

South Australia

# Courts Administration Act 1993

An Act to provide for the administration of courts.

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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 *Courts Administration Act 1993*.

### **3—Objects of this Act**

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.

### **4—Interpretation**

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) the Coroner's Court; 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.

## 5—Collective name

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

### 6—Judicial Council

- (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

### 7—Composition of the Council

- (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**

### **8—Meetings of the Council**

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

### **9—Proceedings and decisions of the Council**

- (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**

### **10—Responsibilities of the Council**

- (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 and their staff properly to carry out their judicial and administrative 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.

### **11—Powers of the Council**

- (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.

## **12—Delegation**

- (1) The Council may, by instrument in writing, delegate any of its powers under this or any other 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**

### **13—Annual report**

- (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.

### **14—Additional reports**

- (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

### 15—Control of property

- (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

#### 16—State Courts Administrator

- (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.
- (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.

### **17—Functions and powers of Administrator**

- (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.

### **17A—Delegation**

- (1) The Administrator may, by instrument in writing, delegate a power or function under this Act—
  - (a) to a particular person or committee; or
  - (b) to the person for the time being performing particular duties or holding or acting in a particular position.
- (2) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (3) A delegation—
  - (a) may be absolute or conditional; and
  - (b) does not derogate from the power of the delegator to act personally in a matter; and
  - (c) is revocable at will.

## **Division 2—Senior staff of the Council**

### **18—Appointment of senior staff**

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

### **19—Disciplinary action and termination of employment**

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.

## **Division 3—Other staff**

### **21—Other staff**

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

## **Division 4—General provisions as to staff**

### **21A—Non-judicial court staff**

- (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).

### **21B—Application of Public Sector Act and Superannuation Act**

- (1) The Administrator and the staff of the Council are not Public Service employees.
- (2) Employment of a person as a member of the staff of the Council is declared to be employment to which Part 7 of the *Public Sector Act 2009* applies and a person so employed is to be treated as a public sector employee, employed by the Administrator, for the purposes of that Act and the *Public Sector (Honesty and Accountability) Act 1995*.
- (3) The regulations may exclude or modify the application of a provision of Part 7 of the *Public Sector Act 2009* to employment of the staff of the Council.
- (4) Section 9(1) of the *Public Sector Act 2009* does not apply to employees holding prescribed positions or the senior staff of the Council.
- (4a) Directions may not be given under section 10 of the *Public Sector Act 2009* to the Council or the Administrator.
- (4b) The Commissioner for Public Sector Employment may not exercise functions under section 14(1)(c) or (f) of the *Public Sector Act 2009* in relation to 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.

### **22—Responsibility of staff**

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.

### **23—Commissioner to consult with Council**

- (1) The Commissioner for Public Sector 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 Sector Employment so far as it affects staff of the Council; and
  - (b) may itself exercise any power of the Commissioner for Public Sector 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).

## **Part 5—Financial provisions**

### **24—Money required for purposes of this Act**

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

### **25—Council's budget**

- (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.

### **26—Financial management**

- (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.

## 27—Audit

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

## Part 6—Miscellaneous

### 28A—Special provisions in relation to publication of judicial decisions

- (1) The following provisions apply in respect of the publication on an Internet site maintained by the Courts Administration Authority of a decision of a judicial officer of a prescribed court:
  - (a) the Council, a member of the Council, the Administrator and the other members of the staff of the Council have, in respect of that publication, the same privileges and immunities as if the publication consisted of a delivery of the decision by a judicial officer in court; and
  - (b) that publication is in all other respects to be treated as if the publication consisted of the delivery of the decision by a judicial officer in court.
- (2) Subsection (1)—
  - (a) does not apply unless the decision published on the Internet site was released by the judicial officer who made the decision before its publication in accordance with the procedures approved by the designated officer for the prescribed court of which the judicial officer is a member; and
  - (b) does not give rise to any privileges or immunities with respect to any subsequent publication of the decision by a third party.
- (3) In this section—

**decision** means any judgment, decree, order, decision or ruling (whether final or interlocutory), or a sentence, and includes—

- (a) reasons for decision; and
- (b) remarks made by a judicial officer in passing sentence;

**designated officer** means—

- (a) in relation to a court or tribunal that has a judicial head—the judicial head of that court or tribunal;
- (b) in any other case—the Chief Justice;

**judicial officer**, in relation to a court or tribunal, means a person who alone, or together with others, constitutes the court or tribunal;

**prescribed court** means—

- (a) the Supreme Court; or
- (b) the District Court; or
- (c) any other court or tribunal of the State prescribed by the regulations.

## **29—Responsibility to Parliament**

- (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.

## **30—Regulations**

- (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.

## **31—Non-interference with individual powers or discretions**

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.

## **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.

## Legislative history

### Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1993	11	<i>Courts Administration Act 1993</i>	25.3.1993	1.7.1993 ( <i>Gazette 1.7.1993 p196</i> )
1993	54	<i>Statutes Repeal and Amendment (Development) Act 1993</i>	27.5.1993	15.1.1994 ( <i>Gazette 27.10.1993 p1889</i> )
1993	58	<i>Youth Court Act 1993</i>	27.5.1993	1.1.1994 ( <i>Gazette 4.11.1993 p2177</i> )
1994	52	<i>Industrial and Employee Relations Act 1994</i>	16.6.1994	Sch 1 (cl 3)—1.11.1994 ( <i>Gazette 4.8.1994 p328</i> )
1995	85	<i>Statutes Amendment (Courts Administration Staff) Act 1995</i>	30.11.1995	14.12.1995 ( <i>Gazette 14.12.1995 p1641</i> )
1998	60	<i>Statutes Amendment (Fine Enforcement) Act 1998</i>	3.9.1998	Pt 3 (ss 7 & 8)—6.3.2000 ( <i>Gazette 18.11.1999 p2358</i> )
2000	49	<i>Statutes Amendment and Repeal (Security and Order at Courts and Other Places) Act 2000</i>	20.7.2000	Pt 3 (s 17)—29.9.2000 ( <i>Gazette 28.9.2000 p2221</i> )
2001	69	<i>Statutes Amendment (Courts and Judicial Administration) Act 2001</i>	6.12.2001	Pt 3 (s 6)—13.1.2002 ( <i>Gazette 10.1.2002 p4</i> )
2003	33	<i>Coroners Act 2003</i>	31.7.2003	Sch (cl 7)—1.7.2005 ( <i>Gazette 23.6.2005 p1899</i> )
2004	23	<i>Statutes Amendment (Courts) Act 2004</i>	8.7.2004	Pt 2 (s 4)—1.9.2004 ( <i>Gazette 26.8.2004 p3402</i> )
2009	84	<i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>	10.12.2009	Pt 40 (ss 74—79)—1.2.2010 ( <i>Gazette 28.1.2010 p320</i> )
<b>2013</b>	<b>31</b>	<b><i>Statutes Amendment (Fines Enforcement and Recovery) Act 2013</i></b>	<b>1.8.2013</b>	<b>Pt 3 (s 5)—3.2.2014 (<i>Gazette 30.1.2014 p422</i>)</b>
2015	34	<i>Judicial Conduct Commissioner Act 2015</i>	5.11.2015	Sch 1 (cl 3)—5.12.2016 ( <i>Gazette 29.11.2016 p4525</i> )

## Provisions amended

New entries appear in bold.

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

Provision	How varied	Commencement
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>1.9.2004</i>
s 4		
participating courts	amended by 54/1993 s 8	15.1.1994
	amended by 58/1993 Sch	1.1.1994
	amended by 52/1994 Sch 1 cl 3	1.11.1994
	amended by 33/2003 Sch (cl 7)	1.7.2005
Pt 2		
s 10		
s 10(1)	amended by 60/1998 s 7	6.3.2000
s 12		
s 12(1)	amended by 49/2000 s 17	29.9.2000
Pt 4		
s 16		
s 16(6)	<i>amended by 85/1995 s 4(a)</i> <i>deleted by 84/2009 s 74</i>	<i>14.12.1995</i> <i>1.2.2010</i>
s 16(7)	inserted by 85/1995 s 4(b)	14.12.1995
s 17		
s 17(3)	<i>amended by 85/1995 s 5</i> <i>deleted by 84/2009 s 75</i>	<i>14.12.1995</i> <i>1.2.2010</i>
s 17A	inserted by 84/2009 s 76	1.2.2010
ss 18 and 19	substituted by 85/1995 s 6	14.12.1995
s 20	<i>deleted by 85/1995 s 6</i>	<i>14.12.1995</i>
s 21	amended by 85/1995 s 7	14.12.1995
s 21A	inserted by 85/1995 s 8	14.12.1995
s 21A(1)	amended by 60/1998 s 8 <b>(ab) deleted by 31/2013 s 5</b>	6.3.2000 <b>3.2.2014</b>
s 21B	inserted by 85/1995 s 8	14.12.1995
s 21B(1)—(4)	substituted by 84/2009 s 77	1.2.2010
s 21B(4a) and (4b)	inserted by 84/2009 s 77	1.2.2010
s 22	amended by 85/1995 s 9	14.12.1995
s 23		
s 23(1) and (2)	amended by 84/2009 s 78	1.2.2010
Pt 6		
s 28	<i>deleted by 84/2009 s 79</i>	<i>1.2.2010</i>
s 28A	inserted by 69/2001 s 6 substituted by 23/2004 s 4	13.1.2002 1.9.2004

## Transitional etc provisions associated with Act or amendments

### *Statutes Amendment (Courts Administration Staff) Act 1995*

#### 20—Transitional provision

- (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.

#### Historical versions

Reprint No 1—15.1.1994

Reprint No 2—1.11.1994

Reprint No 3—14.12.1995

Reprint No 4—6.3.2000

Reprint No 5—29.9.2000

Reprint No 6—13.1.2002

1.9.2004

1.7.2005

1.2.2010