



ANNO TRICESIMO QUINTO

ELIZABETHAE II REGINAE

A.D. 1986

No. 83 of 1986

An Act to amend the Education Act, 1972.

[Assented to 4 December 1986]

The Parliament of South Australia enacts as follows:

1. (1) This Act may be cited as the “Education Act Amendment Act, 1986”. Short title.

(2) The Education Act, 1972, is in this Act referred to as “the principal Act”.

2. (1) This Act shall come into operation on a day to be fixed by proclamation. Commencement.

(2) The Governor may, in a proclamation fixing a day for this Act to come into operation, suspend the operation of specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

3. Section 5 of the principal Act is amended—

(a) by striking out from subsection (1) the definition of “parent” and substituting the following definition:

Amendment of
s. 5—
Interpretation.

“parent” of a child includes—

(a) a person who has legal custody or guardianship of the child;

and

(b) a person standing *in loco parentis* in relation to the child,

but does not include a parent of the child where another parent or person has legal custody or guardianship of the child to the exclusion of that parent;

and

(b) by striking out paragraph (a) of the definition of “recognized kindergarten” in subsection (1) and substituting the following paragraph:

- (a) any kindergarten registered as a children's services centre under the Children's Services Act, 1985;

Amendment of
s. 8—
Power of
delegation.

4. Section 8 of the principal Act is amended by striking out from subsection (1) the passage "any other officer of" and substituting the passage "the person for the time being holding or acting in any position or office in".

Amendment of
s. 9—
General powers of
the Minister.

5. Section 9 of the principal Act is amended by striking out from subsection (4) the passage "officers of the Department and of" and substituting the passage "employees and officers of the Department and".

Amendment of
s. 10—
Advisory
committees.

6. Section 10 of the principal Act is amended by striking out from subsection (5) the word "prescribed" and substituting the passage "determined by the Governor".

Amendment of
s. 11—
Continuance of
the Department.

7. Section 11 of the principal Act is amended—

- (a) by striking out from subsection (2) the passage "Permanent Head" and substituting the passage "Chief Executive Officer";

and

- (b) by striking out from subsection (4) the passage "officers of" and substituting the passage "employees in".

Amendment of
s. 13—
Delegation, etc.

8. Section 13 of the principal Act is amended by striking out from subsection (1) the passage "other officer of the Department or any officer of" and substituting the passage "person for the time being holding or acting in any position or office in the Department or".

Amendment of
s. 17—
Incapacity of
members of the
teaching service.

9. Section 17 of the principal Act is amended—

- (a) by striking out subsection (1) and substituting the following subsections:

(1) Where the Director-General is satisfied that an officer is, by reason of mental or physical illness or disability, incapable of performing satisfactorily the duties of the office occupied by the officer, the Director-General may do one or more of the following:

- (a) by written determination, transfer the officer to some other office in the teaching service;
- (b) recommend to the Minister that the officer be transferred to some other employment in the Government of the State;
- (c) grant the officer leave of absence (without remuneration) from the teaching service;
- (d) recommend to the Minister that the officer be retired from the teaching service.

(1a) The Director-General must, before transferring or recommending the transfer of an officer to an office or position of reduced status, or recommending that an officer be retired, be satisfied that transfer of the officer to an office or position of equivalent status is not reasonably practicable in the circumstances.

(1b) Where an officer is transferred to an office of reduced status pursuant to subsection (1) (a), the Director-General shall alter the classification of the officer accordingly.

(1c) The Minister, on receiving a recommendation under subsection (1) (b), may appoint the officer to an office or position pursuant to section 9 (4) or take action with a view to securing for the officer some other appropriate employment in the Government of the State.;

(b) by inserting in subsection (2) after the passage "subsection (1)" the letter "(d)";

and

(c) by inserting in subsection (3) after the passage "decision made by the Minister to" the passage "transfer or".

10. Section 24 of the principal Act is amended by striking out from paragraph (c) of subsection (2) the passage "as an officer of" and substituting the word "in".

Amendment of s. 24—
Rights of persons transferred to the teaching service.

11. Section 25 of the principal Act is amended by striking out subsection (2).

Amendment of s. 25—
Retiring age.

12. Section 31 of the principal Act is amended by inserting in paragraph (a) of subsection (3) after the word "incapacity" the passage "to perform satisfactorily the duties of the office".

Amendment of s. 31—
Terms and conditions on which members of classification Board hold office.

13. Section 35 of the principal Act is amended by inserting in paragraph (a) of subsection (3) after the word "incapacity" the passage "to perform satisfactorily the duties of the office".

Amendment of s. 35—
Terms and conditions on which members of Salaries Board hold office.

14. Section 45 of the principal Act is amended—

(a) by striking out from paragraph (b) of subsection (2) the passage "officers of" and substituting the passage "employees in";

and

(b) by striking out from paragraph (d) of subsection (2) the passage "officers of" and substituting the passage "employees in".

Amendment of s. 45—
The Teachers Appeal Board.

15. Section 46 of the principal Act is amended by inserting in paragraph (a) of subsection (3) after the word "incapacity" the passage "to perform satisfactorily the duties of the office".

Amendment of s. 46—
Terms and conditions on which members of Appeal Board hold office.

16. Section 55 of the principal Act is amended—

(a) by inserting after paragraph (e) of subsection (2) the following paragraph:

(ea) one person appointed by the Governor on the nomination of the Association of Teachers in Independent Schools (South Australia) made after holding an election in accordance with the regulations;;

Amendment of s. 55—
The Teachers Registration Board.

and

(b) by striking out from paragraph (g) of subsection (2) the passage "Kindergarten Union of South Australia" and substituting the passage "person holding or acting in the office of the Director of Children's Services".

Amendment of
s. 56—
Terms and
conditions on
which members
of the Board hold
office.

17. Section 56 of the principal Act is amended by inserting in paragraph (a) of subsection (3) after the word "incapacity" the passage "to perform satisfactorily the duties of the office".

Amendment of
s. 60—
Functions of the
Board.

18. Section 60 of the principal Act is amended by striking out from subsection (2) the passage ", the Kindergarten Union of South Australia".

Amendment of
s. 70—
Registrar of the
Board.

19. Section 70 of the principal Act is amended by striking out subsections (2) and (3) and substituting the following subsection:

(2) The Governor may appoint a person employed in the Public Service of the State to be the Registrar of the Board.

Amendment of
s. 72a—
Term of office of
members of the
Board.

20. Section 72a of the principal Act is amended by inserting in paragraph (a) of subsection (3) after the word "incapacity" the passage "to perform satisfactorily the duties of the office".

Amendment of
s. 72e—
Registrar.

21. Section 72e of the principal Act is amended by striking out subsections (2) and (3) and substituting the following subsection:

(2) The Governor may appoint a person employed in the Public Service of the State to be the Registrar.

Amendment of
s. 72f—
Non-Government
schools to be
registered.

22. Section 72f of the principal Act is amended—

(a) by striking out "Penalty: Five hundred dollars.:";

and

(b) by inserting after its present contents as amended by this section (now to be designated as subsection (1)) the following subsection:

(2) The penalty for an offence against subsection (1) is as follows—

(a) for a first offence—\$1 000;

(b) for a subsequent offence—\$1 000 or \$100 for every day on which students have received instruction since the date on which the authority was last convicted under subsection (1), whichever is greater.

Amendment of
s. 72p—
Inspection of
non-government
schools.

23. Section 72p of the principal Act is amended by inserting in subsection (1) after the passage "proposed to be used" the passage ", or reasonably suspected by the Board of being used,".

Amendment of
s. 74—
Interpretation.

24. Section 74 of the principal Act is amended by striking out subsections (2) and (3).

25. Section 75 of the principal Act is amended—

Amendment of
s 75—
Compulsory
enrolment of
children.

- (a) by striking out from subsection (1) the word “A” and substituting the passage “Subject to this Part, a”;
- (b) by inserting in subsection (1) after the passage “according to the” the passage “age and”;
- (c) by striking out subsections (2) and (3) and substituting the following subsections:

(2) A child—

(a) who is resident within the State;

and

(b) who is of compulsory school age,

is entitled, subject to this Part and the conditions determined by the Director-General under subsection (3), to be enrolled at any Government primary school or (according to the age and educational attainments of the child) any Government secondary school.

(3) The Director-General may determine conditions limiting the right of children to be enrolled at Government schools, but no such condition may limit the right of a child to be enrolled at the Government school that is nearest to, or most easily accessible from, the place at which the child resides.;

and

- (d) by striking out from subsection (5) the passage “one hundred dollars” and substituting the passage “two hundred dollars”.

26. The following sections are inserted after section 75 of the principal Act:

Insertion of new
ss. 75a and 75b.

75a. (1) The Director-General may, subject to the regulations, if satisfied that a child has disabilities or learning difficulties such that it would be in the best interests of the child to do so, direct that the child be enrolled at a special school or some other particular Government school nominated in the direction.

Direction by
Director-General
that child be
enrolled in
particular school.

(2) Where a direction is given under subsection (1) in respect of a child, the child shall not be enrolled at any Government school other than the school nominated in the direction.

(3) The Director-General may give a direction under this section, or vary or revoke a direction under this section—

(a) on the application of a parent of the child;

or

(b) at the Director-General’s initiative,

but, in either case, after taking reasonable steps to consult each parent of the child.

Direction by
Minister that
child not be
enrolled at
Government
schools, etc.

75b. (1) The Minister may, subject to the regulations, after taking reasonable steps to consult each parent of a child, if satisfied that the behaviour of the child has been such that it would be in the best interests of the child and the maintenance of proper discipline at Government schools to do so, direct that the child not be enrolled at any Government school.

(2) The Minister shall not give a direction under subsection (1) in respect of a child of compulsory school age unless the child is afforded the right to participate in a programme established by the Minister for the education of children outside the ordinary Government school system.

(3) Where a direction is given under subsection (1) in respect of a child, the child shall not be enrolled at any Government school.

(4) Where a direction is given under subsection (1) in respect of a child of compulsory school age, the participation of the child in an educational programme of the kind referred to in subsection (2) shall have the same effect for the purposes of section 75 as if the child were enrolled at a Government school.

(5) The Minister may revoke a direction under this section—

(a) on the application of a parent of the child;

or

(b) at the Minister's initiative,

but, in either case, after taking reasonable steps to consult each parent of the child.

Appeal against
direction of
Director-General
or Minister.

75c. (1) A parent of a child may, if aggrieved—

(a) by a direction of the Director-General or the Minister given in respect of the child under section 75a and 75b;

or

(b) by decision of the Director-General or the Minister on an application by the parent under section 75a or section 75b,

appeal to a local court of full jurisdiction against the direction or decision.

(2) The appeal must be instituted within one month of receipt by the appellant of notice in writing of the direction or decision appealed against, but the court may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with requirement that the appeal should be so instituted.

(3) The court may, on the hearing of the appeal, exercise one or more of the following powers, according to the nature of the case:

(a) affirm, vary or quash the direction or decision appealed against;

(b) remit the subject matter of the appeal to the Director-General or the Minister, as the case may be, for further consideration;

or

(c) make any order as to costs, or as to any other matter, that the case may require.

(4) No order for costs shall be made against the appellant unless the court is satisfied that the appeal is frivolous or vexatious.

27. Section 76 of the principal Act is amended by striking out from subsection (3) the passage "one hundred dollars" and substituting the passage "two hundred dollars".

Amendment of
s. 76—
Compulsory
attendance.

28. Section 78 of the principal Act is amended by striking out from subsection (1) "Two hundred dollars" and substituting "Five hundred dollars".

Amendment of
s. 78—
Employment of
children of
compulsory
school age.

29. Section 80 of the principal Act is amended—

Amendment of
s. 80—
Authorized
officers.

(a) by inserting after subsection (2) the following subsection:

(2a) An authorized officer may in the circumstances referred to in subsection (2), if the child is in the charge or company of some person apparently over the age of eighteen years, request that person to furnish the authorized officer with the information referred to in that subsection;

and

(b) by striking out subsection (4) and substituting the following subsection:

(4) Any person who, when requested to furnish information under subsection (2a) or (3), fails to furnish the information to the best of the person's knowledge or belief, or wilfully furnishes any false information, shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars.

30. Section 82 of the principal Act is amended by striking out paragraph (a) of subsection (3) and substituting the following paragraph:

Amendment of
s. 82—
Determination of
curriculum.

(a) such employees in the Department and officers of the teaching service;.

31. Section 85 of the principal Act is amended—

Amendment of
s. 85—
Borrowing power
of councils.

(a) by striking out from subsection (1) the passage "any corporation carrying on the business of banking in the State" and substituting the passage "any person";

(b) by striking out from subsection (2) the passage "by a corporation referred to in" and substituting the word "under";

(c) by striking out from paragraph (a) of subsection (6) the passage "corporation that has made the loan" and substituting the word "lender";

and

(d) by striking out from paragraphs (b) and (c) the word "corporation" wherever occurring and substituting, in each case, the word "lender".

32. Section 86 of the principal Act is amended by inserting after subsection (4) the following subsection:

Amendment of
s. 86—
School Loans
Advisory
Committee.

(5) The Minister may, if of the opinion that it is expedient to do so, establish separate advisory committees under this section for different parts of the State, and, in that event, a reference in this Part to the School Loans Advisory Committee in relation to the council for a school is a reference to the Committee established for the area in which the school is situated.

Insertion of new s. 102a.

33. The following section is inserted after section 102 of the principal Act:

Arrangements under which land, buildings and facilities may be used for both school and community purposes.

102a. The Minister may, if of the opinion that it is expedient to do so—

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

Amendment of s. 103—
Educational censuses.

34. Section 103 of the principal Act is amended by striking out from subsection (6) the passage “fifty dollars” and substituting the passage “two hundred dollars”.

Amendment of s. 104—
Offence of insulting a teacher.

35. Section 104 of the principal Act is amended by striking out the passage “two hundred dollars” and substituting the passage “five hundred dollars”.

Amendment of s. 107—
Regulations.

36. Section 107 of the principal Act is amended by striking out from subsection (4) the passage “one hundred dollars” and substituting the passage “two hundred dollars”.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor