

South Australia

## **SACE Board of South Australia Act 1983**

An Act to provide for the continuation of an authority to be known as the *SACE Board of South Australia*; to prescribe its functions and powers; and for other purposes.

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**The Parliament of South Australia enacts as follows:**

## **Part 1—Preliminary**

### **1—Short title**

This Act may be cited as the *SACE Board of South Australia Act 1983*.

### **4—Interpretation**

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

***appointed member*** of the Board means a member of the Board appointed by the Governor under section 8(1)(b);

***Board*** means the *SACE Board of South Australia* constituted under this Act;

***Chief Executive Officer*** means the person for the time being holding the office of Chief Executive Officer of the Board or, where a person is acting in that office, means the person so acting;

***designated entity*** means a person or body referred to in Schedule 1;

***employing authority*** means—

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

***institution*** includes an institution the principal function of which is the education of students at the tertiary level;

***SACE*** means the *South Australian Certificate of Education* awarded by the Board under this Act;

***student*** means a person who is undertaking studies that lead to achievement of the SACE (if the person qualifies under the requirements of that award).

- (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.
- (3) For the purposes of this Act, the 3 school education sectors are:
  - (a) the Catholic schools education sector;
  - (b) the independent schools education sector;
  - (c) the public schools education sector.

**Note—**

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

## 5—Legislative principles

The following principles will apply in connection with the operation of this Act:

- (a) all young people are to be encouraged to obtain a formal education qualification that helps them to live and participate successfully in the world as it constantly changes, after taking into account their goals and abilities;
- (b) it is recognised—
  - (i) that young people acquire skills, values and knowledge associated with their education through their individual endeavours and through a range of learning experiences and in a variety of situations that may include, as well as schools, workplaces and training and community organisations; and
  - (ii) that young people require a range of skills and knowledge, including literacy and numeracy skills, to assist them to succeed in the wider community;
- (c) the qualification that is awarded by the Board should—
  - (i) acknowledge the skills and knowledge that have been acquired through formal education and training and other learning processes; and
  - (ii) reflect rigorous standards and community expectations; and
  - (iii) be consistent with an appropriate Australian qualification framework;
- (d) cooperation and collaboration between the Board, the school education sectors and the Minister are to be recognised as fundamental elements to achieving the best outcomes for students seeking to qualify for the SACE.

## Part 2—SACE Board of South Australia

### Division 1—Constitution of the Board

#### 7—The Board

- (1) The Senior Secondary Assessment Board of South Australia continues in existence as the *SACE Board of South Australia*.
- (2) The Board—
  - (a) is a body corporate with perpetual succession and a common seal;
  - (b) is capable of suing and being sued.
- (3) Where an apparently genuine document purports to bear the common seal of the Board, it will be presumed in all legal proceedings, in the absence of proof to the contrary, that the document has been duly executed by the Board.

#### 8—Membership of Board

- (1) The Board is to consist of—
  - (a) the Chief Executive Officer (*ex officio*); and

- (b) 11 members appointed by the Governor on the nomination of the Minister.
- (2) The Minister must, in making nominations for appointment to the Board, seek to ensure that the membership of the Board comprises persons who—
- (a) together provide a broad range of backgrounds that are relevant to the activities and interests of the Board; and
  - (b) together have the abilities, knowledge and experience necessary to enable the Board to carry out its functions effectively.
- (3) Without limiting subsection (2)—
- (a) at least 4 of the appointed members of the Board must have specific knowledge and expertise in relation to the provision of senior secondary education and, of these members, at least 1 must be a person who is currently engaged, or who has recently been engaged, in the provision of senior secondary education; and
  - (b) 1 of the appointed members of the Board must be a person specifically nominated by the South Australian Commission for Catholic Schools Inc.; and
  - (c) 1 of the appointed members of the Board must be a person specifically nominated by the Association of Independent Schools of South Australia; and
  - (d) 1 of the appointed members of the Board must be a person specifically nominated by the Director-General of Education; and
  - (e) the Minister must seek to achieve a reasonable gender balance in the membership of the Board.
- (4) Subject to the requirements of subsections (2) and (3), the Minister should, before nominating a person for appointment to the Board (other than for the purposes of subsection (3)(b), (c) or (d)), under a scheme determined by the Minister for the purposes of this section—
- (a) call for expressions of interest; and
  - (b) take into account any representations made by a designated entity.
- (5) The Governor may, on the recommendation of the Minister, appoint 1 member of the Board to be the presiding member of the Board and another member of the Board to be the deputy presiding member (subject to the qualification that the Chief Executive Officer cannot hold an appointment under this subsection).
- (6) The Governor may appoint a suitable person to be deputy to a member of the Board and a person so appointed may act in the place of the member of whom he or she has been appointed—
- (a) while the member is absent; or
  - (b) if the office of the member has become vacant—until the vacancy is filled by the making of a new appointment under this section.

## **9—Terms and conditions of office**

- (1) An appointed member of the Board will be appointed on terms and conditions determined by the Governor for a term, not exceeding 3 years, specified in the instrument of appointment and is, on the expiration of a term of office, eligible for reappointment.
- (2) The Governor may remove an appointed member of the Board from office for—
  - (a) a breach of, or non-compliance with, the conditions of appointment; or
  - (b) mental or physical incapacity to carry out office duties satisfactorily; or
  - (c) neglect of duty; or
  - (d) dishonourable conduct.
- (3) The office of an appointed member of the Board becomes vacant if the member—
  - (a) dies; or
  - (b) completes a term of office and is not reappointed; or
  - (c) resigns by written notice to the Minister; or
  - (d) is removed from office by the Governor pursuant to subsection (2).
- (4) On the office of a member of the Board becoming vacant, a person must be appointed in accordance with this Act to the vacant office.

## **9A—Chief Executive Officer**

- (1) There will be a Chief Executive Officer of the Board.
- (2) The Chief Executive Officer will be responsible to the Board for the conduct of the business of the Board.
- (3) The Chief Executive Officer will be appointed by the Governor on the recommendation of the Minister on terms and conditions approved by the Premier.
- (4) The Minister must consult with the Board before the Minister makes a recommendation for the purposes of subsection (3).
- (5) The Board may appoint a suitable person to act in the office of Chief Executive Officer during any period for which the Chief Executive Officer is absent or unavailable to carry out official duties, or for which there is a temporary vacancy in the office.

## **10—Procedures etc of Board**

- (1) A quorum of the Board consists of one half of the total number of its appointed members (ignoring any fraction resulting from the division) plus 1.
- (2) The presiding member, or in his or her absence, the deputy presiding member, must preside at a meeting of the Board and in the absence of both the presiding member and the deputy presiding member the appointed members present at the meeting must decide who is to preside.
- (3) A decision carried by a majority of the votes cast by appointed members of the Board present at a meeting is a decision of the Board.

- (4) Each appointed member of the Board is entitled to one vote on a matter arising for determination by the Board and the person presiding at a meeting of the Board has, in the event of an equality of votes, a second or casting vote (and the Chief Executive Officer does not have a right to a vote).
- (4a) A conference by telephone or other electronic means between the members of the Board will, for the purposes of this section, be taken to be a meeting of the Board at which the participating members are present if—
- (a) notice of the conference is given to all members in the manner determined by the Board for the purpose; and
  - (b) each participating member is capable of communicating with every other participating member during the conference.
- (4b) A proposed resolution of the Board becomes a valid decision of the Board despite the fact that it is not voted on at a meeting of the Board if—
- (a) notice of the proposed resolution is given to all members of the Board in accordance with procedures determined by the Board; and
  - (b) a majority of the appointed members of the Board express concurrence in the proposed resolution by letter, facsimile transmission, e-mail or other written or electronic communication setting out the terms of the resolution.
- (5) The Board must cause accurate minutes to be kept of the business conducted at meetings of the Board.
- (6) Subject to this Act, the procedure for the calling of meetings of the Board, and the conduct of business at meetings of the Board, must be determined by the Board.

## **11—Validity of acts of Board**

- (1) No act or proceeding of the Board is invalid by reason only of a vacancy in the office of a member, or a defect in the appointment of a member.

## **12—Delegation**

- (1) The Board may delegate any of its functions or powers—
- (a) to a specified person or body; or
  - (b) to a person occupying a specified office or position.
- (2) A delegation under this section—
- (a) may be made subject to such conditions as the Board thinks fit; and
  - (ab) if the instrument of delegation so provides, may be further delegated by the delegate; and
  - (b) is revocable at will and does not derogate from the power of the Board to act in any matter itself.

## **14—Allowances and expenses of members**

A member of the Board is, if the Governor thinks fit, entitled to such allowances and expenses as may be determined by the Governor.

## Division 2—Functions and powers of the Board

### 15—Functions of Board

- (1) The Board has the following functions:
- (a) to establish a qualification (to be called the *South Australian Certificate of Education* or *SACE*) to be awarded by the Board after taking into account any requirements prescribed by the regulations;
  - (b) to determine the requirements for the achievement of the SACE;
  - (c) to commission the development and review of courses and subjects;
  - (d) to accredit subjects and courses (whether prepared at the direction of the Board or submitted to it by a school, institution or other authority or organisation) that will be recognised by the Board as being suitable for the purposes of the SACE;
  - (e) to approve learning frameworks in order to provide the structures within which subjects and courses may be developed;
  - (f) to assess, in such manner and to such extent as the Board thinks fit, achievements in or satisfactory completion of subjects, courses or other requirements determined by the Board for the purposes of the SACE;
  - (g) to recognise, in such manner and to such extent as the Board thinks fit—
    - (i) assessments of students made by schools, institutions or other authorities or organisations;
    - (ii) the achievements of a student in or towards completion of any activities or requirements recognised by the Board for the purposes of the SACE;
  - (h) to assure the quality and suitability of processes and standards used to assess the achievements of students for the purposes of the SACE;
  - (i) to prepare and maintain records of assessments or achievements made or recognised by the Board and to provide, on request, a copy or extract of those records to a student or former student or to such other person as the student or former student may direct;
  - (j) to certify the successful completion by a student of any studies or other activities that contribute to qualifying for the SACE and, if or when the SACE has been achieved, to award the SACE;
  - (k) to prepare and publish—
    - (i) information on the requirements determined by the Board under paragraph (b); and
    - (ii) guidelines relating to the operation of paragraph (c); and
    - (iii) criteria to apply in connection with the accreditation of subjects or courses under paragraph (d) or the approval of learning frameworks under paragraph (e); and

- (iv) information on the assessment processes established under paragraph (f); and
    - (v) advice on the assessments and achievements that will be recognised for the purposes of paragraph (g); and
    - (vi) information on the quality assurance processes established under paragraph (h); and
    - (vii) information on the method for gaining access to records under paragraph (i) and notifying achievements under paragraph (j);
  - (l) to undertake or commission research related to any matter for which the Board is responsible and to publish the results or such research as the Board thinks fit;
  - (m) to the extent determined by the Minister or the Board, to collect, record and collate information that is directly related to the participation (or non-participation) of children of compulsory education age in secondary education, or training or development programs or opportunities, and, in relation to any such information—
    - (i) to provide the information to the Minister, or other authorities or organisations determined by the Minister; and
    - (ii) to publish the information in such other manner as the Board thinks fit;
  - (n) to keep under review the operation of this Act and the policies and processes of the Board;
  - (o) to perform other functions assigned to the Board under this or any other Act.
- (2) The Board may adopt and apply such transitional arrangements with respect to requirements, assessment or other processes of the Board as it considers appropriate in view of any legislative change or any change in its policies or processes.
- (3) The Board—
- (a) may act under subsection (1)(c)—
    - (i) on its own initiative after consultation with the Minister, and the 3 school sectors (jointly); or
    - (ii) on the basis of a request by the Minister, or the 3 school sectors (jointly); and
  - (b) must, in connection with the implementation of its requirements for the achievement of the SACE, take steps to assist schools and education authorities to provide information and professional development opportunities to teachers and other persons who work with students who are seeking to obtain the SACE; and
  - (c) must, in the performance of its functions, to such extent as the Board considers reasonable, take into account the views of—
    - (i) relevant schools, institutions or authorities; and
    - (ii) teachers, instructors, trainers and counsellors; and
    - (iii) the 3 school sectors; and



- (iv) bodies within the tertiary and higher education sectors; and
  - (v) employer and employee associations; and
  - (vi) other relevant accreditation and regulation bodies; and
  - (vii) any body or authority that represents the Government of another jurisdiction that has a working relationship with the Board; and
- (d) without limiting any steps that the Board may take on its own initiative, must give effect to any decision, made by a Ministerial Council, that is specified by the Minister for the purposes of this paragraph.
- (4) The Board must provide to the Minister any information or report that the Minister reasonably requires in connection with the Minister's portfolio responsibilities for education in the State.

## 16—Powers of Board

- (1) For the purpose of carrying out its functions the Board may—
- (a) acquire, hold, deal with and dispose of real and personal property;
  - (b) enter into any kind of contract or arrangement;
  - (c) acquire or incur any other rights or liabilities;
  - (d) exercise any other powers that are necessary for, or incidental to, the efficient discharge of its functions.
- (2) The Board may—
- (a) provide professional services and related material to authorities or other entities elsewhere in Australia, or overseas;
  - (b) act outside of the State for any other purpose connected with the performance of its functions or the exercise of its powers.

## 17—Committees and sub-committees

- (1) The Board may establish committees to advise the Board on any matter related to the administration of this Act or to carry out functions on behalf of the Board.
- (2) A committee established under subsection (1) may delegate any of its functions or powers to a sub-committee established by it for that purpose.
- (3) A delegation under subsection (2)—
- (a) may be made subject to such conditions as the committee thinks fit; and
  - (b) is revocable at will and does not derogate from the power of the committee to act in any matter itself.
- (4) A person who is not a member of the Board may be appointed to be a member of a committee or a sub-committee.

## 17A—Ministerial directions

- (1) Subject to subsection (2), the Minister may give the Board a direction about any matter relevant to the performance or exercise of a function or power of the Board.

- (2) No Ministerial direction may be given—
  - (a) in relation to the content or accreditation of any subject or course under this Act; or
  - (b) in relation to the assessment of, or recording the results of, a student's achievements or learning.
- (3) A direction given by the Minister under this section must be in writing.
- (4) If the Minister gives a direction under this section—
  - (a) the Minister must prepare a report on the matter and cause a copy of the report to be laid before each House of Parliament; and
  - (b) the Board must cause a statement of the fact that the direction was given to be published in its next annual report.

## **18—Staffing arrangements**

- (1) The employing authority may employ staff to perform activities in connection with the operations or activities of the Board.
- (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 will not be employed in the Public Service of the State unless brought into an administrative unit under the *Public Sector Act 2009*).
- (4) 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).
- (5) The employing authority is, in acting under this section, subject to direction by the Minister.
- (6) However, no Ministerial direction may be given by the Minister relating to the appointment, transfer, remuneration, discipline or termination of a particular person.
- (7) The employing authority may delegate a power or function under this section.
- (8) A delegation under subsection (7)—
  - (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.
- (9) A change in the person who constitutes the employing authority under this Act will not affect the continuity of employment of a person under this section.

- (10) The Board must, at the direction of the Minister, the Treasurer or the employing authority, make payments with respect to any matter arising in connection with the employment of a person under this Act (including, but not limited to, payments with respect to salary or other aspects of remuneration, leave entitlements, superannuation contributions, taxation liabilities, workers compensation payments, termination payments, public liability insurance and vicarious liabilities).
- (11) The Board does not have the power to employ any person.
- (12) The Board may, under an arrangement established by the Minister administering an administrative unit, make use of the services or staff of that administrative unit.
- (13) In this section—  
*public sector agency* has the same meaning as in the *Public Sector Act 2009*.

## Part 3—Miscellaneous

### 19—Reports and budgets

- (1) The Board must, at the request of the Minister, submit to the Minister a statement setting out the Board's strategic directions and targets and, if so requested, the Board's budget, for a specified period.
- (2) The Minister may approve a statement submitted under this section with or without modification.
- (3) The Board may not expend money in a manner that is inconsistent with a statement approved under subsection (2) or its budget unless the expenditure is approved by the Minister, or a person authorised by the Minister.

### 19A—Accounts and audit

- (1) The Board must cause proper accounting records to be kept in relation to its financial affairs, and must have annual statements of account prepared in respect of each calendar year.
- (2) The accounting records and the statements of account must comply with—
  - (a) any relevant instruction of the Treasurer under section 41 of the *Public Finance and Audit Act 1987*; and
  - (b) any further requirement imposed by the Auditor-General.
- (3) The Auditor-General may at any time audit the accounts of the Board and must audit the annual statements of account.

### 20—Report

- (1) The Board must, on or before 31 March in each year, deliver to the Minister a report of its operations during the period of 12 months that ended on the preceding 31 December.
- (1a) The report must—
  - (a) incorporate the audited accounts of the Board for the relevant year; and

- (b) include a specific report on the consultation processes that the Board has established or used for the purposes of this Act during the relevant year, including an assessment of the extent to which those processes have assisted the Board in the performance of its functions; and
  - (c) contain any other information required by this Act.
- (2) The Minister must, within 14 sitting days after receiving a report under this section, cause a copy of the report to be laid before each House of Parliament.

## 21—Summary offences

Offences against this Act are summary offences.

## 22—Money required for this Act

The money required for the purposes of this Act must be paid out of money provided by Parliament for those purposes.

## 23—Regulations

- (1) The Governor may, on the recommendation of the Board, make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
- (a) provide for matters of a saving or transitional nature consequent on amendments made to this Act, including matters that relate to the subjects, patterns of study and other requirements associated with obtaining certification of achievements for the purposes of a qualification awarded by the Board under this Act;
  - (b) provide for and regulate fees to be charged for goods or services provided by the Board and provide for the waiving or reduction of such fees.
- (3) The regulations may confer discretionary powers on the Board.

## Schedule 1—Designated entities

### 1—Designated entities

Subject to clause 2, the following will be designated entities:

- (a) the Chief Executive of the Department primarily responsible for assisting the Minister responsible for the administration of the *Education Act 1972*;
- (b) the Chief Executive of the Department primarily responsible for assisting the Minister responsible for the administration of the *Technical and Further Education Act 1975*;
- (c) The University of Adelaide;
- (d) The Flinders University of South Australia;
- (e) the University of South Australia;
- (f) the Training and Skills Commission;
- (g) the Pitjantjatjara Yankunytjatjara Education Committee;

- (h) the Association of Independent Schools of South Australia—Secondary/Combined Heads Committee;
- (i) the South Australian Commission for Catholic Schools Inc.;
- (j) the Non-Government Schools Registration Board;
- (k) the South Australian Secondary Principals Association;
- (l) the South Australian Special Schools Principals' Association;
- (m) the Association of Principals of Catholic Secondary Schools;
- (n) the Australian Education Union (SA Branch);
- (o) the Independent Education Union (SA);
- (p) the South Australian Employers' Chamber of Commerce and Industry Inc. (*Business SA*);
- (q) the United Trades and Labor Council;
- (r) the South Australian Association of State Schools Organisation Incorporated;
- (s) the South Australian Association of School Parents' Clubs Incorporated;
- (t) the Federation of Catholic School Parent Communities;
- (u) the SA Isolated Children's Parents' Association Incorporated;
- (v) the *Minister's Youth Council*;
- (w) the Association of Independent Schools of South Australia Incorporated.

## **2—Amendment of Schedule**

The Governor may, by regulation, amend clause 1 by adding or deleting specified persons or bodies.

## Legislative history

### Notes

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

### Formerly

*Senior Secondary Assessment Board of South Australia Act 1983*

### Legislation repealed by principal Act

The *SACE Board of South Australia Act 1983* repealed the following:

*Public Examinations Board Act 1968*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1983	21	<i>Senior Secondary Assessment Board of South Australia Act 1983</i>	26.5.1983	1.2.1984 ( <i>Gazette 19.1.1984 p88</i> )
1983	60	<i>Senior Secondary Assessment Board of South Australia Act Amendment Act 1983</i>	8.9.1983	1.2.1984 ( <i>Gazette 19.1.1984 p89</i> )
1990	81	<i>Senior Secondary Assessment Board of South Australia Act Amendment Act 1990</i>	20.12.1990	1.5.1991 ( <i>Gazette 24.4.1991 p1376</i> ) except ss 3, 6 & 7—27.6.1991 ( <i>Gazette 27.6.1991 p2059</i> )
2006	41	<i>Statutes Amendment (Public Sector Employment) Act 2006</i>	14.12.2006	Pt 17 (ss 74—77)—1.4.2007 ( <i>Gazette 29.3.2007 p930</i> )
2008	6	<i>Senior Secondary Assessment Board of South Australia (Review) Amendment Act 2008</i>	13.3.2008	1.7.2008 ( <i>Gazette 22.5.2008 p1718</i> )
2008	(163)	<i>Senior Secondary Assessment Board of South Australia Variation Regulations 2008</i> ( <i>Gazette 19.6.2008 p2382</i> )	—	1.7.2008: r 2
2008	(255)	<i>SACE Board of South Australia Regulations 2008</i> ( <i>Gazette 18.9.2008 p4509</i> )	—	18.9.2008: r 2

2009	84	<i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>	10.12.2009	Pt 133 (s 302—304)—1.2.2010 ( <i>Gazette 28.1.2010 p320</i> )
2011	46	<i>Education and Early Childhood Services (Registration and Standards) Act 2011</i>	8.12.2011	Sch 3 (cl 22)—1.1.2012 ( <i>Gazette 15.12.2011 p4986</i> )

## 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 by 81/1990 Sch	1.5.1991
	amended by 6/2008 s 4	1.7.2008
Pt 1		
s 1	amended by 6/2008 s 5	1.7.2008
<i>ss 2 and 3</i>	<i>deleted by 81/1990 Sch</i>	<i>1.5.1991</i>
s 4		
s 4(1)	s 4 redesignated as s 4(1) by 41/2006 s 74(2)	1.4.2007
appointed member	inserted by 6/2008 s 6(1)	1.7.2008
<i>the Board</i>	<i>deleted by 6/2008 s 6(1)</i>	<i>1.7.2008</i>
Board	inserted by 6/2008 s 6(1)	1.7.2008
Chief Executive Officer	inserted by 60/1983 s 3	1.2.1984
designated entity	inserted by 6/2008 s 6(2)	1.7.2008
employing authority	inserted by 41/2006 s 74(1)	1.4.2007
	substituted by 6/2008 s 6(3)	1.7.2008
<i>the former board</i>	<i>deleted by 81/1990 Sch</i>	<i>1.5.1991</i>
SACE	inserted by 6/2008 s 6(4)	1.7.2008
<i>senior secondary education</i>	<i>inserted by 81/1990 s 3</i>	<i>27.6.1991</i>
	<i>deleted by 6/2008 s 6(4)</i>	<i>1.7.2008</i>
student	substituted by 6/2008 s 6(5)	1.7.2008
s 4(2)	inserted by 41/2006 s 74(2)	1.4.2007
	substituted by 6/2008 s 6(6)	1.7.2008
s 4(3)	inserted by 6/2008 s 6(6)	1.7.2008
s 5	deleted by 81/1990 Sch	1.5.1991
	inserted by 6/2008 s 7	1.7.2008
s 6	<i>deleted by 81/1990 Sch</i>	<i>1.5.1991</i>
Pt 2		
heading	substituted by 6/2008 s 8	1.7.2008
s 7		
s 7(1)	substituted by 81/1990 Sch	1.5.1991
	substituted by 6/2008 s 9	1.7.2008
s 7(2) and (3)	amended by 81/1990 Sch	1.5.1991

*s 8 before substitution**by 6/2008*

<i>s 8(1)</i>	<i>amended by 60/1983 s 4(a)</i>	<i>1.2.1984</i>
	<i>substituted by 81/1990 s 4</i>	<i>1.5.1991</i>
<i>s 8(2)</i>	<i>amended by 60/1983 s 4(b)</i>	<i>1.2.1984</i>
	<i>amended by 81/1990 Sch</i>	<i>1.5.1991</i>
<i>s 8(3)</i>	<i>amended by 60/1983 s 4(c)</i>	<i>1.2.1984</i>
	<i>substituted by 81/1990 Sch</i>	<i>1.5.1991</i>
<i>s 8(4)</i>	<i>amended by 60/1983 s 4(d)</i>	<i>1.2.1984</i>
	<i>amended by 81/1990 Sch</i>	<i>1.5.1991</i>
<i>s 8(5)</i>	<i>amended by 60/1983 s 4(e)</i>	<i>1.2.1984</i>
	<i>amended by 81/1990 Sch</i>	<i>1.5.1991</i>
<i>s 8(6)</i>	<i>amended by 81/1990 Sch</i>	<i>1.5.1991</i>
<i>s 8</i>	<i>substituted by 6/2008 s 10</i>	<i>1.7.2008</i>
<i>s 9</i>	<i>amended by 81/1990 Sch</i>	<i>1.5.1991</i>
	<i>substituted by 6/2008 s 10</i>	<i>1.7.2008</i>
<i>s 9A</i>	<i>inserted by 60/1983 s 5</i>	<i>1.2.1984</i>
<i>s 9A(1)</i>	<i>amended by 81/1990 Sch</i>	<i>1.5.1991</i>
	<i>substituted by 6/2008 s 11</i>	<i>1.7.2008</i>
<i>s 9A(2)</i>	<i>deleted by 81/1990 Sch</i>	<i>1.5.1991</i>
	<i>inserted by 6/2008 s 11</i>	<i>1.7.2008</i>
<i>s 9A(3) and (4)</i>	<i>amended by 81/1990 Sch</i>	<i>1.5.1991</i>
	<i>substituted by 41/2006 s 75</i>	<i>1.4.2007</i>
	<i>substituted by 6/2008 s 11</i>	<i>1.7.2008</i>
<i>s 9A(5)</i>	<i>amended by 81/1990 Sch</i>	<i>1.5.1991</i>
<i>s 10</i>		
<i>s 10(1)</i>	<i>amended by 81/1990 s 5, Sch</i>	<i>1.5.1991</i>
	<i>substituted by 6/2008 s 12(1)</i>	<i>1.7.2008</i>
<i>s 10(2)</i>	<i>substituted by 81/1990 Sch</i>	<i>1.5.1991</i>
	<i>amended by 6/2008 s 12(2)</i>	<i>1.7.2008</i>
<i>s 10(3)</i>	<i>amended by 81/1990 Sch</i>	<i>1.5.1991</i>
	<i>amended by 6/2008 s 12(3)</i>	<i>1.7.2008</i>
<i>s 10(4)</i>	<i>amended by 81/1990 Sch</i>	<i>1.5.1991</i>
	<i>amended by 6/2008 s 12(4), (5)</i>	<i>1.7.2008</i>
<i>s 10(4a) and (4b)</i>	<i>inserted by 6/2008 s 12(6)</i>	<i>1.7.2008</i>
<i>s 10(5) and (6)</i>	<i>amended by 81/1990 Sch</i>	<i>1.5.1991</i>
<i>s 11</i>	<i>amended by 81/1990 Sch</i>	<i>1.5.1991</i>
<i>s 11(2) and (3)</i>	<b><i>deleted by 84/2009 s 302</i></b>	<b><i>1.2.2010</i></b>
<i>s 12</i>		
<i>s 12(1)</i>	<i>amended by 41/2006 s 76</i>	<i>1.4.2007</i>
	<i>amended by 6/2008 s 13(1)</i>	<i>1.7.2008</i>
<i>s 12(2)</i>	<i>amended by 6/2008 s 13(2)</i>	<i>1.7.2008</i>



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<i>s 13 before deletion by 84.2009</i>		
<i>s 13(1) and (2)</i>	<i>amended by 81/1990 Sch</i>	<i>1.5.1991</i>
<b>s 13</b>	<b>deleted by 84/2009 s 303</b>	<b>1.2.2010</b>
s 14	amended by 81/1990 Sch	1.5.1991
s 15	substituted by 81/1990 s 6	27.6.1991
s 15(1)	substituted by 6/2008 s 14(1)	1.7.2008
s 15(2)	amended by 6/2008 s 14(2)	1.7.2008
s 15(3) and (4)	inserted by 6/2008 s 14(3)	1.7.2008
s 16		
s 16(1)	s 16 redesignated as s 16(1) by 6/2008 s 15	1.7.2008
s 16(2)	inserted by 6/2008 s 15	1.7.2008
s 17A	inserted by 6/2008 s 16	1.7.2008
<i>s 18 before substitution by 41/2006</i>		
<i>s 18(2)</i>	<i>deleted by 81/1990 Sch</i>	<i>1.5.1991</i>
s 18	substituted by 41/2006 s 77	1.4.2007
<b>s 18(3)</b>	<b>amended by 84/2009 s 304</b>	<b>1.2.2010</b>
<b>s 18(13)</b>		
<b>public sector agency</b>	<b>amended by 84/2009 s 304</b>	<b>1.2.2010</b>
Pt 3		
<i>s 19 before substitution by 6/2008</i>		
<i>s 19(1) and (2)</i>	<i>amended by 81/1990 Sch</i>	<i>1.5.1991</i>
<i>s 19(3)</i>	<i>deleted by 81/1990 Sch</i>	<i>1.5.1991</i>
s 19	substituted by 6/2008 s 17	1.7.2008
s 19A	inserted by 6/2008 s 17	1.7.2008
s 20		
s 20(1)	amended by 81/1990 Sch	1.5.1991
s 20(1a)	inserted by 6/2008 s 18(1)	1.7.2008
s 20(2)	amended by 81/1990 Sch	1.5.1991
	amended by 6/2008 s 18(2)	1.7.2008
s 21	substituted by 81/1990 Sch	1.5.1991
s 22	amended by 81/1990 Sch	1.5.1991
s 23		
s 23(1)	s 23 amended and redesignated as s 23(1) by 81/1990 s 7	27.6.1991
s 23(2)	inserted by 81/1990 s 7(b)	27.6.1991
	amended by 6/2008 s 19	1.7.2008
s 23(3)	inserted by 81/1990 s 7(b)	27.6.1991
Sch 1	inserted by 6/2008 s 20	1.7.2008
cl 1	amended by 163/2008 r 4	1.7.2008

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## 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;
- (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

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- (c) the Industrial Commission may, on application by the Minister to whom the administration of the *Fair Work Act 1994* is committed, or an application by a person or body recognised by regulations made for the purposes of this subclause, vary or revoke any term or provision of the award or enterprise agreement if the Industrial Commission is satisfied that it is fair and reasonable to do so in the circumstances.

### 3—Superannuation

- (1) If a prescribed body under a relevant Act is, immediately before the commencement of this clause, a party to an arrangement relating to the superannuation of one or more persons employed by the prescribed body, then the relevant employing authority under that Act will, on that commencement, become a party to that arrangement in substitution for the prescribed body.
- (2) Nothing that takes effect under subclause (1)—
- (a) constitutes a breach of, or default under, an Act or other law, or constitutes a breach of, or default under, a contract, agreement, understanding or undertaking; or
  - (b) terminates an agreement or obligation or fulfils any condition that allows a person to terminate an agreement or obligation, or gives rise to any other right or remedy,
- and subclause (1) may have effect despite any other Act or law.
- (3) An amendment effected to another Act by this Act does not affect a person's status as a contributor under the *Superannuation Act 1988* (as it may exist immediately before the commencement of this Act).

### 4—Interpretative provision

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

### 5—Related matters

- (1) A notice in force under section 51 of the *Children's Services Act 1985* immediately before the commencement of this clause will continue to have effect for the purposes of that section, as amended by this Act.
- (2) A notice in force under section 28 of the *Institute of Medical and Veterinary Science Act 1982* immediately before the commencement of this clause will continue to have effect for the purposes of that section, as amended by this Act.
- (3) A notice in force under section 61 of the *South Australian Health Commission Act 1976* immediately before the commencement of this clause will continue to have effect for the purposes of that section, as amended by this Act.

- (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.

## *Senior Secondary Assessment Board of South Australia (Review) Amendment Act 2008, Sch 1—Transitional provisions*

### 1—Membership of Board

To avoid doubt, a person holding office as a member of the Senior Secondary Assessment Board of South Australia immediately before the commencement of this clause will, on that commencement, cease to hold that office.

### 2—Chief Executive Officer of Board

The person holding office as the Chief Executive Officer of the Senior Secondary Assessment Board of South Australia immediately before the commencement of this clause will, on that commencement, be taken to be employed under the *Senior Secondary Assessment Board of South Australia Act 1983* as amended by this Act—

- (a) with continuity of service; and
- (b) without affecting existing conditions of employment or existing or accrued rights to leave; and
- (c) for the balance of the term of any contract of employment in existence immediately before that commencement.

### 3—Staff

To avoid doubt, the amendments made to the *Senior Secondary Assessment Board of South Australia Act 1983* by section 6(3) and (6) of this Act will not affect the continuity of employment (including as to service, conditions or rights) of a person employed under that Act.

### Historical versions

22.7.1991

1.4.2007

1.7.2008

18.9.2008

### Appendix—Divisional penalties and expiation fees

At the date of publication of this version divisional penalties and expiation fees are, as provided by section 28A of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	—	\$500	\$100
10	—	\$200	\$75
11	—	\$100	\$50
12	—	\$50	\$25

*Note: This appendix is provided for convenience of reference only.*