

South Australia

# Education and Children's Services Act 2019

An Act to provide for preschool, primary and secondary education in this State, to provide for children's services, to constitute the teaching service in this State and for other purposes.

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## Contents

### Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Interpretation
- 4 Application of Act to non-Government schools
- 5 Interaction with other Acts
- 6 Minister may acquire land

### Part 2—Objects and principles

- 7 Objects and principles

### Part 3—Administration

- 8 Functions of Chief Executive
- 9 Administrative instructions
- 10 Model constitutions
- 11 Advisory committees
- 12 Delegation
- 13 Chief Executive may require information from schools, preschools and children's services centres
- 14 Sharing of information between certain persons and bodies
- 15 Report

### Part 4—Preschools and children's services centres

#### Division 1—School-based preschools

- 16 Minister may establish school-based preschools
- 17 Governing councils of school-based preschools

#### Division 2—Stand-alone preschools and children's services centres

- 18 Minister may establish stand-alone preschools and children's services centres
- 19 Governing councils of stand-alone preschools and children's services centres
- 20 Composition of governing councils of stand-alone preschools and children's services centres
- 21 Approval of constitutions by Minister

- 22 Amendment of constitutions
- 23 Functions and powers of governing councils
- 24 Limitations on powers of governing councils

### Division 3—Continuation of children's services centres registered under *Children's Services Act 1985*

- 25 Application of Division
- 26 Continuation of registered children's services centres

### Division 4—Removal of members of governing councils etc

- 27 Minister may remove member of governing council
- 28 Minister may prohibit or limit performance of functions etc by governing council

### Division 5—Closure of stand-alone preschools and children's services centres

- 29 Closure of stand-alone preschools and children's services centres

### Division 6—Miscellaneous

- 30 Conflict of interest
- 31 Accounts may be audited
- 32 Corporal punishment prohibited

## Part 5—Government schools

### Division 1—Establishment of schools

- 33 Minister may establish schools

### Division 2—Governing councils and affiliated committees

#### Subdivision 1—Governing councils and affiliated committees

- 34 Governing councils of schools
- 35 Composition of governing councils of schools
- 36 Affiliated committees
- 37 Conflict of interest
- 38 Accounts may be audited

#### Subdivision 2—Approval and amendment of constitutions

- 39 Approval of constitutions by Minister
- 40 Amendment of constitutions

#### Subdivision 3—Functions and powers of governing councils and affiliated committees

- 41 Functions and powers of governing councils and affiliated committees
- 42 Limitations on powers of governing councils and affiliated committees

#### Subdivision 4—Arrangements on closure or amalgamation of schools

- 43 Minister may make arrangements for governing councils etc on closure or amalgamation of school

#### Subdivision 5—Removal of members of governing councils and affiliated committees etc

- 44 Minister may remove member of governing council or affiliated committee
- 45 Minister may prohibit or limit performance of functions etc by governing council or affiliated committee

---

## Subdivision 6—Governing Councils Legal Fund

- 46 Interpretation
- 47 Governing Councils Legal Fund
- 48 Payments from Fund
- 49 Accounts
- 50 Audit of Fund

## Division 3—Amalgamation and closure of schools

- 51 Amalgamation of schools
- 52 Closure of schools
- 53 Review of schools in a particular area
- 54 Review committees
- 55 Minister to report to Parliament if recommendations of review committee not followed

## Part 6—Special purpose schools

- 56 Minister may establish special purpose schools
- 57 Governing council and constitution
- 58 Closure of special purpose schools
- 59 Modification of operation of Act in relation to special purpose schools

## Part 7—Provision of education in schools

### Division 1—Enrolment

#### Subdivision 1—Compulsory enrolment in school or approved learning program

- 60 Children of compulsory school age must be enrolled in school
- 61 Children of compulsory education age must be enrolled in approved learning program
- 62 Chief Executive may direct that child be enrolled in particular school
- 63 Chief Executive may direct that child be enrolled in another school if improperly enrolled

#### Subdivision 2—Enrolment of adult students

- 64 Special provisions relating to enrolment of adult students

#### Subdivision 3—Information gathering

- 65 Certain information to be provided on enrolment
- 66 Chief Executive may require further information relating to student
- 67 Principal may require other principal to provide report in respect of specified child

### Division 2—Attendance at school and participation in approved learning programs

#### Subdivision 1—Compulsory attendance at school and participation in approved learning program

- 68 Child of compulsory school age must attend school
- 69 Child of compulsory education age must participate in approved learning program

#### Subdivision 2—Family conferences

- 70 Purpose of family conferences
- 71 Chief Executive may convene family conference
- 72 Procedures at family conference
- 73 Chief Executive and principal etc to give effect to decisions of family conference

Subdivision 3—Limitations on employment of certain children of compulsory school age or compulsory education age

74 Employment of children of compulsory school age or compulsory education age

Subdivision 4—Reporting of persistent non-attendance or non-participation

75 Principal etc to report persistent non-attendance or non-participation

Division 3—Suspension, exclusion and expulsion of students

76 Suspension of students

77 Exclusion of students

78 Expulsion of certain students from particular school

79 Expulsion of certain students from all Government schools

80 Appeal against decision to exclude or expel student

81 Regulations in relation to operation, administration and enforcement of suspension, exclusion or expulsion of student

Division 4—Religious and cultural activities

82 Religious and cultural activities

Division 5—Discipline

83 Corporal punishment prohibited

Division 6—Registration of student exchange programs

84 Interpretation

85 Registration of student exchange organisations

86 Annual registration fee

87 Guidelines

88 Board may give directions to registered student exchange organisation

89 Suspension and revocation of registration

Part 8—Protections for teachers, staff and students etc at schools, preschools and children's services centres

Division 1—Preliminary

90 Application of Part

Division 2—Offences

91 Offensive or threatening behaviour

92 Trespassing on premises

Division 3—Barring orders

93 Power to bar persons from premises

94 Review of barring notice by Minister

Division 4—Power to restrain etc persons acting unlawfully on premises to which Part applies

95 Certain persons may restrain, remove from or refuse entry to premises

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## Part 9—The teaching service

### Division 1—Preliminary

96 Interpretation

### Division 2—Appointment to the teaching service

97 Appointment to the teaching service

98 Merit-based selection processes

99 Rate of remuneration for part-time employees

100 Special remuneration for attraction and retention of officers of the teaching service

101 Probation

### Division 3—Duties, classification, promotion and transfer

102 Assignment of duties and transfer to non-teaching position within Department

103 Transfer within teaching service

104 Classification of officers and positions

105 Application to Chief Executive for reclassification

106 Appointment to promotional level positions

### Division 4—Long service leave

107 Long service leave and retention entitlement

108 Taking leave

109 Payment in lieu of long service leave

110 Interruption of service where officer leaves teaching service

111 Special provisions relating to certain temporary officers of the teaching service

112 Entitlement where officer transferred to other public sector employment

113 Entitlement of persons transferred to the teaching service

### Division 5—Disciplinary action and management of unsatisfactory performance

114 Disciplinary action

115 Managing unsatisfactory performance

116 Reduction in remuneration level

117 Suspension

### Division 6—Physical or mental incapacity of officers of the teaching service

118 Physical or mental incapacity of officers of the teaching service

### Division 7—Resignation and termination

119 Resignation

120 Termination

## Part 10—Other employment and staffing arrangements

121 Chief Executive may employ other persons for purposes of Act

122 Part 7 and Schedule 1 of the *Public Sector Act 2009* to apply to persons employed under this Part

123 Use of staff etc of administrative units of the Public Service

## Part 11—Appeals

### Division 1—Review by South Australian Employment Tribunal

124 Review by SAET of certain decisions and determinations

### Division 2—Appeals to Administrative and Disciplinary Division of the District Court

125 Appeal against certain actions of Minister or Chief Executive

## Part 12—Authorised officers

126 Authorised officers

127 Powers of authorised officers

128 Offence to hinder etc authorised officers

## Part 13—Financial provisions

### Division 1—Materials and services charges for schools

129 Materials and services charges for schools

### Division 2—Other fees and charges

130 Charges for certain overseas and non-resident students etc

131 Certain other charges etc unaffected

### Division 3—Recovery of amounts payable to the Commonwealth

132 Recovery of amounts payable to the Commonwealth

## Part 14—Miscellaneous

133 Exemptions

134 Use of certain school premises etc for both school and community purposes

135 Proceedings for offences

136 Commencement of prosecution for offence against Act

137 Confidentiality

138 Protections, privileges and immunities

139 Evidentiary provisions

140 Service

141 Regulations

## Schedule 1—Repeals, related amendments, transitional provisions etc

### Part 1—Preliminary

1 Amendment provisions

### Part 2—Repeal of *Children's Services Act 1985*

2 Repeal of *Children's Services Act 1985*

### Part 3—Repeal of *Education Act 1972*

3 Repeal of *Education Act 1972*

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## Part 4—Amendment of *Children's Protection Act 1993*

4 Amendment of section 31—Constitution of family care meeting

## Part 5—Amendment of *Education and Early Childhood Services (Registration and Standards) Act 2011*

5 Amendment of section 3—Interpretation

6 Amendment of section 8—Responsible authorities

7 Amendment of section 13—Meaning of certain terms in *Education and Care Services National Law (South Australia)* for the purposes of this jurisdiction

8 Amendment of section 22—Composition of Board

9 Amendment of section 28—Staff of Board

## Part 6—Amendment of *Independent Commissioner Against Corruption Act 2012*

10 Amendment of Schedule 1—Public officers, public authorities and responsible Ministers

## Part 7—Amendment of *National Tax Reform (State Provisions) Act 2000*

11 Amendment of section 5—GST component to be separately identified in government accounts

## Part 8—Amendment of *Public Sector Act 2009*

12 Amendment of section 25—Public Service employees

## Part 9—Amendment of *SACE Board of South Australia Act 1983*

13 Amendment of section 8—Membership of Board

## Part 10—Amendment of *Summary Offences Act 1953*

14 Amendment of section 38A—Sale of books and educational matter

## Part 11—Amendment of *Superannuation Act 1988*

15 Amendment of section 4—Interpretation

## Part 12—Amendment of *Teachers Registration and Standards Act 2004*

16 Amendment of section 3—Interpretation

17 Amendment of section 9—Membership of Teachers Registration Board

## Part 13—Transitional and other provisions

18 Continuation of schools established etc under *Education Act 1972*

19 Continuation of school councils

20 Continuation of affiliated committees

21 Classification of officers etc under section 15A of *Education Act 1972* to continue

22 Designation of principals

23 Continuation of appointments of officers of the teaching service

24 Continuation of other appointments under section 101B of *Education Act 1972*

25 Continuation of staff appointed under section 12 of *Children's Services Act 1985*

26 Continuation of curriculum

27 Continuation of enrolments

28 Suspensions, exclusions and expulsions of students to continue

29 Prohibition notices

- 30 Exemptions under section 81A of *Education Act 1972* to continue
- 31 Continuation of advisory committees
- 32 Provision relating to adult students during transition to *Child Safety (Prohibited Persons) Act 2016*
- 33 Authorisation of authorised officers to continue
- 34 Recovery etc of outstanding fees and charges
- 35 Continuation of arrangements under section 102A
- 36 Continuation of administrative instructions
- 37 Continuation of delegations under *Education Act 1972*
- 38 Appointment of Director of Children's Services nominee to Teachers Registration Board continued
- 39 Appointment of Director of Children's Services nominee to Education and Early Childhood Services (Registration and Standards) Board continued
- 40 Continuation of review panel
- 41 Continuation of registration of student exchange organisations

## Legislative history

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

## Part 1—Preliminary

### 1—Short title

This Act may be cited as the *Education and Children's Services Act 2019*.

### 2—Commencement

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

### 3—Interpretation

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

***approved learning program*** means a program that—

- (a) consists of secondary education provided under this Act; or
- (b) counts towards, or is otherwise required for, the award of a degree, diploma or other award provided by a university declared by the regulations to be a university or class of universities that is within the ambit of this paragraph for the purposes of this Act; or
- (c) consists of technical and further education provided by a college (within the meaning of the *Technical and Further Education Act 1975*); or
- (d) consists of an accredited course provided by a training organisation registered under the *Training and Skills Development Act 2008* or a law of the Commonwealth or another State or a Territory of the Commonwealth relating to higher education, vocational education and training and adult community education (other than a course or training organisation excluded from the ambit of this definition by the regulations for the purposes of this Act); or



- (e) is an apprenticeship or traineeship undertaken with an employer approved as an employer who may undertake the training of an apprentice or trainee under an approved contract of training under the *Training and Skills Development Act 2008* (and any relevant work undertaken as part of the apprenticeship or traineeship will be taken to form part of the program); or
- (f) is a program of a class declared by the Minister by notice in the Gazette to be an approved learning program; or
- (g) complies with any other requirements set out in the regulations;

**authorised officer**—see section 126;

**Chief Executive** means the Chief Executive of the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of this Act;

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

**child of compulsory school age** means a child who is—

- (a) of or above—
  - (i) if the regulations prescribe an age for the purposes of this paragraph—that age; or
  - (ii) if the regulations do not prescribe an age for the purposes of this paragraph—6 years of age; and
- (b) less than 16 years of age;

**children's services** includes services of the following kinds (being services provided to, or for the benefit of, children):

- (a) preschool education;
- (b) child care provided on a not for profit basis that is wholly or partly Government-funded;
- (c) any other service of a kind prescribed by the regulations for the purposes of this Act;

**children's services centre** means a children's services centre established under this Act (being a place at which children's services are provided);

**Department** means the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of this Act;

**director**, of a stand-alone preschool or children's services centre, means the person for the time being designated by the Chief Executive as the director of the stand-alone preschool or children's services centre (as the case requires);

**governing authority**, of a non-Government school, means the person, board, committee or other authority by which the school is administered;

**governing council**, of a stand-alone preschool or children's services centre, means—

- (a) in the case of a children's services centre to which Part 4 Division 3 applies—the management committee of the children's services centre continued as the governing council of the children's services centre or stand-alone preschool (as the case requires) under section 26; and

- (b) in any other case—the governing council for the preschool or children's services centre established under section 19;

***governing council***, of a school, means the governing council for the school established under section 34;

***Government preschool*** means a school-based preschool or stand-alone preschool;

***Government school*** means a school established under this Act or a repealed Act and includes (other than for the purposes of Part 5) a special purpose school;

***head*** of an approved learning program means—

- (a) if the learning program consists of secondary education—the principal of the school at which the program is provided; or
- (b) in any other case—the person, or person of a class, prescribed by the regulations for the purposes of this paragraph;

***local council*** means a council constituted under the *Local Government Act 1999*;

***merit***, in relation to a selection process, means—

- (a) the extent to which each of the applicants has abilities, aptitude, skills, qualifications, knowledge, experience (including community experience) and personal qualities relevant to the carrying out of the duties in question; and
- (b) if relevant—
- (i) the manner in which each of the applicants carried out any previous employment or occupational duties or functions; and
- (ii) the extent to which each of the applicants has potential for development;

***model constitution*** means a model constitution published under section 10, as in force from time to time;

***non-Government school*** means a school that is registered under the *Education and Early Childhood Services (Registration and Standards) Act 2011* that is not a Government school;

***officer of the teaching service*** or ***officer*** means a person appointed as an officer of the teaching service under Part 9;

***parent***, of a student or child, includes—

- (a) a step-parent of the student or child; and
- (b) a guardian of the student or child; and
- (c) a person standing *in loco parentis* to the student or child;

***preschool*** means a place at which education services are provided to children who have not yet attained the compulsory school age (and ***preschool education*** will be taken to have a corresponding meaning) but a reference to a preschool, or to preschool education, will be taken not to include a reference to the provision of primary education to such children at a school;

**principal** of a school means—

- (a) in relation to a Government school—the person for the time being designated by the Chief Executive as the principal of the school; or
- (b) in relation to a non-Government school—the person for the time being designated by the governing authority of the school as the principal of the school;

**promotional level**, in relation to a position in the teaching service, means a classification level for a position declared by the regulations to be a promotional level for the purposes of this Act;

**public sector** has the same meaning as in the *Public Sector Act 2009*;

**public sector code of conduct** means the public sector code of conduct under the *Public Sector Act 2009*, as in force from time to time;

**reclassify** includes alter an entitlement of an officer of the teaching service to an increment of remuneration;

**registered student exchange organisation** means a person or body registered as a student exchange organisation under section 85;

**repealed Acts** means the *Education Act 1972* and the *Education Act 1915*;

**responsible for a child** or **responsible for a student**—see subsection (2);

**SAET** means the South Australian Employment Tribunal established under the *South Australian Employment Tribunal Act 2014*;

**school** means a school at which primary or secondary education or both is, or is to be, provided (whether or not preschool education is also provided at the school);

**school-based preschool** means a preschool established under this Act as a part of, and providing preschool education as a program of, a Government school;

**special purpose school** means a special purpose school established under Part 6;

**special school** means a Government school established for the benefit of a particular class of children who require some special form of education, treatment or care;

**stand-alone preschool** means a preschool established under this Act that is not a school-based preschool;

**student**, in relation to a school or approved learning program, means a student enrolled at the school or in the approved learning program;

**teacher** means a person who gives, or is qualified to give, instruction in 1 or more of the following:

- (a) preschool education;
- (b) primary education;
- (c) secondary education;

**teaching service** means the teaching service constituted under Part 9 (and, for the purposes of this Act, a reference to the teaching service will be taken to include a reference to the teaching service as constituted under the repealed Acts);

**term employee** means an employee appointed for a specified term;

***working with children check*** means a working with children check under the *Child Safety (Prohibited Persons) Act 2016*.

- (2) For the purposes of this Act, a person is responsible for a child or student if the person is—
- (a) a parent of the child or student; or
  - (b) a person of a class declared by the regulations to be included within the ambit of this subsection for the purposes of this Act,

however, a person will be taken not to be responsible for a child or student if the person's guardianship or custody of, or responsibility for, the child or student is excluded under any Act or law.

- (3) For the purposes of this Act, a reference to a school, preschool or children's services centre includes, unless the context requires otherwise, a reference to a campus or site other than the principal site at which services are provided by the school, preschool or children's services centre.
- (4) For the purposes of this Act, a reference to participation in an approved learning program includes a reference to attending at the place or places at which the approved learning program is conducted.
- (5) For the purposes of this Act, a reference to the effective service of an officer of the teaching service is a reference to—
- (a) —
    - (i) in the case of an officer to whom section 111 applies—the period (if any) of the officer's continuous service in the teaching service determined in accordance with that section; or
    - (ii) in any other case—the period (if any) of the officer's continuous service in the teaching service; and
  - (b) any other period that is, by determination of the Chief Executive, to be regarded as forming the whole, or part, of the officer's effective service,
- but does not include any period that is, by determination of the Chief Executive, not to be regarded as a period of effective service.
- (6) A reference in any other Act to the ***employing authority*** under this Act or a repealed Act will be taken to be a reference to the Chief Executive.

#### **4—Application of Act to non-Government schools**

- (1) The following provisions of this Act apply only to Government schools:
- (a) section 9;
  - (b) Part 5;
  - (c) Part 6;
  - (d) sections 62, 63 and 64(5);
  - (e) Part 7 Division 3 and Division 4;
  - (f) Part 9;
  - (g) Part 10;

- (h) Part 11 Division 1;
  - (i) Part 13 Division 1 and Division 2.
- (2) A provision of this Act not referred to in subsection (1) that is expressed to apply only to Government schools will be taken not to apply to a non-Government school.
- (3) Each other provision of this Act (not being a provision referred to in a preceding subsection) applies to Government and non-Government schools.

## **5—Interaction with other Acts**

This Act is in addition to, and does not derogate from, any other Act or law.

## **6—Minister may acquire land**

The Minister may, subject to and in accordance with the *Land Acquisition Act 1969*, acquire land for the purposes of this Act.

# **Part 2—Objects and principles**

## **7—Objects and principles**

- (1) The objects of this Act include—
- (a) ensuring that education provided to children and students in this State is of a high quality; and
  - (b) ensuring that children's services provided at children's services centres in this State are of a high quality; and
  - (c) ensuring the development of an accessible range of education and children's services that meet the needs of all groups in the community; and
  - (d) promoting the involvement of parents, persons other than parents who are responsible for children and other members of the community in the provision of education and children's services to children and students in this State,
- and, in the course of achieving those objects, it is an object of this Act to continuously improve the wellbeing and safety of children in this State.
- (2) It is a further object of this Act to acknowledge the efforts and dedication of all teachers and educators (including school services officers, early childhood workers and Aboriginal education workers) in respect of the education of the children and students of this State, as well as their importance to the successful development of children and the success of the education and children's services sectors generally.
- (3) It is a further object of this Act to recognise the diversity of the student body in this State.
- (4) The following principles must be taken into account in relation to the operation, administration and enforcement of this Act:
- (a) the best interests of children and students is the paramount consideration;
  - (b) every child has a right to education;
  - (c) the cultural and religious diversity of the student population must be recognised;

- (d) children and students should not be unlawfully discriminated against on the ground of their gender, mental or physical impairment, religion or race, nor that of their parents;
- (e) the involvement of children, students, parents, persons other than parents who are responsible for children and other members of the community in relation to the education and development of children and students should be promoted;
- (f) children, students, stakeholders and communities should be consulted in respect of decisions under this Act that may affect them;
- (g) education and children's services provided by Government schools, Government preschools and children's services centres are to be secular in nature;
- (h) subject to this and any other Act or law, schools, preschools and children's services centres are free to celebrate events that are of significance to their communities (including, for example, by singing Christmas carols).

## **Part 3—Administration**

### **8—Functions of Chief Executive**

- (1) The functions of the Chief Executive under this Act include—
  - (a) determining the curriculum in accordance with which instruction is provided in Government schools; and
  - (b) determining the content and nature of services provided at Government preschools and children's services centres; and
  - (c) providing for the education and training of teachers; and
  - (d) maintaining efficiency and competency in the teaching service; and
  - (e) ensuring that the expertise and qualifications of persons who provide children's services are of the highest possible standards; and
  - (f) providing or arranging residences for the accommodation of teachers or students; and
  - (g) providing or arranging transport of students to and from Government schools; and
  - (h) developing or adopting, and implementing, policies relating to the provision of education and children's services and keeping the operation of those policies under constant review and evaluation; and
  - (i) keeping the public informed of the availability of education and children's services and how they may be accessed; and
  - (j) reviewing the special needs of particular groups of children (including those living with disability and those who are economically disadvantaged) and providing, assisting in the provision of or promoting services to meet those needs; and

- (k) collaborating and consulting with Government and non-Government organisations in relation to the provision of education and children's services; and
  - (l) promoting the involvement of parents, persons other than parents who are responsible for children and other members of the community in the provision of education and children's services; and
  - (m) such other functions as may be conferred on the Chief Executive under this or any other Act or by the Minister.
- (2) Subject to this Act, the Chief Executive has such powers as may be necessary or expedient for the performance of the Chief Executive's functions.

### **9—Administrative instructions**

- (1) The Chief Executive may issue administrative instructions to governing councils or affiliated committees of schools, stand-alone preschools and children's services centres.
- (2) Without limiting the matters in respect of which administrative instructions may be issued, administrative instructions may be issued in respect of materials and services for which materials and services charges may be imposed under Part 13.
- (3) An administrative instruction may be varied or revoked by further administrative instruction.
- (4) An administrative instruction—
  - (a) may be of general application or limited application; and
  - (b) may make different provision according to the matters or circumstances to which it is expressed to apply.
- (5) Governing councils and affiliated committees are bound by administrative instructions under this section.

### **10—Model constitutions**

- (1) The Minister must, by notice in the Gazette, publish model constitutions of the following kinds for the purposes of this Act:
  - (a) a model constitution for governing councils of schools without a school-based preschool;
  - (b) a model constitution for governing councils of schools with a school-based preschool;
  - (c) a model constitution for governing councils of stand-alone preschools;
  - (d) a model constitution for governing councils of children's services centres;
  - (e) a model constitution for affiliated committees,and may publish such other model constitutions as the Minister thinks fit.

- (2) Without limiting the provisions that may be included in a model constitution for governing councils, each such model constitution (other than a model constitution for affiliated committees) must contain provisions requiring—
  - (a) the governing council to participate in a scheme for the resolution of disputes between the governing council and the principal of the school or the director of the preschool or children's services centre (as the case requires); and
  - (b) the members of the governing council to comply with a code of practice approved by the Minister.
- (3) The Minister may, by notice in the Gazette, vary, substitute or revoke a model constitution.
- (4) The Minister must cause copies of each model constitution and each code of practice approved by the Minister, as in force from time to time, to be published on a website determined by the Minister.

## **11—Advisory committees**

- (1) The Minister may appoint an advisory committee or committees to advise the Minister or the Chief Executive on any matter related to the operation of this Act or the provision of education and children's services in this State.
- (2) An advisory committee consists of such members as the Minister thinks fit.
- (3) A member of an advisory committee will hold office on conditions, and for a term, determined by the Minister.
- (4) A member of an advisory committee is entitled to such allowances and expenses as may be determined by the Minister.
- (5) Subject to any direction of the Minister, an advisory committee may determine its own procedures.

## **12—Delegation**

- (1) The Minister or the Chief Executive may delegate a function or power under this Act (other than a prescribed function or power) to a specified body or person (including a person for the time being holding or acting in a specified office or position).
- (2) A delegation under this section—
  - (a) must be by instrument in writing; and
  - (b) may be absolute or conditional; and
  - (c) does not derogate from the ability of the Minister or Chief Executive (as the case requires) to act in any matter; and
  - (d) is revocable at will.
- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.



### **13—Chief Executive may require information from schools, preschools and children's services centres**

- (1) The Chief Executive may, by notice in writing, require the principal of a school to provide to the Chief Executive such specified information relating to a specified child (being a child who is, or was, enrolled at the school) as may be in the school's possession and that the Chief Executive reasonably requires for the purposes of this Act.
- (2) The Chief Executive may, by notice in writing, require the director of a stand-alone preschool to provide to the Chief Executive such specified information relating to a specified child (being a child who is attending, or attended, the preschool) as may be in the preschool's possession and that the Chief Executive reasonably requires for the purposes of this Act.
- (3) The Chief Executive may, by notice in writing, require the director of a children's services centre to provide to the Chief Executive such specified information relating to a specified child (being a child who is, or was, being provided with children's services at or by the children's services centre) as may be in the children's services centre's possession and that the Chief Executive reasonably requires for the purposes of this Act.
- (4) The Chief Executive may, by notice in writing, require a specified person or body to provide to the Chief Executive such specified information relating to a specified child as may be in the person's or body's possession and that the Chief Executive reasonably requires for the purposes of this Act.
- (5) A person must provide information required under this section to the Chief Executive in the manner, and within the period, specified in the notice.
- (6) A person must not, without reasonable excuse, refuse or fail to comply with a requirement under this section.  
Maximum penalty: \$2 500.
- (7) If a person refuses or fails, without reasonable excuse, to comply with a requirement under subsection (1), the Chief Executive may, after consultation with the person—
  - (a) report the refusal or failure to the Minister; and
  - (b) include details of the refusal or failure in the annual report of the Department.

### **14—Sharing of information between certain persons and bodies**

- (1) This section applies to the following persons and bodies:
  - (a) the Chief Executive;
  - (b) schools;
  - (c) stand-alone preschools;
  - (d) children's services centres;
  - (e) State authorities;
  - (f) any other person or body declared by the regulations to be included within the ambit of this subsection.

- (2) Despite any other Act or law, a person or body to whom this section applies (the *provider*) may, in accordance with any requirement set out in the regulations for the purposes of this Act, provide prescribed information and documents to another person or body to whom this section applies (the *recipient*) if the provider reasonably believes that the provision of the information or documents would assist the recipient—
  - (a) to perform official functions relating to the education, health, safety, welfare or wellbeing of a child; or
  - (b) to manage any risk to a child or class of children that might arise in the recipient's capacity as an employer or provider of services.
- (3) Despite any other Act or law, information or documents that do not directly or indirectly disclose the identity of any person may be provided by one person or body to whom this section applies to another without restriction.
- (4) Subsection (3) applies—
  - (a) whether or not the information or documents consist of or include prescribed information and documents; and
  - (b) whether or not the information or documents ever disclosed the identity of a person, or has been redacted so as to de-identify it.
- (5) Information may be provided under this section regardless of whether the provider has been requested to provide the information.
- (6) A person or body who receives information or documents under this section must not (unless the information or documents are otherwise provided to a person or body to which this section applies under this section) disclose or communicate the information or documents to another person or body except where the disclosure or communication—
  - (a) is required to assist the person or body disclosing or communicating the information or documents in the proper performance of official functions or duties relating to the education, health, safety, welfare or wellbeing of a child; or
  - (b) is required to assist the person or body disclosing or communicating the information or documents in the management of any risk to a child or class of children that might arise in the person's or body's capacity as an employer or provider of services; or
  - (c) is reasonably required to lessen or prevent a serious threat to the life, health or safety of a child or other persons; or
  - (d) is required or authorised under this Act or any other Act or law; or
  - (e) is required or authorised by an order of a court or tribunal; or
  - (f) is with the consent of—
    - (i) in the case of information or documents that relate to a child—a person responsible for the child to whom it relates; or
    - (ii) in any other case—the person to whom the information or documents relate; or

(g) is in circumstances or for a purpose prescribed by the regulations.

Maximum penalty: \$10 000.

(7) Information or documents that have been disclosed or communicated under this section for a particular purpose must not be used for any other purpose by—

- (a) the person to whom the information or documents were disclosed or communicated; or
- (b) any other person who gains access to the information or documents (whether properly or improperly and whether directly or indirectly) as a result of that disclosure or communication,

unless—

- (c) it relates to the health, safety, welfare or wellbeing of a child or class of children; or
- (d) it is in circumstances or for a purpose prescribed by the regulations.

Maximum penalty: \$10 000.

(8) In this section—

***prescribed information and documents*** means—

- (a) information or documents relating to the education, health, safety, welfare or wellbeing of a particular child or class of children; or
- (b) any other information or document of a kind prescribed by the regulations for the purposes of this definition;

***State authorities***—the following persons and bodies are State authorities:

- (a) a person who holds an office established by an Act;
- (b) a public sector agency;
- (c) South Australia Police;
- (d) a local council constituted under the *Local Government Act 1999*;
- (e) any incorporated or unincorporated body—
  - (i) established for a public purpose by an Act; or
  - (ii) established for a public purpose under an Act (other than an Act providing for the incorporation of companies or associations, cooperatives, societies or other voluntary organisations); or
  - (iii) established, or subject to control or direction, by the Governor, a Minister of the Crown or any instrumentality or agency of the Crown or a local council (whether or not established by or under an Act or an enactment);
- (f) any other person or body declared by the regulations to be a State authority for the purposes of this Act,

but does not include a person or body declared by the regulations to be excluded from the ambit of this definition.

## 15—Report

- (1) The Chief Executive must, on or before 31 March in each year, report to the Minister on the operation of the Department during the 12 months ending on 31 December in the preceding year.
- (2) A report under this section must include the information required by the regulations.
- (3) The Minister must, within 12 sitting days after receiving a report under this section, have copies of the report laid before both Houses of Parliament.

## Part 4—Preschools and children's services centres

### Division 1—School-based preschools

#### 16—Minister may establish school-based preschools

- (1) The Minister may establish such school-based preschools as the Minister thinks fit.
- (2) A school-based preschool—
  - (a) must be established in relation to the school specified by the Minister; and
  - (b) must provide preschool education as a program of the specified school; and
  - (c) will, for the purposes of this Act, be taken to form part of the specified school,

(and, for the purposes of this Act and the *Education and Early Childhood Services (Registration and Standards) Act 2011* or any other Act or law, a reference to the school will, unless the contrary intention is indicated, be taken to include a reference to the school-based preschool).
- (3) A school-based preschool—
  - (a) may consist of such number of campuses or sites as the Minister thinks fit; and
  - (b) need not be located at the same campus or site as the specified school in relation to which it is established.
- (4) To avoid doubt, if a school-based preschool consists of more than 1 campus or site, an individual campus or site will be taken not to constitute a separate preschool for the purposes of the *Education and Early Childhood Services (Registration and Standards) Act 2011* or any other Act or law.

#### 17—Governing councils of school-based preschools

- (1) Subject to this Act, the governing council of the school in relation to which a school-based preschool is established is the governing council for the school-based preschool.
- (2) If the Minister establishes a school-based preschool in relation to an existing school, the Minister—
  - (a) must appoint to the governing council of the school such number of persons who are responsible for children attending, or who are to attend, the preschool as the Minister considers appropriate to represent the preschool; and

- (b) must take such action under section 40 as the Minister thinks fit to ensure the constitution of the governing council reflects the establishment of the preschool; and
  - (c) must comply with any other requirements set out in the regulations.
- (3) If the Minister establishes a school-based preschool in relation to a new school, the Minister must ensure that the governing council of the school established under section 34 includes such number of persons who are responsible for children attending, or who are to attend, the preschool as the Minister considers appropriate to represent the preschool.

## **Division 2—Stand-alone preschools and children's services centres**

### **18—Minister may establish stand-alone preschools and children's services centres**

- (1) The Minister may establish such stand-alone preschools as the Minister thinks fit.
- (2) The Minister may establish such children's services centres as the Minister thinks fit.
- (3) A stand-alone preschool or children's services centre may consist of such number of campuses or sites as the Minister thinks fit.
- (4) To avoid doubt, if a stand-alone preschool or children's services centre consists of more than 1 campus or site, an individual campus or site will be taken not to constitute a separate preschool or children's services centre for the purposes of the *Education and Early Childhood Services (Registration and Standards) Act 2011* or any other Act or law.

### **19—Governing councils of stand-alone preschools and children's services centres**

- (1) The Minister must, by notice in the Gazette, establish a governing council for each stand-alone preschool or children's services centre.
- (2) Subject to this Act, the same body may be the governing council for 2 or more stand-alone preschools or children's services centres, or a combination of stand-alone preschools and children's services centres.
- (3) The governing council of a stand-alone preschool or children's services centre—
  - (a) is a body corporate with perpetual succession and a common seal; and
  - (b) has, subject to this Act and its constitution, all the powers of a natural person that are capable of being exercised by a body corporate; and
  - (c) is not an agency or instrumentality of the Crown.
- (4) Except where the governing council adopts a constitution approved by the Minister under section 21, the governing council of a stand-alone preschool or children's services centre is to operate under the model constitution for governing councils of the relevant kind.
- (5) Subject to this Act and its constitution, the governing council of a stand-alone preschool or children's services centre may determine its own procedures.

- (6) The regulations may make further provision in relation to governing councils of stand-alone preschools and children's services centres for the purposes of this Act.

## **20—Composition of governing councils of stand-alone preschools and children's services centres**

- (1) Subject to this Act, the governing council for a stand-alone preschool or children's services centre consists of—
- (a) the director of the preschool or children's services centre (*ex officio*); and
  - (b) such number of other persons as the Minister may from time to time determine, being persons elected or appointed in accordance with the governing council's constitution, or appointed by the Minister under this Act.
- (2) Subject to this Act, a majority of the persons appointed under subsection (1)(b) must be persons who are responsible for children attending, or who are to attend, the stand-alone preschool or children's services centre.
- (3) The governing council of a stand-alone preschool or children's services centre must, in accordance with the governing council's constitution, appoint or elect one of its members to be the presiding member of the governing council, being a person who—
- (a) is responsible for a child attending, or a child who is to attend, the stand-alone preschool or children's services centre; and
  - (b) is not a member of the staff of the stand-alone preschool or children's services centre,
- (however, the governing council may, with the approval of the Chief Executive and until such time as a person who is not a person referred to in paragraph (b) is willing to be the presiding member, disregard the requirement under paragraph (b) if there is no other member willing to be the presiding member).
- (4) If an election of members of the governing council of a stand-alone preschool or children's services centre fails because no person nominates, or an insufficient number of persons nominate, for the election, or no votes are cast in the election, then—
- (a) the Minister must conduct at least one supplementary election in accordance with the governing council's constitution; and
  - (b) if that election or those elections also fail, the Minister may appoint such persons to the governing council as the Minister thinks fit (and subsection (2) will be taken not to apply in relation to the governing council in such a case).
- (5) To avoid doubt, subsection (4) applies despite any provision of a governing council's constitution to the contrary.

## **21—Approval of constitutions by Minister**

- (1) The Minister may, on application or on the Minister's own motion, by notice in writing, approve a constitution to be adopted by the governing council of a stand-alone preschool or children's services centre.
- (2) An application under subsection (1)—
- (a) must be made in a manner and form determined by the Minister; and
  - (b) must be accompanied by a copy of the proposed constitution.

- (3) However, the Minister may only approve a constitution if the Minister is satisfied that the constitution contains—
  - (a) the information and provisions required by the regulations in respect of a constitution of the relevant kind; and
  - (b) a provision requiring the governing council to participate in a scheme for the resolution of disputes between the governing council and the director of the stand-alone preschool or children's services centre; and
  - (c) a provision requiring the members of the governing council to comply with a code of practice approved by the Minister under section 10(2)(b); and
  - (d) any other information or provisions that the Minister may reasonably require (including provisions prohibiting the governing council from taking, or not taking, specified actions or otherwise limiting the powers that may be exercised by the governing council).
- (4) Nothing in this section requires the Minister to approve a particular constitution or a particular provision of a constitution.
- (5) The Minister must cause a copy of each constitution approved under this section, as in force from time to time—
  - (a) to be kept available for public inspection during normal office hours at an office determined by the Minister; and
  - (b) to be published on a website determined by the Minister.

## **22—Amendment of constitutions**

- (1) The Minister may, if the Minister considers it necessary or appropriate to do so, by notice in the Gazette, amend the constitution of the governing council of a stand-alone preschool or children's services centre.
- (2) An amendment of a constitution under subsection (1) has effect—
  - (a) if the notice specifies a day on which the amendment is to have effect—from that day; or
  - (b) if the notice does not specify such a day—from the day on which the notice is published in the Gazette.
- (3) Without limiting subsection (1), the Minister may, by notice in writing, direct the governing council of a stand-alone preschool or children's services centre to make such amendments to its constitution as are specified in the notice.
- (4) However, the Minister must not give a direction under subsection (3) unless the Minister—
  - (a) has given written notice to the governing council setting out the proposed amendments at least 3 months before the direction; and
  - (b) has had regard to any submissions made by the governing council before the date specified in the notice.
- (5) Subject to this Act, the governing council of a stand-alone preschool or children's services centre may amend its constitution in accordance with its constitution.

- (6) An amendment of a constitution under subsection (3) or (5) has no effect until it is approved by the Minister in accordance with any requirements set out in the regulations.

### **23—Functions and powers of governing councils**

Subject to this Act, the governing council of a stand-alone preschool or children's services centre—

- (a) is jointly responsible with the director of the preschool or children's services centre for the governance of the preschool or children's services centre; and
- (b) is to fulfil the roles specified in the constitution of the preschool or children's services centre in respect of—
  - (i) strategic planning for the preschool or children's services centre; and
  - (ii) determining policies for the preschool or children's services centre; and
  - (iii) determining the application of the total financial resources available to the preschool or children's services centre; and
  - (iv) presenting operational plans and reports on its operations to the community and the Minister,

and has such other functions and powers as may be conferred on it—

- (c) by or under this Act; or
- (d) by the Minister or the Chief Executive; or
- (e) by its constitution.

### **24—Limitations on powers of governing councils**

- (1) The governing council of a stand-alone preschool or children's services centre may only enter into a transaction involving the acquisition or disposal of real property with the Minister's written consent.
- (2) The governing council of a stand-alone preschool or children's services centre may only borrow money with the Minister's written consent.
- (3) The governing council of a stand-alone preschool or children's services centre must not interfere, or take any action that interferes, with—
  - (a) in the case of a stand-alone preschool—the provision, or the day-to-day management of the provision, of preschool education in the preschool; or
  - (b) in the case of a children's services centre—the provision, or the day-to-day management of the provision, of children's services at the children's services centre; or
  - (c) in any case—the administration of discipline to children attending the stand-alone preschool or children's services centre.
- (4) The governing council of a stand-alone preschool or children's services centre must not give directions to the director of the preschool or children's services centre or any other member of the staff of the preschool or children's services centre (other than an employee of the governing council), in relation to the manner in which the person carries out their duties.



- (5) A complaint received by the governing council of a stand-alone preschool or children's services centre against the director or any other member of the staff of the preschool or children's services centre (other than an employee of the governing council) must—
  - (a) in the case of a complaint against the director—be passed on without comment to the Chief Executive; and
  - (b) in any other case—be passed on without comment to the director of the preschool or children's services centre.
- (6) The Treasurer may guarantee repayment by a governing council of a stand-alone preschool or children's services centre of a loan (together with interest and incidental charges connected with the loan).
- (7) A liability of the Treasurer arising under a guarantee under this section will be satisfied out of the Consolidated Account (which is appropriated to the necessary extent).

### **Division 3—Continuation of children's services centres registered under *Children's Services Act 1985***

#### **25—Application of Division**

- (1) This Division applies to a children's services centre that was, immediately before the commencement of this section, registered under the *Children's Services Act 1985* (a **registered children's services centre**).
- (2) Nothing in this Division affects the registration (if any) of a registered children's services centre under the *Education and Early Childhood Services (Registration and Standards) Act 2011*.

#### **26—Continuation of registered children's services centres**

- (1) Subject to this Act, the following provisions apply to a registered children's services centre:
  - (a) the registered children's services centre will be taken to continue as—
    - (i) a stand-alone preschool established under this Act; or
    - (ii) a children's services centre established under this Act,
 (determined according to the services provided by the registered children's services centre immediately prior to the commencement of this section);
  - (b) the management committee of the registered children's services centre will continue as the governing council of the children's services centre or stand-alone preschool (and sections 19 and 20 will be taken not to apply to the governing council);
  - (c) the constitution of the registered children's services centre (as in force immediately before the commencement of this section) continues in force as the constitution of the governing council of the children's services centre or stand-alone preschool.
- (2) To avoid doubt, a registered children's services centre continues as a stand-alone preschool or a children's services centre under subsection (1)(a) as a body corporate.

- (3) A reference in any Act, instrument or document to a registered children's services centre, or to the management committee of a registered children's services centre, is to be construed according to the operation of subsection (1).
- (4) Nothing in this section affects any title to the property, assets or liabilities of a registered children's services centre.
- (5) A stand-alone preschool or children's services centre continued under this Division is exempt from the payment of land tax under the *Land Tax Act 1936*.

## **Division 4—Removal of members of governing councils etc**

### **27—Minister may remove member of governing council**

The Minister may remove a member of the governing council of a stand-alone preschool or children's services centre from office—

- (a) for misconduct (including any breach of a code of practice approved by the Minister under section 10(2)(b) and applying to the member); or
- (b) for failure or incapacity to carry out the duties of office satisfactorily; or
- (c) for any other reasonable cause.

### **28—Minister may prohibit or limit performance of functions etc by governing council**

- (1) The Minister may, if the Minister considers it necessary or appropriate to do so, by notice in writing, prohibit or limit the performance of a specified function, or the exercise of a specified power, by the governing council of a stand-alone preschool or children's services centre.
- (2) The Minister must cause a copy of a notice under subsection (1) to be given to the director of the stand-alone preschool or children's services centre (as the case requires).
- (3) A prohibition or limitation imposed under this section—
  - (a) must comply with any requirements set out in the regulations; and
  - (b) has effect despite the provisions of the constitution of the governing council.
- (4) The Minister may, by notice in writing, vary or revoke a notice under subsection (1).

## **Division 5—Closure of stand-alone preschools and children's services centres**

### **29—Closure of stand-alone preschools and children's services centres**

- (1) The Minister may, on an application by the governing council of a stand-alone preschool or children's services centre, close the stand-alone preschool or children's services centre.

- (2) The Minister may, on the Minister's own motion, close a stand-alone preschool or children's services centre—
  - (a) in the case of a stand-alone preschool (including a stand-alone preschool continued under Division 3)—if less than 10 children per year attend the preschool for a period of 2 successive years; or
  - (b) in any case—in any circumstances prescribed by the regulations for the purposes of this subsection.
- (3) In the case of the closure of a stand-alone preschool or a children's services centre (other than a stand-alone preschool or children's services centre continued under Division 3), all assets, rights and liabilities of the preschool or children's services centre will, on the closure of the preschool or children's services centre, vest in the Minister.
- (4) Subject to any provision of the constitution of the preschool or children's services centre to the contrary, in the case of the closure of a stand-alone preschool or a children's services centre (being a stand-alone preschool or children's services centre continued under Division 3), all assets, rights and liabilities of the preschool or children's services centre will, on the closure of the preschool or children's services centre, vest in the Minister.
- (5) The Minister may, by notice in the Gazette, dissolve the incorporation of a stand-alone preschool or children's services centre closed under this section, or the governing council of such a preschool or children's services centre (or both).
- (6) However, the Minister need not comply with the requirements of this section in relation to the temporary closure of a stand-alone preschool or children's services centre in an emergency or for the purposes of carrying out building work.
- (7) The regulations may make further provision in relation to the closure of stand-alone preschools and children's services centres for the purposes of this Act.

## **Division 6—Miscellaneous**

### **30—Conflict of interest**

- (1) A member of the governing council of a stand-alone preschool or children's services centre who has a direct or indirect pecuniary interest in a contract or proposed contract with the governing council—
  - (a) must, as soon as the member becomes aware of the interest, disclose the nature of the interest to the governing council; and
  - (b) must not take part in discussions or decisions of the governing council with respect to that contract; and
  - (c) must not vote in relation to that contract; and
  - (d) must be absent from the meeting room when any such discussion or voting is taking place.

Maximum penalty: \$20 000.

- (2) If a member of the governing council of a stand-alone preschool or children's services centre discloses an interest in a contract or proposed contract in accordance with this section—
  - (a) the contract is not liable to be avoided by the governing council on any ground arising from the fiduciary relationship between the member and the governing council; and
  - (b) the member is not liable to account for profits derived from the contract.
- (3) This section does not apply in relation to a contract in which a member of the governing council of a stand-alone preschool or children's services centre has an interest while the member remains unaware that they have an interest in the contract, but in any proceedings against the member the burden will lie on the member to prove that they were not, at the material time, aware of the interest.

### **31—Accounts may be audited**

The Chief Executive or the Auditor-General may, at any time, inspect or audit accounts kept by the governing council of a stand-alone preschool or children's services centre.

### **32—Corporal punishment prohibited**

- (1) Corporal punishment (however described) must not be imposed on a child enrolled in, or attending at, a preschool or children's services centre.
- (2) The Chief Executive must take all reasonable steps to ensure that principals, directors, officers of the teaching service and all other persons employed in, or in relation to, a Government preschool or children's services centre comply with subsection (1).
- (3) For the purposes of the *Criminal Law Consolidation Act 1935*, corporal punishment will be taken not to amount to conduct that lies within limits of what would be generally accepted in the community as normal incidents of social interaction or community life.

## **Part 5—Government schools**

### **Division 1—Establishment of schools**

#### **33—Minister may establish schools**

- (1) The Minister may establish such schools as the Minister thinks fit.
- (2) A school may consist of such number of campuses or sites as the Minister thinks fit.
- (3) To avoid doubt, if a school consists of more than 1 campus or site, an individual campus or site will be taken not to constitute a separate school for the purposes of the *Education and Early Childhood Services (Registration and Standards) Act 2011* or any other Act or law.

## Division 2—Governing councils and affiliated committees

### Subdivision 1—Governing councils and affiliated committees

#### 34—Governing councils of schools

- (1) The Minister must, by notice in the Gazette, establish a governing council for each school established under this Act.
- (2) Subject to this Act, the same body may be the governing council for 2 or more schools.
- (3) A governing council—
  - (a) is a body corporate with perpetual succession and a common seal; and
  - (b) has, subject to this Act and its constitution, all the powers of a natural person that are capable of being exercised by a body corporate; and
  - (c) is not an agency or instrumentality of the Crown.
- (4) Except where the governing council adopts a constitution approved by the Minister under Subdivision 2, the governing council of a school is to operate under the model constitution for governing councils of the relevant kind.
- (5) Subject to this Act and its constitution, the governing council of a school may determine its own procedures.
- (6) The regulations may make further provision in relation to governing councils of schools for the purposes of this Act.

#### 35—Composition of governing councils of schools

- (1) Subject to this Act, the governing council of a school consists of—
  - (a) the principal of the school (*ex officio*); and
  - (b) such number of other persons as the Minister may from time to time determine, being persons elected or appointed in accordance with the governing council's constitution, or appointed by the Minister under this Act.
- (2) Subject to this Act, a majority of the persons appointed under subsection (1)(b) must, unless the school is wholly or principally for adult students, be persons who are responsible for students enrolled in, or children who are to attend, the school.
- (3) The governing council of a school must, in accordance with the governing council's constitution, appoint or elect one of its members to be the presiding member of the governing council, being a person who—
  - (a) except in the case of a school that is wholly or principally for adult students, is responsible for a student enrolled in, or a child who is to attend, the school; and
  - (b) is not a member of the staff of the school or a person employed in an administrative unit for which the Minister is responsible,

(however, the governing council may, with the approval of the Chief Executive and until such time as a person who is not a person referred to in paragraph (b) is willing to be the presiding member, disregard the requirement under paragraph (b) if there is no other member willing to be the presiding member).

- (4) If an election of members of the governing council of a school fails because no person nominates, or an insufficient number of persons nominate, for the election, or no votes are cast in the election, then—
  - (a) the Minister must conduct at least one supplementary election in accordance with the governing council's constitution; and
  - (b) if that election or those elections also fail, the Minister may appoint such persons to the governing council as the Minister thinks fit (and subsection (2) will be taken not to apply in relation to the governing council in such a case).
- (5) To avoid doubt, subsection (4) applies despite the provisions of the governing council's constitution to the contrary.
- (6) If a school includes, or is to include, a school-based preschool, the governing council will be taken to include any persons appointed under section 17(2).

### **36—Affiliated committees**

- (1) The Minister may authorise the establishment of committees to be affiliated with a governing council (an *affiliated committee*).

**Note—**

An example of an affiliated committee would be a parents and friends committee.

- (2) Except where an affiliated committee adopts a constitution approved by the Minister under Subdivision 2, an affiliated committee is to operate under the model constitution for affiliated committees of the relevant kind.
- (3) The regulations may make further provision in relation to affiliated committees for the purposes of this Act.

### **37—Conflict of interest**

- (1) A member of the governing council of a school who has a direct or indirect pecuniary interest in a contract or proposed contract with the governing council—
  - (a) must, as soon as the member becomes aware of the interest, disclose the nature of the interest to the governing council; and
  - (b) must not take part in discussions or decisions of the governing council with respect to that contract; and
  - (c) must not vote in relation to that contract; and
  - (d) must be absent from the meeting room when any such discussion or voting is taking place.

Maximum penalty: \$20 000.

- (2) A member of an affiliated committee who has a direct or indirect pecuniary interest in a contract or proposed contract with the affiliated committee, or the governing council with which the committee is affiliated—
- (a) must, as soon as the member becomes aware of the interest, disclose the nature of the interest to the affiliated committee and governing council; and
  - (b) must not take part in discussions or decisions of the affiliated committee with respect to that contract; and
  - (c) must not vote in relation to that contract; and
  - (d) must be absent from the meeting room when any such discussion or voting is taking place.

Maximum penalty: \$20 000.

- (3) If a member of the governing council of a school or an affiliated committee discloses an interest in a contract or proposed contract in accordance with this section—
- (a) the contract is not liable to be avoided by the governing council or affiliated committee on any ground arising from the fiduciary relationship between the member and the governing council or affiliated committee (as the case requires); and
  - (b) the member is not liable to account for profits derived from the contract.
- (4) This section does not apply in relation to a contract in which a member of the governing council of a school or an affiliated committee has an interest while the member remains unaware that they have an interest in the contract, but in any proceedings against the member the burden will lie on the member to prove that they were not, at the material time, aware of the interest.

### **38—Accounts may be audited**

The Chief Executive or the Auditor-General may, at any time, inspect or audit accounts kept by the governing council of a school or an affiliated committee.

### **Subdivision 2—Approval and amendment of constitutions**

#### **39—Approval of constitutions by Minister**

- (1) The Minister may, on application or on the Minister's own motion, by notice in writing, approve a constitution to be adopted by the governing council of a school or an affiliated committee.
- (2) An application under subsection (1)—
- (a) must be made in a manner and form determined by the Minister; and
  - (b) must be accompanied by a copy of the proposed constitution.
- (3) However, the Minister may only approve a constitution if the Minister is satisfied that the constitution contains—
- (a) the information and provisions required by the regulations in respect of a constitution of the relevant kind; and
  - (b) in the case of a constitution of a governing council—

- (i) a provision requiring the governing council to participate in a scheme for the resolution of disputes between the governing council and the principal of the school; and
  - (ii) a provision requiring the members of the governing council to comply with a code of practice approved by the Minister under section 10(2)(b); and
- (c) any other information or provisions that the Minister may reasonably require (including, in the case of a governing council of a school, provisions prohibiting the governing council from taking, or not taking, specified actions or otherwise limiting the powers that may be exercised by the governing council).
- (4) Nothing in this section requires the Minister to approve a particular constitution or a particular provision of a constitution.
- (5) The Minister must cause a copy of each constitution approved under this section, as in force from time to time—
  - (a) to be kept available for public inspection during normal office hours at an office determined by the Minister; and
  - (b) to be published on a website determined by the Minister.

#### **40—Amendment of constitutions**

- (1) The Minister may, if the Minister considers it necessary or appropriate to do so, by notice in the Gazette, amend the constitution of the governing council of a school or an affiliated committee.
- (2) An amendment of a constitution under subsection (1) has effect—
  - (a) if the notice specifies a day on which the amendment is to have effect—from that day; or
  - (b) if the notice does not specify such a day—from the day on which the notice is published in the Gazette.
- (3) The Minister may, by notice in writing, direct the governing council of a school or an affiliated committee to make such amendments to its constitution as are specified in the notice.
- (4) However, the Minister must not give a direction under subsection (3) unless the Minister—
  - (a) has given written notice to the governing council or affiliated committee setting out the proposed amendments at least 3 months before the direction is given; and
  - (b) has had regard to any submissions made by the governing council or affiliated committee (as the case requires) made before the date specified in the notice.
- (5) Subject to this Act, the governing council of a school or an affiliated committee may amend its constitution in accordance with its constitution.
- (6) An amendment of a constitution under subsection (3) or (5) has no effect until it is approved by the Minister in accordance with any requirements set out in the regulations.



### **Subdivision 3—Functions and powers of governing councils and affiliated committees**

#### **41—Functions and powers of governing councils and affiliated committees**

- (1) Subject to this Act, the governing council of a school—
  - (a) is jointly responsible with the principal of the school for the governance of the school; and
  - (b) is to fulfil the roles specified in the constitution of the governing council in respect of—
    - (i) strategic planning for the school; and
    - (ii) determining policies for the school; and
    - (iii) determining the application of the total financial resources available to the school; and
    - (iv) presenting operational plans and reports on its operations to the community and the Minister,and has such other functions and powers as may be conferred on it—
  - (c) by or under this Act; or
  - (d) by the Minister or the Chief Executive; or
  - (e) by its constitution.
- (2) Subject to this Act, an affiliated committee has such functions and powers as may be conferred on it—
  - (a) by or under this Act; or
  - (b) by the governing council with which it is affiliated; or
  - (c) by its constitution.

#### **42—Limitations on powers of governing councils and affiliated committees**

- (1) The governing council of a school may only enter into a transaction involving the acquisition or disposal of real property with the Minister's written consent.
- (2) The governing council of a school may only borrow money with the Minister's written consent.
- (3) The governing council of a school or an affiliated committee must not interfere, or take any action that interferes, with—
  - (a) the provision, or the day-to-day management of the provision, of instruction in the school in accordance with the curriculum determined by the Chief Executive; or
  - (b) the administration of discipline to students enrolled at or attending the school.
- (4) The governing council of a school or an affiliated committee must not give directions to the principal, or any other member of the staff of the school (other than an employee of the governing council), in relation to the manner in which the person carries out their duties.

- (5) A complaint received by the governing council of a school or an affiliated committee against the principal or any other member of the staff of the school (other than an employee of the governing council) must—
  - (a) in the case of a complaint against the principal—be passed on without comment to the Chief Executive; and
  - (b) in any other case—be passed on without comment to the principal of the school.
- (6) The Treasurer may guarantee repayment by the governing council of a school of a loan (together with interest and incidental charges connected with the loan).
- (7) A liability of the Treasurer arising under a guarantee under this section will be satisfied out of the Consolidated Account (which is appropriated to the necessary extent).

#### **Subdivision 4—Arrangements on closure or amalgamation of schools**

##### **43—Minister may make arrangements for governing councils etc on closure or amalgamation of school**

- (1) The Minister may, by notice in the Gazette, in relation to the amalgamation or closure of a school under Division 3—
  - (a) dissolve the governing council of the school; or
  - (b) dissolve the governing councils of 2 or more schools and establish a single governing council for those schools; or
  - (c) if a governing council operates for 2 or more schools, dissolve the governing council and establish separate governing councils for those schools.
- (2) The Minister may, by notice in the Gazette, dissolve an affiliated committee following the amalgamation or closure of a school.
- (3) The Minister may, in establishing a governing council under this section, determine the constitution under which the governing council is to operate and make arrangements for the election or appointment of the governing council's elected or appointed members.
- (4) If the governing council of a school or affiliated committee is dissolved under this section—
  - (a) the Minister may, by notice in the Gazette, transfer specified assets or liabilities (or both) of the governing council or affiliated committee to a specified person or body; and
  - (b) any remaining assets and liabilities of the governing council or affiliated committee vest in the Minister.
- (5) No stamp duty is payable under a law of the State in respect of a transfer under subsection (4).

## **Subdivision 5—Removal of members of governing councils and affiliated committees etc**

### **44—Minister may remove member of governing council or affiliated committee**

The Minister may remove a member of the governing council of a school or an affiliated committee from office—

- (a) for misconduct (including any breach of a code of practice approved by the Minister under section 10(2)(b) and applying to the member); or
- (b) for failure or incapacity to carry out the duties of office satisfactorily; or
- (c) for any other reasonable cause.

### **45—Minister may prohibit or limit performance of functions etc by governing council or affiliated committee**

- (1) The Minister may, if the Minister considers it necessary or appropriate to do so, by notice in writing, prohibit or limit the performance of a specified function, or the exercise of a specified power, by the governing council of a school or an affiliated committee.
- (2) The Minister must cause a copy of a notice under subsection (1) to be given to the principal of the school.
- (3) A prohibition or limitation imposed under this section—
  - (a) must comply with any requirements set out in the regulations; and
  - (b) has effect despite the provisions of the constitution of the governing council or affiliated committee.
- (4) The Minister may, by notice in writing, vary or revoke a notice under subsection (1).

## **Subdivision 6—Governing Councils Legal Fund**

### **46—Interpretation**

In this Subdivision—

*Crown Solicitor* has the same meaning as in the *Crown Proceedings Act 1992*;

*Fund* means the Governing Councils Legal Fund established under section 47.

### **47—Governing Councils Legal Fund**

- (1) There will be a fund kept in a separate account at the Treasury to be called the *Governing Councils Legal Fund*.
- (2) The Fund consists of—
  - (a) the money provided by Parliament for the purposes of the Fund; and
  - (b) any money paid into the Fund under this or any other Act.
- (3) Any money standing to the credit of the Fund that is not for the time being required for the purposes of this Act may be invested by the Treasurer.

- (4) Income from investment of the Fund will, at the direction of the Treasurer, be paid into the Fund or into the Consolidated Account.
- (5) A deficiency in the Fund will be met from the Consolidated Account.

#### **48—Payments from Fund**

- (1) The Fund is to be applied as follows:
  - (a) as payment for the costs of independent legal advice incurred, or to be incurred, by the governing council of a school in relation to a dispute between the governing council and the Department;
  - (b) as payment of the expenses of administering the Fund;
  - (c) as may otherwise be authorised by or under this or any other Act.
- (2) The governing council of a school may, in a manner and form determined by the Crown Solicitor, apply to the Crown Solicitor for approval of a payment from the Fund under subsection (1)(a).
- (3) The Crown Solicitor may refer an application by a governing council under subsection (2) for determination by such other person as is nominated by the Crown Solicitor (a *nominated person*).
- (4) A payment may only be made from the Fund under subsection (1)(a) with the approval of the Crown Solicitor or a nominated person.
- (5) A governing council making an application for payment from the Fund must provide the Crown Solicitor or a nominated person (as the case requires) with such information or documents as may reasonably be required to enable the Crown Solicitor or the nominated person to determine the application.
- (6) The Crown Solicitor or a nominated person (as the case requires) must approve the payment from the Fund under subsection (1)(a) if the Crown Solicitor or the nominated person is satisfied that—
  - (a) there is a genuine dispute between the governing council and the Department that is not trivial, frivolous or vexatious; and
  - (b) it is necessary or appropriate that the governing council seek independent legal advice in relation to the dispute; and
  - (c) the legal advice is, or is to be, provided by a legal practitioner with the appropriate skills and experience; and
  - (d) the costs of the independent legal advice incurred, or to be incurred are reasonable.
- (7) In performing a function under this section, the Crown Solicitor or a nominated person (as the case requires) is, despite the *Public Sector Act 2009* or any other Act or law, independent of direction or control by the Crown or any Minister or officer of the Crown.
- (8) Nothing in this section prevents a governing council from seeking any legal advice it thinks fit.

**49—Accounts**

The Minister must cause proper accounts to be kept of money paid into and payments made from the Fund.

**50—Audit of Fund**

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

**Division 3—Amalgamation and closure of schools****51—Amalgamation of schools**

- (1) The Minister may amalgamate 2 or more schools—
  - (a) if, in respect of each school to be amalgamated—
    - (i) if the school is wholly or principally for adult students—a majority of the students enrolled in the school; or
    - (ii) in any other case—a majority of the persons who are responsible for students enrolled in the school,  
indicate, in a manner and form determined by the Minister, that they support the amalgamation; or
  - (b) after having regard to any recommendation of a review committee following a review under section 53.
- (2) The Minister must, as soon as reasonably practicable after making a decision to amalgamate 2 or more schools, give written notice of the decision and the reasons for it to—
  - (a) the principal; and
  - (b) the governing council,  
of each school to which the decision relates.
- (3) To avoid doubt, a Government school must not be amalgamated with a non-Government school.

**52—Closure of schools**

- (1) The Minister may close a school—
  - (a) if—
    - (i) if the school is wholly or principally for adult students—a majority of the students enrolled in the school; or
    - (ii) if the school includes a school-based preschool—a majority of the persons who are responsible for students enrolled in the school and a majority of the persons who are responsible for children attending the preschool; or
    - (iii) in any other case—a majority of the persons who are responsible for students enrolled in the school,

- indicate, in a manner and form determined by the Minister, that they support the closure; or
- (b) after having regard to any recommendation of a review committee following a review under section 53.
- (2) The Minister must, as soon as reasonably practicable after making a decision to close a school, give written notice of the decision and the reasons for it to—
- (a) the principal of the school; and
- (b) the governing council of the school.
- (3) However, the Minister need not comply with the requirements of this section in relation to the temporary closure of a school in an emergency or for the purposes of carrying out building work.

### **53—Review of schools in a particular area**

- (1) The Minister may cause a review to be conducted under this section for the purposes of—
- (a) considering all of the schools within an area determined by the Minister (the *review area*); and
- (b) addressing the question of whether all of those schools continue to be required and, if not, whether 1 or more schools should be amalgamated or closed (as the case requires).
- (2) The following provisions apply to a review under this section:
- (a) the Minister must give written notice of the review to—
- (i) the principal; and
- (ii) the presiding member of the governing council, of each school to which the review relates;
- (b) the Minister must, within 21 days of giving notice under paragraph (a)—
- (i) establish a review committee under section 54 to conduct the review (the *review committee*); and
- (ii) provide the review committee with the Minister's reasons for requiring the review;
- (c) the review must be conducted by the review committee;
- (d) the review committee must, in accordance with a scheme determined by the Minister—
- (i) call for public submissions on—
- (A) the present and future use of schools within the review area; and
- (B) the likely effect on schools outside the review area in the event of the amalgamation or closure (as the case requires) of a school or schools within the review area; and
- (ii) call for submissions from or meet with—

- (A) the governing council; and
  - (B) teachers; and
  - (C) a majority of the persons who are responsible for students; and
  - (D) any other school staff,  
of each school within the review area;
- (e) the review committee must, in the course of the review, have regard to—
- (i) the educational, social and economic needs of the local communities within the review area and those of the State as a whole; and
  - (ii) any other matter specified by the Minister,
- and may have regard to any other matter the review committee considers relevant;
- (f) the review must comply with any other requirement set out in the regulations.
- (3) A review committee must, no later than the date specified by the Minister (being not less than 3 months after the date on which the committee was established), submit to the Minister a written report setting out—
- (a) the findings of the review committee in respect of the review; and
  - (b) the recommendations of the review committee in respect of the amalgamation or closure of any school within the review area (including, to avoid doubt, a recommendation that a school not be amalgamated or closed).
- (4) If a review committee has not provided a written report under subsection (3) within the period specified by the Minister, the review committee will be taken to have recommended that any amalgamation or closure (as the case requires) to which the review relates occur.

#### **54—Review committees**

- (1) The Minister may establish a committee (a *review committee*) to conduct a review under section 53.
- (2) A review committee will consist of the following members, appointed by the Minister:
  - (a) at least 2 persons nominated by the Minister (1 of whom will be appointed by the Minister to be the presiding member);
  - (b) —
    - (i) if the review area under section 53 falls wholly or partly within the area of a local council—the principal member of the local council (or a person nominated by the principal member); or
    - (ii) in any other case—a person nominated by the Minister to whom the administration of the *Local Government Act 1999* is committed;
  - (c) the Chief Executive or a person nominated by the Chief Executive;
  - (d) a person (not being a teacher at a school to which the review relates) nominated by the Australian Education Union (SA Branch);
  - (e) the principal of each school to which the review relates;

- (f) a person nominated by the governing council of each school to which the review relates.
- (3) If, after making a request by notice in writing, the Minister does not receive a nomination under subsection (2)(d) within the time specified in the notice (which must not be less than 14 days) the Minister may, in lieu of such a nominee, appoint a person who is a member of staff of a school to which the review relates in accordance with the regulations.
- (4) The total number of members appointed under subsection (2)(a) must not exceed the number gained by multiplying the number of schools to which the review relates by 2.
- (5) The Minister must appoint a member of a review committee, nominated by the presiding member, to be the deputy presiding member.
- (6) The terms and conditions of membership of a review committee will be as determined by the Minister.
- (7) A quorum of a review committee consists of one half the total number of its members (ignoring any fraction resulting from the division) plus 1.
- (8) Each member of a review committee is entitled to 1 vote on any question arising for decision by the committee.
- (9) A decision supported by a majority of the votes cast by members of the review committee present at a meeting of the committee is a decision of the committee.
- (10) The presiding member or, in the presiding member's absence, the deputy presiding member will preside at any meeting of a review committee.
- (11) The person presiding at a meeting of a review committee has, in addition to a deliberative vote, a casting vote in the event of an equality of votes.
- (12) An act or proceeding of a review committee is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.
- (13) Subject to this Act, a review committee may determine its own procedures.

### **55—Minister to report to Parliament if recommendations of review committee not followed**

If the Minister makes a decision that a school should be closed, or that 2 or more schools should be amalgamated, contrary to the recommendations of a review committee, the Minister must, within 3 sitting days of the decision, cause a copy of the review committee's report under section 53(3) and a statement of the reasons for the Minister's decision to be laid before each House of Parliament.

## **Part 6—Special purpose schools**

### **56—Minister may establish special purpose schools**

- (1) The Minister may establish schools (*special purpose schools*) for the following purposes:
- (a) the provision of primary or secondary education to children and other persons detained in training centres or prisons;



- (b) the provision of primary or secondary education to children and other persons in hospitals or other healthcare facilities;
  - (c) the provision of primary or secondary education to particular groups within the community;
  - (d) the provision of education in, or relating to, particular languages;
  - (e) any other purpose prescribed by the regulations for the purposes of this subsection.
- (2) A special purpose school may consist of such number of campuses or sites as the Minister thinks fit.
  - (3) To avoid doubt, if a special purpose school consists of more than 1 campus or site, an individual campus or site will be taken not to constitute a separate school for the purposes of the *Education and Early Childhood Services (Registration and Standards) Act 2011* or any other Act or law.
  - (4) The regulations may make further provision in relation to special purpose schools for the purposes of this Act.

### **57—Governing council and constitution**

- (1) For the purposes of this Act, the governing council of a special purpose school consists of—
  - (a) if the constitution of the governing council provides for the composition of the governing council—the person or persons appointed by the Minister from time to time in accordance with the constitution; or
  - (b) if the constitution of the governing council does not provide for the composition of the governing council—the Chief Executive.
- (2) A governing council of a special purpose school—
  - (a) is a body corporate with perpetual succession and a common seal; and
  - (b) has, subject to this Act and its constitution, all the powers of a natural person that are capable of being exercised by a body corporate; and
  - (c) is not an agency or instrumentality of the Crown.
- (3) For the purposes of this Act, the constitution of the governing council of a special purpose school will be the constitution determined from time to time by the Minister.

### **58—Closure of special purpose schools**

- (1) The Minister may close a special purpose school for any reason the Minister thinks fit.
- (2) The Minister must, as soon as reasonably practicable after making a decision to close a special purpose school, give written notice of the decision and the reasons for it to—
  - (a) the principal of the special purpose school; and
  - (b) the persons responsible for students of the special purpose school.
- (3) However, the Minister need not comply with subsection (2) in relation to the temporary closure of a special purpose school in an emergency or for the purposes of carrying out building work.

## **59—Modification of operation of Act in relation to special purpose schools**

- (1) Part 5 does not apply to a special purpose school.
- (2) The regulations may modify the operation of specified provisions of this Act in relation to a special purpose school and the education services provided by or at a special purpose school (including by providing that specified provisions of the Act do not apply in relation to a special purpose school).

## **Part 7—Provision of education in schools**

### **Division 1—Enrolment**

#### **Subdivision 1—Compulsory enrolment in school or approved learning program**

#### **60—Children of compulsory school age must be enrolled in school**

- (1) Subject to this Act, a child of compulsory school age must be enrolled in a school in accordance with the requirements set out in the regulations.
- (2) If a child of compulsory school age is not enrolled as required by subsection (1), each person who is responsible for the child is guilty of an offence.  
Maximum penalty: \$5 000.
- (3) In proceedings for an offence against this section, it is a defence for the defendant to prove that they took such steps as were reasonably practicable to ensure that the child to whom the offence relates was enrolled as required by subsection (1).
- (4) In proceedings for an offence against this section, it is a defence for the defendant to prove that they believed on reasonable grounds that the child to whom the offence relates was, in fact, enrolled as required by subsection (1).

#### **61—Children of compulsory education age must be enrolled in approved learning program**

- (1) Subject to this Act, a child of compulsory education age must be enrolled in an approved learning program, or in a combination of approved learning programs, in accordance with the requirements set out in the regulations.
- (2) However, subsection (1) does not apply to a child of compulsory education age who has, in accordance with any requirements set out in the regulations, achieved a qualification under an approved learning program.
- (3) If a child of compulsory education age is not enrolled in an approved learning program as required by subsection (1), each person who is responsible for the child is guilty of an offence.  
Maximum penalty: \$5 000.
- (4) In proceedings for an offence against this section, it is a defence for the defendant to prove that they took such steps as were reasonably practicable to ensure that the child to whom the offence relates was enrolled as required by subsection (1).

- (5) In proceedings for an offence against this section, it is a defence for the defendant to prove that they believed on reasonable grounds that the child to whom the offence relates was, in fact, enrolled as required by subsection (1).

## **62—Chief Executive may direct that child be enrolled in particular school**

- (1) The Chief Executive may, by notice in writing, direct that a specified child be enrolled in a specified school (including a special school) if the Chief Executive is satisfied that—
- (a) the child has disabilities or learning difficulties that make it necessary or appropriate to do so; or
  - (b) it would, having regard to the child's health, safety or welfare, be appropriate to do so; or
  - (c) it would, having regard to the health, safety or welfare of students and staff at another school, be appropriate to do so,

and, if such a direction is given, the child may be refused enrolment in any school other than the specified school.

- (2) Before giving a direction under this section, the Chief Executive must take reasonable steps to consult with—
- (a) each person who is responsible for the child; and
  - (b) any other person or body prescribed by the regulations,
- and may consult with such other persons or bodies as the Chief Executive thinks fit.
- (3) The Chief Executive may, by notice in writing, vary or revoke a direction under this section.
- (4) This section does not apply in relation to a child if the child is, or is to be, enrolled in a non-Government school.
- (5) The regulations may make further provision in relation to a direction under this section for the purposes of this Act (including provisions limiting the circumstances in which a direction may be given).

## **63—Chief Executive may direct that child be enrolled in another school if improperly enrolled**

- (1) The Chief Executive may, by notice in writing, direct that a specified child who is enrolled in a Government school (including a special school) be instead enrolled at another Government school if the Chief Executive is satisfied that the child was enrolled at the school on basis of false or misleading information (including, to avoid doubt, information based on the residential address of the child or 1 or more of the persons responsible for the child).
- (2) If a direction is given under subsection (1)—
- (a) the enrolment of the child at the school will be taken to be cancelled from the date specified in the notice; and
  - (b) the child may be refused enrolment at any Government school other than the Government school specified in the notice.

- (3) The Chief Executive may, by notice in writing, vary or revoke a direction under this section.
- (4) The regulations may make further provision in relation to a direction under this section for the purposes of this Act.

## **Subdivision 2—Enrolment of adult students**

### **64—Special provisions relating to enrolment of adult students**

- (1) An adult person must not be enrolled in a school if they are a prohibited person under the *Child Safety (Prohibited Persons) Act 2016*.
- (2) Without limiting subsection (1), an adult person must not be enrolled at a school unless a working with children check has been conducted in relation to the person within the preceding 5 years.
- (3) Subsections (1) and (2) do not apply to—
  - (a) the continuing enrolment in a school of a student who attains 18 years of age while enrolled in the school; or
  - (b) the enrolment of an adult student in a special purpose school providing education to persons detained in training centres or prisons; or
  - (c) any other enrolments of a kind declared by the regulations to be included within the ambit of this subsection.
- (4) The principal of a school may refuse to enrol an adult student if the principal believes on reasonable grounds that—
  - (a) it would, having regard to the results of the person's working with children check or any other information relating to the person of which the principal is aware, be inappropriate to enrol the person in the school; or
  - (b) it would otherwise not be in the interests of the students or staff at the school to enrol the person in the school.
- (5) The principal of a school may, with the approval of the Chief Executive, refuse to enrol an adult student for any other reason the principal thinks fit.
- (6) The regulations may make further provision in relation to the enrolment of adult students in schools for the purposes of this Act.
- (7) Without limiting the generality of subsection (6), the regulations may provide for—
  - (a) the provision of information by adult students; or
  - (b) the cancellation of the enrolments of adult students.

## **Subdivision 3—Information gathering**

### **65—Certain information to be provided on enrolment**

- (1) A person who is responsible for a child who is to be enrolled in a school or an approved learning program must provide to the principal of the school or the head of the approved learning program (as the case requires)—
  - (a) the full name and each residential address of the child; and

- 
- (b) the date of birth of the child; and
  - (c) details of any school or approved learning program in which the child was previously, or is currently, enrolled; and
  - (d) information relating to the academic progress of the child in a school or approved learning program in which the child was previously, or is currently, enrolled; and
  - (e) any other information or documents prescribed by the regulations for the purposes of this subsection.
- (2) The information or documents required under subsection (1) must be provided in a manner and form determined by the principal of the school or head of the approved learning program (as the case requires).
  - (3) A person who, without reasonable excuse, refuses or fails to comply with a requirement under this section is guilty of an offence.  
Maximum penalty: \$2 500.

#### **66—Chief Executive may require further information relating to student**

- (1) The Chief Executive may, by notice in writing, require a person who is responsible for a child to provide to the Chief Executive such information or documents relating to the child as may be specified in the notice (being information or documents in the possession of the person that is reasonably required in the administration, operation or enforcement of this Act).
- (2) To avoid doubt, the information or documents that may be required under subsection (1) may include medical certificates, or other personal information, relating to a child.
- (3) The information or documents required under subsection (1) must be provided to the Chief Executive in the manner and form, and within the period, specified in the notice.
- (4) A person who, without reasonable excuse, refuses or fails to comply with a requirement under this section is guilty of an offence.  
Maximum penalty: \$2 500.

#### **67—Principal may require other principal to provide report in respect of specified child**

- (1) The principal of a school, or the head of an approved learning program, in which it is proposed a specified child be enrolled may, by notice in writing, require the principal of a specified school or the head of a specified approved learning program (being a school or approved learning program in which the child is, or was previously, enrolled) to prepare and provide a report relating to the child setting out the information specified in the notice.
- (2) A notice under subsection (1)—
  - (a) may require the following information to be provided:
    - (i) information relating to any previous or current enrolment of the child in the specified school or approved learning program;
    - (ii) information relating to the academic progress of the specified child in the specified school or approved learning program;

- (iii) information that relates to the safety or wellbeing of the specified child or that may be relevant to the safety or wellbeing of other children or persons at the school or the premises at which an approved learning program is conducted;
    - (iv) any other information of a specified kind relating to the child that the principal of the school or head of the approved learning program (as the case requires) considers necessary or appropriate in relation to the child's education; and
  - (b) must comply with any requirements set out in the regulations.
- (3) A report under subsection (1)—
  - (a) must be provided in a manner and form, and within the period, specified in the notice;
  - (b) must contain such information as may be specified in the notice.
- (4) A principal of a school or head of an approved learning program must not, without reasonable excuse, refuse or fail to comply with a requirement under subsection (1).  
Maximum penalty: \$2 500.
- (5) A principal of a school, or the head of an approved learning program to whom a report is provided under this section must not disclose personal information contained in the report to any other person or body unless the disclosure—
  - (a) is required in the proper performance of official functions or duties relating to the education, health, safety, welfare or wellbeing of a child; or
  - (b) is with the consent of—
    - (i) in the case of information that relates to a child—a person responsible for the child to whom it relates; or
    - (ii) in any other case—the person to whom the information relates; or
  - (c) is reasonably required to lessen or prevent a serious threat to the life, health, or safety of a child or other persons; or
  - (d) is required or authorised under this Act or any other Act or law; or
  - (e) is required or authorised by an order of a court or tribunal; or
  - (f) is in circumstances or for a purpose prescribed by the regulations.  
Maximum penalty: \$10 000.
- (6) Information that has been disclosed in a report under this section for a particular purpose must not be used for any other purpose by—
  - (a) the person to whom the information was disclosed; or
  - (b) any other person who gains access to the information (whether properly or improperly and whether directly or indirectly) as a result of that disclosure, unless—
    - (c) it relates to the health, safety, welfare or wellbeing of a child or class of children; or

- (d) it is in circumstances or for a purpose prescribed by the regulations.  
Maximum penalty: \$10 000.

## **Division 2—Attendance at school and participation in approved learning programs**

### **Subdivision 1—Compulsory attendance at school and participation in approved learning program**

#### **68—Child of compulsory school age must attend school**

- (1) Subject to this Act, a child of compulsory school age must attend at the school in which they are enrolled on every day, and for such parts of every day, that instruction is provided for the child at the school.
- (2) If a child of compulsory school age fails to attend school as required by subsection (1), each person who is responsible for the child is guilty of an offence.  
Maximum penalty: \$5 000.
- (3) However, subsection (2) does not apply to a particular failure to attend school if—
- (a) the reason for the failure is—
    - (i) the child was sick or infirm; or
    - (ii) there was a danger of the child being affected by an infectious or contagious disease; or
    - (iii) any other reason prescribed by the regulations; and
  - (b) a person who is responsible for the child advises the principal of the school within 5 school days after the failure of the reason for the child's failure to attend school.
- (4) In proceedings for an offence against this section, it is a defence for the defendant to prove that they took such steps as were reasonably practicable to ensure that the child to whom the offence relates attended school as required by subsection (1).

#### **69—Child of compulsory education age must participate in approved learning program**

- (1) Subject to this Act, a child of compulsory education age must participate in an approved learning program in which they are enrolled on every day, and for such parts of every day, that instruction is provided in relation to the program.
- (2) If a child of compulsory education age fails to participate in an approved learning program as required by subsection (1), each person who is responsible for the child is guilty of an offence.  
Maximum penalty: \$5 000.
- (3) However, subsection (2) does not apply to a particular failure to participate in an approved learning program if—
- (a) the reason for the failure is—
    - (i) the child was sick or infirm; or

- (ii) there was a danger of the child being affected by an infectious or contagious disease; or
    - (iii) the child was reasonably required to care for a member of the child's family; or
    - (iv) any other reason prescribed by the regulations; and
  - (b) a person who is responsible for the child advises the head of the approved learning program within 5 business days of the failure of the reason for the child's failure to participate in the approved learning program.
- (4) In proceedings for an offence against this section, it is a defence for the defendant to prove that they took such steps as were reasonably practicable to ensure that the child to whom the offence relates participated in an approved learning program as required by subsection (1).

## **Subdivision 2—Family conferences**

### **70—Purpose of family conferences**

The purpose of a family conference under this Subdivision is to provide an opportunity for a student and their family, in conjunction with the principal of a school or head of an approved learning program (as the case requires) and a family conference coordinator, to make voluntary arrangements to ensure the attendance of the student at the school, or the participation of the student in the approved learning program, in which they are enrolled (as the case requires).

### **71—Chief Executive may convene family conference**

- (1) If the Chief Executive is of the opinion that—
- (a) a student—
    - (i) is a child of compulsory school age and is regularly absent from the school in which they are enrolled; or
    - (ii) is a child of compulsory education age and regularly fails to participate in the approved learning program in which they are enrolled; and
  - (b) arrangements should be made to attempt to improve their attendance or participation; and
  - (c) it would be appropriate in all of the circumstances to make those arrangements by means of a family conference,

then the Chief Executive may (after consulting with the principal of the school or the head of the approved learning program in which the student is enrolled) convene a family conference under this Subdivision.

- (2) A family conference is to be conducted by a family conference coordinator (the *coordinator*) nominated by the Chief Executive.
- (3) Subject to subsection (4), the following people are entitled to attend a family conference convened in respect of a particular student:
- (a) the student;



- (b) each person who is responsible for the student;
- (c) the principal of the school or the head of the approved learning program in which the student is enrolled (as the case requires) or a nominee of the principal or head;
- (d) an employee of the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of this Act;
- (e) any other person (not being a legal practitioner) who the student, or a person who is responsible for the student, wishes to support them at the conference and who, in the opinion of the coordinator, would be of assistance in that role;
- (f) any other person, or person of a class, prescribed by the regulations for the purposes of this subsection,

and the coordinator may allow such other persons as the coordinator thinks appropriate to attend a conference.

- (4) The coordinator of a family conference may exclude a person (including, to avoid doubt, the student to whom the conference relates) from attending a family conference if the coordinator is satisfied that to do so would be in the best interests of the student.

## 72—Procedures at family conference

- (1) The coordinator of a family conference must ensure that information relating to the student's level of attendance at the school, or participation in the approved learning program, in which they are enrolled, including any reasons for their non-attendance or non-participation, is presented to the conference.
- (2) The coordinator of a family conference must allow the persons who are responsible for the student, and the student if the coordinator thinks it appropriate to do so, an opportunity to hold discussions in private for the purpose of formulating recommendations to improve the student's attendance or participation.
- (3) The following provisions relate to the making of decisions at a family conference:
  - (a) decisions should, if possible, be made by consensus of those present at the conference;
  - (b) a written record must be prepared of the decisions made at the conference;
  - (c) a decision will only be valid for the purposes of this Act if each of the following persons (being persons who are present at the conference) accept the decision in accordance with any requirements set out in the regulations:
    - (i) the student;
    - (ii) each person responsible for the student;
    - (iii) the principal of the school or head of the approved learning program (as the case requires) in which the student is enrolled;
    - (iv) an employee of the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of this Act;
  - (d) the decisions must comply with any other requirements set out in the regulations.

- (4) The coordinator of the family conference must cause a copy of the written record of any valid decisions made at a family conference to be provided to each person present at the conference (and may provide a copy of the written record to any other person the coordinator thinks fit).
- (5) Subject to this Act, the coordinator of a family conference may determine the procedures of the conference.

### **73—Chief Executive and principal etc to give effect to decisions of family conference**

- (1) Subject to this Act, the Chief Executive and the principal of the school or head of the approved learning program in which a student is enrolled (as the case requires) should, to the extent that it is consistent with this Act to do so, exercise their powers and perform their functions so as to give effect to valid decisions made at a family conference.
- (2) Nothing in this section—
  - (a) requires or authorises the Chief Executive, a principal of a school or head of an approved learning program or any other person to do something that is unlawful; or
  - (b) requires or authorises the Chief Executive, a principal of a school or head of an approved learning program or any other person to not do something that is required to be done under this or any other Act or law; or
  - (c) creates legally enforceable rights or obligations on the part of the Chief Executive, the Crown, the student or any other person.

### **Subdivision 3—Limitations on employment of certain children of compulsory school age or compulsory education age**

#### **74—Employment of children of compulsory school age or compulsory education age**

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

Maximum penalty: \$10 000.

- (2) Subsection (1) does not apply in relation to—
  - (a) employment that forms a part of an approved learning program; or
  - (b) any other kind of employment prescribed by the regulations for the purposes of this subsection.

- (3) To avoid doubt, subsection (1) applies to a person who is responsible for a child.
- (4) In proceedings for an offence against subsection (1), it is a defence for the defendant to prove that the alleged offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

#### **Subdivision 4—Reporting of persistent non-attendance or non-participation**

##### **75—Principal etc to report persistent non-attendance or non-participation**

- (1) The principal of a school or head of an approved learning program must notify the Chief Executive if a student of the school or approved learning program is persistently failing to attend school, or participate in the approved learning program, (as the case requires) as required under this Act.
- (2) A notice under subsection (1)—
  - (a) must be given in a manner and form determined by the Chief Executive; and
  - (b) must be given as soon as is reasonably practicable after the principal of the school or head of the approved learning program (as the case requires) becomes aware of the relevant matter; and
  - (c) must contain the information required by the regulations.
- (3) A person must not, without reasonable excuse, refuse or fail to comply with subsection (1).  
Maximum penalty: \$2 500.
- (4) For the purposes of this section, a student will be taken to be persistently failing to attend school, or failing to participate in an approved learning program, if the student fails to attend school, or participate in the approved learning program, for 10 or more days in a particular term (disregarding any failure to which section 68(3) or 69(3) applies).

#### **Division 3—Suspension, exclusion and expulsion of students**

##### **76—Suspension of students**

- (1) Subject to this Act, the principal of a school may suspend a student from attendance at the school for a specified period (not exceeding 5 school days) if the principal believes on reasonable grounds that—
  - (a) the student has threatened or perpetrated violence; or
  - (b) the student has acted in a manner that threatens the safety or wellbeing of a student or member of staff of, or other person associated with, the school (including by sexually harassing, racially vilifying, verbally abusing or bullying that person); or
  - (c) the student has acted illegally; or
  - (d) the student has interfered with the ability of a teacher to instruct students or of a student to benefit from that instruction; or

- (e) the student has acted in a manner that threatens the good order of the school by persistently contravening or failing to comply with rules applying within the school with respect to behaviour; or
  - (f) the student shows persistent and wilful inattention or indifference to school work.
- (2) In determining whether to suspend a student from attendance at a school, a principal must have regard to the matters (if any) specified by the regulations.
- (3) A student cannot (except with the authorisation of the Chief Executive) be suspended from attendance at the school under this section—
- (a) for more than 15 school days in a calendar year; or
  - (b) on more than 4 separate occasions in a calendar year.

### **77—Exclusion of students**

- (1) Subject to this Act, the principal of a school may exclude a student from attendance at the school for a specified period if the principal believes on reasonable grounds that—
- (a) the student has threatened or perpetrated violence; or
  - (b) the student has acted in a manner that threatens the safety or wellbeing of a student or member of staff of, or other person associated with, the school (including by sexually harassing, racially vilifying, verbally abusing or bullying that person); or
  - (c) the student has acted illegally; or
  - (d) the student has persistently interfered with the ability of a teacher to instruct students or of a student to benefit from that instruction; or
  - (e) the student has acted in a manner that threatens the good order of the school by persistently contravening or failing to comply with rules applying within the school with respect to behaviour.
- (2) In determining whether to exclude a student from attendance at a school, a principal must have regard to the matters (if any) specified by the regulations.
- (3) The period of an exclusion under this section must be—
- (a) not less than—
    - (i) if the exclusion is for the remainder of the school term during which the student is excluded—that period; or
    - (ii) in any other case—4 consecutive weeks; and
  - (b) not more than—
    - (i) if the period remaining in the school term in which the exclusion occurs is more than 10 weeks—that period; or
    - (ii) 10 consecutive weeks,whichever is the greater.
- (4) The principal of a school may, if the principal considers it appropriate to do so, extend the exclusion of a student from attendance at the school under this section for a further period not exceeding the limits fixed by subsection (3).

- (5) A student cannot (except with the authorisation of the Chief Executive) be excluded from attendance at the school under this section for more than 20 weeks in a calendar year.
- (6) A principal cannot exclude a student from attendance at a school unless the student has first been suspended from attendance at the school for a period not exceeding 5 consecutive school days under this Act or a repealed Act.
- (7) The Chief Executive may, by notice in writing, give such directions as the Chief Executive thinks appropriate to a student excluded from attendance at a school under this section in relation to the student undertaking education, work or other relevant activity during the period of the exclusion.
- (8) A student must not refuse or fail to comply with a direction under subsection (7).  
Maximum penalty: \$1 250.

### **78—Expulsion of certain students from particular school**

- (1) Subject to this Act, the principal of a school may expel a student who is above the compulsory school age from a school for a specified period if the principal believes on reasonable grounds that—
  - (a) the student has threatened or perpetrated violence; or
  - (b) the student has acted in a manner that threatens the safety or wellbeing of a student or member of staff of, or other person associated with, the school (including by sexually harassing, racially vilifying, verbally abusing or bullying that person); or
  - (c) the student has acted illegally; or
  - (d) the student has persistently interfered with the ability of a teacher to instruct students or of a student to benefit from that instruction.
- (2) In determining whether to expel a student from a school under this section, a principal must have regard to the matters (if any) specified by the regulations.
- (3) The period of an expulsion from a school under this section must be—
  - (a) not less than—
    - (i) if the expulsion is for the remainder of the semester or year during which the student is expelled—that period; or
    - (ii) in any other case—6 consecutive months; and
  - (b) not more than 18 consecutive months.
- (4) A principal cannot expel a student from a school under this section unless the student has first been suspended from attendance at the school for a period not exceeding 20 consecutive school days under this Act or a repealed Act.

### **79—Expulsion of certain students from all Government schools**

- (1) Subject to this Act, the Chief Executive may, on the recommendation of the principal of the school in which the student is enrolled, expel a student who is above the compulsory school age from all Government schools for a specified period if the Chief Executive believes on reasonable grounds that—
  - (a) the student has threatened or perpetrated violence; or

- (b) the student has acted in a manner that threatens the safety or wellbeing of a student or member of staff of, or other person associated with, the school (including by sexually harassing, racially vilifying, verbally abusing or bullying that person); or
  - (c) the student has acted illegally.
- (2) In determining whether to expel a student from all Government schools under this section, the Chief Executive must have regard to the matters (if any) specified by the regulations.
- (3) The period of an expulsion under this section must (unless the expulsion is for the remainder of the school year during which the student is expelled) be—
  - (a) not less than 12 consecutive months; and
  - (b) not more than 5 consecutive years.
- (4) A principal cannot make a recommendation under subsection (1) unless the student has first been suspended from attendance at the school for a period not exceeding 30 consecutive school days.

## **80—Appeal against decision to exclude or expel student**

- (1) A prescribed person in relation to a student may appeal to the relevant authority against—
  - (a) an exclusion of the student from attendance at school under section 77; or
  - (b) an expulsion of the student from a school under section 78; or
  - (c) an expulsion of the student from all Government schools under section 79.
- (2) An appeal must be instituted—
  - (a) in the case of an appeal against a decision to exclude a student from attendance at a school—within 5 school days after the student is notified of the decision;
  - (b) in any other case—within 10 school days after the student is notified of the decision,

(or such longer period as may be allowed by the relevant authority).
- (3) An appeal must be instituted by lodging a notice in a form approved by the Chief Executive—
  - (a) in the case of an appeal to a panel established under subsection (7)—with a person or body specified by the Chief Executive; or
  - (b) in any other case—with the relevant authority.
- (4) An appeal must be heard within 2 weeks after it is instituted.
- (5) The person who made the original decision being appealed against, or the relevant authority, may stay the operation of the decision until the appeal is determined, withdrawn or struck out.
- (6) A stay cannot be granted if its effect would be to create a danger to person or property or to allow a danger to person or property to continue.

- (7) The Chief Executive must, for the purposes of hearing an appeal under this section, from time to time establish a panel consisting of the following persons nominated by the Chief Executive:
- (a) an employee of the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of this Act;
  - (b) a principal of a school (not being the principal who made the decision to exclude or expel the student to whom the appeal relates);
  - (c) a person with experience in the administration of equal opportunity matters.
- (8) A decision carried by a majority of the votes of the members of the panel is a decision of the panel (and, subject to this Act and any direction of the Chief Executive, the panel may determine its own procedures).
- (9) The relevant authority may, on the hearing of an appeal—
- (a) affirm, vary or quash the decision appealed against or substitute, or make in addition, any decision that the relevant authority thinks appropriate; and
  - (b) make recommendations as to actions to be taken in relation to the student.

- (10) In this section—

*prescribed person*, in relation to a student, means—

- (a) the student; or
- (b) a person responsible for the student; or
- (c) an adult acting at the request of the student or a person responsible for the student;

*relevant authority* means—

- (a) in relation to a decision of the principal of a school to exclude a student from attendance at a school under section 77—the panel established under subsection (7);
- (b) in relation to a decision of the principal of a school to expel a student from the school under section 78—the Chief Executive;
- (c) in relation to a decision of the Chief Executive to expel a student from all Government schools under section 79—the Minister.

## **81—Regulations in relation to operation, administration and enforcement of suspension, exclusion or expulsion of student**

The regulations may make provision for or in relation to the operation, administration and enforcement of the suspension, exclusion or expulsion of a student under this Division.

## **Division 4—Religious and cultural activities**

### **82—Religious and cultural activities**

- (1) The principal of a school may set aside time for the conduct of religious or cultural activities (or both) by a person, or a person of a class, prescribed by the regulations for the purposes of this section.

- (2) The principal of a school must give notice in writing to a person who is responsible for a student enrolled at the school who is a child, of the intended conduct of a specified religious or cultural activity involving the student.
- (3) The regulations may—
  - (a) make provision for procedures and requirements relating to obtaining the consent of persons who are responsible for students at the school for the student's participation in religious or cultural activities; and
  - (b) make provision in relation to the exemption of students from participation in religious or cultural activities.
- (4) A student who does not participate in a religious or cultural activity under this section—
  - (a) cannot be made to suffer any detriment for not participating in the activity; and
  - (b) must be offered an alternative activity related to the curriculum determined by the Chief Executive during the period in which the activity is conducted.
- (5) Religious and cultural activities may be conducted on school premises or elsewhere.
- (6) Neither religious or cultural activities form part of the curriculum determined by the Chief Executive for the purposes of this Act.
- (7) Nothing in this section limits the operation of the *Child Safety (Prohibited Persons) Act 2016* or any other Act that imposes requirements or limitations on working with children.
- (8) In this section—

*detriment* includes—

  - (a) intimidation or harassment; and
  - (b) discrimination, disadvantage or adverse treatment.

## **Division 5—Discipline**

### **83—Corporal punishment prohibited**

- (1) Corporal punishment (however described) must not be imposed on a student enrolled or attending at a Government or a non-Government school.
- (2) The Chief Executive must take all reasonable steps to ensure that principals, officers of the teaching service and all other persons employed in, or in relation to, Government schools comply with subsection (1).
- (3) For the purposes of the *Criminal Law Consolidation Act 1935*, corporal punishment will be taken not to amount to conduct that lies within limits of what would be generally accepted in the community as normal incidents of social interaction or community life.



## Division 6—Registration of student exchange programs

### 84—Interpretation

In this Division—

*Board* means the Education and Early Childhood Services Registration and Standards Board of South Australia established under the *Education and Early Childhood Services (Registration and Standards) Act 2011*;

*student exchange program* means a program in which students undertaking secondary education undertake a part of their studies in a country other than Australia and, in return, students from other countries undertake a part of their studies in this State.

### 85—Registration of student exchange organisations

- (1) The Board may, on application, register a person or body as a student exchange organisation.
- (2) An application for registration under subsection (1) must—
  - (a) be made in the manner and form determined by the Board; and
  - (b) be accompanied by such documents or information as may be required by the Board; and
  - (c) be accompanied by the prescribed fee.
- (3) In deciding whether to register a person or body under subsection (1), the Board may have regard to the following matters:
  - (a) the suitability of the person or body to operate a student exchange program;
  - (b) the organisational and financial structure of the person or body;
  - (c) any relevant guidelines under this or any other Act;
  - (d) the aims of the proposed student exchange program;
  - (e) any reciprocal arrangements between the State and the other country under the proposed student exchange program;
  - (f) the support offered under the proposed student exchange program to students in the program and the families accommodating those students;
  - (g) the arrangements for health insurance for students in the proposed student exchange program;
  - (h) the processes established by the proposed student exchange program for resolution of problems;
  - (i) any other matter the Board considers relevant.
- (4) Registration under subsection (1) may be conditional or unconditional.
- (5) The Board may, by notice in writing, vary, substitute or revoke a condition of registration.
- (6) Registration under subsection (1) remains in force—
  - (a) for the period specified in the instrument of registration (not exceeding 5 years from the date of registration); or

- (b) until it is revoked under this Act,  
whichever is the sooner (and may be renewed in accordance with the regulations).

### **86—Annual registration fee**

- (1) A registered student exchange organisation must, in respect of each calendar year, pay an annual registration fee determined in accordance with the regulations.
- (2) A registered student exchange organisation must pay the annual registration fee for each year—
  - (a) in the manner determined by the Board; and
  - (b) on or before the day specified by the Board in relation to that year.

### **87—Guidelines**

- (1) The Board may publish or adopt guidelines in relation to the registration of student exchange organisations and the operation of student exchange programs.
- (2) The Board may, from time to time, vary, substitute or revoke guidelines published or adopted under subsection (1).

### **88—Board may give directions to registered student exchange organisation**

- (1) The Board may, by notice in writing, direct a registered student exchange organisation to take, or to not take, such action as may be specified in the notice if the Board is satisfied that—
  - (a) the registered student exchange organisation has contravened, or is likely to contravene, this Act or guidelines published or adopted under section 87; or
  - (b) the direction is necessary or desirable to protect the interests of students engaged in the student exchange program operated by the registered student exchange organisation.
- (2) A registered student exchange organisation must comply with a direction given under subsection (1).

### **89—Suspension and revocation of registration**

- (1) The Board may, by notice in writing, suspend or revoke the registration of a registered student exchange organisation if the Board is satisfied that—
  - (a) the organisation has contravened this Act; or
  - (b) the organisation has not paid the annual registration fee under section 86; or
  - (c) the organisation has contravened guidelines issued under section 87; or
  - (d) the organisation has not complied with a direction under section 88; or
  - (e) it is otherwise in the public interest to suspend or revoke the registration.
- (2) A suspension of registration has effect for the period specified in the notice.
- (3) The Board must revoke the registration of a registered student exchange organisation on the request of the organisation.

## **Part 8—Protections for teachers, staff and students etc at schools, preschools and children's services centres**

### **Division 1—Preliminary**

#### **90—Application of Part**

This Part applies to, or in relation to, the following premises:

- (a) the premises of a Government or non-Government school;
- (b) the premises of a preschool (whether a Government preschool or otherwise);
- (c) the premises of a children's services centre;
- (d) the premises of an approved education and care service under the *Education and Care Services National Law (South Australia)*;
- (e) any other premises prescribed by the regulations for the purposes of this section.

### **Division 2—Offences**

#### **91—Offensive or threatening behaviour**

- (1) A person who behaves in an offensive or threatening manner on premises to which this Part applies is guilty of an offence.

Maximum penalty: \$2 500.

- (2) A person who—
  - (a) uses abusive, threatening or insulting language to a prescribed person acting in the course of their duties; or
  - (b) behaves in an offensive or threatening manner towards a prescribed person acting in the course of their duties,

(whether or not the behaviour occurs on premises to which this Part applies) is guilty of an offence.

Maximum penalty: \$2 500.

- (3) Subsections (1) and (2) do not apply to—
  - (a) a person employed at the relevant school, preschool, children's services centre or approved education and care service; or
  - (b) a student of, or a child attending, the relevant school, preschool, children's services centre or approved education and care service.
- (4) In proceedings for an offence against subsection (2), it is a defence for the defendant to prove that they did not know, and could not reasonably have been expected to have known, that a specified person was a prescribed person.

- (5) In this section—

***prescribed person*** means—

- (a) a principal of a school or head of an approved learning program; or

- (b) a director of a stand-alone preschool or children's services centre; or
- (c) an officer of the teaching service; or
- (d) an employee of the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of this Act; or
- (e) any other person employed at a school, preschool, children's services centre or approved education and care service.

## **92—Trespassing on premises**

A person who, without reasonable excuse, trespasses on premises to which this Part applies is guilty of an offence.

Maximum penalty: \$2 500.

## **Division 3—Barring orders**

### **93—Power to bar persons from premises**

- (1) Subject to this section, if a designated person in respect of premises to which this Part applies is satisfied that a person has—
- (a) behaved in an offensive or threatening manner while on the premises; or
  - (b) used abusive, threatening or insulting language to a prescribed person acting in the course of their duties; or
  - (c) trespassed on the premises; or
  - (d) committed or threatened to commit any other offence on, or in relation to, the premises,

the designated person may issue a notice (a *barring notice*) to the person barring the person from the premises specified in the notice.

- (2) The premises from which a person may be barred are—
- (a) the premises on which, or in relation to which, the conduct referred to in subsection (1) allegedly occurred; and
  - (b) any other premises or place used, or to be used, by the relevant school, preschool, children's services centre or approved education and care service in relation to the provision of education or children's services.
- (3) Subsection (1) (as it applies to particular premises) does not apply in relation to the following persons:
- (a) in the case of premises that are premises of a school or approved learning program—the principal of the school or head of the approved learning program;
  - (b) in the case of premises that are premises of a stand-alone preschool or children's services centre—the director of the stand-alone preschool or children's services centre;
  - (c) in the case of premises that are premises of an approved education and care service—the nominated supervisor of the service under the *Education and Care Services National Law (South Australia)*;

- (d) in any case—
  - (i) an officer of the teaching service; or
  - (ii) an employee of the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of this Act; or
  - (iii) any other person employed at the premises; or
  - (iv) a student of the school or approved learning program to which the premises relate, or a child attending the preschool, children's services centre or education care service to which the premises relate.
- (4) A barring notice—
  - (a) must be in writing in a form approved by the Chief Executive; and
  - (b) may be conditional or unconditional; and
  - (c) must specify all premises to which it relates; and
  - (d) has effect from the time it is served on the person to whom it is issued, and (subject to this Division) remains in force—
    - (i) for the period (not exceeding 3 months) specified in the barring notice; or
    - (ii) until it is revoked under this Act,whichever occurs first; and
  - (e) must comply with any other requirements specified in the regulations.
- (5) A barring notice may, by notice in writing, be varied or revoked by—
  - (a) in the case of a barring notice issued in relation to a Government school, Government preschool or children's services centre—the Chief Executive or the designated person who issued the barring notice; or
  - (b) in any other case—the designated person who issued the barring notice.
- (6) A person who contravenes or fails to comply with a barring notice is guilty of an offence.  
Maximum penalty: \$2 500.
- (7) In this section—

***designated person***, in respect of premises to which this Part applies, means—

  - (a) in the case of the premises of a school or approved learning program—
    - (i) the principal of the school or the head of the approved learning program; or
    - (ii) if the principal of the school or the head of the approved learning program is absent from the premises or is otherwise unable to exercise a power under this section—a person authorised in writing by the principal of the school or the head of the approved learning program (as the case requires) for the purposes of this section; or
  - (b) in the case of the premises of a stand-alone preschool or children's services centre—

- (i) the director of the preschool or centre; or
- (ii) if the director of the preschool or centre is absent from the premises or is otherwise unable to exercise a power under this section—a person authorised in writing by the director of the preschool or centre (as the case requires) for the purposes of this section; or
- (c) in the case of the premises of an approved education and care service—the nominated supervisor of the service under the *Education and Care Services National Law (South Australia)*;

**prescribed person** means—

- (a) a principal of a school or head of an approved learning program; or
- (b) a director of a stand-alone preschool or children's services centre; or
- (c) an officer of the teaching service; or
- (d) an employee of the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of this Act; or
- (e) any other person employed at a school, preschool, children's services centre or approved education and care service.

#### **94—Review of barring notice by Minister**

- (1) A person who is barred under section 93 for a period exceeding 2 weeks from premises to which this section applies may apply to the Minister for a review of the barring notice.
- (2) An application under this section must be made in a manner and form determined by the Minister.
- (3) The Minister may, on the hearing of an application for a review of a barring notice, confirm, vary or revoke the notice.
- (4) A barring notice continues to apply pending a determination by the Minister of an application for review of the notice.
- (5) This section applies to the following premises:
  - (a) the premises of a Government school;
  - (b) the premises of a Government preschool;
  - (c) the premises of a Government children's services centre;
  - (d) any other premises prescribed by the regulations for the purposes of this section.

#### **Division 4—Power to restrain etc persons acting unlawfully on premises to which Part applies**

##### **95—Certain persons may restrain, remove from or refuse entry to premises**

- (1) If an authorised person in respect of premises to which this Part applies reasonably suspects that a person—
  - (a) has behaved in an offensive or threatening manner while on the premises; or

- (b) has used abusive, threatening or insulting language to a person while on the premises; or
- (c) is trespassing on the premises; or
- (d) has committed or threatened to commit any other offence on, or in relation to, the premises,

the authorised person may direct the person to leave the premises.

- (2) A person who has been directed to leave premises under subsection (1) must not—
  - (a) remain on the premises; or
  - (b) return, or attempt to return, to the premises within 48 hours.

Maximum penalty: \$2 500.

- (3) An authorised person in respect of premises to which this Part applies may use such force as is reasonably necessary—
  - (a) to restrain on the premises any person who, in the opinion of the authorised person, is posing an immediate threat to the safety of another person; or
  - (b) to prevent the entry to the premises of a person who has been directed to leave the premises under this section during the previous 48 hours; or
  - (c) to prevent the entry to the premises of a person who is barred from the premises under a barring notice; or
  - (d) to remove from the premises a person referred to in a preceding paragraph.
- (4) In this section—
 

*authorised person*, in respect of premises to which this Part applies, means—

  - (a) a police officer; or
  - (b) an officer of the teaching service; or
  - (c) a person employed at the premises; or
  - (d) any other person authorised by the Chief Executive for the purposes of this section.

## Part 9—The teaching service

### Division 1—Preliminary

#### 96—Interpretation

In this Part—

*misconduct* includes—

- (a) making a false statement in connection with an application for appointment as an officer of the teaching service; and
- (b) a breach of a disciplinary provision of the public sector code of conduct while employed as an officer of the teaching service; and
- (c) being found guilty, while employed as an officer of the teaching service, of an offence punishable by imprisonment; and

- (d) any other misconduct occurring in the course of employment as an officer of the teaching service.

## **Division 2—Appointment to the teaching service**

### **97—Appointment to the teaching service**

- (1) Subject to this Act, the Chief Executive may appoint such teachers to be officers of the teaching service as the Chief Executive considers appropriate.
- (2) A reference in any other Act to the employing authority, in relation to the teaching service, will be taken to be a reference to the Chief Executive.
- (3) An officer of the teaching service must be appointed as—
  - (a) an ongoing employee; or
  - (b) a term employee; or
  - (c) a casual employee.
- (4) The appointment of an officer of the teaching service appointed on an ongoing basis may only be terminated in accordance with this Act.
- (5) An officer of the teaching service appointed on a term or casual basis will hold office for a term, and on conditions, determined by the Chief Executive.

### **98—Merit-based selection processes**

- (1) The following may only occur as a consequence of selection processes conducted on the basis of merit and in accordance with any requirements set out in administrative guidelines or the regulations:
  - (a) the appointment of a person as an officer of the teaching service on an ongoing basis;
  - (b) the promotion of an officer of the teaching service to a higher remuneration level;
  - (c) changing the basis on which a person is appointed as an officer of the teaching service to appointment on an ongoing basis.
- (2) However, subsection (1) does not apply—
  - (a) to the promotion of an officer of the teaching service by way of reclassification of the officer's remuneration level; or
  - (b) to the appointment of an officer of the teaching service on an ongoing basis (being an officer who is, or was, before the appointment employed on a term basis) in circumstances prescribed by the regulations for the purposes of this paragraph; or
  - (c) in any other circumstances prescribed by the regulations for the purposes of this subsection.



**99—Rate of remuneration for part-time employees**

- (1) If an officer of the teaching service is employed on the basis that the officer will work a specified percentage of the time ordinarily expected of an officer employed on a full-time basis, the rate of remuneration applicable to the officer is that same percentage applied to the rate of remuneration that would apply if the officer were employed on a full-time basis.
- (2) Subsection (1) applies in relation to—
  - (a) any salary payable to the officer (despite any Act or law (including the provisions of any contract of employment or award) to the contrary); and
  - (b) any allowance payable to the officer (subject to any express provision of a contract of employment or an award that provides for payment of the full amount of the allowance to the officer); and
  - (c) any other remuneration to which the officer is entitled (whether arising before or after the commencement of this section),

and applies regardless of the number of working days, or the period of time in a working day, in any pay period during which the officer performs the work.

**100—Special remuneration for attraction and retention of officers of the teaching service**

- (1) The Chief Executive may, in accordance with any requirements set out in administrative guidelines or the regulations, offer special remuneration to officers of the teaching service for the purposes of attracting and retaining officers of a high standard (and, for that purpose, may enter into an arrangement with an officer of the teaching service).
- (2) However, nothing in subsection (1) limits the actions that the Chief Executive may take for the purpose of attracting or retaining officers of the teaching service, or for any other purpose.

**101—Probation**

- (1) Subject to this section, a person is, when first appointed to the teaching service as an ongoing employee (whether or not the person has been previously appointed as a term employee or casual employee), on probation for a period of 2 years.
- (2) The Chief Executive may, in relation to a specified officer of the teaching service (being an officer appointed as an ongoing employee) determine that—
  - (a) no probation is required; or
  - (b) some lesser period of probation is to apply; or
  - (c) that the probation period for the officer may consist of 12 months, with a further period of probation of 12 months to apply at the discretion of the Chief Executive,

and, in such a case, the probation period (if any) for the officer will be as so determined.

- (3) A person appointed to the teaching service as a term employee (whether or not the person has been previously appointed as a term employee or casual employee) is on probation for a period determined in accordance with the scheme set out in the regulations.
- (4) Subsections (1) and (3) do not apply to—
  - (a) the appointment of an officer of the teaching service as a casual employee; or
  - (b) any other appointment, or class of appointments, declared by the regulations to be included within the ambit of this subsection.
- (5) The employment of an officer of the teaching service who is on probation may be terminated by the Chief Executive at any time.
- (6) If an officer of the teaching service has been on probation for at least half of the period of probation, the Chief Executive may confirm the officer's employment and, in that event, the officer ceases to be on probation.
- (7) Subject to this Act, an officer of the teaching service ceases to be on probation at the end of the period of probation.
- (8) For the purposes of this section, in determining the period during which an officer of the teaching service has been on probation, any period during which the officer is absent on leave without pay is to be disregarded.
- (9) A period of probation that applies to an officer of the teaching service under this section will be taken to be reasonable for the purposes of the *Fair Work Act 1994*.

### **Division 3—Duties, classification, promotion and transfer**

#### **102—Assignment of duties and transfer to non-teaching position within Department**

- (1) The Chief Executive may from time to time determine the duties of an officer of the teaching service and the place or places at which the duties are to be performed.
- (2) Without limiting subsection (1), the Chief Executive may, by notice in writing—
  - (a) transfer an officer of the teaching service from a teaching position to an administrative or other specified position; and
  - (b) make such transitional or ancillary arrangements as may be necessary or expedient in the circumstances.
- (3) A notice under subsection (2) has effect according to its terms and despite any other Act or law.
- (4) The regulations may make further provision in relation to the operation of this section for the purposes of this Act (including, to avoid doubt, provisions limiting the circumstances in which a transfer under this section can occur).
- (5) A transfer of an officer of the teaching service under this section does not constitute a breach of the officer's contract of employment or termination of the officer's employment, or affect the continuity of the officer's employment for any purpose.
- (6) Nothing in this section limits section 9 of the *Public Sector Act 2009*.

**103—Transfer within teaching service**

- (1) The Chief Executive may transfer officers of the teaching service between positions in the teaching service but not so as to—
  - (a) reduce an officer's salary without the officer's consent; or
  - (b) effect promotion of an officer to a position at a higher classification level.
- (2) A transfer of an officer of the teaching service under this section does not constitute a breach of the officer's contract of employment or termination of the officer's employment, or affect the continuity of the officer's employment for any purpose.

**104—Classification of officers and positions**

- (1) The Chief Executive may, from time to time—
  - (a) fix the duties and titles of officers of, and positions in, the teaching service; and
  - (b) classify officers of the teaching service; and
  - (c) classify positions in the teaching service at promotional levels.
- (2) The classifying of officers under subsection (1) may be conditional or unconditional.
- (3) The Chief Executive may vary or revoke a condition under subsection (2).

**105—Application to Chief Executive for reclassification**

- (1) If an officer of the teaching service considers that the classification of the officer, or a position occupied by the officer, is not appropriate in view of the duties of the officer or on any other ground, the officer may lodge with the Chief Executive an application for reclassification.
- (2) An application under subsection (1) must be made in a manner and form approved by the Chief Executive.
- (3) The Chief Executive may, on an application under subsection (1), reclassify the officer or a position occupied by the officer.
- (4) Nothing in this section limits the Chief Executive's general power to reclassify officers of, or positions in, the teaching service.
- (5) The regulations may make further provision in relation to an application under this section for the purposes of this Act (including, to avoid doubt, limiting the circumstances or positions in relation to which an application can be made).

**106—Appointment to promotional level positions**

- (1) Subject to this Act, the Chief Executive may appoint officers of the teaching service to positions within the teaching service classified at promotional levels in accordance with this section.
- (2) The Chief Executive must call for applications in relation to a position in the teaching service classified at a promotional level in a manner specified by the regulations, and applications for the position are to be submitted in accordance with the regulations to either—
  - (a) the Chief Executive; or

- (b) a committee established by the Chief Executive and consisting of members appointed by the Chief Executive, at least 1 of whom must, subject to subsection (3), be a nominee of the Australian Education Union (SA Branch).
- (3) If the Chief Executive does not receive a nomination under subsection (2)(b) within 14 days after calling for applications in relation to the position, the Chief Executive may appoint, in lieu of a nominee, an officer of the teaching service elected or nominated by other officers of the teaching service to represent them on such committees in accordance with the regulations.
- (4) However, subsection (2) does not apply to—
  - (a) the appointment of an officer of the teaching service to a position in an acting capacity for a period of not more than 12 months; or
  - (b) the appointment of an officer of the teaching service to a position in an acting capacity for a period of more than 12 months but not more than 2 years in circumstances determined by the Chief Executive; or
  - (c) the transfer of an officer of the teaching service between positions in the teaching service; or
  - (d) any other appointment of a kind declared by the regulations to be included within the ambit of this subsection.
- (5) A committee established under subsection (2)(b) may make a provisional recommendation to the Chief Executive that an applicant be appointed to the vacant position.
- (6) The Chief Executive may, after considering an application under subsection (2)(a), or a provisional recommendation of a committee under subsection (5)—
  - (a) appoint the applicant to the vacant position; or
  - (b) decline to make the appointment.
- (7) The Chief Executive may appoint an officer of the teaching service to a position classified at a promotional level in an acting capacity for a term not exceeding 2 years.
- (8) An appointment under this section may be conditional or unconditional.
- (9) The Chief Executive may vary or revoke a condition under subsection (8).

## **Division 4—Long service leave**

### **107—Long service leave and retention entitlement**

- (1) An officer of the teaching service's entitlement to long service leave accrues as follows:
  - (a) the officer is entitled to 63 days' leave in respect of the first 7 years of effective service;
  - (b) the officer is then entitled to 0.75 of a day's leave for each subsequent complete month of effective service.

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- (2) An officer of the teaching service who has completed 15 years of effective service (a *long-term employee*) is entitled to an additional amount of leave (a *skills and experience retention leave entitlement*) (that will be taken to constitute long service leave) for each completed month of effective service (being service as a long-term employee) as follows:
- (a) for each month of effective service completed during the 2012/2013 financial year— $\frac{1}{6}$  working day's leave;
  - (b) for each month of effective service completed during the 2013/2014 financial year— $\frac{1}{4}$  working day's leave;
  - (c) for each month of effective service completed on or after 1 July 2014— $\frac{1}{3}$  working day's leave.
- (3) If long service leave is taken by an officer of the teaching service, the officer's entitlement to long service leave is reduced accordingly.
- (4) Each day from the commencement to the conclusion of a period of long service leave (whether a working day or not) will be counted as a day of that leave.
- (5) The following additional provisions apply in relation to a skills and experience retention leave entitlement:
- (a) the Chief Executive may make a determination under which the accrual of the entitlement will be calculated instead as a number of working hours leave for each completed month of effective service;
  - (b) an entitlement to skills and experience retention leave accrued during a particular financial year may be converted to an entitlement to a monetary amount fixed by the regulations in accordance with a scheme prescribed by the regulations;
  - (c) a skills and experience retention leave entitlement is to be taken (depending on the amount of leave accrued) as 1 or more whole working days of leave and accordingly subsection (4) will not apply in relation to a skills and experience retention leave entitlement;
  - (d) a skills and experience retention leave entitlement that is not taken within 5 years of the end of the financial year in which it accrues will be lost (and a sum equal to the monetary value of any entitlement that is lost will not be payable) (and accordingly the other provisions of this Division relating to paying out an entitlement to leave will apply subject to the operation of this paragraph);
  - (e) the Chief Executive may, by determination, make any other provision in relation to the granting or taking of skills and experience retention leave.
- (6) This Division—
- (a) does not affect an entitlement to long service leave or payment in lieu of long service leave that accrued before the commencement of the *Education Act Amendment Act 1987*; and
  - (b) does not prejudice an entitlement to *pro rata* long service leave arising after 5 years' effective service that would have come into existence if the *Education Act Amendment Act 1987* had not been enacted.

- (7) The regulations may, for the purposes of this section—
  - (a) prescribe a process for electing to convert an accrued entitlement to skills and experience retention leave to a monetary amount; and
  - (b) fix different monetary amounts according to different classes or categories of officers of the teaching service.
- (8) A regulation under subsection (7) may only be made on the recommendation of the Treasurer.
- (9) The Treasurer must, in making a recommendation under subsection (8), apply the principle that a monetary amount fixed by the regulations must be consistent with any corresponding regulations applying under the *Public Sector Act 2009*.

### **108—Taking leave**

- (1) Subject to this section, an officer of the teaching service who has completed at least 10 years' effective service is entitled to take long service leave.
- (2) The Chief Executive may permit an officer who has completed at least 7 years' effective service to take long service leave.
- (3) Long service leave may only be taken in respect of completed years of effective service.
- (4) Subsection (3) does not apply in relation to a skills and experience retention leave entitlement.
- (5) Long service leave may only be taken at times and for periods that are, in the opinion of the Chief Executive, convenient to the Department.
- (6) Subject to this section, the salary to which an officer of the teaching service is entitled during long service leave is—
  - (a) where the effective service of the officer consists of full-time service—the salary applicable to the officer's position or classification level during that leave (disregarding any acting appointment); or
  - (b) where the effective service of the officer consists in whole or in part of part-time service—a salary determined by the Chief Executive.
- (7) An officer of the teaching service may elect to take long service leave on half salary and, in that event, may take 2 days' leave for each whole day of the officer's entitlement.
- (8) If the effective service of an officer of the teaching service consists wholly or partly of part-time service, the officer may elect to take long service leave on the salary applicable to full-time service and, in that event, the period of the long service leave will be reduced accordingly.
- (9) The Chief Executive may authorise payment to an officer of the teaching service on long service leave of such additional salary or allowances as the Chief Executive considers appropriate.

**109—Payment in lieu of long service leave**

- (1) The Chief Executive may, on application by an officer of the teaching service, authorise the officer to be paid, in lieu of a period of long service leave to which the officer has accrued an entitlement, an amount equal to the salary or wages and allowances (if any) that the officer would have been entitled to receive during such a period of leave.
- (2) If an officer of the teaching service who is entitled to long service leave dies or ceases for any reason to be an officer, then—
  - (a) in the case of death—the officer's personal representative; or
  - (b) in the case of cessation of service for any other reason—the officer,must be paid the salary or wages that would have been payable if the long service leave had commenced on the day of cessation of service.
- (3) In determining a sum payable under this section, no allowance may be made for an increase in salary or wages granted or payable after the date of the payment.
- (4) The Chief Executive may apply any amount payable to or in respect of an officer of the teaching service under this section in satisfaction of a claim against the officer.

**110—Interruption of service where officer leaves teaching service**

- (1) If an officer of the teaching service retires or retired from employment under this Act or a repealed Act on the ground of invalidity and is, or was, subsequently reappointed as an officer, their service before retirement and service after reappointment will, for the purposes of this Division, be taken into account as though that service were continuous.
- (2) If the service of an officer of the teaching service was interrupted other than by resignation or termination for misconduct and the officer is, or was, subsequently reappointed as an officer within 2 years after the date of that interruption, the officer's service before the interruption and service after the interruption will, for the purposes of this Division be taken into account as though that service were continuous.
- (3) Subsections (1) and (2) apply to a retirement or interruption whether occurring before or after the commencement of this section.
- (4) However, subsections (1) and (2) do not apply to the extent to which the officer has taken long service leave, or received payment in lieu of long service leave, in respect of any period of service.
- (5) If the service of an officer of the teaching service was interrupted other than by resignation or termination for misconduct for a period exceeding 2 years, the Chief Executive may grant a certificate under this section (and, if a certificate is issued, the service of the officer will be regarded as continuous despite the interruption, but the period of the interruption will not be taken into account in determining the period of the officer's service).
- (6) This section does not apply in relation to an officer of the teaching service to whom section 111 applies.
- (7) This section does not apply in relation to an interruption in service occurring while an officer of the teaching service is employed in prescribed employment.

(8) In this section—

*prescribed employment* means—

- (a) employment in the Public Service of the Commonwealth; or
- (b) employment in the Public Service of this State; or
- (c) employment in the public sector of this State other than in the Public Service; or
- (d) employment in the Public Service of any other State or Territory of the Commonwealth; or
- (e) employment by a university; or
- (f) employment by a college (within the meaning of the *Technical and Further Education Act 1975*); or
- (g) any other employment approved by the Minister.

### **111—Special provisions relating to certain temporary officers of the teaching service**

- (1) This section applies to an officer of the teaching service who was, immediately before the commencement of this section, a person to whom section 22A of the *Education Act 1972* (as in force immediately before the commencement of this section) applied.
- (2) To the extent that the entitlements to long service leave and skills and experience retention leave of an officer of the teaching service to whom this section applies were not conferred under section 22A(2) of the *Education Act 1972* (as in force immediately before the commencement of this section), those entitlements are to be determined as if that section (and any regulations under that Act that may be relevant to the determination) had not been repealed or revoked.

### **112—Entitlement where officer transferred to other public sector employment**

- (1) If an officer of the teaching service is transferred to other employment in the public sector of the State, and their service in that employment is continuous with their service as an officer, their service as an officer will be taken into account for the purpose of determining long service leave to which they may be entitled in respect of that other employment.
- (2) However, subsection (1) does not apply to the extent to which the officer has taken long service leave, or received payment in lieu of long service leave, in respect of any period of service.
- (3) For the purposes of the *Public Sector Act 2009* and any other Act, the question of whether particular service of an officer to whom section 111 applies is continuous service is to be determined in accordance with section 22A of the *Education Act 1972* (as in force immediately before the commencement of this section).

### **113—Entitlement of persons transferred to the teaching service**

- (1) If an officer of the teaching service has previously been in prescribed employment and their service in the prescribed employment is continuous with their service as an officer, the long service leave to which the officer is entitled under this Division will be determined on the basis that their service in the prescribed employment is service in the teaching service.



- (2) However, subsection (1) does not apply to the extent to which the officer has taken long service leave, or received payment in lieu of long service leave, in respect of any period of service.
- (3) For the purposes of this section, continuity of service is not interrupted by an interval, not exceeding 3 months, between the time that service in the prescribed employment terminated and the time the officer commenced employment in the teaching service.
- (4) In determining the period of an interval for the purposes of subsection (3), any period that falls within a period of Government school vacation is to be disregarded.
- (5) If there is an interval of more than 3 months between the time that service in the prescribed employment terminated and the commencement of employment in the teaching service, the Chief Executive may, if they are of the opinion that special reasons exist for doing so, declare that that interval will be taken not to disrupt the continuity of service, and the declaration will have effect according to its terms.
- (6) This section does not apply to an officer of the teaching service to whom section 111 applies.
- (7) In this section—  
*prescribed employment* means—
  - (a) employment in the Public Service of the Commonwealth; or
  - (b) employment in the Public Service of this State; or
  - (c) employment in the public sector of this State other than in the Public Service;  
or
  - (d) employment in the Public Service of any other State or Territory of the Commonwealth; or
  - (e) employment by a university; or
  - (f) employment by a college (within the meaning of the *Technical and Further Education Act 1975*); or
  - (g) any other employment approved by the Minister.

## **Division 5—Disciplinary action and management of unsatisfactory performance**

### **114—Disciplinary action**

- (1) If the Chief Executive is satisfied that an officer of the teaching service is guilty of misconduct, the Chief Executive may do 1 or more of the following:
  - (a) reprimand the officer;
  - (b) reduce the remuneration of the officer under section 116;
  - (c) vary the duties of the officer;
  - (d) reclassify the officer;
  - (e) remove the entitlement of the officer to an increase in remuneration;
  - (f) impose a fine on the officer not exceeding the amount of 1 week's salary of the officer;

- (g) transfer the officer to another position in the teaching service;
  - (h) suspend an officer of the teaching service from duty without remuneration or accrual of leave rights for a specified period (not exceeding 12 months);
  - (i) terminate the employment of the officer under section 120.
- (2) To avoid doubt, action referred to in subsection (1)(c), (d), (e) or (g) may be taken whether or not the action has the effect of reducing the officer's remuneration.
  - (3) A fine imposed on an officer of the teaching service under this section may be deducted from the salary or other remuneration payable to that officer.
  - (4) The regulations may make further provision in respect of disciplinary action under this section for the purposes of this Act.

### **115—Managing unsatisfactory performance**

- (1) If the Chief Executive is satisfied that the performance of an officer of the teaching service is unsatisfactory, the Chief Executive may do 1 or more of the following:
  - (a) reprimand the officer;
  - (b) reduce the remuneration of the officer under section 116;
  - (c) vary the duties of the officer;
  - (d) reclassify the officer;
  - (e) transfer the officer to another position in the teaching service;
  - (f) terminate the employment of the officer under section 120.
- (2) To avoid doubt, action referred to in subsection (1)(c), (d) or (e) may be taken whether or not the action has the effect of reducing the officer's remuneration.
- (3) The regulations may make further provision in respect of managing unsatisfactory performance under this section for the purposes of this Act.

### **116—Reduction in remuneration level**

- (1) The Chief Executive may reduce the remuneration level of an officer of the teaching service without the officer's consent on any of the following grounds:
  - (a) the officer is excess to the requirements of the teaching service at the higher remuneration level;
  - (b) the officer is physically or mentally incapable of satisfactorily performing the duties required at the higher remuneration level;
  - (c) misconduct;
  - (d) unsatisfactory performance;
  - (e) the lack of an essential qualification in respect of the higher remuneration level.
- (2) However, the Chief Executive must not reduce an officer's remuneration level under subsection (1)(a) or (b) unless the Chief Executive has taken reasonable steps, but has failed, to find other suitable duties in the Department or other employment in the public sector of the State to which the officer might be assigned or transferred on conditions that maintain the officer's substantive remuneration level.

- (3) If the remuneration level of an officer of the teaching service is reduced under subsection (1)(a), the officer is entitled to supplementation of their remuneration in accordance with the relevant provisions of an award or enterprise agreement or, if there is no award or enterprise agreement covering the matter, in accordance with a scheme prescribed by the regulations.
- (4) Without limiting the generality of subsection (1), the Chief Executive may, in reducing the remuneration level of an officer of the teaching service under this section, reduce the remuneration level—
  - (a) to a remuneration level contained within a different classification structure; and
  - (b) as a preliminary step to assigning or transferring the officer to other duties in the teaching service or to other employment in the public sector of the State.

### **117—Suspension**

- (1) If the Chief Executive is satisfied that the nature or circumstances of any matter alleged against an officer of the teaching service are such that the officer should not continue in the performance of their duties, the Chief Executive may suspend the officer.
- (2) To avoid doubt, subsection (1) applies whether the matter alleged is a disciplinary matter or a matter relating to unsatisfactory performance.
- (3) A suspension under subsection (1) may be made whether or not the officer has been charged with an offence.
- (4) Unless the Chief Executive directs otherwise, an officer suspended under this section is entitled to their salary in respect of the period of suspension.
- (5) If a direction has been given under subsection (4), but the matter alleged against the suspended officer is not proved, the officer is entitled to receive the salary to which they would have been entitled had the direction not been so given.
- (6) The Chief Executive may revoke a suspension at any time.

## **Division 6—Physical or mental incapacity of officers of the teaching service**

### **118—Physical or mental incapacity of officers of the teaching service**

- (1) If—
  - (a) an officer of the teaching service is not performing their duties satisfactorily; and
  - (b) it appears to the Chief Executive that the officer's unsatisfactory performance may be caused by physical or mental incapacity,

the Chief Executive may require the officer to undergo a medical examination by a medical practitioner selected by the officer from a panel of medical practitioners nominated by the Chief Executive.

- (2) If an officer of the teaching service refuses or fails, without reasonable excuse, to submit to a medical examination as required under subsection (1), the Chief Executive may suspend the officer from duty (without remuneration and accrual of leave rights) until the officer submits to a medical examination as required by the Chief Executive.
- (3) The Chief Executive must—
  - (a) provide a copy of any report on the results of a medical examination required under this section to the officer concerned; and
  - (b) before taking any action on the basis of the report, allow the officer a period of not less than 14 days from the date the report is provided to the officer to provide to the Chief Executive any other medical reports obtained by the officer relating to their physical or mental condition.
- (4) If the Chief Executive is satisfied that an officer of the teaching service is, by reason of their physical or mental condition, incapable of satisfactorily performing the officer's duties, the Chief Executive may do 1 or more of the following:
  - (a) transfer the officer to some other position in the teaching service;
  - (b) vary the officer's duties and assign an appropriate classification to the officer;
  - (c) determine to take steps to transfer the officer to some other employment in the public sector of the State;
  - (d) grant the officer leave of absence (without remuneration) from the teaching service.
- (5) The Chief Executive must, before taking action under subsection (4), be satisfied that a transfer or variation of duties without reduction of remuneration is not reasonably practicable in the circumstances.
- (6) This section is in addition to, and does not derogate from, section 120(3).

## **Division 7—Resignation and termination**

### **119—Resignation**

- (1) An officer of the teaching service may resign from employment by not less than 14 days notice in writing to the Chief Executive (unless notice of a shorter period is accepted by the Chief Executive).
- (2) If an officer of the teaching service—
  - (a) is absent, without authority, from their employment for a period of 10 working days; and
  - (b) gives no proper written explanation or excuse for the absence to the Chief Executive before the end of that period,the officer will, if the Chief Executive so determines, be taken to have resigned from their employment.

### **120—Termination**

- (1) If the Chief Executive is satisfied that—
  - (a) the volume of work in any section of the teaching service has diminished; and

- (b) a reduction in staff of the teaching service has consequently become necessary or appropriate; and
- (c) the employment of a specified officer of the teaching service should be terminated for that purpose,

the Chief Executive may terminate the employment of that officer as from the date determined by the Chief Executive.

- (2) An officer of the teaching service whose employment is terminated under subsection (1) is entitled to receive—
  - (a) at least 12 weeks' notice in writing prior to the date of termination; or
  - (b) if the notice is less than 12 weeks, a sum equal to the officer's salary for the period by which the notice falls short of 12 weeks.
- (3) The Chief Executive may terminate the employment of an officer of the teaching service on any of the following grounds:
  - (a) the officer is excess to the requirements of the teaching service;
  - (b) the officer is physically or mentally incapable of performing duties satisfactorily;
  - (c) misconduct;
  - (d) unsatisfactory performance;
  - (e) the officer's lack of an essential qualification;
  - (f) the officer is not a registered teacher within the meaning of the *Teachers Registration and Standards Act 2004*;
  - (g) the officer is a prohibited person within the meaning of the *Child Safety (Prohibited Persons) Act 2016*.
- (4) However, the employment of an officer of the teaching service may not be terminated under subsection (3)(a) or (b) unless the Chief Executive has taken reasonable steps to find other suitable duties in the public sector of the State to which the officer might be assigned or transferred on conditions that maintain the officer's substantive remuneration level.

## **Part 10—Other employment and staffing arrangements**

### **121—Chief Executive may employ other persons for purposes of Act**

- (1) The Chief Executive may employ such other persons (in addition to the employees and officers of the Department and officers of the teaching service) as the Chief Executive thinks necessary or appropriate for the purposes of this Act.
- (2) To avoid doubt, a person may be employed under this section to provide health, social or other non-education services in relation to schools and children's services centres.

## **122—Part 7 and Schedule 1 of the *Public Sector Act 2009* to apply to persons employed under this Part**

- (1) Pursuant to section 41(2) of the *Public Sector Act 2009*, Part 7 of that Act (as modified by the following provisions) applies to a person employed under section 121:
  - (a) section 45(3) of that Act does not apply in relation to the employee;
  - (b) Part 7 Division 2 of that Act does not apply in relation to an employee employed under an executive employment contract entered into before the day on which this section commences;
  - (c) a grievance about an employment decision made before 1 July 2016 is to be heard and determined, or to continue to be heard and determined, in accordance with any policies and procedures established by the Department for Education and Child Development for the purpose of dealing with such grievances, as in force when the employment decision was made.
- (2) The regulations may make further modification to Part 7 of the *Public Sector Act 2009* as it applies to a person employed under section 121.
- (3) Schedule 1 of the *Public Sector Act 2009* applies to a person employed under section 121.
- (4) However, this section does not apply in relation to the following employees:
  - (a) an employee employed in duties that are classified in a classification contained in the *Pre-School (Kindergarten) Teaching Staff Award* (or any award made in substitution for that award);
  - (b) an employee employed in duties as an hourly paid instructor or a swimming and aquatics instructor as classified in a classification contained in the *Teachers DECS Award* or the *SA School and Preschool Education Staff Enterprise Agreement 2012* (or any award or enterprise agreement made in substitution for that award or enterprise agreement);
  - (c) any other employee declared by the regulations to be included within the ambit of this subsection.

## **123—Use of staff etc of administrative units of the Public Service**

The Chief Executive may, by agreement with the Minister responsible for an administrative unit of the Public Service, make use of the services of the staff, equipment or facilities of that administrative unit.

## **Part 11—Appeals**

### **Division 1—Review by South Australian Employment Tribunal**

#### **124—Review by SAET of certain decisions and determinations**

- (1) Subject to this section, an officer of the teaching service who is aggrieved with a decision or determination of the Chief Executive under Part 9 (other than a decision or determination of a kind prescribed by the regulations) may apply to SAET under Part 3 Division 1 of the *South Australian Employment Tribunal Act 2014* for a review of the decision or determination.

- (2) An application for review must be made within—
- (a) in the case of a review of a decision or determination relating to an application under section 105—30 days; or
  - (b) in any other case—14 days,
- after receiving notice of the decision or determination (or such longer period as SAET may allow).
- (3) For the purposes of section 18A of the *South Australian Employment Tribunal Act 2014*, there will be the following panels of supplementary panel members:
- (a) a panel of employees in the Department appointed by the Governor on the nomination of the Minister;
  - (b) a panel of officers of the teaching service appointed by the Governor on the nomination of the Australian Education Union made after elections have been held in accordance with the regulations.
- (4) In exercising its powers under the *South Australian Employment Tribunal Act 2014* in proceedings under this Act related to an application for review by an officer of the teaching service, SAET will, if the President of SAET so determines, sit with—
- (a) 1 supplementary panel member from the panel referred to in subsection (3)(a); and
  - (b) 1 supplementary panel member from the panel referred to in subsection (3)(b).
- (5) A decision of SAET in a review of a decision or determination of the Chief Executive on an application under section 105 may not be the subject of an application for review or an appeal under Part 5 of the *South Australian Employment Tribunal Act 2014*.
- (6) A person may not make an application to SAET under Part 3 Division 1 of the *South Australian Employment Tribunal Act 2014* for review of a decision of the Chief Executive on an application by the person under section 106 unless—
- (a) the person made the application to a committee established under section 106(2)(b); and
  - (b) the committee made a provisional recommendation to the Chief Executive that the person be appointed to the vacant position; and
  - (c) the Chief executive declined to make the appointment in accordance with that recommendation.
- (7) In addition to section 30 of the *South Australian Employment Tribunal Act 2014*, SAET may, at any stage of proceedings for a review of a decision or determination resulting in the termination of an officer of the teaching service under Part 9 Division 7, revoke the decision or determination and order that the officer be reinstated in the teaching service.

## Division 2—Appeals to Administrative and Disciplinary Division of the District Court

### 125—Appeal against certain actions of Minister or Chief Executive

- (1) A person who is aggrieved by a prescribed action of the Minister or the Chief Executive may appeal to the Administrative and Disciplinary Division of the District Court against the prescribed action.
- (2) Subject to this section, an appeal must be instituted within 1 month of the prescribed action.
- (3) The Minister or the Chief Executive (as the case requires) must, if required by the appellant, state in writing the reasons for the prescribed action.
- (4) If the reasons of the Minister or the Chief Executive (as the case requires) are not given to the appellant, in writing, at the time of taking the prescribed action and the appellant (within 1 month of the making of the decision) requires the Minister or Chief Executive to state the reasons in writing, the time for instituting the appeal runs from the time at which the appellant receives the written statement of those reasons.
- (5) In this section—

*prescribed action* means—

- (a) a direction under section 22(3); or
- (b) a direction under section 40(3); or
- (c) a direction under section 62 or 63 that a child be enrolled at a specified school; or
- (d) any other action of a kind prescribed by the regulations for the purposes of this definition,

but does not include a decision or determination that may be reviewed by SAET under Division 1 or any other action of a kind declared by the regulations to be excluded from the ambit of this definition.

## Part 12—Authorised officers

### 126—Authorised officers

- (1) The following persons are *authorised officers* for the purposes of this Act:
  - (a) the Chief Executive;
  - (b) police officers;
  - (c) employees of the Department authorised by the Chief Executive as an authorised officer.
- (2) An authorisation under subsection (1)(c) may be made subject to conditions or limitations specified in the instrument of authorisation.
- (3) An authorised officer referred to in subsection (1)(c) must be issued with an identity card—
  - (a) containing the person's name and a photograph of the person; and



- (b) stating that the person is an authorised officer under this Act.
- (4) If the powers of an authorised officer referred to in subsection (1)(c) have been limited by conditions, the identity card issued to the officer must indicate those limitations.
- (5) An authorised officer (other than a police officer in uniform) must, at the request of a person in relation to whom the officer intends to exercise powers under this Act, produce for inspection their identity card or other evidence of their authority.
- (6) The Chief Executive may, by notice in writing, vary or revoke the authorisation, or a condition or limitation of the authorisation, of an authorised officer referred to in subsection (1)(c) on any grounds the Chief Executive thinks fit.

### **127—Powers of authorised officers**

- (1) If an authorised officer observes a person in a public place who appears to the officer to be a child of compulsory school age or a child of compulsory education age at a time when such a child should normally be attending school or participating in an approved learning program (as the case requires), the officer may require the child to provide—
  - (a) their name, address and age; and
  - (b) details of the school or approved learning program (if any) in which they are enrolled; and
  - (c) the reason for their non-attendance at school or non-participation in an approved learning program.
- (2) If a child referred to in subsection (1) is in the company of a person apparently over the age of 18 years, the authorised officer may require that person to provide the authorised officer with the information referred to in that subsection.
- (3) If an authorised officer who is a police officer is of the opinion that a child referred to in subsection (1) does not have a proper reason for being absent from school or for not participating in an approved learning program (as the case requires), the authorised officer may take the child into custody and return the child—
  - (a) to a person in authority at the school or approved learning program in which the child is enrolled; or
  - (b) to a person responsible for the child.
- (4) An authorised officer may at any time attend at residential premises and request any person in the premises to provide the officer with—
  - (a) the full name of each child of compulsory school age and compulsory education age who resides in the premises; and
  - (b) the age of each such child; and
  - (c) the school or approved learning program (if any) in which each such child is enrolled.

### **128—Offence to hinder etc authorised officers**

A person who—

- (a) hinders or obstructs an authorised officer, or a person assisting an authorised officer, in the exercise of powers conferred by this Act; or

- (b) uses abusive, threatening or insulting language to an authorised officer, or a person assisting an authorised officer; or
  - (c) when required by an authorised officer under this Act to answer a question, refuses or fails to answer the question to the best of the person's knowledge, information and belief; or
  - (d) falsely represents, by words or conduct, that they are an authorised officer,
- is guilty of an offence.

Maximum penalty: \$7 500.

## **Part 13—Financial provisions**

### **Division 1—Materials and services charges for schools**

#### **129—Materials and services charges for schools**

- (1) A school may impose materials and services charges in respect of each student enrolled in the school for the whole or part of a calendar year.
- (2) The following provisions apply in relation to materials and services charges imposed, or proposed to be imposed, by a school under this section:
  - (a) a materials and services charge must relate to a course of instruction in primary or secondary education provided at the school in accordance with the curriculum determined by the Chief Executive for the purposes of this Act;
  - (b) the school must not impose a materials and services charge to recover the salaries or material costs of teachers, or the provision of school buildings or fittings;
  - (c) the school must not impose a materials and services charge in an amount exceeding the prescribed amount unless—
    - (i) all persons who, in the opinion of the governing council, would be liable for the materials and services charge have been given an opportunity to participate in a poll on the matter conducted in accordance with the regulations; and
    - (ii) a majority of the votes cast in the poll indicate support for the proposed materials and services charge; and
    - (iii) the Chief Executive has approved the proposed materials and services charge;
  - (d) the school may impose different materials and services charges according to the year level of a student, the course of instruction for which a student is enrolled or any other factor;
  - (e) materials and services charges may be imposed from time to time throughout the calendar year;
  - (f) the principal of the school must, in accordance with any requirement set out in the regulations, disclose to the governing council of the school the bases on which materials and services charges are proposed to be fixed;

- (g) the amount of any proposed materials and services charge must be approved by the governing council of the school before it can be imposed;
  - (h) a student, and each person who is responsible for the student, must be given written notice of a materials and services charge payable in respect of the student in accordance with the requirements set out in the regulations.
- (3) A student must not be refused materials or services considered necessary for curricular activities that form part of the core of activities in which students are required to participate by reason of non-payment of a materials and services charge.
- (4) Liability for a materials and services charge is to be determined as follows:
- (a) in the case of a student who is not an adult—each person who is responsible for the student is jointly and severally liable for the charge;
  - (b) in the case of an adult student—
    - (i) if the student is a dependant of a person who is responsible for the student—the student and the person who is responsible for the student are jointly and severally liable for the charge; or
    - (ii) in any other case—the student is liable for the charge.
- (5) Subject to the regulations, a materials and services charge is recoverable as a debt due to the governing council of the school.
- (6) Subject to any directions of the Chief Executive, the principal of a school may wholly or partly waive, reduce or refund a materials and services charge, or allow a materials and services charge to be paid by instalments.
- (7) The Chief Executive must, at the request of a governing council of a school, make services available (without cost) to the governing council for the recovery of outstanding materials and services charges.
- (8) In this section—
- person who is responsible for the student* does not include a step-parent or a person standing *in loco parentis* to the student.

## Division 2—Other fees and charges

### 130—Charges for certain overseas and non-resident students etc

- (1) The Chief Executive may, by notice in the Gazette, fix charges payable by—
- (a) full fee paying overseas students; and
  - (b) students enrolled in schools who are not resident in the State; and
  - (c) children enrolled in schools who are dependants of a person who is the subject of a visa issued under the *Migration Act 1958* of the Commonwealth of a kind prescribed by the regulations for the purposes of this subsection.
- (2) Different charges may be fixed according to the school in which the student is, or is to be, enrolled, the year level or age of the child or any other relevant factor.
- (3) Liability for charges fixed under this section is to be determined as follows:
- (a) in the case of a child—each person who is responsible for the child is jointly and severally liable for the charge;

- (b) in the case of an adult student—
  - (i) if the student is a dependant of a person who is responsible for the student—the student and the person who is responsible for the student are jointly and severally liable for the charge; or
  - (ii) in any other case—the student is liable for the charge.
- (4) Subject to any directions of the Chief Executive, the principal of a school may wholly or partly waive, reduce or refund a charge under this section, allow a charge to be paid by instalments or require a person to give security for payment of a charge.
- (5) A charge fixed under this section is recoverable as a debt due to the Minister.
- (6) In this section—

***full fee paying overseas student***—a student will be taken to be a full fee paying overseas student if—

- (a) the student holds a temporary visa in force under the *Migration Act 1958* of the Commonwealth; and
- (b) the Commonwealth and the State disregard the student (or a class of students to which that student belongs) when calculating the amount of any assistance to the school in which the student is enrolled;

***student*** includes a prospective student.

### **131—Certain other charges etc unaffected**

Nothing in this Act prevents—

- (a) charges being made in connection with—
  - (i) courses of instruction other than those provided in accordance with the curriculum determined by the Chief Executive for the purposes of this Act; or
  - (ii) extra-curricular activities; or
- (b) charges being made in connection with courses of instruction or activities undertaken by adults other than as students enrolled in a course of secondary education; or
- (c) charges being made to the governing authority of a non-Government school in respect of students of the non-Government school undertaking courses of instruction provided by a Government school; or
- (d) the Chief Executive, or the principal or governing council of a Government school, inviting or receiving voluntary payments from persons responsible for students, students or others for the purposes of the school.

## Division 3—Recovery of amounts payable to the Commonwealth

### 132—Recovery of amounts payable to the Commonwealth

- (1) This section applies if a determination is made under section 110(1)(a) of the *Australian Education Act 2013* of the Commonwealth that the State pay a specified amount to the Commonwealth as a result of—
  - (a) non-compliance or a breach by a prescribed entity to which the State paid an amount of financial assistance in accordance with that Act; or
  - (b) a payment referred to in section 109(1), (2), (3)(a) or (4) of that Act (being an amount paid to the State for payment to a prescribed entity in accordance with that Act).
- (2) The State is taken to have made an arrangement with a prescribed entity that the amount determined under section 110(1)(a) of the *Australian Education Act 2013* of the Commonwealth—
  - (a) is a debt due by the prescribed entity to the State; and
  - (b) may be recovered by the State in a court of competent jurisdiction.
- (3) The State may assign to the Commonwealth the right to recover a debt mentioned in subsection (2).
- (4) In this section—

*prescribed entity* means—

  - (a) an approved authority; or
  - (b) a block grant authority; or
  - (c) a non-government representative body,

all within the meaning of the *Australian Education Act 2013* of the Commonwealth.

## Part 14—Miscellaneous

### 133—Exemptions

- (1) The Minister may, by notice in writing, exempt a specified person, or a specified class of persons, from the operation of a provision or provisions of this Act.
- (2) An exemption may be conditional or unconditional.
- (3) The Minister may, by notice in writing, vary or revoke an exemption for any reason the Minister thinks fit.
- (4) A person must not contravene or fail to comply with a condition of an exemption.  
Maximum penalty: \$5 000.

### **134—Use of certain school premises etc for both school and community purposes**

The Minister may, if of the opinion that it is expedient to do so—

- (a) permit the land, buildings or facilities of a Government school or Government preschool, or a children's services centre, to be used for community purposes on conditions determined by the Minister;
- (b) provide assistance to community bodies (whether by the making of grants or loans or otherwise) on conditions that secure for Government schools a right to make use of the land, buildings or facilities of the community bodies.

### **135—Proceedings for offences**

- (1) Proceedings for an offence against this Act may only be commenced with the consent in writing of the Minister.
- (2) In any proceedings for an offence against this Act, a document apparently signed by the Minister and certifying that the Minister consented to the proceedings must be accepted as proof of that consent in the absence of evidence to the contrary.

### **136—Commencement of prosecution for offence against Act**

- (1) Proceedings for an offence against this Act must be commenced within 2 years of the date on which the offence is alleged to have been committed.
- (2) Section 52(1)(a) of the *Criminal Procedure Act 1921* does not apply to proceedings for an offence against this Act.

### **137—Confidentiality**

- (1) A person engaged or formerly engaged in the administration of this Act must not divulge or communicate personal information obtained (whether by that person or otherwise) in the course of official duties except—
  - (a) as required or authorised by or under this Act or any other Act or law; or
  - (b) as required or authorised by an order of a court or tribunal; or
  - (c) with the consent of—
    - (i) in the case of information that relates to a child—a person responsible for the child to whom it relates; or
    - (ii) in any other case—the person to whom the information relates; or
  - (d) in connection with the administration or enforcement of this or any other Act; or
  - (e) for the purposes of referring the matter to a law enforcement agency; or
  - (f) to an agency or instrumentality of this State, the Commonwealth or another State or a Territory of the Commonwealth for the purposes of the proper performance of its functions; or
  - (g) if the disclosure is reasonably necessary for the protection of the lawful interests of that person; or

- (h) if the disclosure is reasonably required to lessen or prevent a serious threat to the life, health or safety of a person or persons.

Maximum penalty: \$10 000.

- (2) Subsection (1) does not prevent disclosure of statistical or other data that could not reasonably be expected to lead to the identification of any person to whom it relates.
- (3) Information that has been disclosed under subsection (1) for a particular purpose must not be used for any other purpose by—
- (a) the person to whom the information was disclosed; or
  - (b) any other person who gains access to the information (whether properly or improperly and whether directly or indirectly) as a result of that disclosure,
- unless—
- (c) it relates to the health, safety, welfare or wellbeing of a child or class of children; or
  - (d) it is in circumstances or for a purpose prescribed by the regulations.

Maximum penalty: \$10 000.

- (4) The regulations may make further provision in respect of the disclosure of information for the purposes of this Act.

### **138—Protections, privileges and immunities**

- (1) No civil liability attaches to the Chief Executive, an authorised officer or any other person for any act or omission done in good faith and without negligence in the exercise or purported exercise of functions or powers under this Act.
- (2) No civil liability attaches to—
- (a) a member or former member of a governing council; or
  - (b) a member or former member of a committee established by a governing council; or
  - (c) a member or former member of an affiliated committee,
- for an act or omission done in good faith and without negligence in the exercise or discharge, or purported exercise or discharge, of a power or function of the council or committee (as the case requires).
- (3) A liability that would, but for subsection (2), lie against a person, lies instead against the Crown.
- (4) Nothing in this Act affects any rule or principle of law relating to—
- (a) legal professional privilege; or
  - (b) "without prejudice" privilege; or
  - (c) public interest immunity.
- (5) A person who does anything in accordance with this Act, or as required or authorised by or under this Act, cannot by so doing be held to have breached any code of professional etiquette or ethics, or to have departed from any acceptable form of professional conduct.

### 139—Evidentiary provisions

- (1) In any proceedings under this Act, a document apparently signed by the principal of a school or head of an approved learning program and certifying that a specified child did, or did not, attend the school or participate in the approved learning program on the days, or during the period, specified in the document must be accepted as proof of the matter so certified in the absence of evidence to the contrary.
- (2) In any proceedings under this Act, a document apparently signed by the Chief Executive and certifying that—
- (a) a specified person is a person who is responsible for a child named in the document; or
  - (b) a specified child is of, above or below a specified age; or
  - (c) at a specified time, a specified child was, or was not, enrolled in a specified school or approved learning program; or
  - (d) a specified person is, or was at a specified time, the principal of a specified school; or
  - (e) a specified person is, or was at a specified time, the head of a specified approved learning program; or
  - (f) a specified person is, or was at a specified time, the director of a stand-alone preschool or children's services centre; or
  - (g) a specified person is, or was at a specified time, an officer of the teaching service; or
  - (h) instruction was provided at a specified time for a specified child at a specified school; or
  - (i) a specified person is, or was at a specified time, an authorised officer; or
  - (j) a specified person is, or was at a specified time, a prescribed person in respect of specified premises; or
  - (k) a specified person is, or was at a specified time, an authorised person in respect of specified premises,

must be accepted as proof of the matter so certified in the absence of evidence to the contrary.

- (3) In any proceedings under this Act, a document apparently signed by the Registrar and certifying that—
- (a) a working with children check relating to a specified person had, or had not, been conducted on a specified day or within a specified period; or
  - (b) a prohibition notice had, or had not, been issued to a specified person; or
  - (c) a specified person had, or had not, been issued with a specified unique identifier,

must be accepted as proof of the matter so certified in the absence of evidence to the contrary.



(4) In any legal proceedings, a document apparently signed by the Chief Executive and certifying that a specified amount of an amount payable under this Act by a specified person is outstanding at a specified date must be accepted as proof of the matter so certified in the absence of evidence to the contrary.

(5) In this section—

*prohibition notice, Registrar* and *unique identifier* have the same meanings as in the *Child Safety (Prohibited Persons) Act 2016*.

## 140—Service

Except where this Act requires otherwise, a notice or other document required or authorised to be given to or served on a person under this Act may—

- (a) be given to the person personally; or
- (b) be left for the person at the person's place of residence or business with someone apparently over the age of 16 years; or
- (c) be posted to the person at the person's last known place of residence or business; or
- (d) be transmitted by fax or email to a fax number or email address provided by the person (in which case the notice or other document will be taken to have been given or served at the time of transmission); or
- (e) if the person is a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth, be served in accordance with that Act.

## 141—Regulations

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), the regulations may provide for the following:
  - (a) the exemption of a person or body, or a class of persons or bodies, from the operation of a specified provision or provisions of this Act;
  - (b) the maintenance and control of Government schools, Government preschools or children's services centres and the management of all land, buildings and equipment used in connection with such schools, preschools or centres;
  - (c) the provision of residences for teachers and boarding accommodation to be used in connection with Government schools, Government preschools or children's services centres;
  - (d) the provision of religious and cultural activities in Government schools, Government preschools or children's services centres;
  - (e) the employment (including terms and conditions of employment) of officers of the teaching service and other persons employed under this Act;
  - (f) the exchange of principals, and other officers of the teaching service, between jurisdictions and the conferral of temporary rights on principals and teachers from other jurisdictions to teach in this State;

- (g) the conferral of a right on an officer of the teaching service to apply to SAET under Part 3 Division 1 of the *South Australian Employment Tribunal Act 2014* for a review of administrative acts, or decisions or determinations, affecting the officer of a kind or class prescribed by the regulations;
- (h) the courses of instruction to be provided in Government schools, Government preschools or children's services centres;
- (i) the provision of stationery, books and other materials or services to, or for the benefit of, students at Government schools, and children at Government preschools and children's services centres;
- (j) the provision of grants to schools, preschools or children's services centres and the conditions applicable to those grants;
- (k) the enrolment of students;
- (l) the establishment of scholarships and the provision of allowances to students;
- (m) the hours during which instruction is to be provided at Government schools (including school vacations);
- (n) the method to be adopted in teaching in Government schools, Government preschools or children's services centres;
- (o) the forms of discipline to be observed and enforced in Government schools, Government preschools or children's services centres (including limiting or prohibiting specified forms of discipline);
- (p) the transport of students and children to and from Government schools, Government preschools and children's services centres and the payment of the costs of transport;
- (q) the use by the public of the buildings, land and equipment of Government schools, Government preschools or children's services centres;
- (r) the prohibition of access to the grounds of Government schools, Government preschools or children's services centres;
- (s) the regulation of the use of vehicles on the grounds of Government schools, Government preschools or children's services centres;
- (t) the operation of governing councils or affiliated committees;
- (u) the collection, recording and collation of information relating to the operation of this Act;
- (v) the provision of information to the Minister or Chief Executive relating to the operation of this Act;
- (w) fees and charges in respect of any matter under this Act and their payment, remission, recovery or waiver;
- (x) fines, not exceeding \$5 000, for offences against the regulations;
- (y) expiation fees, not exceeding \$750, for offences against this Act or the regulations (other than an offence against Subdivision 1 or Subdivision 3 of Part 7 Division 2 of this Act);
- (z) facilitation of proof of the commission of offences against the regulations.

- (3) The regulations may—
  - (a) be of general or limited application; and
  - (b) make different provision according to the matters or circumstances to which they are expressed to apply; and
  - (c) make provisions of a saving or transitional nature consequent upon the enactment of this Act; and
  - (d) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister, the Chief Executive or any other specified person or body; and
  - (e) apply or incorporate, wholly or partially and with or without modification, a code, standard, policy or other document prepared or published by the Minister or another specified person or body.
- (4) A provision of a regulation made under subsection (3)(c) may, if the regulation so provides, take effect from the commencement of this Act or from a later day.
- (5) To the extent to which a provision takes effect under subsection (4) 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.
- (6) If a code, standard or other document is referred to or incorporated in the regulations—
  - (a) a copy of the code, standard or other document must be kept available for public inspection, without charge and during ordinary office hours, at an office or offices specified in the regulations; and
  - (b) evidence of the contents of the code, standard or other document may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code, standard or other document.

## **Schedule 1—Repeals, related amendments, transitional provisions etc**

### **Part 1—Preliminary**

#### **1—Amendment provisions**

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

### **Part 2—Repeal of *Children's Services Act 1985***

#### **2—Repeal of *Children's Services Act 1985***

The *Children's Services Act 1985* is repealed.

## **Part 3—Repeal of *Education Act 1972***

### **3—Repeal of *Education Act 1972***

The *Education Act 1972* is repealed.

## **Part 4—Amendment of *Children's Protection Act 1993***

### **4—Amendment of section 31—Constitution of family care meeting**

- (1) Section 31(d)(i)—delete "Director-General of Education" and substitute:  
Chief Executive of that administrative unit
- (2) Section 31(d)(ii)—delete "head teacher" and substitute:  
principal

## **Part 5—Amendment of *Education and Early Childhood Services (Registration and Standards) Act 2011***

### **5—Amendment of section 3—Interpretation**

- (1) Section 3(1)—after the definition of *Catholic school* insert:  
*Chief Executive* means the Chief Executive of the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of the *Education and Children's Services Act 2019*;
- (2) Section 3(1), definition of *Director-General*—delete the definition

### **6—Amendment of section 8—Responsible authorities**

Section 8(1)—delete "Director-General" and substitute:  
Chief Executive

### **7—Amendment of section 13—Meaning of certain terms in *Education and Care Services National Law (South Australia)* for the purposes of this jurisdiction**

- (1) Section 13(2)—delete "the *Children's Services Act 1985*" and substitute:  
the *Education and Children's Services Act 2019*
- (2) Section 13(4)—delete "the *Education Act 1972*" and substitute:  
the *Education and Children's Services Act 2019*

### **8—Amendment of section 22—Composition of Board**

Section 22(2)(b)—delete "Director-General" and substitute:  
Chief Executive

### **9—Amendment of section 28—Staff of Board**

Section 28(5)—after paragraph (a) insert:  
(ab) the Chief Executive under the *Education and Children's Services Act 2019*; or

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## Part 6—Amendment of *Independent Commissioner Against Corruption Act 2012*

### 10—Amendment of Schedule 1—Public officers, public authorities and responsible Ministers

Schedule 1, table, row relating to the *Education Act 1972*—delete the row and substitute:

an officer or employee appointed by the Chief Executive under the <i>Education and Children's Services Act 2019</i>	the Chief Executive under the <i>Education and Children's Services Act 2019</i>	the Minister responsible for the administration of the <i>Education and Children's Services Act 2019</i>
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## Part 7—Amendment of *National Tax Reform (State Provisions) Act 2000*

### 11—Amendment of section 5—GST component to be separately identified in government accounts

Section 5(2), definition of *government account*—delete "*Education Act 1972*" and substitute:

*Education and Children's Services Act 2019*

## Part 8—Amendment of *Public Sector Act 2009*

### 12—Amendment of section 25—Public Service employees

Section 25(2)(k)—delete paragraph (k) and substitute:

- (k) an employee employed under the *Education and Children's Services Act 2019*;

## Part 9—Amendment of *SACE Board of South Australia Act 1983*

### 13—Amendment of section 8—Membership of Board

Section 8(3)(d)—delete "Director-General of Education" and substitute:

Chief Executive under the *Education and Children's Services Act 2019*

## Part 10—Amendment of *Summary Offences Act 1953*

### 14—Amendment of section 38A—Sale of books and educational matter

Section 38A(1)—delete "*Education Act 1972*" and substitute:

*Education and Children's Services Act 2019*

## Part 11—Amendment of *Superannuation Act 1988*

### 15—Amendment of section 4—Interpretation

Section 4(1), definition of *employee*, (b)(ii)—delete "*Education Act 1972*" and substitute:

*Education and Children's Services Act 2019*

## **Part 12—Amendment of *Teachers Registration and Standards Act 2004***

### **16—Amendment of section 3—Interpretation**

- (1) Section 3, definition of *Department*—delete "the Minister" and substitute:  
a Minister
- (2) Section 3, definition of *prescribed service*, (a) and (b)—delete paragraphs (a) and (b) and substitute:
  - (a) a school-based preschool or stand-alone preschool under the *Education and Children's Services Act 2019* (including a stand-alone preschool continued under Part 4 Division 3 of that Act); or

### **17—Amendment of section 9—Membership of Teachers Registration Board**

Section 9(1)(h)—delete "person holding or acting in the office of Director of Children's Services" and substitute:

Chief Executive of the Department

## **Part 13—Transitional and other provisions**

### **18—Continuation of schools established etc under *Education Act 1972***

- (1) A school established or continued under the *Education Act 1972* continues in existence and will, for the purposes of this and any other Act, be taken to be a school established under this Act.
- (2) Nothing in subclause (1) affects the registration of a school under the *Education and Early Childhood Services (Registration and Standards) Act 2011*.

### **19—Continuation of school councils**

- (1) Subject to this clause, a school council for a Government school in existence immediately before the commencement of Part 3 of this Schedule continues in existence as the governing council for the school and will, for the purposes of this and any other Act, be taken to be a governing council established under section 34 of this Act.
- (2) The constitution (as in force immediately before the commencement of this clause) of a governing council continued under this clause will continue in accordance with its terms and will, for the purposes of this Act, be taken to be a constitution adopted under this Act.

### **20—Continuation of affiliated committees**

- (1) An affiliated committee in respect of a school council in existence immediately before the commencement of Part 3 of this Schedule will continue in existence as an affiliated committee in respect of the governing council for the relevant school and will, for the purposes of this Act, be taken to be an affiliated committee established under section 36 of this Act.

- (2) The constitution (as in force immediately before the commencement of this clause) of an affiliated committee continued under this clause will continue in accordance with its terms and will, for the purposes of this Act, be taken to be a constitution adopted under this Act.

## **21—Classification of officers etc under section 15A of *Education Act 1972* to continue**

- (1) The fixing of duties and titles of officers and positions in the teaching service by the Director-General under section 15A of the *Education Act 1972* will continue according to their terms and will, for the purposes of this Act, be taken to have been so fixed by the Chief Executive under section 104 of this Act.
- (2) Classifications of officers and positions in the teaching service by the Director-General under section 15A of the *Education Act 1972* will continue according to their terms and will, for the purposes of this and any other Act, be taken to have been so classified by the Chief Executive under section 104 of this Act (and any condition imposed by the Director-General on a classification under section 15A(c) of the *Education Act 1972* will be taken to continue to apply to the classification as continued according to its terms).

## **22—Designation of principals**

Subject to this Act, the designation of a person as the head teacher of a school by the Director-General, or by the governing authority of a non-Government school, (as the case requires) as the head teacher under the *Education Act 1972* and in force immediately before the commencement of this clause will continue and will, for the purposes of this and any other Act, be taken to be a designation under the relevant paragraph of the definition of *principal* in section 3 of this Act.

## **23—Continuation of appointments of officers of the teaching service**

- (1) Subject to this Act, an appointment of a person as an officer of the teaching service by the employing authority under section 15 of the *Education Act 1972* will continue and will, for the purposes of this and any other Act, be taken to be an appointment under section 97 of this Act.
- (2) Subject to this Act, any service of an officer of the teaching service while appointed as an officer of the teaching service under section 15 of the *Education Act 1972* will be taken to be service in the teaching service under this Act.
- (3) Subject to this Act, an appointment by the employing authority under section 15B of the *Education Act 1972* of an officer of the teaching service to a position classified at a promotional level will continue and will, for the purposes of this and any other Act, be taken to be an appointment by the Chief Executive under section 106 of this Act.
- (4) The terms and conditions applying to an appointment continued under this clause immediately before the commencement of this clause will continue to apply to the appointment as continued and will, for the purposes of this Act, be taken to have been imposed by the Chief Executive under section 97 or 106 of this Act (as the case requires).
- (5) The operation of a preceding subclause—
  - (a) does not affect an employee's remuneration or other entitlements; and

- (b) does not affect any rights and entitlements (including any entitlement to annual leave, sick leave, long service leave or any other leave) accrued prior to the commencement of this clause; and
  - (c) does not interrupt continuity of service or effective service; and
  - (d) does not constitute a termination of employment (however described); and
  - (e) cannot involve a reduction in an employee's status.
- (6) The operation of this clause does not give rise to any remedy or entitlement arising from termination or change of employment.

**24—Continuation of other appointments under section 101B of *Education Act 1972***

- (1) The employment of a person who was, immediately before the commencement of this clause, employed under section 101B of the *Education Act 1972* will continue and that person will, for the purposes of this and any other Act, be taken to have been employed under section 121 of this Act.
- (2) The operation of subclause (1)—
- (a) does not affect the employee's remuneration or other entitlements; and
  - (b) does not affect any rights and entitlements (including any entitlement to annual leave, sick leave, long service leave or any other leave) accrued prior to the commencement of that subclause; and
  - (c) does not interrupt continuity of service or effective service; and
  - (d) does not constitute a termination of employment (however described); and
  - (e) cannot involve a reduction in the employee's status.
- (3) Subject to this Act, the employment of a person continued under this clause will be taken to be subject to the same conditions applicable to the person's employment immediately before the commencement of this clause.
- (4) The operation of this clause does not give rise to any remedy or entitlement arising from termination or change of employment.

**25—Continuation of staff appointed under section 12 of *Children's Services Act 1985***

- (1) The employment of a person who was, immediately before the commencement of this clause, employed under section 12 of the *Children's Services Act 1985* will continue as follows:
- (a) a person employed under that section as a preschool teacher or preschool director will continue and that person will, for the purposes of this and any other Act, be taken to be an officer of the teaching service appointed under this Act;
  - (b) a person employed as an early childhood worker will continue and that person will, for the purposes of this and any other Act, be taken to have been employed under section 121 of this Act.



- (2) The operation of subclause (1)—
  - (a) does not affect the employee's remuneration or other entitlements; and
  - (b) does not affect any rights and entitlements (including any entitlement to annual leave, sick leave, long service leave or any other leave) accrued prior to the commencement of that subclause; and
  - (c) does not interrupt continuity of service or effective service; and
  - (d) does not constitute a termination of employment (however described); and
  - (e) cannot involve a reduction in the employee's status.
- (3) Subject to this Act, the employment of a person continued under this clause will be taken to be subject to the same conditions applicable to the person's employment immediately before the commencement of this clause.
- (4) The operation of this clause does not give rise to any remedy or entitlement arising from termination or change of employment.

## **26—Continuation of curriculum**

A curriculum determined by the Director-General under section 82 of the *Education Act 1972* and in force immediately before the commencement of this clause will continue in accordance with its terms and will, for the purposes of this and any other Act, be taken to be a curriculum determined by the Chief Executive under this Act.

## **27—Continuation of enrolments**

- (1) The enrolment of a child at a children's services centre under the *Children's Services Act 1985* in effect immediately before the commencement of this clause will continue in accordance with its terms in respect of the relevant preschool or children's services centre under this Act.
- (2) The enrolment of a student at a school under the *Education Act 1972* in effect immediately before the commencement of this clause will continue and will, for the purposes of this and any other Act, be taken to be an enrolment under section 60 of this Act.
- (3) The enrolment of a student in an approved learning program under the *Education Act 1972* in effect immediately before the commencement of this clause will continue in accordance with its terms and will, for the purposes of this and any other Act, be taken to be an enrolment under section 61 of this Act.

## **28—Suspensions, exclusions and expulsions of students to continue**

The suspension, exclusion or expulsion of a student under a provision of Part 4 Division 6 of the *Education Regulations 2012* in effect immediately before the commencement of this clause will continue in accordance with its terms and will, for the purposes of this Act, be taken to be a suspension, exclusion or expulsion of the student (as the case requires) under the corresponding provision of Part 7 Division 3 of this Act.

## **29—Prohibition notices**

- (1) A prohibition notice issued under regulation 10 of the *Education Regulations 2012* in effect immediately before the commencement of this clause will continue in accordance with its terms and will, for the purposes of this Act, be taken to be a barring notice issued under section 93 of this Act.
- (2) A right to make an application for review by the Minister of a prohibition notice under regulation 11 of the *Education Regulations 2012* in existence immediately before the commencement of this clause (but not exercised before that commencement), will be exercised as if section 94 of this Act had been in operation before that right arose, so that an application for review may be made instead under that section.
- (3) Nothing in this clause affects any proceedings under regulation 11 of the *Education Regulations 2012* commenced before the commencement of this clause.

## **30—Exemptions under section 81A of *Education Act 1972* to continue**

- (1) An exemption granted by the Minister under section 81A of the *Education Act 1972* in force immediately before the commencement of this clause will continue in accordance with its terms and will, for the purposes of this Act, be taken to be an exemption granted by the Minister under section 133 of this Act.
- (2) Subject to this Act, an exemption continued under this clause will be taken to be subject to the same conditions applicable to the exemption immediately before the commencement of this clause.

## **31—Continuation of advisory committees**

The appointment of an advisory committee under section 10 of the *Education Act 1972* before the commencement of Part 3 of this Schedule will continue in accordance with its terms and will, for the purposes of this Act, be taken to be an appointment under section 11 of this Act.

## **32—Provision relating to adult students during transition to *Child Safety (Prohibited Persons) Act 2016***

- (1) This clause will be taken to expire on the commencement of section 64 of this Act.
- (2) The principal of a school may refuse to enrol an adult student if the principal believes on reasonable grounds that—
  - (a) it would, having regard to the person's criminal history or any other information relating to the person of which the principal is aware, be inappropriate to enrol the person in the school; or
  - (b) it would otherwise not be in the interests of the students or staff at the school to enrol the person in the school.
- (3) The principal of a school may, with the approval of the Chief Executive, refuse to enrol an adult student for any other reason the principal thinks fit.
- (4) However, this clause does not apply to—
  - (a) the continuing enrolment in a school of a student who attains 18 years of age while enrolled in the school; or

- (b) the enrolment of an adult student in a special purpose school providing education to persons detained in training centres or prisons.

### **33—Authorisation of authorised officers to continue**

The authorisation of a person (being a person who is an employee of the Department) as an authorised officer under section 80 of the *Education Act 1972* in force immediately before the commencement of this clause continues in force and the person will, for the purposes of this and any other Act, be taken to be an officer authorised under section 126(1)(c) of this Act.

### **34—Recovery etc of outstanding fees and charges**

- (1) A materials and services charge payable under section 106A of the *Education Act 1972* that remains unpaid immediately before the commencement of this clause will be taken to be a charge of the relevant kind under section 129 of this Act and may be recovered under that section accordingly.
- (2) A charge payable under section 106B of the *Education Act 1972* that remains unpaid immediately before the commencement of this clause will be taken to be a charge of the relevant kind under section 130 of this Act and may be recovered under that section accordingly.

### **35—Continuation of arrangements under section 102A**

For the purposes of this Act, an arrangement (however described) under section 102A of the *Education Act 1972* in force immediately before the commencement of this clause will continue to have effect according to its terms and will be taken to be an arrangement under section 134 of this Act.

### **36—Continuation of administrative instructions**

An administrative instruction issued by the Minister under section 96 of the *Education Act 1972* and in force immediately before the commencement of this clause will continue to have effect according to its terms and will, for the purposes of this and any other Act, be taken to be an administrative instruction issued by the Chief Executive under section 9 of this Act.

### **37—Continuation of delegations under *Education Act 1972***

- (1) A delegation of a function or power of the Minister under section 8 of the *Education Act 1972* in force immediately before the commencement of this clause will continue to have effect according to its terms and will, for the purposes of this and any other Act, be taken to be—
- (a) if the corresponding function or power is, under this Act, a function or power of the Minister—a delegation of the Minister under section 12 of this Act; or
- (b) if the corresponding function or power is, under this Act, a function or power of the Chief Executive—a delegation of the Chief Executive under section 12 of this Act.
- (2) A delegation of a function or power of the Director-General under section 13 of the *Education Act 1972* in force immediately before the commencement of this clause will continue to have effect according to its terms and will, for the purposes of this and any other Act, be taken to be a delegation of the Chief Executive under section 12 of this Act.

- (3) A delegation of a function or power of the employing authority under section 101C of the *Education Act 1972* in force immediately before the commencement of this clause will continue to have effect according to its terms and will, for the purposes of this and any other Act, be taken to be a delegation of the Chief Executive under section 12 of this Act.
- (4) Subject to this Act, a delegation continued under this clause will be taken to be subject to the same conditions applicable to the delegation immediately before the commencement of this clause.
- (5) For the purposes of this clause, a reference to a delegation of a function or power under a specified section includes a reference to a further delegation of that function or power done in accordance with that section.

### **38—Appointment of Director of Children's Services nominee to Teachers Registration Board continued**

A person holding office as a member appointed to the Teachers Registration Board pursuant to section 9(1)(h) of the *Teachers Registration and Standards Act 2004* (as in force before the commencement of this clause) will, subject to that Act, continue to hold office for the remainder of their term of office.

### **39—Appointment of Director of Children's Services nominee to Education and Early Childhood Services (Registration and Standards) Board continued**

A person holding office as a member appointed to the Education and Early Childhood Services (Registration and Standards) Board pursuant to section 22(2)(b) of the *Education and Early Childhood Services (Registration and Standards) Act 2011* (as in force before the commencement of this clause) will, subject to that Act, continue to hold office for the remainder of their term of office.

### **40—Continuation of review panel**

A panel (as constituted immediately before the commencement of this clause) established by the responsible officer under regulation 50(9) of the *Education Regulations 2012* before the commencement of this clause will continue as a panel under section 80(7) of this Act and will, for the purposes of this Act, be taken to be a panel established by the Chief Executive under that subsection.

### **41—Continuation of registration of student exchange organisations**

- (1) Subject to this Act, the registration of a person or body as a student exchange organisation by the Department (within the meaning of the *Education Act 1972*) in force immediately before the commencement of this clause will continue and will, for the purposes of this and any other Act, be taken to be registration of the person or body as a student exchange organisation by the Board under section 85 of this Act.
- (2) The conditions applying to a registration continued under this clause immediately before the commencement of this clause will continue to apply to the registration as continued and will, for the purposes of this Act, be taken to have been imposed under section 85 of this Act.

## Legislative history

### Notes

- 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

Year	No	Title	Assent	Commencement
2019	19	<i>Education and Children's Services Act 2019</i>	8.8.2019	uncommenced

### Provisions amended

New entries appear in bold.

Provision	How varied	Commencement
Sch 1		
cl 32	will expire: Sch 1 cl 32(1)	