

South Australia

Education and Children's Services Bill 2016

A BILL FOR

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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- 3 Repeal of *Education Act 1972*

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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 2016*.

2—Commencement

5 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—

- 10 (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; or
- (c) consists of technical and further education provided by a college (within the meaning of the *Technical and Further Education Act 1975*); or
- 15 (d) consists of an accredited course provided by a training organisation registered under the *Training and Skills Development Act 2003* or a law of 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); or
- 20 (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 2003* (and any relevant work undertaken as part of the apprenticeship or traineeship will be taken to form part of the program); or
- 25 (f) is a program of a class declared by the Minister by notice in the Gazette to be an approved learning program,
- (g) complies with any other requirements set out in the regulations for the purposes of this paragraph;

30 ***authorised officer***—see section 123;

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—

- 35 (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) play groups;

(b) toy libraries;

(c) out of school hours care;

(d) occasional care;

(e) any other service of a kind prescribed by the regulations for the purposes of this definition;

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

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 the governing council for the preschool or children's services centre established or determined under section 17;

governing council, of a school, means the governing council for the school established under section 38;

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;

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 9, 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 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;

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;

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 82;

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 school means a special purpose school established under Part 6;

special school means a school established under this Act or a repealed Act 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 in the school or approved learning program;

teacher means a person who gives, or is qualified to give, instruction in courses of 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 or for the duration of a specified project;

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 in the ambit of this paragraph,

however, a person will be taken not to be responsible for a child or student if the person's guardianship or custody of 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 107 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 Minister, 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 Minister, not to be regarded as a period of effective service.

4—Application of Act to non-Government schools

(1) The following provisions of this Act apply only to Government schools:

- (a) section 8;
- (b) Part 5;
- (c) Part 6;
- (d) section 65(4);
- (e) Part 7 Division 3;
- (f) Part 9;
- (g) Part 10;
- (h) Part 13 Division 1, Division 2 and Division 3.

(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.

Part 2—Objects and principles

6—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 the development of an accessible range of children's services that meet the needs of all groups in the community; and
- (c) promoting the involvement of parents and other members of the community in the provision of education and children's services to children and students in this State.

(2) It is a further object of this Act to acknowledge the efforts and dedication of all teachers 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) 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;

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- (c) children and students should not be unlawfully discriminated against on the ground of their gender, mental or physical impairment, religion or race;
 - (d) the involvement of parents and other members of the community in relation to the education and development of children and students should be promoted;
 - (e) stakeholders and communities should be consulted in respect of decisions under this Act that may affect them;
 - (f) education and children's services provided by Government schools, preschools and children's services centres is to be secular in nature.

Part 3—Administration

7—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) establishing such institutions and making such other provision as the Chief Executive considers necessary or expedient for the proper education and training of teachers; and
 - (c) maintaining a proper standard of efficiency and competency in the teaching service; and
 - (d) establishing and maintaining such residences for the accommodation of teachers or students as the Chief Executive considers necessary or desirable for the purposes of this Act; and
 - (e) provide or arrange for the transport of students to and from schools; and
 - (f) developing or adopting, and implementing, policies relating to the provision of children's services and keeping the operation of those policies under constant review and evaluation; and
 - (g) ensuring that the expertise and qualifications of persons who provide children's services are of the highest possible standards; and
 - (h) keeping the public informed on the availability of children's services and how they may be accessed; and
 - (i) reviewing the special needs of particular groups of children (including those who suffer from physical or mental disabilities and those who are economically disadvantaged) and providing, assisting in the provision of or promoting services to meet those needs; and
 - (j) collaborating and consulting with government and non-government organisations in relation to the provision of education and children's services; and
 - (k) promoting the involvement of parents and other members of the community in the provision of education and children's services; and
 - (l) such other functions as may conferred on the Chief Executive under this or any other Act or by the Minister.

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- (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.

8—Administrative instructions

- 5 (1) The Chief Executive may, from time to time, 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—
- 10 (a) zoning and capacity management relating to the enrolment of students in schools; and
- (b) 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.
- 15 (4) An administrative instruction —
- (a) may be of general application or limited application; and
- (b) make different provision according to the matters or circumstances to which it is expressed to apply.
- 20 (5) Governing councils and affiliated committees are bound by administrative instructions under this section.

9—Model constitutions

- (1) The Chief Executive must, by notice in the Gazette, publish model constitutions of the following kinds for the purposes of this Act:
- 25 (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;
- 30 (e) a model constitution for affiliated committees,
- and may publish such other model constitutions as the Chief Executive thinks fit.
- (2) The Chief Executive may, by notice in the Gazette, vary, substitute or revoke a model constitution.
- (3) The Chief Executive must cause copies of each model constitution, as in force from
- 35 time to time, to be published on a website determined by the Chief Executive.

10—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.

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- (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.

11—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.

12—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 specified information or documents relating to a specified child (being a child who is, or was, a student at the school) as may be in the school's possession and that the Chief Executive reasonably requires for 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, or was, enrolled in the preschool) as may be in the preschool's possession and that the Chief Executive reasonably requires for 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 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 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.

Expiation fee: \$210.

- 5 (7) If a person refuses or fails 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.

13—Sharing of information between certain persons and bodies

- 10 (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;
 - 15 (e) State authorities;
 - (f) any other person or body declared by the regulations to be included in 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, provide
- 20 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
 - 25 (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.
- 30 (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 document ever disclosed the identity of a person, or has been redacted so as to de-identify it.
- 35 (5) Information may be provided under this section regardless of whether the provider has been requested to provide the information.

(6) 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, co-operatives, 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, but does not include a person or body declared by the regulations to be excluded from the ambit of this definition.

Part 4—Preschools and children's services centres

Division 1—School-based preschools

14—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 a 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 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.

15—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 parents of students or prospective students of the preschool as the Minister considers appropriate to represent the preschool; and
 - (b) must take such action under section 44 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 for the purposes of this subsection.
- (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 new school established under section 38 includes such number of parents of students or prospective students of the preschool as the Minister considers appropriate to represent the preschool.

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

16—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.

Education and Children's Services Bill 2016

Part 4—Preschools and children's services centres

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

17—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.
- 5 (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
- 10 (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 19, 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.
- 15 (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 the governing councils of stand-alone preschools and children's services centres.
- 20

18—Composition of governing councils of stand-alone preschools and children's services centres

The governing council for a stand-alone preschool or children's services centre consists of—

- 25 (a) the director of the stand-alone 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.

19—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)—
- 35 (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—
- 40 (a) the information and provisions required by the regulations in respect of a constitution of the relevant kind; and

- (b) 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).
- 5 (4) Without limiting subsection (3), a constitution may contain such other information or provisions as the governing council thinks fit.
- (5) Nothing in this section requires the Minister to approve a particular constitution or a particular provision of a constitution.
- 10 (6) 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.

20—Amendment of constitutions

- 15 (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—
 - 20 (a) if the notice specifies a day on which the amendment is to have effect—from that day; or
 - (b) in 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 stand-alone preschool or children's services centre to make such amendments to its constitution as are specified in the notice.
- 25 (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
 - 30 (b) has had regard to any submissions made by the governing council made 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 the constitution.
- 35 (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 for the purposes of this subsection.

21—Functions and powers of governing councils

Subject to this Act, the governing council of a stand-alone preschool or children's services centre has such functions and powers as may be conferred on it—

- 40 (a) by or under this Act; or
- (b) by the Minister or the Chief Executive; or

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(c) by its constitution.

22—Limitations on powers of governing councils

- 5
- (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 must not interfere, or take any action that interferes, with—
- 10
- (a) the provision, or the day-to-day management of the provision, of preschool education in the stand-alone preschool; or
- (b) the administration of discipline within the stand-alone preschool.
- (4) The governing council of a stand-alone preschool or children's services centre must not give directions to the director of the stand-alone 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.
- 15
- (5) 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).
- 20
- (6) 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 registered children's services centres under repealed Act**23—Application of Division**

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*).

24—Continuation of registered children's services centres

- 30
- (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—
- 35
- (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 17 and 18 will be taken not to apply to the governing council);
- 5 (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.
- 10 (2) 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).
- (3) Nothing in this section affects any title to property, assets or liabilities of a registered children's services centre.
- 15 (4) 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*.

25—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 continued under this Division.
- 20 (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) in the notice does not specify such a day—from the day on which the notice is published in the Gazette.
- 25 (3) The Minister may, by notice in writing, direct the governing council of a stand-alone preschool or children's services centre continued under this Division to make such amendments to its constitution as are specified in the notice.
- (4) Subject to this Act, the governing council of a stand-alone preschool or children's services centre continued under this Division may amend its constitution in
- 30 accordance with the constitution.
- (5) An amendment of a constitution under subsection (3) or (4) has no effect until it is approved by the Minister in accordance with any requirements set out in the regulations for the purposes of this subsection.

Division 4—Direction, suspension and dissolving of governing councils etc

35

26—Interpretation

In this Division—

misconduct includes—

- (a) a refusal or failure to comply with a direction under section 28; and
- 40 (b) a contravention of a prohibition or restriction under section 29.

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Division 4—Direction, suspension and dissolving 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; or
- 5 (b) for failure or incapacity to carry out the duties of office satisfactorily; or
- (c) for any other reasonable cause.

28—Minister may direct governing council

(1) If the Minister is satisfied that—

- 10 (a) the governing council of a stand-alone preschool or children's services centre—
 - (i) has refused or failed to perform a function under this Act or its constitution; or
 - (ii) has performed a function or exercised a power under this Act or its constitution in a particular manner; and

15 (b) by doing so has caused, or may cause, a detriment to—

- (i) the students of the stand-alone preschool or children attending the children's services centre, or a substantial section of the students, or a substantial section of such students or children; or
- (ii) the parents of such students or children,

20 the Minister may, by notice in writing, direct the governing council to take such action as the Minister requires to correct or prevent such detriment.

- (2) If the requirements of a direction under subsection (1) are not complied with, the Minister may take any action required by the direction.
- (3) Action taken by the Minister may be taken on the Minister's behalf by an employee of the Department or another person authorised by the Minister for the purpose.
- 25 (4) A person must not hinder or obstruct the Minister or another person taking action under subsection (2).

Maximum penalty: \$7 500.

Expiation fee: \$400.

29—Minister may prohibit or limit performance of functions etc by governing council

- 30 (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.
- 35 (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 or affiliated committee.

5 **30—Minister may suspend governing council**

- (1) The Minister may, by notice in the Gazette, suspend the governing council of a stand-alone preschool or children's services centre in the following circumstances:

- (a)
- (b)
- 10 (c)

Drafting note—

The circumstances in which this can occur will be determined in the course of consultation.

- 15 (2) Despite any other provision of this Act, if governing council is suspended the following provisions apply:

- (a) the suspension may have effect for the period specified in the notice or until further notice in the Gazette;
- (b) the Minister may, by notice in the Gazette, appoint—
 - 20 (i) the director of the stand-alone preschool or children's services centre (as the case requires); or
 - (ii) the Chief Executive; or
 - (iii) a specified officer of the Department,

(the *administrator*) to administer the affairs of the governing council during the period of the suspension;

- 25 (c) the Minister may appoint a person to act as the administrator—
 - (i) during a vacancy in the office of the administrator; or
 - (ii) when the administrator is absent from, or unable to discharge, official duties;
- (d) the administrator has all the functions and powers of the governing council;
- 30 (e) the Minister may remove an administrator from office, or substitute an administrator, for any reason the Minister thinks fit;
- (f) in any legal proceedings, an apparently genuine document purporting to bear the common seal of a governing council and the signature of the administrator attesting the affixation of the seal will be presumed, in the absence of proof to the contrary, to have been duly executed by the governing council.
- 35

- (3) For the purposes of the *Public Sector (Honesty and Accountability) Act 1995*, the administrator will be taken to be a senior official.

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Division 4—Direction, suspension and dissolving of governing councils etc

(4) The Minister must, as soon as is reasonably practicable after each prescribed period of an administrator's appointment, prepare and submit to both Houses of Parliament a report on the operations of the administrator and the relevant stand-alone preschool or children's services centre during the prescribed period.

5 (5) The regulations may make further provision in relation to suspension of the governing council, and the administration, of a stand-alone preschool or children's services centre under this section.

(6) In this section—

prescribed period means—

10 (a) if the administrator is appointed for a period of less than 12 months—the period of the administrator's appointment; or

(b) in any other case—12 months.

31—Minister may dissolve governing council and establish new governing council

15 (1) The Minister may, by notice in the Gazette—

(a) dissolve the governing council of a stand-alone preschool or children's services centre and establish a new governing council for the preschool or centre; or

20 (b) if a governing council operates for 2 or more stand-alone preschools or children's services centres, or a combination of preschools and centres—dissolve the governing council and establish separate governing councils for the stand-alone preschools and children's services centres,

if the Minister is of the opinion that—

(c) the governing council has—

25 (i)

(ii)

Drafting note—

the circumstances in which this can occur will be determined in the course of consultation.

30 (d) to do so is in the interest of students, or the parents of students, at a school.

(2) The Minister may, in establishing a governing council under this section, determine the constitution under which the governing council is to operate and make such arrangements for the election or appointment of the governing council's members as the Minister thinks fit.

35 (3) If a governing council 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 to a specified person or body; and

40 (b) any remaining assets and liabilities of the governing council vest in the Minister.

- (4) No stamp duty is payable under a law of the State in respect of a transfer under subsection (3).

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

5 32—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—
- 10 (a) in the case of a stand-alone preschool, or a stand-alone preschool or children's services centre continued under Division 3—if less than 10 students per year are enrolled in the preschool, or attend at the children's services centre, for a period of 2 successive years; or
- 15 (b) in any case—in any circumstances prescribed by the regulations for the purposes of this subsection.
- (3) Subject to any provision of the constitution of a stand-alone preschool or children's services centre continued under Division 3 to the contrary, all assets, rights and liabilities of such a children's services centre will, on the closure of the children's services centre, vest in the Minister.
- 20 (4) 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.
- 25 (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.
- 30 (7) The regulations may make further provision in relation to the closure of stand-alone preschools and children's services centres.

Division 6—Miscellaneous

35 33—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—
- 40 (a) must, as soon as the member becomes aware of the interest, disclose the nature of the interest to the governing council; and

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Division 6—Miscellaneous

- (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.

34—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.

35—Corporal punishment prohibited

- (1) Corporal punishment (however described) must not be imposed on a child enrolled in, or attending at, a stand-alone 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 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.
- (4) Without limiting any other Act or law, a contravention of this section will be taken to misconduct for the purposes of disciplinary proceedings under this Act, the *Public Sector Act 2009* and any other Act or law.

36—Religious education and activities

- (1) Religious education (being education consisting of the study of various religions) may only be provided to a child enrolled in a preschool if a person responsible for the child consents to the provision of such education to the child.
- (2) A child enrolled in a preschool or attending a children's services centre may only participate in activities of a religious nature if a person responsible for the child consents to the participation of the child in such activities.

(3) If a person responsible for a child does not consent to the provision of religious education, or the participation in activities of a religious nature, the child cannot be made to suffer any detriment for not receiving such education, or not participating in such activities (as the case requires)

5 (4) In this section—

detriment includes—

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

Part 5—Government schools

10 Division 1—Establishment of schools

37—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.
- 15 (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 of schools

Subdivision 1—Governing councils and affiliated committees

20 38—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.
- 25 (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.
- 30 (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.
- 35 (6) The regulations may make further provision in relation to governing councils of schools.

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Part 5—Government schools

Division 2—Governing councils and affiliated committees of schools

39—Composition of governing councils of schools

- (1) Subject to this Act, a 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 be parents of students of the school unless—
- (a) the school is wholly or principally for adult students; or
 - (b) there is not, in the Minister's opinion, enough parents willing or able to be members of the governing council to reasonably enable compliance with that requirement (having regard to the functions and requirements of the governing council); or
 - (c) the school is a school, or is a school of a class, declared by the Minister by notice in the Gazette to be exempt from the requirements of this subsection.
- (3) If an election of members of the governing council of a school fails because no person nominates for the election, or no votes are cast in the election, then the Minister may, in the Minister's discretion—
- (a) conduct a supplementary election in accordance with the governing council's constitution; or
 - (b) 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).
- (4) To avoid doubt, subsection (3) applies despite the provisions of a governing council's constitution to the contrary.
- (5) 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 15(2).

40—Affiliated committees

- (1) The governing council of a school may, with the approval of the Minister, establish a committee or committees to be affiliated with the 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.

41—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 of a school 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 or an affiliated committee of a school 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 or an affiliated committee of a school 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.

42—Accounts may be audited

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

Subdivision 2—Approval and amendment of constitutions**43—Approval of constitutions by Minister**

- 5 (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 or an affiliated committee of a school.
- (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.
- 10 (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) any other information or provisions that the Minister may reasonably require (including provisions prohibiting a governing council from taking, or not taking, specified actions or otherwise limiting the powers that may be exercised by the governing council).
- 15 (4) Without limiting subsection (3), a constitution may contain such other information or provisions as the governing council or affiliated committee (as the case requires) thinks fit.
- 20 (5) Nothing in this section requires the Minister to approve a particular constitution or a particular provision of a constitution.
- (6) The Minister must cause a copy of each constitution approved under this section, as in force from time to time—
- 25 (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.

44—Amendment of constitutions

- 30 (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 or an affiliated committee of a school.
- (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) in the notice does not specify such a day—from the day on which the notice is published in the Gazette.
- 35 (3) The Minister may, by notice in writing, direct the governing council or an affiliated committee of a school 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—
- 5 (a) has given written notice to the governing council or affiliated committee 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 or affiliated committee (as the case requires) made before the date specified in the notice.
- (5) Subject to this Act, the governing council or an affiliated committee of a school may amend its constitution in accordance with the constitution.
- 10 (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 for the purposes of this subsection.

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

45—Functions and powers of governing councils and affiliated committees of schools

- (1) Subject to this Act, the governing council of a school has such functions and powers as may be conferred on it—
- 20 (a) by or under this Act; or
- (b) by the Minister or the Chief Executive; or
- (c) by its constitution.
- (2) Subject to this Act, an affiliated committee of a school has such functions and powers as may be conferred on it—
- 25 (a) by or under this Act; or
- (b) by the governing council with which it is affiliated; or
- (c) by its constitution.

46—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.
- 30 (2) The governing council of a school may only borrow money with the Minister's written consent.
- (3) The governing council or an affiliated committee of a school must not interfere, or take any action that interferes, with—
- 35 (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 within the school.

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Division 2—Governing councils and affiliated committees of schools

(4) The governing council or an affiliated committee of a school 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 (5) A complaint received by the governing council or an affiliated committee of a school 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

10 (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 loan (together with interest and incidental charges connected with the loan).

15 (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 school**47—Minister may make arrangements for governing councils etc on closure or amalgamation of school**

20 (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

25 (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.

30 (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 a governing council or affiliated committee is dissolved under this section—

35 (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.

40 (5) No stamp duty is payable under a law of the State in respect of a transfer under subsection (4).

Subdivision 5—Direction, suspension and dissolving etc of governing councils and affiliated committees etc

48—Interpretation

In this Subdivision—

5 *misconduct* includes—

- (a) a refusal or failure to comply with a direction under section 50; and
- (b) a contravention of a prohibition or restriction under section 51.

49—Minister may remove member of governing council or affiliated committee

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

- (a) for misconduct; or
- (b) for failure or incapacity to carry out the duties of office satisfactorily; or
- (c) for any other reasonable cause.

15 **50—Minister may direct governing council or affiliated committee**

(1) If the Minister is satisfied that—

- (a) the governing council or an affiliated committee of a school—
 - (i) has refused or failed to perform a function under this Act or its constitution; or
 - 20 (ii) has performed a function or exercised a power under this Act or its constitution in a particular manner; and
- (b) by doing so has caused, or may cause, a detriment to—
 - (i) the students, or a substantial section of the students, of the school; or
 - (ii) the parents of such students,

25 the Minister may, by notice in writing, direct the governing council or affiliated committee to take such action as the Minister requires to correct or prevent such detriment.

(2) If the requirements of a direction under subsection (1) are not complied with, the Minister may take any action required by the direction.

30 (3) Action taken by the Minister may be taken on the Minister's behalf by an employee of the Department or another person authorised by the Minister for the purpose.

(4) A person must not hinder or obstruct the Minister or another person taking action under subsection (2).

Maximum penalty: \$7 500.

35 Expiation fee: \$400.

51—Minister may prohibit or limit performance of functions etc by governing council or affiliated committee

- 5 (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 or an affiliated committee of a school.
- (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—
- 10 (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.

52—Minister may suspend governing council

- 15 (1) The Minister may, by notice in the Gazette, suspend the governing council of a school in the following circumstances:

- (a)
- (b)
- (c)

Drafting note—

20 the circumstances in which this can occur will be determined in the course of consultation.

- (2) Despite any other provision of this Act, if governing council is suspended the following provisions apply:
- 25 (a) the suspension may have effect for the period specified in the notice or until further notice in the Gazette;
- (b) the Minister may, by notice in the Gazette, appoint—
- (i) the principal of the school; or
- (ii) the Chief Executive; or
- (iii) a specified officer of the Department,
- 30 (the *administrator*) to administer the affairs of the governing council during the period of the suspension;
- (c) the Minister may appoint a person to act as the administrator—
- (i) during a vacancy in the office of the administrator; or
- (ii) when the administrator is absent from, or unable to discharge,
- 35 official duties;
- (d) the administrator has all the functions and powers of the governing council;
- (e) the Minister may remove an administrator from office, or substitute an administrator, for any reason the Minister thinks fit;

(f) in any legal proceedings, an apparently genuine document purporting to bear the common seal of a governing council and the signature of the administrator attesting the affixation of the seal will be presumed, in the absence of proof to the contrary, to have been duly executed by the governing council.

5 (3) For the purposes of the *Public Sector (Honesty and Accountability) Act 1995*, the administrator will be taken to be a senior official.

(4) The Minister must, as soon as is reasonably practicable after each prescribed period of an administrator's appointment, prepare and submit to both Houses of Parliament a report on the operations of the administrator and the relevant school or schools during
10 the prescribed period.

(5) The regulations may make further provision in relation to suspension of the governing council, and the administration, of a school under this section.

(6) In this section—

prescribed period means—

15 (a) if the administrator is appointed for a period of less than 12 months—the period of the administrator's appointment; or

(b) in any other case—12 months.

53—Minister may dissolve governing council and establish new governing council

20 (1) The Minister may, by notice in the Gazette—

(a) dissolve the governing council of a school and establish a new governing council for the school; or

(b) if a governing council operates for 2 or more schools—dissolve the governing council and establish separate governing councils for the schools,

25 if the Minister is of the opinion that—

(c) the governing council—

(i)

(ii)

Drafting note—

30 the circumstances in which this can occur will be determined in the course of consultation.

(d) to do so is in the interest of students, or the parents of students, at a school.

(2) The Minister may, in establishing a governing council under this section, determine the constitution under which the governing council is to operate and make such
35 arrangements for the election or appointment of the governing council's members as the Minister thinks fit.

(3) If a governing council 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 to a specified person or body;
40 and

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- (b) any remaining assets and liabilities of the governing council vest in the Minister.
- (4) No stamp duty is payable under a law of the State in respect of a transfer under subsection (3).

5 Division 3—Amalgamation and closure of schools**54—Amalgamation of schools**

- (1) The Minister may amalgamate 2 or more schools if—
- (a) in respect of each school to be amalgamated—
- 10 (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 parents of the students enrolled in school,
- indicate, in a manner and form determined by the Minister, that they are not opposed to the amalgamation; or
- 15 (b) a review committee, following a review under section 56, recommends that the amalgamation occur.
- (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—
- 20 (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.

25 55—Closure of schools

- (1) The Minister may close a school—
- (a) —
- 30 (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 parents of the students enrolled in the school and a majority of the parents of the students enrolled in the preschool; or
- (iii) in any other case—a majority of the parents of the students enrolled in the school,
- 35 indicate in a manner and form determined by the Minister, that they are not opposed to the closure; or
- (b) a review committee, following a review under section 56, recommends that the closure occur.

- (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.
- 5 (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.

56—Review of schools in a particular area

- 10 (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.
- 15 (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 57 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 closure or amalgamation 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 parents of students,of each school within the review area;
 - (e) the review committee must, in the course of the review, have regard to—
- 20
25
30
35

- (i) the educational, social and economic needs both of the local communities within the review area and 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 for the purposes of this paragraph.

(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).

57—Review committees

- (1) The Minister may establish a committee (a *review committee*) to conduct a review under section 56.
- (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 56 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 that is subject to the review) 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) 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.
- (4) The Minister must appoint a member of a review committee, nominated by the presiding member, to be the deputy presiding member.
- (5) The terms and conditions of membership of a review committee will be as determined by the Minister.
- (6) 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.

- (7) Each member of a review committee is entitled to 1 vote on any question arising for decision by the committee.
- (8) 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.
- 5 (9) The presiding member or, in the presiding member's absence, the deputy presiding member will preside at any meeting of a review committee.
- (10) 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.
- 10 (11) 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.
- (12) Subject to this Act, a review committee may determine its own procedures.

58—Minister to report to Parliament if recommendations of review committee not followed

15 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 56(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

59—Minister may establish special purpose schools

- (1) The Minister may establish such schools (*special purpose schools*) for the following purposes as the Minister thinks fit:
- (a) the provision of primary or secondary education by correspondence;
 - (b) the provision of primary or secondary education to mature age students;
 - 25 (c) the provision of primary or secondary education to children and other persons detained in training centres or prisons;
 - (d) the provision of primary or secondary education to children and other persons in hospitals or other healthcare facilities;
 - (e) the provision of primary or secondary education to particular groups within
30 the community;
 - (f) the provision of education in, or relating to, particular languages;
 - (g) 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
35 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.
- 40 (4) The regulations may make further provision in relation to special purpose schools.

60—Governing council and constitution

- (1) For the purposes of this Act, the governing council of a special purpose school consists of—
- 5 (a) if the Minister has, by notice in the Gazette, declared a specified person or persons to be the governing council for the special purpose school—that person or those persons; or
- (b) in any other case—the Chief Executive.
- (2) 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 Chief Executive.
- 10

61—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).
- 15

Part 7—Provision of education in schools**Division 1—Enrolment****Subdivision 1—Compulsory enrolment in school or approved learning program****62—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.
- 25 Maximum penalty: \$5 000.
 Expiation fee: \$315.
- (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).
- 30
- (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).

63—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.
- 35

- (2) However, subsection (1) does not apply to a child who—
- (a) is 16 or more years of age; and
 - (b) has, in accordance with any requirements set out in the regulations, achieved a qualification under an approved learning program.
- 5 (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.
Expiation fee: \$315.
- 10 (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
- 15 relates was, in fact, enrolled as required by subsection (1).

64—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—
- 20 (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
 - 25 (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) The Chief Executive may, by notice in writing, vary or revoke a direction under this section.
- 30 (3) This section does not apply in relation to a child who is enrolled in a non-Government school.
- (4) The regulations may make further provision in relation to a direction under this section (including requiring the Chief Executive to consult with specified persons before giving a direction).

35 Subdivision 2—Enrolment of adult students

65—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 Person) Act 2016*.

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- (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) The principal of a school may refuse to enrol an adult student if the principal believes on reasonable grounds that—
- 5 (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
- 10 (b) it would otherwise not be in the interests of the students or staff at the school to enrol the person in the school.
- (4) 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.
- (5) The regulations may make further provision in relation to the enrolment of adult students in schools (including provisions requiring the provision of information by an adult student or provisions relating to the cancellation of the enrolment of an adult student).
- 15

Subdivision 3—Information gathering**66—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 approved learning program—
- 20 (a) the full name and each residential address of the child; and
- (b) the date of birth of the child; and
- 25 (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
- 30 (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 approved learning program.
- (3) A person who, without reasonable excuse, refuses or fails to comply with requirement under this section is guilty of an offence
- 35 Maximum penalty: \$2 500.
Expiation fee: \$210.

67—Chief Executive may require further information relating to student

- 5 (1) The Chief Executive may, by notice in writing, require a person 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) 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.
- 10 (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.

Expiation fee: \$210.

68—Principal may require other principal to provide report in respect of specified child

- 15 (1) The principal of a school or approved learning program in which it is proposed a child be enrolled may, by notice in writing, require the principal of a specified school or approved learning program to prepare and provide within the period specified in the notice a report relating to the child specified in the notice (being a child who was
- 20 previously, or is currently, enrolled in the specified school or approved learning program).
- (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;
- 25 (ii) information relating to the academic progress of the specified child in the specified school or approved learning program;
- (iii) any other information specified by the principal relating to the child that the principal considers necessary or appropriate in relation to child's education; and
- 30 (b) must comply with any requirements set out in the regulations for the purposes of this paragraph.
- (3) A report under subsection (1)—
- (a) must be provided in a manner and form, and within the period, specified in the notice;
- 35 (b) must contain such information as may be specified in the notice.
- (4) A principal of a school or approved learning program must not, without reasonable excuse, refuse or fail to comply with a requirement under subsection (1).
- (5) For the purposes of this or any other Act, a refusal or failure to comply with a requirement under subsection (1) will be taken to be misconduct.

Division 2—Attendance and participation

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

69—Child of compulsory school age must attend school

- 5 (1) Subject to this Act, a child of compulsory school age must attend at the school at 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.
10 Maximum penalty: \$5 000.
Expiation fee: \$315.
- (3) However, subsection (2) does not apply to a particular failure to attend school if—
- (a) the reason for the failure is—
 - 15 (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 for the purposes of this paragraph; and
 - (b) a person who is responsible for the child advises the principal of the school
20 within 5 business 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).

70—Child of compulsory education age must participate in approved learning program

- 25 (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.
- 30 (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.
Expiation fee: \$315.
- 35 (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
- 5 (iv) any other reason prescribed by the regulations for the purposes of this paragraph; and
- (b) a person who is responsible for the child advises the principal 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.
- 10 (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

15 71—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 and a family conference co-ordinator, to make voluntary arrangements to ensure the attendance of the student in the school at which they are enrolled.

20 72—Chief Executive may convene family conference

- (1) If the Chief Executive is of the opinion that—
- (a) a student who is a child of compulsory school age is regularly absent from school; and
- (b) that arrangements should be made to attempt to improve their attendance; and
- 25 (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 convene a family conference under this Subdivision.
- (2) A family conference is to be conducted by a family conference co-ordinator (the *co-ordinator*) nominated by the Chief Executive.
- 30 (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 student's school or a nominee of the principal;
- 35 (d) any other person (not being a legal practitioner) who the student, or their parents, wish to support them at the conference and who, in the opinion of the co-ordinator, would be of assistance in that role;
- (e) any other person, or person of a class, prescribed by the regulations for the purposes of this paragraph,

and the co-ordinator may allow such other persons as the co-ordinator thinks appropriate to attend a conference.

- 5 (4) The co-ordinator 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 co-ordinator is satisfied that to do so would be in the best interests of the student.

73—Procedures at family conference

- 10 (1) The co-ordinator of a family conference must ensure that information relating to the student's level of attendance at school, including any reasons for their non-attendance, is presented to the conference.
- (2) The co-ordinator of a family conference must allow the persons who are responsible for the student, and the student if the co-ordinator 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.
- 15 (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;
 - 20 (c) a decision will only be valid for the purposes of this Act if the student, each person responsible for the student who is present at the conference and the principal of the student's school each accept the decision in accordance with any requirements set out in the regulations;
 - (d) the decisions must comply with any other requirements set out in the regulations.
- 25 (4) The co-ordinator 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 co-ordinator thinks fit).
- 30 (5) Subject to this Act, the co-ordinator of a family conference may determine the procedures of the conference.

74—Chief Executive and principal etc to give effect to decisions of family conference

- 35 (1) Subject to this Act, the Chief Executive and the principal of a student's school 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, the principal or any other person to do something that is unlawful; or
 - 40 (b) requires or authorises the Chief Executive, the principal 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

75—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 at which 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.

Expiation fee: \$750.

- (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 paragraph.
- (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

76—Principal to report persistent non-attendance or non-participation

- (1) The principal of a school or 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 becomes aware of the relevant matter; and
 - (c) must contain the information required by the regulations for the purposes of this paragraph.

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Division 2—Attendance and participation

- (3) A person must not, without reasonable excuse, refuse or fail to comply with subsection (1).

Maximum penalty: \$2 500.

- (4) A contravention of this section will be taken to misconduct for the purposes of disciplinary proceedings under this Act, the *Public Sector Act 2009* and any other Act.

- (5) For the purposes of this section, a student will be taken to be persistently failing to attend school, or 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 69(3) or 70(3) applies).

Division 3—Religious education**77—Religious education to form part of curriculum**

Despite any other provision of this Act, provision is to be made for religious education (being education consisting of the study of various religions) in the curriculum determined by the Chief Executive for the purposes of this Act.

78—Religious seminars

- (1) The principal of a school may, on the request of local clergy, cause a maximum of 1 half day in each term to be set aside for the conduct of religious seminars by churches.
- (2) A religious seminar may be held on school premises or elsewhere.
- (3) A religious seminar does not form part of the curriculum determined by the Chief Executive for the purposes of this Act.
- (4) 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.

79—Exemption from attendance and participation in religious education or seminars

- (1) A student is exempt from any requirement to attend or participate in religious education—
- (a) if the student is a child—a person responsible for the student; or
 - (b) if the student is an adult—the student,
- indicates that they object to such attendance or participation on conscientious grounds.
- (2) A student who is exempt from a requirement to attend or participate in religious education under subsection (1)—
- (a) cannot be compelled to attend or participate in any religious education or religious seminars to which the exemption relates; and
 - (b) cannot be made to suffer any detriment for not attending or participating in any religious education or religious seminars to which the exemption relates.
- (3) A student who is a child may only attend or participate in a religious seminar if a person responsible for the student consents to such attendance or participation.

(4) In this section—

detriment includes—

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

5 **Division 4—Discipline**

80—Corporal punishment prohibited

- (1) Corporal punishment (however described) must not be imposed on a student.
- (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, schools
10 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.
- 15 (4) A contravention of subsection (1) will be taken to misconduct for the purposes of disciplinary proceedings under this Act, the *Public Sector Act 2009* and any other Act.

Division 5—Registration of student exchange programs

81—Interpretation

In this Division—

- 20 **Board** means the Education and Early Childhood Services Registration and Standards Board of South Australia 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
25 return, students from other countries undertake a part of their studies in this State.

82—Registration of student exchange organisations

- (1) The Board may, on application, register a specified person or body as a student exchange organisation.
- (2) An application for registration under subsection (1) must—
30
 - (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
35 have regard to the following matters:
 - (a) the suitability of the person or body to operate a student exchange program;
 - (b) any relevant guidelines under this or any other Act;

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Division 5—Registration of student exchange programs

- (c) the aims of the proposed student exchange program;
- (d) any reciprocal arrangements between the State and the other country under the proposed student exchange program;
- (e) the organisational and financial structure of the person or body;
- 5 (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
10 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.
- 15 (6) Registration under subsection (1) remains in force—
- (a) for a period of 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).

83—Annual registration fee

- 20 (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
- 25 (b) on or before the day specified by the Board in relation to that year.

84—Guidelines

- (1) The Board may, by notice in the Gazette, publish or adopt guidelines in relation to the registration of registered student exchange organisation and the operation of student exchange programs.
- 30 (2) The Board may, by notice in the Gazette, vary, substitute or revoke guidelines published under subsection (1).

85—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.
- 35 (2) However, a direction may only be given under subsection (1) if the Board is satisfied that—
- (a) the registered student exchange organisation has contravened, or is likely to contravene, this Act or guidelines published under section 84; 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.
- (3) A registered student exchange organisation must comply with a direction given under subsection (1).

86—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 83; or
 - (c) the organisation has contravened guidelines issued under section 84; or
 - (d) the organisation has not complied with a direction under section 85; 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 at schools, preschools and children's services centres

Division 1—Preliminary

87—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 or not they are established under this Act or operated by or on behalf of the Government);
- (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

88—Offensive behaviour

- (1) A person who behaves in an offensive manner on premises to which this Part applies is guilty of an offence.
- Maximum penalty: \$2 500.
- Expiation fee: \$210.

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

Division 2—Offences

- (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 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.

Expiation fee: \$210.

- (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 approved learning program;
- (b) a director of a stand-alone preschool or children's services centre;
- (c) an officer of the teaching service;
- (d) any other person employed at a school, preschool, children's services centre or approved education and care service.

89—Trespassing on premises

A person who trespasses on premises to which this Part applies is guilty of an offence.

Maximum penalty: \$2 500.

Expiation fee: \$210.

Division 3—Barring orders**90—Power to bar persons from premises**

- (1) If a prescribed person in respect of premises to which this Part applies is satisfied that a person has—
- (a) behaved in an offensive 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 prescribed 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) does not apply in relation 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) 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 be served personally on the person to whom it is issued; and
 - (d) must specify all premises to which it relates; and
 - (e) has effect from the time it is served on the person to whom it is issued, and remains in force—
 - (i) for the period (not exceeding 3 months) specified in the barring notice; or
 - (ii) until it is revoked under this section, whichever occurs first; and
 - (f) must comply with any other requirements specified in the regulations.
- (5) The Chief Executive, or the prescribed person who issued the notice, may, by notice in writing, vary or revoke a 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—
- prescribed 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—the principal of the school or approved learning program;
 - (b) in the case of the premises of a stand-alone preschool or children's services centre—the director of the preschool or centre;
 - (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)*.

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Part 8—Protections for teachers, staff and students at schools, preschools and children's services centres
Division 4—Power to restrain etc persons acting unlawfully on premises to which Part applies

Division 4—Power to restrain etc persons acting unlawfully on premises to which Part applies**91—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 a person—

- (a) has behaved in an offensive 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 school premises under subregulation (1) must not remain on the school premises or return, or attempt to return, to the school premises within 24 hours.

Maximum penalty: \$2 500.

Expiation fee: \$210.

(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, or remove from, the premises (or both) 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 24 hours, or to remove such a person from the premises; or
- (c) to prevent the entry to the premises of a person who is barred from the school premises under a barring notice, or to remove such a person from the premises.

(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

92—Interpretation

In this Part—

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misconduct includes—

- (a) making a false statement in connection with an application for appointment as an officer of the teaching service; or
- (b) a breach of a disciplinary provision of the public sector code of conduct while employed as an officer of the teaching service; or
- 10 (c) being found guilty, while employed as an officer of the teaching service, of an offence punishable by imprisonment; or
- (d) any other misconduct occurring in the course of employment as an officer of the teaching service.

Division 2—Appointment to the teaching service

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93—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.
- 20 (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) An officer of the teaching service appointed on a permanent basis may only be dismissed or retired from the teaching service in accordance with the provisions of this Act.
- 25 (5) An officer of the teaching service appointed on a temporary or casual basis will hold office for a term, and on conditions, determined by the Chief Executive.

94—Merit-based selection processes

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- (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) appointment or reappointment of a person as an officer of the teaching service;
 - 35 (b) promotion of an officer of the teaching service to a higher remuneration level;

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Division 2—Appointment to the teaching service

(c) changing the basis on which a person is engaged as an officer of the teaching service to engagement on a permanent basis.

(2) However, subsection (1) does not apply—

- (a) to the appointment of an officer of the teaching service on a casual basis; or
- 5 (b) to the reappointment, or extension of a contract of employment, of an officer of the teaching service in circumstances prescribed by the regulations; or
- (c) to the promotion of an officer of the teaching service by way of reclassification of the officer's remuneration level; or
- 10 (d) in any other circumstances prescribed by the regulations for the purposes of this paragraph.

95—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.

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(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
- 20 (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),

25 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.

96—Attraction and retention

30 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).

97—Probation

35 (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 on as a term employee or casual employee), on probation for period of 2 school years.

(2) However, 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
- 40 (b) some lesser period of probation is to apply; or

- (c) that the probation period for the officer may consist of 1 school year, with a further period of probation of 1 school year 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 in 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*.
- (10) For the purposes of this section, a reference to a *school year* will be taken to be a reference to such number of duty days as may constitute a particular school year, determined in accordance with the relevant award.

Division 3—Duties, classification, promotion and transfer

98—Assignment of duties and transfer 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.

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Division 3—Duties, classification, promotion and transfer

- (4) The regulations may make further provision in relation to the operation of this section (including, to avoid doubt, provisions limiting the circumstances in which a transfer under this section can occur).
- 5 (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*.

99—Classification of officers and positions

- (1) The Chief Executive may, from time to time—
- 10 (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.
- 15 (3) The Chief Executive may vary or revoke a condition under subsection (2).

100—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.
- 20 (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 the application of an officer of the teaching service, reclassify the officer or a position occupied by the officer.
- 25 (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 (including, to avoid doubt, limiting the circumstances or positions in relation to which an application can be made).

101—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) An application for a position in the teaching service classified at a promotional level is to be submitted in accordance with the regulations to either—
- 35 (a) the Chief Executive; or
- (b) a committee established by the Chief Executive and consisting of members appointed by the Chief Executive with the agreement of the Australian Education Union (SA Branch) (1 or more of whom must be nominees of the Australian Education Union (SA Branch)),
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and the Chief Executive, or the committee, may provisionally recommend that an applicant be appointed to the vacant position.

- (3) However, subsection (2) does not apply to—
- (a) an appointment of an officer of the teaching service to a position in an acting capacity for a period not exceeding 12 months; or
 - (b) a transfer of an officer of the teaching service between positions in the teaching service.
- (4) 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 12 months.
- (5) An appointment under this section may be conditional or unconditional.
- (6) The Chief Executive may vary or revoke a condition under subsection (5).

102—Transfer

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.

Division 4—Long service leave

103—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 days leave for each subsequent complete month of effective service.
- (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 days leave;
 - (b) for each month of effective service completed during the 2013/2014 financial year— $\frac{1}{4}$ working days leave;
 - (c) for each month of effective service completed on or after 1 July 2014— $\frac{1}{3}$ working days 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.

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Division 4—Long service leave

- (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:
- 5 (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;
- 10 (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;
- 15 (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);
- 20 (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—
- 25 (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.
- 30 (7) The regulations may—
- (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.
- 35 (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*.
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104—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.

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- (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.
- 5 (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.
- 10 (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);
 - (b) where the effective service of the officer consists in whole or in part of
- 15 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.
- 20 (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.
- 25 (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.

105—Payment in lieu of long service leave

- (1) The Chief Executive may, on application by an officer of the teaching service, authorise to 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
- 30 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
 - 35 (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.
- 40 (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.

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Part 9—The teaching service

Division 4—Long service leave

106—Interruption of service where officer leaves teaching service

- 5 (1) If an officer of the teaching service retires from employment under this Act or the repealed Acts 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.
- 10 (2) If the service of an officer of the teaching service was interrupted other than by resignation or dismissal 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.
- 15 (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.
- 20 (5) If the service of an officer of the teaching service was interrupted other than by resignation or dismissal 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 107 applies.

107—Special provisions relating to certain temporary officers of the teaching service

- 25 (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.
- 30 (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.
- 35

108—Entitlement where officer transferred to other Government employment

- 40 (1) If an officer of the teaching service is transferred to any other employment in the Government 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 107 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).

5 **109—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.
- 10 (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
- 15 (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 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.
- 20 (6) This section does not apply to an officer of the teaching service to whom section 107 applies.
- 25 (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
 - 30 (c) employment by the Government of the State otherwise 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
 - 35 (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**110—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:
- 5 (a) reprimand the officer;
 - (b) reduce the remuneration of the officer under section 112;
 - (c) vary the duties of the officer;
 - (d) reclassify the officer;
 - (e) remove the entitlement of the officer to an increase in remuneration;
 - 10 (f) impose a fine on the officer not exceeding the amount of 1 weeks 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;
 - 15 (i) terminate the employment of the officer under section 117.
- (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.
- 20 (4) The regulations may make further provision in respect of disciplinary action under this section.

111—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:
- 25 (a) reprimand the officer;
 - (b) reduce the remuneration of the officer under section 112;
 - (c) vary the duties of the officer;
 - (d) reclassify the officer;
 - (e) remove the entitlement of the officer to an increase in remuneration;
 - 30 (f) transfer the officer to another position in the teaching service;
 - (g) terminate the employment of the officer under section 117.
- (2) To avoid doubt, action referred to in subsection (1)(c), (d), (e) or (f) may be taken whether or not the action has the effect of reducing the officer's remuneration.
- 35 (3) The regulations may make further provision in respect of managing unsatisfactory performance under this section.

112—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) unsatisfactory performance;
 - (d) misconduct;
 - (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 public sector employment 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 other public sector employment.

113—Suspension

- (1) If the Chief Executive is of the opinion 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) A suspension under subsection (1) may be made whether or not the officer has been charged with an offence.
- (3) Unless the Chief Executive directs otherwise, an officer suspended under this section is entitled to their salary in respect of the period of suspension.
- (4) If a direction has been given under subsection (3), 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.
- (5) The Chief Executive may revoke a suspension at any time.

Division 6—Resignation, retrenchment and termination**114—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.

115—Retrenchment of officers of the teaching service

(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) a specified officer of the teaching service should be retrenched for that purpose,

the Chief Executive may, by written determination, retrench that officer as from the date specified in the determination.

(2) An officer of the teaching service who is retrenched under this section is entitled to receive—

(a) at least 12 weeks notice in writing prior to the date of retrenchment; 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.

116—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) by written determination, transfer the officer to some other position in the teaching service;
 - (b) by written determination, 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 Government;
 - (d) grant the officer leave of absence (without remuneration) from the teaching service;
 - (e) retire the officer from the teaching service.
- (5) The Chief Executive must, before taking action under subsection (4) that would result in reduction of remuneration or retirement, be satisfied that a transfer or variation of duties without reduction of remuneration is not reasonably practicable in the circumstances.

117—Termination

- (1) 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) unsatisfactory performance;
 - (d) misconduct;
 - (e) the officer's lack of an essential qualification.
- (2) However, the employment of an officer of the teaching service may not be terminated 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 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

118—Chief Executive may employ other persons for purposes of Act

- 5 (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.
- 10 (3) The Chief Executive is, in acting under this section, subject to direction by the Minister (however, no direction may be given under this section relating to the appointment, transfer, remuneration, discipline or termination of a particular person).
- (4) For the purposes of the *Public Sector Act 2009*, the *Public Sector (Honesty and Accountability) Act 1995* and any other Act or law, a person employed under this section—
- 15 (a) is a public sector employee; and
- (b) is not a member of the Public Service,
- both within the meaning of the *Public Sector Act 2009*.

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

- 20 (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 118:
- (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;
- 25 (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.
- 30 (2) Schedule 1 of the *Public Sector Act 2009* applies to a person employed under section 118.
- (3) However, this section does not apply in relation to the following employees:
- 35 (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
- 40 substitution for that award or enterprise agreement);

- (c) any other employee declared by the regulations to be included in the ambit of this subsection.

120—Use of staff etc of administrative units of the Public Service

5 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

121—Review by SAET of certain decisions and determinations

- 10 (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 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.
- 15 (2) An application for review must be made within—
- (a) in the case of a review of a decision relating to an application under section 100—30 days; or
 - (b) in any other case—14 days,
- 20 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* and this section, there will be the following panels of supplementary panel members:
- 25 (a) in the case of the review of a decision of the Chief Executive on an application under section 100—
 - (i) a panel of officers of the teaching service nominated by the Australian Education Union (SA Branch);
 - (ii) a panel of officers of the teaching service nominated by the Chief Executive;
 - 30 (b) in the case of a review relating to a provisional recommendation under section 101(2)—
 - (i) a panel of officers of the teaching service nominated by Australian Education Union (SA Branch);
 - 35 (ii) a panel of employees in the Department nominated by the Chief Executive,

and, in exercising its powers under that Act in proceedings related to a review under this section, SAET will, if the President of SAET so determines, sit with 1 supplementary panel member from each of the panels referred to in respect of a review of the relevant kind.

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Part 11—Appeals

Division 1—Review by South Australian Employment Tribunal

- (4) A decision of SAET in a review of a decision of the Chief Executive on an application under section 100 may not be the subject of an application for review or an appeal under Part 5 of the *South Australian Employment Tribunal Act 2014*.
- (5) No application for review may be made against a provisional recommendation of a committee established under section 101(2)(b) unless—
- (a) the provisional recommendation is that an officer be appointed to the vacant position; and
 - (b) the Chief Executive declines to make the appointment.
- (6) 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 resulting in the retrenchment, retirement or termination of an officer of the teaching service under Part 9 Division 6, revoke the decision and order that the officer be reinstated in the teaching service.

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

122—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 Part 4 (other a direction relating to the closure or amalgamation of a stand-alone preschool or children's services centre under Division 5 of that Part); or
- (b) a direction under Part 5 (other a direction relating to the closure or amalgamation of a school under Division 3 of that Part); or
- (c) a direction under section 64 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

123—Authorised officers

- (1) The following persons are *authorised officers* for the purposes of this Act:
- (a) the Chief Executive;
 - 5 (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.
- 10 (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.
- 15 (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.
- 20

124—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—
- 25
- (a) their name, address and age; and
 - (b) details of the school or approved learning program (if any) in which they are enrolled; and
 - 30 (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 charge or 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.
- 35

(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.

125—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.

Expiation fee: \$400.

Part 13—Financial provisions

Division 1—Materials and services charges for stand-alone preschools and children's services centres

126—Materials and services charges for stand-alone preschools and children's services centres

(1) A stand-alone preschool or a children's services centre may, in accordance with the regulations, impose materials and services charges in respect of each child enrolled in the preschool, or using the services of the children's services centre, (as the case requires) for the whole or part of a calendar year.

- (2) The following provisions apply in relation to materials and services charges imposed under this section:
- (a) the parents of a child enrolled in a preschool, or using the services of a children's services centre, (as the case requires) must be given written notice of a materials and services charge payable in respect of the child in accordance with the regulations;
 - (b) materials and services charges may imposed from time to time throughout the calendar year;
 - (c) the parents of a child are jointly and severally liable for the material and services charge payable in respect of the child.
- (3) Subject to the regulations, a materials and services charge is recoverable as a debt due to the governing council of the stand-alone preschool or children's services centre (as the case requires).
- (4) Subject to any directions of the Chief Executive, the director of a stand-alone preschool or children's services centre 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.
- (5) The Chief Executive must, at the request of a governing council of a stand-alone preschool or children's services centre, make services available (without cost) to the governing council for the recovery of outstanding materials and services charges.

Division 2—Materials and services charges for schools

127—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, 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;
 - (b) the school must not impose a materials and services charge to recover the costs of teachers' salaries, teachers' materials 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 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 persons who responded to the poll indicate that they support the proposed materials and services charge; and
 - (iii) the Chief Executive has approved the proposed materials and services charge;

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Part 13—Financial provisions

Division 2—Materials and services charges for schools

- (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;
- 5 (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;
- 10 (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) the student, or the parents of 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.
- 15 (4) Liability for a materials and services charge is to be determined as follows:
- (a) if the student is not an adult—the parents of the student are jointly and severally liable for the charge;
- 20 (b) if the student is an adult—
- (i) in the case of a student who is a dependant of their parents—the student and the parents of the student are jointly and severally liable for the charge; or
- (ii) in any other case—the student is liable for the charge.
- 25 (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.
- 30 (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.

Division 3—Other fees and charges**128—Charges for certain overseas and non-resident students etc**

- 35 (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 or preschools, or children attending children's services centres, who are not resident in the State; and
- 40 (c) children enrolled in schools or preschools, or attending children's services centres, who are a dependant of a person who is the subject of—

- (i) a temporary work (skilled) visa (subclass 457) issued under the *Migration Act 1958* of the Commonwealth; or
- (ii) any other visa of a kind declared by the regulations to be included in the ambit of this paragraph.
- 5 (2) Different charges may be fixed according to the school or preschool at which the student is or is to be enrolled, or the children's services centre attends or is to attend, 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:
- 10 (a) in the case of a child—the parents of the child are jointly and severally liable for the charge;
- (b) in the case of an adult student—
- (i) in the case of a student who is a dependant of their parents—the student and the parents of the student are jointly and severally liable for the charge; or
- 15 (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) Subject to the regulations, a charge fixed under this section is recoverable as a debt due to the Minister.
- 20 (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
- 25 (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 at which the student is enrolled;

student includes a prospective student.

30 **129—Certain other payments 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; or
- 35 (ii) extra-curricular activities; or
- (b) charges being made in connection with courses of instruction or activities undertaken by adults otherwise than as students enrolled in a course of secondary education; or

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Division 3—Other fees and charges

- (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 parents, students or others for the purposes of the school.

Division 4—Recovery of amounts payable to the Commonwealth**130—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 approval 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**131—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 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.

132—Use of school premises etc for both school and community purposes

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

- 5
- (a) permit the land, buildings or facilities of a school, preschool or 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 schools a right to make use of land, buildings or facilities of the community bodies.

133—Confidentiality

- 10
- (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) with the consent of the person to whom the information relates; or

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 - (c) in connection with the administration or enforcement of this or any other Act; or
 - (d) for the purposes of referring the matter to a law enforcement agency; or
 - (e) 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

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 - (f) if the disclosure is reasonably necessary for the protection of the lawful interests of that person.

Maximum penalty: \$10 000.

- 25
- (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

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 - improperly and whether directly or indirectly) as a result of that disclosure.

Maximum penalty: \$10 000.

- (4) The regulations may make further provision in respect of the disclosure of information obtained in the course of the administration of this Act.

134—Protections, privileges and immunities

- 35
- (1) No civil or criminal liability attaches to the Chief Executive, an authorised officer or any other person for any act or omission in good faith 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

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- (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 in good faith in the exercise or discharge, or purported exercise
5 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
- 10 (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
15 professional conduct.

135—Evidentiary provisions

- (1) In any proceedings under this Act, a document apparently signed by the principal of a school or approved learning program and certifying that a specified child did, or did
20 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 parent of a child named in the document; or
- 25 (b) a child named in the document is of, above or below a specified age; or
- (c) at a specified time, the child named in the document was, or was not, enrolled in a specified school or approved learning program; or
- (d) a person named in the document is, or was at a specified time, the principal of a specified school; or
- 30 (e) a person named in the document is, or was at a specified time, the director of a stand-alone preschool or children's services centre; or
- (f) a person named in the document is, or was at a specified time, an officer of the teaching service; or
- (g) instruction was provided at a specified time for a specified child at a specified
35 school; or
- (h) a person named in the document is, or was at a specified time, an authorised officer; or
- (i) a person named in the document 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—

- 5 (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,

10 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*

136—Service

20 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
- 25 (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
- 30 (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.

137—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 a class of persons, from the operation of a specified provision or provisions of this Act;

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- (b) the maintenance and control of Government schools, preschools or children's services centres and the management of all land, buildings and equipment used in connection with such schools, preschools or centres;
- 5 (c) the provision of residences for teachers and boarding accommodation to be used in connection with Government schools, preschools or children's services centres;
- (d) the provision of religious education or religious seminars in Government schools, preschools or Government children's services centres;
- 10 (e) the employment (including terms and conditions of employment) of officers of the teaching service and other persons employed under this Act;
- (f) 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 affecting the officer of a kind or class prescribed by the regulations;
- 15 (g) the courses of instruction to be provided in Government schools, preschools or children's services centres;
- (h) the provision of stationery, books and other materials or services to, or for the benefit of, students at schools and preschools, and children at children's services centres;
- 20 (i) the provision of grants to schools, preschools or children's services centres and the conditions applicable to those grants;
- (j) the enrolment of students;
- (k) the establishment of scholarships and the provision of allowances to students;
- 25 (l) the hours at which instruction is to be provided at Government schools (including school vacations);
- (m) the method to be adopted in teaching in Government schools, preschools or children's services centres;
- (n) the forms of discipline to be observed and enforced in Government schools, preschools or children's services centres (including limiting or prohibiting specified forms of discipline);
- 30 (o) the transport of students to and from schools, preschools and children's services centres and the payment of the costs of transport;
- (p) the use by the public of the buildings, land and equipment of Government schools, preschools or children's services centres;
- 35 (q) the prohibition of access to the grounds of Government schools, preschools or children's services centres;
- (r) the regulation of the use of vehicles on the grounds of Government schools, preschools or children's services centres;
- (s) the operation of governing councils or affiliated committees;
- 40 (t) the collection, recording and collation of information relating to the operation of this Act;

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- (u) the provision of the information to the Minister or Chief Executive relating to the operation of this Act;
- (v) fees and charges in respect of any matter under this Act and their payment, remission, recovery or waiver;
- 5 (w) fines, not exceeding \$5 000, for offences against the regulations;
- (x) facilitation of proof of the commission of offences against the regulations.
- (3) The regulations may—
- (a) be of general or limited application; and
- 10 (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; 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
- 15 (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) If a code, standard or other document is referred to or incorporated in the regulations—
- 20 (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.
- 25

Schedule 1—Repeals, related amendments and transitional provisions

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*

35 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—Transitional provisions