

South Australia

Industrial Referral Agreements Act 1986

An Act to make provision with respect to the resolution of certain disputes; and for other purposes.

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Legislative history

The Parliament of South Australia enacts as follows:

1—Short title

This Act may be cited as the *Industrial Referral Agreements Act 1986*.

2—Interpretation

A word or expression used in this Act that is the subject of a definition under section 4 of the *Fair Work Act 1994* when used in that Act will have the same meaning in this Act as it has in that Act.

3—Referral of matter to Industrial Relations Commission by agreement

- (1) This section applies to an industrial matter or an industrial dispute if 2 or more parties have entered into an agreement in writing (a *referral agreement*) to seek the assistance of the Commission by making a referral to the Commission in order to obtain (as the case may be)—
 - (a) the resolution of an industrial matter arising between the parties (including by making a determination about levels of remuneration, conditions of employment or other industrial matters);
 - (b) the resolution of an industrial dispute between the parties (including by settling a dispute about whether appropriate remuneration has been paid to a person under a contract of employment or whether there has been a breach of a condition of employment);
 - (c) the resolution of the question whether, on the balance of probabilities, the dismissal of an employee was harsh, unjust or unreasonable.
- (2) A referral agreement may relate to a particular matter or dispute, or to matters or disputes of a specified class.

- (3) The parties to a referral agreement may be—
 - (a) an employer, or group of employers;
 - (b) an employee, or group of employees;
 - (c) a registered association;
 - (d) the United Trades and Labor Council.
- (4) The parties to a referral agreement may agree that the Commission is—
 - (a) to act as a conciliator, mediator or arbitrator;
 - (b) to make recommendations to the parties;
 - (c) to make determinations or orders that the parties agree to accept or observe, as specified in the referral agreement.
- (5) A party seeking the assistance of the Commission under a referral agreement will do so in accordance with the rules.
- (6) On a referral under this Act, the Commission has and may perform or exercise such functions or powers with respect to the matter as the Commission might exercise in the exercise of its jurisdiction under section 26 of the *Fair Work Act 1994*, subject to any limitation or exclusion specified in the referral agreement and not so as to give any form of relief outside the referral agreement.
- (7) The regulations may make provision for or with respect to the application of the provisions of the *Fair Work Act 1994* (with such modifications, if any, as may be prescribed by the regulations) to the performance or exercise of functions or powers under this Act.
- (8) Subject to any regulations made for the purposes of subsection (7) or unless the Commission is hearing an appeal, the Commission is to be constituted of a single member of the Commission.
- (9) Subject to the *Fair Work Act 1994* and any regulations made for the purposes of subsection (7), and without limiting section 178 of the *Fair Work Act 1994*, rules of the Commission may be made in connection with the practice and procedure of the Commission in the performance or exercise of functions or powers conferred by referral agreements.
- (10) A determination, order or other decision of the Commission on a referral under this Act—
 - (a) is binding on the parties to the referral agreements; and
 - (b) may be enforced under the *Fair Work Act 1994* in the same way as a determination, order or other decision of the Commission or the Court to the same effect.
- (11) For the purposes of subsection (10), the regulations may make provision for the entry of a determination, order or other decision of the Commission as a determination, order or other decision of the Commission or the Court (as the case requires) under the *Fair Work Act 1994*.

- (12) The Commission may, in acting under this Act, make any determination as to the scope or operation of the relevant referral agreement, or as to the meaning of any provision of the referral agreement, and any such determination will then have effect according to its terms.
- (13) The Commission may, at any time after a matter or dispute has been referred to the Commission under this Act, determine to take no action on the referral, or to suspend or discontinue any action on the referral, if the Commission considers or is satisfied that—
- (a) the matter or dispute should be determined in some other manner; or
 - (b) proceedings that relate to the subject matter of the referral have been commenced under the *Fair Work Act 1994*, or before some other body or person; or
 - (c) there is some other reasonable cause that justifies a decision not to proceed, or to suspend or discontinue any action under this section,
- (and such a determination will have effect according to its terms).
- (14) A party to a matter in respect of which the Commission has made a determination under this section may appeal against that determination in accordance with section 207 of the *Fair Work Act 1994* unless the referral agreement provides that a determination will be final and conclusive and not subject to appeal.
- (15) If an appeal is made, it will be taken to be part of the referral to the Commission under the referral agreement.
- (16) The functions and powers conferred on the Commission by or under this Act are in addition to, and do not derogate from, any other function or power of the Commission under the *Fair Work Act 1994*.
- (17) A referral agreement may be amended from time to time by agreement between the parties to the referral agreement.
- (18) Once a referral has been made a party cannot withdraw from the referral agreement without the agreement in writing of the other party or parties to the agreement.

4—Regulations

The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.

Legislative history

Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Formerly

Commercial Arbitration Act 1986

Commercial Arbitration and Industrial Referral Agreements Act 1986

Legislation repealed by principal Act

The *Industrial Referral Agreements Act 1986* repealed the following:

Arbitration Act 1891

Legislation amended by principal Act

The *Industrial Referral Agreements Act 1986* amended the following:

Local and District Criminal Courts Act 1926

Supreme Court Act 1935

Principal Act and amendments

New entries appear in bold.

| Year | No | Title | Assent | Commencement |
|-------------|-----------|--|------------------|---|
| 1986 | 102 | <i>Commercial Arbitration Act 1986</i> | 18.12.1986 | 9.7.1987 (<i>Gazette 9.7.1987 p57</i>) |
| 1992 | 64 | <i>Commercial Arbitration (Uniform Provisions) Amendment Act 1992</i> | 12.11.1992 | 1.1.1993 (<i>Gazette 17.12.1992 p2192</i>) |
| 2006 | 17 | <i>Statutes Amendment (New Rules of Civil Procedure) Act 2006</i> | 6.7.2006 | Pt 16 (ss 54—61)—4.9.2006 (<i>Gazette 17.8.2006 p2831</i>) |
| 2006 | 41 | <i>Statutes Amendment (Public Sector Employment) Act 2006</i> | 14.12.2006 | Pt 8 (ss 25—27)—1.4.2007 (<i>Gazette 29.3.2007 p930</i>) |
| 2009 | 77 | <i>Building and Construction Industry Security of Payment Act 2009</i> | 10.12.2009 | Sch 1 (cl 3)—10.12.2011 (s 7(5) <i>Acts Interpretation Act 1915</i>) |
| 2011 | 32 | <i>Commercial Arbitration Act 2011</i> | 22.9.2011 | Sch 1 (cll 1—7)—1.1.2012 (<i>Gazette 15.12.2011 p4986</i>) |

2016 63 *Statutes Amendment (South Australian Employment Tribunal) Act 2016* 8.12.2016 Pt 11 (ss 108 & 109)—1.7.2017 (*Gazette* 16.5.2017 p1221)

Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

| Provision | How varied | Commencement |
|---------------------------------------|--|-----------------|
| Long title | amended under <i>Legislation Revision and Publication Act 2002</i> | 4.9.2006 |
| | amended by 32/2011 Sch 1 cl 2 | 1.1.2012 |
| <i>Pt 1</i> | | |
| <i>heading</i> | <i>deleted by 32/2011 Sch 1 cl 7</i> | <i>1.1.2012</i> |
| s 1 | amended by 41/2006 s 25 | 1.4.2007 |
| | amended by 32/2011 Sch 1 cl 3 | 1.1.2012 |
| s 2 | <i>omitted under Legislation Revision and Publication Act 2002</i> | 4.9.2006 |
| s 2 | Sch 1 cl 1 redesignated as s 2 by 32/2011 Sch 1 cl 6(5) | 1.1.2012 |
| s 2(1) | cl 1(1) amended by 32/2011 Sch 1 cl 6(1) | 1.1.2012 |
| s 2(2) | <i>cl 1(2) deleted by 32/2011 Sch 1 cl 6(4)</i> | <i>1.1.2012</i> |
| <i>s 3 before deletion by 32/2011</i> | | |
| s 3(1) | <i>omitted under Legislation Revision and Publication Act 2002</i> | 4.9.2006 |
| s 3(6) | <i>substituted by 17/2006 s 54</i> | 4.9.2006 |
| s 3(7) | <i>inserted by 17/2006 s 54</i> | 4.9.2006 |
| | <i>amended by 41/2006 s 26(1)</i> | 1.4.2007 |
| s 3(8) and (9) | <i>inserted by 41/2006 s 26(2)</i> | 1.4.2007 |
| s 3(9a) | <i>inserted by 77/2009 Sch 1 cl 3</i> | 10.12.2011 |
| s 3(10) | <i>inserted by 41/2006 s 26(2)</i> | 1.4.2007 |
| s 3 | <i>deleted by 32/2011 Sch 1 cl 4</i> | <i>1.1.2012</i> |
| s 3 | Sch 1 cl 2 redesignated as s 3 by 32/2001 Sch 1 cl 6(5) | 1.1.2012 |
| s 3(1) | cl 2(1) amended by 32/2011 Sch 1 cl 6(2) | 1.1.2012 |
| s 3(6) and (7) | cl 2(6) and (7) amended by 32/2011 Sch 1 cl 6(1) | 1.1.2012 |
| s 3(8) and (9) | cl 2(8) and (9) amended by 32/2011 Sch 1 cl 6(3) | 1.1.2012 |
| s 3(10) | cl 2(10) amended by 32/2011 Sch 1 cl 6(1) | 1.1.2012 |
| s 3(11) | cl 2(11) amended by 32/2011 Sch 1 cl 6(3) | 1.1.2012 |
| s 3(12), (13) and (16) | cl 2(12), (13) and (16) amended by 32/2011 Sch 1 cl 6(1) | 1.1.2012 |
| <i>s 4 before deletion by 32/2011</i> | | |
| s 4(1) | <i>s 4 redesignated as s 4(1) by 64/1992 s 3(d)</i> | 1.1.1993 |

Industrial Referral Agreements Act 1986—1.1.2012Legislative history

| | | |
|--|---|-----------------|
| <i>the Court</i> | <i>amended by 17/2006 s 55</i> | 4.9.2006 |
| <i>domestic arbitration agreement</i> | <i>deleted by 64/1992 s 3(a)</i> | 1.1.1993 |
| <i>international arbitration agreement</i> | <i>deleted by 64/1992 s 3(b)</i> | 1.1.1993 |
| <i>prescribed arbitration agreement</i> | <i>deleted by 64/1992 s 3(c)</i> | 1.1.1993 |
| <i>s 4(2)</i> | <i>inserted by 64/1992 s 3(d)</i> | 1.1.1993 |
| s 4 | deleted by 32/2011 Sch 1 cl 4 | 1.1.2012 |
| s 4 | s 57 redesignated as s 4 by 32/2011 Sch 1 cl 5 | 1.1.2012 |
| s 5 | deleted by 32/2011 Sch 1 cl 4 | 1.1.2012 |
| Pt 2 | | |
| heading | deleted by 32/2011 Sch 1 cl 7 | 1.1.2012 |
| s 6 | substituted by 64/1992 s 4 | 1.1.1993 |
| | deleted by 32/2011 Sch 1 cl 4 | 1.1.2012 |
| ss 7—10 | deleted by 32/2011 Sch 1 cl 4 | 1.1.2012 |
| s 11 | substituted by 64/1992 s 5 | 1.1.1993 |
| | deleted by 32/2011 Sch 1 cl 4 | 1.1.2012 |
| ss 12 and 13 | deleted by 32/2011 Sch 1 cl 4 | 1.1.2012 |
| Pt 3 | | |
| heading | deleted by 32/2011 Sch 1 cl 7 | 1.1.2012 |
| ss 14—16 | deleted by 32/2011 Sch 1 cl 4 | 1.1.2012 |
| <i>s 17 before deletion by 32/2011</i> | | |
| <i>s 17(1)</i> | <i>substituted by 64/1992 s 6</i> | 1.1.1993 |
| s 17 | deleted by 32/2011 Sch 1 cl 4 | 1.1.2012 |
| <i>s 18 before deletion by 32/2011</i> | | |
| <i>s 18(2)</i> | <i>amended by 64/1992 s 7</i> | 1.1.1993 |
| s 18 | deleted by 32/2011 Sch 1 cl 4 | 1.1.2012 |
| <i>s 19 before deletion by 32/2011</i> | | |
| <i>s 19(3)</i> | <i>amended by 64/1992 s 8</i> | 1.1.1993 |
| s 19 | deleted by 32/2011 Sch 1 cl 4 | 1.1.2012 |
| s 20 | substituted by 64/1992 s 9 | 1.1.1993 |
| | deleted by 32/2011 Sch 1 cl 4 | 1.1.2012 |
| s 21 | amended by 64/1992 s 10 | 1.1.1993 |
| | deleted by 32/2011 Sch 1 cl 4 | 1.1.2012 |
| ss 22—25 | deleted by 32/2011 Sch 1 cl 4 | 1.1.2012 |
| ss 26 and 27 | substituted by 64/1992 s 11 | 1.1.1993 |
| | deleted by 32/2011 Sch 1 cl 4 | 1.1.2012 |
| Pt 4 | | |
| heading | deleted by 32/2011 Sch 1 cl 7 | 1.1.2012 |

| | | |
|--|--|-----------------|
| ss 28—30 | deleted by 32/2011 Sch 1 cl 4 | 1.1.2012 |
| <i>s 31 before deletion by 32/2011</i> | | |
| <i>s 31(1)</i> | <i>amended by 64/1992 s 12(a), (b)</i> | 1.1.1993 |
| <i>s 31(2)</i> | <i>substituted by 64/1992 s 12(c)</i> | 1.1.1993 |
| <i>s 31(3) and (4)</i> | <i>inserted by 64/1992 s 12(c)</i> | 1.1.1993 |
| s 31 | deleted by 32/2011 Sch 1 cl 4 | 1.1.2012 |
| <i>s 32 before deletion by 32/2011</i> | | |
| <i>s 32(1)</i> | <i>amended by 64/1992 s 13</i> | 1.1.1993 |
| s 32 | deleted by 32/2011 Sch 1 cl 4 | 1.1.2012 |
| <i>s 33</i> | <i>amended by 17/2006 s 56(1), (2)</i> | 4.9.2006 |
| | deleted by 32/2011 Sch 1 cl 4 | 1.1.2012 |
| <i>s 34 before deletion by 32/2011</i> | | |
| <i>s 34(3)</i> | <i>substituted by 64/1992 s 14(a)</i> | 1.1.1993 |
| <i>s 34(5)</i> | <i>amended by 64/1992 s 14(b)</i> | 1.1.1993 |
| <i>s 34(6)</i> | <i>substituted by 64/1992 s 14(c)</i> | 1.1.1993 |
| ss 34—37 | deleted by 32/2011 Sch 1 cl 4 | 1.1.2012 |
| Pt 5 | | |
| heading | deleted by 32/2011 Sch 1 cl 7 | 1.1.2012 |
| <i>s 38 before deletion by 32/2011</i> | | |
| <i>s 38(4)</i> | <i>amended by 64/1992 s 15(a)</i> | 1.1.1993 |
| | <i>amended by 17/2006 s 57(1)</i> | 4.9.2006 |
| <i>s 38(5)</i> | <i>substituted by 64/1992 s 15(b)</i> | 1.1.1993 |
| | <i>amended by 17/2006 s 57(2)</i> | 4.9.2006 |
| <i>s 38(6)</i> | <i>substituted by 64/1992 s 15(b)</i> | 1.1.1993 |
| | <i>amended by 17/2006 s 57(3)</i> | 4.9.2006 |
| <i>s 38(7)</i> | <i>substituted by 64/1992 s 15(b)</i> | 1.1.1993 |
| <i>s 38(8)</i> | <i>deleted by 64/1992 s 15(b)</i> | 1.1.1993 |
| s 38 | deleted by 32/2011 Sch 1 cl 4 | 1.1.2012 |
| <i>s 39 before deletion by 32/2011</i> | | |
| <i>s 39(2)</i> | <i>amended by 17/2006 s 58</i> | 4.9.2006 |
| <i>s 39(3) and (4)</i> | <i>deleted by 64/1992 s 16</i> | 1.1.1993 |
| s 39 | deleted by 32/2011 Sch 1 cl 4 | 1.1.2012 |
| <i>s 40 before deletion by 32/2011</i> | | |
| <i>s 40(1)</i> | <i>amended by 64/1992 s 17(a)</i> | 1.1.1993 |
| | <i>amended by 17/2006 s 59</i> | 4.9.2006 |
| <i>s 40(6)</i> | <i>substituted by 64/1992 s 17(b)</i> | 1.1.1993 |
| <i>s 40(7)</i> | <i>inserted by 64/1992 s 17(b)</i> | 1.1.1993 |
| ss 40—45 | deleted by 32/2011 Sch 1 cl 4 | 1.1.2012 |

| | | |
|--|--|-----------------|
| <i>s 46 before deletion by 32/2011</i> | | |
| <i>s 46(1)</i> | <i>amended by 64/1992 s 18(a)</i> | <i>1.1.1993</i> |
| <i>s 46(3)</i> | <i>substituted by 64/1992 s 18(b)</i> | <i>1.1.1993</i> |
| ss 46—49 | deleted by 32/2011 Sch 1 cl 4 | 1.1.2012 |
| <i>Pt 6</i> | | |
| heading | deleted by 32/2011 Sch 1 cl 7 | 1.1.2012 |
| ss 50—52 | deleted by 32/2011 Sch 1 cl 4 | 1.1.2012 |
| <i>s 53 before deletion by 32/2011</i> | | |
| <i>s 53(1)</i> | <i>amended by 64/1992 s 19(a), (b)</i> | <i>1.1.1993</i> |
| | <i>amended by 17/2006 s 60(1)</i> | <i>4.9.2006</i> |
| <i>s 53(2)</i> | <i>amended by 64/1992 s 19(c)</i> | <i>1.1.1993</i> |
| | <i>amended by 17/2006 s 60(2)</i> | <i>4.9.2006</i> |
| <i>s 53(3)</i> | <i>substituted by 64/1992 s 19(d)</i> | <i>1.1.1993</i> |
| <i>s 53(4)</i> | <i>deleted by 64/1992 s 19(d)</i> | <i>1.1.1993</i> |
| s 53 | deleted by 32/2011 Sch 1 cl 4 | 1.1.2012 |
| <i>s 54</i> | <i>substituted by 64/1992 s 20</i> | <i>1.1.1993</i> |
| | deleted by 32/2011 Sch 1 cl 4 | 1.1.2012 |
| <i>s 55</i> | <i>substituted by 64/1992 s 21</i> | <i>1.1.1993</i> |
| | deleted by 32/2011 Sch 1 cl 4 | 1.1.2012 |
| <i>Pt 7</i> | | |
| heading | deleted by 32/2011 Sch 1 cl 7 | 1.1.2012 |
| s 56 | deleted by 32/2011 Sch 1 cl 4 | 1.1.2012 |
| s 57—see s 4 | | |
| <i>Sch</i> | <i>omitted under Legislation Revision and Publication Act 2002</i> | <i>4.9.2006</i> |
| <i>Sch 1</i> | <i>inserted by 41/2006 s 27</i> | <i>1.4.2007</i> |
| heading | deleted by 32/2011 Sch 1 cl 7 | 1.1.2012 |
| <i>cl 1 and 2—see ss 2 and 3</i> | | |

Transitional etc provisions associated with Act or amendments

Commercial Arbitration (Uniform Provisions) Amendment Act 1992

22—Transitional provisions

- (1) Subject to this section, the amendments made by this Act apply in relation to an arbitration agreement (whenever made) and an arbitration under such an agreement.
- (2) The amendment made by section 9 of this Act does not apply in relation to arbitration proceedings that were commenced before the commencement of the amendment.
- (3) Section 26 of the principal Act as in force before the commencement of this Act continues to apply in relation to—
 - (a) an order made under that section before that commencement; or

- (b) an application pending under that section immediately before that commencement.

Historical versions

Reprint No 1—1.1.1993

4.9.2006

1.4.2007

10.12.2011