

South Australia

# Technical and Further Education Act 1975

An Act to make provision for technical and further education in this State; 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 *Technical and Further Education Act 1975*.

#### 4—Interpretation

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

***the Appeal Board*** means the Teachers Appeal Board established under the *Education Act 1972*;

***Chief Executive Officer*** means the person for the time being holding, or acting in, the position of Chief Executive Officer of the Department;

***college*** means an educational institution at which technical and further education is provided pursuant to this Act;

***council*** means a college council established by the Minister under Part 4;

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**Department** means the administrative unit of the Public Service that is, under the Minister, responsible for the administration of this Act;

**employing authority** means—

- (a) unless paragraph (b) applies—the Chief Executive Officer; or
- (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;

**the Minister** means the Minister of Employment and Further Education or any other Minister of the Crown for the time being exercising and discharging the functions and responsibilities of the Minister of Employment and Further Education;

**officer** means an officer appointed under section 15;

**technical and further education** means instruction or training in any academic, vocational or practical discipline other than instruction or training excluded from the application of this Act.

- (2) A reference in this Act to the effective service of an officer is a reference to—
  - (a) the period (if any) of the officer's continuous service as an officer; and
  - (b) any other period (if any) that is, by determination of the employing authority, to be regarded as forming the whole, or part, of the officer's effective service,but does not include any period that is, by determination of the employing authority, not to be regarded as a period of effective service for the purposes of this Act.
- (3) The employing authority may, by instrument in writing, determine in relation to any specified officers, or officers of any specified class, that a period referred to in the instrument is, or is not, to be regarded as a period of effective service for the purposes of this Act.
- (4) 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) If—
  - (a) the Chief Executive Officer is the employing authority under this Act; and
  - (b) a provision of this Act—
    - (i) requires that a matter be referred to the employing authority by the Chief Executive Officer; or
    - (ii) provides that the Chief Executive Officer make a recommendation to the employing authority,

the provision will be taken to allow for the Chief Executive Officer, in his or her capacity as the employing authority, to take action without an actual referral or recommendation.

**Note—**

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

## 5—Application of Act

This Act does not apply in respect of—

- (a) instruction or training provided at any Government school (within the meaning of the *Education and Early Childhood Services (Registration and Standards) Act 2011*); or
- (b) instruction or training in primary or secondary education provided at any school (not being a college) that is attended by the students, or a majority of the students, enrolled at the school on a full-time basis; or
- (c) instruction or training provided by any university established by statute; or
- (d) pre-school instruction or training; or
- (e) instruction or training provided by any theological college, seminary or religious body.

## Part 2—The Minister and the Department

### 6—Administration of this Act

Subject to this Act, the Minister has the general administration of this Act, and the administration and control of all officers and employees appointed under this Act.

### 7—The Minister

- (1) For the purposes of this Act, the Minister—
  - (a) is a body corporate with perpetual succession and a common seal; and
  - (b) is capable of acquiring, holding and disposing of real and personal property; and
  - (c) is capable of acquiring or incurring any other legal rights and liabilities, and of suing and being sued; and
  - (d) has the powers, authorities, duties and obligations prescribed under this Act.
- (2) Where an apparently genuine document purports to bear the common seal of the Minister, the common seal of the Minister will be taken, in the absence of proof to the contrary, to have been duly affixed to that document.

### 8—Delegation by Minister

- (1) The Minister may, by instrument in writing, delegate to—
  - (a) the Chief Executive Officer or the person for the time being holding or acting in some other position in the Department; or
  - (b) the person for the time being holding or acting in a position or office established for the purposes of this Act; or
  - (c) the person for the time being holding or acting in the position of presiding member of an advisory committee appointed by the Minister under section 10A,

any of the powers, duties or functions of the Minister under this Act.

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- (2) A delegation under this section may be given subject to such conditions as the Minister thinks fit and specifies in the instrument of delegation.
  - (3) A delegation under this section is revocable at will and does not prevent the Minister from acting personally in any matter.
  - (4) A power, duty or function delegated under this section may, if the instrument of delegation so provides, be further delegated.

## 9—General powers of Minister

- (1) The Minister may establish and maintain such colleges as he or she considers necessary or desirable for the purposes of providing technical and further education.
- (2) The Minister may, where in his or her opinion the public interest does not require the continuance of any college, close the college permanently or temporarily and sell or otherwise dispose of the land, buildings, equipment and facilities acquired or set apart for the purposes of that college.
- (3) The Minister may establish and maintain such institutions as he or she considers necessary for the education and training of those who are to give instruction or training in colleges.
- (4) The Minister may establish and maintain boarding houses for the accommodation of students at any college or any institution established under subsection (3).
- (5) The Minister may—
  - (a) make available, on such conditions as the Minister thinks fit, any land, buildings, equipment or facilities for the purposes of technical and further education;
  - (b) provide assistance to community bodies (whether by the making of grants or loans or otherwise) on conditions that secure for colleges rights to make use of land, buildings, equipment or facilities of the bodies.
- (7) The Minister may, subject to and in accordance with the *Land Acquisition Act 1969*, acquire land for the purposes of this Act.
- (8) Where land, buildings, equipment, facilities or services used or provided for or incidentally to the provision of technical and further education can, in the opinion of the Minister, also be used or provided for commercial, community or other purposes without substantially detracting from the provision of technical and further education, the Minister may, by lease, licence or other arrangement, authorise their use or provision for those other purposes.
- (9) The Minister may—
  - (a) in order to provide students with practical training and experience in the course of technical and further education—
    - (i) establish or carry on an enterprise or activity, for commercial, community or other purposes, in which students are to participate;
    - (ii) provide for the participation of students, on such conditions as the Minister thinks fit, in a commercial, community or other enterprise or activity carried on by some other person or body;

- (b) provide consultancy or other services, for a fee or otherwise, in any area in which officers or employees appointed under this Act or employed in the Department have particular expertise developed (whether wholly or partly) in the course of, or incidentally to, the provision of technical and further education;
- (c) undertake or provide for the development or use, for commercial, community or other purposes, of any intellectual property, product or process created or developed (whether wholly or partly) in the course of, or incidentally to, the provision of technical and further education.

### **10A—Advisory committees**

- (1) The Minister may appoint such advisory committees as he or she considers desirable.
- (2) The membership of an advisory committee will be as determined by the Minister and its members hold office at the Minister's pleasure.
- (3) An advisory committee must—
  - (a) investigate and report to the Chief Executive Officer on such matters related to technical and further education or the administration of this Act as the Minister may request; and
  - (b) perform any other function assigned to the committee by the Minister.
- (4) Subject to any direction of the Minister, the procedure of an advisory committee may be determined by the committee.

### **12—Powers, functions and duties of the Chief Executive Officer**

- (1) The Chief Executive Officer is responsible to the Minister—
  - (a) for maintaining a proper standard of efficiency and competency among officers and employees; and
  - (b) for the efficient and effective management of officers and employees; and
  - (c) for ensuring that all resources available for technical and further education are managed with the object of securing the highest practicable standards of instruction, training, facilities and services for students enrolled in courses conducted under this Act.
- (2) The responsibilities imposed under subsection (1) are in addition to the responsibilities of the Chief Executive Officer in respect of the Department.
- (3) The Chief Executive Officer has such powers, functions and duties—
  - (a) as are vested in and imposed on the Chief Executive Officer under this or any other Act; or
  - (b) as the Chief Executive Officer is directed to exercise or perform by the Minister.

### **13—Delegation by Chief Executive Officer**

- (1) The Chief Executive Officer may, by instrument in writing and with the consent of the Minister, delegate to—
  - (a) the person for the time being performing particular duties in the Department or holding or acting in a position or office in the Department or established under this Act; or
  - (b) the person for the time being holding or acting in the position of presiding member of an advisory committee appointed by the Minister under section 10A,any of the powers, functions or duties of the Chief Executive Officer under this Act.
- (2) A delegation under this section may be given subject to such conditions as the Chief Executive Officer thinks fit and specifies in the instrument of delegation.
- (3) A delegation under this section is revocable at will and does not prevent the Chief Executive Officer from acting personally in any matter.
- (4) A power, function or duty delegated under this section may, if the instrument of delegation so provides, be further delegated.

### **14—Annual report**

- (1) The Chief Executive Officer must, on or before 31 March in each year, present to the Minister a report on the operations of the Department and colleges for the preceding calendar year.
- (2) The Minister must, within six sitting days after receipt of a report under this section, cause copies of the report to be laid before each House of Parliament.

## **Part 3—Officers**

### **Division 1—Appointment**

#### **15—Appointment of officers**

- (1) Subject to this Act, the employing authority may appoint such officers to provide technical and further education and undertake related functions pursuant to this Act as the employing authority thinks fit.
- (2) An officer may be appointed under this section—
  - (a) on a permanent or temporary basis; and
  - (b) on a full-time or part-time basis.
- (3) An appointment under this section may be made on probation.
- (4) The probation will be for such period of effective service (not exceeding two years' effective service) as may be determined by the employing authority.
- (5) No officer appointed on a permanent basis may be dismissed, retrenched or retired, or have his or her appointment otherwise terminated, except in accordance with the provisions of this Act.

- (6) An officer appointed on a temporary basis holds office at the pleasure of the employing authority.
- (7) If the Chief Executive Officer is not the employing authority, the employing authority must, in acting under this section, consult with the Chief Executive Officer.

## **Division 2—Termination of appointment**

### **15A—Termination of appointment of officers on probation**

- (1) The employing authority may by written determination at any time terminate the appointment of an officer who is on probation.
- (2) If the Chief Executive Officer is not the employing authority, the employing authority must, in acting under this section, consult with the Chief Executive Officer.

### **16—Retrenchment of officers**

- (1) Where the employing authority is satisfied that—
  - (a) the volume of work for officers in a section has diminished; and
  - (b) in consequence a reduction in the number of officers has become necessary in the interest of economy; and
  - (c) an officer should be retrenched for that purpose,the employing authority may, by written determination, retrench that officer as from a date specified in the determination.
- (2) An officer who is retrenched under the provisions of this section is entitled to receive—
  - (a) at least twelve weeks' notice in writing prior to the date of retrenchment; or
  - (b) where the notice is less than twelve weeks, a sum equal to his or her salary for the period by which the notice falls short of twelve weeks.
- (3) If the Chief Executive Officer is not the employing authority, the employing authority must, in acting under this section, consult with the Chief Executive Officer.

### **17—Incapacity of officers**

- (1) If the Chief Executive Officer is satisfied that an officer is, by reason of mental or physical illness or disability, incapable of performing satisfactorily the duties of the office occupied by the officer, the Chief Executive Officer may do one or more of the following:
  - (a) by written determination, transfer the officer to some other office established under section 15;
  - (b) determine to take steps to transfer the officer to some other employment in the Government of the State;
  - (c) grant the officer leave of absence (without remuneration);
  - (d) recommend to the employing authority that the officer be retired.



- (2) The Chief Executive Officer must, before transferring or recommending the transfer of an officer to an office or position of reduced status, or recommending that an officer be retired, be satisfied that transfer of the officer to an office or position of equivalent status is not reasonably practicable in the circumstances.
- (3) Where an officer is transferred to an office of reduced status pursuant to subsection (1)(a), the Chief Executive Officer must alter the classification of the officer accordingly.
- (4) The Chief Executive Officer may, in acting under subsection (1)(b), recommend to the employing authority that the officer be appointed to an office or position under section 39AAB or attempt to secure for the officer some other appropriate employment in the Government of the State.
- (5) The employing authority, on receiving a recommendation under subsection (1)(d) may, in accordance with that recommendation, retire the officer.

### **17A—Appeal against termination, retrenchment, transfer or retirement**

- (1) An officer may, within 14 days after receiving notice of a determination or decision under this Division to terminate the officer's appointment or retrench, transfer or retire the officer, appeal to the Appeal Board against the determination or decision.
- (2) On the hearing of an appeal under this section, the Appeal Board may revoke the determination or decision and, where effect has been given to the determination or decision, order that the officer be reinstated as an officer as if no such determination or decision had been made.

## **Division 3—Long service leave**

### **19—Long service leave**

- (1) An officer's entitlement to long service leave accrues as follows:
  - (a) the officer is entitled to 63 days' leave in respect of the first seven years of effective service;
  - (b) the officer is then entitled to 0.75 of a day's leave for each subsequent complete month of effective service.
- (2) Where long service leave is taken by an officer, the officer's entitlement to long service leave is reduced accordingly.
- (3) Every day from the commencement to the conclusion of a period of long service leave (whether a working day or not) will be counted as a day of that leave.
- (4) This Division—
  - (a) does not affect an entitlement to long service leave or payment in lieu of long service leave that accrued before the commencement of the *Technical and Further Education Act Amendment Act 1987*; and
  - (b) does not prejudice an entitlement to pro rata long service leave arising after five years' effective service that would have come into existence if the *Technical and Further Education Act Amendment Act 1987* had not been enacted.

## 20—Taking of long service leave

- (1) Subject to this section, an officer who has completed at least 10 years' effective service is entitled to take long service leave.
- (2) The Chief Executive Officer may permit an officer who has completed at least seven years' effective service to take long service leave.
- (3) Long service leave may only be taken in respect of completed years of effective service.
- (4) Long service leave may only be taken at times and for periods that are, in the opinion of the Chief Executive Officer, convenient to the Department.
- (5) Subject to this section, the salary to which an officer is entitled during long service leave is—
  - (a) where the effective service of an officer consists of full-time service—the salary applicable to the officer's substantive classification level during that leave (excluding any additional salary attributable to a higher classification level temporarily assigned to the officer);
  - (b) where the effective service of an officer consists in whole or in part of part-time service—a salary determined by the Chief Executive Officer.
- (6) An officer may elect to take long service leave on half salary and, in that event, may take two days' leave for each whole day of the officer's entitlement.
- (7) Where the effective service of an officer consists in whole or in part of part-time service, the officer may elect to take long service leave on the salary applicable to full-time service and, in that event, the period of the long service leave will be reduced accordingly.
- (8) The Chief Executive Officer may authorise payment to an officer on long service leave of such additional salary or allowances as the Chief Executive Officer considers appropriate.

## 21—Payment in lieu of long service leave

- (1) Where a person ceases to be an officer after not less than seven years' effective service, the person is entitled to payment of the monetary equivalent of the officer's long service leave entitlement as at the date of cessation of service.
- (2) Where an officer dies, the employing authority must ensure that there is paid to—
  - (a) the officer's personal representative; or
  - (b) such of the officer's dependants as the employing authority, with the approval of the Minister, considers appropriate,the monetary equivalent of the officer's long service leave entitlement as at the date of death.
- (3) In determining the monetary equivalent of a long service leave entitlement no allowance will be made for an increase in salary that may or would have been made if the officer's service had not ceased.
- (4) The employing authority may apply any amount payable to or in respect of an officer under this section in satisfaction of a claim against the officer.

## 22—Interruption of service

- (1) Where a person is re-employed as an officer—
  - (a) at any time after his or her service as an officer was interrupted by retirement on the ground of incapacity; or
  - (b) within two years after his or her service as an officer was interrupted otherwise than by resignation, dismissal for misconduct or retirement on the ground of incapacity,

the person's effective service before the interruption and his or her effective service after the interruption will, for the purposes of this Division, be taken into account as if the service were continuous.

- (2) Where a person is re-employed as an officer more than two years after his or her service as an officer was interrupted otherwise than by resignation, dismissal for misconduct or retirement on the ground of incapacity, the employing authority may grant a certificate under this section.
- (3) Where the employing authority grants a certificate under subsection (2), the person's effective service before the interruption and his or her effective service after the interruption will, for the purposes of this Division, be taken into account as if the service were continuous.
- (4) Where long service leave has been granted, or payment has been made in lieu of long service leave, in respect of a period of effective service that is required by this section to be taken into account as if it were continuous with subsequent service, the officer's entitlement to long service leave in respect of the total period of his or her effective service will be taken to have reduced accordingly.

## 23—Recognition of previous employment

- (1) Where an officer was in prescribed employment prior to being appointed as an officer and there is continuity of service between that prescribed employment and his or her effective service as an officer, the long service leave to which he or she is entitled under this Act must, subject to this section, be determined on the basis that the period of his or her service that would have been taken into account for the purpose of determining his or her entitlement to long service leave in respect of the prescribed employment, as at the cessation of that employment, was effective service as an officer.

- (2) In this section—

*prescribed employment* means—

- (a) employment in the Public Service of the Commonwealth; and
- (b) employment in the Public Service of this State; and
- (c) employment by the Government of this State otherwise than as an employee in the Public Service; and
- (d) employment in the Public Service of another State or a Territory of the Commonwealth; and
- (e) employment by a University established in this State; and
- (f) any other employment approved by the Minister.

- (3) Where long service leave has been granted, or payment has been made in lieu of long service leave, in respect of a period of service in prescribed employment required by this section to be regarded as effective service as an officer, the officer's entitlement to long service leave in respect of the total period of his or her effective service will be taken to have reduced accordingly.
- (4) For the purposes of this section, continuity of service is not interrupted by an interval, not exceeding three months, between the cessation of prescribed employment and the commencement of employment as an officer.
- (5) Where there is an interval of more than three months between the cessation of prescribed employment and the commencement of employment as an officer, the employing authority may, if he or she thinks that special reasons exist for so doing, declare that the interval does not disrupt the continuity of service for the purposes of this section, and such a declaration has effect according to its terms.

## **24—Recognition of service as officer in future employment**

- (1) Where an officer is transferred to other employment in the Government of this State and his or her service in that employment is continuous with his or her effective service as an officer, the long service leave to which he or she is entitled in respect of that other employment must, subject to this section, be determined on the basis that—
  - (a) his or her effective service as an officer; and
  - (b) any service required under section 23 to be regarded as effective service as an officer in determining his or her long service leave entitlement under this Act,was service in that other employment.
- (2) Where long service leave has been granted, or payment has been made in lieu of long service leave, in respect of a period of effective service as an officer (or a period required to be regarded as effective service as an officer), the person's entitlement to long service leave in respect of the total period of his or her service will be taken to have reduced accordingly.

## **Division 4—Retiring age**

### **25—Retiring age**

- (1) An officer may retire on or after the day on which he or she reaches the age of 55 years.

## **Division 5—Discipline**

### **26—Disciplinary action**

- (1) If an officer—
  - (a) contravenes or fails to comply with any provision of this Act; or
  - (b) contravenes or fails to comply with any lawful direction given to the officer under this Act; or
  - (c) is negligent, inefficient or incompetent in the discharge of his or her duties; or
  - (d) is absent from duty without proper cause; or

- (e) is guilty of any disgraceful or improper conduct,  
there is sufficient cause for disciplinary action against that officer.
- (2) Where the Chief Executive Officer finds that there is sufficient cause for disciplinary action under this section, he or she may—
- (a) by written determination under his or her hand—
- (i) reprimand the officer; or
- (ii) impose a fine on the officer not exceeding the amount of one week's salary of the officer; or
- (iii) reduce the classification of the officer; or
- (iv) suspend the officer from duty (without pay) for a period not exceeding one year; or
- (b) recommend to the employing authority that the officer be dismissed.
- (3) The employing authority may, upon receipt of a recommendation under subsection (2), dismiss the officer.
- (4) An officer may, within fourteen days after he or she receives notice of a determination under this section, or a decision made by the employing authority to dismiss the officer under this section, appeal to the Appeal Board against the determination or decision.
- (5) The Appeal Board may, upon the hearing of an appeal under this section, vary or revoke the determination or decision subject to appeal, and if the determination or decision has taken effect, order that the officer be re-instated as an officer as if no such determination or decision had been made.
- (6) Any fine imposed on an officer under this section may be deducted from the salary or other remuneration payable to that officer.

## **27—Suspension**

- (1) Where, in the opinion of the Chief Executive Officer, the nature or circumstances of any matter alleged against an officer are such that the officer should not continue in the performance of his or her duties, the Chief Executive Officer may suspend the officer.
- (2) A suspension under subsection (1) may be given whether or not the officer has been charged with an offence.
- (3) Unless the employing authority otherwise determines, a person suspended under this section is entitled to his or her salary in respect of the period of suspension.
- (4) Where a direction has been given under subsection (3), and the guilt of the suspended officer of the matter alleged against that officer is not established by due process of law, he or she is entitled to receive the salary to which he or she would have been entitled if there had been no direction under subsection (3).

## **Part 4—College councils**

### **28—Establishment of college councils**

- (1) The Minister may establish a council for any college.

- (2) The Minister may establish an interim council for any proposed college.
- (3) A council will consist of members appointed by, or in accordance with, the regulations.
- (4) The members of the council will hold office for such term and upon such conditions as are prescribed.
- (5) Meetings of the council must be conducted in accordance with the regulations.

### **29—Incorporation of councils**

- (1) A council—
  - (a) is a body corporate with perpetual succession and a common seal; and
  - (b) is capable of holding and dealing with real and personal property; and
  - (c) is capable of acquiring or incurring any other legal rights or obligations, and of suing and being sued; and
  - (d) holds its property on behalf of the Crown; and
  - (e) has such powers, authorities, duties and obligations as may be conferred, imposed or prescribed by or under this Act.
- (2) A council must not engage in any transaction involving the acquisition or disposal of real property unless the Minister has, by instrument in writing, consented to that transaction.

### **30—Borrowing power of councils**

- (1) Subject to this Act, a council may—
  - (a) with the approval of the Treasurer; and
  - (b) in accordance with any administrative instruction issued by the Chief Executive Officer under this section,

borrow money from any person for the purposes of paying in whole or in part for the erection or construction of a building or structure, or the provision of equipment or facilities, for a college.
- (2) The Chief Executive Officer may from time to time issue administrative instructions relating to the borrowing of money by councils.
- (3) The Chief Executive Officer may vary or revoke an administrative instruction given under this section.
- (4) A council must supply the Minister, the Treasurer or the Chief Executive Officer with such information relating to a loan or proposed loan under this section, or to the purposes of such a loan or proposed loan, as the Minister, Treasurer or Chief Executive Officer requires.

### **31—Power of Minister to make grant or loan**

The Minister may, on such terms and conditions as he or she thinks fit, make a grant or loan of money to a council.

### **32—Accounts**

- (1) A council must cause proper accounts to be kept of any money received by it and any dealings with that money.
- (2) The Chief Executive Officer or any person authorised by the Chief Executive Officer may at any time inspect or audit the accounts of a council.

### **32A—Returns**

- (1) A council must, within three months after the end of each calendar year, provide to the Chief Executive Officer, in a manner and form approved by the Chief Executive Officer, a return relating to the financial position of the council.
- (2) A return under this section must specify—
  - (a) the money received by the council, whether by grant, loan or otherwise, during the calendar year just ended; and
  - (b) the money expended by the council during that calendar year; and
  - (c) the money currently held by the council; and
  - (d) any money owed to or by the council; and
  - (e) such other information as the Chief Executive Officer may require.
- (3) The Chief Executive Officer may, by notice in writing, require a council to provide, within a time specified in the notice, such return or further or fuller return relating to the financial position of the council as the Chief Executive Officer requires.

### **33—Abolition of council**

- (1) Where a college for which a council has been established under this Part is closed, the Minister may, by instrument in writing, abolish the council.
- (2) Where a council is abolished under subsection (1), the Minister may dispose of the assets of the council in such manner as he or she thinks proper.

## **Part 6—Miscellaneous**

### **39AA—Operation of industrial relations legislation**

This Act does not exclude (and will be taken never to have excluded) the operation of the *Industrial and Employee Relations Act 1994* in relation to officers or persons employed under this Act.

### **39AAB—Other staffing arrangements**

- (1) The employing authority may employ such other persons (in addition to officers appointed under this Act and employees in the Department) as appear to the employing authority to be necessary for the proper administration of this Act.
- (2) The employing authority is, in acting under this section, subject to direction by the Minister.
- (3) However, no Ministerial direction may be given by the Minister relating to the appointment, transfer, remuneration, discipline or termination of a particular person.

- (4) In addition, if the Chief Executive Officer is not the employing authority, the employing authority must, in acting under this section, consult with the Chief Executive Officer.

### **39AAC—Employing authority—related matters**

- (1) The employing authority may delegate a power or function under this Act.
- (2) A delegation under subsection (1)—
- (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) does not derogate from the power of the employing authority to act personally in any matter; and
  - (e) may be revoked at any time by the employing authority.
- (3) A power or function delegated under subsection (1) may, if the instrument of delegation so provides, be further delegated.
- (4) A change in the person who constitutes the employing authority under this Act will not affect the continuity of employment or appointment of a person under this Act.

### **39A—Special provisions relating to rate of remuneration for part-time officers**

- (1) Where an officer is employed on a part-time basis (that is to say, on the basis that he or she will work in any pay period a specified percentage of the time ordinarily expected of an officer employed on a full-time basis) the rate of remuneration applicable to the officer (including any allowances that may be payable) is that same percentage applied to the rate of remuneration that would apply if he or she were employed on a full-time basis.
- (2) Subject to subsection (3), subsection (1)—
- (a) applies in relation to salary, notwithstanding any Act or law (including the provisions of any contract of employment, award or industrial agreement) to the contrary; and
  - (b) applies in relation to an allowance, subject to any express provision of a contract of employment, award or industrial agreement that provides for payment of the full amount of the allowance to the officer; and
  - (c) applies regardless of the number of working days, and the period of time in any one day, over which the officer performs the required amount of work in any pay period; and
  - (d) applies in relation to any past or present entitlement to remuneration, whether it arose before or arises after the commencement of this section.
- (3) Nothing in this section affects the payment in full of any allowance to an officer employed on a part-time basis if—
- (a) the payment was made before the commencement of this section; or



- (b) the payment is made after the commencement of this section in respect of an allowance that was being paid in full immediately prior to that commencement.

#### **40—Requirement to leave college premises**

- (1) A person who is on the premises of a college without lawful authority must leave the college premises if lawfully requested to do so.  
Penalty: Division 9 fine.
- (2) A request to leave the premises of a college is lawful—
- (a) if made by—
    - (i) an officer or employee appointed under this Act or employed in the Department; or
    - (ii) a member of the council of the college; or
    - (iii) a person engaged by the Minister for the protection of property of the college; or
    - (iv) any person, or person of a class, authorised by the Chief Executive Officer to make such requests; and
  - (b) if the person making the request advises the person of whom the request is made that he or she is authorised under this Act to make such a request.
- (3) In any proceedings for an offence against this Act, an apparently genuine document purporting to be under the hand of the Chief Executive Officer and to certify that a specified person was at a specified time authorised by or under this section to request persons to leave college premises must be accepted as proof of the matters so certified in the absence of proof to the contrary.

#### **40A—Insulting officers, employees etc**

A person who behaves in an offensive or insulting manner—

- (a) to an officer or employee appointed under this Act or employed in the Department who is acting in the course of his or her duties; or
- (b) to a person referred to in section 40 who is exercising the power conferred by that section,

is guilty of an offence.

Penalty: Division 9 fine.

#### **41—Summary offences**

- (1) Offences against this Act are summary offences.
- (2) Proceedings for an offence against this Act must not be commenced without the consent in writing of the Minister.
- (3) In any proceedings for an offence against this Act an apparently genuine document purporting to be under the hand of the Minister and to record his or her consent to the commencement of the proceedings must be accepted as proof of that consent in the absence of proof to the contrary.

### 43—Regulations

- (1) The Governor may make such regulations as are contemplated by this Act, or as he or she considers necessary or expedient for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), those regulations may make provision with respect to the following matters:
  - (a) the establishment, maintenance and control of colleges by the Minister under this Act and the management of all land, buildings, equipment or facilities used in connection therewith; and
  - (b) the provision of residences or other accommodation for officers; and
  - (c) the terms and conditions upon which officers or officers of any class are employed under this Act, their rights to leave of absence and any other privileges, their rights on retirement from employment under this Act and any other matter whatsoever affecting their employment; and
  - (d) the courses of instruction or training to be provided under this Act and the awards to be conferred upon those who successfully complete any such courses of instruction or training; and
  - (da) the fees to be paid for or in relation to—
    - (i) instruction, training or assessment of students; and
    - (ii) assessment and certification of qualifications whether or not relating to instruction or training under this Act; and
    - (iii) land, buildings, equipment, facilities or services used or provided under this Act; and
  - (e) the provision of grants to colleges and the conditions applicable to those grants; and
  - (f) the establishment of scholarships and the provision of allowances to students; and
  - (g) college vacations, the hours at which instruction or training is to be provided, the method to be adopted in teaching, and the discipline to be observed and enforced in colleges; and
  - (h) the use of the land, buildings, equipment or facilities of colleges; and
  - (ia) regulating, restricting or prohibiting the driving, parking or ranking of vehicles on the grounds of any college; and
  - (ib) providing evidentiary presumptions in relation to offences against regulations made under paragraph (ia); and
  - (j) the furnishing of returns to the Chief Executive Officer by the head of a college, and the matters to be contained in any such returns; and
  - (k) providing for the constitution of associations of students, or students and staff, of colleges; and
  - (l) conferring upon officers a right of appeal to the Appeal Board against administrative acts or decisions of the Minister or the Chief Executive Officer (not being administrative acts or decisions declared by the regulations to be excluded from appeal); and

- (n) any other matter necessary or expedient for the proper administration of this Act.
- (2a) A regulation made under subsection (2)(da)—
  - (a) may—
    - (i) fix fees (including differential fees);
    - (ii) regulate the payment of a fee;
    - (iii) provide for exemption (in whole or in part) from the liability to pay a fee;
    - (iv) provide for the refund, in whole or in part, of a fee,or may empower the Minister or another person or body to do so; and
  - (b) may provide for the recovery of a fee.
- (3) A regulation made under this Act is not invalid on the ground that it relates to circumstances that occurred before the commencement of this Act.
- (4) A regulation under this Act may—
  - (a) impose fines, not exceeding a division 10 fine, for offences against the regulations;
  - (b) fix expiation fees, not exceeding a division 10 fee, for alleged offences against the regulations.

## **Schedule—Interpretation of other Acts and instruments**

### **1—References to officers of the teaching service**

A reference in an Act or in any other instrument (whether the instrument is of a legislative character or not) to an officer of the teaching service under this Act will be construed as a reference to an officer.

## 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).

### Formerly

*Further Education Act 1975*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1976	17	<i>Further Education Act 1975</i>	4.3.1976	29.4.1976 ( <i>Gazette</i> 29.4.1976 p2218) except Pt 5—3.11.1977 ( <i>Gazette</i> 3.11.1977 p1350)
1979	13	<i>Further Education Act Amendment Act 1979</i>	8.3.1979	3.5.1979 ( <i>Gazette</i> 3.5.1979 p1313) except Pt 2 (ss 3—7)—1.1.1978: s 2(2)
1980	36	<i>Further Education Act Amendment Act 1980</i>	17.4.1980	17.4.1980
1983	94	<i>Further Education Act Amendment Act 1983</i>	15.12.1983	26.1.1984 ( <i>Gazette</i> 26.1.1984 p175)
1986	119	<i>Tertiary Education Act 1986</i>	18.12.1986	1.1.1987 ( <i>Gazette</i> 18.12.1986 p1876)
1987	62	<i>Technical and Further Education Act Amendment Act 1987</i>	22.10.1987	1.1.1988 ( <i>Gazette</i> 17.12.1987 p1851)
1988	25	<i>Technical and Further Education Act Amendment Act 1988</i>	21.4.1988	9.6.1988 ( <i>Gazette</i> 9.6.1988 p1868)
1990	48	<i>Technical and Further Education Act Amendment Act 1990</i>	15.11.1990	10.1.1991 ( <i>Gazette</i> 10.1.1991 p32)
1991	34	<i>Industrial Conciliation and Arbitration (Commonwealth Provisions) Amendment Act 1991</i>	24.4.1991	1.7.1991 ( <i>Gazette</i> 27.6.1991 p2059)
1992	7	<i>Technical and Further Education (Miscellaneous) Amendment Act 1992</i>	2.4.1992	1.7.1992 ( <i>Gazette</i> 18.6.1992 p1756)
1993	75	<i>Statutes Amendment (Abolition of Compulsory Retirement) Act 1993</i>	21.10.1993	1.1.1994: s 2
1996	34	<i>Statutes Amendment and Repeal (Common Expiation Scheme) Act 1996</i>	2.5.1996	Sch (cl 36)—3.2.1997 ( <i>Gazette</i> 19.12.1996 p1923)

1998	35	<i>Technical and Further Education (Industrial Jurisdiction) Amendment Act 1998</i>	16.7.1998	16.7.1998
2006	41	<i>Statutes Amendment (Public Sector Employment) Act 2006</i>	14.12.2006	Pt 25 (ss 117—131)—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 157 (ss 355 & 356)—1.2.2010 ( <i>Gazette</i> 28.1.2010 p320)
2010	22	<i>Statutes Amendment (Budget 2010) Act 2010</i>	18.11.2010	Pt 14 (ss 88 & 89)—1.7.2011: s 2(2)
<b>2011</b>	<b>46</b>	<b><i>Education and Early Childhood Services (Registration and Standards) Act 2011</i></b>	<b>8.12.2011</b>	<b>Sch 3 (cl 27)—1.1.2012 (<i>Gazette</i> 15.12.2011 p4986)</b>
2016	63	<i>Statutes Amendment (South Australian Employment Tribunal) Act 2016</i> as amended by 16/2017	8.12.2016	Pt 20 (ss 138—142)—1.7.2017 ( <i>Gazette</i> 27.6.2017 p2622)
2017	16	<i>South Australian Employment Tribunal (Miscellaneous) Amendment Act 2017</i>	23.5.2017	Sch 1 (cl 5)—27.6.2017; Sch 1 (cl 3)—1.7.2017 immediately after Pts 8 & 20 of 63/2016 ( <i>Gazette</i> 27.6.2017 p2620)

## 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
Long title	amended by 94/1983 s 3	26.1.1984
Pt 1		
s 1	substituted by 94/1983 s 4	26.1.1984
s 2	<i>deleted by 7/1992 Sch</i>	<i>1.7.1992</i>
s 3	<i>amended by 94/1983 s 5</i>	<i>26.1.1984</i>
	<i>deleted by 7/1992 Sch</i>	<i>1.7.1992</i>
s 4		
s 4(1)	s 4 redesignated as s 4(1) by 13/1979 s 3	1.1.1978
the Appeal Board	amended by 7/1992 Sch	1.7.1992
Chief Executive Officer	inserted by 7/1992 s 3(a)	1.7.1992
<i>college of further education</i>	<i>deleted by 94/1983 s 6(a)</i>	<i>26.1.1984</i>
college	college of technical and further education inserted by 94/1983 s 6(a)	26.1.1984
	college of technical and further education amended by 7/1992 s 3(b)	1.7.1992
<i>the Director-General</i>	<i>amended by 94/1983 s 6(b)</i>	<i>26.1.1984</i>
	<i>deleted by 7/1992 s 3(c)</i>	<i>1.7.1992</i>
council	inserted by 7/1992 s 3(c)	1.7.1992
<i>the Department</i>	<i>substituted by 94/1983 s 6(c)</i>	<i>26.1.1984</i>

## Technical and Further Education Act 1975—1.1.2012 to 30.6.2017

### Legislative history

	<i>amended by 7/1992 s 3(d)</i>	1.7.1992
	<i>deleted by 84/2009 s 355</i>	1.2.2010
Department	inserted by 84/2009 s 355	1.2.2010
<i>employee</i>	<i>inserted by 7/1992 s 3(e)</i>	1.7.1992
	<i>deleted by 41/2006 s 117(1)</i>	1.4.2007
employing authority	inserted by 41/2006 s 117(1)	1.4.2007
<i>further education</i>	<i>deleted by 94/1983 s 6(d)</i>	26.1.1984
the Minister	amended by 48/1990 s 3	10.1.1991
officer	inserted by 7/1992 s 3(f)	1.7.1992
	amended by 41/2006 s 117(2)	1.4.2007
<i>the Teachers Salaries Board</i>	<i>deleted by 34/1991 s 54(a)</i>	1.7.1991
technical and further education	inserted by 94/1983 s 6(e)	26.1.1984
s 4(2)	inserted by 13/1979 s 3	1.1.1978
	amended by 62/1987 s 3	1.1.1988
	amended by 7/1992 s 3(g)	1.7.1992
	amended by 41/2006 s 117(3)	1.4.2007
s 4(3)	inserted by 13/1979 s 3	1.1.1978
	amended by 41/2006 s 117(4)	1.4.2007
s 4(4) and (5)	inserted by 41/2006 s 117(5)	1.4.2007
s 5	amended by 13/1979 s 8	3.5.1979
	amended by 94/1983 s 7	26.1.1984
	amended by 7/1992 s 4, Sch	1.7.1992
	<b>amended by 46/2011 Sch 3 cl 27</b>	<b>1.1.2012</b>
Pt 2		
s 6		
s 6(1)	amended by 7/1992 s 5(a), Sch	1.7.1992
s 6(2)	<i>amended by 13/1979 s 9</i>	3.5.1979
	<i>amended by 94/1983 s 8</i>	26.1.1984
	<i>deleted by 7/1992 s 5(b)</i>	1.7.1992
s 7	amended by 7/1992 Sch	1.7.1992
s 8	amended by 48/1990 s 4	10.1.1991
	substituted by 7/1992 s 6	1.7.1992
s 8(1)	amended by 41/2006 s 118(1), (2)	1.4.2007
s 8(4)	inserted by 41/2006 s 118(3)	1.4.2007
s 9		
s 9(1)	amended by 94/1983 s 9(a)	26.1.1984
	amended by 7/1992 s 7(a), Sch	1.7.1992
s 9(2)	amended by 94/1983 s 9(a)	26.1.1984
	amended by 7/1992 s 7(b), (c), Sch	1.7.1992
s 9(3)	amended by 94/1983 s 9(b)	26.1.1984
	amended by 7/1992 s 7(d), Sch	1.7.1992

s 9(4)	amended by 94/1983 s 9(a)	26.1.1984
	amended by 7/1992 s 7(e), Sch	1.7.1992
s 9(5)	amended by 94/1983 s 9(a)	26.1.1984
	substituted by 7/1992 s 7(f)	1.7.1992
s 9(6)	<i>substituted by 7/1992 s 7(f)</i>	<i>1.7.1992</i>
	<i>deleted by 41/2006 s 119</i>	<i>1.4.2007</i>
s 9(7)	amended by 7/1992 Sch	1.7.1992
s 9(8) and (9)	inserted by 7/1992 s 7(g)	1.7.1992
s 10	<i>substituted by 94/1983 s 10</i>	<i>26.1.1984</i>
	<i>deleted by 119/1986 Sch 1</i>	<i>1.1.1987</i>
s 10A	inserted by 94/1983 s 10	26.1.1984
s 10A(1) and (2)	amended by 7/1992 Sch	1.7.1992
s 10A(3)	substituted by 7/1992 s 8	1.7.1992
s 10A(4)	amended by 7/1992 Sch	1.7.1992
s 11	<i>amended by 94/1983 s 11</i>	<i>26.1.1984</i>
	<i>deleted by 7/1992 s 9</i>	<i>1.7.1992</i>
s 12	substituted by 7/1992 s 9	1.7.1992
s 13	amended by 48/1990 s 5	10.1.1991
	substituted by 7/1992 s 9	1.7.1992
s 13(1)	amended by 41/2006 s 120(1)	1.4.2007
	amended by 84/2009 s 356	1.2.2010
s 13(4)	inserted by 41/2006 s 120(2)	1.4.2007
s 14	substituted by 7/1992 s 9	1.7.1992
Pt 3	heading substituted by 7/1992 s 10	1.7.1992
Pt 3 Div 1	heading substituted by 7/1992 s 10	1.7.1992
s 15		
s 15(1)	amended by 7/1992 s 11(a), Sch	1.7.1992
	substituted by 41/2006 s 121(1)	1.4.2007
s 15(2) and (3)	substituted by 7/1992 s 11(b)	1.7.1992
s 15(4)	amended by 13/1979 s 10	3.5.1979
	amended by 7/1992 Sch	1.7.1992
	amended by 41/2006 s 121(2)	1.4.2007
s 15(5)	amended by 36/1980 s 2(a)	17.4.1980
	amended by 7/1992 s 11(c)	1.7.1992
s 15(6)	amended by 36/1980 s 2(b)	17.4.1980
	amended by 7/1992 Sch	1.7.1992
	amended by 41/2006 s 121(3)	1.4.2007
s 15(7)	deleted by 34/1991 s 54(b)	1.7.1991
	inserted by 41/2006 s 121(4)	1.4.2007
Pt 3 Div 2	heading substituted by 7/1992 s 12	1.7.1992
s 15A	inserted by 7/1992 s 13	1.7.1992
s 15A(1)	s 15A amended and redesignated as s 15A(1) by 41/2006 s 122(1), (2)	1.4.2007

**Technical and Further Education Act 1975—1.1.2012 to 30.6.2017**

## Legislative history

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s 15A(2)	inserted by 41/2006 s 122(2)	1.4.2007
s 16		
s 16(1)	amended by 7/1992 s 14(a), (b), Sch amended by 41/2006 s 123(1), (2)	1.7.1992 1.4.2007
s 16(2)	amended by 7/1992 Sch	1.7.1992
s 16(3)	deleted by 7/1992 s 14(c) inserted by 41/2006 s 123(3)	1.7.1992 1.4.2007
s 16(4)	<i>deleted by 7/1992 s 14(c)</i>	<i>1.7.1992</i>
s 17	substituted by 48/1990 s 6	10.1.1991
s 17(1)	amended by 7/1992 s 15(a)—(d) amended by 41/2006 s 124(1), (2)	1.7.1992 1.4.2007
s 17(2)	amended by 7/1992 s 15(e)	1.7.1992
s 17(3)	amended by 7/1992 s 15(f)	1.7.1992
s 17(4)	substituted by 41/2006 s 124(3)	1.4.2007
s 17(5)	amended by 7/1992 s 15(g) amended by 41/2006 s 124(4)	1.7.1992 1.4.2007
s 17(6) and (7)	<i>deleted by 7/1992 s 15(h)</i>	<i>1.7.1992</i>
s 17A	inserted by 7/1992 s 16	1.7.1992
s 18	<i>deleted by 13/1979 s 4</i>	<i>1.1.1978</i>
Pt 3 Div 3		
s 19	amended by 13/1979 s 5 substituted 62/1987 s 4	1.1.1978 1.1.1988
s 19(1)	amended by 22/2010 s 88 (c) deleted by 22/2010 s 88	1.7.2011 1.7.2011
s 20	substituted by 13/1979 s 6 substituted by 62/1987 s 4	1.1.1978 1.1.1988
s 20(2)	amended by 7/1992 s 17(a)	1.7.1992
s 20(4)	amended by 7/1992 s 17(b)	1.7.1992
s 20(5)	amended by 7/1992 s 17(c)	1.7.1992
s 20(8)	amended by 7/1992 s 17(d)	1.7.1992
s 21	amended by 13/1979 s 7 substituted by 62/1987 s 4	1.1.1978 1.1.1988
s 21(1)	amended by 7/1992 s 18	1.7.1992
s 21(2)	amended by 41/2006 s 125(1), (2)	1.4.2007
s 21(4)	amended by 41/2006 s 125(3)	1.4.2007
s 22	substituted by 7/1992 s 19	1.7.1992
s 22(2)	amended by 41/2006 s 126(1)	1.4.2007
s 22(3)	amended by 41/2006 s 126(2)	1.4.2007
s 23	substituted by 7/1992 s 19	1.7.1992
s 23(5)	amended by 41/2006 s 127	1.4.2007
s 24	substituted by 7/1992 s 19	1.7.1992
Pt 3 Div 4		
s 25		



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s 25(1)	substituted by 36/1980 s 3	17.4.1980
	amended by 7/1992 s 20(a), Sch	1.7.1992
	amended by 75/1993 s 28	1.1.1994
s 25(1a)	<i>inserted by 36/1980 s 3</i>	<i>17.4.1980</i>
	<i>deleted by 7/1992 s 20(b)</i>	<i>1.7.1992</i>
s 25(2)	<i>deleted by 7/1992 s 20(b)</i>	<i>1.7.1992</i>
Pt 3 Div 5		
s 26		
s 26(1)	amended by 7/1992 Sch	1.7.1992
s 26(2)	amended by 13/1979 s 11	3.5.1979
	amended by 7/1992 s 21(a), (b), Sch	1.7.1992
	amended by 41/2006 s 128(1)	1.4.2007
s 26(3)	amended by 7/1992 s 21(c)	1.7.1992
	amended by 41/2006 s 128(2)	1.4.2007
s 26(4)	amended by 7/1992 Sch	1.7.1992
	amended by 41/2006 s 128(3)	1.4.2007
s 26(5)	amended by 7/1992 s 21(d)	1.7.1992
s 27		
s 27(1)	amended by 7/1992 s 22, Sch	1.7.1992
s 27(2)	amended by 7/1992 Sch	1.7.1992
s 27(3)	amended by 7/1992 Sch	1.7.1992
	amended by 41/2006 s 129	1.4.2007
s 27(4)	amended by 7/1992 Sch	1.7.1992
Pt 4		
s 28		
s 28(1)	amended by 94/1983 s 12	26.1.1984
	amended by 7/1992 s 23(a)	1.7.1992
s 28(2)	amended by 94/1983 s 12	26.1.1984
	amended by 7/1992 s 23(b)	1.7.1992
s 28(3) and (4)	substituted by 25/1988 s 3	9.6.1988
s 28(5)	inserted by 25/1988 s 3	9.6.1988
s 29		
s 29(1)	substituted by 7/1992 s 24	1.7.1992
s 29(2)	amended by 7/1992 Sch	1.7.1992
ss 30 and 31	substituted by 7/1992 s 25	1.7.1992
s 32		
s 32(1)	amended by 7/1992 s 26(a), Sch	1.7.1992
s 32(2)	amended by 7/1992 s 26(b), (c), Sch	1.7.1992
s 32A	inserted by 7/1992 s 27	1.7.1992
s 33		
s 33(2)	amended by 7/1992 Sch	1.7.1992
Pt 5	<i>amended by 13/1979 ss 12—14</i>	<i>3.5.1979</i>
	<i>amended by 36/1980 s 4</i>	<i>17.4.1980</i>

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	<i>amended by 94/1983 ss 13—15</i>	26.1.1984
	<i>deleted by 7/1992 s 28</i>	1.7.1992
Pt 6		
s 39AA	inserted by 35/1998 s 2	16.7.1998
	amended by 41/2006 s 130	1.4.2007
ss 39AAB and 39AAC	inserted by 41/2006 s 131	1.4.2007
s 39A	inserted by 7/1992 s 29	1.7.1992
s 40	substituted by 7/1992 s 29	1.7.1992
s 40A	inserted by 7/1992 s 29	1.7.1992
s 41		
s 41(1)	substituted by 7/1992 Sch	1.7.1992
s 41(2) and (3)	amended by 7/1992 Sch	1.7.1992
s 42	<i>deleted by 7/1992 s 30</i>	1.7.1992
s 43		
s 43(1)	amended by 7/1992 Sch	1.7.1992
s 43(2)	amended by 13/1979 s 14	3.5.1979
	amended by 36/1980 s 4	17.4.1980
	amended by 94/1983 s 16	26.1.1984
	amended by 7/1992 s 31(a)—(p), Sch	1.7.1992
	(i) deleted by 7/1992 s 31(k)	1.7.1992
	(m) deleted by 7/1992 s 31(p)	1.7.1992
	amended by 34/1996 s 4 (Sch cl 36)	3.2.1997
s 43(2a)	inserted by 7/1992 s 31(q)	1.7.1992
s 43(3)	amended by 7/1992 Sch	1.7.1992
s 43(4)	amended by 7/1992 s 31(r)	1.7.1992
	substituted by 34/1996 s 4 (Sch cl 36)	3.2.1997
Sch	inserted by 7/1992 s 32	1.7.1992

## **Transitional etc provisions associated with Act or amendments**

### ***Industrial Conciliation and Arbitration (Commonwealth Provisions) Amendment Act 1991, s 55—Transitional provisions***

(11) The following provisions apply in relation to the amendment of the *Education Act 1972* and the *Technical and Further Education Act 1976*:

- (a) an award of the Teachers' Salaries Board in force immediately before those amendments will, after those amendments, be taken to be an award of the Commission and will, subject to the principal Act, continue to have the same operation; and
- (b) any proceedings before the Teachers' Salaries Board at the time of those amendments may continue before the Teachers' Salaries Board as if those amendments had not been effected.

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## *Statutes Amendment and Repeal (Common Expiation Scheme) Act 1996*

### 5—Transitional provision

An Act repealed or amended by this Act will continue to apply (as in force immediately prior to the repeal or amendment coming into operation) to an expiation notice issued under the repealed or amended 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;

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- (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.

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- (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.

## *Statutes Amendment (Budget 2010) Act 2010*

### 89—Transitional provision

The amendment to the *Technical and Further Education Act 1975* made by this Part does not affect an entitlement to long service leave or payment in lieu of long service leave that accrues before 1 July 2011.

## Historical versions

Reprint No 1—15.1.1992

Reprint No 2—1.7.1992

Reprint No 3—1.1.1994

Reprint No 4—3.2.1997

Reprint No 5—16.7.1998

1.4.2007

1.2.2010

1.7.2011

## 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.*