

South Australia

Education (Compulsory Education Age) Amendment Act 2007

An Act to amend the *Education Act 1972*.

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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 *Education (Compulsory Education Age) Amendment Act 2007*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Education Act 1972*

4—Amendment of section 5—Interpretation

Section 5(1)—after the definition of *the Appeal Board* insert:

child of compulsory education age means a person who is 16 years of age;

5—Substitution of section 8

Section 8—delete the section and substitute:

8—Power of delegation

- (1) The Minister may delegate to a body or person (including a person for the time being holding or acting in a specified office or position) a function or power of the Minister under this Act.
- (2) A delegation under this section—
 - (a) must be by instrument in writing; and
 - (b) may be absolute or conditional; and
 - (c) does not derogate from the ability of the Minister to act in any matter; and
 - (d) is revocable at will.
- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (4) A person to whom functions or powers have been delegated under subsection (1) who has a direct or indirect personal or pecuniary interest in any matter in relation to which the person proposes to perform those functions or exercise those powers must disclose the nature of the interest in writing to the Minister.

Maximum penalty: \$20 000.

- (5) It is a defence to a charge of an offence against subsection (4) to prove that the defendant was not, at the time of the alleged offence, aware of his or her interest in the matter.

6—Substitution of section 13

Section 13—delete the section and substitute:

13—Power of delegation etc

- (1) The Director-General may, with the consent of the Minister, delegate to a body or person (including a person for the time being holding or acting in a specified office or position) a function or power of the Director-General under this Act.
- (2) A delegation under this section—
- (a) must be by instrument in writing; and
 - (b) may be absolute or conditional; and
 - (c) does not derogate from the ability of the Director-General to act in any matter; and
 - (d) is revocable at will.
- (3) A person to whom functions or powers have been delegated under subsection (1) who has a direct or indirect personal or pecuniary interest in any matter in relation to which the person proposes to perform those functions or exercise those powers must disclose the nature of the interest in writing to the Director-General.
- Maximum penalty: \$20 000.
- (4) It is a defence to a charge of an offence against subsection (3) to prove that the defendant was not, at the time of the alleged offence, aware of his or her interest in the matter.
- (5) If the Director-General is absent from the duties of his or her office for any reason, a Deputy Director-General will act in the office of the Director-General and will exercise and perform the functions and powers of the Director-General.

7—Substitution of heading to Part 6

Heading to Part 6—delete the heading and substitute:

Part 6—Compulsory enrolment and attendance etc

8—Amendment of section 74—Interpretation

- (1) Section 74(1)—before the definition of *school* insert:
- approved learning program*—see section 75D;
 - authorised officer*—see section 80(1);

(2) Section 74—after subsection (1) insert:

- (2) For the purposes of this Part, a reference to *participation* in an approved learning program includes a reference to attending at the place or places at which the approved learning program is conducted.

9—Amendment of section 75—Compulsory enrolment of children

(1) Section 75(1) and (2)—delete subsections (1) and (2) and substitute:

- (1) Subject to this Part, a child of compulsory school age must be enrolled at a primary school or secondary school (according to the educational attainments of the child).
- (2) Subject to this Part, a child of compulsory education age must be enrolled in an approved learning program, or in a combination of approved learning programs, so as to constitute full-time participation in approved learning programs under this Act.

(2a) Nothing in this section requires a child who—

- (a) is 16 or more years of age; and
- (b) has achieved a qualification under an approved learning program,

to be enrolled in a school or in an approved learning program under this section.

(2) Section 75(5)—delete "shall be guilty of an offence and liable to a penalty not exceeding one hundred dollars." and substitute:

is guilty of an offence.

Maximum penalty: \$500.

(3) Section 75(6)—delete "the name, date of birth and place of residence of the child" and substitute:

—

- (a) the name and date of birth of the child; and
- (b) the place of residence of the child; and
- (c) any other information required by the regulations.

(4) Section 75—after subsection (6) insert:

(7) The Governor may, by regulation—

- (a) prescribe rules or criteria that will be applied for the purposes of determining at which school a child must be enrolled under subsection (1) or (2) (subject to the operation of subsections (3) and (4) of this section and section 75A and unless the child is enrolled at a non-Government school);
- (b) prescribe rules or criteria that will be applied for the purposes of determining what constitutes full-time participation in approved learning programs for the purposes of subsection (2);

- (c) prescribe rules or criteria that will be applied for the purposes of determining whether a qualification has been achieved for the purposes of subsection (2a)(b).
- (8) A regulation under subsection (7) may confer discretionary powers on the Minister.

10—Amendment of section 75C—Appeal against direction of Director-General or Minister

- (1) Section 75C(1)(a)—delete "and 75B"
- (2) Section 75C(1)(b)—delete "or 75B"

11—Insertion of sections 75D and 75E

After section 75C insert:

75D—Approved learning programs

- (1) For the purposes of this Part, a learning program is an *approved learning program* if the program—
 - (a) —
 - (i) consists of secondary education provided under this Act; or
 - (ii) counts towards, or is otherwise required for, the award of a degree, diploma or other award provided by a university declared by the regulations to be a university or class of universities that is within the ambit of this subparagraph; or
 - (iii) consists of technical and further education provided by a college (within the meaning of the *Technical and Further Education Act 1975*); or
 - (iv) consists of an accredited course provided by a training organisation registered under the *Training and Skills Development Act 2003* or a corresponding law (other than a course or training organisation excluded from the ambit of this definition by the regulations); or
 - (v) is an apprenticeship or traineeship undertaken with an employer approved as an employer who may undertake the training of an apprentice/trainee under an approved contract of training under the *Training and Skills Development Act 2003*; or
 - (vi) is a program of a class declared by the Minister by notice in the Gazette to be an approved learning program; and
 - (b) complies with the requirements set out in the regulations for the purposes of this section.

- (2) To avoid doubt, a reference to an apprenticeship or traineeship in subsection (1)(a)(v) includes a reference to any relevant work undertaken as part of the apprenticeship or traineeship.
- (3) In this section—
corresponding law means a law of another State or a Territory of the Commonwealth relating to higher education, vocational education and training and adult community education.

75E—Report on operation of Part

- (1) The Director-General must, on or before December 31 in each year, provide to the Minister a report on the operation of this Part (including compliance with this Part) for the preceding year.
- (2) The Director-General, in preparing a report under subsection (1)—
 - (a) may, by notice in writing, require a specified person or body to provide the information specified in the notice to the Director-General; and
 - (b) must comply with any other requirements prescribed by the regulations.
- (3) A report under subsection (1) may be incorporated in the report of the Director-General prepared under section 14.

12—Amendment of section 76—Compulsory attendance and participation

- (1) Section 76(1)—delete subsection (1) and substitute:
 - (1) Subject to this Part, a child of compulsory school age is required to attend at the school at which he or she is enrolled on every day, and for such parts of every day, that instruction is provided for the child at the school.
 - (1a) Subject to this Part, a child of compulsory education age is required to participate in an approved learning program in which he or she is enrolled on every day, and for such parts of every day, that instruction is provided in relation to the program.
- (2) Section 76—after subsection (2) insert:
 - (2a) Subsection (1a) does not apply—
 - (a) in respect of a child exempted from participation in accordance with this Part; or
 - (b) in respect of a child for whom a parent presents, within a reasonable time, a prescribed reason for the non-participation of the child in the approved learning program.
- (3) Section 76(3)—delete "shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars." and substitute:

is guilty of an offence.
Maximum penalty: \$500.

- (4) Section 76(5)—delete subsection (5)

13—Substitution of section 78

Section 78—delete the section and substitute:

78—Employment of children of compulsory school age or compulsory education age

- (1) Subject to this Part, a person must not employ a child of compulsory school age or compulsory education age—
- (a) during the hours at which the child is required to attend school or to participate in an approved learning program (as the case requires); or
 - (b) in any labour or occupation that renders, or is likely to render, the child unfit to attend school or participate in an approved learning program as required by this Part or to obtain the proper benefit from such attendance or participation.

Maximum penalty: \$5 000.

- (2) It is a defence to a charge of an offence against this section if the defendant proves that the alleged offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

14—Amendment of section 79—Attendance

Section 79—after "age" insert:

and participation in an approved learning program by children of compulsory education age

15—Substitution of section 80

Section 80—delete the section and substitute:

80—Authorised officers

The following persons are authorised officers for the purposes of this Part:

- (a) any member of the police force;
- (b) any person authorised in writing by the Director-General to exercise the powers of an authorised officer under this Act;
- (c) any person authorised in writing by the Chief Executive Officer (within the meaning of the *Family and Community Services Act 1972*) to exercise the powers of an authorised officer under this Act.

80A—Powers of authorised officers

- (1) If an authorised officer observes a person in a public place who appears to the officer to be a child of compulsory school age or a child of compulsory education age at a time when such a child should normally be attending school or participating in an approved learning program (as the case requires), the officer may require the child to provide—
 - (a) his or her name, address and age; and
 - (b) the reason for his or her non-attendance at school or non-participation in an approved learning program.
- (2) If a child referred to in subsection (1) is in the charge or company of a person apparently over the age of 18 years, the authorised officer may require that person to provide the authorised officer with the information referred to in that subsection.
- (3) If it appears to an authorised officer who is a member of the police force, after enquiring into the child's reasons for not being at school or participating in an approved learning program, that the child does not have a proper reason for being absent from school or for not participating in an approved learning program, the authorised officer may take the child into his or her custody and return the child—
 - (a) to someone in authority at the school or in relation to the approved learning program in which the child is enrolled (as the case requires); or
 - (b) to a parent or guardian of the child.
- (4) An authorised officer may at any time attend at residential premises and request any person in the premises to provide the officer with—
 - (a) the full names of all children of compulsory school age and children of compulsory education age resident in the dwelling house; and
 - (b) the respective ages of those children; and
 - (c) the schools at which, or the approved learning program in which, (if any) the children are enrolled in accordance with this Part.

80B—Offence to hinder etc authorised officers

A person who—

- (a) hinders or obstructs an authorised officer, or a person assisting an authorised officer, in the exercise of powers conferred by this Part; or
- (b) uses abusive, threatening or insulting language to an authorised officer, or a person assisting an authorised officer; or

- (c) when required by an authorised officer under this Part to answer a question, refuses or fails to answer the question to the best of the person's knowledge, information and belief;
or
- (d) falsely represents, by words or conduct, that he or she is an authorised officer,

is guilty of an offence.

Maximum penalty: \$5 000.

16—Amendment of section 81—Evidentiary provision

Section 81(2)(c)—after "school" insert:

or approved learning program

17—Amendment of section 81A—Exemptions

Section 81A—after subsection (2) insert:

- (2a) The Minister may, by notice published in the Gazette, publish guidelines in relation to the granting of, or variation or revocation of, an exemption under this section.

18—Amendment of section 107—Regulations

- (1) Section 107(2)—after paragraph (sa) insert:

- (sb) the collection, recording and collation of information on any matter relating to the administration or enforcement of Part 6 and the provision of the information to the Minister or other body determined by the Minister;

- (2) Section 107(4)—delete "two hundred dollars" and substitute:

\$500

19—Amendment of long title

Long title—after "State;" insert:

to make proper provision for education alternatives to traditional secondary schooling;