



ANNO VICESIMO NONO

**ELIZABETHAE II REGINAE**

**A.D. 1980**

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**No. 108 of 1980**

**An Act to amend the Education Act, 1972-1980.**

*[Assented to 18 December 1980]*

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

**Short titles.**

1. (1) This Act may be cited as the "Education Act Amendment Act (No. 2), 1980".

(2) The Education Act, 1972-1980, is in this Act referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Education Act, 1972-1980".

**Commence-  
ment.**

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

(2) The Governor may, in a proclamation made for the purposes of subsection (1), suspend the operation of any specified provisions of this Act until a subsequent day fixed in the proclamation or a day to be fixed by subsequent proclamation.

**Amendment of  
s. 3—  
Arrangement of  
Act.**

3. Section 3 of the principal Act is amended by striking out the passage "PART V—NON-GOVERNMENT SCHOOLS" and substituting the following passage:

**PART V—NON-GOVERNMENT SCHOOLS**

**DIVISION I—THE NON-GOVERNMENT SCHOOLS REGISTRATION BOARD**

**DIVISION II—REGISTRATION**

**DIVISION III—CANCELLATION OF REGISTRATION**

**DIVISION IV—RIGHT OF APPEAL**

**DIVISION V—MISCELLANEOUS**

4. Section 5 of the principal Act is amended—
- (a) by striking out from subsection (1) the definition of “approved non-Government school”;
- (b) by striking out from subsection (1) the definition of “governing authority” and substituting the following definition:
- “governing authority” in relation to a non-Government school or proposed non-Government school means the person, board, committee or other authority by which the school is or will be administered;
- and
- (c) by inserting in subsection (1) after the definition of “registered” the following definition:
- “registered non-Government school” means a non-Government school registered under Part V .:
5. Section 55 of the principal Act is amended by striking out from paragraph (e) of subsection (2) the passage “Director of Catholic Education in this State” and substituting the passage “South Australian Commission for Catholic Schools”.
6. Section 58 of the principal Act is amended—
- (a) by striking out from subsection (2) the passage “or purported exercise”;
- (b) by striking out from subsection (2) the passage “or purported discharge”;
- and
- (c) by inserting after subsection (2) the following subsection:
- (3) A liability that would, but for subsection (2), attach to a member of the Board shall attach to the Crown.
7. Section 63 of the principal Act is amended by striking out from paragraph (a) of subsection (1) the word “approved” and substituting the word “registered”.
8. Part V of the principal Act is repealed and the following Part is substituted:

Amendment of  
s. 5—  
Interpretation.

Amendment of  
s. 55—  
Constitution of  
Teachers  
Registration  
Board.

Amendment of  
s. 58—  
Validity of  
acts of Board  
and immunity  
of its members.

Amendment of  
s. 63—  
Unregistered  
persons not to  
hold certain  
appointments.

Repeal of  
Part V and  
substitution  
of new Part.

## PART V

### NON-GOVERNMENT SCHOOLS

#### DIVISION I—THE NON-GOVERNMENT SCHOOLS REGISTRATION BOARD

72. (1) There shall be a Board entitled the “Non-Government Schools Registration Board”.
- (2) The Board shall consist of the following members:
- (a) a chairman appointed by the Governor on the nomination of the Minister;
- (b) two persons appointed by the Governor on the nomination of the Minister, one of whom shall be an officer of the Department;

Constitution  
of Non-  
Government  
Schools  
Registration  
Board.

- (c) one person appointed by the Governor on the nomination of the South Australian Commission for Catholic Schools;
- and
- (d) one person appointed by the Governor on the nomination of the South Australian Independent Schools Board Incorporated.

Term of office  
of members of  
the Board.

72a. (1) Subject to this Act, a member of the Board shall be appointed for such term of office, not exceeding three years, as the Governor may determine and specifies in the instrument of his appointment and, upon the expiration of his term of office, he shall be eligible for re-appointment.

(2) The Governor—

- (a) may appoint a suitable person to be a temporary member of the Board for a period not exceeding six months and any such temporary member shall be entitled to act as a member of the Board where there is a vacancy in its membership or where a member of the Board is unable, or fails for any reason, to act in his capacity as such;

and

- (b) may appoint a suitable person to be a deputy of a member of the Board, and any person so appointed shall be entitled to act as a member of the Board where the member of the Board of whom he has been appointed a deputy is unable, or fails, for any reason, to act in his capacity as such.

(3) The Governor may remove a member of the Board from office for—

- (a) mental or physical incapacity;
- (b) neglect of duty;
- (c) dishonourable conduct;
- or
- (d) any other cause considered sufficient by the Governor.

(4) The office of a member of the Board shall become vacant if—

- (a) he dies;
- (b) his term of office expires;
- (c) he resigns by written notice to the Minister;
- or
- (d) he is removed from office by the Governor pursuant to subsection (3).

(5) Upon the office of a member of the Board becoming vacant, a person shall be appointed, in accordance with this Act, to the vacant office, but where the office of a member of the Board becomes vacant before the expiration of the term for which he was appointed, a person appointed to his place shall be appointed only for the balance of the term of his predecessor.

Quorum, etc.

72b. (1) Three members of the Board shall constitute a quorum of the Board, and no business shall be transacted at a meeting unless a quorum is present.

(2) A decision carried by a majority of the votes cast by the members present at a meeting of the Board shall be a decision of the Board.

(3) The chairman shall preside at any meeting of the Board at which he is present.

(4) In the absence of the chairman from a meeting of the Board, the members present shall elect one of their number to preside at that meeting.

(5) Each member of the Board shall be entitled to one vote on any matter arising for the decision of the Board, and, in the event of an equality of votes on any matter, the person presiding shall have a second, or casting, vote.

(6) Subject to this Act, the business of the Board shall be conducted in such manner as the Board thinks fit.

72c. (1) An act or proceeding of the Board shall not be invalid by reason only of a vacancy in its membership, and, notwithstanding the subsequent discovery of a defect in the nomination or appointment of a member, any such act or proceeding shall be as valid and effectual as if the member had been duly nominated or appointed.

Validity of acts of Board and immunity of its members.

(2) No liability shall attach to a member of the Board for any act or omission by him, or by the Board, in good faith, and in the exercise of his or its powers or functions, or in the discharge of his or its duties under this Act.

(3) A liability that would, but for subsection (2), attach to a member of the Board shall attach to the Crown.

72d. The members of the Board shall be entitled to receive such allowances and expenses as may be determined by the Governor.

Allowances and expenses.

72e. (1) There shall be a registrar of the Board.

Registrar.

(2) The registrar of the Board shall be appointed and hold office subject to the Public Service Act, 1967-1978.

(3) The office of registrar of the Board may be held in conjunction with any other office in the Public Service of the State.

## DIVISION II—REGISTRATION

72f. If, after a date to be fixed by proclamation for the purposes of this section, students are enrolled or receive instruction at an unregistered non-Government school, the governing authority of the school shall be guilty of an offence.

Non-Government schools to be registered.

Penalty: Five hundred dollars.

72g. (1) The governing authority of a non-Government school, or proposed non-Government school, or a person authorized by the governing authority, may apply for registration of the school or proposed school.

Registration of non-Government schools.

(2) An application for registration of a non-Government school must—

(a) be made in a manner and form determined by the Board;  
and

(b) be accompanied by the prescribed fee.

(3) Where the Board is satisfied upon an application under this section that—

(a) the nature and content of the instruction offered or to be offered at the school is satisfactory;  
and

(b) the school provides adequate protection for the safety, health and welfare of its students,

the Board shall register that non-Government school.

(4) The Board may impose such conditions upon the registration of a non-Government school as it thinks necessary—

(a) to protect the safety, health and welfare of students at the school;  
and

(b) to ensure that those students receive a suitable education.

(5) Where the Board does not grant an application for registration of a non-Government school, or grants an application subject to conditions, it shall, within one month after deciding not to register the school, or to impose conditions upon the registration, inform the applicant in writing of the reasons for its decision.

Register to be kept.

72h. (1) The Board shall cause a register to be kept in which shall be entered the names of all non-Government schools registered under this Part, and such other information as may be determined by the Board.

(2) The register shall be available for public inspection.

(3) The name of any registered non-Government school, the registration of which is cancelled, shall be removed from the register.

Registration remains in force for five years and may be renewed.

72i. Registration of a non-government school shall remain in force for a period of five years from the date on which it was granted or last renewed, and may be renewed from time to time for further consecutive periods of five years on fresh applications for registration of the school.

#### DIVISION III—CANCELLATION OF REGISTRATION

Grounds for cancellation.

72j. (1) The Board may, upon the application of the registrar, or of its own motion, inquire into the administration of any registered non-Government school.

(2) If, after conducting an inquiry under subsection (1), the Board is satisfied that the governing authority of the registered non-Government school has contravened or failed to comply with a condition upon which registration of the school was granted, the Board may, by notice in writing addressed to the governing authority of the school, cancel the registration.

(3) The Board may cancel the registration of a non-Government school if the school is defunct.

72k. (1) For the purposes of an inquiry under this Division, the Board may— Powers of Board upon an inquiry.

- (a) by summons signed on behalf of the Board by a member of the Board, require the attendance before the Board of any person;
- (b) by summons signed on behalf of the Board by a member of the Board, require the production of any books, papers or documents;
- (c) inspect any books, papers or documents produced before the Board and retain them for such reasonable period as it thinks fit, and make copies of any of them or of any of their contents;
- (d) require any person to make an oath or affirmation that he will truly answer all questions put to him by the Board, or any person appearing before the Board (which oath or affirmation may be administered by any member of the Board);

or

- (e) require any person appearing before the Board to answer any relevant questions put to him by any member of the Board, or by any person appearing before the Board.

(2) Subject to subsection (3), if any person—

- (a) who has been served with a summons to attend before the Board fails without reasonable excuse (proof of which shall lie upon him) to attend in obedience to the summons;
- (b) who has been served with a summons to produce any books, papers or documents fails without reasonable excuse (proof of which shall lie upon him) to comply with the summons;
- (c) misbehaves himself before the Board, wilfully insults the Board or any member thereof, or interrupts the proceedings of the Board;

or

- (d) refuses to be sworn or to affirm, or to answer any relevant question when required to do so by the Board,

he shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars.

(3) A person shall not be obliged to answer any question put to him under this section if the answer to that question would tend to incriminate him, or to produce any books, papers or documents, if their contents would tend to incriminate him.

(4) In the course of any inquiry, the Board may—

- (a) receive in evidence any transcript of evidence in proceedings before a court, and draw any conclusions of fact therefrom that it considers proper;

or

- (b) adopt, as in its discretion it considers proper, any findings, decision or judgment of a court that may be relevant to the proceedings.

Notice of inquiry.

72l. (1) The Board shall give the governing authority of a registered non-Government school that is subject to an inquiry under this Part at least twenty-one days' notice of the time and place at which it proposes to hold the inquiry, and of the matters to which the inquiry relates, and shall afford the governing authority opportunity to call or give evidence, to examine or cross-examine witnesses, and to make submissions to the Board.

(2) If a person representing the governing authority of the school does not attend at the time and place fixed by the notice, the Board may proceed with the inquiry *ex parte*.

#### DIVISION IV—RIGHT OF APPEAL

Appeal.

72m. (1) If the governing authority of a non-Government school is aggrieved by any decision of the Board made in the exercise or purported exercise of any of its powers or functions under this Part, it may appeal against that decision to a local court of full jurisdiction.

(2) Subject to this Act, the appeal shall be instituted within one month of receipt by the appellant of notice in writing of the 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 the 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 decision appealed against or substitute, or make in addition, any decision that should have been made in the first instance;

(b) remit the subject matter of the appeal to the Board for further hearing or consideration;

or

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

#### DIVISION V—MISCELLANEOUS

Records to be kept in non-Government schools.

72n. (1) The head teacher of a registered non-Government school shall keep such records in relation to the attendance of students at the school as may be prescribed or as the Minister may determine.

(2) The head teacher of a registered non-Government school shall furnish the Minister with such returns in relation to the attendance of students at the school as may be prescribed, or as the Minister may require.

(3) The head teacher of a registered non-Government school who fails to comply with any provision of this section shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars.

72o. (1) The Minister may, at the request of the governing authority, or head teacher, of any registered non-Government school, cause the school to be visited by an appropriate officer of the Department for the purpose of advising the governing authority or head teacher in relation to any matter connected with the administration of the school.

Minister may provide certain forms of assistance to non-Government schools.

(2) The Minister may, at the request of the governing authority, or head teacher, of any registered non-Government school, cause the school to be visited by a medical or dental officer, health inspector or nurse, for the purpose of medical or dental examination of those who attend the school or for the purpose of advising the governing authority, or head teacher, of the school on any matter relating to the health of those who attend the school.

72p. (1) For purposes connected with the administration of this Part, the Board may, by instrument in writing, authorize an officer of the Department to carry out an inspection of any non-Government school or premises proposed to be used for the purposes of a non-Government school and that person may, at any reasonable time, enter and inspect the school or premises specified in his authority.

Inspection of non-Government schools.

(2) A person who prevents an authorized person from carrying out an inspection under subsection (1), or hinders any such inspection, shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars.

9. Section 74 of the principal Act is amended by striking out from subsection (1) the passage "an approved" and substituting the passage "a registered".

Amendment of s. 74—  
Schools and school districts.

10. Section 82 of the principal Act is amended by striking out from paragraph (b) of subsection (3) the word "approved" and substituting the word "registered".

Amendment of s. 82—  
Determination of courses of instruction.

11. Section 107 of the principal Act is amended by striking out paragraph (sa) of subsection (2).

Amendment of s. 107—  
Regulations.

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

K. D. SEAMAN, Governor