

South Australia

Children's Services Act 1985

An Act to ensure the provision of services for children; and for other purposes.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Children's Services Act 1985*.

3—Interpretation

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

child care centre means any place or premises in which more than 4 young children are, for monetary or other consideration, cared for on a non-residential basis apart from their guardians;

children's services centre means—

- (a) a kindergarten; or
- (b) a licensed child care centre that operates on a non-profit basis and is assisted by public funding; or
- (c) any other prescribed establishment;

the Director means the person holding or acting in the office of Director of Children's Services under this Act;

employing authority means—

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

kindergarten means an establishment at which pre-school education is provided for children;

the Kindergarten Union of South Australia means the Kindergarten Union of South Australia established under the repealed Act;

pre-school education means programmes for the development and education of children who have not attained the age of six years;

the repealed Act means the Kindergarten Union Act repealed by this Act.

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

5—Schedule

The provisions of Schedule 1 to this Act are incorporated with, and shall be read as part of, this Act.

Part 2—Administration

Division 1—General

6—Incorporation of the Minister

- (1) The Minister and his successors in office shall be a corporation sole.
- (2) The Minister shall, in his corporate name and capacity, be capable of—
 - (a) suing and being sued; and
 - (b) acquiring, holding, dealing with and disposing of real and personal property; and
 - (c) acquiring or incurring any other rights or liabilities.
- (3) A document purporting to bear the signature or the common seal of the Minister shall be presumed in any legal proceedings, in the absence of proof to the contrary, to have been duly executed by the Minister.

9—Delegation

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

Division 2—Staff

10—Director and other staff may be referred to as the Children's Services Office

- (1) The Director, and the members of the staff employed by the employing authority for the purposes of this Act, may be referred to as "the Children's Services Office".
- (2) In addition to the other functions and duties of the Director under this Act, the Director shall be responsible for the efficient management of the other staff of the Children's Services Office and any other matter relating to the Children's Services Office.

11—Director of Children's Services

- (1) There shall be a Director of Children's Services.
- (2) The Director shall be appointed—
 - (a) for a term of office, not exceeding five years, specified in the instrument of his appointment; and

- (b) upon terms and conditions determined by the Minister.
- (3) The Director is, on the expiration of a term of office, eligible for reappointment.
- (5) The Director may delegate to any other person any of his or her powers or functions under this Act.
- (6) A delegation under this section is revocable at will and does not derogate from the power of the Director to act personally in any matter.
- (7) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.

12—Staff

- (1) The employing authority may employ staff for the purposes of this Act.
- (2) The terms and conditions of employment of a person under subsection (1) will be determined by the employing authority.
- (3) A person employed under this section will be taken to be employed by or on behalf of the Crown but not as a Public Service employee.
- (4) The provisions of the *Public Sector Act 2009* with respect to long service leave apply in relation to persons employed under this section with such modification as may be prescribed.
- (5) The employing authority may direct a person employed under this section to perform functions in connection with the operations or activities of a public sector agency specified by the employing authority (and the person must comply with that direction).
- (6) The employing authority is, in acting under this section, subject to direction by the Minister.
- (7) However, no Ministerial direction may be given by the Minister relating to the appointment, transfer, remuneration, discipline or termination of a particular person.
- (8) The employing authority may delegate a power or function under this section.
- (9) A delegation under subsection (8)—
 - (a) must be by instrument in writing; and
 - (b) may be made to a body or person (including a person for the time being holding or acting in a specified office or position); and
 - (c) may be unconditional or subject to conditions; and
 - (d) may, if the instrument of delegation so provides, allow for the further delegation of a power or function that has been delegated; and
 - (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.
- (10) A change in the person constituting the employing authority under this Act will not affect the continuity of employment of a person under this section.
- (11) The Minister may, in connection with the operation of this Act, with the approval of another Minister administering an administrative unit, make use of the services or staff of that administrative unit.

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

(13) In this section—

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

13—Superannuation

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

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

14—Transfer of staff from public service or prescribed employment

(1) Where a person becomes a member of the Children's Services Office after ceasing to be employed—

- (a) in the Public Service of the State; or
- (b) in prescribed employment,

and that employment with the Children's Services Office follows immediately on the cessation of that previous employment—

- (c) his transfer shall be effected without loss of accrued recreation leave; and
- (d) his existing and accruing rights in respect of sick leave, accouchement leave and long service leave shall continue in effect.

(2) Except where subsection (1) applies, where a person becomes a member of the Children's Services Office within three months after ceasing to be employed—

- (a) in the Public Service of the State; or
- (b) in prescribed employment,

his existing and accruing rights immediately before the cessation of that previous employment in respect of recreation leave, sick leave, accouchement leave and long service leave shall continue in effect to the extent directed by the employing authority and subject to such conditions as may be determined by the employing authority.

Part 3—Children's services

Division 4—Registered Children's Services Centres

42—Registration

(1) Subject to this Act, the registration of a Children's Services Centre in force immediately before the commencement of this subsection continues in force.

(3) The registration of a Children's Services Centre under this section does not affect the title of the Centre to any of its property.

- (4) A Children's Services Centre that is registered, or deemed to be registered, under this Act is a body corporate and has the powers and functions prescribed by its constitution.
- (5) Incorporation of a Children's Services Centre by virtue of subsection (4) terminates incorporation of the Centre under any other Act.

43—Amendment of constitution of registered Children's Services Centres

- (1) The Director may, by notice in writing, direct a registered Children's Services Centre to make such amendments to its constitution as are specified in the notice.
 - (1a) The Director must not give a direction under subsection (1) until the expiration of three months after the Director has informed the Children's Services Centre in writing of the amendments that the Director requires.
 - (1b) Before the direction is given the Children's Services Centre may make representations to the Director in relation to the proposed amendments and the Director must give proper consideration to those representations.
- (2) Where a registered Children's Services Centre fails to comply with a notice under subsection (1) within the period specified in the notice, the Director may cancel its registration.
- (3) An amendment to the constitution of a registered Children's Services Centre has no effect until submitted to, and approved by, the Director.

44—Management of Children's Services Centres

- (1) A registered Children's Services Centre shall be administered by a management committee constituted in accordance with the constitution of the Children's Services Centre.
- (2) The constitution of a children's services centre may include provisions under which the membership of the management committee is such that it may also constitute a school council under the *Education Act 1972*.

45—Provision on dissolution of registered Children's Services Centre

Subject to the constitution of a registered Children's Services Centre, on its dissolution, all property, rights and liabilities vested in, or attached to, the Children's Services Centre shall vest in, or attach to, the Minister.

Division 5—Appeals

46—Appeal against decisions of the Director

- (1) A right of appeal to the Minister shall lie against any decision of the Director under this Part—
 - (b) to cancel a registration under this Part.
- (2) The appeal must be instituted, in the prescribed manner, before the expiration of one month from the day on which the decision appealed against took effect, but the Minister may, if he is satisfied that in the circumstances it is just and reasonable to do so, extend the period within which an appeal may be instituted.

- (3) The Minister shall establish such number of appeal boards as may be necessary for the purposes of investigating appeals under this section.
- (4) The Minister may pay to the members of an appeal board such allowances and expenses as he thinks fit.
- (5) Where an appeal under this section has been instituted against a decision, any action in relation to the decision shall be stayed until the appeal has been determined or withdrawn, unless the Minister directs otherwise.
- (6) The Minister may, upon determining an appeal, revoke the decision appealed against and may substitute for that decision any other decision that could have been made in the first instance.

Part 4—Miscellaneous

50—Financial provision

The moneys required for the purposes of this Act shall be paid out of moneys appropriated by Parliament for the purpose.

51—Recognised organisations

- (1) Where the employing authority is of the opinion that an organisation (being an association registered under the *Industrial Conciliation and Arbitration Act 1972*) represents the interests of a significant number of the members of the Children's Services Office, he shall, by notice published in the Gazette, declare that organisation to be a recognised organisation for the purposes of this section.
- (2) A recognised organisation has the right to make submissions to the employing authority on any matter that is an industrial matter within the meaning of the *Industrial Conciliation and Arbitration Act 1972* arising out of the exercise or performance by the employing authority of powers and functions under this Act.

52—Registered Children's Services Centres exempted from land tax

A registered Children's Services Centre is exempt from the payment of land tax under the *Land Tax Act 1936*.

53—Service of notices

A notice or document required or authorised to be given or served under this Act may be given or served personally or by post.

57—Regulations

- (1) The Governor may make such regulations as are contemplated by, or as are necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), those regulations may—
 - (a) prescribe any form for the purposes of this Act; and
 - (b) prescribe, and provide for the payment of, fees; and
 - (c) require registered Children's Services Centres to furnish periodic or other returns to the Minister containing information required by the regulations; and

- (d) prescribe the form of any notice, application, certificate or other document given, made or granted under this Act.
- (3) Any regulation made under this Act may be of general or limited application according to—
 - (a) the classes of persons; or
 - (b) the circumstances; or
 - (c) any other specified factor,to which the regulation is expressed to apply.

Schedule 1—Transitional provisions

1—Transitional provision relating to the repeal of the *Kindergarten Union Act 1974* and the amendment of the *Community Welfare Act 1972*

- (1) A kindergarten registered under the repealed Act immediately before the commencement of this Act shall be deemed to be registered as a Children's Services Centre under this Act and shall, subject to this Act, continue to be registered.
- (1a) Section 42(5) does not apply to a kindergarten incorporated under this Act before the commencement of the *Children's Services Act Amendment Act 1987*.
- (1b) If a kindergarten is incorporated under this Act and the *Associations Incorporation Act 1985*, its incorporation under the *Associations Incorporation Act 1985* will terminate at the expiration of three months after the commencement of the *Children's Services Act Amendment Act 1987*, unless the kindergarten has, by notice in writing to the Director and the Corporate Affairs Commission, elected to retain its incorporation under the *Associations Incorporation Act 1985*.
- (1c) If this Act and the *Associations Incorporation Act 1985* are in conflict in relation to a kindergarten incorporated under both Acts, the provisions of this Act will prevail.
- (2) A kindergarten registered as a branch kindergarten under the repealed Act immediately before the commencement of this Act, shall, upon the commencement of this Act, continue to be exempt from the payment of rates under the *Local Government Act 1934*.
- (3) All property, rights and liabilities vested in or attached to the Kindergarten Union of South Australia immediately before the commencement of this Act, shall, upon that commencement, vest in, or attach to, the Minister.
- (4) A licence or approval in force under the repealed provisions of the amended Act immediately before the commencement of this Act shall be deemed to be a licence or approval granted and in force under this Act and shall, subject to this Act, continue in force.
- (5) In subsection (4)—

the amended Act means the *Community Welfare Act 1972*;

the repealed provisions means the provisions of the amended Act repealed by this Act.

2—Transfer of staff of the Kindergarten Union of South Australia

- (1) This section applies to employees of the Kindergarten Union of South Australia who were so employed immediately before the commencement of this Act.
- (2) Subject to subsection (3), all persons to whom this section applies shall, on the commencement of this Act, become employees of the Minister on terms and conditions determined by the Minister.
- (3) On the commencement of this Act—
 - (a) a salaried employee to whom this section applies who is specified in a notice published by the Governor in the Gazette shall become an officer of the Public Service in a Department specified in the notice, at the salary and classification specified in relation to him in the notice; and
 - (b) an employee to whom this section applies (not being a salaried employee) who is specified in the notice referred to in paragraph (a), shall become an employee of a Minister specified in the notice, upon terms and conditions fixed by the relevant Minister.
- (4) The transfer of the employment of a person to whom this section applies shall be effected without loss of accrued recreation leave and without prejudice to, or interruption of his accrued or accruing rights in respect of sick leave, accouchement leave and long service leave arising out of his service with the Kindergarten Union of South Australia.

Legislative history

Notes

- 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.

Repeal of Act

The *Children's Services Act 1985* was repealed by Sch 1 cl 2 of the *Education and Children's Services Act 2019* on 1.7.2020.

Legislation repealed by principal Act

The *Children's Services Act 1985* repealed the following:

Kindergarten Union Act 1974

Legislation amended by principal Act

The *Children's Services Act 1985* amended the following:

Community Welfare Act 1972

Principal Act and amendments

Year	No	Title	Assent	Commencement
1985	21	<i>Children's Services Act 1985</i>	28.3.1985	1.7.1985 (<i>Gazette</i> 27.6.1985 p2244) except Pt 3 (Divs 1 & 6) and portion of Sch 2— 5.9.1985 (<i>Gazette</i> 5.9.1985 p700) and except Pt 3 (Div 2) and portion of Sch 2—12.9.1985 (<i>Gazette</i> 12.9.1985 p796) and except Pt 3 (Div 3) and portion of Sch 2—1.10.1985 (<i>Gazette</i> 26.9.1985 p944)
1987	95	<i>Children's Services Act Amendment Act 1987</i>	17.12.1987	4.2.1988 (<i>Gazette</i> 4.2.1988 p213)
1998	7	<i>Children's Services (Child Care) Amendment Act 1998</i>	2.4.1998	16.4.1998 (<i>Gazette</i> 16.4.1998 p1706)
2000	34	<i>South Australian Health Commission (Administrative Arrangements) Amendment Act 2000</i>	6.7.2000	Sch 1 (cl 3)—6.7.2000 (<i>Gazette</i> 6.7.2000 p5)
2000	92	<i>Education (Councils and Charges) Amendment Act 2000</i>	21.12.2000	Sch 2—31.5.2001 (<i>Gazette</i> 31.5.2001 p1893)

2006	41	<i>Statutes Amendment (Public Sector Employment) Act 2006</i>	14.12.2006	Pt 7 (ss 17—24)—1.4.2007 (<i>Gazette</i> 29.3.2007 p930)
2009	84	<i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>	10.12.2009	Pt 27 (ss 53 & 54)—1.2.2010 (<i>Gazette</i> 28.1.2010 p320)
2011	46	<i>Education and Early Childhood Services (Registration and Standards) Act 2011</i>	8.12.2011	Sch 3 (cII 4—14)—1.1.2012 (<i>Gazette</i> 15.12.2011 p4986)

Provisions amended

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 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	
s 3		
s 3(1)	s 3 redesignated as s 3(1) by 41/2006 s 17(2)	1.4.2007
child care centre	substituted by 7/1998 s 3(a)	16.4.1998
<i>baby sitting agency</i>	<i>deleted by 46/2011 Sch 3 cl 4(1)</i>	<i>1.1.2012</i>
<i>child</i>	<i>deleted by 46/2011 Sch 3 cl 4(2)</i>	<i>1.1.2012</i>
<i>children's services</i>	<i>deleted by 46/2011 Sch 3 cl 4(3)</i>	<i>1.1.2012</i>
<i>the Committee</i>	<i>deleted by 46/2011 Sch 3 cl 4(4)</i>	<i>1.1.2012</i>
employing authority	inserted by 41/2006 s 17(1)	1.4.2007
<i>family day care agency</i>	<i>amended by 7/1998 s 3(b)</i>	<i>16.4.1998</i>
	<i>deleted by 46/2011 Sch 3 cl 4(5)</i>	<i>1.1.2012</i>
<i>guardian</i>	<i>deleted by 46/2011 Sch 3 cl 4(6)</i>	<i>1.1.2012</i>
<i>parent</i>	<i>deleted by 46/2011 Sch 3 cl 4(7)</i>	<i>1.1.2012</i>
<i>regional advisory committee</i>	<i>deleted by 46/2011 Sch 3 cl 4(8)</i>	<i>1.1.2012</i>
<i>young child</i>	<i>inserted by 7/1998 s 3(c)</i>	<i>16.4.1998</i>
	<i>deleted by 46/2011 Sch 3 cl 4(9)</i>	<i>1.1.2012</i>
s 3(2)	inserted by 41/2006 s 17(2)	1.4.2007
s 4	<i>omitted under Legislation Revision and Publication Act 2002</i>	
Pt 2		
Pt 2 Div 1		
ss 7 & 8	<i>deleted by 46/2011 Sch 3 cl 5</i>	<i>1.1.2012</i>
s 9		
s 9(3)	inserted by 41/2006 s 18	1.4.2007
Pt 2 Div 2		

Children's Services Act 1985—1.1.2012 to 30.6.2020—repealed
Legislative history

s 10		
s 10(1)	amended by 41/2006 s 19(1)	1.4.2007
s 10(2)	amended by 41/2006 s 19(2)	1.4.2007
s 11		
s 11(4)	<i>amended by 41/2006 s 20(1)</i>	<i>1.4.2007</i>
	<i>deleted by 84/2009 s 53</i>	<i>1.2.2010</i>
s 11(5)—(7)	inserted by 41/2006 s 20(2)	1.4.2007
<i>s 12 before substitution by 41/2006</i>		
s 12(6)	<i>deleted by 34/2000 Sch 1 cl 3</i>	<i>6.7.2000</i>
s 12	substituted by 41/2006 s 21	1.4.2007
s 12(3)	amended by 84/2009 s 54(1)	1.2.2010
s 12(4) and (13)	amended by 84/2009 s 54(2)	1.2.2010
s 13	substituted by 41/2006 s 22	1.4.2007
s 14		
s 14(1)	amended by 41/2006 s 23(1), (2)	1.4.2007
s 14(2)	amended by 41/2006 s 23(3), (4)	1.4.2007
<i>Pt 2 Divs 3 and 4</i>	<i>deleted by 46/2011 Sch 3 cl 6</i>	<i>1.1.2012</i>
Pt 3		
<i>Pt 3 Div 1 before deletion by 46/2011</i>		
s 25		
s 25(3)	<i>substituted by 7/1998 s 4(a)</i>	<i>16.4.1998</i>
s 25(6)	<i>amended by 7/1998 s 4(b)</i>	<i>16.4.1998</i>
<i>Pt 3 Div 1</i>	<i>deleted by 46/2011 Sch 3 cl 7</i>	<i>1.1.2012</i>
<i>Pt 3 Div 2</i>	<i>deleted by 46/2011 Sch 3 cl 7</i>	<i>1.1.2012</i>
<i>Pt 3 Div 3 before deletion by 46/2011</i>		
s 33		
s 33(1)	<i>amended by 7/1998 s 5(a)</i>	<i>16.4.1998</i>
s 33(2a)—(2d)	<i>inserted by 7/1998 s 5(b)</i>	<i>16.4.1998</i>
s 33(4)	<i>substituted by 7/1998 s 5(c)</i>	<i>16.4.1998</i>
<i>Pt 3 Div 3</i>	<i>deleted by 46/2011 Sch 3 cl 7</i>	<i>1.1.2012</i>
Pt 3 Div 4		
s 41	<i>deleted by 46/2011 Sch 3 cl 8</i>	<i>1.1.2012</i>
s 42		
s 42(1)	substituted by 46/2011 Sch 3 cl 9	1.1.2012
s 42(2)	<i>deleted by 46/2011 Sch 3 cl 9</i>	<i>1.1.2012</i>
s 42(4)	substituted by 95/1987 s 3	4.2.1988
s 42(5)	inserted by 95/1987 s 3	4.2.1988
s 43		
s 43(1a) and (1b)	inserted by 95/1987 s 4	4.2.1988
s 44		

s 44(1)	s 44 redesignated as s 44(1) by 92/2000 Sch 2	31.5.2001
s 44(2)	inserted by 92/2000 Sch 2	31.5.2001
Pt 3 Div 5		
s 46		
s 46(1)	(a) deleted by 46/2011 Sch 3 cl 10(1)	1.1.2012
	amended by 46/2011 Sch 3 cl 10(2)	1.1.2012
<i>Pt 3 Div 6 before deletion by 46/2011</i>		
s 48	<i>amended by 7/1998 s 6</i>	16.4.1998
<i>Pt 3 Div 6 deleted by 46/2011 Sch 3 cl 11</i>		
Pt 4		
s 49	<i>deleted by 46/2011 Sch 3 cl 12</i>	1.1.2012
s 51		
s 51(1)	amended by 41/2006 s 24(1), (2)	1.4.2007
s 51(2)	amended by 41/2006 s 24(3), (4)	1.4.2007
ss 54—56	<i>deleted by 46/2011 Sch 3 cl 13</i>	1.1.2012
s 57		
s 57(2)	(e) and (f) deleted by 46/2011 Sch 3 cl 14(1)	1.1.2012
	amended by 46/2011 Sch 3 cl 14(2)	1.1.2012
Sch 1		
cl 1		
cl 1(1a)—(1c)	inserted by 95/1987 s 5	4.2.1988
<i>Sch 2 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;
- (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;

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- (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.

- (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.

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- (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

Reprint No 1—1.7.1991

Reprint No 2—16.4.1998

Reprint No 3—6.7.2000

Reprint No 4—31.5.2001

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