

South Australia

**Industrial and Employee Relations (Prohibition
Against Bargaining Services Fee) Amendment Bill
2003**

A BILL FOR

An Act to amend the *Industrial and Employee Relations Act 1994*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Industrial and Employee Relations (Prohibition Against Bargaining Services Fee) Amendment Act 2003*.

5 2—Commencement

This Act will come into operation 1 month after assent.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Industrial and Employee Relations Act 1994*

4—Amendment of section 4—Interpretation

Section 4(1)—after the definition of *award* insert:

5 ***bargaining services*** means services provided by (or on behalf of) an association in relation to—

- (a) an industrial dispute (including representation in proceedings before the Court or the Commission); or
- (b) an industrial matter; or
- 10 (c) an industrial instrument (including, as appropriate, the negotiation, making, approval, variation or rescission of the instrument);

bargaining services fee means a fee (however described) payable to—

- (a) an association; or
- (b) someone else in lieu of an association,

15 wholly or partly for the provision, or purported provision, of bargaining services, but does not include a membership fee;

5—Amendment of section 79—Approval of enterprise agreement

Section 79—after subsection (2) insert:

- 20 (2a) The Commission must refuse to approve an enterprise agreement if the agreement includes a provision that requires payment of a bargaining services fee.

6—Amendment of section 115—Prohibited reason

Section 115—after paragraph (n) insert:

- 25 (o) because the other person has not paid, has not agreed to pay, or does not propose to pay, a bargaining services fee.

7—Insertion of Chapter 4 Part 4 Division 1A

Chapter 4 Part 4—after Division 1 insert:

Division 1A—Prohibition against bargaining services fee

139A—Association must not demand bargaining services fee

- 30 (1) Subject to subsection (2), an association, or an officer or member of an association, must not demand payment of a bargaining services fee from another person.

Maximum penalty: \$20 000.

- 35 (2) Subsection (1) does not prevent an association from demanding or receiving payment of a bargaining services fee that is payable to the association under a contract for the provision of bargaining services.

(3) In this section—

demand includes—

- (a) purport to demand; and
- (b) have the effect of demanding; and
- (c) purport to have the effect of demanding.

139B—Association must not coerce person to pay bargaining services fee

An association, or an officer or member of an association, must not take, or threaten to take, action against a person with intent to coerce the person, or another person, to—

- (a) pay a bargaining services fee; or
- (b) enter into a contract for the provision of bargaining services.

Maximum penalty: \$20 000.

139C—Association must not take certain action

An association, or an officer or member of an association, must not—

- (a) take, or threaten to take, action having the effect, directly or indirectly, of prejudicing a person in the person's employment or possible employment; or
- (b) advise, encourage or incite a third person to take action having the effect, directly or indirectly, of prejudicing a person in the person's employment or possible employment,

for the reason that, or for reasons that include the reason that, the person has not paid, has not agreed to pay, or does not propose to pay, a bargaining services fee.

Maximum penalty: \$20 000.

139D—Certain provisions void

A provision of an industrial instrument is void to the extent that it requires payment of a bargaining services fee.

139E—False or misleading representations about bargaining services fees

A person must not make a false or misleading representation about—

- (a) another person's liability to pay a bargaining services fee; or
- (b) another person's obligation to enter into an agreement to pay a bargaining services fee; or
- (c) another person's obligation to join an industrial association.

Maximum penalty: \$20 000.

Schedule 1—Transitional provisions

1—Application of sections 4 and 5

5 The amendments made by sections 4 and 5 of this Act apply for the purpose of any consideration by the Commission after the commencement of this clause of an enterprise agreement, even if the application to the Commission was made before that commencement.

2—Application of section 139D as inserted

10 Section 139D of the *Industrial and Employee Relations Act 1994*, as inserted by this Act, applies to any industrial instrument whether executed before or after the commencement of this clause.