

South Australia

**South Australian Employment Tribunal
(Miscellaneous) Amendment Bill 2018**

A BILL FOR

An Act to amend the *South Australian Employment Tribunal Act 2014*.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Amendment provisions

Part 2—Amendment of *South Australian Employment Tribunal Act 2014*

- 3 Amendment of section 4—Relevant Acts prevail
 - 4 Amendment of section 6A—Conferral of jurisdiction—criminal matters
 - 5 Insertion of section 6AB
 - 6AB Diversity proceedings
-

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

5 This Act may be cited as the *South Australian Employment Tribunal (Miscellaneous) Amendment Act 2018*.

2—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 *South Australian Employment Tribunal Act 2014*

3—Amendment of section 4—Relevant Acts prevail

Section 4(1)—delete "If" and substitute:

Subject to section 6AB, if

4—Amendment of section 6A—Conferral of jurisdiction—criminal matters

15 (1) Section 6A—after subsection (6) insert:

(6a) In the exercise of the criminal jurisdiction to which this section applies, a magistrate of the South Australian Employment Court may not award by way of compensation under section 124 of the *Sentencing Act 2017* more than \$20 000 (or if a greater amount is prescribed under section 124(6)(c) of that Act—the prescribed amount).

(2) Section 6A(7)—delete subsection (7) and substitute:

(7) If a magistrate of the South Australian Employment Court is of the opinion in any particular case that—

25 (a) a sentence should be imposed that exceeds the limit prescribed by subsection (6); or

- (b) an award of compensation should be made that exceeds the limit applying under subsection (6a),

the magistrate may remand the defendant to appear for sentence before a judge of the South Australian Employment Court.

5 **5—Insertion of section 6AB**

After section 6A—insert:

6AB—Diversity proceedings

- (1) Despite the provisions of this or any other Act, if—
- 10 (a) the determination of a matter that is within the jurisdiction of the Tribunal involves the exercise of federal diversity jurisdiction; or
- 15 (b) the determination of a matter would be within the jurisdiction of the Tribunal but for the fact that the exercise of the jurisdiction would involve the exercise of federal diversity jurisdiction,

then the jurisdiction must be exercised by the Tribunal sitting as the South Australian Employment Court.

- 20 (2) If, in proceedings before the Tribunal (other than the Tribunal sitting as the South Australian Employment Court), whether commenced before or after the commencement of this section, the Tribunal considers that the determination of the matter involves, or may involve, the exercise of federal diversity jurisdiction, the Tribunal must refer the proceedings to the South Australian Employment Court for determination.

- 25 (3) A proceeding—
- (a) that is before the South Australian Employment Court in the exercise of jurisdiction under subsection (1); or
- (b) referred to the South Australian Employment Court under subsection (2),

30 is a *diversity proceeding*.

- (4) If proceedings are referred to the South Australian Employment Court under subsection (2), the proceedings may be continued and completed, subject to the direction of the Court, as if steps taken in the proceedings prior to the referral had been taken in the Court.

- 35 (5) In respect of diversity proceedings under this section and despite anything to the contrary in a relevant Act—
- (a) the South Australian Employment Court may not be constituted of supplementary panel members; and

(b) in the case of proceedings referred to the Court under subsection (2) that prior to the referral involved 1 or more supplementary panel members, the proceedings may be continued and completed in the absence of the panel members.

5

(6) The South Australian Employment Court may, if the Court is satisfied that the matter does not involve the exercise of federal diversity jurisdiction—

(a) remit the proceedings to the Tribunal as originally constituted; and

10

(b) make such orders that the Court considers appropriate to facilitate the determination of the proceedings.

(7) The South Australian Employment Court has, and may exercise, all of the jurisdiction, powers and functions in relation to diversity proceedings that the Tribunal (other than in Court Session) would have had if it could exercise federal diversity jurisdiction, including jurisdiction, powers and functions conferred or imposed on the Tribunal by or under this Act or a relevant Act.

15

(8) The practices and procedures under this Act (including the rules) or a relevant Act that apply to the Tribunal (other than in Court Session) will apply to the South Australian Employment Court in respect of diversity proceedings unless, and to such extent as, the Court determines otherwise.

20

(9) The amount specified in a purported monetary order made by the Tribunal may be recovered in the appropriate court (within the meaning of section 86) by the person in favour of whom the order was made as if it were a debt.

25

(10) A person who contravenes or fails to comply with the terms of a purported order of the Tribunal (other than a purported monetary order) is guilty of an offence.

30

Maximum penalty: \$50 000 or imprisonment for 2 years.

(11) If a person seeks a variation or revocation of a purported order or purported monetary order, the person may apply to the South Australian Employment Court, and such a matter will be a diversity proceeding for the purposes of this section.

35

(12) No action undertaken, or purportedly undertaken, by a person pursuant to, or for the purposes of enforcing, a purported order or a purported monetary order, in good faith, gives rise to any liability against the person or the Crown.

- 5
- (13) In this section, a reference to a *purported order* or a *purported monetary order* is a reference to an order purportedly made by the Tribunal other than in Court Session (whether before or after the commencement of this section) that is invalid because determination of the matter that gave rise to the order involved the exercise of federal diversity jurisdiction and that, on the commencement of this section, is to be made by the South Australian Employment Court.
- 10
- (14) The provisions of this section prevail to the extent of any inconsistency between those provisions and any other provisions of this Act or any other Act.
- (15) In this section—
federal diversity jurisdiction means jurisdiction of the kind referred to in section 75(iii) or (iv) of the *Constitution of the Commonwealth*.