

Legislative Council—No 31

As introduced and read a first time, 3 September 2026

South Australia

Statutes Amendment (Industrial Relations Portfolio) (No 2) Bill 2026

A BILL FOR

An Act to amend the *Construction Industry Long Service Leave Act 1987*, the *Explosives Act 2024*, the *Fair Work Act 1994*, the *Portable Long Service Leave Act 2024*, the *Return to Work Act 2014* and the *Work Health and Safety Act 2012*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

- 5 This Act may be cited as the *Statutes Amendment (Industrial Relations Portfolio) (No 2) Act 2026*.

2—Commencement

- (1) Subject to subsection (2), this Act comes into operation on the day on which it is assented to by, or on behalf of, the Crown.
- (2) Section 25 comes into operation—
- 10 (a) immediately after section 136I of the *Fair Work Act 1994* (as inserted by the *Fair Work (Registered Associations) Amendment Act 2024*) comes into operation; or
- (b) on the day on which this Act is assented to by, or on behalf of, the Crown, whichever occurs later.

Part 2—Amendment of *Construction Industry Long Service Leave Act 1987*

3—Substitution of section 31

Section 31—delete and substitute:

31—Recovery of amounts and crediting entitlements

- (1) If an amount is payable or recoverable under this Act, including an amount of levy that should have been paid or an amount in respect of an employer who should have furnished one or more returns but failed to do so, the period of recovery of the amount is 7 years from which it was payable or able to be recovered.
- (2) The period for retrospectively crediting an effective service entitlement is 7 years from the date on which the work to which the entitlement relates was carried out.
- (3) This section applies despite any other Act or law.

4—Insertion of section 37AA

After section 37 insert:

37AA—Costs

SAET may, in any proceedings under or relating to this Part, only order a party to pay costs incurred by another party to the proceedings if SAET is satisfied that the party's unreasonable act or omission caused the other party to incur the costs.

5—Amendment of section 40—Records

Section 40(2)—delete "five years" and substitute:

7 years

Part 3—Amendment of *Explosives Act 2024*

6—Amendment of section 4—Interpretation

- (1) Section 4(1)—before the definition of *authorised explosive* insert:
approved code of practice means a code of practice approved under Part 7;
- (2) Section 4(1)—after the definition of *building* insert:
carrying on an activity involving an explosive includes dealing with an explosive;
- (3) Section 4(1)—after the definition of *officer* insert:
port includes harbor, haven, roadstead, channel, and navigable creek, river, or lake;

7—Insertion of Part 7 Division 2A

After section 72 insert:

Division 2A—Codes of practice

72A—Approved codes of practice

- 5 (1) The Minister may approve a code of practice for the purposes of this Act and may vary or revoke an approved code of practice.
- (2) The Minister may only approve, vary or revoke a code of practice under subsection (1) if the Minister is acting on the recommendation of the Regulator.
- 10 (3) A code of practice may apply, adopt or incorporate any matter contained in a document formulated, issued or published by a person or body whether—
- (a) with or without modification; or
- (b) as in force at a particular time or from time to time.
- 15 (4) An approval of a code of practice, or a variation or revocation of an approved code of practice, takes effect when notice of it is published in the Gazette or on such later date as is specified in the approval, variation or revocation.
- 20 (5) As soon as practicable after approving a code of practice, or varying or revoking an approved code of practice, the Minister must ensure that notice of the approval, variation or revocation is published in the Gazette and on a website determined by the Minister.
- (6) An approved code of practice or the variation of a code of practice is subject to disallowance by Parliament.
- 25 (7) The Minister must ensure that each approved code of practice or variation is laid before both Houses of Parliament within 6 sitting days after it is published in the Gazette.
- (8) If either House of Parliament passes a resolution disallowing an approved code of practice or the variation of a code of practice, then
- 30 the code of practice or variation ceases to have effect.
- (9) A resolution is not effective for the purposes of subsection (8) unless passed in pursuance of a notice of motion given within 14 sitting days (which need not all fall within the same session of Parliament) after the day on which the code of practice or variation was laid
- 35 before the House.

72B—Use of codes of practice in proceedings

- (1) This section applies in a proceeding for an offence against this Act.
- (2) An approved code of practice is admissible in the proceeding as evidence of whether or not a duty or obligation under this Act has
- 40 been complied with.

(3) The court may—

(a) have regard to the code as evidence of what is known about a hazard or risk, risk assessment or risk control to which the code relates; and

(b) rely on the code in determining what is reasonably practicable in the circumstances to which the code relates.

(4) Nothing in this section prevents a person from introducing evidence of compliance with this Act in a manner that is different from the code but provides a standard that is equivalent to or higher than the standard required in the code.

8—Amendment of section 100—Harbors and vessels

(1) Section 100, heading—delete "Harbors" and substitute:

Control and management of ports

(2) Section 100(1) and (2)—delete "harbors" wherever occurring and substitute in each case:

ports

9—Insertion of section 100A

After section 100 insert:

100A—Prohibited areas

(1) The Minister may, by notice in the Gazette, declare the whole or any part of a port to be a prohibited area.

(2) If a declaration is made in relation to the whole or any part of a port, the port must be managed and controlled by the holder of a licence under section 31 appointed by the Regulator (the *port manager*).

(3) The port manager for a port must ensure that explosives within a prohibited area of the port do not exceed any limits prescribed by the regulations or determined by the Regulator.

(4) The licence conditions of a port manager may contain conditions, limitations or prohibitions relating to the presence of explosives in a prohibited area of the port.

(5) A person (other than the port manager) must not carry explosives into a prohibited area or within a prescribed distance of a prohibited area, unless authorised to do so by the port manager.

(6) An authorisation under subsection (5) may be subject to conditions and limitations that the port manager thinks fit.

(7) A person who contravenes subsection (5), or who contravenes a condition or limitation of an authorisation imposed under subsection (6), is guilty of an offence.

Maximum penalty:

(a) in the case of an individual—\$50 000;

(b) in the case of a body corporate—\$250 000.

10—Amendment of section 104—Regulations and fee notices

Section 104(2)(c) and (d)—delete paragraph (c) and (d) and substitute:

- 5 (c) impose fines, not exceeding \$50 000 in cases involving bodies corporate and \$10 000 in cases involving individuals, for offences against the regulations; and
- (d) fix expiation fees, not exceeding \$5 000 in cases involving bodies corporate and \$1 000 in cases involving individuals, for alleged offences against the regulations; and
- 10 (e) provide for measures for the protection of people and other living beings, critical infrastructure, property and the natural environment from the harmful effects of explosives (having regard to the safety and security duties); and
- 15 (f) specify standards to be observed, practices and procedures to be followed and measures to be taken in relation to activities or operations relating to explosives; and
- (g) make provision for or in relation to the keeping of records or furnishing of information by persons carrying on activities or operations relating to explosives; and
- 20 (h) make provision for or in relation to the control or management of government magazines or facilities relating to explosives.

Part 4—Amendment of *Fair Work Act 1994*

11—Amendment of section 4—Interpretation

- (1) Section 4(1), definition of *Consultative Council*—delete the definition
- 25 (2) Section 4(1), definition of *peak entity*, (c)—delete paragraph (c) and substitute:
 - (c) the Local Government Association of South Australia; and

12—Insertion of section 68A

After section 68 insert:

68A—Prohibition on pay secrecy

- 30 (1) A person who is or was an employee may disclose any of the following information to any other person:
 - (a) the person's current or previous remuneration;
 - (b) the person's current or previous terms and conditions of employment that are reasonably necessary to determine remuneration outcomes.
- 35

Example—

A condition of an employee's employment that may be reasonably necessary to determine remuneration outcomes includes the number of hours that the employee works.

(2) A person who is or was an employee may ask another employee (whether employed by the same employer or a different employer and including a former employee) for any of the following information:

- (a) the other employee's current or previous remuneration;
- (b) the other employee's current or previous terms and conditions of employment that are reasonably necessary to determine remuneration outcomes.

(3) A term of an industrial instrument or contract of employment has no effect to the extent that the term would be inconsistent with subsection (1) or (2).

(4) An employer must not enter into a contract of employment or other written agreement with an employee which includes a term that is inconsistent with subsection (1) or (2).

(5) Nothing in subsection (1) is to be taken to require a person who is or was an employee to disclose information referred to in that situation.

13—Amendment of section 70A—Bereavement leave

(1) Section 70A, heading—delete "Bereavement leave" and substitute:

Compassionate leave

(2) Section 70A—delete "bereavement leave" wherever occurring and substitute in each case:

compassionate leave

14—Amendment of section 75—Who may make enterprise agreement

Section 75(7)—delete subsection (7)

15—Amendment of section 76—Negotiation of enterprise agreement

Section 76—after subsection (2) insert:

- (2a) A person (other than a registered association) who acts as a bargaining representative for an employee or group of employees must provide written evidence to each other party to the negotiations that they have been duly authorised by the relevant employee or group of employees to be their representative.

16—Amendment of section 100—Adoption of principles affecting determination of remuneration and working conditions

Section 100(1)—delete subsection (1) and substitute:

- (1) SAET may, on its own initiative, or on the application of a peak entity, make a declaration adopting in whole or in part, and with or without modification, principles, guidelines, conditions, practices or procedures enunciated or laid down in, or attached to, a decision or determination of the Fair Work Commission.

17—Amendment of heading to Chapter 4

Heading to Chapter 4—after "Associations" insert:
and general protections

18—Amendment of heading to Chapter 4 Part 1

Heading to Chapter 4 Part 1—after "association" insert:
and general protections

19—Amendment of section 115—Prohibited reason

- (1) Section 115(h)—delete "an instrument dealing with conditions of employment" and substitute:

, or has a role or responsibility under, or has exercised or proposed to exercise a right or function under, this Act or a workplace law, an industrial instrument,

- (2) Section 115(i) and (j)—delete paragraphs (i) and (j) and substitute:

- (i) because the other person has made or proposes to make an inquiry or complaint—

(a) to a person or body with power under this Act or a workplace law; or

(b) otherwise in relation to their employment;

- (j) because the other person has participated in, proposes to participate in, or has at any time proposed to participate in a proceeding before SAET or a proceeding under this Act or a workplace law;

- (3) Section 115—after paragraph (n) insert:

- (o) because the person has participated in, or proposes to participate in, an industrial dispute or industrial action.

- (4) Section 115—after its presents contents as amended by this section (now to be designated as subsection (1)) insert:

- (2) For the purposes of this section, an employer acts for a prohibited reason if the employer organises or takes, or threatens to organise or take, action against an employee with the intent to coerce the employee to exercise or not exercise, or propose to exercise or not exercise, any of the actions, rights or functions specified in subsection (1).

- (3) However, the following is not action taken for a prohibited reason:

- (a) action taken against an employee on the ground the employee has contravened a determination of SAET or has committed an offence;
- (b) action that is required under this Act or any other law of the State or the Commonwealth.

20—Substitution of heading to Chapter 4 Part 1 Division 2

Heading to Chapter 4 Part 1 Division 2—delete the heading and substitute:

Division 2—Freedom of association and general protections

21—Amendment of section 116A—General offences against the principle of freedom of association

- (1) Section 116A—delete "A person" and substitute:

An employer

- (2) Section 116A, penalty provision—delete the penalty provision and substitute:

Maximum civil penalty: \$20 000.

22—Amendment of section 116B—Dismissal etc for prohibited reason

- (1) Section 116B, penalty provision—delete the penalty provision and substitute:

Maximum civil penalty: \$20 000.

- (2) Section 116B—after subsection (1) insert:

(1a) An employer must not dismiss an employee because the employee is temporarily absent from work because of illness or injury of a kind prescribed by the regulations.

- (3) Section 116B(2)—delete "A court by which an employer is convicted of an offence against this section may, on application by the employee (or prospective employee) against whom the offence was committed" and substitute:

A court which finds an employer has contravened a civil penalty provision in this section may, separate to any order for the payment of a civil penalty

23—Amendment of section 117—Prohibition of discrimination in supply or purchase of goods or services

- (1) Section 117(1), penalty provision—delete the penalty provision and substitute:

Maximum civil penalty: \$20 000.

- (2) Section 117(2), penalty provision—delete the penalty provision and substitute:

Maximum civil penalty: \$20 000.

24—Amendment of section 122—Registration of associations

Section 122(1)(e)—delete paragraph (e) and substitute:

- (e) that there is no other registered association to which the members of the association might conveniently belong; and

25—Amendment of section 136I—Misrepresentations by unregistered associations and agents

- (1) Section 136I(1), penalty provision—delete the penalty provision and substitute:

Maximum civil penalty: \$25 000.

- (2) Section 136I(2), penalty provision—delete the penalty provision and substitute:

Maximum civil penalty: \$25 000.

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

Section 138(1)—after "industrial dispute" insert:
or industrial action

27—Repeal of Chapter 6AA

5 Chapter 6AA—delete the Chapter

28—Repeal of section 223

Section 223—delete the section

29—Amendment of section 236C—Responsible agency of the Crown

10 (1) Section 236C(2)—delete "If proceedings are brought against the Crown in relation to a contravention of this Act that is not an offence" and substitute:

In relation to proceedings brought against the Crown under this Act to which subsection (1) does not apply

(2) Section 236C(2)(a)—delete "contravention" and substitute:
proceedings

15 (3) Section 236C(4), definition of *responsible agency*—delete "a contravention of this Act" and substitute:
proceedings

(4) Section 236C(4)(a)—delete "or contravention" and substitute:
or whose conduct has given rise to the proceedings

20 **30—Amendment of Schedule 1—Transitional provisions**

Schedule 1, after clause 16 insert:

16A—*Fair Work (Registered Associations) Amendment Act 2024*

25 (1) In addition to Schedule 1 clause 2 of the *Fair Work (Registered Associations) Amendment Act 2024*, if an application for registration of an association is before SAET on 1 January 2026, the association will be taken to be a registered association pending the determination of the application before SAET.

(2) Nothing in subclause (1) affects the ability of SAET to grant or not grant an application for registration referred to in subclause (1).

30 **31—Amendment of Schedule 3—Minimum standard for sick leave/carer's leave**

Schedule 3, clause 6(1)—delete "up to 5 days" and substitute:
any number of days

32—Amendment of Schedule 3A—Minimum standard for bereavement leave

35 (1) Schedule 3A, heading—delete "bereavement leave" and substitute:
compassionate leave

- (2) Schedule 3A, clause 1, heading—delete "Bereavement leave" and substitute:

Compassionate leave

- (3) Schedule 3A, clause 1—delete "bereavement leave" wherever occurring and substitute in each case:

compassionate leave

- (4) Schedule 3A, clause 1(1)—delete subclause (1) and substitute:

- (1) An employee is entitled to 2 days of compassionate leave for each occasion—

- (a) a member of the employee's immediate family or a member of the employee's household—

(i) contracts or develops a personal illness that poses a serious threat to their life; or

(ii) sustains a personal injury that poses a serious threat to their life; or

(iii) dies; or

- (b) a child is stillborn, where the child would have been a member of the employee's immediate family, or a member of the employee's household, if the child had been born alive; or

- (c) the employee, or the employee's spouse or domestic partner, has a miscarriage.

- (1a) Subsection (1)(c) does not apply if the miscarriage results in a stillborn child.

- (1b) In this clause

stillborn, in relation to a child, means a child—

- (a) who weighs at least 400 grams at delivery or whose period of gestation was at least 20 weeks; and

- (b) who has not breathed since delivery; and

- (c) whose heart has not beaten since delivery.

33—Transitional provision—section 122 of the *Fair Work Act 1994*

The amendment to section 122(1) of the *Fair Work Act 1994* by section 24 of this Act does not affect the registration of any association registered under Chapter 4 Part 2 of the *Fair Work Act 1994* prior to the commencement of this clause.

Part 5—Amendment of *Portable Long Service Leave Act 2024*

34—Amendment of section 3—Interpretation

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

apprentice includes a trainee under a contract of training;

35—Amendment of section 5—Application of Act

- (1) Section 5(7)—delete "is not a registered employer" and substitute:
is not required to be registered

- (2) Section 5(7)—delete "employer becomes a registered employer" and substitute:
date the employer is required to be registered

36—Amendment of section 7—Delayed participation in scheme

Section 7(6)—delete subsection (6)

37—Insertion of section 55A

After section 55 insert:

55A—Costs

SAET may, in any proceedings under or relating to this Part, only order a party to pay costs incurred by another party to the proceedings if SAET is satisfied that the party's unreasonable act or omission caused the other party to incur the costs.

38—Amendment of section 56—Civil penalties

- (1) Section 56(11)—delete subsection (11) and substitute:

- (11) SAET must apply the rules of evidence and procedure for civil proceedings when hearing proceedings under this section.

- (2) Section 56(12)—delete "to another party if SAET believes that the party ordered to pay the costs has acted unreasonably and, in so doing, caused the other party to incur costs or additional costs" and substitute:

incurred by another party to the proceedings if SAET is satisfied that the party's unreasonable act or omission caused the other party to incur the costs

39—Amendment of Schedule 2—Community services

- (1) Schedule 2, clause 3(1)—delete subclause (1) and substitute:

- (1) Work is covered under this clause if a qualifying award is expressed to cover employees in relation to their employment performing the work, even if a person performing the work is being paid under an individual contract, industrial instrument, or other workplace law at a different rate of pay.

- (2) Schedule 2, clause 3—after subclause (1) insert:

- (1a) If the scope of employees covered by a qualifying award is varied, that variation will not take effect for the purpose of this Act until a date determined by the Minister and published in the Gazette following consultation with the relevant industry board.

(3) Schedule 2, clause 3—after subclause (2) insert:

(3) In this clause—

workplace law means a law of the State or the Commonwealth that regulates the relationships between employers and employees and includes a legislative instrument made under such a law.

40—Amendment of Schedule 3—Related amendments and transitional provisions

Schedule 3 Clause 7(7)(a)—delete "3 months after the designated day" and substitute:

a timeframe determined by the Board

Part 6—Amendment of *Return to Work Act 2014*

41—Amendment of section 171—Advisory Committee

(1) Section 171—delete "Governor" wherever occurring and substitute in each case:

Minister

(2) Section 171(6)—after paragraph (d) insert:

(da) having been appointed as an officer or employee of an organisation representing the interests of a particular class of person, ceases to be an officer or employee of that organisation.

(3) Section 171(7) and (8)—delete subsections (7) and (8) and substitute:

(7) Subject to subsection (8), a member of the advisory committee may appoint a suitable person to act as an alternate member and a person so appointed may, in the member's absence, act as a member of the committee.

(8) A member of the advisory committee may only appoint someone under subsection (7) with the approval of the Minister.

Part 7—Amendment of *Work Health and Safety Act 2012*

42—Amendment of section 72—Obligation to train health and safety representatives

(1) Section 72(1)(c)—delete ", in consultation with the person conducting the relevant business or undertaking"

(2) Section 72(2)—delete "(after undertaking the consultation referred to in subsection (1)(c))"

(3) Section 72(6)—delete "subsections (1)(c) and (3)" and substitute:
subsection (3)

(4) Section 72(8)—after "course" insert:

at a time

(3) Without derogating from the obligation of a person conducting a business or undertaking under subsection (2), a notification to the regulator of the health and safety representative or the deputy health and safety representative (if any) for a work group of workers carrying out work for a business or undertaking may be made at any time by—

- #### **44—Amendment of section 118—Rights that may be exercised while at workplace**

- and

- (iii) take and remove for analysis a reasonable sample of any substance or thing directly relevant to the suspected contravention without paying for it;

- conducting tests, or taking and removing of samples

- , tests or taking and removing of samples (as the case requires)

- , conduct the tests, or take and remove the samples (as the case requires)

45—Amendment of Schedule 6—Transitional provisions

Schedule 6, after clause 25A insert:

**25B—*Work Health and Safety (Review Recommendations)*
*Amendment Act 2024***

5 Despite the requirement in Schedule 1 clause 6 of the *Work Health*
 and Safety (Review Recommendations) Amendment Act 2024 (the
 amendment Act) that a review of the amendments to the *Work*
 Health and Safety Act 2012 effected by the amendment Act
10 commence 2 years after the commencement of Schedule 1 clause 6
 of the amendment Act and be completed within a period of 6 months,
 the review of the amendments must instead commence 4 years after
 that commencement and be completed within a period of 6 months.