

South Australia



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ELIZABETHAE II REGINAE
A.D. 2000

EDUCATION (COUNCILS AND CHARGES) AMENDMENT ACT 2000

No. 92 of 2000

[Assented to 21 December 2000]

An Act to amend the Education Act 1972 and to make a related amendment to the Children's Services Act 1985.

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SCHEDULE 2 *Amendment of Children's Services Act*

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Education (Councils and Charges) Amendment Act 2000*.
- (2) The *Education Act 1972* is referred to in this Act as "the principal Act".

Commencement

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

Amendment of s. 5—Interpretation

3. Section 5 of the principal Act is amended—

- (a) by inserting before the definition of "**the Appeal Board**" in subsection (1) the following definitions:

"adult" means a person who has attained 18 years of age;

"affiliated committee"—*see* section 86;;

- (b) by inserting after the definition of "**governing authority**" in subsection (1) the following definition:

"governing council" means a school council that is, under its constitution, jointly responsible with the head teacher of the school for the governance of the school;;

- (c) by striking out the definition of "**head teacher**" from subsection (1) and substituting the following definition:

"head teacher" means—

(a) in relation to a Government school—the person for the time being designated by the Director-General as the head teacher of the school;

(b) in relation to a non-Government school—the person for the time being designated by the governing authority as the head teacher of the school;.

Amendment of s. 9—General powers of Minister

4. Section 9 of the principal Act is amended by inserting after subsection (9) the following subsection:

(9a) The Minister may provide courses of instruction or other services to students who do not reside in this State.

Substitution of Part 8

5. Part 8 (comprising sections 83 to 90) of the principal Act is repealed and the following Part is substituted:

**PART 8
SCHOOL COUNCILS**

School councils

83. (1) Each Government school providing courses of instruction in primary or secondary education is to have a school council.

(2) The same body may be the school council for two or more Government schools.

(3) A school council—

- (a) is a body corporate with perpetual succession and a common seal; and
- (b) is to operate under a constitution approved by the Minister; and
- (c) is to consist of members as prescribed by its constitution; and
- (d) has the functions prescribed by or under this Act or its constitution; and
- (e) 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
- (f) is not an agency or instrumentality of the Crown.

Constitution of school council

84. (1) The constitution of a school council must assign a name to the council and contain—

- (a) provisions determining the membership of the council and stipulating—
 - (i) except in the case of a school that is wholly or principally for adult students, that a majority of the members are to be parents of students of the school; and
 - (ii) that the head teacher of the school is to be an *ex officio* member; and
 - (iii) that a presiding member is to be appointed from amongst the members; and
 - (iv) in the case of a governing council, that the presiding member is not to be a member of the staff of the school or a person employed in an administrative unit for which the Minister is responsible; and
- (b) provisions specifying the functions of the council (which may include functions relating to pre-school education or to the education, care, recreation, health or welfare of students outside of school hours); and

- (c) provisions specifying the quorum and the procedures of the council, which may include provisions—
 - (i) for the establishment of, and the delegation of functions or powers to, committees comprised of members, non-members or both members and non-members; or
 - (ii) for the delegation of functions or powers to another school council; or
 - (iii) allowing procedures to be determined by the council from time to time; and
- (d) provisions specifying the accounting and auditing practices and procedures to be followed by the council; and
- (e) in the case of a governing council—provisions stipulating—
 - (i) that the council is jointly responsible with the head teacher of the school for the governance of the school; and
 - (ii) that the council is to fulfil the roles specified in the constitution in respect of—
 - (A) strategic planning for the school; and
 - (B) determining policies for the school; and
 - (C) determining the application of the total financial resources available to the school; and
 - (D) presenting operational plans and reports on its operations to the school community and the Minister; and
 - (iii) that the members are to comply with a code of practice approved by the Minister; and
 - (iv) that the council is to participate in a scheme for the resolution of disputes between the council and the head teacher; and
- (f) provisions setting out the manner in which amendments to the constitution are to be made; and
- (g) provisions of any other kind considered appropriate by the Minister.

(2) The constitution of a school council may include provisions limiting the powers that may be exercised by the council.

(3) The constitution of a governing council may include provisions under which the membership of the council is such that it may also constitute the management committee of a registered children's services centre under the *Children's Services Act 1985*.

Establishment and dissolution of school councils

85. (1) The Minister may, by notice in the *Gazette*, do one or more of the following:

- (a) establish a school council for a Government school or proposed Government school;
- (b) dissolve the school councils of two or more Government schools and establish a single school council for those schools;
- (c) if Government schools are amalgamated, dissolve the school councils of those schools and establish a school council for the schools as amalgamated;
- (d) if a school council operates for two or more Government schools, dissolve the council and establish separate school councils for those schools;
- (e) dissolve a school council if the Government school is permanently closed.

(2) A notice under subsection (1) may include provisions of a transitional or ancillary nature.

(3) The Minister may, in establishing a school council, determine the constitution under which the council is to operate and make arrangements for the election or appointment of the council's elected or appointed members.

(4) The Minister may only determine that a council is to operate under a constitution appropriate to a governing council if the council is established under paragraph (b), (c) or (d) of subsection (1) and the council or each of the councils dissolved under the paragraph was, immediately before its dissolution, a governing council.

(5) If a school council is dissolved—

- (a) the Minister may, by written order, transfer assets or liabilities (or both) of the council to one or more other school councils or to any other person; and
- (b) any remaining assets and liabilities of the council or affiliated committee vest in the Minister.

(6) No stamp duty is payable under a law of the State in respect of a transfer effected under subsection (5) and no person has an obligation under the *Stamp Duties Act 1923* to lodge a statement or return relating to such a transfer or to include information about such a transfer in a statement or return.

(7) The Registrar-General or any other authority required or authorised under a law of the State to register or record transactions affecting assets or liabilities, or documents relating to such transactions, must, on application by the Minister or a person nominated by the Minister for the purpose, register or record a transfer under subsection (5).

Affiliated committees (eg Parents & Friends)

86. (1) The Minister may authorise the establishment of committees to be affiliated with a school council.

(2) An affiliated committee operates under a constitution approved by the Minister.

Constitution of affiliated committee

87. The constitution of an affiliated committee must assign a name to the committee and contain—

- (a) provisions determining the membership of the committee; and
- (b) provisions specifying the functions of the committee and its relationship to the school council; and
- (c) provisions specifying the quorum and the procedures to be followed by the committee (which may include provisions allowing procedures to be determined by the committee from time to time); and
- (d) provisions specifying the accounting and auditing practices to be followed by the committee; and
- (e) provisions providing for the dissolution of the committee and the distribution of assets held by the committee on dissolution; and
- (f) provisions setting out the manner in which amendments to the constitution are to be made; and
- (g) provisions of any other kind considered appropriate by the Minister.

Amendment of constitution of school council or affiliated committee

88. (1) The Minister may, by notice in writing to the presiding member of a school council or affiliated committee, direct the school council or affiliated committee to make such amendments to its constitution as are specified in the notice.

(2) The Minister must not give a direction under subsection (1) until the expiration of three months after the Minister has informed the school council or affiliated committee in writing of the amendments that the Minister requires.

(3) Before the direction is given the school council or affiliated committee may make representations to the Minister in relation to the proposed amendments and the Minister must give proper consideration to those representations.

(4) The Minister may not give a direction under subsection (1) that would result in a school council becoming a governing council.

(5) An amendment to the constitution of a school council or affiliated committee has no effect until submitted to, and approved by, the Minister.

(6) A school council may only submit to the Minister an amendment to the constitution that would result in the council becoming a governing council if the council, the head teacher of the school and the Director-General are signatories to an agreement that contemplates that result.

Model constitutions

89. (1) The Minister may publish model constitutions for school councils and affiliated committees.

(2) If a school council or affiliated committee applies to the Minister for approval of a constitution, or an amendment of a constitution, that contains an alteration to a model constitution, the council or committee must inform the Minister of the alteration and the reasons for the alteration.

(3) The Minister has absolute discretion to approve or refuse to approve the constitution or an amendment of the constitution of a school council or affiliated committee that contains an alteration to a model constitution.

Copies of constitutions and codes of practice to be available for inspection

90. The Minister is to keep available for public inspection during normal office hours at an office determined by the Minister—

- (a) a copy of the constitution (as in force from time to time) of each school council and each affiliated committee; and
- (b) a copy of each code of practice (as in force from time to time) with which members of a governing council must comply.

Limitation on power to deal with real property

91. A school council may only enter into a transaction involving the acquisition or disposal of real property with the Minister's written consent.

Limitation on power to borrow money

92. (1) A school council may only borrow money with the Minister's written consent.

(2) The Minister will establish an advisory committee to provide advice to the Minister on school council proposals to borrow money.

(3) The Treasurer may guarantee repayment by a school council of a loan (together with interest and incidental charges connected with the loan).

(4) 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).

General limitation in respect of curriculum, discipline and staff

93. (1) A school council or affiliated committee must not interfere, or take any action that interferes, with—

- (a) the provision, or the day-to-day management of the provision, of instruction in the school in accordance with the curriculum determined by the Director-General under Part 7; or
- (b) the administration of discipline within the school.

(2) A school council or affiliated committee must not give directions to the head teacher, or any other member of the staff of the school (other than an employee of the school council), in relation to the manner in which the person carries out his or her duties.

(3) A complaint received by a council or affiliated committee against the head teacher or any other member of the staff of the school (other than an employee of the school council) must—

- (a) in the case of a complaint against the head teacher—be passed on without comment to the Director-General; and
- (b) in any other case—be passed on without comment to the head teacher.

Conflict of interest

94. (1) A member of a school council who has a direct or indirect pecuniary interest in a contract or proposed contract with the council—

- (a) must, as soon as the member becomes aware of the interest, disclose the nature of the interest to the council; and
- (b) must not take part in deliberations or decisions of the council with respect to that contract.

Maximum penalty: \$5 000.

(2) If a member 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 council on any ground arising from the fiduciary relationship between the member and the council; and
- (b) the member is not liable to account for profits derived from the contract.

Accounts

95. The Director-General or the Auditor-General may, at any time, inspect or audit accounts kept by a school council or affiliated committee.

Administrative instructions

96. (1) The Minister may, from time to time, issue administrative instructions to school councils or affiliated committees.

(2) An administrative instruction may be varied or revoked by further administrative instruction.

(3) An administrative instruction—

- (a) may be of general application or limited application;
- (b) may vary in its terms according to whether or not the school council is a governing council or any other factor.

(4) School councils and affiliated committees are bound by administrative instructions.

Minister's power to remove members

97. The Minister may remove a member of a school council or affiliated committee from office—

- (a) for misconduct; or
- (b) for failure or incapacity to carry out the duties of office satisfactorily; or
- (c) if—
 - (i) irregularities have occurred in the conduct of the council or committee; or
 - (ii) the council or committee has failed to carry out its functions satisfactorily; or
 - (iii) the council or committee has failed to comply with directions, or administrative instructions, of the Minister given under this Act,and the membership of the council or committee should, in the opinion of the Minister, be reconstituted for that reason; or
- (d) for any other reasonable cause.

Minister's power to suspend powers or functions in urgent circumstances

98. (1) If the Minister is of the opinion that it is necessary or desirable to limit the powers or functions of a school council or affiliated committee as a matter of urgency, the Minister may, by written notice to the presiding member of the school council or affiliated committee (as the case may require), prohibit or restrict the exercise of a specified power or the performance of a specified function for a specified period or until further order of the Minister.

(2) A prohibition or restriction imposed under this section has effect despite the provisions of the constitution of the school council or affiliated committee.

Validity of acts

99. An act or proceeding of a school council or affiliated committee is not invalid by reason only of a vacancy in its membership or a defect in the election or appointment of a member.

Immunity

100. (1) No personal liability attaches to—

- (a) a member or former member of a school council; or
- (b) a member or former member of a committee established by a school 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 or discharge, of a power or function of the council or committee (as the case requires).

(2) A liability that would, but for subsection (1), lie against a person, lies instead against the Crown.

Insertion of ss. 106A to 106C

6. The following sections are inserted after section 106 of the principal Act:

Materials and services charge

106A. (1) The head teacher of a Government school that provides courses of instruction in primary or secondary education may, in respect of any calendar year, fix a materials and services charge payable in respect of each student enrolled at the school for the whole or part of that year, as follows:

- (a) the charge must not exceed—
 - (i) in the case of a student enrolled at a secondary level—\$215 multiplied by the relevant indexation factor; or
 - (ii) in the case of a student enrolled at a primary level—\$161 multiplied by the relevant indexation factor,or, if some other amount is prescribed by regulation, that amount;
- (b) in fixing the amount of the charge—
 - (i) regard may be had to the cost of stationery, books, apparatus, equipment, organised activities or other materials and services to be provided to or for students in connection with courses of instruction provided in accordance with the curriculum determined by the Director-General; and
 - (ii) regard may not be had to the cost of teachers' salaries or teachers' materials or costs associated with school buildings or fittings;
- (c) the basis on which the charge is proposed to be fixed must be disclosed to the school council and the amount of the proposed charge must be approved by the school council.

(2) Different charges may be fixed according to the year level for which the student is enrolled or any other factor.

(3) Liability for the 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;
- (b) if the student is an adult—
 - (i) in the case of a student who is a dependant of his or her parents—the student and the parents are jointly and severally liable for the charge;
 - (ii) in any other case—the student is liable for the charge.

(4) The student, or the parents of the student, must be given written notice (in a form approved by the Director-General) of the amount of the materials and services charge payable in respect of a particular year and the period, being not less than 14 days from the date of the notice, within which payment is required.

(5) Subject to any directions of the Director-General, the head teacher of a Government school may, in a particular case or class of cases—

- (a) allow a materials and services charge to be paid by instalments; or
- (b) waive or reduce a materials and services charge; or
- (c) refund a materials and services charge in whole or in part.

(6) A materials and services charge is recoverable as a debt due to the school council.

(7) In any legal proceedings, an apparently genuine document purporting to be a certificate signed by the head teacher of a Government school certifying that a specified amount of a materials and services charge payable by a specified person is outstanding at a specified date constitutes proof of the matters so certified in the absence of proof to the contrary.

(8) A student is not to be refused materials or services by reason of non-payment of a materials and services charge.

(9) In this section—

"CPI" means the Consumer Price Index (All Groups) for the City of Adelaide published by the Australian Bureau of Statistics;

"relevant indexation factor" means 1 or the quotient obtained by dividing the CPI for the quarter ending 30 September in the year immediately preceding the year for which the materials and services charge is payable by the CPI for the quarter ending 30 September 1999, whichever is the greater.

Charges for certain overseas and non-resident students

106B. (1) The Director-General may, by notice in the *Gazette*, fix charges payable by—

- (a) a full fee paying overseas student (within the meaning of Part 5—see section 72I) of a Government school; or
- (b) a student of a Government school who is not resident in the State.

(2) Different charges may be fixed according to the school, the year level or subject for which the student is enrolled or proposed to be enrolled or any other factor.

(3) Liability for charges fixed under this section 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;

- (b) if the student is an adult—
 - (i) in the case of a student who is a dependant of his or her parents—the student and the parents are jointly and severally liable for the charge;
 - (ii) in any other case—the student is liable for the charge.

(4) The Director-General may, in a particular case or class of cases—

- (a) allow the charges to be paid by instalments; or
- (b) waive or reduce the charges; or
- (c) refund, in whole or in part, the charges; or
- (d) require a person to give security for payment of the charges.

(5) Charges payable under this section are recoverable as a debt due to the Minister.

(6) In any legal proceedings, an apparently genuine document purporting to be a certificate signed by the Director-General certifying that a specified amount of charges payable under this section by a specified person is outstanding at a specified date constitutes proof of the matters so certified in the absence of proof to the contrary.

(7) In this section—

"student" includes a prospective student.

Certain other payments unaffected

106C. 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 Director-General; or
 - (ii) extra-curricular activities; or
 - (iii) curricular activities that do not form part of the core of activities in which students are required to participate; 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
- (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 Director-General or the head teacher or school council of a Government school inviting or receiving voluntary payments from parents, students or others for the purposes of the school.

Review and expiry

106D. (1) The Minister must—

- (a)* cause Part 8 and sections 106A to 106C of this Act to be reviewed in light of the Report of the Parliamentary Select Committee on DETE Funded Schools established on 9 November 2000; and
- (b)* cause the results of the review to be embodied in a written report; and
- (c)* cause a copy of the report to be laid before both Houses of Parliament no later than three months after the making of the Report of the Parliamentary Select Committee.

(2) Sections 106A to 106C of this Act expire on 1 December 2002.

Amendment of s. 107—Regulations

7. Section 107 of the principal Act is amended—

- (a)* by striking out from subsection (2)(f) ", committee or council" and substituting "or committee";
- (b)* by striking out paragraphs *(sa)* and *(sb)* of subsection (2) and substituting the following paragraph:
 - (sa)* any matter pertaining to school councils, affiliated committees or the operation of school councils or affiliated committees (and such a regulation may confer discretionary powers on the Minister or the Director-General); and.

SCHEDULE 1
*Transitional Provisions***Head teachers**

1. A person who is, immediately before the commencement of this clause, the head teacher of a school will be taken, for the purposes of the definition of "head teacher" in the principal Act (as amended by this Act), to have been designated by the Director-General or governing authority of the non-Government school (as the case requires) as the head teacher of the school.

School councils

2. (1) A school council in existence immediately before the commencement of this clause will, on that commencement, be taken—

(a) to continue in existence as the same body corporate; and

(b) to consist of the members of the council holding office immediately before that commencement.

(2) An elected or appointed member of a school council will hold office for the same term as applied to the member immediately before the commencement of this clause.

(3) A school council may, within 6 months after the commencement of this clause, adopt a constitution.

(4) If the school is a Partnerships 21 site, the constitution adopted by the council must be one appropriate to a governing council.

(5) A constitution adopted by a school council has no effect until submitted to, and approved by, the Minister.

(6) If—

(a) a school council does not adopt a constitution and submit it to the Minister for approval within 6 months after the commencement of this clause; or

(b) the Minister refuses to approve a constitution so submitted by a school council,

the Minister may, by notice in writing to the presiding member of the school council, determine that the council is to operate under a constitution specified in the notice.

(7) The Minister may not make a determination under subclause (6) that a school council is to operate under a constitution appropriate to a governing council unless, at the time the direction is given, the school is a Partnerships 21 site.

(8) Until a constitution takes effect in relation to a school council under this clause, the council must operate in accordance with the provisions of the Act, and the regulations made under the Act, as in force immediately before the commencement of this clause (subject to any modifications prescribed by regulation and despite the repeal or revocation of those provisions).

(9) For the purposes of this clause, a school is a Partnerships 21 site only if it is so designated by an agreement (known as a "Services Agreement") to which the presiding member of the school council, the head teacher of the school and the Director-General (or a former presiding member, head teacher and Director-General) are signatories.

Affiliated committees

3. (1) An affiliated committee established by the Minister under the principal Act and in existence immediately before the commencement of this clause will, on that commencement, be taken—

(a) to continue in existence as an affiliated committee authorised by the Minister under the principal Act (as amended by this Act); and

(b) to consist of the members of the committee holding office immediately before that commencement.

(2) An elected or appointed member of an affiliated committee will hold office for the same term as applied to the member immediately before the commencement of this clause.

(3) An affiliated committee may, within 6 months after the commencement of this clause, adopt a constitution.

(4) A constitution adopted by an affiliated committee has no effect until submitted to, and approved by, the Minister.

(5) If—

(a) an affiliated committee does not adopt a constitution and submit it to the Minister for approval within 6 months after the commencement of this clause; or

(b) the Minister refuses to approve a constitution so submitted by an affiliated committee,

the Minister may, by notice in writing to the presiding member of the affiliated committee, determine that the committee is to operate under a constitution specified in the notice.

(6) Until a constitution takes effect in relation to an affiliated committee under this clause, the committee must operate in accordance with the provisions of the Act, and the regulations made under the Act, as in force immediately before the commencement of this clause (subject to any modifications prescribed by regulation and despite the repeal or revocation of those provisions).

SCHEDULE 2

Amendment of Children's Services Act

The *Children's Services Act 1985* is amended by inserting after the present contents of section 44 (now to be designated as subsection (1)) the following subsection:

(2) The constitution of a children's services centre may include provisions under which the membership of the management committee is such that it may also constitute a school council under the *Education Act 1972*.