ANNO TRICESIMO QUINTO

ELIZABETHAE II REGINAE

A.D. 1986

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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”.

(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.

(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:

“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.

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”.

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”.

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”.

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”.

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”.

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”.

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

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”.

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”.

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”.

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”.

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;
(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".

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".

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

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.

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".

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.

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.

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,"

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—

(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:

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.

(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.
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.

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".

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

29. Section 80 of the principal Act is amended—
(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 sub-
section:

(4) Any person who, when requested to furnish infor-
mation 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:

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

31. Section 85 of the principal Act is amended—
(a) by striking out from subsection (1) the passage "any corporation
carrying on the business of banking in the State" and substi-
tuting 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 sub-
section (4) the following subsection:
(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.

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

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.

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".

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

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