemetery;
    - (ii) Enfield Memorial Park;
    - (iii) West Terrace Cemetery; and
  - (b) the administration and maintenance of any other cemetery established or acquired by the Authority; and
  - (c) the burial or other disposal of human remains in an Authority cemetery; and
  - (d) activities associated with the heritage or historical significance of an Authority cemetery; and
  - (e) any other function assigned to the Authority by or under this or any Act, or by the Minister.
- (2) The Authority's functions may extend to the following as the Authority thinks fit:
  - (a) activities or services relating to the burial or other disposal of human remains;
  - (b) other activities or services utilising Authority property and buildings.

### **7—Powers**

Subject to this Act, the Authority has all the powers of a natural person together with the powers conferred on it under this or any other Act.

### **8—Special provisions relating to Authority's powers**

- (1) The Authority may not acquire a cemetery or part of a cemetery, or establish a cemetery, without the written approval of the Minister.
- (2) The Authority may grant a right for burial purposes for any term or in perpetuity.
- (3) The Authority must not disturb or interfere with a grave within the area delineated and marked *Jewish Granted MEM. No. 443 Bk. 42* on the plan of West Terrace Cemetery in Schedule 1 without the written approval of the Board, the Trustees, or the Chief Minister, of the Adelaide Hebrew Congregation Inc.
- (4) The Authority must not, without the approval of the Minister, use for any other purpose a portion of an Authority cemetery set apart (before or after the commencement of this subsection) for the burial or other disposal—
  - (a) of persons of particular religious denominations; or

- (b) of members or former members of an arm of the Defence Forces of Australia or of the naval, military or air force of some other country.
- (5) The Authority must not prevent or interfere with the performance of a ceremony according to the usage of a person's religion in connection with the burial or other disposal of the person's remains.
- (6) The Authority must allow a minister of a religious denomination for which a portion of an Authority cemetery is set apart to have free access and admission to that portion of the cemetery at all times in order to exercise his or her functions as a minister.
- (7) The Authority's charter under the *Public Corporations Act 1993* must contain specific limitations on the Authority's activities designed to prevent the Authority, through its control of access to Authority cemeteries, from unduly restricting competition in the provision of funeral, floral, monument making or other services, or the supply of goods.

### **9—Minister must give notice of certain proposed transactions of Authority**

- (1) The Authority must not—
  - (a) sell an Authority cemetery or part of an Authority cemetery; or
  - (b) grant a lease or licence in respect of an Authority cemetery, or part of an Authority cemetery, in order to enable the Authority's primary functions, or a substantial part of the Authority's primary functions, with respect to the cemetery to be performed otherwise than directly by the Authority and its staff; or
  - (c) enter into any partnership, joint venture or other profit sharing arrangement, unless the Minister has approved a proposal for the transaction and has, at least two months before the proposed transaction is entered into—
    - (d) given notice of the proposed transaction in the Gazette and in a newspaper circulating generally throughout the State; and
    - (e) provided a written report on the proposed transaction to the Economic and Finance Committee of the Parliament.
- (2) Subsection (1) does not apply to the disposal of land comprising or forming part of West Terrace Cemetery that is surplus to the requirements of the Authority.

### **10—Surplus West Terrace Cemetery land to form part of Adelaide Park Lands**

The Authority may only dispose of land comprising or forming part of West Terrace Cemetery that is surplus to the requirements of the Authority—

- (a) with the written approval of the Minister; and
- (b) by surrender of the fee simple in the land to the Crown; and, on surrender, the land will form part of the Adelaide Park Lands and come under the care, control and management of The Corporation of the City of Adelaide.

## 11—Common seal and execution of documents

- (1) The common seal of the Authority must not be affixed to a document except in pursuance of a decision of the board, and the affixing of the seal must be attested by the signatures of two directors.
- (2) The Authority may, by instrument under its common seal, authorise a director, a person employed under this Act (whether nominated by name or by office or title) or any other person to execute documents on behalf of the Authority subject to conditions and limitations (if any) specified in the instrument of authority.
- (3) Without limiting subsection (2), an authority may be given so as to authorise two or more persons to execute documents jointly on behalf of the Authority.
- (4) A document is duly executed by the Authority if—
  - (a) the common seal of the Authority is affixed to the document in accordance with this section; or
  - (b) the document is signed on behalf of the Authority by a person or persons in accordance with an authority conferred under this section.

## Division 2—Board

### 12—Establishment of board

- (1) A board of directors is established as the governing body of the Authority.
- (2) The board consists of not more than seven directors appointed by the Governor on the nomination of the Minister, of whom—
  - (a) one must be a person with practical knowledge of and experience in local government selected from a panel of three persons nominated by the Local Government Association of South Australia; and
  - (b) the remainder must include—
    - (i) three who together have, in the Minister's opinion, the abilities and experience required for the effective performance of the Authority's business and management obligations; and
    - (ii) one with experience in historical and heritage matters; and
    - (iii) one with experience in religious and community affairs; and
    - (iv) one with management experience in government (other than local government).
- (3) The Minister must, in nominating persons for appointment to the board, have regard to the need for the Authority, in carrying out its functions, to be sensitive to the cultural diversity of the State.
- (4) At least two directors must be women and at least two must be men.
- (5) One director will, on the nomination of the Minister, be appointed by the Governor to chair meetings of the board.

### **13—Conditions of membership**

- (1) A director will be appointed for a term, not exceeding four years, specified in the instrument of appointment and will, at the expiration of a term of appointment, be eligible for reappointment.
- (2) However, the term of office of a retiring director will continue until he or she is reappointed or a successor is appointed (as the case may be).
- (3) The Governor may remove a director from office on the recommendation of the Minister.
- (4) The Minister may recommend the removal of a director on any ground that the Minister considers sufficient.
- (5) The office of a director becomes vacant if the director—
  - (a) dies; or
  - (b) completes a term of office and is not reappointed; or
  - (c) resigns by written notice to the Minister; or
  - (d) becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors; or
  - (e) is convicted of an indictable offence or sentenced to imprisonment for an offence; or
  - (f) is removed from office under subsection (3).

### **14—Vacancies or defects in appointment of directors**

An act of the board is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a director.

### **15—Remuneration**

A director is entitled to be paid from the funds of the Authority such remuneration, allowances and expenses as may be determined by the Governor.

### **16—Board proceedings**

- (1) A quorum of the board consists of four directors.
- (2) The director appointed to chair meetings of the board will preside at each meeting of the board at which he or she is present.
- (3) In the absence of the director appointed to chair meetings of the board, a director chosen by the directors present at the meeting will preside.
- (4) A decision carried by a majority of the votes cast by directors at a meeting is a decision of the board.
- (5) Each director present at a meeting of the board has one vote on any question arising for decision and, if the votes are equal, the director presiding at the meeting may exercise a casting vote.

- (6) A conference by telephone or other electronic means between directors will, for the purposes of this section, be taken to be a meeting of the board at which the participating directors are present if—
  - (a) notice of the conference is given to all directors in the manner determined by the board for the purpose; and
  - (b) each participating director is capable of communicating with every other participating director during the conference.
- (7) A proposed resolution of the board becomes a valid decision of the board despite the fact that it is not voted on at a meeting of the board if—
  - (a) notice of the proposed resolution is given to all directors in accordance with procedures determined by the board; and
  - (b) a majority of the directors expresses concurrence in the proposed resolution by letter or by facsimile transmission or other electronically transmitted written communication setting out the terms of the resolution.
- (8) The board must have accurate minutes kept of its proceedings.
- (9) Subject to this Act, the board may determine its own procedures.

## 17—Committees

- (1) The board may establish such committees (including advisory or subcommittees) as the board thinks fit.
- (2) The membership of a committee will be determined by the board and may, but need not, consist of, or include, directors.
- (3) The procedures to be observed in relation to the conduct of the business of a committee will be—
  - (a) as determined by the board;
  - (b) insofar as a procedure is not determined under paragraph (a), as determined by the committee.

## Division 3—Staff

### 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 Act 2009*).
- (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 Act 2009*.

## Part 3—Miscellaneous

### 19—Adelaide Cemeteries Authority Heritage and Monument Committee

- (1) The Minister will establish the *Adelaide Cemeteries Authority Heritage and Monument Committee*.
- (2) The Committee will consist of not less than three, nor more than five, members appointed by the Minister, of whom—
  - (a) one must be a director; and
  - (b) the remainder must include persons who together have, in the Minister's opinion, the abilities and experience required for the effective performance of the Committee's functions.
- (3) The members of the Committee will hold office on such terms and conditions as the Minister thinks fit.



- (4) The Committee has the following functions:
  - (a) to advise the Authority on heritage and historical matters relating to Authority cemeteries;
  - (b) to advise the Authority on activities associated with the heritage or historical significance of Authority cemeteries;
  - (c) to advise the Authority on the establishment and implementation of policies relating to monuments, headstones and memorials;
  - (d) any other function assigned to the Committee by or under this Act, or by the Minister or the Authority.
- (5) Subject to this section, the Committee may determine its own procedures.
- (6) The Committee must submit to the Authority for inclusion in each annual report of the Authority a report prepared by the Committee on its operations during the financial year to which the report relates.
- (7) A report submitted to the Authority under subsection (6) must be included in the relevant annual report of the Authority in unaltered form.

## **20—Plans of management for Authority cemeteries**

- (1) The Authority must, in accordance with this section—
  - (a) prepare plans of management for each Authority cemetery; and
  - (b) present the plans at public meetings convened by the Authority.
- (2) Plans of management must be prepared and presented as follows:
  - (a) the first plan must cover a five year period and be prepared and presented within 18 months after the commencement of this section;
  - (b) subsequent plans must cover subsequent five year periods and each plan must be prepared and presented at least six months before it is to take effect.
- (3) A plan of management for a cemetery must take into account the heritage and historical significance of the cemetery and establish policies relating to the following matters:
  - (a) retention or removal of existing headstones;
  - (b) re-use of burial sites;
  - (c) the scale and character of new memorials or monuments;
  - (d) planting and nurturing of vegetation in the cemetery.
- (4) In preparing a plan of management for a cemetery, the Authority must consult with the relevant local government council, the administrative unit of the Public Service responsible for State heritage matters and other persons who, in the opinion of the Authority, have a particular interest in the management of the cemetery.
- (5) The Authority must, at least 30 business days before the date of a public meeting to be convened under this section, in a newspaper circulating generally throughout the State, publish a notice—
  - (a) of the date, time, place and purpose of the meeting; and

- (b) of the place, determined by the Minister, where the plan of management may be inspected, without charge and during normal office hours, during the period of 30 business days immediately prior to the meeting.
- (6) A plan of management for an Authority cemetery must, if the cemetery is, or includes, a State heritage place (within the meaning of the *Development Act 1993*), be approved by the Minister before it takes effect.
- (7) The Authority may amend a plan of management at any time during the course of the five year period covered by the plan (and, in that event, the amendment must be presented at public meetings convened by the Authority and subsections (4), (5) and (6) will apply to the amendment process in the same way as to the initial preparation of a plan of management).
- (8) The Authority must keep a copy of each current plan of management available for inspection by members of the public, without charge and during normal office hours, at a place determined by the Minister.
- (9) In this section—  
*business day* means any day except a Saturday or a Sunday or other public holiday within the meaning of the *Holidays Act 1910*.

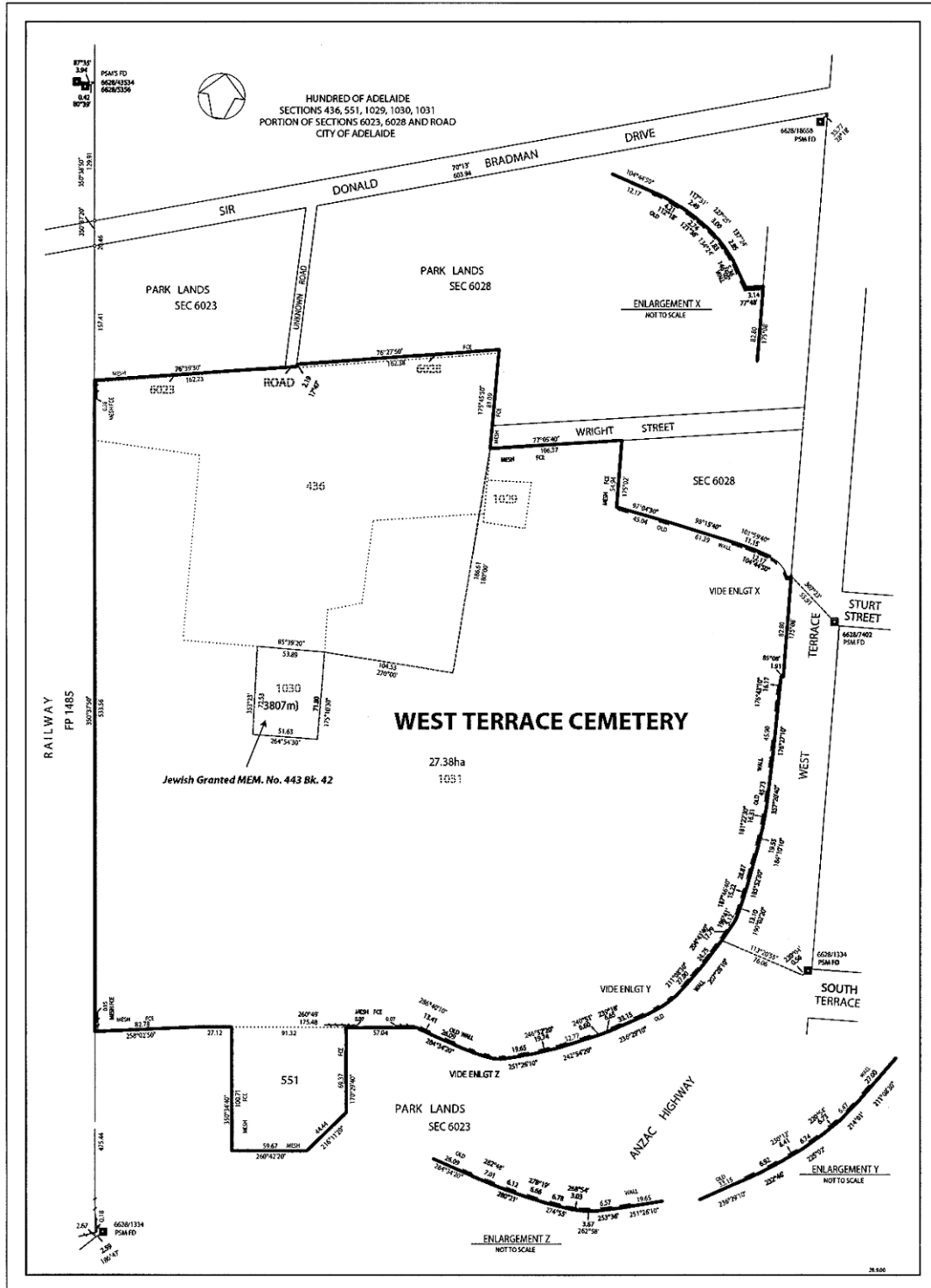
## 22—Ministerial approvals

- (1) An approval given by the Minister under this Act may be—
  - (a) specific or general; and
  - (b) conditional or unconditional.
- (2) An approval given by the Minister may be varied or revoked by the Minister at any time.

## 23—Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) The regulations may apply other specified regulations (with or without modifications) to an Authority cemetery.

# Schedule 1—Plan of West Terrace Cemetery



## **Schedule 2—Transitional provisions**

### **2—Enfield General Cemetery Trust continues as Adelaide Cemeteries Authority**

- (1) The Authority is the same body corporate as the Enfield General Cemetery Trust established under the *Enfield General Cemetery Act 1944*.
- (2) A reference in an Act or instrument to the Enfield General Cemetery Trust is (where the context admits) to be read as a reference to the Authority.
- (3) The offices of the members of the Enfield General Cemetery Trust are vacated on the commencement of this clause.

### **3—Vesting of West Terrace Cemetery in Authority**

- (1) The land situated in the Hundred of Adelaide delineated and marked *West Terrace Cemetery* on the plan set out in Schedule 1 is vested in the Authority for an estate in fee simple.
- (2) The Authority will hold the land vested under subclause (1) subject to any rights or interests granted and in force in respect of the land immediately before the commencement of this clause.
- (3) Despite section 29(1) of the *Public Corporations Act 1993*, where property vests by virtue of this clause in the Authority, the vesting of the property, and any instrument evidencing or giving effect to that vesting, are exempt from stamp duty.

### **4—Application of Real Property Act**

- (1) The Registrar-General must, on the application of the Authority, register the Authority as the proprietor of an estate in land that has vested in the Authority under this Schedule.
- (2) No registration fee is payable in respect of an application under subclause (1).
- (3) An instrument relating to land that has vested in the Authority under this Schedule must, if the instrument is executed by the Authority and is otherwise in registrable form, be registered by the Registrar-General despite the fact that the Authority has not been registered as the proprietor of the land under subclause (1).

### **5—Continuation of West Terrace Cemetery plan of management**

The plan of management for the West Terrace Cemetery made under section 20A of the *Enfield General Cemetery Act 1944* in operation immediately before the commencement of this clause continues in operation as if it had been made under Part 3 of this Act, took effect at the commencement of this clause and covered the five year period from that commencement.

## Legislative history

### Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Legislation repealed by principal Act

The *Adelaide Cemeteries Authority Act 2001* repealed the following:

*Enfield General Cemetery Act 1944*

*West Terrace Cemetery Act 1976*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2001	25	<i>Adelaide Cemeteries Authority Act 2001</i>	26.7.2001	1.1.2002 ( <i>Gazette 6.12.2001 p5266</i> )
2006	41	<i>Statutes Amendment (Public Sector Employment) Act 2006</i>	14.12.2006	Pt 3 (ss 7—9)—1.4.2007 ( <i>Gazette 29.3.2007 p930</i> )
2009	84	<i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>	10.12.2009	Pt 5 (s 10)—1.2.2010 ( <i>Gazette 28.1.2010 p320</i> )
<b>2013</b>	<b>20</b>	<b><i>Burial and Cremation Act 2013</i></b>	<b>14.6.2013</b>	<b>Sch 1 (cll 3 &amp; 4)—1.2.2014 (<i>Gazette 16.1.2014 p120</i>)</b>
2023	39	<i>Public Holidays Act 2023</i>	7.12.2023	Sch 1 (cl 1)—1.1.2024: s 2

### Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	
Pt 1		
s 3		
s 3(1)	s 3 redesignated as s 3(1) by 41/2006 s 7(2)	1.4.2007

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employing authority	inserted by 41/2006 s 7(1)	1.4.2007
s 3(2)	inserted by 41/2006 s 7(2)	1.4.2007
Pt 2		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	
<b>s 8</b>		
<b>s 8(2)</b>	<b>substituted by 20/2013 Sch 1 cl 3</b>	<b>1.2.2014</b>
s 11		
s 11(2)	amended by 41/2006 s 8	1.4.2007
s 18	substituted by 41/2006 s 9	1.4.2007
s 18(3)	amended by 84/2009 s 10	1.2.2010
s 18(13)		
public sector agency	amended by 84/2009 s 10	1.2.2010
Pt 3		
s 21	<i>deleted by 20/2013 Sch 1 cl 4</i>	<b>1.2.2014</b>
Sch 2		
cl 1	<i>omitted under Legislation Revision and Publication Act 2002</i>	

## Transitional etc provisions associated with Act or amendments

### *Statutes Amendment (Public Sector Employment) Act 2006, Sch 1—Transitional provisions*

**Note—**

Also see *Statutes Amendment (Public Sector Employment) (Transitional Provisions) Regulations 2007*.

### **1—Interpretation**

In this Part, unless the contrary intention appears—

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

**employing authority** means—

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

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

**prescribed body** means—

- (a) the Aboriginal Lands Trust;

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- (b) the Adelaide Cemeteries Authority;
  - (c) the Adelaide Festival Centre Trust;
  - (d) the Adelaide Festival Corporation;
  - (e) SA Ambulance Service Inc;
  - (f) the Minister to whom the administration of the *Children's Services Act 1985* is committed;
  - (g) the Minister to whom the administration of the *Education Act 1972* is committed;
  - (h) the Electricity Supply Industry Planning Council;
  - (i) a body constituted under the *Fire and Emergency Services Act 2005*;
  - (j) the History Trust of South Australia;
  - (k) the Institute of Medical and Veterinary Science;
  - (l) a regional NRM board constituted under the *Natural Resources Management Act 2004*;
  - (m) the Senior Secondary Assessment Board of South Australia;
  - (n) the South Australian Country Arts Trust;
  - (o) the South Australian Film Corporation;
  - (p) the South Australian Health Commission;
  - (q) an incorporated hospital under the *South Australian Health Commission Act 1976*;
  - (r) an incorporated health centre under the *South Australian Health Commission Act 1976*;
  - (s) the South Australian Motor Sport Board;
  - (t) the South Australian Tourism Commission;
  - (u) The State Opera of South Australia;
  - (v) the State Theatre Company of South Australia;
  - (w) the Minister to whom the administration of the *Technical and Further Education Act 1975* is committed;

**relevant Act** means—

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

## 2—Transfer of employment

- (1) Subject to this clause, a person who, immediately before the commencement of this clause, was employed by a prescribed body under a relevant Act will, on that commencement, be taken to be employed by the employing authority under that Act (as amended by this Act).
- (2) The following persons will, on the commencement of this clause, be taken to be employed as follows:
  - (a) a person who, immediately before the commencement of this clause, was employed under section 6L(1) of the *Electricity Act 1996* will, on that commencement, be taken to be employed by the employing authority under that Act (as amended by this Act);
  - (b) a person who, immediately before the commencement of this clause, was employed by the South Australian Fire and Emergency Services Commission will, on that commencement, be taken to be employed by the Chief Executive of that body;
  - (c) a person who, immediately before the commencement of this clause, was employed by an emergency services organisation under the *Fire and Emergency Services Act 2005* will, on that commencement, be taken to be employed by the Chief Officer of that body;
  - (d) a person who, immediately before the commencement of this clause, was employed by an incorporated hospital or an incorporated health centre under the *South Australian Health Commission Act 1976* will, on that commencement, be taken to be employed by an employing authority under that Act (as amended by this Act) designated by the Governor by proclamation made for the purposes of this paragraph.
- (3) Subject to this clause, the Governor may, by proclamation, provide that a person employed by a subsidiary of a public corporation under the *Public Corporations Act 1993* will be taken to be employed by a person or body designated by the Governor (and the arrangement so envisaged by the proclamation will then have effect in accordance with its terms).
- (4) Subject to subclause (5), an employment arrangement effected by subclause (1), (2) or (3)—
  - (a) will be taken to provide for continuity of employment without termination of the relevant employee's service; and
  - (b) will not affect—
    - (i) existing conditions of employment or existing or accrued rights to leave; or
    - (ii) a process commenced for variation of those conditions or rights.



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- (5) If, immediately before the commencement of this clause, a person's employment within the ambit of subclause (1), (2) or (3) was subject to the operation of an award or certified agreement (but not an Australian Workplace Agreement) under the Commonwealth Act, then, on that commencement, an award or enterprise agreement (as the case requires) will be taken to be created under the *Fair Work Act 1994*—
- (a) with the same terms and provisions as the relevant industrial instrument under the Commonwealth Act; and
  - (b) with any terms or provisions that existed under an award or enterprise agreement under the *Fair Work Act 1994*, that applied in relation to employment of the kind engaged in by the person, immediately before 27 March 2006, and that ceased to apply by virtue of the operation of provisions of the Commonwealth Act that came into force on that day,
- subject to any modification or exclusion prescribed by regulations made for the purposes of this subclause and subject to the operation of subclause (6).
- (6) Where an award or enterprise agreement is created by virtue of the operation of subclause (5)—
- (a) the award or enterprise agreement will be taken to be made or approved (as the case requires) under the *Fair Work Act 1994* on the day on which this clause commences; and
  - (b) the *Fair Work Act 1994* will apply in relation to the award or enterprise agreement subject to such modifications or exclusions as may be prescribed by regulations made for the purposes of this subclause; and
  - (c) the Industrial Commission may, on application by the Minister to whom the administration of the *Fair Work Act 1994* is committed, or an application by a person or body recognised by regulations made for the purposes of this subclause, vary or revoke any term or provision of the award or enterprise agreement if the Industrial Commission is satisfied that it is fair and reasonable to do so in the circumstances.

### 3—Superannuation

- (1) If a prescribed body under a relevant Act is, immediately before the commencement of this clause, a party to an arrangement relating to the superannuation of one or more persons employed by the prescribed body, then the relevant employing authority under that Act will, on that commencement, become a party to that arrangement in substitution for the prescribed body.
- (2) Nothing that takes effect under subclause (1)—
- (a) constitutes a breach of, or default under, an Act or other law, or constitutes a breach of, or default under, a contract, agreement, understanding or undertaking; or
  - (b) terminates an agreement or obligation or fulfils any condition that allows a person to terminate an agreement or obligation, or gives rise to any other right or remedy,

and subclause (1) may have effect despite any other Act or law.

- (3) An amendment effected to another Act by this Act does not affect a person's status as a contributor under the *Superannuation Act 1988* (as it may exist immediately before the commencement of this Act).

#### 4—Interpretative provision

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

#### 5—Related matters

- (1) A notice in force under section 51 of the *Children's Services Act 1985* immediately before the commencement of this clause will continue to have effect for the purposes of that section, as amended by this Act.
- (2) A notice in force under section 28 of the *Institute of Medical and Veterinary Science Act 1982* immediately before the commencement of this clause will continue to have effect for the purposes of that section, as amended by this Act.
- (3) A notice in force under section 61 of the *South Australian Health Commission Act 1976* immediately before the commencement of this clause will continue to have effect for the purposes of that section, as amended by this Act.
- (4) A notice in force under section 13(6) of the *South Australian Motor Sport Act 1984* immediately before the commencement of this clause will continue to have effect after that commencement but may, pursuant to this subclause, be varied from time to time, or revoked, by the Minister to whom the administration of that Act is committed.
- (5) The fact that a person becomes an employer in his or her capacity as an employing authority under an Act amended by this Act does not affect the status of any body or person as an employer of public employees for the purposes of the *Fair Work Act 1994* (unless or until relevant regulations are made under the provisions of that Act).

#### 6—Other provisions

- (1) The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on the enactment of this Act.
- (2) A provision of a regulation made under subclause (1) may, if the regulation so provides, take effect from the commencement of this Act or from a later day.
- (3) To the extent to which a provision takes effect under subclause (2) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person by—
  - (a) decreasing the person's rights; or
  - (b) imposing liabilities on the person.

- (4) The *Acts Interpretation Act 1915* will, except to the extent of any inconsistency with the provisions of this Schedule (or regulations made under this Schedule), apply to any amendment or repeal effected by this Act.

### **Historical versions**

1.4.2007

1.2.2010