

SOUTH AUSTRALIA

COURTS ADMINISTRATION ACT 1993

*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at **14 December 1995**.*

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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LEGISLATIVE HISTORY**

COURTS ADMINISTRATION ACT 1993

being

Courts Administration Act 1993 No. 11 of 1993
[Assented to 25 March 1993]¹

as amended by

Statutes Repeal and Amendment (Development) Act 1993 No. 54 of 1993 [Assented to 27 May 1993]²

Youth Court Act 1993 No. 58 of 1993 [Assented to 27 May 1993]³

Industrial and Employee Relations Act 1994 No. 52 of 1994 [Assented to 16 June 1994]⁴

Statutes Amendment (Courts Administration Staff) Act 1995 No. 85 of 1995 [Assented to 30 November 1995]⁵

¹ Came into operation 1 July 1993: *Gaz.* 1 July 1993, p. 196.

² Came into operation 15 January 1994: *Gaz.* 27 October 1993, p. 1889.

³ Came into operation 1 January 1994: *Gaz.* 4 November 1993, p. 2177.

⁴ Came into operation 1 November 1994: *Gaz.* 4 August 1994, p. 328.

⁵ Came into operation 14 December 1995: *Gaz.* 14 December 1995, p. 1641.

NOTE:

- *Asterisks indicate repeal or deletion of text.*
- *For the legislative history of the Act see Appendix. Entries appearing in the Appendix in bold type indicate the amendments incorporated since the last reprint.*

An Act to provide for the administration of courts.

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Courts Administration Act 1993*.

Commencement

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

Objects of this Act

3. The objects of this Act are—

- (a) to establish the *State Courts Administration Council* as an administrative authority independent of control by executive government;
- (b) to confer on the Council power to provide courts with the administrative facilities and services necessary for the proper administration of justice.

Interpretation

4. In this Act, unless the contrary intention appears—

"**Administrator**" means the State Courts Administrator appointed under this Act;

"**Council**" means the *State Courts Administration Council* established under this Act;

"**parliamentary committee**" means a committee of either or both Houses of Parliament;

"**participating courts**" means—

- (a) the Supreme Court; and
- (b) the District Court; and
- (ba) the Environment, Resources and Development Court; and
- (bb) the Industrial Relations Court of South Australia; and
- (c) the Youth Court of South Australia; and
- (d) the Magistrates Court; and
- (e) coroners' courts; and
- (f) any other court or tribunal declared by regulation to be a participating court;

"**prescribed position**" means a position on the staff of the Council designated by regulation as a prescribed position;

"**senior staff**" of the Council means those members of the staff of the Council holding prescribed positions.

Courts Administration Act 1993

Collective name

5. The Council, the Administrator and the other staff of the Council may be collectively referred to as the *Courts Administration Authority*.

**PART 2
THE JUDICIAL COUNCIL**

DIVISION 1—ESTABLISHMENT OF JUDICIAL COUNCIL

Judicial Council

- 6.** (1) The *State Courts Administration Council* is established.
- (2) The Council is a body corporate.
- (3) The Council is an instrumentality of the Crown.
- (4) A document apparently bearing the Council's common seal will, in the absence of evidence to the contrary, be taken to have been duly executed by the Council.

DIVISION 2—COMPOSITION OF THE COUNCIL

Composition of the Council

- 7.** (1) The Council consists of—
- (a) the Chief Justice of the Supreme Court; and
- (b) the Chief Judge of the District Court; and
- (c) the Chief Magistrate of the Magistrates Court.
- (2) A member of the Council may appoint a judicial officer of the relevant court to be an associate member of the Council.
- (3) An associate member of the Council is a deputy of the member by whom he or she was appointed and may, in the absence of that member, act as a member of the Council.
- (4) An associate member of the Council is entitled to attend meetings of the Council but, except when acting in the absence of a member, is not entitled to a vote on any question before the Council.

DIVISION 3—PROCEEDINGS OF THE COUNCIL

Meetings of the Council

- 8.** The Council will meet at such times and places as may be determined by the Chief Justice.

Proceedings and decisions of the Council

- 9.** (1) The Chief Justice or, in the Chief Justice's absence, the Chief Justice's deputy, will preside at any meeting of the Council.
- (2) The Chief Justice or, in the Chief Justice's absence, the Chief Justice's deputy, and one other member of the Council constitute a quorum of the Council.
- (3) A decision supported by the votes of the Chief Justice or, in the Chief Justice's absence, the Chief Justice's deputy and one other member of the Council is a decision of the Council.

DIVISION 4—FUNCTIONS AND POWERS OF THE COUNCIL

Responsibilities of the Council

10. (1) The Council is responsible for providing, or arranging for the provision of, the administrative facilities and services for participating courts that are necessary to enable those courts properly to carry out their judicial functions.

(2) A participating court remains, however, responsible for its own internal administration.

(3) The Council may establish administrative policies and guidelines to be observed by participating courts in the exercise of their administrative responsibilities.

(4) Any such administrative policies and guidelines must be published in the annual report for the financial year in which they are established.

Powers of the Council

11. (1) Subject to subsection (2), the Council has the powers of a natural person and may for example—

- (a) enter into any form of contract or arrangement;
- (b) acquire, hold, deal with and dispose of real and personal property;
- (c) provide services on terms and conditions determined by the Council.

(2) The Council may not, without the Governor's consent—

- (a) incur contractual liabilities exceeding a limit fixed by regulation for the purposes of this section; or
- (b) enter into a contract of a class prescribed by regulation for the purposes of this section; or
- (c) acquire or dispose of an interest in real property.

(3) The Council must, before entering into a transaction of a class prescribed by regulation for the purposes of this subsection, observe the appropriate procedures prescribed by regulation.

Delegation

12. (1) The Council may, by instrument in writing, delegate any of its powers under this Act.

(2) A delegation of power under this section—

- (a) is revocable at will; and
- (b) does not derogate from the power of the Council to act itself in any matter.

(3) A delegation must be reported in the annual report for the financial year in which the delegation is made.

DIVISION 5—COUNCIL'S OBLIGATION TO REPORT

Annual report

13. (1) The Council must on or before 31 October in each year make a report to the Attorney-General on—

- (a) the administration of justice in participating courts during the previous financial year; and
- (b) any changes to the law and procedures of the participating courts that may be necessary or desirable to improve the administration of justice in participating courts.

(2) The Attorney-General must within 12 sitting days after receiving a report under this section cause copies of the report to be laid before both Houses of Parliament.

Additional reports

14. (1) The Council must make such further reports to the Attorney-General as may be necessary to ensure that the Attorney-General is kept properly informed about the administration of the participating courts.

(2) The Council must, at the request of the Attorney-General, report to the Attorney-General on any matter relevant to the administration of a participating court.

**PART 3
CONTROL OF PROPERTY**

Control of property

15. (1) All courthouses and other real and personal property of the Crown set apart for the use of the participating courts is under the care, control and management of the Council.

(2) The Council may assign a courthouse or other building that is under the Council's care, control and management for the use of a particular court.

(3) A courthouse or other building will be taken to have been set apart for the use of participating courts if—

- (a) it is dedicated or reserved for use as a courthouse under a law governing the administration or use of Crown property; or
- (b) it is set apart for the use of participating courts by proclamation under this section.

(4) The Governor may, by proclamation—

- (a) set apart a courthouse or building belonging to the Crown for the use of participating courts; or
- (b) vary or revoke a proclamation previously made under this subsection.

(5) A proclamation may be conditional or unconditional, and, if conditional, will be subject to such conditions as the Governor thinks fit to include.

**PART 4
STAFF OF THE COUNCIL**

DIVISION 1—THE STATE COURTS ADMINISTRATOR

The State Courts Administrator

16. (1) There is to be a *State Courts Administrator*.

(2) The Administrator is to be appointed by the Governor for a term, not exceeding five years, specified in the instrument of appointment (but, on completion of a term of appointment, is eligible for reappointment).

(3) The Administrator is to be appointed on terms and conditions determined by the Governor which must, however, include the following:

(a) the Administrator must inform the Council in writing of—

- (i) any direct or indirect interest that the Administrator has or acquires in any business, or in any body corporate carrying on business, in Australia or elsewhere; or
- (ii) any other direct or indirect interest that the Administrator has or acquires that conflicts or may conflict with the Administrator's duties; and

(b) the Administrator must not engage, without the Council's consent, in any other remunerated employment.

(4) A person cannot be appointed as the Administrator unless nominated for appointment by the Council.

(5) The Administrator cannot be dismissed from office or reduced in status except by or with the concurrence of the Council.

(6) The Administrator is not a member of the Public Service nor is the Administrator an employee for the purposes of the *Public Sector Management Act 1995* (other than Part 2 of that Act).

(7) The Council may assign an appropriate employee to act as the Administrator—

(a) during a vacancy in the office of Administrator; or

(b) when the Administrator is absent from, or unable to discharge, official duties.

Functions and powers of the Administrator

17. (1) The Administrator is the Council's Chief Executive Officer.

(2) The Administrator is, subject to control and direction by the Council, responsible to the Council for—

(a) the control and management of the Council's staff; and

(b) the management of property that is under the Council's care, control and management.

(3) The Administrator has in relation to staff employed under this Act the powers of the Chief Executive of an administrative unit of the Public Service.

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DIVISION 2—SENIOR STAFF OF THE COUNCIL

Appointment of senior staff

18. The senior staff of the Council are to be appointed by the Administrator with the approval of the Council.

Disciplinary action and termination of employment

19. The Council’s consent is required before—

- (a) disciplinary action may be taken against a member of the Council’s senior staff; or
- (b) the employment of a member of the senior staff may be terminated.

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DIVISION 3—OTHER STAFF

Other staff

21. Other staff of the Council are to be appointed by the Administrator.

DIVISION 4—GENERAL PROVISIONS AS TO STAFF

Non-judicial court staff

21A. (1) The staff of the Council includes—

- (a) the Registrars of the participating courts; and
- (b) the Sheriff; and
- (c) the Registrar of Probates; and
- (d) the Youth Justice Co-ordinators (who are not Magistrates); and
- (e) any deputies of the officers referred to above; and
- (f) the other non-judicial officers and staff of the participating courts.

(2) This Act has effect in addition to, and does not derogate from, any provisions of another Act providing for the appointment of, or otherwise specifically relating to, officers or staff referred to in subsection (1).

Application of Public Sector Management Act and Superannuation Act

21B. (1) Subject to this Act, the *Public Sector Management Act 1995* applies—

- (a) with any modifications and exclusions required by the context; and
- (b) with prescribed modifications and exclusions,

to the staff and positions on the staff of the Council in the same way as to an administrative unit and positions in an administrative unit of the Public Service.

(2) Part 4 (other than section 17) and section 22(1)(c) and (e) of the *Public Sector Management Act 1995* do not apply to the staff or positions on the staff of the Council.

(3) Section 7(3) and (4) of the *Public Sector Management Act 1995* do not apply to prescribed positions or the senior staff of the Council.

(4) The regulations may modify or exclude the application of a specified provision of the *Public Sector Management Act 1995* to the staff or a position on the staff of the Council.

(5) The *Superannuation Act 1988* applies to a member of the Council's staff in the same way as to a person employed in the Public Service.

Responsibility of staff

22. A member of the Council's staff is answerable, through any properly constituted administrative superior, for the proper discharge of his or her duties to—

- (a) the Administrator; and
- (b) if the position relates to a particular participating court—the judicial head of that participating court.

Commissioner to consult with the Council

23. (1) The Commissioner for Public Employment must consult with the Council before making a determination or giving an instruction that relates specifically to the Council's staff.

- (2) The Council—
 - (a) may vary or revoke a determination or instruction of the Commissioner for Public Employment so far as it affects staff of the Council; and
 - (b) may itself exercise any power of the Commissioner for Public Employment to make a determination or to give an instruction in relation to the Council's staff,

(but a determination affecting remuneration or conditions of employment cannot be made, varied or revoked under this subsection).

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**PART 5
FINANCIAL PROVISIONS**

Money required for purposes of this Act

24. The money required for the purposes of this Act is to be paid out of money appropriated by Parliament for those purposes.

Council's budget

25. (1) The Council must, from time to time, prepare and submit to the Attorney-General a budget showing estimates of its receipts and expenditures for the next financial year or for some other period determined by the Attorney-General.

(2) The budget must conform with any requirements of the Attorney-General as to its form and the information that it is to contain.

(3) The Attorney-General may approve a budget submitted under this section with or without modification.

(4) The Council may not expend money unless provision for the expenditure is made in a budget approved by the Attorney-General under this section.

Financial management

26. (1) The Council must ensure that proper accounting records are kept of its receipts and expenditures.

(2) The Council's accounting records must conform with any applicable instructions issued by the Treasurer under section 41 of the *Public Finance and Audit Act 1987*.

(3) The Council must ensure—

(a) that expenditures are not made out of money under the Council's control without proper administrative authorisation; and

(b) that proper control is maintained over the Council's property or property in the Council's control.

Audit

27. The Auditor-General may at any time, and must at least once in each year, audit the accounts of the Council.

**PART 6
MISCELLANEOUS**

Immunity

28. (1) A person engaged under this Act in functions related to the administration of a participating court incurs no civil liability for an honest act or omission in the exercise or purported exercise of those functions.

(2) A liability that would, but for subsection (1), attach to a person engaged under this Act in functions related to the administration of a participating court attaches instead to the Crown.

Responsibility to Parliament

29. (1) A member of the Council, or the Administrator, must, at the request of a parliamentary committee, attend before the committee to answer questions about—

- (a) the financial needs of participating courts; or
- (b) the expenditure of money by the Council; or
- (c) any other matters affecting the administration of participating courts.

(2) A member of the Council, or the Administrator, cannot however be required to answer questions about the exercise of judicial as distinct from administrative powers or discretions.

Regulations

30. (1) The Governor may make regulations for the purposes of this Act.

(2) Subject to subsection (3), a regulation may only be made on the recommendation of the Council.

(3) A regulation may be made—

- (a) designating a position on the staff of the Council as a prescribed position for the purposes of section 4; or
- (b) for the purposes of section 11;

but, before such a regulation is made, the Council must be allowed a reasonable opportunity to comment on the terms of the proposed regulation.

(4) A regulation may impose a fine, not exceeding \$2 000 for contravention of, or non-compliance with, the regulation.

Non-interference with individual powers or discretions

31. No power or discretion vested in the Governor or the Minister by this Act may be exercised so as to impugn the independence of the judiciary in relation to the exercise of judicial powers or discretions.

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SCHEDULE

Transitional Provision

(1) A person who was employed, immediately before the commencement of this Act, in an office or position in the Court Services Department (except the Chief Executive Officer of the Department) is taken to have been appointed on the commencement of this Act to the corresponding office or position under this Act.

(2) This section does not affect continuity of employment or prejudice existing or accruing rights in respect of employment.

APPENDIX

LEGISLATIVE HISTORY

Transitional Provisions

(Transitional provision from Statutes Amendment (Courts Administration Staff) Act 1995, s. 20)

20. (1) An appointment to a non-judicial office or position made or purportedly made before the commencement of this Act in accordance with an Act that is amended by this Act will be taken to have been duly made under the statutory provisions that, as amended by this Act, provide for the making of such an appointment as if this Act had been enacted and in force at the relevant time.

(2) The provisions of the *Government Management and Employment Act 1985* and the *Public Sector Management Act 1995* as from time to time in force before the commencement of this Act will be taken to have applied (with necessary modifications and exclusions) before that commencement to the staff and positions on the staff of the State Courts Administration Council in the same way as to an administrative unit and positions in an administrative unit of the Public Service.

(3) The provisions of the *Superannuation Act 1988* as from time to time in force before the commencement of this Act will be taken to have applied before that commencement to a member of the staff of the State Courts Administration Council in the same way as to a person employed in the Public Service.

Legislative History

(entries in bold type indicate amendments incorporated since the last reprint)

Section 4:	definition of "participating courts" amended by 54, 1993, s. 8; 58, 1993, Sched.; 52, 1994, Sched. 1 cl. 3
Section 16(6):	amended by 85, 1995, s. 4(a)
Section 16(7):	inserted by 85, 1995, s. 4(b)
Section 17(3):	amended by 85, 1995, s. 5
Sections 18 and 19:	substituted by 85, 1995, s. 6
Section 20:	repealed by 85, 1995, s. 6
Section 21:	amended by 85, 1995, s. 7
Sections 21A and 21B:	inserted by 85, 1995, s. 8
Section 22:	amended by 85, 1995, s. 9