



ANNO VICESIMO QUARTO

**ELIZABETHAE II REGINAE**

A.D. 1975

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**No. 3 of 1975**

An Act to promote pre-school education in this State; to confer upon the Kindergarten Union of South Australia the status of a statutory corporation, to provide for its administration, and to invest it with certain statutory powers; and for other purposes.

[Assented to 13th March, 1975]

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

<u>PART I</u>	<p>PART I PRELIMINARY</p>
Short title.	1. This Act may be cited as the "Kindergarten Union Act, 1974-1975".
Commencement.	2. This Act shall come into operation on a day to be fixed by proclamation.
Arrangement of Act.	<p>3. This Act is arranged as follows:—</p> <p>PART I—PRELIMINARY</p> <p>PART II—THE UNION AND ITS OBJECTIVES</p> <p>PART III—THE BOARD OF MANAGEMENT OF THE UNION</p> <p>PART IV—THE COUNCIL OF THE UNION</p> <p>PART V—BRANCH KINDERGARTENS AND AFFILIATED KINDERGARTENS</p> <p>PART VI—THE STATUTES OF THE UNION</p> <p>PART VII—FINANCIAL PROVISIONS</p> <p>PART VIII—MISCELLANEOUS.</p>
Interpretation.	<p>4. In this Act, unless the contrary intention appears—</p> <p>“affiliated kindergarten” means a kindergarten that has been registered as such by the Union:</p>

“appointed member” of the Board means a person appointed to membership of the Board by the Governor:

“the Board” means the Board of Management of the Union:

“branch kindergarten” means a kindergarten that has been registered as such by the Union:

“the Childhood Services Council” means a body of that name established by an Act of the Parliament of this State or any other body that is, by direction of the Minister to exercise the functions assigned to the body so designated by this Act:

“the Council” means the Council of the Union:

“kindergarten” means any person or body of persons that provides, or proposes to provide, pre-school education for children:

“the Minister” means the Minister of Education or any other Minister to whom the administration of this Act is for the time being committed:

“registered kindergarten” means a kindergarten that has been registered as a branch kindergarten or as an affiliated kindergarten in pursuance of this Act:

“statute” means a statute made under this Act:

“the Union” means the body corporate formerly known as the Kindergarten Union of South Australia Incorporated which continues under this Act under the name the “Kindergarten Union of South Australia”.

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## PART II

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## PART II

### THE UNION AND ITS OBJECTIVES

5. (1) The Union shall continue in existence under the name of the “Kindergarten Union of South Australia”. Continuance of the Union.

(2) The Union—

(a) shall be a body corporate with perpetual succession and a common seal;

(b) shall be capable in its corporate name of acquiring, holding and disposing of real and personal property;

(c) shall be capable of acquiring or incurring any other legal rights or liabilities, and of suing and being sued;

(d) shall hold its property on behalf of the Crown;

and

(e) shall have the powers, authorities, duties and obligations prescribed by or under this Act.

(3) Where an apparently genuine document purports to bear the common seal of the Union, it shall be presumed, in the absence of proof to the contrary, that the common seal of the Union was duly affixed to that document.

(4) The registration of the Union under the Associations Incorporation Act is hereby cancelled.

**PART II**  
**Objects of**  
**the Union.**

**6. The objects of the Union shall be—**

- (a) to promote proper education, development, guidance and care of pre-school children;
  - (b) to initiate, encourage and support research into aspects of pre-school education and to disseminate the results of such research by publication or in any other manner;
  - (c) to disseminate knowledge of sound principles of education and care of pre-school children;
  - (d) to provide a forum for discussion of policies and practices in pre-school education and in the provision of other childhood services;
  - (e) to establish and administer kindergartens;
  - (f) to register as members of the Union kindergartens that meet the requirements of the Union in respect of membership;
  - (g) to register as kindergartens affiliated with the Union kindergartens that meet the requirements of the Union in respect of affiliation;
  - (h) to encourage members of the community to become personally involved in matters affecting pre-school education and the provision of other childhood services;
  - (i) to promote a high standard in the design, amenities, and equipment of premises used or intended to be used for the purpose of kindergartens and for the provision of other childhood services;
  - (j) to promote the highest possible standards in the qualifications of staff employed to provide pre-school education and other childhood services;
  - (k) to support financially or in other ways branch kindergartens and affiliated kindergartens;
  - (l) to support financially and in other ways organizations providing childhood services in co-operation with the Union;
- and
- (m) to promote the welfare of kindergartens, organizations providing other childhood services, and the children for which they are established in any other manner that the Union considers appropriate.

**Powers of**  
**the Union.**

**7. (1) In the furtherance of its objects, the Union may—**

- (a) acquire, and hold under any tenure, real property;
- (b) acquire personal property;
- (c) erect, repair, renovate, improve or demolish any buildings or structures;
- (d) represent all branch and affiliated kindergartens, and where appropriate organizations providing other childhood services in co-operation with the Union, in negotiations with the Government of the Commonwealth or the State in regard to the provision of moneys for capital works and recurrent expenditure incurred in the provision of pre-school education and other childhood services;

- (e) receive moneys provided by the Government of the Commonwealth, or of the State, for the purpose of pre-school education and other childhood services and allocate and apply the moneys in accordance with the terms upon which they were received;
  - (f) apply any other property of the Union for the purposes of this Act;
  - (g) invest any moneys not immediately required for the purposes of the Union;
  - (h) appoint employees and honorary officers;
  - (i) hold and administer property on trust;
  - (j) receive gifts or bequests;
  - and
  - (k) exercise any other powers that may be necessary or expedient for promoting its objects.
- (2) The Board shall not dispose of any real property without the consent of the Minister.
- (3) In the exercise of its powers, the Union shall collaborate with—
- (a) the South Australian Pre-School Education Committee;
  - (b) the Education Department;
  - (c) the Department for Community Welfare;
  - and
  - (d) any other body or organization with which collaboration is desirable in the interests of promoting the objects of the Union.

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PART III

PART III

THE BOARD OF MANAGEMENT OF THE UNION

8. (1) There shall be a Board of Management of the Union.
- (2) The Board of Management—
- (a) shall be the governing authority of the Union and may exercise any of the powers vested in the Union under this Act;
  - (b) may appoint and dismiss officers and employees of the Union;
  - and
  - (c) shall have full power to perform any other act necessary or expedient for the due administration of the Union, and the performance of the functions for which the Union is established.
- (3) The Board of Management shall be responsible to the Council for the due administration of the Union.

Board of  
Management.

**PART III**

Membership  
of the  
Board of  
Management.

9. (1) The Board of Management shall consist of the following members:—
- (a) the chief executive officer of the Union (but during the period extending from the commencement of this Act to the appointment of the first chief executive officer of the Union, the administrator of the Union shall be a member of the Board in his place);
  - (b) two members appointed by the Governor on the nomination of the Minister after consultation with the South Australian Institute of Teachers, (of whom at least one must be a member of the Pre-School Teachers Association);
  - (c) one member elected by the professional and senior administrative staff of the Union (as defined in the statutes) in accordance with principles established by the statutes;
  - (d) one member appointed by the Governor from the staff of a college of advanced education that is conducting courses for the benefit of persons wishing to become pre-school teachers;
  - (e) four members, not being employees of the Union, appointed by the Governor on the nomination of the Council (who in the case of the first nominees shall be chosen by the Council from amongst the members of the board of management of the Union as it existed immediately before the commencement of this Act);
  - (f) four members appointed by the Governor on the nomination of the Minister;
- and
- (g) any co-opted members of the Board.

(2) The Board may, from time to time, co-opt persons to membership of the Board (not being employees of the Union), but there shall not be more than two such members of the Board at any one time.

(3) A member of the Board shall not, in the exercise of his powers or functions as such, be subject to the direction of any person or body of persons.

(4) If before the commencement of this Act, the Minister caused an election to be held in which those persons who were, in his opinion, likely to become members of the professional and senior administrative staff of the Union, elected one of their number to membership of the Board the person so elected shall be deemed to have been elected to membership of the Board under paragraph (c) of subsection (1) of this section upon the commencement of this Act.

Conditions of  
membership.

10. (1) Subject to subsection (2) of this section, and the statutes, an appointed or elected member of the Board shall be appointed or elected for a term of office of two years.

(2) Subsection (1) of this section is subject to the following qualifications:—

- (a) two of the four members nominated by the Council (who shall be chosen by lot) shall be appointed for a term of one year in the first instance;

and

- (b) two of the four members nominated by the Minister shall be appointed for a term of one year in the first instance.

11. (1) Upon the expiration of his term of office, an appointed or elected member of the Board shall, subject to this Act and the statutes, be eligible for re-appointment or re-election.

Conditions  
of office.

(2) An appointed member may resign from the Board by submitting his resignation in writing to the President.

(3) A person appointed or elected to a casual vacancy before the expiration of the term of his predecessor shall hold office for the balance of the term of his predecessor.

(4) Where a member of the Board does not continue in the capacity by virtue of which he was entitled to appointment or election as a member of the Board, he may nevertheless continue as a member of the Board until the expiration of his term of office.

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

- (a) mental or physical incapacity;
- (b) dishonest or dishonourable conduct;
- or
- (c) neglect of duty.

(6) A member of the Board shall be deemed to be guilty of a neglect of duty when he has, without leave of the Board, been absent from three or more consecutive meetings of the Board held over a period of at least three months.

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

Procedure  
of the Board.

(2) A quorum of the Board shall consist of the prescribed number of members of the Board calculated in accordance with subsection (3) of this section.

(3) The prescribed number shall be calculated by dividing the number of persons who are for the time being members of the Board (except any who have been granted leave of absence by the Board or the Minister under this section) by two, ignoring any fraction resulting from the division, and adding one.

(4) The Board may grant leave of absence to a member of the Board for up to three months and the Minister may grant leave of absence to a member of the Board for any period he thinks fit.

(5) The President, or if he is not present, a Vice-President, or if neither President nor a Vice-President is present, a person elected by the members present at a meeting of the Board, shall preside at the meeting.

(6) Subject to this Act, and the statutes, the business of the Board shall be conducted in such manner as the Board may determine.

13. An act or decision of the Board shall not be invalid by reason only of any vacancy in the office of a member of the Board or on the ground of any defect in the nomination or appointment of any member of the Board.

Validating  
provision.

**PART III**President and  
Vice-President.

14. (1) The Board shall, from time to time, as occasion requires, appoint from its own membership a President and Vice-President, or Vice-Presidents.

(2) The term of office of the President, or a Vice-President, the conditions upon which they shall hold their respective offices, and the powers, functions and duties appertaining to their respective offices, shall be prescribed by the statutes of the Union.

(3) No member of the staff of the Union shall be eligible for election as President or Vice-President.

The executive  
director.

15. (1) The Board shall, from time to time, as occasion requires, appoint a suitable person to be the chief executive officer of the Union.

(2) The Board may assign such title to the chief executive officer as it thinks appropriate and may vary a title so assigned from time to time.

(3) The chief executive officer shall—

(a) be responsible to the Board for the management and administration of the Union;

(b) be responsible for the performance of such duties as prescribed by the statutes;

and

(c) shall hold office upon such terms and conditions as may be prescribed in the statutes, or in the absence of statutes governing the matter, as may be determined by the Board.

Power of  
delegation.

16. (1) The Board may delegate to any person or committee any of its powers under this Act.

(2) Any such delegation shall be revocable at will, and shall not derogate from the power of the Board to act itself in any matter.

(3) A committee appointed by the Board to which the Board proposes to delegate any of its powers under this Act, may contain members who are not members of the Board.

(4) A member of any such committee shall hold office upon such terms and conditions as may be determined by the Board.

Annual report.

17. (1) The Board shall, not later than the thirtieth day of June in each year, prepare and present to the Governor a report on the affairs of the Union during the previous calendar year.

(2) The Minister shall cause a copy of the report to be laid before each House of Parliament as soon as practicable.

(3) The Board shall transmit a copy of any report made under this section to the Council for discussion and comment.

## PART IV

## PART IV

## THE COUNCIL OF THE UNION

18. (1) There shall be a council of the Union.

The Council  
of the Union.

(2) The Council shall be comprised of the following members:—

- (a) one representative of each branch kindergarten (not being an employee of the kindergarten or of the Union) appointed by the governing body of that kindergarten;
  - (b) representatives of the teaching staff (other than teaching aides) of the branch kindergartens (not exceeding in number ten per centum of the total number of that teaching staff) elected in accordance with the statutes (or in the absence of statutes governing the matter, elected in accordance with principles determined by the Minister);
  - (c) the members of the Board;
  - (d) any persons elected to life membership of the Union (including persons elected to life membership before the commencement of this Act);
  - (e) any persons holding honorary offices in the Union (including those holding such offices before the commencement of this Act);
  - (f) any persons who are declared by the statutes to be private members of the Union and entitled to membership of the Council as such;
  - (g) one member elected by a single electorate comprising members of the non-teaching staff of the Union in accordance with the statutes (or in the absence of statutes governing the matter, elected in accordance with principles determined by the Minister);
- and
- (h) the holders of such senior offices as the Board may determine.

(3) A governing body of a registered kindergarten may, if it considers it necessary or expedient to do so, nominate a deputy of any member appointed by it to membership of the Union, and a deputy so nominated shall be entitled to act as a member of the Council in the absence of the member of whom he is a deputy.

19. (1) Subject to this Part, an elected or appointed member of the Council shall be entitled to hold office as member of the Council for a term of one year, and upon the expiration of his term of office shall be eligible for re-election or re-appointment.

Term of  
office.

(2) The first such appointed and elected members of the Council shall hold office until the thirty-first day of March, 1976.

20. (1) The office of an elected or appointed member of the Council shall become vacant if—

Casual  
vacancies  
on Council.

- (a) he resigns by written notice addressed to the President;
  - (b) he ceases to hold the qualification under which he was eligible for election or appointment;
- or
- (c) he is removed from office under subsection (2) of this section.



**PART IV**

(2) The Governor may remove an elected or appointed member of the Council from office for—

- (a) mental or physical incapacity;
- (b) dishonourable conduct;
- or
- (c) neglect of duty.

(3) A person appointed to a casual vacancy of the Council shall hold office only for the balance of the term of his predecessor.

**Conduct of business of the Council.**

21. (1) The President of the Board shall preside at meetings of the Council, or in his absence a Vice-President of the Board shall preside, and in the absence of the President and the Vice-Presidents, a member elected by the members present at the meeting of the Council shall preside at the meeting.

(2) A quorum of the Council shall consist of the prescribed number of members of the Council calculated in accordance with subsection (3) of this section.

(3) The prescribed number shall be calculated by dividing the number of members of the Council by five, ignoring any fraction resulting from the division, and adding one.

(4) Each member of the Council shall be entitled to exercise one vote on any matter arising for the decision of the Council.

**Functions of the Council.**

22. (1) The functions of the Council are as follows:—

- (a) to act to further the objects of the Union in co-operation with the Board;
- (b) to arrange conferences, seminars, lectures for purposes associated with the objects of the Union;
- (c) to transact any business referred by the Board to the Council;
- (d) to consider any matters referred to the Council by the Board or by a registered kindergarten and to report upon those matters to the Board.

(2) For the purpose of performing its functions under this Act, the Council may establish committees consisting of such persons as it thinks fit, define the functions of the committees and determine any other matter relating thereto.

**Meetings of the Council.**

23. (1) An annual meeting of the Council shall be held not earlier than the thirty-first day of March, and not later than the thirtieth day of June, in each year at the time and place appointed by the Board.

(2) The business to be considered by an annual general meeting of the Council shall be as follows:—

- (a) the Council shall consider the annual report of the Union prepared by the Board, and may make such comments on the report as it thinks fit and cause those comments to be transmitted for the consideration of the Board and the Minister;

- (b) the Council shall transact any business stipulated by the statutes;
- (c) the Council shall consider any matters referred to the Council by the Board;
- and
- (d) the Council shall transact any business of which due notice has been given in accordance with any statute under this Act governing the business of the Council.

(3) The Council shall meet at such other times as the Council may determine for the discharge of business of the Council in accordance with any statutes governing the conduct of business of the Council.

(4) The Council may from time to time meet in various centres of population in country areas throughout the State.

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PART V

PART V

## BRANCH KINDERGARTENS AND AFFILIATED KINDERGARTENS

24. (1) The Union may register a kindergarten as a branch kindergarten.

Registration  
of branch  
kindergartens.

(2) No kindergarten shall be registered under this section as a branch kindergarten unless it has lodged with the Union a copy of its constitution and rules and the constitution and rules have been approved by the Union.

(3) Any kindergarten registered by the Union as a branch kindergarten before the commencement of this Act shall be deemed to be registered under this section.

(4) The Board may, by instrument in writing, direct any kindergarten to which subsection (3) of this section applies, to make such amendments to its constitution and rules, or to adopt such constitution and rules, as may be specified in the instrument and if the kindergarten fails to do so within the period specified in the instrument, the Board may cancel the registration.

(5) No amendment to the constitution or rules of a branch kindergarten shall be of any force or effect until submitted to, and approved by, the Board.

(6) Any registered branch kindergarten shall be a body corporate with the powers and functions prescribed by its constitution and rules.

(7) Upon dissolution of a registered branch kindergarten, its assets shall vest in the Union, and the Board may dispose of those assets in such manner as it thinks fit.

(8) It shall not be lawful for a branch kindergarten to dispose of its assets without the consent in writing of the Board.

25. (1) The Union may register a kindergarten as an affiliated kindergarten.

Affiliation of  
kindergartens.

(2) The relationship between the Union and the affiliated kindergartens shall be as defined by statute.

(3) Any kindergarten that was immediately before the commencement of this Act affiliated with the Union shall be deemed to have been registered under this section.

**PART V**

Provisions generally applicable to registered kindergartens.

26. (1) If at any time there is no duly constituted management committee of a registered kindergarten, or if for any reason it is not practicable for a registered kindergarten to carry out its functions and duties, then the Board may exercise all or any of the powers of the kindergarten on its behalf.

(2) Two or more registered kindergartens may, with the approval of the Board, amalgamate to form one kindergarten.

**PART VI****PART VI****THE STATUTES OF THE UNION**

Power of Board to make statutes.

27. (1) The Board may make, alter and repeal statutes for all or any of the following purposes, or with respect to all or any of the following matters:—

- (a) the conduct of the business and proceedings of the Board and of the Council;
  - (b) the election of members of the Board or of the Council;
  - (c) the conditions upon which the President, Vice-Presidents, chief executive officer or any other member, officer or employee of the Union shall hold office;
  - (d) the management of the Union;
  - (e) the requirements for registration and de-registration of kindergartens as branch kindergartens or affiliated kindergartens;
  - (f) the financial relationships between the Union and its registered and affiliated kindergartens;
  - (g) the constitution of branch kindergartens and registered kindergartens;
  - (h) the nomination and election of private members of the Council;
  - (i) the nomination and appointment of life members of the Council;
- and
- (j) any other matter necessary or expedient for the management of the Union, or any other matter arising in the administration of this Act.

(2) Nothing in this section shall be construed as detracting from the jurisdiction of the Industrial Commission to make awards applying to the staff of the Union.

(3) No proposed statute shall be submitted to the Governor for confirmation unless—

- (a) it has been approved by the Council;
- and
- (b) it has been submitted to the Childhood Services Council.

(4) Every statute made pursuant to this section shall—

- (a) be sealed with the seal of the Union and submitted to the Governor for confirmation;
  - (b) after confirmation be published in the *Gazette* and laid before each House of Parliament;
- and
- (c) take effect on the day on which it is published in the *Gazette*, or on any later day prescribed in the statute.

(5) If either House of Parliament, pursuant to a notice of motion given within fourteen sitting days after the statute has been laid before the House, passes a resolution disallowing the statute, it shall cease to have effect, but the disallowance shall not affect the validity or legality or cure the invalidity or illegality of any act or omission occurring in the meantime.

(6) Notice of a resolution passed under subsection (5) of this section shall be published in the *Gazette*.

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## PART VII

PART VII

### FINANCIAL PROVISIONS

28. (1) The Treasurer shall, upon the recommendation of the Minister, pay to the Union in each financial year such amounts as may be necessary in his opinion for the purpose of enabling the Union adequately to perform and discharge its functions and duties under this Act.

Financial provision.

(2) The Board shall submit to the Childhood Services Council at such times, and in such form, as the Council may require, such information in relation to the financial and other requirements of the Union as may be requested by that Council.

(3) The Board may require each kindergarten committee to supply to the Union, with such financial and other statements relating to the affairs of the committee, such information as the Board may require.

(4) The Board shall determine how the funds furnished by the Treasurer under this section are to be allocated between the kindergarten committees.

29. (1) The Board shall cause proper accounts to be kept of its financial affairs.

Accounts and Audit.

(2) The Auditor-General or an auditor approved by the Minister may, at any time, and shall at least once in every calendar year, audit the accounts of the Union.

(3) The Minister may at any time direct the Auditor-General to audit the accounts of the Union and the Auditor-General shall perform an audit in accordance with that direction.

(4) For the purposes of an audit, the Auditor-General shall have, and may exercise, in relation to the accounts of the Union, and the officers and employees of the Union, the same powers as are vested by the Audit Act in the Auditor-General in relation to public accounts and accounting officers.

PART VIIBorrowing  
powers.

30. (1) The Union may, on the recommendation of the Childhood Services Council, and with the approval of the Treasurer, borrow moneys for the purposes of enabling it to perform and discharge its functions and duties under this Act.

(2) The repayment of any moneys so borrowed, and any interest thereon, is hereby guaranteed by the Treasurer.

(3) The Treasurer may, without any authority other than this section, pay out of the General Revenue of the State any moneys required for the purpose of discharging his obligations arising by virtue of the guarantee under this section.

Exemption  
from certain  
rates and  
taxes.

31. The Union, and any registered branch kindergarten, shall be exempt from—

(a) any gift duty under the Gift Duty Act, 1968-1973;

(b) any land tax under the Land Tax Act, 1936-1974;

and

(c) any rates under the Local Government Act, 1934-1974.

PART VIII

## PART VIII

## MISCELLANEOUS

Property.

32. (1) The Governor may, by instrument in writing, direct that any unalienated Crown lands, or any land held on behalf of the Crown, be vested in the Union for an estate of fee simple, or for such lesser estate or interest as he may determine.

(2) The Registrar-General shall, upon lodgment of any such direction in the Lands Titles Registration Office, together with the duplicate Certificates of Title (if any) relating to the land, issue such new Certificates of Title, or make such entries or notations upon existing Certificates of Title, as may be necessary to evidence the vesting of the land in the Union.

(3) The Governor may, by instrument in writing, place any unalienated Crown land under the care, control and management of the Union.

(4) The Governor may, by instrument in writing, resume any land placed under the care, control and management of the Union pursuant to subsection (3) of this section.

(5) The Governor may, by instrument in writing, direct that any personal property referred to in the instrument be vested in the Union.

(6) A direction under this section shall have effect according to its terms.

(7) The Minister may, subject to, and in accordance with, the Land Acquisition Act, 1969-1973, acquire land for the purposes of the Union.

33. (1) The coming into force of this Act does not, of itself, affect the employment or salary of any person who was, immediately before the commencement of this Act, an employee of the Union or of a branch kindergarten.

Rights of employees of the Union.

(2) The existing and accruing rights of any such employee in respect of recreation leave, sick leave or long service leave shall continue in effect.

(3) An employee of the Union shall be an employee within the meaning and for the purposes of the Superannuation Act, 1974.

(4) An employee of the Union who was, immediately before the commencement of this Act, a contributor to the Kindergarten Union of South Australia Incorporated Superannuation Fund shall, if he elects within three months after the commencement of this Act to remain a contributor to that Fund, continue as a contributor to that superannuation fund.

(5) A person shall not be entitled to be simultaneously a contributor to the superannuation fund referred to in subsection (4) of this section and a contributor under the Superannuation Act, 1974.

34. (1) The Community Welfare Act, 1972-1974, shall not apply in relation to registered kindergartens.

Application of certain Acts.

(2) The Public Service Act, 1967-1974, shall not apply in relation to officers and employees of the Union in their capacity as such.

35. The Governor may make such regulations as he considers necessary or expedient for the purposes of this Act.

Regulations.

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

M. L. OLIPHANT, Governor