

South Australia

Fair Work (Registered Associations) Amendment Act 2024

An Act to amend the *Fair Work Act 1994*, and to make a related amendment to the *South Australian Employment Tribunal Act 2014*.

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Part 1—Related amendment to the *South Australian Employment Tribunal Act 2014*

1 Amendment of section 51—Representation

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2 Registration of associations under Chapter 4 Part 3 to continue

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Fair Work (Registered Associations) Amendment Act 2024*.

2—Commencement

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

Part 2—Amendment of *Fair Work Act 1994*

3—Amendment of section 3—Objects of Act

Section 3(1)—after paragraph (k) insert:

- (ka) to encourage representation of employees and employers by registered associations; and

4—Amendment of section 4—Interpretation

Section 4(1)—after the definition of *Termination of Employment Convention* insert:

unregistered association means an association that is not registered under this Act;

5—Amendment of section 18—Advertisement of applications

Section 18—after subsection (1) insert:

- (1a) In addition, before SAET deals with the subject matter of an application involving a demarcation dispute between associations representing employees, 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 to the United Trades and Labor Council (trading as SA Unions).

6—Amendment of section 25—Representation

- (1) Section 25(1)(b)—delete "an industrial association" and substitute:
a registered association

- (2) Section 25(1)(b)—delete "industrial association" second occurring and substitute:
registered association

- (3) Section 25—after subsection (1) insert:

- (1a) Despite section 51(1)(c) of the *South Australian Employment Tribunal Act 2014*, the Tribunal must not give leave for a person to appear as a representative in proceedings before the Tribunal if the grant of leave would be contrary to an order made under section 136H or an order made in settlement of an industrial dispute.

7—Amendment of section 32—Who may make a claim

Section 32(1)—delete "an association" and substitute:
a registered association

8—Amendment of section 77—Form and content of enterprise agreement

Section 77(1)(d)—delete "an association" and substitute:
a registered association

9—Amendment of section 83—Duration of enterprise agreement

Section 83(1)—delete "3 years" and substitute:
4 years

10—Amendment of section 120—Application for registration

Section 120(2)—delete subsection (2) and substitute:

- (2) If an application for registration is made, the Registrar must—
- (a) publish notice of the application on a website determined by the Registrar; and
 - (b) give notice of the application—
 - (i) to any registered association the Registrar considers has a proper interest in the subject matter of the application; and
 - (ii) in the case of an application for registration of an association that is an employee association—to the United Trades and Labor Council (trading as SA Unions).

11—Substitution of section 131

Delete the section and substitute:

131—Eligibility for registration

- (1) Subject to this section, an association that is an organisation or branch of an organisation registered under the *Fair Work (Registered Organisations) Act 2009* of the Commonwealth is eligible for registration under this Part.

- (2) An association that is an employee association is only eligible for registration if—
 - (a) immediately before the commencement day, the association was entitled under its rules to represent the industrial interests of employees in South Australia; or
 - (b) the association—
 - (i) has, in accordance with the *Fair Work (Registered Organisations) Act 2009* of the Commonwealth, amalgamated with or withdrawn from amalgamation with, an organisation or branch of an organisation that was, immediately before the commencement day, entitled under its rules to represent the industrial interests of employees in South Australia; and
 - (ii) is, following the amalgamation or withdrawal, entitled under its rules to represent the industrial interests of employees in South Australia.
- (3) In the case of an association that is an employee association and the rules of the association provide that 1 or more branches of the association are entitled to represent the industrial interests of employees in South Australia, no part of the association other than the relevant branch or branches is eligible for registration under this Part.
- (4) In the case of an association that is an employee association and a Federal counterpart of a locally based association, the association is not eligible for registration under this Part if the locally based association has provided written notice to the Registrar that it seeks to represent the industrial interests of employees under this Act to the exclusion of its Federal counterpart.
- (5) A notice provided in accordance with subsection (4) may, by subsequent notice, be varied or revoked.
- (6) A notice provided in accordance with subsection (4), or a subsequent notice varying or revoking that notice, must be published on a website determined by the Registrar.
- (7) If an association has been de-registered in accordance with section 135, the association is not eligible for registration under this Part unless SAET is satisfied that registration is appropriate having regard to the circumstances in which the order for de-registration was made.
- (8) In this section—
commencement day means the day on which section 11 of the *Fair Work (Registered Associations) Amendment Act 2024* comes into operation;

Federal counterpart has the same meaning as in section 9A of the *Fair Work (Registered Organisations) Act 2009* of the Commonwealth;

locally based association means an association registered under Chapter 4 Part 2.

12—Amendment of section 132—Application for registration

Section 132—delete subsection (2) and substitute:

- (2) If an application for registration is made, the Registrar must—
 - (a) publish notice of the application on a website determined by the Registrar; and
 - (b) give notice of the application—
 - (i) to any registered association the Registrar considers has a proper interest in the subject matter of the application; and
 - (ii) in the case of an application for registration of an association that is an employee association—to the United Trades and Labor Council (trading as SA Unions).

13—Amendment of section 134—Registration

- (1) Section 134—delete "SAET may" and substitute:
SAET must
- (2) Section 134(b) and (c)—delete paragraphs (b) and (c)

14—Insertion of Chapter 4 Parts 3A and 3B

After section 136 insert:

Part 3A—Extension of Federal administration of CFMEU

136A—Interpretation

In this Part—

ABCWF—means the Australian Building and Construction Workers' Federation registered under Chapter 4 of this Act or a repealed Act;

CFMEU—means the Construction and General Division of the Construction Forestry and Maritime Employees Union registered under the *Fair Work (Registered Organisations) Act 2009* of the Commonwealth;

Federal administrator means the administrator appointed to administer the CFMEU in accordance with the *Fair Work (Registered Organisations) Act 2009* of the Commonwealth or a scheme under that Act;

repealed Act means the *Industrial and Employee Relations Act 1994*, the *Industrial Relations Act 1972* or an earlier Act relating to industrial relations providing for the registration of associations.

136B—Application by Federal administrator of CFMEU

- (1) This section applies if the CFMEU is under administration in accordance with the *Fair Work (Registered Organisations) Act 2009* of the Commonwealth in respect of its operations in South Australia.
- (2) The Minister must, on application by the Federal administrator of the CFMEU, place the ABCWF into administration (notice of which is to be published in the Gazette).

136C—Effect of administration of ABCWF

- (1) Subject to this Part, if the Minister places the ABCWF into administration under section 136B(2), the following provisions apply:
 - (a) the Federal administrator of the CFMEU is taken to be the administrator of the ABCWF on and from the day on which the notice referred to in section 136B(2) is published in the Gazette;
 - (b) the administrator of the ABCWF has—
 - (i) the same powers and functions in respect of the ABCWF that the Federal administrator has under the *Fair Work (Registered Organisations) Act 2009* of the Commonwealth or a scheme made under that Act in respect of the CFMEU; and
 - (ii) any other powers and functions prescribed by the regulations.
- (2) For the avoidance of doubt, if the Federal administrator of the CFMEU is replaced by another administrator, that other Federal administrator is taken to be the administrator of ABCWF.
- (3) Despite subsection (1)(a) (and subsection (2))—
 - (a) the Minister may, at any time after the commencement of subsection (1), by notice in the Gazette, appoint another person as administrator of the ABCWF; and
 - (b) a person appointed under this subsection—
 - (i) is taken to be the administrator of ABCWF; and
 - (ii) has—

- (A) the same powers and functions in respect of the ABCWF that the Federal administrator of the CFMEU has under the *Fair Work (Registered Organisations) Act 2009* of the Commonwealth or a scheme made under that Act in respect of the CFMEU; and
 - (B) any other powers and functions prescribed by the regulations.
- (4) The administrator must act in the best interests of the members of the ABCWF in the performance or exercise of functions and powers as administrator of the ABCWF.

136D—Administrator not liable in civil proceedings

An administrator of the ABCWF, or person acting under the direction of that administrator, is not liable to civil proceedings for loss, damage or injury of any kind suffered by a person in relation to an act done, or omitted to be done, in good faith—

- (a) in the performance or exercise, or the purported performance or exercise, of any power or function of administration of the ABCWF; or
- (b) in preparing for the performance or exercise of any such power or function.

136E—Regulations under this Part

- (1) The Governor may make such regulations as are contemplated by, or as are necessary or expedient for the purposes of, this Part.
- (2) Without limiting the generality of subsection (1), the regulations may prescribe all matters necessary or expedient for the purposes of the effective administration of the ABCWF under this Part, including in relation to—
 - (a) the delegation of the administrator's powers and functions; and
 - (b) the exercise of the functions of governing bodies of the ABCWF; and
 - (c) the control of funds, property and other assets of the ABCWF; and
 - (d) the conduct of legal proceedings in the name of the ABCWF; and
 - (e) the suspension or removal of officers of the ABCWF; and
 - (f) the declaration that offices of the ABCWF are vacant; and
 - (g) the timing and conduct of elections for the ABCWF; and
 - (h) the taking of disciplinary action in respect of employees of the ABCWF, including termination of employment; and

- (i) the making of alterations to the rules of the ABCWF; and
- (j) the remuneration of the administrator out of the funds, property and other assets of the ABCWF; and
- (k) the modification or removal of the powers or functions conferred on the administrator in accordance with section 136C(1)(b)(i) or (3)(b)(ii)(A).

136F—Cessation of administration

The administration of the ABCWF ceases if the administration of the CFMEU ceases in respect of its operations in South Australia, or if the administrator signs a determination to that effect (notice of which is to be published in the Gazette).

136G—Anti-avoidance

A person commits an offence if, without reasonable excuse, the person engages in conduct or a course of conduct and as a result of that conduct or course of conduct—

- (a) another person or body is prevented from taking action under an administration; or
- (b) the administrator of the ABCWF is prevented from effectively administering the ABCWF.

Maximum penalty: \$100 000.

Part 3B—Orders in relation to unregistered associations

136H—Power for SAET to make orders in relation to unregistered associations

- (1) SAET (constituted as an industrial relations commission) may, on application by a registered association or an employer, if satisfied it is appropriate and consistent with the object of this Act to encourage representation of employees and employers by registered associations, make 1 or more of the following orders:
 - (a) an order prohibiting an unregistered association or an officer, employee or agent of an unregistered association from representing a person or group of persons in a specified matter or class of matters before SAET;
 - (b) an order prohibiting an unregistered association from arranging for or funding an agent (including a registered agent) to represent a person or group of persons in a specified matter or class of matters before SAET;
 - (c) an order prohibiting an unregistered association from holding out membership on the basis of being able to provide representation in a specified matter or class of matters before SAET;

- (d) an order prohibiting another entity associated with the unregistered association, or an officer, employee or agent of another entity associated with the unregistered association, from engaging in the conduct referred to in a preceding paragraph.
- (2) An order made by SAET under this section may, on application by an unregistered association or any other body or person to which the order applies, be revoked if SAET is satisfied that the grounds on which the order was made no longer apply.
- (3) Nothing in this section limits the orders that SAET may make in respect of a demarcation dispute between associations.

136I—Misrepresentations by unregistered associations and agents

- (1) An unregistered association must not make a false or misleading representation about its right to represent the industrial interests of employees under this Act.
Maximum penalty: \$25 000.
- (2) An officer, employee or agent of an unregistered association must not knowingly or recklessly make a false or misleading representation about their right to represent the industrial interests of employees under this Act.
Maximum penalty: \$5 000

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

Section 140(1)—delete "an association" and substitute:
a registered association

16—Insertion of section 144A

After section 144 insert:

144A—Demarcation agreements etc

- (1) In exercising functions under this Act, SAET is to give effect to any demarcation agreement unless it is satisfied it would be unreasonable to do so.
- (2) Despite any other provision of this Act, if there is a demarcation dispute between a locally based association and a Federally based association that is a Federal counterpart of the locally based association, SAET must give preference to the right of the locally based association to represent the industrial interests of employees under this Act.
- (3) In this section—
demarcation agreement means an agreement between associations or organisations dealing with the right to represent the industrial interests of a class or group of employees under this Act;

Federal counterpart has the same meaning as in section 9A of the *Fair Work (Registered Organisations) Act 2009* of the Commonwealth;

Federally based association means an association registered under Chapter 4 Part 3;

locally based association means an association registered under Chapter 4 Part 2.

17—Amendment of section 147—Exercise of powers of SAET

- (1) Section 147(1)—after "under this Chapter" insert:
(other than a power under Part 3A or 3B)
- (2) Section 147(2)(b)—delete "SAET and substitute:
a Full Bench of SAET

18—Review of Act

- (1) The Parliamentary Committee on Occupational Safety Rehabilitation and Compensation established under section 15D of the *Parliamentary Committees Act 1991* must undertake a review of the operation and impact of the amendments to the *Fair Work Act 1994* made by this Act.
- (2) The review must be completed within 3 years after the commencement of this Act and a report on the outcome of the review must be tabled in each House of Parliament within 6 sitting days of the completion of the review.

Schedule 1—Related amendment and transitional provision

Part 1—Related amendment to the *South Australian Employment Tribunal Act 2014*

1—Amendment of section 51—Representation

Section 51—after subsection (2) insert:

- (2a) Subject to the provisions of a relevant Act, a person who is an officer or employee of an association (within the meaning of the *Fair Work Act 1994*) may appear as a representative of an employee or other person in proceedings before the Tribunal without leave of the Tribunal if—
 - (a) in the case of proceedings under the *Fair Work Act 1994*—the person is an officer or employee of an association registered under that Act; or
 - (b) in the case of proceedings under the *Fair Work Act 2009* of the Commonwealth—the person is an officer or employee of an association registered under the *Fair Work (Registered Organisations) Act 2009* of the Commonwealth; or
 - (c) the person is entitled to represent an employee or other person in proceedings before the Tribunal under another relevant Act.

Part 2—Transitional provision

2—Registration of associations under Chapter 4 Part 3 to continue

- (1) The registration of an association that is, immediately before the commencement of this clause, registered under Chapter 4 Part 3 of the *Fair Work Act 1994* is not affected by the amendments to Chapter 4 Part 3 of that Act made by this Act.
- (2) Nothing in subclause (1) affects the ability of SAET to de-register such an association.