

Legislative Council—No 145

As introduced and read a first time, 22 February 2024

South Australia

**Statutes Amendment (South Australian
Employment Tribunal) Bill 2024**

A BILL FOR

An Act to amend the *Equal Opportunity Act 1984*, the *Fair Work Act 1994*, the *Magistrates Court Act 1991*, the *South Australian Employment Tribunal Act 2014* and the *Work Health and Safety Act 2012*.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement

Part 2—Amendment of *Equal Opportunity Act 1984*

- 3 Amendment of section 95B—Referral of complaints to Tribunal

Part 3—Amendment of *Fair Work Act 1994*

- 4 Amendment of section 4—Interpretation
- 5 Insertion of section 4A
 - 4A Meaning of employer for public employees
- 6 Amendment of section 8—Jurisdiction to interpret awards and enterprise agreements
- 7 Substitution of section 11
 - 11 Jurisdiction to settle and resolve industrial disputes
- 8 Amendment of section 12—Orders to remedy or restrain contraventions
- 9 Amendment of section 13—Advisory jurisdiction
- 10 Insertion of section 13A
 - 13A Mandatory injunctions
- 11 Insertion of heading
 - Division 1—Processes generally
- 12 Insertion of heading
 - Division 2—Processes when constituted as an industrial relations commission
- 13 Repeal of section 24
- 14 Amendment of section 34—Award to include interest
- 15 Insertion of Chapter 3 Part A1
 - Part A1—Interpretation
 - 65 References to SAET
- 16 Amendment of section 69—Remuneration
- 17 Amendment of section 70—Sick leave/carer's leave
- 18 Amendment of section 70A—Bereavement leave
- 19 Amendment of section 70B—Family and domestic violence leave
- 20 Amendment of section 71—Annual leave
- 21 Amendment of section 72—Parental leave
- 22 Amendment of section 72A—Minimum standards—additional matters
- 23 Amendment of section 72B—Special provision relating to severance payments
- 24 Amendment of section 79—Approval of enterprise agreement
- 25 Amendment of section 90—Power to regulate industrial matters by award
- 26 Insertion of section 100A
 - 100A State Wage Case
- 27 Amendment of section 108—Question to be determined at the hearing
- 28 Amendment of section 120—Application for registration
- 29 Amendment of section 125—Alteration of rules of registered association
- 30 Amendment of section 127—Orders to secure compliance with rules etc
- 31 Amendment of section 130—De-registration of associations
- 32 Amendment of section 132—Application for registration
- 33 Amendment of section 134—Registration
- 34 Amendment of section 135—De-registration
- 35 Amendment of section 138—Limitations of actions in tort

- 36 Amendment of section 140—Powers of officials of employee associations
 37 Amendment of section 219D—Compliance notices
 38 Repeal of section 230
 39 Transitional provisions

Part 4—Amendment of *Magistrates Court Act 1991*

- 40 Amendment of section 9—Criminal jurisdiction
 41 Transitional provision

Part 5—Amendment of *South Australian Employment Tribunal Act 2014*

- 42 Amendment of section 6—Jurisdiction of Tribunal
 43 Amendment of section 6A—Conferral of jurisdiction—criminal matters
 44 Amendment of section 13—Appointment of Deputy Presidents
 45 Amendment of section 19—Constitution of Tribunal
 46 Amendment of section 43—Compulsory conciliation conferences
 47 Amendment of section 44—Referral of matters for hearing and determination
 48 Amendment of section 51—Representation
 49 Substitution of section 65
 65 Power to enlarge scope
 50 Amendment of section 72—Functions of registrars
 51 Amendment of section 86—Enforcement of decisions and orders of Tribunal
 52 Amendment of section 91—Disrupting proceedings of Tribunal
 53 Amendment of section 92—Rules
 54 Transitional provisions

Part 6—Amendment of *Work Health and Safety Act 2012*

- 55 Amendment of section 230—Prosecutions
 56 Transitional provision

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

- 5 This Act may be cited as the *Statutes Amendment (South Australian Employment Tribunal) Act 2024*.

2—Commencement

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

Part 2—Amendment of *Equal Opportunity Act 1984*

3—Amendment of section 95B—Referral of complaints to Tribunal

- 10 (1) Section 95B(1)(ba)—delete "to the Tribunal"

(2) Section 95B(2)—delete subsection (2) and substitute:

(2) However if, in respect of a complaint, the Commissioner is of the opinion that the matter involves—

(a) an alleged contravention of Part 3 Division 2, Part 4 Division 2, Part 5 Division 2, Part 5A Division 2 or Part 5B Division 2; or

(b) an alleged contravention of section 86, 87 or 88 by a person against—

(i) a person with whom they work; or

(ii) a person who is seeking to become a fellow worker,
the Commissioner must not refer the matter to the Tribunal under subsection (1) but must instead refer the matter to SAET (subject to subsection (2a)).

(2a) If, in respect of a complaint, the Commissioner is of the opinion that the matter involves both alleged contraventions of a kind referred to in subsection (2) and other matters, the Commissioner may refer the matter to SAET or to the Tribunal, as the Commissioner thinks fit.

(3) Section 95B(3)—after "subsection (2)" insert:

or (2a)

Part 3—Amendment of *Fair Work Act 1994*

4—Amendment of section 4—Interpretation

(1) Section 4(1), definition of *employer*, (a)—delete the paragraph and substitute:

(a) for public employees—see section 4A;

(2) Section 4(1), definition of *industrial matter*—after paragraph (f) insert:

(fa) matters in an industrial instrument relating to wage parity;

5—Insertion of section 4A

After section 4 insert:

4A—Meaning of employer for public employees

(1) For the purposes of paragraph (a) of the definition of *employer* in section 4(1), the employer for public employees is the body or person (not being a Minister) declared by regulation to be the employer of the employees.

(2) The body or person referred to in subsection (1) is an instrumentality of the Crown and is capable of binding the Crown in relation to an industrial matter.

6—Amendment of section 8—Jurisdiction to interpret awards and enterprise agreements

Section 8(1)—after "SAET" insert:

(constituted as the South Australian Employment Court)

5 **7—Substitution of section 11**

Section 11—delete the section and substitute:

11—Jurisdiction to settle and resolve industrial disputes

(1) SAET (constituted as an industrial relations commission) has jurisdiction to settle and resolve industrial disputes.

10 (2) In exercising its dispute settlement jurisdiction SAET may deal with a dispute as it considers appropriate including by any of the following:

(a) conciliation or mediation;

(b) making a recommendation or expressing an opinion;

15 (c) arbitration.

8—Amendment of section 12—Orders to remedy or restrain contraventions

Section 12(1)—after "SAET" insert:

(constituted as the South Australian Employment Court)

9—Amendment of section 13—Advisory jurisdiction

20 Section 13(1)—after "SAET" insert:

(constituted as an industrial relations commission)

10—Insertion of section 13A

After section 13 insert:

13A—Mandatory injunctions

25 Section 7(2) of the *Crown Proceedings Act 1992* does not apply in respect of proceedings before SAET under this Act.

11—Insertion of heading

Before section 14 insert:

Division 1—Processes generally

12—Insertion of heading

5 Before section 18 insert:

Division 2—Processes when constituted as an industrial relations commission

13—Repeal of section 24

Section 24—delete the section

14—Amendment of section 34—Award to include interest

10 Section 34—after subsection (1) insert:

- (1a) An award of interest, or lump sum instead of interest, determined under this section must take into account the period between the day the relevant cause of action arose and the day the judgement is delivered.

15—Insertion of Chapter 3 Part A1

Chapter 3—before Part 1 insert:

Part A1—Interpretation

65—References to SAET

20 A reference in this Chapter to *SAET* is a reference to SAET constituted as an industrial relations commission.

16—Amendment of section 69—Remuneration

- (1) Section 69(3)—before "SAET" first occurring insert:

a Full Bench of

- 25 (2) Section 69(3)(a)—delete paragraph (a)

17—Amendment of section 70—Sick leave/carer's leave

Section 70(3)—before "SAET" insert:

A Full Bench of

18—Amendment of section 70A—Bereavement leave

30 Section 70A(3)—before "SAET" insert:

A Full Bench of

19—Amendment of section 70B—Family and domestic violence leave

Section 70B(3)—before "SAET" insert:

A Full Bench of

20—Amendment of section 71—Annual leave

5 Section 71(3)—before "SAET" insert:

A Full Bench of

21—Amendment of section 72—Parental leave

Section 72(3)—before "SAET" insert:

A Full Bench of

10 **22—Amendment of section 72A—Minimum standards—additional matters**

Section 72A(1)—before "SAET" insert:

A Full Bench of

23—Amendment of section 72B—Special provision relating to severance payments

15 Section 72B(1)—before "SAET" insert:

A Full Bench of

24—Amendment of section 79—Approval of enterprise agreement

(1) Section 79(5)—before "SAET" first occurring insert:

a Full Bench of

20 (2) Section 79(6)—delete "must also be referred to SAET" and substitute:

may be referred to a Full Bench of SAET

25—Amendment of section 90—Power to regulate industrial matters by award

(1) Section 90(1)—after "make" insert:

or vary

25 (2) Section 90(5)—after "made" insert:

or varied

(3) Section 90(6)—after "making" insert:

or varying

(4) Section 90(7)—after "makes" insert:

30 or varies

(5) Section 90, note—delete the note appearing at the foot of the section

26—Insertion of section 100A

After section 100 insert:

100A—State Wage Case

- 5
- (1) A Full Bench of SAET must conduct an annual review of—
- (a) the minimum standard of remuneration under section 69;
and
- (b) minimum wage rates in awards; and
- (c) minimum work-related allowances and loadings in awards.
- 10
- (2) The review must commence within 3 months of the conclusion of the Annual Wage Review conducted by the Fair Work Commission.
- (3) Subject to subsection (5), in conducting the review, SAET may make a declaration under section 100(1) adopting the outcomes of the Annual Wage Review without receiving evidence or submissions, or conducting a hearing, if there is no objection from an interested party.
- 15
- (4) If SAET proposes to act in accordance with the above, SAET must—
- (a) take reasonable steps to ensure that all persons who are likely to have an interest in the review are given a reasonable opportunity to appear and be heard before SAET; and
- 20
- (b) at least 21 days before making the declaration, publish a notice in a manner prescribed by the rules—
- (i) setting out the terms of the proposed declaration;
and
- 25
- (ii) advising that, in the absence of any objection from an interested party, SAET will make the declaration on its own initiative.
- (5) If there is an objection from an interested party, SAET must conduct the review by considering the matter *de novo*.
- 30
- (6) In this section—
- interested party* means—
- (a) the Minister; or
- (b) an employer or group of employers; or
- (c) a registered employee association; or
- 35
- (d) the United Trades and Labor Council (trading as SA Unions).

27—Amendment of section 108—Question to be determined at the hearing

Section 108(2)(e)—delete "section 58B or 58C of the *Workers Rehabilitation and Compensation Act 1986*" and substitute:

section 18 or 20 of the *Return to Work Act 2014*

5 **28—Amendment of section 120—Application for registration**

Section 120(1)—after "SAET" insert:

(constituted as an industrial relations commission)

29—Amendment of section 125—Alteration of rules of registered association

Section 125(5)—after "SAET" insert:

10 (constituted as an industrial relations commission)

30—Amendment of section 127—Orders to secure compliance with rules etc

(1) Section 127(1)—after "SAET" insert:

(constituted as the South Australian Employment Court)

(2) Section 127(3)—after "SAET" insert:

15 (constituted as the South Australian Employment Court)

31—Amendment of section 130—De-registration of associations

Section 130(1)—after "SAET" insert:

(constituted as an industrial relations commission)

32—Amendment of section 132—Application for registration

20 Section 132(1)—after "SAET" insert:

(constituted as an industrial relations commission)

33—Amendment of section 134—Registration

Section 134—after "SAET" insert:

(constituted as an industrial relations commission)

25 **34—Amendment of section 135—De-registration**

Section 135(1)—after "SAET" insert:

(constituted as an industrial relations commission)

35—Amendment of section 138—Limitations of actions in tort

30 Section 138(3) and (4)—delete "SAET" wherever occurring and substitute in each case:

a Full Bench of SAET (constituted as an industrial relations commission)

36—Amendment of section 140—Powers of officials of employee associations

Section 140(4)—after "SAET" insert:

(constituted as an industrial relations commission)

37—Amendment of section 219D—Compliance notices

Section 219D(3)—after "SAET" insert:

(constituted as the South Australian Employment Court)

38—Repeal of section 230

5 Section 230—delete the section

39—Transitional provisions

(1) Section 4(1) of the *Fair Work Act 1994* (as amended by section 4(2) of this Act) applies in relation to an industrial instrument made or approved on or after the day on which this subclause comes into operation.

10 (2) Nothing in section 4A(2) of the *Fair Work Act 1994* (as inserted by section 5 of this Act) affects the interpretation of the term 'employer' in an industrial instrument made or approved before the commencement of this subclause.

(3) Where a provision of this Act amends the *Fair Work Act 1994* to require the South Australian Employment Tribunal to be constituted—

15 (a) as an industrial relations commission; or

(b) as the South Australian Employment Court; or

(c) as a Full Bench of the South Australian Employment Tribunal,

the amendment only applies in relation to proceedings commenced after the commencement of the amendment.

20 (4) Section 13A of the *Fair Work Act 1994*, as in force after the commencement of section 10 of this Act, applies in relation to proceedings determined by SAET after the commencement of section 10 (regardless of when the proceedings were commenced).

(5) Section 34(1a) of the *Fair Work Act 1994*, as inserted by section 14 of this Act, applies in relation to an award of interest, or lump sum instead of interest, determined after the commencement of section 14 of this Act (regardless of when the proceedings were commenced).

25 (6) In this clause—

industrial instrument has the same meaning as in the *Fair Work Act 1994*.

Part 4—Amendment of *Magistrates Court Act 1991*

30 40—Amendment of section 9—Criminal jurisdiction

Section 9(4)(b)(i)—delete "\$300 000" and substitute:

\$1 500 000

41—Transitional provision

35 Section 9(4)(b)(i) of the *Magistrates Court Act 1991*, as in force after the commencement of section 40 of this Act, applies in relation to proceedings commenced in the Magistrates Court after the commencement of section 40 of this Act.

Part 5—Amendment of *South Australian Employment Tribunal Act 2014*

42—Amendment of section 6—Jurisdiction of Tribunal

(1) Section 6(2)(b)—delete paragraph (b) and substitute:

(b) the rules may (unless to do so is inconsistent with a provision of a relevant Act) assign matters to the South Australian Employment Court;

(2) Section 6—after subsection (2) insert:

(2a) If a matter is assigned to the South Australian Employment Court, the Court may direct, or an Act or the rules may provide, that the matter be the subject of a compulsory conference (within the meaning of section 43) in the part of the Tribunal that is acting as an industrial relations commission.

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

Section 6A(6)(a)—delete "\$300 000" and substitute:

\$1 500 000

44—Amendment of section 13—Appointment of Deputy Presidents

Section 13(13)—after paragraph (a) insert:

(ab) the President; and

45—Amendment of section 19—Constitution of Tribunal

(1) Section 19(3)—delete subsection (3) and substitute:

(3) A Full Bench of the Tribunal consists of—

(a) when sitting as the South Australian Employment Court—3 Presidential members; or

(b) when acting as an industrial relations commission—3 members of which at least 1 must be a Presidential member.

(2) Section 19—after subsection (4) insert:

(4a) If a member of the Tribunal who is not a Presidential member is to constitute the Tribunal, or is to be a member of a Full Bench of the Tribunal, for the purpose of dealing with any matter, the President must be satisfied that the member has appropriate knowledge, expertise, or experience relating to that class of matter.

46—Amendment of section 43—Compulsory conciliation conferences

(1) Section 43—after subsection (5) insert:

(5a) The parties to a compulsory conference must ensure, so far as is reasonably practicable, that the conference is attended by persons with sufficient decision-making authority to fully participate in settlement discussions.

(2) Section 43(7) and (8)—delete subsections (7) and (8) and substitute:

(7) However —

(a) proceedings constituting a compulsory conference under the *Return to Work Act 2014* should not run over a period exceeding 10 weeks; and

(b) if the rules fix a period of time in relation to proceedings constituting a compulsory conference under another relevant Act, those proceedings should not run over a period exceeding the period so fixed,

unless the member of the Tribunal presiding at the conference is satisfied that an extension of time is justified on the basis that there is a substantial likelihood the proceedings will resolve by settlement if the extension occurs.

(8) If the period in which proceedings constituting a compulsory conference are conducted is extended in accordance with subsection (7), the member of the Tribunal presiding at the conference must notify the parties in writing of the decision to extend the period.

(3) Section 43(11)—after paragraph (c) insert:

(ca) enlarge the scope of the proceedings in accordance with section 65;

47—Amendment of section 44—Referral of matters for hearing and determination

Section 44—after "must" insert:

(unless a relevant Act provides otherwise)

48—Amendment of section 51—Representation

Section 51—after subsection (3) insert:

(4) If, in accordance with a relevant Act, a person who is not a legal practitioner (the *representative*) is entitled to appear in proceedings before the Tribunal as a representative of a party (the *first party*), evidence is not to be adduced in proceedings and material is not required to be disclosed to another party in proceedings if, on objection by the first party, the Tribunal finds that—

(a) adducing the evidence or disclosing the material would result in the disclosure of—

(i) a confidential communication between the first party and the representative; or

(ii) the contents of a confidential document prepared by the representative; and

(b) the communication or document was for the dominant purpose of—

(i) providing advice to the first party; or

- (ii) preparing for or conducting a proceeding, or anticipated proceeding,

in relation to a matter in which the representative would be entitled to appear before the Tribunal in accordance with a relevant Act.

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49—Substitution of section 65

Section 65—delete the section and substitute:

65—Power to enlarge scope

- (1) The Tribunal may enlarge the scope of proceedings to include questions that are not presently at issue in the proceedings—

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- (a) in the case of proceedings under the *Return to Work Act 2014*—if, on application and after giving all parties an opportunity to be heard, the Tribunal is satisfied it is in the interests of justice that a question should be determined as part of the proceedings; or

15

- (b) in any case—with the consent of all parties to the proceedings.

- (2) In considering whether it is in the interests of justice that a question should be determined as part of the proceedings under subsection (1)(a), the Tribunal must have regard to the principle that all issues in dispute between the parties should be heard and determined in the same proceeding insofar as is just and appropriate.

20

50—Amendment of section 72—Functions of registrars

Section 72—after subsection (3) insert:

- (4) A person affected by an exercise of administrative power by a registrar in relation to a proceeding before the Tribunal may, on application made in a manner and within the time prescribed by the Rules, apply to the Tribunal for a review of that exercise of power.
- (5) A Presidential member of the Tribunal may, on an application made under subsection (4), review the exercise of power that is the subject of the application (by holding a hearing or in any other manner the member thinks fit) and make such orders as the member thinks fit with respect to the matter.
- (6) No appeal lies against a decision of a Presidential member of the Tribunal under subsection (5).

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51—Amendment of section 86—Enforcement of decisions and orders of Tribunal

Section 86(1)—delete subsection (1) and substitute:

- (1) If the Tribunal constituted as the South Australian Employment Court makes a monetary order, the order is enforceable, and any action may be taken in respect of the order, as if it were a judgment or order of the appropriate court.

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- 5
- (1a) If the Tribunal constituted as an industrial relations commission makes a monetary order, the amount specified in the order may be recovered in the appropriate court as if it were a debt.
- (1b) No court fees are payable in relation to proceedings in an appropriate court in respect of a monetary order made by the Tribunal, including proceedings under the *Enforcement of Judgments Act 1991*.
- 10
- (1c) Where, in accordance with a relevant Act, a person who is not a legal practitioner is entitled to act as a representative of a party before SAET, that person may also act as a representative of that party in any proceedings under the *Enforcement of Judgments Act 1991* before an appropriate court with respect to an order made by SAET.

52—Amendment of section 91—Disrupting proceedings of Tribunal

Section 91(2)(a)—delete "(other than an order for payment of money)"

53—Amendment of section 92—Rules

15 Section 92(1)—after paragraph (l) insert:

- (la) providing for the suspension of inactive proceedings; and

54—Transitional provisions

- 20
- (1) Section 6A of the principal Act, as amended by section 43 of this Act, applies in relation to proceedings commenced in the South Australian Employment Court after the commencement of section 43 of this Act.
- (2) Section 19(3) of the principal Act, as substituted by section 45(1) of this Act, applies in relation to proceedings commenced before a Full Bench of the South Australian Employment Tribunal after the commencement of section 45(1) of this Act.
- 25
- (3) Section 19(4a) of the principal Act, as inserted by section 45(2) of this Act, applies in relation to proceedings commenced before the South Australian Employment Tribunal after the commencement of section 45(2) of this Act.
- (4) Section 51(4) of the principal Act, as inserted by section 48 of this Act, applies, on and from the commencement of section 48 of this Act, to any proceedings regardless of when the communication or document referred to in section 51(4) occurred or was created (as the case requires).
- 30
- (5) Section 65 of the principal Act, as substituted by section 49 of this Act, applies, on and from the commencement of section 49 of this Act, to any proceedings regardless of whether the proceedings were commenced before or after that commencement.
- (6) Section 72(4) and (5) of the principal Act, as inserted by section 50 of this Act, apply to an exercise of administrative power occurring after the commencement of section 50 of this Act.
- 35
- (7) In this section—
- principal Act* means the *South Australian Employment Tribunal Act 2014*.

Part 6—Amendment of *Work Health and Safety Act 2012*

55—Amendment of section 230—Prosecutions

Section 230(4)—delete "\$300 000" and substitute:

\$1 500 000

5 56—Transitional provision

Section 230(4) of the *Work Health and Safety Act 2012*, as amended by section 55 of this Act, applies in relation to proceedings commenced in the South Australian Employment Court after the commencement of section 55 of this Act.