

**Legislative Council—No 65**

As received from the House of Assembly and read a first time, 13 October 2015

South Australia

**Statutes Amendment (Industrial Relations  
Consultative Council) Bill 2015**

A BILL FOR

An Act to amend the *Fair Work Act 1994* and the *Work Health and Safety Act 2012*.

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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 *Statutes Amendment (Industrial Relations Consultative Council) Act 2015*.

### **2—Commencement**

This Act will come into operation on a day to be fixed by proclamation.

### **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 *Fair Work Act 1994***

### **4—Amendment of section 4—Interpretation**

- (1) Section 4(1), definition of *Committee*—delete the definition
- (2) Section 4(1)—after the definition of *Commonwealth (Registered Organisations) Act* insert:

*Consultative Council* means the *Industrial Relations Consultative Council*;

### **5—Amendment of section 7—Industrial authorities**

- (1) Section 7(1)(c)—delete "Industrial Relations Advisory Committee" and substitute:

Industrial Relations Consultative Council

- (2) Section 7(4)—delete subsection (4) and substitute:

(4) The Consultative Council is a statutory authority with the functions conferred by this or any other Act.

### **6—Repeal of Chapter 2 Part 5**

Chapter 2, Part 5—delete Part 5

### **7—Insertion of Chapter 6AA**

Before Chapter 6 insert:

## **Chapter 6AA—Industrial Relations Consultative Council**

### **Part 1—Establishment of Consultative Council**

#### **218—Establishment of Consultative Council**

The *Industrial Relations Consultative Council* is established.

## Part 2—Functions and powers

### 218A—Functions and powers of Consultative Council

- (1) The functions of the Consultative Council are—
- 5 (a) to assist the Minister in formulating, and advise the Minister on implementing, policies affecting—
- (i) industrial relations and employment in the State; or
- (ii) work health and safety in the State; and
- (b) to advise the Minister on legislative proposals of—
- 10 (i) industrial significance; or
- (ii) significance to work health and safety; and
- (c) to consider matters referred to the Consultative Council by the Minister or members of the Consultative Council; and
- (d) to perform such other functions as are conferred on it by this or any other Act.
- 15 (2) The Consultative Council has the power to do anything necessary, expedient or incidental to the performance of its functions.

## Part 3—Composition of Consultative Council

### 218B—Membership of Consultative Council

- (1) The Consultative Council consists of 13 members of whom—
- 20 (a) 1 is the Minister; and
- (b) 12 are persons appointed by the Governor—
- (i) 6 being persons who, in the opinion of the Minister, are suitable to represent the interests of employers (at least 1 being a person considered by the Minister to be suitable to represent the interests of the public sector as an employer), appointed on the recommendation of the Minister after the Minister has consulted with the South Australian Employers' Chamber of Commerce and Industry Inc (trading as Business SA), and with other associations representing the interests of employers determined to be appropriate by the Minister; and
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(ii) 6 being persons who, in the opinion of the Minister, are suitable to represent the interests of employees (at least 1 being a person considered by the Minister to be suitable to represent the interests of employees in the public sector), appointed on the recommendation of the Minister after the Minister has consulted with the United Trades and Labor Council (trading as SA Unions), and with other associations representing the interests of employees determined to be appropriate by the Minister.

(2) A member of the Consultative Council may, with the Minister's approval, appoint a suitable person to act as an alternate member of the Consultative Council and a person so appointed may, in the member's absence, act as a member of the Consultative Council.

### **218C—Terms and conditions of office**

(1) An appointed member of the Consultative Council will hold office on conditions, and for a term (not exceeding 3 years), determined by the Governor and, on the expiration of a term of appointment, is eligible for re-appointment.

(2) The Governor may remove an appointed member from office for—

- (a) breach of, or non-compliance with, a condition of appointment; or
- (b) mental or physical incapacity to carry out duties of office satisfactorily; or
- (c) neglect of duty; or
- (d) dishonourable conduct.

(3) The office of an appointed member becomes vacant if the member—

- (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) resigns by written notice addressed to the Minister; or
- (d) is found guilty of an indictable offence; or
- (e) is removed from office by the Governor under subsection (2).

(4) On the office of an appointed member of the Consultative Council becoming vacant, a person must be appointed, in accordance with this Act, to the vacant office.

(5) The Minister must ensure that a vacant office is filled within 6 months after the vacancy occurs.

### **218D—Fees Allowances and expenses**

A member of the Consultative Council (other than the Minister) is entitled to fees, allowances and expenses approved by the Governor.

## Part 4—Proceedings of Consultative Council

### 218E—Meetings

- (1) The Consultative Council must meet at times appointed by the Minister.
- (2) The Minister must convene a meeting of the Consultative Council if requested to do so by 4 or more of its members.

### 218F—Proceedings

- (1) The Minister must chair meetings of the Consultative Council.
- (2) A quorum of the Consultative Council consists of 8 members of whom—
  - (a) 1 must be the Minister; and
  - (b) at least 3 must be members appointed to represent the interests of employers; and
  - (c) at least 3 must be members appointed to represent the interests of employees.
- (3) A telephone or video conference between members of the Consultative Council constituted in accordance with procedures determined by the Consultative Council will, for the purposes of this section, be taken to be a meeting of the Consultative Council at which the participating members are present.
- (4) The Consultative Council must cause an accurate record to be kept of its proceedings.
- (5) Subject to this Act, the proceedings of the Consultative Council will be conducted in a manner determined by the Consultative Council.

### 218G—Conflict of interest under *Public Sector (Honesty and Accountability) Act 1995*

- (1) A member of the Consultative Council will not be taken to have a direct or indirect interest in a matter for the purposes of the *Public Sector (Honesty and Accountability) Act 1995* by reason only of the fact that the member has an interest in a matter that is shared in common with employers or employees generally, or a substantial section of employers or employees.

- 5 (2) Despite the *Public Sector (Honesty and Accountability) Act 1995*, a member of the Consultative Council who has made a disclosure of an interest in a matter decided or under consideration by the Consultative Council may, with the permission of a majority of the members of the Consultative Council who may vote on the matter, attend or remain at a meeting when the matter is under consideration in order to ask or answer questions, or to provide any other information or material that may be relevant to the deliberations of the Consultative Council, provided that the member then withdraws from the room and does not in any other way take part in any deliberations or vote on the matter.
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### **218H—Validity of acts**

15 An act or proceeding of the Consultative Council is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

## **Part 5—Use of staff and facilities**

### **218I—Use of staff and facilities**

- 20 (1) The Consultative Council may, by agreement with the Minister responsible for an administrative unit in the Public Service, make use of the services of the staff, equipment or facilities of that administrative unit.
- 25 (2) The Consultative Council may, by agreement with the relevant agency or instrumentality, make use of the services of the staff, equipment or facilities of any other agency or instrumentality of the Crown.

## **Part 6—Committees**

### **218J—Committees**

- 30 (1) The Consultative Council may establish such committees as it thinks fit to advise the Consultative Council on, or to assist it with respect to, any aspect of its functions under this or any other Act.
- (2) A committee established under subsection (1)—
- 35 (a) must consist of at least 2 members of the Consultative Council; and
  - (b) must be chaired by a member of the Consultative Council; and
  - (c) must be established to consider a specific issue or range of issues; and
  - 40 (d) must be established for a specified duration determined by the Consultative Council (but may then be re-established if the Consultative Council thinks fit); and
  - (e) must report to the Consultative Council as required by the Consultative Council; and

(f) may invite persons with experience or knowledge relevant to a matter to be considered at a meeting of the committee to attend and participate in the meeting.

(3) The procedures to be observed by the committee will be—

(a) as determined by the Consultative Council; or

(b) insofar as the procedure is not determined under paragraph (a)—as determined by the committee.

## Part 7—Related matters

### 218K—Confidentiality

(1) A member of the Consultative Council who, as a member of the Consultative Council, acquires information that—

(a) the member knows to be of a commercially sensitive nature, or of a private confidential nature; or

(b) the Consultative Council classifies as confidential information,

must not divulge the information without the approval of the Consultative Council.

Maximum penalty: \$10 000.

(2) Subsection (1) extends to members of a committee established by the Consultative Council as if—

(a) the committee were the Consultative Council; and

(b) a member of the committee were a member of the Consultative Council.

### 8—Transitional provision

A member of the Industrial Relations Advisory Committee established under the *Fair Work Act 1994* ceases to hold office on the commencement of this section.

## Part 3—Amendment of *Work Health and Safety Act 2012*

### 9—Amendment of section 4—Definitions

(1) Section 4, definition of *Advisory Council*—delete the definition

(2) Section 4—after the definition of *construct* insert:

*Consultative Council* means the *Industrial Relations Consultative Council* established under the *Fair Work Act 1994*;

### 10—Amendment of section 68—Powers and functions of health and safety representatives

Section 68(4)(c)(i)—delete "Advisory Council" and substitute:

Consultative Council



## 11—Amendment of section 274—Approved codes of practice

- (1) Section 274(2)—delete "Advisory Council" and substitute:

Consultative Council

- (2) Section 274(3)—delete subsection (3) and substitute:

5 (3) On each occasion that the Consultative Council is required to make a recommendation under subsection (2), the Consultative Council must—

(a) establish a committee to advise it on, and assist it with, the making of the recommendation; and

10 (b) consult the Small Business Commissioner so that the Commissioner may assess whether the code of practice would affect small business if implemented and, if so, provide any comments or advice that the Commissioner considers to be appropriate in the circumstances (including that the code be varied).

15 (3a) A committee established under subsection (3)(a) must consist of—

(a) at least 2 members of the Consultative Council; and

(b) such other members as are determined by the Consultative Council.

## 20 12—Amendment of Schedule 2—Local tripartite consultation arrangements

- (1) Schedule 2, Part 1—delete Part 1

- (2) Schedule 2, Part 2, clause 12(2)(a)—delete "Advisory Council" and substitute:

Consultative Council

- 25 (3) Schedule 2, Part 2, clause 13(6)—delete "in conjunction with the annual report of the Advisory Council for the relevant financial year (and laid before both Houses of Parliament by the Minister together with the Advisory Council's annual report)" and substitute:

and laid before both Houses of Parliament by the Minister

## 30 13—Amendment of Schedule 5—Provisions of local application

- Schedule 5, clause 1(1)—delete "Advisory Council" and substitute:

Consultative Council

## 14—Transitional provision

A member of the SafeWork SA Advisory Council established under the *Work Health and Safety Act 2012* ceases to hold office on the commencement of this section.