

**House of Assembly—No 144A**

As reported with amendments, report agreed to and passed remaining stages,  
21 September 2016

South Australia

**Statutes Amendment (South Australian  
Employment Tribunal) Bill 2016**

A BILL FOR

An Act to amend various Acts relating to the jurisdiction of the South Australian  
Employment Tribunal.

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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 (South Australian Employment Tribunal) Act 2016*.

### **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 *South Australian Employment Tribunal Act 2014***

### **4—Amendment of section 3—Interpretation**

(1) Section 3(1), definition of *conciliation officer*—delete the definition and substitute:

*Commissioner* means a person holding office as a Commissioner of the Tribunal;

*decision*, of a person or body (other than the Tribunal) under an Act includes a direction, determination or order of that person or body;

(2) Section 3(1), definition of *Department*—delete the definition and substitute:

*Department* means the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of this Act;

(3) Section 3(1), definition of *Industrial Relations Court*—delete the definition

(4) Section 3(1), definition of *Tribunal*—after "by this Act" insert:

(including, if the context so permits, the Tribunal in Court Session—*see* section 5)

### **5—Amendment of section 5—Establishment of Tribunal**

Section 5—after its present contents (now to be designated as subsection (1)) insert:

(2) The Tribunal will have a part that is the Tribunal in Court Session and, as so established by force of this Act, is a court of record.

(3) The Tribunal in Court Session is to be the *South Australian Employment Court*.

(4) The Tribunal will also have a part that is the Tribunal acting as an industrial relations commission.

## 6—Substitution of section 6

Section 6—delete the section and substitute:

### 6—Jurisdiction of Tribunal

- 5
- (1) Subject to this or any other Act, the Tribunal will have the jurisdiction (including the jurisdiction to try a charge for an offence) conferred on it by or under this or any other Act.
- (2) Matters within the jurisdiction of the Tribunal will be assigned to the South Australian Employment Court as follows:
- 10
- (a) an Act conferring jurisdiction on the Tribunal may specifically assign matters to the South Australian Employment Court;
- (b) the rules may (unless to do so is inconsistent with a provision of a relevant Act)—
- 15
- (i) assign matters to the South Australian Employment Court;
- (ii) assign matters to the South Australian Employment Court for resolution or determination after initial consideration or other steps having been undertaken in that part of the Tribunal that does not sit as the Court;
- 20
- (c) the jurisdiction to try a charge for an offence is assigned to the South Australian Employment Court.
- (3) Matters within the jurisdiction of the Tribunal (and not assigned to the South Australian Employment Court) and dealt with by the Tribunal acting as an industrial relations commission do not need to be specifically assigned to such a commission.
- 25

### 6A—Conferral of jurisdiction—criminal matters

- 30
- (1) Subject to this section, the criminal jurisdiction of the South Australian Employment Court does not include jurisdiction in respect of major indictable offences.
- (2) In addition to any jurisdiction conferred by or under another Act, the regulations may confer on the South Australian Employment Court jurisdiction in respect of a summary or minor indictable offence against a specified Act or statutory provision.
- 35
- (3) If jurisdiction is conferred on the South Australian Employment Court under this or any other Act in respect of a summary or minor indictable offence, any proceedings for the offence must be commenced in the Court.

5 (4) The South Australian Employment Court will deal with a charge of a summary or minor indictable offence in the same way as the Magistrates Court deals with such a charge (and in accordance with the procedures that would apply if the Magistrates Court were dealing with such a charge) and the *Summary Procedure Act 1921* applies to the South Australian Employment Court subject to any exclusions or modifications prescribed by the regulations as if references to the Magistrates Court extended to the South Australian Employment Court.

10 (5) For the avoidance of doubt, if a person charged with a minor indictable offence elects, in accordance with the *Summary Procedure Act 1921*, for a trial in a superior court, the South Australian Employment Court must commit the defendant for trial by jury in the District Court.

15 (6) Where proceedings for a minor indictable offence are dealt with by a magistrate of the South Australian Employment Court—

(a) the magistrate cannot impose a fine that exceeds the maximum fixed by the relevant Act or \$300 000 (whichever is the lesser); and

20 (b) the magistrate cannot impose a sentence of imprisonment that exceeds the maximum fixed by the relevant Act or 5 years (whichever is the lesser).

25 (7) If a magistrate of the South Australian Employment Court is of the opinion in any particular case that a sentence should be imposed that exceeds the limit prescribed by subsection (6), the magistrate may remand the defendant to appear for sentence before a judge of the South Australian Employment Court.

30 (8) In the exercise of the criminal jurisdiction to which this section applies, summary proceedings will be heard by a Deputy President of the South Australian Employment Court who is also a magistrate unless the President determines that the proceedings should be heard by a judge of the Court.

### **6B—Conferral of jurisdiction—related matters**

35 (1) Without limiting any other provision, if a provision of an Act specifically enables an application to be made to the Tribunal, or a claim to be brought before the Tribunal, the Act will be taken to confer jurisdiction on the Tribunal to deal with the matter concerned.

40 (2) Without limiting any other provision, Divisions 6 and 7 provide for additional jurisdiction, powers and other matters relating to the conferral of jurisdiction on the Tribunal or the Tribunal in Court session.

## 7—Insertion of section 7A

After section 7 insert:

### 7A—Seals

- 5
- (1) The Tribunal will have such seals as are necessary for the transaction of its business.
  - (2) The Tribunal must have a seal for the South Australian Employment Court.
  - (3) A document apparently sealed with a seal of the Tribunal (including with respect to the South Australian Employment Court) will, in the absence of evidence to the contrary, be taken to have been duly issued under the authority of the Tribunal.
- 10

## 8—Amendment of section 9—The members

- (1) Section 9(b)—delete "Deputy President or"
  - (2) Section 9(d)—delete paragraph (d) and substitute:
    - (d) the Commissioners; and
    - (e) the supplementary panel members.
- 15

## 9—Substitution of section 10

Section 10—delete the section and substitute:

### 10—Appointment of President

- 20
- (1) The President of the Tribunal will be a judge of the District Court appointed by the Governor, by proclamation, to be the President of the Tribunal.
  - (2) The President of the Tribunal will, by virtue of holding that office, have the same rank, title, status and precedence as a judge of the Supreme Court.
  - (3) Furthermore, the appointment of a judge of the District Court as President of the Tribunal does not affect—
    - (a) the judge's tenure of office or status as a judge; or
    - (b) the payment of the judge's salary or allowances as a judge (subject to the operation of subsection (7)); or
    - (c) the ability of the person to do anything in the person's capacity as a judge (including as to the exercise of the jurisdiction of the District Court); or
    - (d) any other right or privilege that the judge has as a judge.
  - (4) Service in the office of President of the Tribunal is taken, for all purposes, to constitute service as a judge of the District Court.
  - (5) Subject to subsections (3) and (4), an appointment may be subject to conditions determined by the Governor.
- 25
- 30
- 35

- 5
- (6) Without limiting subsection (5), the Remuneration Tribunal may determine that the President's salary or allowances as a judge will have an additional component on account of holding office under this Act (and the jurisdiction to make such a determination is conferred on the Remuneration Tribunal by this Act).
- (7) Any salary or allowances payable as an additional component of remuneration under subsection (6) cannot be reduced during the person's term of office as President.
- 10
- (8) A person ceases to be the President of the Tribunal if—
- (a) the person ceases to be a judge of the District Court; or
  - (b) the person, with the approval of the Governor, resigns as President by written notice to the Attorney-General; or
  - (c) the person dies.
- (9) Nothing under subsection (8)(b) affects the person's tenure or status as a judge.
- 15
- (10) Before the Governor makes a proclamation under this section, the Attorney-General must consult with the Chief Justice and the Chief Judge.

#### **10—Amendment of section 12—Acting President**

- 20
- (1) Section 12(1)—delete "a Deputy President" and substitute:  
a person
- (2) Section 12(2) and (3)—delete subsections (2) and (3) and substitute:
- (2) The Governor may only appoint—
- (a) a Deputy President; or
  - 25 (b) a judge of the District Court,  
to act as President.
- (3) A person appointed to act as a President—
- (a) has all the functions of the President; and
  - 30 (b) is taken to be the President for all purposes related to this Act or a relevant Act.
- (4) A person appointed to act as President is, for the period of his or her appointment, entitled to be paid additional salary and allowances to ensure that his or her salary and allowances equal the salary and allowances payable to a President of the Tribunal.
- 35
- (5) The Governor may, by further proclamation—
- (a) extend or renew an appointment under this section; or
  - (b) revoke an appointment under this section.

- (6) Until an appointment is made under subsection (1) (or unless such an appointment is made) the most senior Deputy President who is also a judge of the District Court will be taken to hold an appointment to act as the President of the Tribunal.

5 **11—Insertion of section 12A**

Before section 13 insert:

**12A—Number of Deputy Presidents**

There will be at least 2 Deputy Presidents of the Tribunal.

10 **12—Substitution of section 13**

Section 13—delete the section and substitute:

**13—Appointment of Deputy Presidents**

- (1) A Deputy President will be—
- (a) a judge of the District Court appointed by the Governor, by proclamation, to be a Deputy President of the Tribunal; or
  - 15 (b) a magistrate appointed by the Governor, by proclamation, to be a Deputy President of the Tribunal.
- (2) The appointment of a judge of the District Court as a Deputy President of the Tribunal under subsection (1)(a) does not affect—
- (a) the judge's tenure of office or status as a judge; or
  - 20 (b) the payment of the judge's salary or allowances as a judge (subject to the operation of subsection (5)); or
  - (c) the ability of the person to do anything in the person's capacity as a judge (including as to the exercise of the jurisdiction of the District Court); or
  - 25 (d) any other right or privilege that the judge has as a judge of the District Court.
- (3) Service in the office of Deputy President of the Tribunal by a judge of the District Court is taken, for all purposes, to constitute service as a judge of that Court.
- 30 (4) Subject to subsections (2) and (3), an appointment under subsection (1)(a) may be subject to conditions determined by the Governor.
- 35 (5) Without limiting subsection (4), in the case of an appointment under subsection (1)(a), the Remuneration Tribunal may determine that a Deputy President's salary or allowance as a judge will have an additional component on account of holding office under this Act (and the jurisdiction to make such a determination is conferred on the Remuneration Tribunal by this Act).
- 40 (6) Any salary or allowances payable as an additional component of remuneration under subsection (5) cannot be reduced during the person's term of office as a Deputy President of the Tribunal.

- 5
- (7) The appointment of a magistrate as a Deputy President of the Tribunal under subsection (1)(b) does not affect—
- (a) the magistrate's tenure of office or status as a magistrate; or
  - (b) the payment of the magistrate's salary or allowances as a magistrate (subject to the operation of subsection (14)); or
  - (c) the ability of the person to do anything in the person's capacity as a magistrate; or
  - (d) any other right of privilege that the magistrate has by virtue of the office of magistrate.
- 10
- (8) Service in the office of Deputy President of the Tribunal by a magistrate is taken, for all purposes, to constitute service as a magistrate.
- 15
- (9) Subject to subsections (7) and (8), an appointment under subsection (1)(b) may be subject to conditions determined by the Governor.
- 20
- (10) Without limiting subsection (9), in the case of an appointment under subsection (1)(b), the Remuneration Tribunal may determine that a Deputy President's salary or allowance as a magistrate will have an additional component on account of holding office under this Act (and the jurisdiction to make such a determination is conferred on the Remuneration Tribunal by this Act).
- 25
- (11) A person ceases to be a Deputy President of the Tribunal if—
- (a) in the case of an appointment under subsection (1)(a)—the person ceases to be a judge of the District Court; or
  - (b) in the case of an appointment under subsection (1)(b)—the person ceases to be a magistrate; or
  - (c) the person resigns as Deputy President by written notice to the Attorney-General; or
  - (d) the person dies.
- 30
- (12) Nothing in subsection (11)(c) affects a person's tenure or status as a judge (in the case of an appointment under subsection (1)(a)) or as a magistrate (in the case of an appointment under subsection (1)(b)).
- 35
- (13) Before the Governor makes a proclamation under this section, the Attorney-General must consult with—
- (a) the Chief Justice; and
  - (b) in the case of an appointment under subsection (1)(a)—the Chief Judge; and
  - (c) in the case of an appointment under subsection (1)(b)—the Chief Magistrate.

### **13—Substitution of heading to Part 2 Division 3 Subdivision 5**

Heading to Part 2 Division 3 Subdivision 5—delete the heading to Subdivision 5 and substitute:

#### **Subdivision 5—Commissioners**

### **14—Amendment of section 16—Appointment of Commissioners**

- (1) Section 16—delete "conciliation officer" wherever occurring and substitute in each case:

Commissioner

- (2) Section 16—delete "conciliation officers" wherever occurring and substitute in each case:

Commissioners

### **15—Amendment of section 17—Commissioner ceasing to hold office and suspension**

- (1) Section 17—delete "conciliation officer" wherever occurring and substitute in each case:

Commissioner

- (2) Section 17—delete "member" wherever occurring and substitute in each case:

Commissioner

- (3) Section 17—delete "member's" wherever occurring and substitute in each case:

Commissioner's

### **16—Amendment of section 18—Supplementary Commissioners**

Section 18—delete "conciliation officer" wherever occurring and substitute in each case:

Commissioner

### **17—Insertion of Part 2 Division 3A**

After section 18 insert:

#### **Division 3A—Supplementary panel members**

##### **18A—Supplementary panel members**

- (1) There will be such panels of supplementary panel members as may be necessary for the purposes of any relevant Act.
- (2) A supplementary panel member will be appointed by the Governor on the recommendation of the Minister responsible for the administration of this Act in consultation with the Minister responsible for the administration of the relevant Act (unless otherwise provided by the relevant Act).

- 5
- (3) A supplementary panel member will be appointed for a term of office, not exceeding 5 years, specified in the instrument of appointment and is eligible for reappointment at the expiration of a term of office.
- (4) A supplementary panel member is appointed on conditions specified in the instrument of appointment.
- (5) A supplementary panel member will sit on a sessional basis.
- (6) Subject to the conditions of appointment, a supplementary panel member may perform work outside the Tribunal.
- 10
- (7) The Governor may, on the recommendation of the Minister responsible for the administration of this Act after consultation with the Minister responsible for the administration of the relevant Act, remove a supplementary panel member from office for—
- 15
- (a) misconduct; or
- (b) neglect of duty; or
- (c) incompetence; or
- (d) incapacity to carry out official duties satisfactorily.
- (8) A person ceases to be a supplementary panel member if the person—
- 20
- (a) dies; or
- (b) completes a term of office and is not reappointed; or
- (c) resigns by written notice to the Minister; or
- (d) ceases to satisfy any qualification by virtue of which the person was eligible for appointment to the panel; or
- (e) is removed from office under subsection (7).
- 25
- (9) The Governor may make appointments from time to time for the purpose of maintaining or increasing the membership of panels established under this section.

**18—Amendment of section 19—Constitution of Tribunal and its decision-making processes**

- 30
- (1) Section 19(3)—after "the Tribunal" insert:  
(including a Full Bench of the South Australian Employment Court)
- (2) Section 19—after subsection (8) insert:
- 35
- (8a) The Tribunal sitting as the South Australian Employment Court may only be constituted by—
- (a) members of the Tribunal who are also judges or magistrates (sitting alone or in any combination as the President thinks fit); or

- (b) another member of the Tribunal, or a registrar or other member of the staff of the Tribunal, to the extent that it may be appropriate for such members of the Tribunal or officials to assist with the business of the Court.

5 **19—Amendment of section 20—Who presides at proceedings of the Tribunal**

Section 20(3)(d)—delete paragraph (d) and substitute:

- (d) Commissioner;  
(e) supplementary panel member.

**20—Amendment of section 22—Determination of questions of law**

- 10 (1) Section 22(1)—delete "Full Bench of the Tribunal" and substitute:

Full Bench of the South Australian Employment Court

- (2) Section 22(2)(a)—delete "Full Bench of the Tribunal" and substitute:

Full Bench of the South Australian Employment Court

- (3) Section 22(3)—delete "of the Tribunal" and substitute:

15 of the Court

**21—Repeal of section 23**

Section 23—delete the section

**22—Insertion of Part 2 Division 6**

After section 26 insert:

20 **Division 6—Additional provisions relating to jurisdiction**

**26A—Declaratory judgments**

25 Without limiting any specific jurisdiction to make declaratory judgments conferred by another Act, the South Australian Employment Court may, on matters within its jurisdiction, make binding declarations of right whether or not any consequential relief is or could be claimed.

**26B—Other provisions relating to civil jurisdiction of Court**

30 Without limiting any other provision of this Act, the South Australian Employment Court may, in exercising any jurisdiction that is in the nature of a civil jurisdiction, exercise any power under Part 6 of the *District Court Act 1991*, subject to any exclusions or modifications prescribed by the regulations as if references to the District Court extended to the South Australian Employment Court.

**26C—Binding nature of decisions**

35 Without limiting any other provision of this Act, any decision or determination of the South Australian Employment Court is binding and authoritative in nature and binds the parties to the relevant matter by its own force.

## **Division 7—Additional provisions relating to jurisdiction under *Return to Work Act 2014***

### **26D—Civil jurisdiction under *Return to Work Act 2014***

- 5 (1) The South Australian Employment Court has exclusive jurisdiction to hear and determine an action for damages to which Part 5 of the *Return to Work Act 2014* applies.
- 10 (2) Proceedings for any tortfeasor liable in respect of damages to which Part 5 of the *Return to Work Act 2014* applies to recover contribution from any other tortfeasor liable in respect of those damages may be brought before the Tribunal and dealt with by the South Australian Employment Court.
- 15 (3) If a cause of action giving rise to proceedings brought under subsection (1) or (2) also gives rise to a claim in respect of some other matter, the claim may be included in those proceedings even though it does not relate to proceedings for damages within the scope of section 71(1) of the *Return to Work Act 2014*.
- 20 (4) Any matter that is ancillary or related to a matter that is the subject of proceedings brought under a preceding subsection may also be included in those proceedings.
- (5) In connection with the operation of this section, a reference to a court in a prescribed provision will be taken to be a reference to the South Australian Employment Court.
- 25 (6) In this section—  
*prescribed provision* means any of the following provisions of the *Return to Work Act 2014*:
- (a) section 22;
  - (b) Part 5;
  - (c) Part 8.

### **26E—Rights of action and recovery against third parties**

- 30 (1) A reference in section 66 of the *Return to Work Act 2014* to the District Court of South Australia will be taken to include a reference to the Tribunal.
- 35 (2) The jurisdiction of the Tribunal by virtue of the operation of subsection (1) is assigned to the South Australian Employment Court.
- (3) An action to recover an excess under section 66(9) of the *Return to Work Act 2014* may be brought in the South Australian Employment Court (or in any other court of competent jurisdiction).

### **26F—Review jurisdiction under *Return to Work Act 2014***

40 A reference in section 103 of the *Return to Work Act 2014* to Part 3 of this Act will be taken to be a reference to Division 1 of that Part.

### **26G—Injuries that develop gradually**

- (1) A reference in section 188 of the *Return to Work Act 2014* to the Industrial Relations Court of South Australia will be taken to be a reference to the Tribunal.
- 5 (2) The jurisdiction of the Tribunal by virtue of the operation of subsection (1) is assigned to the South Australian Employment Court.

### **26H—Criminal jurisdiction**

10 The South Australian Employment Court is conferred with jurisdiction to try a charge for an offence against the *Return to Work Act 2014*.

### **26I—Appeals**

15 An appeal from a decision of the Tribunal under the *Return to Work Act 2014* (other than in the exercise of its criminal jurisdiction) will be limited to a question of law.

### **23—Insertion of heading**

Before section 27 insert:

#### **Division 1—Review jurisdiction**

### **24—Insertion of section 26J**

20 Before section 27 insert:

#### **26J—Application of Division**

- (1) This Division applies if—
- 25 (a) the Tribunal is dealing with a matter that involves the review of a decision made under an Act (including in a case that constitutes an appeal under a relevant Act); or
- (b) a relevant Act provides for the Tribunal to deal with a matter under this Division; or
- (c) the rules apply this Division to a matter within the jurisdiction of the Tribunal.
- 30 (2) Subsection (1)(a) does not apply in any circumstances prescribed by the regulations.

### **25—Amendment of section 27—General nature of proceedings**

(1) Section 27(1)—delete subsection (1) and substitute:

- 35 (1) Subject to a relevant Act, a matter under this Division will be dealt with by the Tribunal as a review of the decision that constitutes the matter.

(2) Section 27(6) and (7)—delete subsections (6) and (7) and substitute:

- (6) In dealing with a matter under this Division, the Tribunal is to deal with the matter in accordance with this Act and any relevant Act.
- (7) Furthermore, a relevant Act may modify the operation of this Act in relation to a matter that comes within the exercise of the Tribunal's jurisdiction under this Division.

## 26—Insertion of new Part 3 Division 2

After section 31 insert:

### Division 2—Application of Division

#### 31A—Application of Division

- (1) This Division applies in cases where Division 1 does not apply.
- (2) Subject to a relevant Act, a matter under this Division will, depending on the nature of the matter, be dealt with by the Tribunal—
- (a) acting as the original decision-maker in the matter (and according to those principles which, according to law, are to be applied to bodies that make such decisions according to statute); or
- (b) resolving a dispute between the parties to the relevant proceedings (according to law and including, if appropriate, by giving a judgment, making a declaration or providing any other remedy); or
- (c) adopting any other course of action and providing any other relief, decision or determination that the Tribunal considers appropriate to deal with the matter.
- (3) In dealing with a matter under this Division, the Tribunal is to deal with the matter in accordance with this Act and any relevant Act.
- (4) Furthermore, a relevant Act may modify the operation of this Act in relation to a matter that comes within the exercise of the Tribunal's jurisdiction under this Division.

## 27—Amendment of section 32—Principles governing hearings

Section 32—after subsection (1) insert:

- (1a) However, the rules of evidence and other formal procedures of a court of record apply to the South Australian Employment Court to the extent that the Court considers it necessary or appropriate and the Tribunal (in the exercise of any jurisdiction) may give directions about any question of evidence.

## 28—Amendment of section 34—Entry and inspection

- (1) Section 34(1)—delete "or building" and substitute:  
, building, structure, ship or vessel

(2) Section 34(2)—delete subsection (2) and substitute:

- (2) A member of the Tribunal may authorise an officer of the Tribunal, or any other specified person, to enter any land, building, structure, ship or vessel and carry out an inspection that the member considers relevant to any proceedings before the Tribunal.

### **29—Amendment of section 49—Joinder of parties etc**

Section 49—after subsection (1) insert:

- (1a) The Tribunal may order that a person who is a party to proceedings before the Tribunal be removed as a party if the Tribunal considers that the person has no proper interest in the proceedings.
- (1b) The Tribunal may order that notice of proceedings be given to specified persons or in a specified way.

### **30—Substitution of section 52**

Section 52—delete the section and substitute:

#### **52—Costs**

- (1) Subject to this Act or a relevant Act, parties bear their own costs in any proceedings before the Tribunal (other than proceedings assigned to the South Australian Employment Court to which section 26B applies).
- (2) If the Tribunal makes an order for the payment of costs and does not fix the amount of costs, that amount is to be assessed and settled in accordance with the rules.

### **31—Amendment of section 53—Costs—related matters**

Section 53(1)—delete "The power of the Tribunal" and substitute:

Any power of the Tribunal under this Act or a relevant Act

### **32—Amendment of section 66—Internal review**

(1) Section 66(1)—delete subsection (1) and substitute:

- (1) A decision of the Tribunal constituted of—
- (a) a Commissioner; or
  - (b) a magistrate (not being a Presidential member); or
  - (c) 2 or 3 members (but not including a Presidential member),
- may, on application under the rules, be reviewed under this section.

- (1a) The regulations may exclude or modify the application of subsection (1) insofar as it applies to prescribed classes of decisions under a relevant Act (subject to any provision made by a relevant Act).

5 (1b) An application for review must be instituted within 1 month of the making of the decision to which the application relates but the Tribunal may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that the application should be instituted within that period (even if the time for instituting the application has expired).

(1c) The President may determine, in relation to a particular matter, or particular class of matters, how the Tribunal will be constituted for the purposes of a review under this section.

10 (1d) On a review, the Tribunal will examine the decision of the Tribunal at first instance on the evidence or material before the Tribunal at that time but the Tribunal may, as it thinks fit, allow further evidence or material to be presented to it.

15 (1e) The Tribunal must, in acting under this section, reach the correct or preferable decision but in so doing must have regard to, and give appropriate weight to, the decision of the Tribunal at first instance.

(2) Section 66(2)—delete "A Presidential member of the" and substitute:

The

(3) Section 66(2)(c)—delete paragraph (c) and substitute:

20 (c) set aside the decision being reviewed and—

(a) substitute a new decision; or

(b) send the matter back for reconsideration in accordance with any directions or recommendations as the Tribunal acting on review considers appropriate.

### 25 **33—Substitution of section 67**

Section 67—delete the section and substitute:

#### **67—Appeals**

30 (1) Subject to this section and to any provision of a relevant Act as to the review of, or appeal against, a decision of the Tribunal, an appeal lies against a decision of the Tribunal, other than a decision of a Full Bench, to a Full Bench of the South Australian Employment Court.

35 (2) The regulations may exclude or modify the application of subsection (1) insofar as the subsection applies to prescribed classes of decisions under a relevant Act (subject to any provision made by a relevant Act).

(3) An appeal under this section will be by way of rehearing.

(4) The Full Bench conducting the appeal may draw inferences of fact from evidence or other material before the Tribunal and may, as it thinks fit, allow further evidence or material to be presented to it.

40 (5) The Full Bench conducting the appeal may—

(a) affirm the decision appealed against; or

- (b) vary the decision appealed against; or
- (c) set aside the decision appealed against and, if it thinks fit, return the matter to the Tribunal for reconsideration in accordance with any directions that the Full Bench considers appropriate.

5

- (6) A Full Bench may, on an appeal, make any interim, ancillary or consequential order that the Full Bench considers appropriate (including orders for costs).

### **34—Amendment of section 68—Final appeal to Supreme Court**

10

- (1) Section 68(1)—after "Tribunal" insert:  
(including a Full Bench of the South Australian Employment Court)
- (2) Section 68(3)(b)—after "Tribunal" insert:  
(or the South Australian Employment Court)

### **35—Amendment of section 69—Effect of appeal on decision**

15

Section 69(4)—delete "of the Tribunal"

### **36—Amendment of section 70—Reservation of questions of law**

Section 70(1)—after "of the Tribunal" insert:  
(including a Full Bench of the South Australian Employment Court)

### **37—Insertion of section 83A**

20

After section 83 insert:

#### **83A—Transfer of proceedings**

25

- (1) The Tribunal may transfer proceedings before the Tribunal to another tribunal or court (being a tribunal or court that also has jurisdiction with respect to the matter) if a member constituting the Tribunal is satisfied or considers that it would be more appropriate or expeditious for the matter to be dealt with by that tribunal or court.
- (2) The Supreme Court or a Judge or Master of the Supreme Court may—
  - (a) order that civil proceedings before the Tribunal be transferred to the Supreme Court; or
  - (b) transfer civil proceedings in the Supreme Court that lie within the jurisdiction of the Tribunal to the Tribunal.
- (3) The District Court or a Judge or Master of the District Court may transfer civil proceedings in the District Court that lie within the jurisdiction of the Tribunal to the Tribunal.
- (4) If proceedings are transferred to another tribunal or court under subsection (1) or (2)(a)—
  - (a) a registrar or other member of the staff of the Tribunal must forward to the other tribunal or court—

30

35

- (i) a file containing all documents filed in the Tribunal in the proceedings; and
- (ii) a transcript of any evidence taken before the Tribunal in the proceedings; and
- (iii) copies of any order made by the Tribunal in relation to the proceedings; and

(b) the tribunal or court may—

- (i) receive in evidence any transcript of any evidence taken before the Tribunal in the proceedings and draw any conclusions of fact from that evidence that appear proper; and
- (ii) adopt any findings or decision of the Tribunal that may be relevant to proceedings before the tribunal or court; and
- (iii) adopt or make any decision, direction, determination or order in relation to the proceedings; and
- (iv) continue any proceedings as if they had been commenced before or in the tribunal or court; and
- (v) take other steps to promote or ensure the smoothest possible transition from 1 jurisdiction to another in connection with the operation of this section.

(5) If proceedings are transferred to the Tribunal under subsection (2)(b) or (3), the Tribunal may—

- (a) receive in evidence any transcript of any evidence taken before the relevant court in the proceedings and draw any conclusions of fact from that evidence that appear proper; and
- (b) adopt any findings or decision of the relevant court that may be relevant to the proceedings before the Tribunal; and
- (c) adopt or make any decision, direction, determination or order in relation to the proceedings; and
- (d) continue any proceedings as if they had been commenced before the Tribunal; and
- (e) take other steps to promote or ensure the smoothest possible transition from 1 jurisdiction to another in connection with the operation of this section.

### **38—Amendment of section 86—Enforcement of decisions and orders of Tribunal**

Section 86(3)—after the definition of *appropriate court* insert:

*monetary order* includes a judgment that provides for the payment of an amount of money.

### 39—Insertion of section 88A

After section 88 insert:

#### 88A—Production of persons held in custody

If the Tribunal requires the attendance before it of any person who is held in custody in the State, the Tribunal may—

- (a) issue a summons or a notice requiring the custodian to produce that person before the Tribunal at a nominated time and place; or
- (b) issue a warrant authorising the sheriff, or a member of the police force, to take the person from the custodian and bring the person before the Tribunal.

### 40—Substitution of section 91

Section 91—delete the section and substitute:

#### 91—Disrupting proceedings of Tribunal

(1) A person who—

- (a) wilfully insults a member or officer of the Tribunal, during a sitting of the Tribunal or in going to or returning from the Tribunal; or
- (b) wilfully disturbs or interrupts proceedings of the Tribunal; or
- (c) misbehaves in any other way before the Tribunal; or
- (d) wilfully disobeys an order or direction of the Tribunal,

commits a contempt of the Tribunal.

(2) If a party to proceedings before the Tribunal—

- (a) contravenes or fails to comply with an order in the nature of an interlocutory order or an order (other than an order for payment of money) to do, or refrain from, a particular act; and
- (b) makes no reasonable and adequate excuse to the Tribunal for the contravention or non-compliance,

the Tribunal may (without limiting its powers to deal with the matter in any other way) order that the party be not heard, or further heard, in the proceedings, or impose another procedural disability or civil penalty the Tribunal considers appropriate to the circumstances of the case.

(3) Before acting under subsection (2), the Tribunal must give the relevant party an opportunity to be heard on the question.

### 91A—Punishment of contempts

- (1) A contempt of the Tribunal is a summary offence punishable by a maximum fine of \$10 000 or imprisonment for a maximum term of 6 months.
- (2) The jurisdiction to deal with an offence against subsection (1) is vested in the South Australian Employment Court.
- (3) If a contempt is committed in the face of the Tribunal, the matter may be dealt with immediately (without the necessity of laying a charge or other formality) and the South Australian Employment Court may proceed to convict and fine the offender as it thinks fit.

### 91B—Offences

An offence against a provision of this Act lies within the criminal jurisdiction of the South Australian Employment Court.

### 41—Transitional provisions

- (1) In this section—

*principal Act* means the *South Australian Employment Tribunal Act 2014*;

*relevant day* means the day on which this section comes into operation;

*Tribunal* means the South Australian Employment Tribunal.

- (2) The person holding office as President of the Tribunal (other than on an acting basis) immediately before the relevant day—

- (a) will continue to hold that office and will, if not already a judge of the District Court, be appointed as a judge of the District Court by force of this subsection; and
- (b) will hold office taking into account the operation of section 10(2) of the principal Act, and subject to the operation of section 10(8) of the principal Act, as enacted by this Act.

- (3) A person holding office as a Deputy President of the Tribunal immediately before the relevant day—

- (a) will continue to hold that office; and
- (b) will hold that office subject to the operation of section 13(11) of the principal Act as enacted by this Act—
- (i) in the case of a judge of the District Court (including as a result of an appointment under subsection (4))—as if the person had been appointed under section 13(1)(a) of the principal Act as enacted by this Act; and
- (ii) in the case of a magistrate—as if the person had been appointed under section 13(1)(b) of the principal Act as enacted by this Act.

- (4) A Deputy President of the Tribunal who, immediately before the relevant day—

- (a) was not a judge of the District Court; and
- (b) was not a magistrate,

will be appointed as a judge of the District Court by force of this subsection.

- (5) A person who was, immediately before the relevant day, a conciliation officer of the Tribunal will continue in office as a Commissioner of the Tribunal on the same terms and conditions as applied to the person immediately before the relevant day.

5 **Part 3—Amendment of *Dust Diseases Act 2005***

**42—Amendment of section 3—Interpretation**

Section 3—after the definition of *injured person* insert:

*SAET* means the South Australian Employment Tribunal established under the *South Australian Employment Tribunal Act 2014*.

10 **43—Insertion of section 4A**

After section 4 insert:

**4A—Jurisdiction of SAET**

- (1) SAET has jurisdiction to hear and determine proceedings in relation to dust disease actions.
- 15 (2) The jurisdiction under subsection (1) is assigned to the South Australian Employment Court.
- (3) Proceedings for any tortfeasor liable in respect of damages for or in relation to a dust disease or the death of a person as a result of a dust disease to recover contribution from any other tortfeasor liable in respect of that damage may be brought before SAET and dealt with by the South Australian Employment Court.
- 20 (4) If a cause of action giving rise to proceedings brought under subsection (1) or (3) also gives rise to a claim in respect of some other matter, the claim may be included in those proceedings even though it does not relate to a dust disease.
- 25 (5) Any matter that is ancillary or related to a matter that is the subject of proceedings brought under a preceding subsection may also be included in those proceedings.

30 **44—Amendment of section 5—Expeditious hearing and determination of dust disease actions**

Section 5—after "The District Court" insert:

or SAET (as the case may be)

**45—Repeal of section 6**

Section 6—delete the section

#### **46—Amendment of section 7—Costs**

- (1) Section 7(1)—after subsection (1) insert:
- (1a) Costs of proceedings in dust disease actions before SAET will be allowed or awarded on the same basis as for actions in the District Court.
- (2) Section 7(2)—after "the District Court" insert:  
or SAET

#### **47—Amendment of section 8—Evidentiary presumptions and special rules of evidence and procedure**

- (1) Section 8(3)—after "apply in a dust disease action" insert:  
before the District Court or SAET
- (2) Section 8(3)(a)—delete "the Court" and substitute:  
the relevant court
- (3) Section 8(3)(a)—after "a court" insert:  
or tribunal
- (4) Section 8(3)(b)—delete paragraph (b) and substitute:  
(b) the relevant court may dispense with proof of any matter that appears to the court to be not seriously in dispute;
- (5) Section 8(3)(c)—delete "the Court" and substitute:  
the relevant court
- (6) Section 8(4)—delete subsection (4) and substitute:  
(4) If—
- (a) a finding of fact has been made in a dust disease action by a court of this State, or a court or tribunal of the Commonwealth or another State or Territory; and
- (b) the finding is, in District Court's or SAET's opinion, of relevance to an action before it under this Act,
- the District Court or SAET (as the case may be) may admit the finding in evidence and indicate to the parties that it proposes to make a corresponding finding in the case presently before it unless the party who would be adversely affected satisfies the District Court or SAET (as the case may be) that such a finding is inappropriate to the circumstances of the present case.

#### **48—Amendment of section 9—Damages**

- (1) Section 9—delete "the Court" wherever occurring and substitute in each case:  
the District Court or SAET (as the case may be)
- (2) Section 9(2)—delete "The Court" and substitute:  
The District Court of SAET (as the case may be)

**49—Amendment of section 10—Procedure where several defendants or insurers involved**

- (1) Section 10—delete "The Court" and substitute:  
The District Court or SAET (as the case may be)
- 5 (2) Section 10—delete "the Court" and substitute:  
the District Court or SAET (as the case may be)

**Part 4—Amendment of *Fair Work Act 1994***

**50—Amendment of section 3—Objects of Act**

- (1) Section 3(1)(p)—delete "industrial authorities" and substitute:  
10 bodies
- (2) Section 3(2)—delete "the Court, the Commission and other industrial authorities are" and substitute:  
SAET is

**51—Amendment of section 4—Interpretation**

- 15 (1) Section 4(1), definition of *award*—delete "the Commission" and substitute:  
SAET
- (2) Section 4(1), definition of *Commission*—delete the definition
- (3) Section 4(1), definition of *Court*—delete the definition
- (4) Section 4(1), definition of *Deputy President*—delete the definition
- 20 (5) Section 4(1), definition of *enterprise agreement matter*—delete the definition
- (6) Section 4(1), definition of *evidentiary material*—delete the definition
- (7) Section 4(1), definition of *examinable arrangements*—delete the definition
- (8) Section 4(1), definition of *Full Commission*—delete the definition
- (9) Section 4(1), definition of *Full Court*—delete the definition
- 25 (10) Section 4(1), definition of *industrial authority*, (a)—delete paragraph (a) and substitute:  
(a) SAET;
- (11) Section 4(1), definition of *Industrial Registrar* or *Registrar*—delete the definition
- (12) Section 4(1), definition of *inspector*—delete the definition and substitute:  
30 *inspector*—see section 219A;
- (13) Section 4(1), definition of *President*—delete the definition and substitute:  
*President* means the President of SAET;
- (14) Section 4(1), definition of *Presidential Member*—delete the definition

- (15) Section 4(1), definition of *registered agent*—delete "the Court or the Commission by registration as an agent under this Act (See Chapter 5 Part 1 Division 2)" and substitute:

SAET by registration as an agent under this Act (See Chapter 2 Part 3)

- 5 (16) Section 4(1)—after the definition of *registered association* insert:

*Registrar* means the Registrar or Deputy Registrar of SAET;

- (17) Section 4(1), definition of *rules*—delete the definition and substitute:

*rules* means the rules of SAET;

10 *SAET* means the South Australian Employment Tribunal established under the *South Australian Employment Tribunal Act 2014*;

- (18) Section 4(5)—delete subsection (5)

## 52—Substitution of Chapter 2

Chapter 2—delete the Chapter and substitute:

## 15 Chapter 2—Jurisdiction of SAET—special provisions

### Part 1—Conferral of jurisdiction, declarations and orders

#### 7—Jurisdiction of SAET

SAET has the jurisdiction conferred by this Act—

- 20 (a) to adjudicate on rights and liabilities arising out of employment; and
- (b) in relation to industrial matters—
- 25 (i) to approve enterprise agreements regulating remuneration and other industrial matters; and
- (ii) to make awards regulating remuneration and other industrial matters; and
- (iii) to hear, determine and regulate any matter or thing arising from or relating to an industrial matter; and
- (c) to settle and resolve industrial disputes.

#### 30 8—Jurisdiction to interpret awards and enterprise agreements

- (1) SAET has jurisdiction to interpret an award or enterprise agreement.
- (2) In exercising its interpretative jurisdiction—
- 35 (a) SAET should have regard to any evidence that is reasonably available to it of what the author of the relevant part of the award or enterprise agreement, and the parties to the award or enterprise agreement, intended it to mean when it was drafted; and

- (b) if a common intention is ascertainable—give effect to that intention.

### **9—Jurisdiction to decide monetary claims under industrial laws or instruments**

- 5 (1) SAET (constituted as the South Australian Employment Court) has jurisdiction to hear and determine monetary claims of the following kinds:
- 10 (a) a claim for a sum due to an employee or former employee from an employer or former employer under—
    - (i) the *Fair Work Act 1994*, an award, enterprise agreement or contract of employment; or
    - (ii) the Commonwealth Act, or an award or agreement under the Commonwealth Act;
  - 15 (b) a claim for a sum due to an employer or former employer from an employee or former employee under—
    - (i) the *Fair Work Act 1994*, an award, enterprise agreement or contract of employment; or
    - (ii) the Commonwealth Act, or an award or agreement under the Commonwealth Act;
  - 20 (c) a claim for compensation to an employee or former employee from an employer or former employer for failure to make contributions (before or after the commencement of this Act) for the benefit of the claimant to a superannuation fund;
  - 25 (d) a claim for payment of a benefit against the trustee of a superannuation fund to which contributions have been made.

- (2) In this section—

*Commonwealth Act* means the *Fair Work Act 2009* of the Commonwealth.

### **10—Jurisdiction to hear and determine questions arising under contracts of employment**

- 30 (1) SAET (constituted as the South Australian Employment Court) has jurisdiction to hear and determine any question, action or claim founded on, or otherwise arising out of or in relation to, a contract of employment (including a contract of employment that has been terminated) including (but not limited to)—
- 35 (a) a claim for damages with respect to a breach of a contract of employment (including a claim where the employee under a contract of employment has been dismissed); and
  - 40 (b) a claim to recover a liquidated sum or debt under a contract of employment; and
  - (c) an action for an order for specific performance; and

- (d) an action for the grant of an injunction.
- (2) Subject to subsection (4), the South Australian Employment Court may, in exercising its jurisdiction under this section—
- 5 (a) make an order for specific performance against an employer or an employee under a contract of employment;
- (b) grant an injunction, or give equivalent relief, against an employer or an employee under a contract of employment even if to do so would effectively require specific performance of a contractual term against the employer or employee;
- 10 (c) award damages against a party to a contract of employment on account of the manner of a breach of the contract (including where the breach constitutes or gives rise to a termination of the contract);
- 15 (d) award damages and also provide a remedy by way of an order for specific performance or an injunction.
- (3) Subject to subsection (4), if the South Australian Employment Court is satisfied that it would best serve the interests of justice in a particular case, the Court should provide for specific performance or an injunction as a remedy—
- 20 (a) even if such a remedy is in addition to, or in substitution for, an award of damages; and
- (b) even if, but for this subsection, only damages would be awarded.
- 25 (4) The South Australian Employment Court—
- (a) should not, except in exceptional circumstances, in exercising its jurisdiction under this section—
- (i) make an order for specific performance against a natural person; or
- 30 (ii) grant an injunction, or give equivalent relief, against a natural person under a contract of employment,
- if to do so would—
- (iii) effectively require an employer to reorganise, to a material extent, his or her undertaking; or
- 35 (iv) effectively prevent an employee from obtaining other employment; and
- (b) in considering the interests of justice under subsection (3), should take into account—
- 40 (i) the length of time that elapsed between the time when the cause of action in the proceedings arose and the time when the proceedings were commenced; and

(ii) the extent to which there no longer exists mutual confidence in the employment relationship between the employer and the employee; and

(iii) the extent to which there is evidence that compliance with an order for specific performance or an injunction would be impracticable or cause undue hardship, including, in the case of an employer, by taking into account the size of the employer's undertaking and the circumstances of the particular employment situation,

and may take into account such other matters as the Court thinks fit.

(5) Subsection (4)(a)(iv) does not apply so as to limit the orders that the South Australian Employment Court may make in relation to a restraint of trade clause in a contract of employment that is enforceable at common law.

(6) The costs in any proceedings under this section will be awarded on the same basis (and in accordance with the same rules) as costs would be awarded in a corresponding civil action or claim brought in the District Court or the Magistrates Court (as the case may be).

(7) This section does not limit the operation of section 9.

(8) This section does not limit the operation of the *Return to Work Act 2014*.

(9) In this section—

*contract of employment* means a contract recognised at common law as a contract of employment.

## 11—Declaratory jurisdiction

SAET has jurisdiction to make declaratory judgments conferred by other provisions of this Act.

## 12—Orders to remedy or restrain contraventions

(1) SAET has jurisdiction to order a person who contravenes or fails to comply with a provision of this Act, an award or an enterprise agreement—

(a) to take steps, specified in the order, within a time specified in the order, to remedy the contravention or non-compliance; or

(b) to refrain from further contravention of, or non-compliance with, the provision.

(2) If there are reasonable grounds to believe that a person is about to contravene or to fail to comply with a provision of this Act, an award or enterprise agreement, SAET has jurisdiction to order the person to refrain from the contravention or non-compliance.

## **Part 2—Processes associated with industrial matters and disputes**

### **13—Amendment or rectification of proceedings**

(1) SAET may—

- 5
- (a) allow the amendment of an application, notice, submission, report or other document associated with proceedings; or
  - (b) correct an error, defect or irregularity (even though the error, defect or irregularity may be such as to render the proceedings void).

10 (2) If SAET exercises its power to correct an error, defect or irregularity under subsection (1)(b), the proceedings are as valid and effective as if the error, defect or irregularity had never happened.

### **14—Power to re-open questions**

15 SAET may re-open a question previously decided and amend or quash an earlier determination.

### **15—General power of waiver**

- 20
- (1) SAET may, on conditions it considers appropriate, waive compliance with a procedural requirement of this Act or the rules.
  - (2) SAET may punish non-compliance with a procedural direction by striking out proceedings, or any defence, in whole or in part.

### **16—Applications to SAET**

25 (1) For the purposes of the *South Australian Employment Tribunal Act 2014*, proceedings before SAET under this Act are commenced by an application made to SAET—

- 30
- (a) if, in the Minister's opinion, it is in the public interest that the matter be dealt with by SAET—by the Minister; or
  - (b) by an employer, or group of employers; or
  - (c) by an employee, or group of employees; or
  - (d) by a registered association of employers; or
  - (e) by a registered association of employees; or
  - (f) by the United Trades and Labor Council.

35 (2) A natural person may bring an application as of right if the application is authorised under some other provision of this Act but otherwise must establish to the satisfaction of SAET—

- (a) that the claim arises out of a genuine industrial grievance; and
- (b) that there is no other impartial grievance resolution process that is (or has been) reasonably available to the person.

## 17—Advertisement of applications

- 5
- (1) Before SAET deals with the subject matter of an application, SAET must satisfy itself that reasonable notice of the substance of the application and the day and time it is to be heard has been given.
  - (2) The substance of an application and the day and time it is to be heard must be—
    - (a) advertised in the manner prescribed in the rules of SAET; or
    - (b) communicated to all persons who are likely to be affected by a determination in the proceedings or their representatives.

10

## 18—Provisions of award etc relevant to how SAET intervenes in dispute

15

If the parties to an industrial dispute are bound by an award or an enterprise agreement that provides procedures for preventing or settling industrial disputes between them, SAET must, in considering whether, when or how it will exercise its powers in relation to the industrial dispute, have regard to—

- 20
- (a) the procedures contemplated by the parties for preventing or settling industrial disputes; and
  - (b) the extent the procedures (if applicable to the industrial dispute) have been complied with by the parties and the circumstances of any compliance or non-compliance with the procedures.

## 19—Voluntary conferences

- 25
- (1) SAET may, if it appears desirable, call a voluntary conference of the parties involved in an industrial dispute.
  - (2) A person who attends a voluntary conference called under this section is, on application to the Registrar, entitled to be paid an amount certified by the person presiding at the conference to be reasonable, having regard to the conduct of the person both before and at the conference and to the expenses and loss of time incurred by the person.
  - (3) The amount certified under subsection (2) will be paid out of money appropriated by Parliament for the purpose.

## 20—Compulsory conference

- 35
- (1) SAET may, if it appears desirable, call a compulsory conference of the parties involved in an industrial dispute.
  - (2) SAET may summon the parties to the dispute and any other person who may be able to assist in resolving the dispute to appear at the conference.
  - (3) A compulsory conference may, at the discretion of SAET, be held in public or in private or partly in public and partly in private.
- 40

(4) A person who fails to attend a compulsory conference as required by SAET's summons or who, having attended, fails to participate in the conference as required by the person presiding at the conference commits a contempt of SAET.

(5) A person who attends a conference as directed by the person presiding at the conference will, on application to the Registrar, be entitled to be paid an amount certified by the person presiding at the conference to be reasonable, having regard to the conduct of the person both before and at the conference and to the expenses and loss of time incurred by the person.

(6) The amount certified under subsection (5) will be paid out of money appropriated by Parliament for the purpose.

### **21—Reference of questions for determination**

(1) The person presiding at a compulsory conference may, after giving reasonable notice to the persons attending at the conference, refer the subject matter of the conference for determination by SAET (which may be constituted of the person who presided at the conference under this Part).

(2) A matter may be referred for determination by SAET under subsection (1) orally and without formality.

(3) An order of SAET on a reference under subsection (1)—

(a) is binding only on persons represented before SAET or summoned to appear at the conference; and

(b) if the parties to the industrial dispute are bound by an enterprise agreement, may not affect the terms of the agreement.

### **22—Experience gained in settlement of dispute**

After the settlement of an industrial dispute, SAET may invite the parties to the dispute to take part in discussions with a view to—

(a) improving the process of conciliation and arbitration in accordance with the objects of this Act; and

(b) encouraging the parties to agree on procedures for preventing or settling further disputes by discussion and agreement; and

(c) deciding whether it would be appropriate for the parties to regulate their relationship by making an enterprise agreement or amending the terms of an existing enterprise agreement to provide more adequate means of dispute prevention or resolution.

### **23—Costs generally**

(1) SAET may only, in the exercise of jurisdiction under this Act, make an order for costs where specifically authorised to do so under this Act.

- (2) Subsection (1) does not apply in relation to proceedings that constitute an appeal under the *South Australian Employment Tribunal Act 2014* in respect of the exercise of jurisdiction under this Act.

## Part 3—Representation

### 24—Representation

- (1) In addition to section 51(1)(a) and (b) of the *South Australian Employment Tribunal Act 2014*, a party to proceedings before SAET under this Act is entitled, without leave, to be represented by—
- (a) in the case of a party that is not otherwise represented by counsel in accordance with section 51(1)(b) of the *South Australian Employment Tribunal Act 2014*—a registered agent; or
- (b) an officer or employee of an industrial association acting in the course of employment with that industrial association.
- (2) However, in the case of a voluntary or compulsory conference, a party or intervener may, subject to subsections (3) and (4), only be represented by a legal practitioner or registered agent with the permission of the person presiding at the conference.
- (3) Permission is not required under subsection (2) if—
- (a) the legal practitioner or registered agent is an officer or employee of—
- (i) an employer who is a party to the proceedings; or
- (ii) the United Trades and Labor Council; or
- (iii) a registered association of which a member is a party to the relevant industrial dispute; or
- (b) the legal practitioner is acting on behalf of the Minister for the purposes of the conference; or
- (c) in the case of a compulsory conference—the matter has already been referred to SAET.
- (4) Permission will only be granted under subsection (2) if (and only if)—
- (a) all of the parties consent to the application for permission; or
- (b) another party is represented by a legal practitioner or registered agent; or
- (c) another party is a legal practitioner or is legally qualified; or
- (d) the person presiding at the conference is satisfied—
- (i) the party or intervener would, if permission were not granted, be unfairly disadvantaged; or
- (ii) permission is appropriate in the circumstances.

- (5) The costs incurred by a party for representation at a voluntary or compulsory conference by a legal practitioner or registered agent acting under the preceding subsections will not be included in any order for costs.

## 25—Registered agents

- (1) The Registrar must maintain a register of registered agents.
- (2) A person who applies for registration or renewal of registration is entitled to registration or renewal of registration (as the case requires) if the person—
- (a) has the qualifications and experience required by regulation for registration or the renewal of registration (as the case requires); and
  - (b) satisfies the Registrar as to any other matter or requirement prescribed by the regulations; and
  - (c) pays the relevant fee fixed by regulation.
- (3) A person who is not entitled to practise as a legal practitioner because his or her name has been struck off the roll of legal practitioners in this State or elsewhere or because of other disciplinary action taken against him or her is not eligible to become or remain registered as an agent.
- (4) Registration will be granted or renewed for a period (not exceeding 2 years) determined by the Registrar.
- (5) The Governor may, by regulation, establish a code of conduct to be observed by registered agents.
- (6) The code of conduct may (for example) deal with the following matters:
- (a) it may regulate the fees to be charged by registered agents;
  - (b) it may require proper disclosure of fees before the registered agent undertakes work for a client;
  - (c) it may limit the extent to which a registered agent may act on the instructions of an unregistered association.

## 26—Inquiries into conduct of registered agents or other representative

- (1) The Registrar may inquire into the conduct of a registered agent or other representative in order to determine whether proper grounds for disciplinary action exist.
- (2) Proper grounds for disciplinary action exist if—
- (a) in the case of a registered agent—
    - (i) the agent commits a breach of the code of conduct;
- or

- (ii) the agent is not a fit and proper person to remain registered as an agent; or
- (b) in the case of another representative—the representative's conduct falls short of the standards that should reasonably be expected of a person undertaking the representation of another in proceedings before SAET.
- (3) If, on inquiry, the Registrar finds that proper grounds for disciplinary action exist, the Registrar may—
- (a) issue a letter of admonition; or
- (b) if the representative is a legal practitioner—refer the matter to the Legal Profession Conduct Commissioner for investigation; or
- (c) if the representative is a registered agent—
- (i) suspend the agent's registration for a period of up to 6 months; or
- (ii) cancel the agent's registration.
- (4) An appeal lies to SAET against a decision of the Registrar under subsection (3)(c).
- (5) An appeal must be instituted in accordance with the rules of SAET.

## **Part 4—Concurrent appointments—other industrial authorities**

### **27—Concurrent appointments**

- (1) A member of SAET may, with the Minister's approval, be appointed also as a member of an industrial authority under the law of the Commonwealth or another State.
- (2) If the Minister revokes an approval under subsection (1), the member must resign from office as a member of the other industrial authority.
- (3) A member of an industrial authority constituted under the law of the Commonwealth or another State may be appointed also as a member of SAET (to hold a position within SAET determined by the President after consultation with the Minister) and, if such an appointment is made, this Act applies with the following qualifications:
- (a) the appointment terminates if the member ceases for any reason to hold office as a member of the relevant industrial authority;
- (b) the member is not entitled to be remunerated as a member of SAET but is entitled, in circumstances determined by the Governor, to allowances for expenses at rates fixed by the Governor.

- (4) If a member holds concurrent appointments, then—
- (a) if the member was appointed first to SAET and subsequently to the other industrial authority, the extent the member performs the duties of a member of that other industrial authority will be determined by agreement between the President and the head of that other industrial authority; or
- (b) if the member was appointed first to the other industrial authority and subsequently to SAET, the extent the member performs the duties of a member of SAET will be determined by agreement between the President and the head of that other industrial authority.

### **28—Powers of member holding concurrent appointments**

A member who holds concurrent appointments under this Part may, in an appropriate case, simultaneously exercise powers deriving from both or all appointments.

## **Part 5—Special provisions relating to monetary claims**

### **29—Interpretation**

In this Part—

*monetary claim* means a claim under section 9 or a claim for a sum or a debt under section 10.

### **30—Limitation of action**

A monetary claim must be made within 6 years after the sum claimed became payable, but no time limitation applies to a claim for the non-payment of superannuation contributions.

### **31—Who may make a claim**

- (1) A monetary claim may be made on behalf of the claimant by an association.
- (2) A monetary claim may be made by a minor as the minor had attained the age of majority.
- (3) A claim relating to money that should have been paid to or for the benefit of a person who is now dead may be made by the personal representative of the deceased person or a beneficiary of the deceased person's estate.

### **32—Simultaneous proceedings not permitted**

The South Australian Employment Court may not hear a monetary claim if it appears that proceedings based on the same claim have begun in another court and the proceedings have not been withdrawn or struck out.

### 33—Award to include interest

- 5
- (1) Unless there is good reason for not doing so, the South Australian Employment Court must, on the application of a person to whom it makes an award on a monetary claim, include in the judgment an award of interest or a lump sum instead of interest.
- (2) However—
- (a) the South Australian Employment Court may not authorise the award of interest on interest; and
- 10 (b) if interest is payable because of an antecedent right, the award may reflect the antecedent right but may not create a right to additional interest; and
- (c) the South Australian Employment Court may not award interest on an amount for which judgment is given by consent except by consent of the parties.

### 34—Monetary judgment

- 15
- (1) The South Australian Employment Court may authorise or direct that a monetary amount awarded be paid in instalments.
- (2) The South Australian Employment Court may direct that compensation for non-payment of contributions that should have been, but were not, made to a superannuation fund be paid to a superannuation fund on the claimant's behalf.
- 20

### 35—Costs

- (1) The South Australian Employment Court may only award costs in proceedings based on a monetary claim as follows—
- 25 (a) the Court may award costs on a claim for non-payment of superannuation contributions to cover reasonable expenses incurred by the claimant to establish the present value of the loss; and
- (b) the Court may award costs on an appeal.
- 30 (2) In connection with the operation of subsection (1)(b)—
- (a) costs need not be awarded so as to follow the event; and
- (b) the Court, in considering whether to award costs and, if so, the extent of the award, must take into account—
- (i) the conduct of the parties; and
- 35 (ii) the relevant positions and circumstances of the appellant and the respondent (and of the successful and unsuccessful parties); and
- (iii) the nature of the question in dispute and whether the proceedings have a broader impact than simply inter-partes proceedings between individual parties,
- 40

and may take into account such other matters as the Court thinks fit to ensure a just outcome in the circumstances of the case.

(3) This section does not apply in relation to a claim under section 10.

5 **53—Amendment of Chapter 3—Employment**

(1) Chapter 3—delete "the Full Commission" wherever occurring and substitute in each case:

SAET

10 (2) Chapter 3—delete "The Full Commission" wherever occurring and substitute in each case:

SAET

(3) Chapter 3—delete "the Commission" wherever occurring and substitute in each case:

SAET

(4) Chapter 3—delete "The Commission" wherever occurring and substitute in each case:

15 SAET

(5) Chapter 3—delete "Commission's" wherever occurring and substitute in each case:

SAET's

**54—Amendment of section 99G—Recovery of amount of unpaid remuneration**

(1) Section 99G(1)—delete "Chapter 5 Part 2" and substitute:

20 section 9

(2) Section 99G(2)—delete subsection (2)

(3) Section 99G(3)—delete "the Court" and substitute:

the South Australian Employment Court

**55—Amendment of Chapter 4—Associations**

25 (1) Chapter 4—delete "the Commission" wherever occurring and substitute in each case:

SAET

(2) Chapter 4—delete "The Commission" wherever occurring and substitute in each case:

SAET

(3) Chapter 4—delete "Commission's" wherever occurring and substitute in each case:

30 SAET's

(4) Chapter 4—delete "the Full Commission" wherever occurring and substitute in each case:

SAET

35 (5) Chapter 4—delete "The Full Commission" wherever occurring and substitute in each case:

SAET

## 56—Repeal of Chapter 5

Chapter 5—delete the Chapter

## 57—Amendment of section 219—Confidentiality

Section 219(2)(b)—delete "the Court or the Commission" and substitute:

5 SAET

## 58—Insertion of sections 219A to 219D

After section 219 insert:

### 219A—Who are inspectors

- 10 (1) The following are inspectors for the purposes of this Act:
- (b) persons appointed by the Minister to be inspectors;
  - (c) persons appointed under the Commonwealth Act who are, under an arrangement between the Minister and the Minister responsible for administering the Commonwealth Act, authorised to exercise the powers of an inspector under this
- 15 Act.
- (2) Each inspector must be furnished by the Minister with an identity card.
- (3) An inspector must produce the identity card for inspection by a
- 20 person who questions the inspector's authority to exercise powers under this Act.

### 219B—General functions of inspectors

- (1) The functions of the inspectors are—
- (a) to investigate complaints of non-compliance with the Act, enterprise agreements and awards; and
  - 25 (b) to conduct audits and systematic inspections to monitor compliance with this Act and enterprise agreements and awards; and
  - (c) to conduct promotional campaigns to improve the awareness of employers and people within the workforce of their rights and obligations under this Act, and under enterprise
- 30 agreements and awards; and
- (d) to do anything else that may be appropriate to encourage compliance and, if appropriate, take action to enforce compliance.
- 35 (2) The powers of an inspector under this Act extend to acting in relation to persons who are no longer engaged in the performance of work.
- (3) An inspector, or a person assisting an inspector, who—
- (a) addresses offensive language to any other person; or

(b) without lawful authority, hinders or obstructs or uses or threatens to use force in relation to any other person, is guilty of an offence.

Maximum penalty: \$5 000.

### 219C—Powers of inspectors

- (1) An inspector may at any time, with any assistance the inspector considers necessary, without any warrant other than this section—
- (a) enter any workplace; and
  - (b) inspect and view any work, process or thing in the place; and
  - (c) question a person in the place on a subject relevant to employment or an industrial matter.
- (2) An inspector must, when entering or as soon as practicable after entering a place under this section, produce his or her identity card for inspection by the occupier or person in charge of the place.
- (3) An inspector may require the production of a time book, paysheet, notice, record, list, indenture of apprenticeship or other document required to be kept by this Act or any other Act and may inspect, examine and copy it.
- (4) In addition to the powers set out in subsections (1) and (3), if an inspector has reason to believe that a document required to be kept by an employer under this Act or any other Act is not accessible during an inspection under subsection (3), the inspector may, by notice in writing to an employer, require the employer to produce the document to the inspector within a reasonable period (of at least 24 hours) specified by the inspector.
- (5) A document produced under subsection (3) or (4) may be retained by the inspector for examination and copying (and, accordingly, the inspector may take it away), subject to the qualification that the inspector must then return the document within 7 days.
- (6) However—
- (a) the inspector may not retain an original document if the employer supplies a copy of it to the inspector for the inspector's own use; and
  - (b) the inspector may not retain the original of a document that is required for the day-to-day operations of the employer (but the inspector may copy it at the time of its production).
- (7) It is the duty of an employer at all reasonable times to facilitate, as far as practicable, the exercise by an inspector of powers under this section.

5 (8) If an inspector puts a question to a person through an interpreter, the question will, for the purposes of this Act, be taken to have been put to the person by the inspector and an answer to the question given by the person to the interpreter will be taken to have been given to the inspector (and in any legal proceedings it will be presumed that the interpreter's translation of the answer is the person's answer to the question as put by the inspector unless it is shown that the interpreter mistranslated the question or the answer).

10 (9) A person must not—

(a) hinder or obstruct an inspector in the exercise of a power conferred by or under this section; or

(b) refuse an inspector entrance to a place the inspector is authorised to enter under subsection (1); or

15 (c) refuse or fail to answer truthfully a question put under subsection (1); or

(d) fail, without lawful excuse, to comply with a requirement of an inspector acting under this section.

Maximum penalty: \$1 250.

### **219D—Compliance notices**

20 (1) If it appears that an employer has failed to comply with a provision of this Act, or of an award or enterprise agreement, an inspector may issue a compliance notice requiring the employer, within a period stated in the notice—

(a) to take specified action to remedy the non-compliance; and

25 (b) to produce reasonable evidence of the employer's compliance with the notice.

(2) An employer who fails to comply with a compliance notice within the time allowed in the notice is guilty of an offence.

Maximum penalty: \$3 250.

30 Expiation fee: \$325.

(3) The following applications may be made to SAET for a review of a notice issued under this section:

35 (a) an employer may apply to SAET on the ground that the employer has in fact complied with this Act, or the relevant award or enterprise agreement (as the case may be);

(b) an employee may apply to SAET on the ground that the employer's failure to comply with this Act, or an award or enterprise agreement, is more extensive than stated in the notice.

40 (4) SAET may, at the conclusion of the review—

(a) confirm the notice; or

(b) confirm the notice with such modification as it thinks fit; or

(c) cancel the notice.

(5) A reference in this section to this Act includes a reference to a code of practice made under this Act.

#### **59—Amendment of section 220—Notice of determinations of SAET**

5 Section 220—delete "Commission" wherever occurring and substitute in each case:  
SAET

#### **60—Repeal of section 221**

Section 221—delete the section

#### **61—Amendment of section 223—Discrimination against employee for taking part in industrial proceedings etc**

10

(1) Section 223(1)—delete "the Court or the Commission" wherever occurring and substitute in each case:

SAET

(2) Section 223(2)—delete "the Commission" and substitute:

15

SAET

#### **62—Amendment of section 230—Orders for payment of money**

Section 230(1)—delete "the Court or the Commission" wherever occurring and substitute in each case:

SAET

20

#### **63—Amendment of section 234—Proof of awards etc**

(1) Section 234(1)—delete "the Court, or the Commission" and substitute:

SAET

(2) Section 234(2)—delete "the Commission" and substitute:

SAET

25

(3) Section 234(3)—delete "the Court or the Commission" and substitute:

SAET

#### **64—Amendment of section 235—Proceedings for offences**

Section 235(1)—delete subsection (1) and substitute:

30

(1) An offence against a provision of this Act lies within the criminal jurisdiction of SAET.

#### **65—Amendment of Schedule 2**

(1) Schedule 2—delete "the Commission" wherever occurring and substitute in each case:

SAET

- (2) Schedule 2—delete "The Commission" wherever occurring and substitute in each case:

SAET

## 66—Amendment of Schedule 2A

- 5 (1) Schedule 2A—delete "the Commission" wherever occurring and substitute in each case:

SAET

- (2) Schedule 2A—delete "The Commission" wherever occurring and substitute in each case:

10 SAET

## 67—Transitional provisions

- (1) In this section—

*determination* has the same meaning as in the principal Act;

15 *industrial authority* means the Industrial Relations Court of South Australia or the Industrial Relations Commission of South Australia;

*principal Act* means the *Fair Work Act 1994*;

*relevant day* means the day on which this section comes into operation;

*Tribunal* means the South Australian Employment Tribunal.

20 (2) The Industrial Relations Court of South Australia and the Industrial Relations Commission of South Australia are dissolved by force of this subsection.

- (3) The commencement of this subsection brings to an end the appointment of a person as a member of the Industrial Relations Court of South Australia or the Industrial Relations Commission of South Australia (as the case may be).

25 (4) No right of action arises, and no compensation is payable, in respect of an appointment coming to an end by virtue of the operation of subsections (3) and (4).

- (5) However—

(a) subsections (2) and (3) do not affect appointment of a person as a member of the Tribunal before the relevant day; and

30 (b) in the case of a member of the Industrial Relations Commission of South Australia who, immediately before the relevant day, was not a member of the Tribunal—the person will be taken to have been appointed (by force of this subsection) as a Commissioner under the *South Australian Employment Tribunal Act 2014* subject to the following provisions:

35 (i) the person's term of office will (subject to section 17 of that Act) be taken to be a period of 5 years from the relevant day;

(ii) the person's appointment will be on any conditions determined by the Governor and specified in an instrument executed by a Minister acting under this provision within 14 days after the relevant day.

40 (6) The salary and allowances of a person to whom subsection (5)(a) applies will not be reduced during the person's term of office as a member of the Tribunal.

- (7) A person to whom subsection (5)(b) applies is not entitled, after the relevant day, to any salary, benefits or allowances on account of the person's position as a member of the Industrial Relations Commission of South Australia before the relevant day.
- 5 (8) However, the salary payable to a person to whom subsection (5)(b) applies as a member of the Tribunal cannot be less than the salary payable to the person as a member of the Industrial Relations Commission of South Australia immediately before the relevant day (unless the person requests or agrees to a change to the number of hours to be worked or to work on a sessional or other basis).
- 10 (9) In addition, a person to whom subsection (5)(b) applies will be taken to have continuity of service in all respects and will not be taken, for the purposes of any Act or law, to have resigned or to have ceased to hold any office for the purposes of any accrued or accruing rights or entitlements to any pension.
- 15 (10) Nothing in a preceding subsection is, in the case of a member of the Industrial Relations Commission of South Australia who, immediately before the relevant day, held an appointment as a member of an industrial authority under a law of the Commonwealth, intended to affect the person's position or status for the purposes of continuing to hold the appointment under that law of the Commonwealth.
- 20 (11) A determination of an industrial authority under the principal Act in force immediately before the relevant day will, on and from the relevant day, be taken to be a determination of the Tribunal.
- 25 (12) A right to bring proceedings before an industrial authority in existence under the principal Act before the relevant day (but not so exercised before that day) will be exercised as if this Part had been in operation before the right arose, so that the relevant proceedings may be commenced before the Tribunal rather than the industrial authority.
- (13) Any proceedings before an industrial authority under the principal Act immediately before the relevant day will, subject to such directions as the President of the Tribunal thinks fit, be transferred to the Tribunal where they may proceed as if they had been commenced before that Tribunal.
- 30 (14) The Tribunal may—
- (a) receive in evidence any transcript of evidence in proceedings before an industrial authority, and draw any conclusions of fact from that evidence that appear proper; and
- 35 (b) adopt any findings or determinations of an industrial authority that may be relevant to proceedings before the Tribunal; and
- (c) adopt or make any determination in relation to proceedings before an industrial authority before the relevant day (including so as to make a determination in relation to proceedings fully heard before the relevant day); and
- 40 (d) take other steps to promote or ensure the smoothest possible transition from 1 jurisdiction to another in connection with the operation of this section.
- (15) Nothing in this section affects a right of appeal to the Supreme Court against a decision, direction or order of the Full Court of the Industrial Relations Court of South Australia made or given before the relevant day.

- (16) A reference in any instrument or enterprise agreement to the Industrial Relations Court of South Australia or the Industrial Relations Commission of South Australia will, unless the context otherwise requires, be taken to be a reference to the Tribunal.

## **Part 5—Amendment of *Construction Industry Long Service Leave Act 1987***

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

- (1) Section 4(1), definition of *award* (a)—delete "the Industrial Relations Commission of South Australia" and substitute:

SAET

- (2) Section 4(1)—after the definition of *return period* insert:

*SAET* means the South Australian Employment Tribunal established under the *South Australian Employment Tribunal Act 2014*;

- (3) Section 4(1), definition of *the Tribunal*—delete the definition

### **69—Substitution of heading to Part 6**

Heading to Part 6—delete the heading and substitute:

## **Part 6—Reviews**

### **70—Repeal of section 33**

Section 33—delete the section

### **71—Substitution of section 34**

Section 34—delete the section and substitute:

#### **34—Review by SAET**

A person who is dissatisfied with a decision of the Board under this Act may, within 30 days after the date of the decision (or such longer period as SAET may allow), apply to SAET under Part 3 Division 1 of the *South Australian Employment Tribunal Act 2014* for a review of the decision.

### **72—Repeal of sections 35 and 36**

Sections 35 and 36—delete the sections

### **73—Amendment of section 37—Effect of pending review by SAET**

- (1) Section 37(1)—delete "an appeal" and substitute:

the commencement of proceedings for a review by SAET

- (2) Section 37(2)—delete "an appeal" and substitute:

a review

## 74—Transitional provisions

(1) In this section—

*principal Act* means the *Construction Industry Long Service Leave Act 1987*;

*relevant day* means the day on which this Part comes into operation;

5 *SAET* means the South Australian Employment Tribunal.

(2) The Appeals Tribunal under the principal Act is dissolved by force of this subsection (and so the commencement of this subsection brings to an end the appointment of a person as a member of the Appeals Tribunal).

10 (3) No right of action arises, and no compensation is payable, in respect of an appointment coming to an end by virtue of the operation of subsection (2).

(4) A decision, direction or order of the Appeals Tribunal under the principal Act in force immediately before the relevant day will, on and from the relevant day, be taken to be a decision, direction or order of SAET.

15 (5) A right of appeal under section 34 of the principal Act in existence before the relevant day (but not exercised before that day) will be exercised as if this Part had been in operation before the right arose, so that the relevant proceedings may be commenced before SAET rather than the Appeals Tribunal.

20 (6) Any proceedings before the Appeals Tribunal under the principal Act immediately before the relevant day will, subject to such directions as the President of SAET thinks fit, be transferred to SAET where they may proceed as if they had been commenced before SAET.

(7) SAET may—

25 (a) receive in evidence any transcript of evidence in proceedings before the Appeals Tribunal, and draw any conclusions of fact from that evidence that appear proper; and

(b) adopt any findings or determinations of the Appeals Tribunal that may be relevant to proceedings before SAET; and

30 (c) adopt or make any decision (including a decision in the nature of a determination), direction or order in relation to proceedings before the Appeals Tribunal before the relevant day (including so as to make a decision or determination, or a direction or order, in relation to proceedings fully heard before the relevant day); and

(d) take other steps to promote or ensure the smoothest possible transition from 1 jurisdiction to another in connection with the operation of this section.

## 35 Part 6—Amendment of *Courts Administration Act 1993*

### 75—Amendment of section 4—Interpretation

Section 4, definition of *participating courts*, (bb)—delete paragraph (bb)

## **Part 7—Amendment of *Criminal Law (Sentencing) Act 1988***

### **76—Amendment of section 19—Limitations on sentencing powers of Magistrates Court**

(1) Section 19(3)(b)—delete paragraph (b) and substitute:

5 (b) a fine that exceeds \$150 000.

(2) Section 19(3a)—delete "limits imposed by subsection (3)(b) apply" and substitute:  
limit imposed by subsection (3)(b) applies

## **Part 8—Amendment of *Education Act 1972***

### **77—Amendment of section 5—Interpretation**

10 (1) Section 5(1), definition of *the Appeal Board*—delete the definition

(2) Section 5(1)—after the definition of *residence* insert:

*SAET* means the South Australian Employment Tribunal established under the *South Australian Employment Tribunal Act 2014*;

### **78—Amendment of section 16—Retrenchment of officers of the teaching service**

15 Section 16(3) and (4)—delete subsections (3) and (4) and substitute:

(3) An officer may, within 14 days after receiving notice of a determination under this section (or such longer period as SAET may allow), apply to SAET under Part 3 Division 1 of the *South Australian Employment Tribunal Act 2014* for a review of the determination.

(4) In addition to section 30 of the *South Australian Employment Tribunal Act 2014*, SAET may, at any stage of proceedings for the review of a determination that has taken effect under this section, revoke the determination and order that the officer be reinstated in the teaching service.

### **79—Amendment of section 17—Incapacity of members of the teaching service**

Section 17(3) and (4)—delete subsections (3) and (4) and substitute:

30 (3) An officer may, within 14 days after receiving notice of a determination under this section or a decision to transfer or retire the officer under this section (or such longer period as SAET may allow), apply to SAET under Part 3 Division 1 of the *South Australian Employment Tribunal Act 2014* for a review of the determination or decision.

- 5 (4) In addition to section 30 of the *South Australian Employment Tribunal Act 2014*, SAET may, at any stage of proceedings for the review of a determination or decision that has taken effect under this section, revoke the determination or decision and order that the officer be reinstated in the teaching service.

### 80—Amendment of section 26—Disciplinary action

Section 26(4) and (5)—delete subsections (4) and (5) and substitute:

- 10 (4) An officer may, within 14 days after receiving notice of a determination under this section or a decision made by the employing authority to dismiss the officer under this section (or such longer period as SAET may allow), apply to SAET under Part 3 Division 1 of the *South Australian Employment Tribunal Act 2014* for a review of the determination or decision.
- 15 (5) In addition to section 30 of the *South Australian Employment Tribunal Act 2014*, SAET may, at any stage of proceedings for the review of a decision that has taken effect under this section, revoke the decision and order that the officer be reinstated in the teaching service.

### 81—Substitution of section 29

20 Section 29—delete the section and substitute:

#### 29—Appointment and selection of supplementary panel members for classification reviews

- 25 (1) For the purposes of section 18A of the *South Australian Employment Tribunal Act 2014*, there will be the following panels of supplementary panel members:
- (a) a panel of officers of the teaching service nominated by the Australian Education Union;
  - (b) a panel of officers of the teaching service nominated by the Director-General.
- 30 (2) In exercising its powers under the *South Australian Employment Tribunal Act 2014* in proceedings related to an application for reclassification by an officer of the teaching service under this Act, SAET will, if the President of SAET so determines, sit with
- 35 1 supplementary panel member from each of the panels referred to in subsection (1).

### 82—Amendment of section 30—Review of Director-General's decision

- (1) Section 30(1)—delete "lodge with the Director-General an application for a review of the classification of the officer or a position occupied by the officer" and substitute:

40 apply to SAET under Part 3 Division 1 of the *South Australian Employment Tribunal Act 2014* for a review of the decision.

(2) Section 30(2) to (7) (inclusive)—delete subsections (2) to (7) and substitute:

(2) A decision of SAET under this section may not be the subject of an application for review or an appeal under Part 5 of the *South Australian Employment Tribunal Act 2014*.

5 **83—Repeal of section 31**

Section 31—delete the section

**84—Substitution of Heading to Part 3 Division 8**

Heading to Part 3 Division 8—delete the heading and substitute:

**Division 8—Promotional level positions—appointments and reviews**

10

**85—Repeal of sections 45 to 52 (inclusive)**

Sections 45 to 52 (inclusive)—delete the sections

**86—Amendment of section 53—Promotional level positions—appointments and reviews**

15

(1) Section 53(3)(b)—delete "Institute of Teachers (one or more of whom must be nominees of the Institute)," and substitute:

Australian Education Union (1 or more of whom must be nominees of the Australian Education Union),

(2) Section 53(5) and (6)—delete subsections (5) and (6) and substitute:

20

(5) An officer who receives notice of a provisional recommendation by the Director-General in accordance with subsection (4), may apply to SAET under Part 3 Division 1 of the *South Australian Employment Tribunal Act 2014* for a review of the provisional recommendation.

25

(6) No application for review may be made against a provisional recommendation of the committee established under this section unless—

- (a) the provisional recommendation made by the committee is that an officer be appointed to the vacant position; and
- (b) the employing authority, acting on the recommendation of the Director-General, declines to make the appointment.

30

(6a) If, on the recommendation of the Director-General, the employing authority declines to make an appointment following a provisional recommendation by the committee established under this section that an officer be appointed to the vacant position, the officer in whose favour the provisional recommendation was made may apply to SAET under Part 3 Division 1 of the *South Australian Employment Tribunal Act 2014* for a review of the recommendation of the Director-General.

35

(3) Section 53(7)—delete subsection (7)

## 87—Substitution of section 54

Section 54—delete the section and substitute:

### 54—Appointment and selection of supplementary panel members for reviews

- 5 (1) For the purposes of section 18A of the *South Australian Employment Tribunal Act 2014*, there will be the following panels of supplementary panel members:
- 10 (a) a panel of employees in the Department appointed by the Governor on the nomination of the Minister;
- (b) a panel of officers of the teaching service appointed by the Governor on the nomination of the Australian Education Union made after elections have been held in accordance with the regulations.
- 15 (2) In exercising its powers under the *South Australian Employment Tribunal Act 2014* in proceedings under this Division related to an application for review by an officer of the teaching service, SAET will, if the President of SAET so determines, sit with—
- (a) 1 supplementary panel member from the panel referred to in subsection (1)(a); and
- 20 (b) 1 supplementary panel member from the panel referred to in subsection (1)(b).

## 88—Amendment of section 107—Regulations

Section 107(2)—after paragraph (f) insert:

- 25 (fa) the conferral of a right on an officer of the teaching service to apply to SAET under Part 3 Division 1 of the *South Australian Employment Tribunal Act 2014* for a review of administrative acts or decisions affecting the officer of a kind or class prescribed by the regulations;

## 89—Transitional provisions

- 30 (1) In this section—
- principal Act* means the *Education Act 1972*;
- relevant day* means the day on which this Part comes into operation;
- review panel* means a classification review panel under Part 3 of the principal Act;
- Tribunal* means the South Australian Employment Tribunal.
- 35 (2) The Appeal Board under the principal Act is dissolved by force of this subsection (and so the commencement of this subsection brings to an end the appointment of a person as a member of the Appeal Board).
- (3) No right of action arises, and no compensation is payable, in respect of an appointment coming to an end by virtue of the operation of subsection (2).

- (4) A decision, direction or order of the Appeal Board under the principal Act in force immediately before the relevant day will, on and from the relevant day, be taken to be a decision, direction or order of the Tribunal.
- 5 (5) A right of appeal to the Appeal Board under the principal Act in existence before the relevant day (but not exercised before that day) will be exercised as if this Part had been in operation before the right arose, so that the relevant proceedings may be commenced before the Tribunal rather than the Appeal Board.
- 10 (6) Any proceedings before the Appeal Board under the principal Act immediately before the relevant day will, subject to such directions as the President of the Tribunal thinks fit, be transferred to the Tribunal where they may proceed as if they had been commenced before that Tribunal.
- (7) A decision of a review panel under the principal Act in force immediately before the relevant day will, on and from the relevant day, be taken to be a decision of the Tribunal.
- 15 (8) A right to have a matter referred to a review panel under the principal Act in existence before the relevant day (but not exercised before that day) will be exercised as if this Part had been in operation before the right arose, so that the relevant proceedings may be commenced before the Tribunal rather than referred to a review panel.
- 20 (9) Any proceedings before a review panel under the principal Act immediately before the relevant day will, subject to such directions as the President of the Tribunal thinks fit, be transferred to the Tribunal where they may proceed as if they had been commenced before that Tribunal.
- (10) The Tribunal may—
- 25 (a) receive in evidence any transcript of evidence in proceedings before the Appeal Board or a review panel, and draw any conclusions of fact from that evidence that appear proper; and
- (b) adopt any findings or determinations of the Appeal Board or a review panel that may be relevant to proceedings before the Tribunal; and
- 30 (c) adopt or make any decision (including a decision in the nature of a determination), direction or order in relation to proceedings before the Appeal Board or a review panel before the relevant day (including so as to make a decision or determination, or a direction or order, in relation to proceedings fully heard before the relevant day); and
- 35 (d) take other steps to promote or ensure the smoothest possible transition from 1 jurisdiction to another in connection with the operation of this section.

## **Part 9—Amendment of *Equal Opportunity Act 1984***

### **90—Amendment of section 5(1)—Interpretation**

- (1) Section 5(1)—definition of *member*—delete the definition
- (2) Section 5(1)—definition of *panel*—delete the definition
- 40 (3) Section 5(1)—definition of *Tribunal*—delete the definition and substitute:
- Tribunal* means the South Australian Employment Tribunal established under the *South Australian Employment Tribunal Act 2014*;

## 91—Substitution of heading to Part 2

Heading to Part 2—delete the heading and substitute:

### **Part 2—Commissioner**

## 92—Repeal of Part 2 Divisions 2 and 3

Part 2 Divisions 2 and 3—delete Divisions 2 and 3

## 93—Substitution of heading to Part 8 Division 2

Heading to Part 8 Division 2—delete the heading and substitute:

### **Division 2—Related matters**

## 94—Repeal of section 98

Section 98—delete the section

## 95—Amendment of section 100—Proceedings under *Fair Work Act 1994*

Section 100(6)—delete subsection (6) and substitute:

- (6) The Commissioner may, with leave of the Tribunal in proceedings before the Tribunal under the *Fair Work Act 1994*, make submissions and present evidence in those proceedings.

## 96—Insertion of Schedule 1

After section 106 insert:

### **Schedule 1—Supplementary panel members for proceedings before Tribunal**

- (1) For the purposes of section 18A of the *South Australian Employment Tribunal Act 2014*, there will be a panel of supplementary panel members who, in the opinion of the Minister, have expertise that would be of value to the Tribunal in dealing with the various classes of discrimination to which this Act applies.
- (2) For the purposes of any proceedings before the Tribunal under this Act, the President of the Tribunal must consider whether the Tribunal will sit with 1 or more members of the panel established under subclause (1).

## 97—Transitional provisions

- (1) In this section—

*principal Act* means the *Equal Opportunity Act 1984*;

*relevant day* means the day on which this Part comes into operation;

*SAET* means the South Australian Employment Tribunal;

*Tribunal* means the Equal Opportunity Tribunal established under the *Equal Opportunity Act 1984*.

- (2) The Tribunal is dissolved by force of this subsection (and so the commencement of this subsection brings to an end the appointment of a person as a member of the Tribunal).
- 5 (3) No right of action arises, and no compensation is payable, in respect of an appointment coming to an end by virtue of the operation of subsection (2).
- (4) A decision, direction or order of the Tribunal under the principal Act in force immediately before the relevant day will, on and from the relevant day, be taken to be a decision, direction or order of SAET.
- 10 (5) A right to take action with respect to any matter in existence before the relevant day, with the effect that the relevant proceedings would have been commenced before the Tribunal under the principal Act, will be exercised as if this Part had been in operation before the right arose, so that the relevant proceedings may be commenced instead before SAET.
- 15 (6) Any proceedings before the Tribunal under the principal Act immediately before the relevant day will, subject to such directions as the President of SAET thinks fit, be transferred to SAET where they may proceed as if they had been commenced before SAET.
- (7) SAET may—
- 20 (a) receive in evidence any transcript of evidence in proceedings before the Tribunal, and draw any conclusions of fact from that evidence that appear proper; and
- (b) adopt any findings or determinations of the Tribunal that may be relevant to proceedings before the Tribunal; and
- 25 (c) adopt or make any decision (including a decision in the nature of a determination), direction or order in relation to proceedings before the Tribunal before the relevant day (including so as to make a decision or determination, or a direction or order, in relation to proceedings fully heard before the relevant day); and
- 30 (d) take other steps to promote or ensure the smoothest possible transition from 1 jurisdiction to another in connection with the operation of this section.

## **Part 10—Amendment of *Fire and Emergency Services Act 2005***

### **98—Amendment of section 3—Interpretation**

- (1) Section 3(1), definition of *award*, (a)—delete "the Industrial Relations Commission of South Australia" and substitute:
- 35 SAET
- (2) Section 3(1), definition of *Industrial Relations Commission*—delete the definition
- (3) Section 3(1)—after the definition of *SACFS region* insert:
- SAET* means the South Australian Employment Tribunal established under the *South Australian Employment Tribunal Act 2014*;

**99—Amendment of section 29—Other officers and firefighters**

- (1) Section 29(2)(c)—delete "appeal against the nomination to the Industrial Relations Commission" and substitute:

5                   apply to SAET under Part 3 Division 1 of the *South Australian Employment Tribunal Act 2014* for a review of the nomination

- (2) Section 29(2)(d) and (e)—delete paragraphs (d) and (e) and substitute:

10           (d) the Chief Officer may confirm the nomination if no application is made within the time allowed under paragraph (c) but if an application is so made within such time then the Chief Officer must comply with any direction given by SAET in the matter;

(e) in relation to a review instituted under paragraph (c)—

15           (i) SAET will, if the President of SAET so determines, sit with supplementary panel members selected in accordance with Schedule 1; and

20           (ii) an applicant may appear personally or be represented by a member of an industrial association to which the applicant belongs or by a legal practitioner; and

25           (iii) the Chief Officer may appear personally or be represented by another officer of SAMFS or, if an applicant is being represented by a legal practitioner, the Chief Officer may also be represented by a legal practitioner; and

30           (iv) SAET may, on hearing the review, confirm the appointment of the person who has been nominated or direct the Chief Officer to revoke the nomination and direct that an applicant be appointed to the position; and

35           (v) in making its decision on a review, SAET must have regard to the criteria (if any) relating to the appointment and promotion of officers or firefighters that are contained in an award or industrial agreement that applies in relation to the relevant position but, if no such criteria exist, the SAET must have regard to the qualifications, aptitude and conduct of the person nominated for the position and of the applicant or applicants; and

          (vi) SAET may, in connection with the proceedings, award costs against SAMFS but may not award costs against an applicant.

**100—Amendment of section 48—Suspension pending hearing of complaint**

Section 48(2)—delete "the Industrial Relations Commission" and substitute:

SAET

## 101—Substitution of sections 49 and 50

Sections 49 and 50—delete the sections and substitute:

### 49—Review by SAET

- 5 (1) An officer or firefighter who is aggrieved by a decision of the  
Disciplinary Committee or the Chief Officer pursuant to  
Subdivision 2 may apply to SAET under Part 3 Division 1 of the  
*South Australian Employment Tribunal Act 2014* for a review of the  
decision.
- 10 (2) In connection with the operation of subsection (1)—
- (a) an application for review by SAET must be made within  
14 days of the making of the decision referred to in  
subsection (1); and
- 15 (b) the Chief Officer is entitled to appear and be heard on a  
review; and
- (c) the applicant may appear personally or be represented by a  
member of an industrial association to which the applicant  
belongs or by a legal practitioner; and
- 20 (d) the Chief Officer may appear personally or be represented  
by another officer of SAMFS or, if the applicant is  
represented by a legal practitioner, the Chief Officer may  
also be represented by a legal practitioner; and
- (e) SAET may award costs against SAMFS but may not award  
costs against the applicant.

## 102—Amendment of section 51—Participation of supplementary panel members in reviews

25 Section 51—delete "the Industrial Relations Commission will sit with assessors" and  
substitute:

SAET will, if the President of SAET so determines, sit with supplementary  
panel members

## 103—Substitution of Schedule 1

Schedule 1—delete the Schedule and substitute:

### Schedule 1—Appointment and selection of supplementary panel members for reviews under Part 3

- 35 (1) For the purposes of proceedings before SAET, there will be the  
following panels of supplementary panel members:
- (a) a panel of persons nominated by the Chief Officer of  
SAMFS;
- (b) a panel of officers nominated by UFU;

- (c) a panel of firefighters nominated by UFU.
- (2) In exercising its powers under the *South Australian Employment Tribunal Act 2014* for the purposes of this Act, SAET will, if the President of SAET so determines, be constituted by 3 members selected by the President of whom—
- (a) 1 will be selected from the panel of nominees of the Chief Officer of SAMFS; and
- (b) —
- (i) if the applicant is an officer—1 will be selected from the panel of officers nominated by UFU; or
- (ii) if the applicant is a firefighter—1 will be selected from the panel of firefighters nominated by UFU.

#### 104—Transitional provisions

- (1) In this section—

*principal Act* means the *Fire and Emergency Services Act 2005*;

*relevant day* means the day on which this Part comes into operation;

*Tribunal* means the South Australian Employment Tribunal.

- (2) A decision, direction, determination or order of the Industrial Relations Commission of South Australia under the principal Act in force immediately before the relevant day will, on and from the relevant day, be taken to be a decision, direction, determination or order of the Tribunal.
- (3) A right of appeal with respect to any matter in existence before the relevant day, with the effect that the relevant proceedings would have been commenced before the Industrial Relations Commission of South Australia under the principal Act, will be exercised as if this Part had been in operation before the right arose, so that the relevant proceedings may be commenced instead before the Tribunal.
- (4) Any proceedings before the Industrial Relations Commission of South Australia under the principal Act immediately before the relevant day will, subject to such directions as the President of the Tribunal thinks fit, be transferred to the Tribunal where they may proceed as if they had been commenced before that Tribunal.
- (5) The Tribunal may—
- (a) receive in evidence any transcript of evidence in proceedings before the Industrial Relations Commission, and draw any conclusions of fact from that evidence that appear proper; and
- (b) adopt any findings or determinations of the Industrial Relations Commission that may be relevant to proceedings before the Tribunal; and
- (c) adopt or make any decision (including a decision in the nature of a determination), direction or order in relation to proceedings before the Industrial Relations Commission before the relevant day (including so as to make a decision or determination, or a direction or order, in relation to proceedings fully heard before the relevant day); and

- (d) take other steps to promote or ensure the smoothest possible transition from  
1 jurisdiction to another in connection with the operation of this section.

## **Part 11—Amendment of *Industrial Referral Agreements Act 1986***

### **105—Amendment of section 3—Referral of matter to SAET by agreement**

- (1) Section 3—delete "the Commission" wherever occurring and substitute in each case:  
SAET

- (2) Section 3(6)—delete "section 26" and substitute:  
section 7

- (3) Section 3(7)—after "the *Fair Work Act 1994*" insert:  
and the *South Australian Employment Tribunal Act 2014*

- (4) Section 3(8)—delete subsection (8)

- (5) Section 3(9)—delete "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*" and substitute:

any regulations made for the purposes of subsection (7)

- (6) Section 3(10)—delete "the Commission or the Court" and substitute:  
SAET

- (7) Section 3(11)—delete subsection (11)

- (8) Section 3(12) and (13)—delete "The Commission" wherever occurring and substitute  
in each case:

SAET

- (9) Section 13(14)—delete subsection (14) and substitute:

- (14) The following provisions apply in connection with the application of  
Part 5 of the *South Australian Employment Tribunal Act 2014* in  
relation to a determination under this section:

- (a) if the referral agreement provides that a determination will  
be final and conclusive, the determination will not be subject  
to review or appeal under Part 5 of the *South Australian  
Employment Tribunal Act 2014*;

- (b) if an application for review or appeal under Part 5 of the  
*South Australian Employment Tribunal Act 2014* is made,  
the determination will be taken to be part of the referral to  
SAET under the referral agreement.

- (10) Section 3(15)—delete "appeal" and substitute:  
application

- (11) Section 3(16)—after "the *Fair Work Act 1994*" insert:  
and the *South Australian Employment Tribunal Act 2014*

## 106—Transitional provisions

(1) In this section—

*principal Act* means the *Industrial Referral Agreements Act 1986*;

*relevant day* means the day on which this Part comes into operation;

*Tribunal* means the South Australian Employment Tribunal.

(2) A decision, direction, determination or order of the Industrial Relations Commission of South Australia under the principal Act in force immediately before the relevant day will, on and from the relevant day, be taken to be a decision, direction, determination or order of the Tribunal.

(3) A right to take action with respect to any matter in existence before the relevant day, with the effect that the relevant proceedings would have been commenced before the Industrial Relations Commission of South Australia under the principal Act, will be exercised as if this Part had been in operation before the right arose, so that the relevant proceedings may be commenced instead before the Tribunal.

(4) Any proceedings before the Industrial Relations Commission of South Australia under the principal Act immediately before the relevant day will, subject to such directions as the President of the Tribunal thinks fit, be transferred to the Tribunal where they may proceed as if they had been commenced before that Tribunal.

(5) The Tribunal may—

(a) receive in evidence any transcript of evidence in proceedings before the Industrial Relations Commission, and draw any conclusions of fact from that evidence that appear proper; and

(b) adopt any findings or determinations of the Industrial Relations Commission that may be relevant to proceedings before the Tribunal; and

(c) adopt or make any decision (including a decision in the nature of a determination), direction or order in relation to proceedings before the Industrial Relations Commission before the relevant day (including so as to make a decision or determination, or a direction or order, in relation to proceedings fully heard before the relevant day); and

(d) take other steps to promote or ensure the smoothest possible transition from 1 jurisdiction to another in connection with the operation of this section.

## Part 12—Amendment of *Judges' Pensions Act 1971*

### 107—Amendment of section 4—Interpretation

Section 4(1), definition of *Judge*, (c) and (ca)—delete paragraphs (c) and (ca)

## Part 13—Amendment of *Long Service Leave Act 1987*

### 108—Amendment of section 3—Interpretation

(1) Section 3(1), definition of *award*, (a)—delete "the Industrial Relations Commission" and substitute:

SAET

(2) Section 3(1), definitions of *the Industrial Relations Commission* and *the Industrial Relations Court*—delete the definitions

(3) Section 3(1)—after the definition of *the relevant date* insert:

5                    *SAET* means the South Australian Employment Tribunal established under  
the *South Australian Employment Tribunal Act 2014*;

#### **109—Amendment of section 6—Continuity of service**

(1) Section 6(1)(a)—delete "the Court or the Industrial Relations Commission" and substitute:

SAET

10                    (2) Section 6(1)(a)—delete "a Court or the Industrial Relations Commission" and substitute:

a court or SAET

#### **110—Amendment of section 9—Exemptions**

(1) Section 9(1)—delete "the Industrial Relations Commission" and substitute:

15                    SAET

(2) Section 9(6)—delete "The Industrial Relations Commission" and substitute:

SAET

#### **111—Amendment of section 12—Inspector may direct employer to grant leave or pay amount due**

20                    (1) Section 12(2)—delete "the Industrial Relations Court for a review of the notice" and substitute:

SAET under Part 3 Division 1 of the *South Australian Employment Tribunal Act 2014* for a review of the notice

(2) Section 12(5)—delete subsection (5)

25                    (3) Section 12(6)(b)—delete "the Industrial Relations Court within a period specified by the Court" and substitute:

SAET within a period specified by SAET

#### **112—Amendment of section 13—Failure to grant leave**

(1) Section 13(1)—delete "the Industrial Relations Court" and substitute:

30                    SAET

(2) Section 13(3)—delete "the Court" and substitute:

SAET

(3) Section 13(5)—delete subsection (5)

#### **113—Transitional provisions**

35                    (1) In this section—

*principal Act* means the *Long Service Leave Act 1987*;

*relevant day* means the day on which this Part comes into operation;

*Tribunal* means the South Australian Employment Tribunal.

- 5 (2) A decision, direction, determination or order of the Industrial Relations Commission of South Australia or the Industrial Relations Court of South Australia (as the case may be) under the principal Act in force immediately before the relevant day will, on and from the relevant day, be taken to be a decision, direction, determination or order of the Tribunal.
- 10 (3) A right to make any application or referral, or to seek a review, with respect to any matter in existence before the relevant day, with the effect that the relevant proceedings would have been commenced before the Industrial Relations Commission of South Australia or before the Industrial Relations Court of South Australia under the principal Act, will be exercised as if this Part had been in operation before the right arose, so that the relevant proceedings may be commenced instead before the Tribunal.
- 15 (4) Any proceedings before the Industrial Relations Commission of South Australia under section 9 of the principal Act or otherwise before the Industrial Relations Court of South Australia under the principal Act immediately before the relevant day will, subject to such directions as the President of the Tribunal thinks fit, be transferred to the Tribunal where they may proceed as if they had been commenced before that
- 20 Tribunal.
- (5) The Tribunal may—
- 25 (a) receive in evidence any transcript of evidence in proceedings before the Industrial Relations Commission or the Industrial Relations Court (as the case may be), and draw any conclusions of fact from that evidence that appear proper; and
- 30 (b) adopt any findings or determinations of the Industrial Relations Commission or the Industrial Relations Court (as the case may be) that may be relevant to proceedings before the Tribunal; and
- (c) adopt or make any decision (including a decision in the nature of a determination), direction or order in relation to proceedings before the Industrial Relations Commission or the Industrial Relations Court (as the case may be) before the relevant day (including so as to make a decision or determination, or a direction or order, in relation to proceedings fully heard before the relevant day); and
- 35 (d) take other steps to promote or ensure the smoothest possible transition from 1 jurisdiction to another in connection with the operation of this section.

## **Part 14—Amendment of *Magistrates Court Act 1991***

### **114—Amendment of section 42—Appeals**

Section 42(2)(a)—delete paragraph (a)

### **115—Amendment of section 43—Reservation of question of law**

Section 43(2)(a)—delete paragraph (a)

## **Part 15—Amendment of *Oaths Act 1936***

### **116—Amendment of section 28—Commissioners for taking affidavits**

Section 28(1)(ca)—delete "Industrial Relations Court" and substitute:

South Australian Employment Tribunal

## **Part 16—Amendment of *Police Act 1998***

### **117—Amendment of section 3—Interpretation**

Section 3—after the definition of *Police Review Tribunal* insert:

*SAET* means the South Australian Employment Tribunal established under the *South Australian Employment Tribunal Act 2014*;

### **118—Amendment of section 48—Right of review**

(1) Section 48(1)—delete "the police review tribunal" and substitute:

SAET under Part 3 Division 1 of the *South Australian Employment Tribunal Act 2014*

(2) Section 48(2)—delete subsection (2) and substitute:

(2) An application for review of the decision must be made to SAET within the period prescribed by regulation.

(3) Section 48(3)—delete "The Tribunal" and substitute:

SAET

### **119—Repeal of sections 49, 50 and 51**

Sections 49, 50 and 51—delete the sections

### **120—Amendment of section 52—Review of certain transfers**

(1) Section 52(1)—delete "the Police Review Tribunal" and substitute:

SAET under Part 3 Division 1 of the *South Australian Employment Tribunal Act 2014*

(2) Section 52(2)—delete subsection (2) and substitute:

(2) An application for review of the decision must be made to SAET within the period prescribed by regulation.

(3) Section 52(3)—delete "The Tribunal" and substitute:

SAET

(4) Section 52(4)—delete "the Tribunal" wherever occurring and substitute in each case:

SAET

### **121—Amendment of Schedule 1—Police Review Tribunal**

Schedule 1—delete clause 1A

## 122—Transitional provisions

(1) In this section—

*principal Act* means the *Police Act 1998*;

*relevant day* means the day on which this Part comes into operation;

*SAET* means the South Australian Employment Tribunal.

(2) A decision, direction or order of the Police Review Tribunal under Part 8 Division 1 or 2 of the principal Act in force immediately before the relevant day will, on and from the relevant day, be taken to be a decision, direction or order of SAET.

(3) A right to apply to the Police Review Tribunal under Part 8 Division 1 or 2 of the principal Act in existence before the relevant day (but not exercised before that day) will be exercised as if this Part had been in operation before the right arose, so that the relevant proceedings may be commenced before SAET rather than the Police Review Tribunal.

(4) Any proceedings before the Police Review Tribunal under Part 8 Division 1 or 2 of the principal Act immediately before the relevant day will, subject to such directions as the President of SAET thinks fit, be transferred to SAET where they may proceed as if they had been commenced before SAET.

(5) SAET may—

(a) receive in evidence any transcript of evidence in proceedings before the Police Review Tribunal, and draw any conclusions of fact from that evidence that appear proper; and

(b) adopt any findings or determinations of the Police Review Tribunal that may be relevant to proceedings before SAET; and

(c) adopt or make any decision (including a decision in the nature of a determination), direction or order in relation to proceedings before the Police Review Tribunal before the relevant day (including so as to make a decision or determination, or a direction or order, in relation to proceedings fully heard before the relevant day); and

(d) take other steps to promote or ensure the smoothest possible transition from 1 jurisdiction to another in connection with the operation of this section.

## Part 17—Amendment of *Public Sector Act 2009*

### 123—Amendment of section 3—Interpretation

(1) Section 3(1)—after the definition of *Commissioner* insert:

*decision*, of SAET, has the same meaning as in the *South Australian Employment Tribunal Act 2014*;

(2) Section 3(1), definition of *Industrial Relations Commission*—delete the definition

(3) Section 3(1), definition of *Public Sector Grievance Review Commission*—delete the definition

- (4) Section 3(1)—after the definition of *SAES charter* insert:

*SAET* means the South Australian Employment Tribunal established under the *South Australian Employment Tribunal Act 2014*;

**124—Amendment of section 25—Public Service employees**

- 5 Section 25(2)(j)—delete paragraph (j)

**125—Amendment of section 49—Remuneration**

Section 49(4)—delete "Public Sector Grievance Review Commission" and substitute:

SAET

**126—Amendment of section 58—Application of unfair dismissal provisions of Fair Work Act**

10

Section 58—delete "the Industrial Relations Commission" wherever occurring and substitute in each case:

SAET

**127—Amendment of section 62—External review**

15

- (1) Section 62—delete "appropriate review body" wherever occurring and substitute in each case:

SAET

- (2) Section 62—after subsection (4) insert:

20

(4a) Section 30(1) and (2) of the *South Australian Employment Tribunal Act 2014* does not apply to or in relation to a decision of SAET acting as the review body under this section.

(4b) A decision of SAET under this section may not be the subject of an application for review or an appeal under Part 5 of the *South Australian Employment Tribunal Act 2014*.

25

- (3) Section 62(8), definition of *appropriate review body*—delete the definition

**128—Amendment of section 64—Application of *Fair Work Act 1994* and *South Australian Employment Tribunal Act 2014***

30

- (1) Section 64(1)—delete "the *Fair Work Act 1994* to proceedings of the Industrial Relations Commission" and substitute:

the *Fair Work Act 1994* and the *South Australian Employment Tribunal Act 2014* to proceedings before SAET

- (2) Section 64(2)—delete subsection (2)

## 129—Substitution of Schedule 2

Schedule 2—delete the Schedule and substitute:

### **Schedule 2—Special provisions relating to Tribunal**

#### **1—Supplementary panel members**

- 5 (1) For the purposes of section 18A of the *South Australian Employment Tribunal Act 2014* there will be the following panels of supplementary panel members:
- (a) a panel of public sector employees nominated by the Commissioner for Public Sector Employment;
- 10 (b) a panel of public sector employees nominated by public sector representative organisations.
- (2) The Minister may, from time to time, invite the public sector representative organisations to nominate employees to constitute a panel.
- 15 (3) If a public sector representative organisation fails to make a nomination in response to an invitation within the time allowed in the invitation, the Minister may choose public sector employees instead of nominees of the organisation and any employees so chosen are to be taken to have been nominated to the relevant panel.

#### **2—Constitution of Tribunal and other matters**

- 20 (1) In exercising its powers for the purposes of this Act, SAET will, if the President of SAET so determines, be constituted by 3 members of whom—
- 25 (a) 1 will be selected from the panel of nominees of the Commissioner for Public Sector Employment by the President of SAET for the purpose of the proceedings; and
- (b) 1 will be selected from the panel of nominees of public sector representative organisations for the purpose of the proceedings—
- 30 (i) by the applicant for review; or
- (ii) if there are 2 or more applicants and they do not agree on the selection of a nominee—by the President of SAET.
- (2) A member of SAET who is a public sector employee is not subject to direction as an employee in respect of the performance of duties as a member of SAET.
- 35 (3) SAET must endeavour to complete any review within 3 months and must, in any event, proceed as quickly as a proper consideration of the matter allows.

### 130—Transitional provisions

(1) In this section—

*principal Act* means the *Public Sector Act 2009*;

*PSGRC* means the Public Sector Grievance Review Commission;

5 *relevant day* means the day on which this Part comes into operation;

*Tribunal* means the South Australian Employment Tribunal.

- (2) A right to apply to PSGRC for a review of a decision under the principal Act in existence before the relevant day (and not exercised before that day) will be exercised as if this Part had been in operation before that right arose, so that the relevant proceedings may be commenced instead before the Tribunal.
- 10
- (3) Nothing in this section affects any proceedings before PSGRC commenced before the relevant day.
- (4) The Governor may, when the Governor thinks it is appropriate to do so, by proclamation, dissolve PSGRC.
- 15
- (5) When a proclamation is made under subsection (4) any member of PSGRC, or member of a panel constituted for the purposes of PSGRC, holding office at the time of the making of the proclamation will cease to hold office and any contract of employment, agreement or arrangement relating to the office held by that member is terminated by force of this subsection at the same time (and no right of action will arise against a Minister or the State on account of that termination).
- 20
- (6) A decision, direction or order of the Industrial Relations Commission of South Australia under the principal Act in force immediately before the relevant day will, on and from the relevant day, be taken to be a decision, direction or order of the Tribunal.
- (7) A right to make any application or referral, or to seek a review, with respect to any matter in existence before the relevant day, with the effect that the relevant proceedings would have been commenced before the Industrial Relations Commission of South Australia under the principal Act will be exercised as if this Part had been in operation before the right arose, so that the relevant proceedings may be commenced instead before the Tribunal.
- 25
- (8) Any proceedings before the Industrial Relations Commission of South Australia under the principal Act immediately before the relevant day will, subject to such directions as the President of the Tribunal thinks fit, be transferred to the Tribunal where they may proceed as if they had been commenced before that Tribunal.
- 30
- (9) The Tribunal may—
- 35
- (a) receive in evidence any transcript of evidence in proceedings before the Industrial Relations Commission, and draw any conclusions of fact from that evidence that appear proper; and
  - (b) adopt any findings or determinations of the Industrial Relations Commission that may be relevant to proceedings before the Tribunal; and

- 5
- (c) adopt or make any decision (including a decision in the nature of a determination), direction or order in relation to proceedings before the Industrial Relations Commission before the relevant day (including so as to make a decision or determination, or a direction or order, in relation to proceedings fully heard before the relevant day); and
  - (d) take other steps to promote or ensure the smoothest possible transition from 1 jurisdiction to another in connection with the operation of this section.

## Part 18—Amendment of *Summary Procedure Act 1921*

### 131—Amendment of section 4—Interpretation

- 10
- (1) Section 4(1), definition of *industrial magistrate*—delete the definition
  - (2) Section 4(1), definition of *industrial offence*—delete the definition

### 132—Repeal of section 8

Section 8—delete the section

## Part 19—Amendment of *Technical and Further Education Act 1975*

### 133—Amendment of section 4—Interpretation

- 15
- (1) Section 4(1), definition of *the Appeal Board*—delete the definition
  - (2) Section 4(1)—after the definition of *officer* insert:

20 *SAET* means the South Australian Employment Tribunal established under the *South Australian Employment Tribunal Act 2014*;

### 134—Substitution of section 17A

Section 17A—delete the section and substitute:

#### 18—Appointment and selection of supplementary panel members for reviews

- 25
- (1) For the purposes of section 18A of the *South Australian Employment Tribunal Act 2014*, there will be the following panels of supplementary panel members:
    - 30 (a) a panel of employees in the Department nominated by the Minister;
    - (b) a panel of officers appointed under section 15 nominated by the Australian Education Union made after elections have been held in accordance with the regulations.
  - 35 (2) In exercising its powers under the *South Australian Employment Tribunal Act 2014* in proceedings related to an application for review by an officer appointed under section 15, SAET will, if the President of SAET so determines, sit with members from each of the panels referred to in subsection (1).

### 18A—Review by SAET

- 5 (1) An officer may, within 14 days after receiving notice of a determination or decision under this Division to terminate the officer's appointment or retrench, transfer or retire the officer, apply to SAET under Part 3 Division 1 of the *South Australian Employment Tribunal Act 2014* for a review of the determination or decision.
- 10 (2) In addition to section 30 of the *South Australian Employment Tribunal Act 2014*, SAET may, at any stage of proceedings for the review of a determination or a decision that has taken effect under this section, revoke the determination or the decision and order that the officer be reinstated as an officer appointed under section 15.

### 135—Amendment of section 26—Disciplinary action

- 15 (1) Section 26(4)—delete "appeal to the Appeal Board against the determination or decision" and substitute:  
apply to SAET under Part 3 Division 1 of the *South Australian Employment Tribunal Act 2014* for a review of the determination or decision
- (2) Section 26(5)—delete subsection (5) and substitute:  
20 (5) In addition to section 30 of the *South Australian Employment Tribunal Act 2014*, SAET may, at any stage of proceedings for the review of a determination or a decision that has taken effect under this section, revoke the determination or the decision and order that the officer be re-instated as an officer appointed under section 15.

### 136—Amendment of section 43—Regulations

- 25 (1) Section 43(2)(1)—delete "a right of appeal to the Appeal Board against" and substitute:  
a right to apply to SAET for review of
- (2) Section 43(2)(1)—delete "appeal" and substitute:  
review

### 137—Transitional provisions

- 30 (1) In this section—  
*principal Act* means the *Technical and Further Education Act 1975*;  
*relevant day* means the day on which this Part comes into operation;  
*Tribunal* means the South Australian Employment Tribunal.
- 35 (2) The Appeal Board under the principal Act is dissolved by force of this subsection (and so the commencement of this subsection brings to an end the appointment of a person as a member of the Tribunal).
- (3) No right of action arises, and no compensation is payable, in respect of an appointment coming to an end by virtue of the operation of subsection (2).

- (4) A decision, direction or order of the Appeal Board under the principal Act in force immediately before the relevant day will, on and from the relevant day, be taken to be a decision, direction or order of the Tribunal.
- (5) A right of appeal under sections 17A or 26 of the principal Act in existence before the relevant day (but not exercised before that day) will be exercised as if this Part had been in operation before the right arose, so that the relevant proceedings may be commenced before the Tribunal rather than the Appeal Board.
- (6) Any proceedings before the Appeal Board under the principal Act immediately before the relevant day will, subject to such directions as the President of the Tribunal thinks fit, be transferred to the Tribunal where they may proceed as if they had been commenced before that Tribunal.
- (7) The Tribunal may—
- (a) receive in evidence any transcript of evidence in proceedings before the Appeal Board, and draw any conclusions of fact from that evidence that appear proper; and
  - (b) adopt any findings or determinations of the Appeal Board that may be relevant to proceedings before the Tribunal; and
  - (c) adopt or make any decision (including a decision in the nature of a determination), direction or order in relation to proceedings before the Appeal Board before the relevant day (including so as to make a decision or determination, or a direction or order, in relation to proceedings fully heard before the relevant day); and
  - (d) take other steps to promote or ensure the smoothest possible transition from 1 jurisdiction to another in connection with the operation of this section.

## Part 20—Amendment of *Training and Skills Development Act 2008*

### 138—Amendment of section 4—Interpretation

- (1) Section 4(1), definition of *Industrial Relations Commission*—delete the definition
- (2) Section 4(1)—after the definition of *repealed Act* insert:

*SAET* means the South Australian Employment Tribunal established under the *South Australian Employment Tribunal Act 2014*;

### 139—Amendment of section 49—Term of training contracts

Section 49—delete "the Industrial Relations Commission" wherever occurring and substitute in each case:

SAET

### 140—Amendment of section 63—Compliance notices

- (1) Section 63(3)—delete "the Industrial Relations Commission for a review of the notice" and substitute:

SAET under Part 3 Division 1 of the *South Australian Employment Tribunal Act 2014* for a review of the notice

- (2) Section 63(3)—delete "the Industrial Relations Commission" wherever occurring and substitute in each case:

SAET

**141—Amendment of section 64—Employer may suspend apprentice/trainee for serious misconduct**

- (1) Section 64—delete "the Industrial Relations Commissioner" wherever occurring and substitute in each case:

SAET

- (2) Section 64—after subsection (2) insert:

- (3) A referral to SAET under this section will be dealt with under Part 3 Division 1 of the *South Australian Employment Tribunal Act 2014*.

**142—Amendment of section 65—Other matters to be dealt with by SAET**

- (1) Section 65(1)—delete "the Industrial Relations Commission" and substitute:

SAET

- (2) Section 65(2)—delete "The Industrial Relations Commission" and substitute:

SAET

- (3) Section 65(2) to (8) (inclusive)—delete "the Industrial Relations Commission" wherever occurring and substitute in each case:

SAET

- (4) Section 65(9)—delete "The Industrial Relations Commission" and substitute:

SAET

**143—Substitution of section 66**

Section 66—delete the section and substitute:

**66—Holding of compulsory conciliation conferences**

For the purposes of section 43 of the *South Australian Employment Tribunal Act 2014*, in relation to proceedings before SAET under this Division (other than applications for review of a compliance notice issued under section 63), parties are required to attend a compulsory conciliation conference.

**144—Amendment of section 67—Representation in proceedings before SAET**

Section 67(1)—delete "the Industrial Relations Commission" wherever occurring and substitute in each case:

SAET

**145—Transitional provisions**

- (1) In this section—

*principal Act* means the *Fair Work Act 1994*;

*relevant day* means the day on which this Part comes into operation;

***Tribunal*** means the South Australian Employment Tribunal.

- (2) A decision, direction or order of the Industrial Relations Commission of South Australia under the principal Act in force immediately before the relevant day will, on and from the relevant day, be taken to be a decision, direction or order of the Tribunal.
- 5 (3) A right to make any application, or to seek a review, or lodge an appeal under the principal Act with respect to any matter in existence before the relevant day, with the effect that the relevant proceedings would have been commenced before the Industrial Commission of South Australia, will be exercised as if this Part had been in operation before the right arose, so that the relevant proceedings may be commenced instead  
10 before the Tribunal.
- (4) Any proceedings before the Industrial Commission of South Australia under the principal Act immediately before the relevant day will, subject to such directions as the President of the Tribunal thinks fit, be transferred to the Tribunal where they may proceed as if they had been commenced before the Tribunal.
- 15 (5) The Tribunal may—
- (a) receive in evidence any transcript of evidence in proceedings before the Industrial Commission, and draw any conclusions of fact from that evidence that appear proper; and
- 20 (b) adopt any findings or determinations of the Industrial Commission that may be relevant to proceedings before the Tribunal; and
- (c) adopt or make any decision (including a decision in the nature of a permission), direction or order in relation to proceedings before the Industrial Commission (as the case may be) before the relevant day (including so as to make a decision or give a permission, direction or order, in relation to  
25 proceedings fully heard before the relevant day); and
- (d) take other steps to promote or ensure the smoothest possible transition from 1 jurisdiction to another in connection with the operation of this section.

## **Part 21—Amendment of *Work Health and Safety Act 2012***

### **146—Amendment of section 4—Definitions**

- 30 (1) Section 4, definition of ***authorising authority***—delete "the Industrial Relations Commission of South Australia" and substitute:
- SAET
- (2) Section 4, definition of ***industrial magistrate***—delete the definition
- (3) Section 4, definition of ***Industrial Registrar***—delete the definition
- 35 (4) Section 4, definition of ***IRC***—delete the definition
- (5) Section 4—after the definition of ***RTWSA*** insert:

***SAET*** means the South Australian Employment Tribunal established under the *South Australian Employment Tribunal Act 2014*;

**147—Amendment of section 65—Disqualification of health and safety representatives**

- (1) Section 65(1)—delete "the Senior Judge of the IRC for a review committee" and substitute:

5 SAET

- (2) Section 65(3)—delete subsection (3) and substitute:

- (3) If SAET is satisfied that a ground in subsection (1) is made out, SAET may disqualify the health and safety representative for a specified period or indefinitely.

10 **148—Amendment of section 112—Civil proceedings in relation to engaging in or inducing discriminatory or coercive conduct**

- (1) Section 112(1)—delete "the IRC" and substitute:

SAET

- (2) Section 112(2)—delete "The IRC" and substitute:

15 SAET

- (3) Section 112(3) and (5)—delete "the IRC" wherever occurring and substitute in each case:

SAET

**149—Amendment of section 114—General provisions relating to orders**

20 Section 114—delete "the IRC" wherever occurring and substitute in each case:

SAET

**150—Amendment of section 215—Injunctions for noncompliance with notices**

Section 215(1)—delete "the IRC" and substitute:

SAET

25 **151—Amendment of section 220—Contravention of WHS undertaking**

Section 220(5)—delete subsection (5)

**152—Amendment of section 229—Application for external review**

- (1) Section 229(1)—delete "the Senior Judge of the IRC for review (an *external review*) of" and substitute:

30 SAET under Part 3 Division 1 of the *South Australian Employment Tribunal Act 2014* for a review of

- (2) Section 229(3) to (6) (inclusive)—delete the subsections

### 153—Amendment of section 230—Prosecutions

(1) Section 230—after subsection (3) insert:

(3a) The South Australian Employment Court is conferred with jurisdiction to try a charge for a summary offence or a minor indictable offence (if such an offence is to be dealt with as a summary offence) under this Act.

(2) Section 230(4)—delete "the court" and substitute:

the South Australian Employment Court

(3) Section 230(5)—delete subsection (5) and substitute:

(5) An offence constituted by a summary offence under subsection (4) will be taken to be a summary offence that lies within the jurisdiction of the South Australian Employment Court.

(4) Section 230(7) and (8)—delete subsections (7) and (8) and substitute:

(7) A preliminary examination for an indictable offence under this Act must be conducted by a magistrate who is a member of the South Australian Employment Court.

(8) A charge for a minor indictable offence under this Act that is to be dealt with as a charge for a summary offence under the *Summary Procedure Act 1921* will be heard by a magistrate who is a member of the South Australian Employment Court (and the Court is vested with jurisdiction to deal with the matter).

### 154—Amendment of section 255—Proceedings for contravention of WHS civil penalty provision

Section 255—delete "the IRC" and substitute:

SAET

### 155—Amendment of section 258—Civil proceeding rules and procedure to apply

Section 258—delete "The IRC" and substitute:

Despite section 32 of the *South Australian Employment Tribunal Act 2014*, SAET

### 156—Amendment of section 259—Proceeding for a contravention of a WHS civil penalty provision

Section 259(1)—delete "the IRC" wherever occurring and substitute in each case:

SAET

### 157—Amendment of section 262—Recovery of a monetary penalty

Section 262—delete "If the IRC" and substitute:

In connection with proceedings before SAET for the purposes of this Division, if SAET

**158—Amendment of section 263—Civil double jeopardy**

Section 263—delete "The IRC" and substitute:

SAET

**159—Amendment of Schedule 3, clause 14**

5 Schedule 3, clause 14—delete "the IRC" and substitute:

SAET

**160—Substitution of Schedule 4**

Schedule 4—delete the Schedule and substitute:

**Schedule 4—Supplementary panel members**

10 **1—Supplementary panel members**

(1) For the purposes of proceedings before SAET under section 65 or Part 12, there will be the following panels of supplementary panel members:

15 (a) a panel nominated by the Minister after taking into account the recommendations of employer associations;

(b) a panel nominated by the Minister after taking into account the recommendations of the United Trades and Labor Council.

20 (2) In exercising its powers under a provision referred to in subclause (1), SAET will, if the President of SAET so determines, sit with—

(a) 1 supplementary panel member from a panel referred to in subclause (1)(a); and

25 (b) 1 supplementary panel member from a panel referred to in subclause (1)(b).

**161—Transitional provisions**

(1) In this section—

*principal Act* means the *Work Health and Safety Act 2012*;

*relevant day* means the day on which this Part comes into operation;

30 *Tribunal* means the South Australian Employment Tribunal.

(2) A decision, direction or order of the Industrial Relations Court of South Australia or a review committee under the principal Act in force immediately before the relevant day will, on and from the relevant day, be taken to be a decision, direction or order of the Tribunal.

5 (3) A right to make any application, or to seek a review, or lodge an appeal under the principal Act with respect to any matter in existence before the relevant day, with the effect that the relevant proceedings would have been commenced before the Industrial Relations Court of South Australia or a review committee, will be exercised as if this Part had been in operation before the right arose, so that the relevant proceedings may be commenced instead before the Tribunal.

10 (4) Any proceedings before the Industrial Relations Court of South Australia or a review committee under the principal Act immediately before the relevant day will, subject to such directions as the President of the Tribunal thinks fit, be transferred to the Tribunal where they may proceed as if they had been commenced before the Tribunal.

(5) The Tribunal may—

15 (a) receive in evidence any transcript of evidence in proceedings before the Industrial Relations Court or a review committee, and draw any conclusions of fact from that evidence that appear proper; and

(b) adopt any findings or determinations of the Industrial Relations Court or a review committee that may be relevant to proceedings before the Tribunal; and

20 (c) adopt or make any decision (including a decision in the nature of a permission), direction or order in relation to proceedings before the Industrial Relations Court or a review committee before the relevant day (including so as to make a decision or give a permission, direction or order, in relation to proceedings fully heard before the relevant day); and

(d) take other steps to promote or ensure the smoothest possible transition from 1 jurisdiction to another in connection with the operation of this section.