

South Australia

# Adelaide Festival Corporation Act 1998

An Act to establish the Adelaide Festival Corporation; to provide for the conduct of the Adelaide Festival of Arts; 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 Festival Corporation Act 1998*.

### 3—Interpretation

- (1) In this Act—

***board*** means the governing authority of the Corporation—see Division 1 of Part 4;

***Corporation*** means the Adelaide Festival Corporation established under this Act;

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

***logo*** means a design (the copyright of which is vested in the Crown in right of the State) declared by the Minister by notice under Part 5 to be a logo;

***official insignia*** means a logo, an official symbol or an official title;

***official symbol*** means a combination of a logo and an official title;

***official title*** means a name or title that is declared to be an official title by or under Part 5;

***promote***, in relation to an event, includes organise, commission, support, market, advertise or act as project manager.

- (2) For the purposes of this Act, goods will be taken to be marked with official insignia if the insignia is affixed or annexed to, marked on, or incorporated in or with—
- (a) the goods; or
  - (b) any covering or container in which the goods are wholly or partly enclosed;  
or
  - (c) anything placed in or attached to any such covering or container; or

- (d) anything that is attached to the goods or around which the goods are wrapped or wound.
- (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.

## **Part 2—Establishment of Adelaide Festival Corporation**

### **4—Establishment of Adelaide Festival Corporation**

- (1) The *Adelaide Festival Corporation* is established.
- (2) The Corporation—
  - (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.
- (3) The Corporation is an instrumentality of the Crown and holds its property on behalf of the Crown.

## **Part 3—Functions and powers of the Corporation**

### **5—Functions of the Corporation**

The functions of the Corporation are—

- (a) to conduct in Adelaide and other parts of the State the multifaceted arts event that is known as the Adelaide Festival of Arts;
- (b) to continue and further develop the Adelaide Festival of Arts as an event of international standing and excellence;
- (c) to conduct or promote other events and activities;
- (d) to provide advisory, consultative, managerial or support services within areas of the Corporation's expertise;
- (e) to undertake other activities that promote the arts or public interest in the arts, or that otherwise involve an appropriate use of its resources;
- (f) to carry out other functions assigned to the Corporation by or under this or any other Act, or by the Minister.

### **6—Powers of the Corporation**

- (1) The Corporation has all the powers of a natural person together with the powers conferred on it under this or any other Act.
- (2) The Corporation may, for example—
  - (b) engage agents, consultants or other contractors;

- (c) enter into contracts or agreements with artists, performers, entertainers and other persons involved in the arts, or employ such persons;
  - (d) enter into other contracts, agreements or arrangements;
  - (e) acquire, hold, deal with and dispose of any interest in real or personal property;
  - (f) accept gifts or grants or obtain financial sponsorship from any person or body;
  - (g) carry on any advertising and promotional activities;
  - (h) conduct events and establish, operate or manage venues and other facilities (including food and liquor facilities);
  - (i) regulate and control admission to any venue for any event or activity conducted, promoted or undertaken by the Corporation, and charge and collect fees for admission to any such venue;
  - (j) grant for fee or other consideration advertising or sponsorship rights or other rights, licences or concessions in connection with events or activities conducted, promoted or undertaken by the Corporation;
  - (k) publish or produce books, programs, brochures, films, souvenirs and other things relating to events or activities conducted, promoted or undertaken by the Corporation;
  - (l) sell or supply food and drink (including alcoholic beverages), books, programs, brochures, films, souvenirs and other things in connection with events or activities conducted, promoted or undertaken by the Corporation;
  - (m) grant or dispose of rights to televise, broadcast or record any events or activities conducted, promoted or undertaken by the Corporation;
  - (n) restrict, control and make charges for the use of official insignia;
  - (o) take out policies of insurance in its own right or on behalf of the State;
  - (p) acquire and hold licences;
  - (q) participate (whether as a member or otherwise) in, or otherwise be involved in the activities of, national or international organisations or associations involved in the arts, or the promotion of the arts;
  - (r) enter into any partnership or joint venture arrangement;
  - (s) form, or acquire, hold, deal with and dispose of shares or other interests in, or securities issued by, bodies corporate, whether within or outside the State;
  - (t) borrow money and obtain other forms of financial accommodation;
  - (u) act as trustee on behalf of another person in connection with the performance of its functions under this Act.
- (3) However, the Corporation must not, without the approval of the Treasurer, exercise a power referred to in subsection (2)(s) or (t).
- (4) The Corporation may exercise its powers within and outside the State.

## **Part 4—Management of the Corporation**

### **Division 1—Board**

#### **7—Establishment of board**

- (1) There will be a board to act as the governing authority of the Corporation.
- (2) The functions and powers of the Corporation may be performed and exercised by the board and decisions made by the board are decisions of the Corporation.

#### **8—Composition of board**

- (1) The board will consist of not more than eight members appointed by the Governor, of whom—
  - (a) one will be a person selected from a panel of three persons nominated by the Friends of the Adelaide Festival Incorporated; and
  - (b) one will be a person selected from a panel of three persons nominated by The Corporation of the City of Adelaide; and
  - (c) the remainder will be persons nominated by the Minister.
- (2) At least two members of the board must be women and at least two must be men.
- (3) One member of the board will be appointed by the Governor to chair meetings of the board.
- (4) The Governor may appoint a suitable person to be a deputy of a member (being a person nominated by the body or person who nominated the member) and a person so appointed may act as a member of the board in the absence of the member.

#### **9—Terms and conditions of appointment of members**

- (1) A member of the board will be appointed for a term, not exceeding three years, specified in the instrument of appointment.
- (2) A member is, at the expiration of a term of appointment, eligible for reappointment but not so as to hold office for consecutive terms that exceed six years in total.
- (3) The Governor may remove a member from office on any grounds that the Governor considers sufficient.
- (4) The office of a member 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
  - (e) is removed from office under subsection (3).

## 10—Vacancies or defects in appointment of members

An act or proceeding of the board is not invalid by reason only of a vacancy in its membership and, despite the subsequent discovery of a defect in the appointment of a member, an act or proceeding of the board will be as valid and effectual as if the member had been duly appointed.

## 11—Remuneration

A member of the board is entitled to such remuneration, allowances and expenses as may be determined by the Governor.

## 12—Proceedings

- (1) A quorum of the board consists of one half the total number of its members (ignoring any fraction resulting from the division) plus one.
- (2) In the absence of the member appointed to chair meetings of the board at a meeting of the board, a member chosen by the members present at the meeting will preside.
- (3) A decision carried by a majority of the votes cast by members at a meeting is a decision of the board.
- (4) Each member present at a meeting of the board has one vote on any question arising for decision and, if the votes are equal, the member presiding at the meeting may exercise a casting vote.
- (5) A conference by telephone or other electronic means between members will, for the purposes of this section, be taken to be a meeting of the board at which the participating members are present if—
  - (a) notice of the conference is given to all members in the manner determined by the board for the purpose; and
  - (b) each participating member is capable of communicating with every other participating member during the conference.
- (6) A proposed resolution of the board becomes a valid decision of the board despite the fact that it is not voted on at a meeting of the board if—
  - (a) notice of the proposed resolution is given to all members in accordance with procedures determined by the board; and
  - (b) a majority of the members 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.
- (7) The board must have accurate minutes kept of its proceedings.
- (8) Subject to this Act, the board may determine its own procedures.

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

A member of the board will not be taken to have a direct or indirect interest in a matter for the purposes of the *Public Sector (Honesty and Accountability) Act 1995* by reason only of the fact that the member has an interest in a matter that is shared in common with those engaged in or associated with the arts industry generally, or a substantial section of those engaged in or associated with the arts industry.

## **Division 2—Ministerial control**

### **16—Ministerial control**

- (1) Subject to subsection (2), the board is subject to the control and direction of the Minister.
- (2) No Ministerial direction can be given—
  - (a) as to the artistic content of an event or activity conducted by the Corporation;  
or
  - (b) as to the manner in which the board is to deal with a testamentary or other gift.

## **Division 3—Committees and delegations**

### **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, members of the board.
- (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.

### **18—Delegation**

- (1) The board may, by instrument in writing, delegate functions or powers under this Act.
- (2) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (3) A delegation—
  - (a) may be made—
    - (i) to a particular person, committee or body; or
    - (ii) to the person for time being occupying a particular office or position;  
and
  - (b) may be made subject to conditions and limitations specified in the instrument of delegation; and
  - (c) is revocable at will and does not derogate from the power of the delegator to act in any matter.
- (4) A delegate must not act pursuant to the delegation in any matter in which the delegate has a direct or indirect pecuniary or personal interest.  
Maximum penalty: \$10 000 or imprisonment for 2 years.

- (5) It is a defence to a charge of an offence against subsection (4) to prove that the defendant was, at the time of the alleged offence, unaware of his or her interest in the matter.

## **Division 4—Financial matters and annual reports**

### **19—Accounts and audit**

- (1) The board must cause proper accounting records to be kept in relation to the financial affairs of the Corporation, and must have annual statements of account prepared in respect of each financial year.
- (2) The accounting records and the statements of account must comply with—
  - (a) any instructions of the Treasurer under section 41 of the *Public Finance and Audit Act 1987*; and
  - (b) any further requirements imposed by the Auditor-General.
- (3) The Auditor-General may at any time audit the accounts of the Corporation and must audit the annual statements of account.

### **20—Annual report**

- (1) The board must, on or before 30 September in every year, forward to the Minister a report on the work and operations of the Corporation for the preceding financial year.
- (2) The report must contain the audited statements of account of the Corporation for the preceding financial year.
- (3) The Minister must, within 12 sitting days after receiving a report under this section, have copies of the report laid before both Houses of Parliament.

## **Division 5—Staffing arrangements**

### **20A—Staffing arrangements**

- (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.
- (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 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.
- (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—
- public sector agency* has the same meaning as in the *Public Sector Act 2009*.

## **Part 5—Miscellaneous**

### **21—Common seal and execution of documents**

- (1) The common seal of the Corporation must not be affixed to a document except in pursuance of a decision of the board and the fixing of the seal must be attested by the signatures of two members of the board.
- (2) The board may, by instrument under the common seal of the Corporation, authorise a person or persons (whether nominated by name or by office or title) to execute documents on behalf of the Corporation 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 Corporation.
- (4) A document is duly executed by the Corporation if—
- (a) the common seal of the Corporation is affixed to the document in accordance with this section; or
  - (b) the document is signed on behalf of the Corporation by a person or persons in accordance with authority conferred under this section.

## 22—Corporation may conduct operations under other name

- (1) The Corporation may, if the board so determines, conduct its operations or any part of its operations not under the name *Adelaide Festival Corporation* but under some other name declared by the Minister by notice in the Gazette.
- (2) However, the Minister must not make a declaration under subsection (1) in relation to a name that is registered or otherwise protected under another Act unless the Minister is acting with the consent or agreement of the person who has the benefit of the registration or protection.
- (3) The *Adelaide Festival Corporation* and any other name declared under subsection (1) are official titles.

## 23—Declaration of logos and official titles

- (1) The Minister may, by notice in the Gazette, declare a logo to be a logo in respect of the Corporation or a particular event or activity conducted, promoted or undertaken by the Corporation.
- (2) The Minister may, by notice in the Gazette, declare a name or a title of an event or activity conducted, promoted or undertaken by the Corporation to be an official title.
- (3) However, the Minister must not make a declaration under subsection (2) in relation to a name or title that is registered or otherwise protected under another Act unless the Minister is acting with the consent or agreement of the person who has the benefit of the registration or protection.
- (4) The Minister may, by notice in the Gazette, vary or revoke a notice under this section.

## 24—Protection of proprietary interests of Corporation

- (1) The Corporation has a proprietary interest in all official insignia.
- (2) A person must not, without the consent of the Corporation, in the course of a trade or business—
  - (a) use a name in which the Corporation has a proprietary interest under this section for the purpose of promoting the sale of services or the provision of any benefits; or
  - (b) sell goods marked with official insignia; or
  - (c) use official insignia for the purpose of promoting the sale of goods or services.

Maximum penalty: \$20 000.

- (3) A person must not, without the consent of the Corporation, assume a name or description that consist of, or includes, official insignia.

Maximum penalty: \$20 000.

- (4) A consent under this section—
  - (a) may be given with or without conditions (including conditions requiring payment to the Corporation); and
  - (b) may be given generally by notice in the Gazette or by notice in writing addressed to an applicant for the consent; and

- (c) may be revoked by the Corporation for breach of a condition by notice in writing given personally or by post to a person who has the benefit of the consent.
- (5) The Supreme Court may, on the application of the Corporation, grant an injunction to restrain a breach of this section.
- (6) The court by which a person is convicted of an offence against this section may, on the application of the Corporation, order the convicted person to pay compensation of an amount fixed by the court to the Corporation.
- (7) Subsections (5) and (6) do not derogate from any civil remedy that may be available to the Corporation apart from those subsections.

## **25—Seizure and forfeiture of goods**

- (1) If—
  - (a) goods apparently intended for a commercial purpose are marked with official insignia; and
  - (b) a member of the police force suspects on reasonable grounds that the use of the insignia has not been authorised by the Corporation,the member may seize those goods.
- (2) If goods have been seized under this section and—
  - (a) proceedings are not instituted for an offence against section 24(2) in relation to the goods within three months of their seizure; or
  - (b) after proceedings have been instituted and completed, the defendant is not convicted,the person from whom they were seized is entitled to recover—
  - (c) the goods or, if they have been destroyed, compensation equal to the market value of the goods at the time of their seizure; and
  - (d) compensation for any loss suffered by reason of the seizure of the goods.
- (3) An action for the payment of compensation under subsection (2) may be brought against the Corporation in any court of competent jurisdiction.
- (4) The court by which a person is convicted of an offence against this Act may order that goods to which the offence relates be forfeited to the Crown.
- (5) Any goods forfeited to the Crown must be disposed of in such manner as the Minister may direct and, if sold, the proceeds of the sale paid into the Consolidated Account.

## **26—Approvals by Treasurer**

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

## 27—Regulations

The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.

## Schedule—Transitional provisions

### 1—Transfer of staff

- (1) The Governor may, by proclamation, declare that a person who is, immediately before the commencement of this clause, employed or engaged for any purpose associated with the conduct of the Adelaide Festival of Arts is to be employed in a position in the employment of the Corporation (and such a proclamation will have effect according to its terms).
- (2) The transfer of a person's employment under subclause (1)—
  - (a) does not constitute a termination of a pre-existing employment agreement; and
  - (b) does 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.
- (3) The Governor may, by proclamation, make any transitional or ancillary provision that may be necessary or expedient in connection with the operation of subclause (1).

### 2—Transfer of assets and liabilities

- (1) The Minister may, by instrument in writing, vest assets or liabilities of the Minister associated with the Adelaide Festival of Arts in the Corporation.
- (2) An instrument under subclause (1) may, in relation to assets or liabilities of the Minister associated with the Adelaide Festival of Arts, be expressed to operate—
  - (a) in relation to all assets or liabilities;
  - (b) in relation to various classes of assets or liabilities;
  - (c) in relation to specific assets or liabilities.
- (3) An instrument under subclause (1) may make other provisions that in the opinion of the Minister are necessary or expedient in connection with the vesting of assets or liabilities.
- (4) The vesting of assets or liabilities under this clause operates by force of this clause and despite the provisions of any other law or instrument.
- (5) The Registrar-General or another authority required or authorised under a law of the State to register or record transactions affecting assets or liabilities, or documents relating to such transactions, must, on application under this clause, register or record in an appropriate manner a vesting under this clause.
- (6) No fee is payable in respect of an application under subclause (5).
- (7) Nothing done under this clause—
  - (a) constitutes a breach of, or default under, an Act or other law; or

- (b) constitutes a breach of, or default under, a contract, agreement, understanding or undertaking; or
  - (c) constitutes a breach of a duty of confidence (whether arising by contract, in equity or by custom or in any other way); or
  - (d) constitutes a civil or criminal wrong; or
  - (e) 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; or
  - (f) releases a surety or other obligee wholly or in part from an obligation.
- (8) In this clause—
- asset*** means—
- (a) a present, contingent or future legal or equitable estate or interest in real or personal property; or
  - (b) a present, contingent or future right, power, privilege or immunity,
- (and includes a present or future cause of action in favour of the Minister);
- liability*** means a present, contingent or future liability or obligation (including a non-pecuniary obligation and a present or future cause of action against the Minister).

## 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).

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1998	73	<i>Adelaide Festival Corporation Act 1998</i>	17.12.1998	1.4.1999 ( <i>Gazette</i> 18.3.1999 p1424)
2006	41	<i>Statutes Amendment (Public Sector Employment) Act 2006</i>	14.12.2006	Pt 5 (ss 12—14)—1.4.2007 ( <i>Gazette</i> 29.3.2007 p930)
<b>2009</b>	<b>84</b>	<b><i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i></b>	<b>10.12.2009</b>	<b>Pt 8 (ss 17 &amp; 18)—1.2.2010 (<i>Gazette</i> 28.1.2010 p320)</b>
2010	19	<i>Statutes Amendment (Arts Agencies Governance and Other Matters) Act 2010</i>	28.10.2010	Pt 3 (ss 15—28) & Sch 1 (Pt 3 & Pt 9 cl 3 & 13)—uncommenced

### Provisions amended

New entries appear in bold.

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

Provision	How varied	Commencement
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	
s 3		
s 3(1)	employing authority inserted by 41/2006 s 12(1)	1.4.2007
s 3(3)	inserted by 41/2006 s 12(2)	1.4.2007
Pt 3		
s 6		
s 6(2)	(a) deleted by 41/2006 s 13	1.4.2007
Pt 4		
<b>Pt 4 Div 1</b>		

s 13	substituted by 84/2009 s 17	1.2.2010
ss 14 and 15	deleted by 84/2009 s 17	1.2.2010
Pt 4 Div 5	inserted by 41/2006 s 14	1.4.2007
s 20A		
s 20A(3)	amended by 84/2009 s 18	1.2.2010
s 20A(13)		
public sector agency	amended by 84/2009 s 18	1.2.2010

## 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;
- (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);



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- (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.
- (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.

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- (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