

South Australia

## **South Australian Film Corporation Act 1972**

An Act to make provision for the establishment of a corporation to be known as the South Australian Film Corporation, to define its powers and functions; and for other purposes.

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### The Parliament of South Australia enacts as follows:

## Part 1—Preliminary

### 1—Short title

This Act may be cited as the *South Australian Film Corporation Act 1972*.

### 4—Interpretation

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

*the Chief Executive Officer* means the person for the time being holding or acting in the office of Chief Executive Officer under this Act;

*the Corporation* means the South Australian Film Corporation established under this Act;

*council* means a municipal or a district council and includes a body corporate which is, by virtue of any Act, deemed to be, or vested with the powers of, a municipal council or district council;

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

*film* means a photographic film or a recording on magnetic tape or on any other material from which a series of images, with or without associated sounds, may be produced and includes such a photographic film or recording for use in a television programme;

*producer*, in relation to a film, means the person by whom the arrangements necessary for the making of the film are undertaken; and *to produce* and *production* have corresponding meanings.

- (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.

#### Note—

For definition of divisional penalties (and divisional expiation fees) see Appendix.

## Part 2—The South Australian Film Corporation

### 5—Establishment of the Corporation

- (1) There shall be a corporation which shall be known as the South Australian Film Corporation which shall be established on the day on which the first members thereof take office as such.

- (2) Subject to this Act, the Corporation—
  - (a) shall be a body corporate with perpetual succession and a common seal; and
  - (b) shall be capable of suing and being sued, and of taking or acquiring, taking or letting on lease, holding, selling and otherwise disposing of land and property of all kinds; and
  - (c) shall hold all its property for and on behalf of the Crown; and
  - (d) shall have the powers, duties, functions and authorities conferred, imposed or prescribed by or under this Act or any other Act.
- (3) Where an apparently genuine document purports to bear the common seal of the Corporation, it shall be presumed, in the absence of evidence to the contrary, that the common seal of the Corporation was duly affixed to that document.
- (4) The Corporation is to consist of not less than eight and not more than ten members appointed by the Governor.
- (5) One member of the Corporation will be appointed by the Governor to chair the Corporation.
- (5a) The Chief Executive Officer is eligible for appointment to the Corporation.
- (6) A member of the Corporation shall be appointed for such term of office as the Governor fixes at the time of making the appointment and may be removed from office by the Governor by notice in writing.
- (7) When a member of the Corporation is unable to perform his duties as such, the Governor may at any time, upon the recommendation of the Minister, appoint a deputy to act for that member during his incapacity and a person so appointed shall, while so acting, be deemed to be a member of the Corporation in lieu of the member for whom he is so acting.
- (8) A person is eligible for re-appointment as a member of the Corporation on the expiration of his term of office as a member.
- (9) The Governor may, as occasion requires, and on the recommendation of the Minister, make such appointments as may be necessary to fill any vacancies occurring in the membership of the Corporation.
- (10) The office of member of the Corporation may be held in conjunction with any other appointment or office under the Government.
- (11) The *Public Service Act 1967*, as amended, shall not apply to or in relation to the appointment of a member of the Corporation, and he shall not, as a member, be subject to that Act, but this provision shall not affect the rights, privileges, duties and obligations under that Act of any person who is otherwise subject to that Act.
- (12) A member of the Corporation shall be entitled to be paid out of the funds of the Corporation such remuneration, allowances and expenses as may be determined by the Governor.

## **6—Procedure at meetings of Corporation**

- (1) Five members of the Corporation constitute a quorum of the Corporation.

- (2) The member of the Corporation appointed to chair the Corporation will preside at meetings of the Corporation or, in the absence of that member, the deputy of that member, or, in the absence of both, a member chosen to preside by those members present at the meeting.
- (3) A decision carried by a majority of the votes cast by members at a meeting is a decision of the Corporation.
- (4) Each member present at a meeting of the Corporation has one vote on any question arising for decision and, if the votes are equal, the member presiding at the meeting may exercise a second or casting vote.
- (5) A telephone or video conference between members will, for the purposes of this section, be taken to be a meeting of the Corporation at which the participating members are present.
- (6) A proposed resolution of the Corporation becomes a valid decision of the Corporation despite the fact that it is not voted on at a meeting of the Corporation if—
  - (a) notice of the proposed resolution is given to all members in accordance with procedures determined by the Corporation; and
  - (b) a majority of the members express their concurrence in the proposed resolution by letter, telegram, telex, facsimile transmission or other written communication setting out the terms of the resolution.
- (7) The Corporation must have accurate minutes kept of its proceedings.
- (8) Subject to this Act, the Corporation may determine its own procedures.

#### **6A—Disclosure of interest**

- (1) A member of the Corporation who has a direct or indirect pecuniary or personal interest in a matter under consideration by the Corporation—
  - (a) must disclose the nature of the interest to the Corporation; and
  - (b) must not take part in any deliberations or decision of the Corporation in relation to that matter.

Penalty: Division 5 fine or division 5 imprisonment.

- (2) A member of the Corporation will not be taken to have a direct or indirect interest in a matter for the purposes of this section by reason only of the fact that the member has an interest in the matter that is shared in common with the public or the film industry generally or a substantial section of the public or the film industry.
- (3) It is a defence to a charge of an offence against subsection (1) to prove that the defendant was not, at the time of the alleged offence, aware of his or her interest in the matter.
- (4) A disclosure under this section must be recorded in the minutes of the Corporation and reported to the Minister.
- (5) If a member discloses an interest in a proposed contract under this section and takes no part in any deliberations or decision of the Corporation on the contract—
  - (a) the contract is not liable to be avoided; and
  - (b) the member is not liable to account for profits derived from the contract.

## **6B—Members' duties of honesty, care and diligence**

- (1) A member of the Corporation must at all times act honestly in the performance of official functions.  
Penalty: Division 4 fine or division 4 imprisonment or both.
- (2) A member of the Corporation must at all times exercise a reasonable degree of care and diligence in the performance of official functions.
- (3) If a member of the Corporation is culpably negligent in the performance of official functions, the member is guilty of an offence.  
Penalty: Division 4 fine.
- (4) A member of the Corporation is not culpably negligent for the purposes of subsection (3) unless the court is satisfied the member's conduct fell sufficiently short of the standard required of the member to warrant the imposition of a criminal sanction.
- (5) A member or former member of the Corporation must not make improper use of information acquired through his or her official position to gain directly or indirectly a personal advantage for himself, herself or another, or to cause detriment to the Corporation or the State.  
Penalty: Division 4 fine or division 4 imprisonment or both.
- (6) A member of the Corporation must not make improper use of his or her official position to gain directly or indirectly a personal advantage for himself, herself or another or to cause detriment to the Corporation or the State.  
Penalty: Division 4 fine or division 4 imprisonment or both.
- (7) This section—
  - (a) operates both inside and outside the State; and
  - (b) is in addition to, and does not derogate from, other laws.

## **7—Validity of proceedings of the Corporation**

- (1) An Act or proceeding of the Corporation shall not be regarded as invalid for the reason only that there was at the time thereof a vacancy in the office of any member.
- (2) Every act or proceeding of the Corporation shall, notwithstanding any defect in the appointment of a person as a member of the Corporation, be as valid and effective as if that person had been validly appointed a member of the Corporation.

## **8—Corporation to be subject to general control of Minister**

In the exercise and performance of its powers, duties, functions and authorities the Corporation shall, except where it is required to make a recommendation to the Minister, be subject to the general control and direction of the Minister.

## **9—Appointment of Chief Executive Officer**

- (1) The Chief Executive Officer of the Corporation is to be appointed by the employing authority on terms and conditions determined by the employing authority.

- (2) However, a person may not be employed as Chief Executive Officer, and may not be removed from office, unless or until the employing authority—
  - (a) has consulted with the Corporation; and
  - (b) has obtained the approval of the Minister.
- (3) The Chief Executive Officer is, subject to the control of the Corporation, responsible for the management of the operations of the Corporation.

### 9A—Staffing arrangements

- (1) The employing authority may employ other 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 Management Act 1995*).
- (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 Act (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 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 Management Act 1995*.

## 10—Functions of the Corporation

The functions of the Corporation are, generally—

- (a) to undertake the production of films; and
- (ab) to promote and participate in any scheme for the financing of film production; and
- (b) to provide library and other services and facilities relating to films and their screening; and
- (c) to provide information services about films and their availability; and
- (d) to offer and arrange courses of instruction for persons who are interested in film projection; and
- (e) to store, distribute, sell and exhibit or otherwise deal with films; and
- (ee) to do all things necessary to promote public interest in film as a medium of communication and as an art form; and
- (f) to carry out research into the distribution of films and the effectiveness of films to meet the purposes for which they are made with a view to improving such distribution and effectiveness.

## 11—Powers of the Corporation

The Corporation has power to do all things necessary for the administration of this Act and, without limiting the generality of the foregoing—

- (a) shall have the sole and exclusive right to produce, or arrange for the production of, film for or on behalf of the Government of the State or for or on behalf of any instrumentality or agency of the State or the Government of the State; and
- (aa) shall have vested in it, by force of this section, all rights in any film made for or on behalf of the Government of the State; and
- (b) may undertake film production on its own behalf or for any other person or organisation; and
- (c) may enter into and carry out arrangements and agreements for the making, distribution and exhibition of films; and
- (ca) may, for the purpose of participating in any scheme for the financing of film production, advance moneys to any person, or persons, upon such security and such conditions as the Corporation thinks fit; and
- (d) may acquire and lend films and any periodicals, books and equipment for use in connection with film making, producing, projecting and screening; and

- (e) may establish regional film libraries throughout South Australia; and
- (f) may do all such other things as it is authorised or empowered to do by or under this Act or any other Act.

## **12—Power of Corporation to delegate powers**

- (1) The Corporation may, by writing under its common seal, but subject to the approval of the Minister, delegate any of its powers, other than this power of delegation, to a member of the Corporation or a person employed under this Act.
- (2) A power so delegated may be exercised by the delegate in accordance with the instrument of delegation and, when so exercised, shall, for the purposes of this Act, be deemed to have been exercised by the Corporation.
- (3) A delegation of power under this section is revocable at will and does not prevent the exercise of the power by the Corporation.
- (4) A delegate must not act in any matter pursuant to the delegation in which the delegate has a direct or indirect pecuniary or personal interest.

Penalty: Division 5 fine or division 5 imprisonment.

## **13—The Corporation may borrow for purposes of this Act**

- (1) For the purposes of this Act the Corporation may, upon such terms and conditions as are approved by the Treasurer, borrow money—
  - (a) from the Treasurer; or
  - (b) with the consent of the Treasurer, from any other person.
- (2) The repayment of all moneys borrowed under paragraph (b) of subsection (1) of this section together with any interest payable thereon is hereby guaranteed by the Treasurer.
- (3) The Treasurer is hereby authorised, without further appropriation than this section, to pay out of the General Revenue of the State any amount required to satisfy a liability under a guarantee by virtue of subsection (2) of this section.

## **Part 5—Financial provisions**

### **22—Moneys required for purposes of this Act**

Except to the extent that the funds of the Corporation might otherwise be sufficient for the purposes of this Act, the moneys required for those purposes shall be paid out of moneys provided by Parliament for those purposes.

### **23—The funds of the Corporation**

- (1) The Treasurer may, from time to time, make available to the Corporation from moneys appropriated by Parliament for the purposes of the administration of this Act and the carrying out by the Corporation of its functions, duties and authorities under this Act, such moneys on such terms and conditions as he thinks fit.

- (2) The funds of the Corporation shall be kept and maintained at the Treasury and shall consist of—
- (a) all moneys made available by the Treasurer to the Corporation, out of appropriations authorised by Parliament, for the purposes of the administration of this Act and the carrying out by the Corporation of its functions, duties and authorities; and
  - (b) all moneys derived by the Corporation from the sale, leasing and other disposal by the Corporation of any property which it has power to sell, lease or otherwise dispose of; and
  - (c) all moneys borrowed by the Corporation under this Act; and
  - (d) all other moneys received by the Corporation; and
  - (e) all moneys, other than moneys referred to in paragraphs (a) to (d) (inclusive) of this subsection that are required to be paid to the Corporation by this Act or any other Act.
- (3) The funds of the Corporation may, with the approval of the Minister, be used by the Corporation for all or any of the following purposes:
- (a) the acquisition and development of any property for the purposes of this Act; and
  - (b) the payment of moneys which the Corporation becomes liable to pay; and
  - (c) the establishment of any special fund or funds for any purposes connected with the functions, duties and authorities of the Corporation; and
  - (d) the transfer to any reserve for the repayment of any moneys borrowed by the Corporation for the purposes of this Act; and
  - (e) the payment of principal, interest and expenses in respect of moneys borrowed by the Corporation for the purposes of this Act; and
  - (f) the maintenance and improvement of any property owned or held by or vested in the Corporation; and
  - (g) any purposes authorised by or under this Act as a purpose for which the funds of the Corporation may be used.
- (4) Any funds of the Corporation that are not immediately required for the purposes referred to in subsection (3) of this section may be deposited by the Corporation with the Treasurer, or may be invested in such other manner as the Treasurer may approve.

## **24—Budget**

- (1) As soon as practicable after the commencement of this Act, the Corporation shall present to the Minister a budget showing estimates of its revenue and expenditure over the balance of the financial year within which that budget is presented and thereafter the Corporation shall, before the commencement of each succeeding financial year, present to the Minister a budget showing estimates of its revenue and expenditure for that financial year.
- (2) The Minister may approve of a budget presented to him pursuant to subsection (1) of this section or may direct or allow the Corporation to amend a budget before he approves of that budget.

- (3) The Corporation shall not, without the consent of the Minister, make any expenditure that is not provided for by a budget that has been approved by the Minister under this section.

## **Part 6—Miscellaneous**

### **25—Service with the State or Commonwealth Government or approved employer to count as service with the Corporation, if continuous**

Where the service of a person in the employment of the Corporation is continuous with his service in the employment of the Government of the Commonwealth or of this State or any other State of the Commonwealth or in the employment of any other employer approved by the Minister, the Corporation shall, when calculating the recreation leave, sick leave and long service leave to be granted to that person in respect of his service in the employment of the Corporation—

- (a) grant in addition to that leave any accrued leave to which that person is entitled in respect of his service in that previous employment; or
- (b) if that person has no such entitlement to any accrued leave, take into account his period of service in that previous employment as if it were service in the employment of the Corporation.

### **26—Superannuation**

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

### **27—Films and equipment of Government departments may be vested in Corporation**

- (1) The Governor may, by proclamation, subject to such terms and conditions, if any, as he may state therein, vest in the Corporation the ownership or custody of any films and any periodicals, books and equipment for use in connection with film making, producing, projecting and screening which are owned by or vested in the Government or any instrumentality or agency of the Government.
- (2) Subject to this Act and to the terms and conditions of the vesting, the Corporation may utilise for the purposes of this Act the films, periodicals, books and equipment so vested in it.
- (3) Upon application to the Corporation by or on behalf of a department, instrumentality or agency of the Government to borrow any film, periodical, book or equipment of which the applicant has been divested pursuant to this section, the Corporation shall, so far as is practicable and unless otherwise directed by the Minister, give the applicant immediate access to the required film, periodical, book or equipment and permit the applicant to borrow it for the period of time for which it is required.

## **28—Preferences in the lending of films etc**

Unless otherwise directed by the Minister, the Corporation shall, when determining conflicting applications to borrow any film, periodical, book or equipment of or in the custody of the Corporation—

- (a) give priority to any applicant that is a department, instrumentality or agency of the Government which has been divested of the film, periodical, book or equipment pursuant to this Act; and
- (b) have regard to the purposes for which the applicants require the film, periodical, book or equipment.

## **29—Temporary closure of roads etc**

The Commissioner of Police shall—

- (a) if he thinks fit, upon the application of the Corporation and the approval of the appropriate council; or
- (b) upon the direction of the Minister made upon application made to him by any person including the Corporation, and after consultation with the appropriate council,

temporarily close any road or part of any road or cause such directions to be given as are necessary to control the movement of pedestrians and vehicular traffic on any road or part of any road during the making of any film being produced by or on behalf of the Corporation or that other person, as the case may be.

## **30—Annual report**

- (1) On or before the thirty-first day of October in each year the Corporation shall furnish the Minister with a report on its administration and the work that had been undertaken by the Corporation during the year or part of the year ended on the thirtieth day of June preceding the report.
- (2) The Minister shall cause each report to be laid before both Houses of Parliament within three weeks after receiving the same, if Parliament is then sitting, or, if Parliament is not then sitting, within two weeks after the commencement of the next sitting of Parliament.

## **31—Accounts and Audit**

- (1) The Corporation shall keep proper books of account showing accurately and in detail all its financial transactions and shall in each year prepare a profit and loss account for the period of twelve months or part thereof ending on the thirtieth day of June in that year and a balance sheet showing its assets and liabilities as at that thirtieth day of June.
- (2) The Auditor-General shall audit the accounts of the Corporation annually and for the purpose of such audit may exercise any of the powers which he could exercise for the purpose of auditing the accounts of a Government department.
- (3) The Corporation shall pay to the Treasurer, as a fee for every such audit, such sum as the Treasurer thinks reasonable.

### **32—Summary proceedings**

Proceedings for offences against this Act or any provision of this Act shall be disposed of summarily.

### **33—Regulations**

- (1) The Governor may make such regulations as are necessary or expedient for the purpose of giving effect to the provisions and objects of this Act.
- (2) Without limiting the generality of the provisions of subsection (1) of this section, the regulations may—
  - (a) prescribe all matters required to be prescribed or authorised by or under this Act and such other matters as are necessary or convenient for carrying out the provisions and objects of this Act; and
  - (b) provide for fees and charges to be payable under this Act and, if necessary, prescribe the fees and charges so payable; and
  - (c) prescribe additional powers and duties of the Corporation, the Chief Executive Officer or any other employee under this Act; and
  - (d) provide for and prescribe penalties not exceeding in each case, one hundred dollars, for an offence against this Act or any provision of this Act.

## 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
1972	48	<i>South Australian Film Corporation Act 1972</i>	20.4.1972	26.10.1972 ( <i>Gazette 26.10.1972 p2021</i> )
1975	92	<i>South Australian Film Corporation Act Amendment Act 1975</i>	20.11.1975	15.4.1976 ( <i>Gazette 15.4.1976 p1979</i> )
1978	77	<i>South Australian Film Corporation Act Amendment Act 1978</i>	16.11.1978	18.2.1982 ( <i>Gazette 18.2.1982 p417</i> )
1979	11	<i>South Australian Film Corporation Act Amendment Act 1979</i>	8.3.1979	8.3.1979
1981	106	<i>South Australian Film Corporation Act Amendment Act 1981</i>	23.12.1981	23.12.1981
1993	79	<i>South Australian Film Corporation (Administration) Amendment Act 1993</i>	27.10.1993	27.10.1993 ( <i>Gazette 27.10.1993 p1888</i> )
<b>2006</b>	<b>41</b>	<b><i>Statutes Amendment (Public Sector Employment) Act 2006</i></b>	<b>14.12.2006</b>	<b>Pt 19 (ss 80—84)—1.4.2007 (<i>Gazette 29.3.2007 p930</i>)</b>
2009	84	<i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>	10.12.2009	Pt 136 (ss 310—312)—1.2.2010 ( <i>Gazette 28.1.2010 p320</i> )

### Provisions amended since 3 February 1976

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	<i>amended by 77/1978 s 3</i>	18.2.1982
	<i>amended by 106/1981 s 2</i>	23.12.1981
	<i>omitted under Legislation Revision and Publication Act 2002</i>	

s 4		
s 4(1)	s 4 redesignated as s 4(1) by 41/2006 s 80(2)	1.4.2007
employing authority	inserted by 41/2006 s 80(1)	1.4.2007
film	substituted by 92/1975 s 3(a)	15.4.1976
<i>the advisory board</i>	deleted by 77/1978 s 4	18.2.1982
<i>the Chairman</i>	inserted by 92/1975 s 3(b)	15.4.1976
	deleted by 79/1993 s 3(a)	27.10.1993
the Chief Executive Officer	inserted by 79/1993 s 3(a)	27.10.1993
<i>the Director</i>	deleted by 106/1981 s 3	23.12.1981
<i>the Managing Director</i>	inserted by 106/1981 s 3	23.12.1981
	deleted by 79/1993 s 3(b)	27.10.1993
s 4(2)	inserted by 41/2006 s 80(2)	1.4.2007
Pt 2		
s 5		
s 5(4)	substituted by 92/1975 s 4(a)	15.4.1976
	substituted by 79/1993 s 4	27.10.1993
s 5(5)	deleted by 92/1975 s 4(a)	15.4.1976
	inserted by 79/1993 s 4	27.10.1993
s 5(5a)	inserted by 79/1993 s 4	27.10.1993
s 5(6)	amended by 92/1975 s 4(b)	15.4.1976
s 5(7)	amended by 92/1975 s 4(c)	15.4.1976
s 5(12)	amended by 92/1975 s 4(d)	15.4.1976
s 6	amended by 92/1975 s 5	15.4.1976
	substituted by 79/1993 s 5	27.10.1993
ss 6A and 6B	inserted by 79/1993 s 5	27.10.1993
s 9 before substitution by 41/2006		
s 9(1)	substituted by 79/1993 s 6(a)	27.10.1993
s 9(1a)	inserted by 79/1993 s 6(a)	27.10.1993
s 9(2)	amended by 79/1993 s 6(b)	27.10.1993
s 9(3)	amended by 79/1993 s 6(c)	27.10.1993
s 9	substituted by 41/2006 s 81	1.4.2007
s 9A	inserted by 41/2006 s 81	1.4.2007
s 10	amended by 92/1975 s 6	15.4.1976
	amended by 11/1979 s 2	8.3.1979
s 11	amended by 92/1975 s 7	15.4.1976
	amended by 11/1979 s 3	8.3.1979
s 12		
s 12(1)	amended by 79/1993 s 7(a)	27.10.1993
	amended by 41/2006 s 82	1.4.2007
s 12(4)	inserted by 79/1993 s 7(b)	27.10.1993

Pt 3	<i>amended by 106/1981 ss 4—8</i>	23.12.1981
	<i>deleted by 79/1993 s 8</i>	27.10.1993
Pt 4	<i>amended by 92/1975 ss 8, 9</i>	15.4.1976
	<i>deleted by 77/1978 s 5</i>	18.2.1982
Pt 5		
s 23		
s 23(4)	inserted by 11/1979 s 4	8.3.1979
Pt 6		
s 26 before substitution by 41/2006	amended by 106/1981 s 9	23.12.1981
	amended by 79/1993 s 9	27.10.1993
	<b>substituted by 41/2006 s 83</b>	<b>1.4.2007</b>
s 30		
s 30(1)	amended by 79/1993 s 10	27.10.1993
s 33		
s 33(2)	amended by 77/1978 s 6	18.2.1982
	amended by 106/1981 s 10	23.12.1981
	amended by 79/1993 s 11	27.10.1993
	<b>amended by 41/2006 s 84</b>	<b>1.4.2007</b>

## Transitional etc provisions associated with Act or amendments

### *South Australian Film Corporation (Administration) Amendment Act 1993*

#### 12—Transitional provision

The members of the Corporation in office immediately before the commencement of this Act continue in office under the principal Act as amended by this Act.

### *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);
  - (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.
- (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—15.1.1992

Reprint No 2—27.10.1993

## Appendix—Divisional penalties and expiation fees

At the date of publication of this version divisional penalties and expiation fees are, as provided by section 28A of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	—	\$500	\$100
10	—	\$200	\$75
11	—	\$100	\$50
12	—	\$50	\$25

*Note: This appendix is provided for convenience of reference only.*