

South Australia

Children's Services Act 1985

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

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

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

3—Interpretation

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

baby sitting agency means any person or body of persons that—

- (a) carries on a business in the course of which persons are employed for the purpose of caring for children, in their own homes, in the temporary absence of their guardians; or
- (b) carries on the business of introducing to the guardians of children persons who are prepared to care for the children, in their own homes, in the temporary absence of their guardians;

child means a person under the age of eighteen years;

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

children's services includes—

- (a) pre-school education; and
- (b) the provision of non-residential care for children; and
- (c) any other service by way of assistance in, or the provision of facilities for, the proper care, guidance and support of children;

children's services centre means—

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

the Committee means the Children's Services Consultative Committee established under this Act;

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

employing authority means—

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

family day care agency means the business of introducing to the guardians of children persons who are prepared to care for the children on a non-residential basis in a family environment away from their own homes and apart from their guardians;

guardian, in relation to a child, means a parent or legal guardian of the child and includes any person who has the immediate custody and control of the child;

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

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

parent includes a step-parent;

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

regional advisory committee means a regional advisory committee established under this Act;

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

young child means a child under the age of 6 years who has not yet commenced attending school.

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

5—Schedule

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

Part 2—Administration

Division 1—General

6—Incorporation of the Minister

- (1) The Minister and his successors in office shall be a corporation sole.
- (2) The Minister shall, in his corporate name and capacity, be capable of—
 - (a) suing and being sued; and
 - (b) acquiring, holding, dealing with and disposing of real and personal property; and
 - (c) acquiring or incurring any other rights or liabilities.

- (3) A document purporting to bear the signature or the common seal of the Minister shall be presumed in any legal proceedings, in the absence of proof to the contrary, to have been duly executed by the Minister.

7—Objects

- (1) The objects of the Minister, any committee established under this Act and any person involved in the administration of this Act, are—
- (a) to ensure the provision of pre-school education and such other children's services as are necessary for the proper care and development of every child; and
 - (b) to ensure the development of an accessible range of children's services to meet the needs of all groups in the community; and
 - (c) to encourage the provision of children's services that do not discriminate against or in favour of any person on the ground of his sex, marital status, mental or physical impairment, religion, race or nationality, except so far as it is necessary to do so for the purpose of assisting a child to overcome any disadvantage arising out of his sex, mental or physical impairment, religion, race or nationality; and
 - (d) to ensure that the multicultural and multilingual nature of the community is reflected—
 - (i) in the planning, implementation and structure of programmes and services for children and their families; and
 - (ii) in the membership of any committee established under this Act and in the staffing of the various bodies, authorities and other agencies involved in the administration of this Act and in the provision of programmes and services for children and their families; and
 - (e) to promote the involvement of parents and other members of the community in the provision of children's services.
- (2) In dealing with children under this Act, the Minister shall regard the interests of the children as the paramount consideration.

8—Functions of the Minister

The functions of the Minister under this Act are—

- (a) to provide, and co-ordinate the provision of, children's services, having regard to the needs of the community and the need to achieve efficient use of available resources;
- (b) to develop and implement, or assist in the development and implementation of, policies relating to the provision of children's services and to keep the operation of those policies under constant review and evaluation;
- (c) to monitor and evaluate the nature and quality of children's services with a view to ensuring the highest possible standards of such services;
- (d) to ensure that the expertise and qualifications of persons who provide children's services are of the highest possible standards;

- (e) to encourage, or assist in the provision of, children's services by voluntary groups or organisations;
- (f) to keep the public informed on the availability of children's services and how they may be obtained;
- (g) to keep under review the special needs of individual groups of children (including those who suffer from physical or mental disabilities and those who are economically disadvantaged) and to provide, assist in the provision of, or promote, services to meet those needs;
- (h) to collaborate and consult with government departments (of the State, the Commonwealth or of other States or Territories of the Commonwealth), with public authorities, with municipal or district councils in this State and with non-government organisations that provide, or support or promote the provision of, children's services;
- (i) to encourage public discussion of policies affecting the provision of children's services;
- (j) to do such other things as may be necessary or desirable for the efficient discharge of its functions.

9—Delegation

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

Division 2—Staff

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

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

11—Director of Children's Services

- (1) There shall be a Director of Children's Services.
- (2) The Director shall be appointed—
 - (a) for a term of office, not exceeding five years, specified in the instrument of his appointment; and
 - (b) upon terms and conditions determined by the Minister.
- (3) The Director is, on the expiration of a term of office, eligible for reappointment.

- (4) The *Public Sector Management Act 1995* will not apply to the office of Director.
- (5) The Director may delegate to any other person any of his or her powers or functions under this Act.
- (6) A delegation under this section is revocable at will and does not derogate from the power of the Director to act personally in any matter.
- (7) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.

12—Staff

- (1) The employing authority may employ staff for the purposes of this Act.
- (2) The terms and conditions of employment of a person under subsection (1) will be determined by the employing authority.
- (3) A person employed under this section will be taken to be employed by or on behalf of the Crown but, subject to subsection (4), the *Public Sector Management Act 1995* will not apply to the person.
- (4) The provisions of the *Public Sector Management Act 1995* with respect to long service leave apply in relation to persons employed under this section with such modification as may be prescribed.
- (5) The employing authority may direct a person employed under this section to perform functions in connection with the operations or activities of a public sector agency specified by the employing authority (and the person must comply with that direction).
- (6) The employing authority is, in acting under this section, subject to direction by the Minister.
- (7) However, no Ministerial direction may be given by the Minister relating to the appointment, transfer, remuneration, discipline or termination of a particular person.
- (8) The employing authority may delegate a power or function under this section.
- (9) A delegation under subsection (8)—
 - (a) must be by instrument in writing; and
 - (b) may be made to a body or person (including a person for the time being holding or acting in a specified office or position); and
 - (c) may be unconditional or subject to conditions; and
 - (d) may, if the instrument of delegation so provides, allow for the further delegation of a power or function that has been delegated; and
 - (e) does not derogate from the power of the employing authority to act personally in any matter; and
 - (f) may be revoked at any time by the employing authority.
- (10) A change in the person constituting the employing authority under this Act will not affect the continuity of employment of a person under this section.
- (11) The Minister may, in connection with the operation of this Act, with the approval of another Minister administering an administrative unit, make use of the services or staff of that administrative unit.

- (12) The Minister may, in connection with the operation of this Act, with the approval of the Minister responsible for the administration of the *Education Act 1972*, make use of services of any member of the teaching service constituted under that Act.
- (13) In this section—
public sector agency has the same meaning as in the *Public Sector Management Act 1995*.

13—Superannuation

- (1) The employing authority may enter into arrangements contemplated by section 5 of the *Superannuation Act 1988*.
- (2) Any person employed as a member of the Children's Services Office under this Act who was, immediately before becoming such an employee, a contributor under the *Superannuation Act 1988* may, subject to that Act, remain a contributor.

14—Transfer of staff from public service or prescribed employment

- (1) Where a person becomes a member of the Children's Services Office after ceasing to be employed—
- (a) in the Public Service of the State; or
 - (b) in prescribed employment,

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

- (c) his transfer shall be effected without loss of accrued recreation leave; and
 - (d) his existing and accruing rights in respect of sick leave, accouchement leave and long service leave shall continue in effect.
- (2) Except where subsection (1) applies, where a person becomes a member of the Children's Services Office within three months after ceasing to be employed—
- (a) in the Public Service of the State; or
 - (b) in prescribed employment,

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

Division 3—The Children's Services Consultative Committee

15—The Children's Services Consultative Committee

- (1) There shall be a committee entitled the *Children's Services Consultative Committee*.
- (2) The Committee shall consist of the following persons:
- (a) twelve persons, elected by the regional advisory committees in accordance with the regulations, being, at the time of their election, parents of children enrolled at, or attending, any establishment that provides children's services; and

- (b) six persons, appointed by the Governor, being persons selected by the Minister from a panel of persons nominated in accordance with the regulations by each regional advisory committee and by such organisations involved in the field of children's services as may be prescribed; and
 - (c) four persons, appointed by the Governor, being persons who, in the opinion of the Minister, are suitable persons to represent individual groups of children with special needs; and
 - (d) one person, appointed by the Governor, upon the nomination of the South Australian Commission for Catholic Schools; and
 - (e) one person, appointed by the Governor, upon the nomination of the South Australian Independent Schools Board Incorporated; and
 - (f) one person, appointed by the Governor, upon the nomination of the South Australian Institute of Teachers, being a person employed in the provision of children's services; and
 - (g) one person, appointed by the Governor, upon the nomination of the Public Service Association, being a person employed in the provision of children's services; and
 - (h) one person, appointed by the Governor, upon the nomination of the Federated Miscellaneous Workers Union, being a person employed in the provision of children's services; and
 - (i) one person, appointed by the Governor, upon the nomination of the Association of Junior Primary Parent Clubs, being a suitable person to represent the interests of persons involved with Child Parent Centres; and
 - (j) one person, appointed by the Governor, being a person who, in the opinion of the Minister, is a suitable person to represent the interests of establishments that provide children's services and that are not assisted by public funding; and
 - (k) four persons appointed by the Governor, being persons nominated by the Minister.
- (3) In selecting persons for membership of the Committee under subsection (2)(b), the Minister shall seek to ensure that the persons selected have an appropriate diversity of experience in the provision of pre-school education for children, non-residential care of children, family day care for children and such other children's services as the Minister thinks fit.
- (4) The Governor may appoint a member of the Committee to be the Chairman of the Committee and another member to be the Deputy Chairman.
- (5) The Governor may appoint a suitable person to be the deputy of a member of the Committee (other than the Chairman), and the deputy may, in the absence of that member, act as a member of the Committee.

16—Term of office of members

- (1) An appointed member of the Committee shall be appointed for such term, not exceeding three years, as the Governor determines and specifies in the instrument of his appointment and, on the expiration of a term of office, shall be eligible for reappointment.

- (2) The Governor may remove a member of the Committee from office on the ground of—
 - (a) mental or physical incapacity to carry out satisfactorily the duties of his office; or
 - (b) dishonourable conduct; or
 - (c) neglect of duty.
- (3) The office of a member of the Committee becomes vacant if—
 - (a) he dies; or
 - (b) his term of office expires; or
 - (c) he resigns by giving notice in writing to the Minister; or
 - (d) he is removed from office by the Governor under subsection (2).
- (4) Upon the office of a member of the Committee becoming vacant, a person shall be appointed or elected to that office in accordance with this Act.

17—Allowances and expenses

A member of the Committee shall be entitled to receive such allowances and expenses as the Governor may from time to time determine.

18—Conduct of business

- (1) The Chairman shall preside at any meeting of the Committee at which he is present and, in his absence, the Deputy Chairman shall preside.
- (2) In the absence of both the Chairman and the Deputy Chairman from a meeting of the Committee, the members present shall elect one of their number to preside at the meeting.
- (3) Seventeen members constitute a quorum of the Committee.
- (4) A decision carried by a majority of the votes cast by the members present at a meeting of the Committee is a decision of the Committee.
- (5) Each member present at a meeting of the Committee is entitled to one vote on a question arising for decision at that meeting and, in the event of an equality of votes, the person presiding is entitled to a second, or casting, vote.
- (6) Subject to this Act, the business of the Committee shall be conducted in such manner as it determines.
- (7) The Committee shall meet at least once annually in a country region in the State designated by the Minister under section 21.
- (8) The Director shall provide such secretarial and other services and facilities as may reasonably be required for the purposes of the Committee.

19—Saving provision

An act or proceeding of the Committee is not invalid by reason of a vacancy in the membership of the Committee or a defect in an appointment to the Committee.

20—Functions of the Committee

The functions of the Committee are—

- (a) to advise the Minister and the Director on any matter relating to the administration of this Act (other than the employment of staff); and
- (b) to identify and assess the needs and attitudes of the community in relation to children's services and to advise the Minister and the Director in relation to programmes to accommodate those needs and attitudes; and
- (c) to consider reports made to the Committee by regional advisory committees; and
- (d) to investigate and report to the Minister on any matters referred by the Minister to the Committee for advice.

Division 4—Regional advisory committees

21—Regional advisory committees

- (1) The Minister shall designate areas within the State for the purposes of this section.
- (2) There shall be a regional advisory committee established in each of the areas designated under subsection (1).

22—Membership of regional advisory committees

- (1) Each regional advisory committee shall consist of such number of members as may be prescribed.
- (2) Subject to subsection (3), the members of a regional advisory committee shall be elected or appointed in accordance with the regulations.
- (3) Each regional advisory committee shall have more elected members than appointed members.
- (4) A majority of the members of a regional advisory committee must be, at the time of their election or appointment, parents of children enrolled at, or attending, any establishment that provides children's services.
- (5) The members of a regional advisory committee shall elect one of the members of the committee to be the chairman of the committee.

23—Terms and conditions of office of members of regional advisory committees

- (1) The members of a regional advisory committee shall hold office on such terms and conditions as may be prescribed.
- (2) A member of a regional advisory committee is entitled to receive such allowances and expenses as the Minister may determine.

24—Procedure etc

- (1) Subject to the regulations, the procedure of a regional advisory committee shall be such as is determined by the committee.
- (2) A regional advisory committee shall consider, and report on, any matter relating to children's services.

- (3) The chairman of a regional advisory committee shall—
 - (a) as soon as is practicable after each meeting of the committee, make a report to the Committee on the business transacted at the meeting; and
 - (b) make such reports to the Director and the Committee on the deliberations of and conclusions reached by the committee as the Minister may require.
- (4) A regional advisory committee shall hold at least five meetings in each year.
- (5) The Director shall provide such secretarial and other services and facilities as may reasonably be required for the purposes of a committee.

Part 3—Children's services

Division 1—Licensed child care centres

25—Business of child care not to be carried on without licence

- (1) No person shall have the conduct or control of a child care centre unless that person is the holder of a valid licence granted under this section in respect of the child care centre.
- (2) The Director may grant a licence under this section subject to such terms and conditions as he thinks fit and specifies in the licence.
- (3) A licence will be granted for a period of 2 years and may be renewed for successive periods of 2 years.
- (4) A person shall not contravene any condition on which a licence is granted under this Division.
- (5) This section does not apply in respect of any premises or place in which foster children are cared for by a person approved as a foster parent under the *Community Welfare Act 1972*.
- (6) This section does not apply where the children who are cared for apart from their guardians are all of the same family.

26—Cancellation of licence

- (1) Where the Director is satisfied that proper cause for the cancellation of a licence under this Division exists, he may, by notice in writing served personally or by post upon the licensee, cancel the licence.
- (2) The Director shall not cancel a licence under this Division unless he has given notice in writing to the licensee of his intention to cancel the licence at least twenty-eight days before he does so.

27—Period for which child may be left in child care centre

- (1) A person shall not leave a child under the age of six years to be cared for in a licensed child care centre for more than a prescribed number of consecutive hours over a prescribed period.
Penalty: Fifty dollars.
- (2) The licensee of a child care centre shall notify the Director in writing of any breach of subsection (1).

28—Register

The licensee of a child care centre shall keep a register containing the following particulars with respect to every child received by him so far as those particulars are reasonably ascertainable by him:

- (a) the name and date of birth of the child; and
- (b) the name and address of the person from whom the child was received; and
- (c) the name and address of the person who will collect the child; and
- (d) the address and telephone number of the place or places where the guardians of the child may be contacted in the event of an emergency; and
- (e) the time of arrival and departure of the child each day; and
- (f) such other particulars as may be prescribed.

29—Powers of entry and inspection

- (1) The Director, or any person authorised in writing by him, may at any reasonable time enter and inspect a licensed child care centre.
- (2) The licensee of a child care centre shall, if so required by the Director or any such authorised person, produce for his inspection the register that he is required to keep under this Division, and shall furnish the Director or authorised person with such information in relation to any child as the Director may require.
- (3) A person shall not hinder the Director or any such authorised person in the exercise of powers conferred on him under subsection (1), or fail to comply with a requirement made of him pursuant to subsection (2).

Division 2—Licensed baby sitting agencies

30—Licensing of baby sitting agencies

- (1) No person shall—
 - (a) carry on the business of a baby sitting agency; or
 - (b) hold himself out to the public as a baby sitting agency,unless he is licensed as a baby sitting agency under this section.
- (2) The Director may grant a licence under this section subject to such terms and conditions as he thinks fit and specifies in the licence.
- (3) A licence shall, subject to this Division, remain in force for a period of twelve months from the day on which it was issued, and may be renewed for successive periods of twelve months.
- (4) A person shall not contravene any condition upon which a licence is granted under this section.

31—Cancellation of licence

- (1) Where the Director is satisfied that proper cause for cancellation of a licence under this Division exists, he may, by notice in writing served personally or by post upon the licensee, cancel the licence.

- (2) The Director shall not cancel a licence under this Division unless, at least twenty-eight days before he does so, he has informed the licensee, by notice in writing served personally or by post upon him, of his intention to cancel the licence.

32—Records etc

- (1) A licensed baby sitting agency shall maintain a register of baby sitters and such other records as may be prescribed.
- (2) A licensed baby sitting agency shall, if so required by the Director, or any person authorised in writing by him, produce for inspection the records that the agency is required to maintain under this section, and shall furnish the Director or authorised person with such other information relating to the activities of the agency as he may require.

Division 3—Approved family day care and licensed family day care agencies

33—Application for approval of family day care

- (1) A person—
- (a) who proposes, for monetary or other consideration, to care for not more than 4 young children on a non-residential basis in a family environment away from their own homes and apart from their guardians; and
 - (b) who is not required to hold a licence under this Act, or the *Community Welfare Act 1972*,
- may apply to the Director for approval—
- (c) of the applicant as a family day care provider; and
 - (d) of the premises in which care is to be provided as family day care premises.
- (2) The Director may give an approval in writing under this section subject to such conditions as he thinks fit and specifies in the approval.
- (2a) It is a condition of every approval under this section (whether given before or after the commencement of this subsection) that the care provider must not, at any one time, have the care of—
- (a) more than 4 young children; or
 - (b) more than 7 children, in total.
- (2b) The Director may exempt an approved family day care provider from the conditions specified in subsection (2a) if—
- (a) all children being cared for by the care provider are of the same family; or
 - (b) no more than 8 children are being cared for by the care provider and the Director is satisfied that special circumstances exist; or
 - (c) immediately before the commencement of this subsection, the care provider had the care of more than 4 young children or more than 7 children, in total.

- (2c) An exemption granted under subsection (2b) will apply only in relation to—
- (a) if the exemption is granted under subsection (2b)(a)—children of the family specified in the exemption; or
 - (b) if the exemption is granted under subsection (2b)(b)—the children in the care of the care provider at the time the exemption is granted; or
 - (c) if the exemption is granted under subsection (2b)(c)—the children in the care of the care provider immediately prior to the commencement of that subsection.
- (2d) An exemption granted under subsection (2b) may be subject to such conditions as the Director thinks fit.
- (3) An approval shall, subject to this Division, remain in force for a period of twelve months after the day on which it was given, and may be renewed for successive periods of twelve months.
- (4) In determining the number of children being cared for by a care provider for the purposes of this section, the care provider's own children and any other children residing in the approved premises will be taken into account if those children are under the age of 13 years.

34—Revocation of approval

- (1) Where the Director is satisfied that proper cause for the revocation of an approval under this Division exists, he may, by notice in writing served personally or by post upon the approved family day care provider, revoke the approval.
- (2) The Director shall not revoke an approval pursuant to this section unless he has given notice in writing to the approved family day care provider of his intention to revoke the approval at least twenty-eight days before he does so.

35—Register

An approved family day care provider shall keep a register containing the following particulars with respect to every child received by him so far as those particulars are reasonably ascertainable by him:

- (a) the name and date of birth of the child; and
- (b) the name and address of the person from whom the child was received; and
- (c) the name and address of the person who will collect the child; and
- (d) the address and telephone number of the place or places at which the guardians of the child may be contacted in the event of an emergency; and
- (e) such other particulars as may be prescribed.

36—Powers of entry and inspection

- (1) The Director, or any person authorised in writing by him, may at any reasonable time enter and inspect any approved family day care premises.
- (2) An approved family day care provider shall, if so required by the Director or any such authorised person, produce for his inspection the register that he is required to keep under this Division, and shall furnish the Director or authorised person with such information in relation to any child as the Director may require.

- (3) A person shall not hinder the Director or any such authorised person in the exercise of powers conferred on him under subsection (1), or fail to comply with a requirement made of him pursuant to subsection (2).

37—False representation as to approval

A person shall not falsely represent that he or any premises have been approved under this Division, nor make any representation that might reasonably be expected to cause or induce any other person falsely to believe that he or the premises have been so approved.

38—Licensing of family day care agencies

- (1) No person shall—
- (a) carry on the business of a family day care agency; or
 - (b) hold himself out to the public as a family day care agency,
- unless he is licensed as a family day care agency under this section.
- (2) The Director may grant a licence under this section subject to such terms and conditions as he thinks fit and specifies in the licence.
- (3) A licence shall, subject to this Division, remain in force for a period of twelve months from the day on which it was issued, and may be renewed for successive periods of twelve months.
- (4) A person shall not contravene any condition upon which a licence is granted under this section.

39—Cancellation of licence

- (1) Where the Director is satisfied that proper cause for cancellation of a licence under this Division exists, he may, by notice in writing served personally or by post upon the licensee, cancel the licence.
- (2) The Director shall not cancel a licence under this Division unless, at least twenty-eight days before he does so, he has informed the licensee, by notice in writing served personally or by post upon him, of his intention to cancel the licence.

40—Records etc

- (1) A licensed family day care agency shall maintain such records as may be prescribed.
- (2) A licensed family day care agency shall, if so required by the Director, or any person authorised in writing by him, produce for inspection the records that the agency is required to maintain under this section, and shall furnish the Director or authorised person with such other information relating to the activities of the agency as he may require.

Division 4—Registered Children's Services Centres

41—Applications for registration

- (1) The management committee of a Children's Services Centre may apply to the Director for registration of the Centre under this Division.

- (2) An application for registration must—
 - (a) be made in the prescribed manner and form; and
 - (b) be accompanied by a copy of the constitution under which the Children's Services Centre is to operate.

42—Registration

- (1) Subject to subsection (2), the Director may, on an application for registration duly made under this Division, register the Children's Services Centre and issue a certificate of incorporation in respect of the Children's Services Centre.
- (2) The Director shall not register a Children's Services Centre under this section unless he has approved the constitution under which the Children's Services Centre is to operate.
- (3) The registration of a Children's Services Centre under this section does not affect the title of the Centre to any of its property.
- (4) A Children's Services Centre that is registered, or deemed to be registered, under this Act is a body corporate and has the powers and functions prescribed by its constitution.
- (5) Incorporation of a Children's Services Centre by virtue of subsection (4) terminates incorporation of the Centre under any other Act.

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

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

44—Management of Children's Services Centres

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

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

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

Division 5—Appeals

46—Appeal against decisions of the Director

- (1) A right of appeal to the Minister shall lie against any decision of the Director under this Part—
 - (a) to refuse a licence or registration under this Part; or
 - (b) to cancel a licence or registration under this Part.
- (2) The appeal must be instituted, in the prescribed manner, before the expiration of one month from the day on which the decision appealed against took effect, but the Minister may, if he is satisfied that in the circumstances it is just and reasonable to do so, extend the period within which an appeal may be instituted.
- (3) The Minister shall establish such number of appeal boards as may be necessary for the purposes of investigating appeals under this section.
- (4) The Minister may pay to the members of an appeal board such allowances and expenses as he thinks fit.
- (5) Where an appeal under this section has been instituted against a decision, any action in relation to the decision shall be stayed until the appeal has been determined or withdrawn, unless the Minister directs otherwise.
- (6) The Minister may, upon determining an appeal, revoke the decision appealed against and may substitute for that decision any other decision that could have been made in the first instance.

Division 6—Miscellaneous

47—Power of Director to enter certain places

- (1) The Director, or any person authorised by him in writing, may, where the Director suspects on reasonable grounds that a child is being cared for in any place in contravention of this Act, enter that place for the purpose of investigating the matter.
- (2) A person shall not hinder the Director or any such authorised person in the exercise of powers conferred on him under subsection (1).

48—Restriction on child minding advertisements

No person shall, by public advertisement, represent that he is prepared, for monetary or other consideration, to mind, look after or care for young children away from their own homes unless he is the holder of a valid licence under this Act in respect of caring for such children or unless he is an approved family day care provider.

Part 4—Miscellaneous

49—Annual report

- (1) The Director shall, on or before the thirty-first day of October in each year, submit to the Minister a report on the administration of this Act during the year ending on the preceding thirtieth day of June and information upon such other matters as the Minister may direct.
- (2) The Minister shall cause a copy of a report furnished to him under subsection (1) to be laid before each House of Parliament within fourteen sitting days of his receipt of the report if Parliament is then in session, but if Parliament is not then in session, within fourteen days of the commencement of the next session of Parliament.

50—Financial provision

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

51—Recognised organisations

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

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

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

53—Service of notices

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

54—Proceedings for offences

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

55—Offences generally

- (1) A person who contravenes, or fails to comply with, a provision of this Act is guilty of an offence.
- (2) A person who is guilty of an offence against this Act for which no penalty is specifically provided shall be liable to a penalty not exceeding one thousand dollars.

56—Evidentiary provision

- (1) In any proceedings for an offence against this Act, an allegation in the complaint—
- (a) that a specified person was or was not the holder of a licence under this Act; or
 - (b) that a specified person was or was not an approved family day care provider; or
 - (c) that a licence or an approval was subject to specified conditions,
- shall, in the absence of proof to the contrary, be proof of the matter so alleged.

57—Regulations

- (1) The Governor may make such regulations as are contemplated by, or as are necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), those regulations may—
- (a) prescribe any form for the purposes of this Act; and
 - (b) prescribe, and provide for the payment of, fees; and
 - (c) require registered Children's Services Centres to furnish periodic or other returns to the Minister containing information required by the regulations; and
 - (d) prescribe the form of any notice, application, licence, certificate or other document given, made or granted under this Act; and
 - (e) provide for—
 - (i) the appointment or election of members of the Committee or a regional advisory committee; and
 - (ii) in the case of the election of such members—
 - (A) the appointment of a person to conduct the election; and
 - (B) the persons, or class of persons, by whom such members are to be elected; and
 - (C) the selection, or nomination, of candidates for election; and
 - (f) exempt, conditionally or unconditionally, any person or class of persons from the requirement to hold a licence under this Act.
- (3) Any regulation made under this Act may be of general or limited application according to—
- (a) the classes of persons; or
 - (b) the circumstances; or
 - (c) any other specified factor,
- to which the regulation is expressed to apply.

Schedule 1—Transitional provisions

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

- (1) A kindergarten registered under the repealed Act immediately before the commencement of this Act shall be deemed to be registered as a Children's Services Centre under this Act and shall, subject to this Act, continue to be registered.
- (1a) Section 42(5) does not apply to a kindergarten incorporated under this Act before the commencement of the *Children's Services Act Amendment Act 1987*.
- (1b) If a kindergarten is incorporated under this Act and the *Associations Incorporation Act 1985*, its incorporation under the *Associations Incorporation Act 1985* will terminate at the expiration of three months after the commencement of the *Children's Services Act Amendment Act 1987*, unless the kindergarten has, by notice in writing to the Director and the Corporate Affairs Commission, elected to retain its incorporation under the *Associations Incorporation Act 1985*.
- (1c) If this Act and the *Associations Incorporation Act 1985* are in conflict in relation to a kindergarten incorporated under both Acts, the provisions of this Act will prevail.
- (2) A kindergarten registered as a branch kindergarten under the repealed Act immediately before the commencement of this Act, shall, upon the commencement of this Act, continue to be exempt from the payment of rates under the *Local Government Act 1934*.
- (3) All property, rights and liabilities vested in or attached to the Kindergarten Union of South Australia immediately before the commencement of this Act, shall, upon that commencement, vest in, or attach to, the Minister.
- (4) A licence or approval in force under the repealed provisions of the amended Act immediately before the commencement of this Act shall be deemed to be a licence or approval granted and in force under this Act and shall, subject to this Act, continue in force.
- (5) In subsection (4)—
the amended Act means the *Community Welfare Act 1972*;
the repealed provisions means the provisions of the amended Act repealed by this Act.

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

- (1) This section applies to employees of the Kindergarten Union of South Australia who were so employed immediately before the commencement of this Act.
- (2) Subject to subsection (3), all persons to whom this section applies shall, on the commencement of this Act, become employees of the Minister on terms and conditions determined by the Minister.

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

Legislative history

Notes

- 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.

Legislation repealed by principal Act

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

Kindergarten Union Act 1974

Legislation amended by principal Act

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

Community Welfare Act 1972

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1985	21	<i>Children's Services Act 1985</i>	28.3.1985	1.7.1985 (<i>Gazette 27.6.1985 p2244</i>) except Pt 3 (Divs 1 & 6) and portion of Sch 2— 5.9.1985 (<i>Gazette 5.9.1985 p700</i>) and except Pt 3 (Div 2) and portion of Sch 2—12.9.1985 (<i>Gazette 12.9.1985 p796</i>) and except Pt 3 (Div 3) and portion of Sch 2—1.10.1985 (<i>Gazette 26.9.1985 p944</i>)
1987	95	<i>Children's Services Act Amendment Act 1987</i>	17.12.1987	4.2.1988 (<i>Gazette 4.2.1988 p213</i>)
1998	7	<i>Children's Services (Child Care) Amendment Act 1998</i>	2.4.1998	16.4.1998 (<i>Gazette 16.4.1998 p1706</i>)
2000	34	<i>South Australian Health Commission (Administrative Arrangements) Amendment Act 2000</i>	6.7.2000	Sch 1 (cl 3)—6.7.2000 (<i>Gazette 6.7.2000 p5</i>)
2000	92	<i>Education (Councils and Charges) Amendment Act 2000</i>	21.12.2000	Sch 2—31.5.2001 (<i>Gazette 31.5.2001 p1893</i>)
2006	41	<i>Statutes Amendment (Public Sector Employment) Act 2006</i>	14.12.2006	Pt 7 (ss 17—24)—1.4.2007 (<i>Gazette 29.3.2007 p930</i>)

2009 84 *Statutes Amendment (Public Sector Consequential Amendments) Act 2009* 10.12.2009 Pt 27 (ss 53 & 54)—1.2.2010 (*Gazette* 28.1.2010 p320)

Provisions amended

New entries appear in bold.

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

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	
Pt 1		
<i>s 2</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	
<i>s 3</i>		
s 3(1)	s 3 redesignated as s 3(1) by 41/2006 s 17(2)	1.4.2007
child care centre	substituted by 7/1998 s 3(a)	16.4.1998
employing authority	inserted by 41/2006 s 17(1)	1.4.2007
family day care agency	amended by 7/1998 s 3(b)	16.4.1998
young child	inserted by 7/1998 s 3(c)	16.4.1998
s 3(2)	inserted by 41/2006 s 17(2)	1.4.2007
<i>s 4</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	
Pt 2		
s 9		
s 9(3)	inserted by 41/2006 s 18	1.4.2007
s 10		
s 10(1)	amended by 41/2006 s 19(1)	1.4.2007
s 10(2)	amended by 41/2006 s 19(2)	1.4.2007
s 11		
s 11(4)	amended by 41/2006 s 20(1)	1.4.2007
s 11(5)—(7)	inserted by 41/2006 s 20(2)	1.4.2007
<i>s 12 before substitution by 41/2006</i>		
<i>s 12(6)</i>	<i>deleted by 34/2000 Sch 1 cl 3</i>	<i>6.7.2000</i>
s 12	substituted by 41/2006 s 21	1.4.2007
s 13	substituted by 41/2006 s 22	1.4.2007
s 14		
s 14(1)	amended by 41/2006 s 23(1), (2)	1.4.2007
s 14(2)	amended by 41/2006 s 23(3), (4)	1.4.2007
Pt 3		
s 25		
s 25(3)	substituted by 7/1998 s 4(a)	16.4.1998

s 25(6)	amended by 7/1998 s 4(b)	16.4.1998
s 33		
s 33(1)	amended by 7/1998 s 5(a)	16.4.1998
s 33(2a)—(2d)	inserted by 7/1998 s 5(b)	16.4.1998
s 33(4)	substituted by 7/1998 s 5(c)	16.4.1998
s 42		
s 42(4)	substituted by 95/1987 s 3	4.2.1988
s 42(5)	inserted by 95/1987 s 3	4.2.1988
s 43		
s 43(1a) and (1b)	inserted by 95/1987 s 4	4.2.1988
s 44		
s 44(1)	s 44 redesignated as s 44(1) by 92/2000 Sch 2	31.5.2001
s 44(2)	inserted by 92/2000 Sch 2	31.5.2001
s 48	amended by 7/1998 s 6	16.4.1998
Pt 4		
s 51		
s 51(1)	amended by 41/2006 s 24(1), (2)	1.4.2007
s 51(2)	amended by 41/2006 s 24(3), (4)	1.4.2007
Sch 1		
cl 1		
cl 1(1a)—(1c)	inserted by 95/1987 s 5	4.2.1988
Sch 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	

Transitional etc provisions associated with Act or amendments

Statutes Amendment (Public Sector Employment) Act 2006, Sch 1—Transitional provisions

Note—

Also see *Statutes Amendment (Public Sector Employment) (Transitional Provisions) Regulations 2007*.

1—Interpretation

In this Part, unless the contrary intention appears—

Commonwealth Act means the *Workplace Relations Act 1996* of the Commonwealth;

employing authority means—

- (a) subject to paragraph (b)—the person who is the employing authority under a relevant Act;
- (b) in a case that relates to employment under the *Fire and Emergency Services Act 2005*—the Chief Executive of the South Australian Fire and Emergency Services Commission, or the Chief Officer of an emergency services organisation under that Act, as the case requires;

Industrial Commission means the Industrial Relations Commission of South Australia;

prescribed body means—

- (a) the Aboriginal Lands Trust;
- (b) the Adelaide Cemeteries Authority;
- (c) the Adelaide Festival Centre Trust;
- (d) the Adelaide Festival Corporation;
- (e) SA Ambulance Service Inc;
- (f) the Minister to whom the administration of the *Children's Services Act 1985* is committed;
- (g) the Minister to whom the administration of the *Education Act 1972* is committed;
- (h) the Electricity Supply Industry Planning Council;
- (i) a body constituted under the *Fire and Emergency Services Act 2005*;
- (j) the History Trust of South Australia;
- (k) the Institute of Medical and Veterinary Science;
- (l) a regional NRM board constituted under the *Natural Resources Management Act 2004*;
- (m) the Senior Secondary Assessment Board of South Australia;
- (n) the South Australian Country Arts Trust;
- (o) the South Australian Film Corporation;
- (p) the South Australian Health Commission;
- (q) an incorporated hospital under the *South Australian Health Commission Act 1976*;
- (r) an incorporated health centre under the *South Australian Health Commission Act 1976*;
- (s) the South Australian Motor Sport Board;
- (t) the South Australian Tourism Commission;
- (u) The State Opera of South Australia;
- (v) the State Theatre Company of South Australia;
- (w) the Minister to whom the administration of the *Technical and Further Education Act 1975* is committed;

relevant Act means—

- (a) in a case that relates to employment with a prescribed body established under an Act being amended by this Act—that Act;
- (b) in a case that relates to employment with a prescribed body who is a Minister to whom the administration of an Act being amended by this Act is committed—that Act;

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- (c) in a case that relates to employment with a body constituted under the *Fire and Emergency Services Act 2005*—that Act.

2—Transfer of employment

- (1) Subject to this clause, a person who, immediately before the commencement of this clause, was employed by a prescribed body under a relevant Act will, on that commencement, be taken to be employed by the employing authority under that Act (as amended by this Act).
- (2) The following persons will, on the commencement of this clause, be taken to be employed as follows:
- (a) a person who, immediately before the commencement of this clause, was employed under section 6L(1) of the *Electricity Act 1996* will, on that commencement, be taken to be employed by the employing authority under that Act (as amended by this Act);
 - (b) a person who, immediately before the commencement of this clause, was employed by the South Australian Fire and Emergency Services Commission will, on that commencement, be taken to be employed by the Chief Executive of that body;
 - (c) a person who, immediately before the commencement of this clause, was employed by an emergency services organisation under the *Fire and Emergency Services Act 2005* will, on that commencement, be taken to be employed by the Chief Officer of that body;
 - (d) a person who, immediately before the commencement of this clause, was employed by an incorporated hospital or an incorporated health centre under the *South Australian Health Commission Act 1976* will, on that commencement, be taken to be employed by an employing authority under that Act (as amended by this Act) designated by the Governor by proclamation made for the purposes of this paragraph.
- (3) Subject to this clause, the Governor may, by proclamation, provide that a person employed by a subsidiary of a public corporation under the *Public Corporations Act 1993* will be taken to be employed by a person or body designated by the Governor (and the arrangement so envisaged by the proclamation will then have effect in accordance with its terms).
- (4) Subject to subclause (5), an employment arrangement effected by subclause (1), (2) or (3)—
- (a) will be taken to provide for continuity of employment without termination of the relevant employee's service; and
 - (b) will not affect—
 - (i) existing conditions of employment or existing or accrued rights to leave; or
 - (ii) a process commenced for variation of those conditions or rights.

- (5) If, immediately before the commencement of this clause, a person's employment within the ambit of subclause (1), (2) or (3) was subject to the operation of an award or certified agreement (but not an Australian Workplace Agreement) under the Commonwealth Act, then, on that commencement, an award or enterprise agreement (as the case requires) will be taken to be created under the *Fair Work Act 1994*—
- (a) with the same terms and provisions as the relevant industrial instrument under the Commonwealth Act; and
 - (b) with any terms or provisions that existed under an award or enterprise agreement under the *Fair Work Act 1994*, that applied in relation to employment of the kind engaged in by the person, immediately before 27 March 2006, and that ceased to apply by virtue of the operation of provisions of the Commonwealth Act that came into force on that day,
- subject to any modification or exclusion prescribed by regulations made for the purposes of this subclause and subject to the operation of subclause (6).
- (6) Where an award or enterprise agreement is created by virtue of the operation of subclause (5)—
- (a) the award or enterprise agreement will be taken to be made or approved (as the case requires) under the *Fair Work Act 1994* on the day on which this clause commences; and
 - (b) the *Fair Work Act 1994* will apply in relation to the award or enterprise agreement subject to such modifications or exclusions as may be prescribed by regulations made for the purposes of this subclause; and
 - (c) the Industrial Commission may, on application by the Minister to whom the administration of the *Fair Work Act 1994* is committed, or an application by a person or body recognised by regulations made for the purposes of this subclause, vary or revoke any term or provision of the award or enterprise agreement if the Industrial Commission is satisfied that it is fair and reasonable to do so in the circumstances.

3—Superannuation

- (1) If a prescribed body under a relevant Act is, immediately before the commencement of this clause, a party to an arrangement relating to the superannuation of one or more persons employed by the prescribed body, then the relevant employing authority under that Act will, on that commencement, become a party to that arrangement in substitution for the prescribed body.
- (2) Nothing that takes effect under subclause (1)—
- (a) constitutes a breach of, or default under, an Act or other law, or constitutes a breach of, or default under, a contract, agreement, understanding or undertaking; or
 - (b) terminates an agreement or obligation or fulfils any condition that allows a person to terminate an agreement or obligation, or gives rise to any other right or remedy,

and subclause (1) may have effect despite any other Act or law.

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- (3) An amendment effected to another Act by this Act does not affect a person's status as a contributor under the *Superannuation Act 1988* (as it may exist immediately before the commencement of this Act).

4—Interpretative provision

- (1) The Governor may, by proclamation, direct that a reference in any instrument (including a statutory instrument) or a contract, agreement or other document to a prescribed body, or other specified agency, instrumentality or body, will have effect as if it were a reference to an employing authority under a relevant Act, the Minister to whom the administration of a relevant Act is committed, or some other person or body designated by the Governor.
- (2) A proclamation under subclause (1) may effect a transfer of functions or powers.

5—Related matters

- (1) A notice in force under section 51 of the *Children's Services Act 1985* immediately before the commencement of this clause will continue to have effect for the purposes of that section, as amended by this Act.
- (2) A notice in force under section 28 of the *Institute of Medical and Veterinary Science Act 1982* immediately before the commencement of this clause will continue to have effect for the purposes of that section, as amended by this Act.
- (3) A notice in force under section 61 of the *South Australian Health Commission Act 1976* immediately before the commencement of this clause will continue to have effect for the purposes of that section, as amended by this Act.
- (4) A notice in force under section 13(6) of the *South Australian Motor Sport Act 1984* immediately before the commencement of this clause will continue to have effect after that commencement but may, pursuant to this subclause, be varied from time to time, or revoked, by the Minister to whom the administration of that Act is committed.
- (5) The fact that a person becomes an employer in his or her capacity as an employing authority under an Act amended by this Act does not affect the status of any body or person as an employer of public employees for the purposes of the *Fair Work Act 1994* (unless or until relevant regulations are made under the provisions of that Act).

6—Other provisions

- (1) The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on the enactment of this Act.
- (2) A provision of a regulation made under subclause (1) may, if the regulation so provides, take effect from the commencement of this Act or from a later day.
- (3) To the extent to which a provision takes effect under subclause (2) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person by—
 - (a) decreasing the person's rights; or
 - (b) imposing liabilities on the person.

- (4) The *Acts Interpretation Act 1915* will, except to the extent of any inconsistency with the provisions of this Schedule (or regulations made under this Schedule), apply to any amendment or repeal effected by this Act.

Historical versions

Reprint No 1—1.7.1991

Reprint No 2—16.4.1998

Reprint No 3—6.7.2000

Reprint No 4—31.5.2001