No 43 of 2025 assented to 30.10.2025

South Australia

Fair Work (Worker Entitlements) Amendment Act 2025

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

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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 *Fair Work (Worker Entitlements) Amendment Act 2025*.

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 4—Interpretation

(1) Section 4(1)—after the definition of ***child*** insert:

civil penalty provision—see section 104A(1);

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

conduct includes an omission;

(3) Section 4(1)—after the definition of ***workplace*** insert:

workplace law means a law (other than this Act) that regulates the relationships between employers and employees (including by dealing with occupational health and safety matters) and includes a legislative instrument made under such a law.

Note—

For example, this includes Acts which confer an entitlement to payment of long service leave and determinations of the Commissioner for Public Sector Employment under the *Public Sector Act 2009*.

4—Insertion of section 4AA

After section 4 insert:

4AA—Act binds the Crown

(1) This Act binds the Crown in right of the State.

(2) The Crown is liable for an offence against this Act.

(3) Without limiting subsection (2), the Crown is liable for a contravention of a civil penalty provision.

(4) Section 7(2) of the *Crown Proceedings Act 1992* does not apply in respect of proceedings under this Act (other than proceedings under section 10).

5—Amendment of section 6—Application of Act to employment

Section 6—before paragraph (a) insert:

(aa) employment with a national system employer (within the meaning of the Commonwealth Act), other than in relation to an excluded subject matter (within the meaning of the *Fair Work (Commonwealth Powers) Act 2009*); or

6—Amendment of section 9—Jurisdiction to decide monetary claims under industrial laws or instruments

(1) Section 9(1)(a) and (b)—delete paragraphs (a) and (b) and substitute:

(a) a claim for a sum due to an employee or former employee from an employer or former employer under this Act, a workplace law, an award, an enterprise agreement or a contract of employment;

(b) a claim for a sum due to an employer or former employer from an employee or former employee under this Act, a workplace law, an award, an enterprise agreement or a contract of employment;

(2) Section 9(2)—delete subsection (2) and substitute:

(2) However, a claim cannot be made under subsection (1) in respect of a sum due under a workplace law if that workplace law confers jurisdiction on a court in respect of the claim.

Note—

For example, a claim for a sum due under the *Long Service Leave Act 1987* must be bought under section 13 of that Act and not under section 9(1) of this Act.

7—Repeal of section 13A

Section 13A—delete the section

8—Amendment of section 25—Representation

Section 25(1)(b)—after "course of" insert:

their office or

9—Amendment of heading to Chapter 2 Part 5

Heading to Chapter 2 Part 5—after "monetary claims" insert:

etc

10—Amendment of section 34—Award to include interest

(1) Section 34, heading—Delete "Award" and substitute:

Judgment

(2) Section 34(1)—delete "person to whom it makes an award on a monetary claim" and substitute:

party in favour of whom a judgment is made for the payment of a monetary amount

(3) Section 34—after subsection (2) insert:

(3) This section applies in respect of any claim under Part 1 for payment of a sum due or other monetary amount.

11—Amendment of section 35—Monetary judgment

Section 35—after subsection (2) insert:

(3) This section applies in respect of any claim under Part 1 for payment of a sum due or other monetary amount.

12—Amendment of section 36—Costs

Section 36(2)—delete subsection (2) and substitute:

(2) In connection with the operation of subsection (1)(b), a party to appeal proceedings may only be ordered to pay costs incurred by another party to the proceedings if—

(a) the Court is satisfied that the party instituted the proceedings vexatiously or without reasonable cause; or

(b) the Court is satisfied that the party's unreasonable act or omission caused the other party to incur the costs.

13—Insertion of Chapter 3 Part 5 Division 2

After section 103 insert:

Division 2—Civil penalty provisions

104—Obligation to pay entitlements

(1) An employer must not contravene a provision of this Act, a workplace law or an industrial instrument which requires the employer to pay an amount to, or on behalf of, an employee in relation to the performance of work.

Maximum civil penalty: $25 000.

(2) For the purpose of subsection (1), unless otherwise provided by this Act, or the relevant workplace law or industrial instrument, the employer must pay an amount referred to in subsection (1)—

(a) in full, subject to any deduction authorised by or under a law of the State or the Commonwealth or an order of a court; and

(b) by cash, cheque, money order or payment into a specified account with a financial institution; and

(c) at least monthly.

(3) For the avoidance of doubt, amounts referred to in subsection (1) include the following:

(a) wages;

(b) loadings;

(c) monetary allowances;

(d) overtime or penalty rates;

(e) leave payments;

(f) incentive-based payments and bonuses;

(g) superannuation contributions;

(h) payments under the *Work Health and Safety Act 2012* in relation to training and the performance of functions as a health and safety representative.

(4) A civil penalty may only be imposed on an employer for a contravention of subsection (1) if—

(a) the employer's conduct constituting the contravention was deliberate; and

(b) the employer's conduct constituting the contravention was part of a systematic pattern of conduct relating to 1 or more employees.

(5) For the purpose of subsection (4)(a), where the employer is the Crown or a body corporate, proof that the Crown or body corporate (as the case may be) expressly, tacitly, or impliedly authorised the conduct constituting the contravention will be taken to be proof that the employer's conduct constituting the contravention was deliberate.

Note—

This does not limit sections 236 or 236B.

(6) For the purpose of subsection (4)(b), in determining whether the employer's conduct constituting the contravention was part of a systematic pattern of conduct, a court may have regard to:

(a) the number of contraventions committed by the employer;

(b) the period over which the contraventions occurred;

(c) the number of employees affected by the contraventions;

(d) the employer's response, or failure to respond, to any complaints made about the contraventions;

(e) whether the employer failed to make or keep, in accordance with this Act or a relevant industrial instrument or workplace law, an employee record relating to the conduct constituting the contraventions;

(f) whether the employer failed to give, in accordance with this Act or a relevant industrial instrument or workplace law, a pay slip relating to the conduct constituting the contraventions.

(7) Subsection (6) does not limit the matters that a court may have regard to.

(8) Section 104A(4) does not apply for the purposes of determining whether an employer's conduct was part of a systematic pattern of conduct.

104A—Proceedings for contravention of civil penalty provision

(1) A provision of this Act is a ***civil penalty provision*** if the words "*Maximum civil penalty*" and one or more amounts by way of monetary penalty are set out at the foot of the provision.

(2) The South Australian Employment Court may, on application, order a person to pay a civil penalty that the Court considers is appropriate if the Court is satisfied, on the balance of probabilities, that the person has contravened a civil penalty provision.

(3) The civil penalty imposed by the South Australian Employment Court must not exceed the amount specified by this Act as the maximum civil penalty in relation to that contravention.

(4) Two or more contraventions of a civil penalty provision are taken to constitute a single contravention if the contraventions were committed by the same person and arose out of a course of conduct by the person.

(5) Subsection (4) does not apply to a contravention of a civil penalty provision that is committed by a person after the South Australian Employment Court has imposed a civil penalty on the person for an earlier contravention of the provision.

(6) An application under this section may be made by—

(a) an employee affected by the contravention; or

(b) a registered association that is entitled to represent the industrial interests of an employee affected by the contravention; or

(c) an inspector.

(7) The South Australian Employment Court may order that the civil penalty, or a part of the penalty, be paid to—

(a) the State; or

(b) a particular organisation; or

(c) a particular person.

(8) The civil penalty may be recovered as a debt due to the person to whom the penalty is payable.

(9) Proceedings under this section may be commenced at any time within 6 years after the day on which the relevant contravention occurred.

(10) For the avoidance of doubt, the Court may make a civil penalty order under this section in addition to 1 or more orders under section 9 or section 12 of this Act.

104B—Civil rules and procedure

(1) The contravention of a civil penalty provision is not an offence.

(2) The South Australian Employment Court must apply the rules of evidence and procedure for civil proceedings when hearing proceedings for a civil penalty order.

Note—

The rules of evidence and procedure for civil proceedings in the South Australian Employment Court include the principles set out in section 32 of the *South Australian Employment Tribunal Act 2014*.

(3) The South Australian Employment Court must not make an order against a person under this Division if an order has been made against the person under a civil penalty provision under an Act of the State or the Commonwealth in relation to conduct that is the same, or substantially the same, as the conduct constituting the contravention.

104C—Costs

A party to proceedings for a civil penalty order may only be ordered to pay costs incurred by another party to the proceedings if—

(a) the Court is satisfied that the party instituted the proceedings vexatiously or without reasonable cause; or

(b) the Court is satisfied that the party's unreasonable act or omission caused the other party to incur the costs.

14—Amendment of section 224—Non-compliance with awards and enterprise agreements

(1) Section 224, penalty provision—delete "$2 500" and substitute:

$25 000

(2) Section 224—after its present contents (now to be designated as subsection (1)) insert:

(2) Two or more contraventions of subsection (1) are taken to constitute a single contravention if the contraventions were committed by the same person and arose out of a course of conduct by the person.

(3) Subsection (2) does not apply to a contravention of subsection (1) that is committed by a person after a court has sentenced a person for an earlier contravention of that subsection.

15—Insertion of sections 236B and 236C

After section 236A insert:

236B—Conduct etc by officers etc of the Crown

(1) If the Crown is guilty of an offence against this act, or contravenes a civil penalty provision, the penalty to be imposed on the Crown is the penalty applicable to a body corporate.

(2) If it is necessary to establish, for the purposes of this Act, the state of mind of the Crown in relation to particular conduct, it is sufficient to show—

(a) that an officer, employee or agent of the Crown engaged in the conduct within the scope of their actual or apparent authority; and

(b) that the officer, employee or agent had the state of mind.

(3) Any conduct in which—

(a) an officer, employee or agent of the Crown engages within the scope of their actual or apparent authority; or

(b) another person engages at the direction or with the consent or agreement (express or implied) of an officer, employee or agent of the Crown, who gives the direction, consent or agreement within the scope of the actual or apparent authority,

is, for the purposes of this Act, conduct of the Crown.

(4) A reference in this section to the state of mind of a person extends to the knowledge, intent, opinion, belief or purpose of the person and the person's reasons for the intent, opinion, belief or purpose.

236C—Responsible agency of the Crown

(1) If proceedings are brought against the Crown for an offence against this Act—

(a) the responsible agency in relation to the offence may be specified in any document initiating, or relating to, the proceedings; and

(b) the Crown Solicitor may be served with the summons and information on behalf of the responsible agency; and

(c) the responsible agency is entitled to act in the proceedings and, subject to any relevant rules of court, the procedural rights and obligations of the Crown as the defendant in the proceedings are conferred or imposed on the responsible agency.

(2) If proceedings are brought against the Crown in relation to a contravention of this Act that is not an offence—

(a) the responsible agency in relation to the contravention may be specified in any document initiating, or relating to, the proceedings; and

(b) notwithstanding the above, the employer of public employees under section 4A is entitled to act in the proceedings and, subject to any relevant rules of court, the procedural rights and obligations of the Crown as the respondent in the proceedings are conferred on the employer of public employees.

(3) The responsible agency may be changed during proceedings with the leave of the court.

(4) In this section—

responsible agency in relation to an offence or a contravention of this Act is —

(a) the agency of the Crown whose conduct allegedly constitutes the offence or contravention; or

(b) if the agency referred to in paragraph (a) has ceased to exist—the agency of the Crown that is the successor of that agency; or

(c) if the agency referred to in paragraph (a) has ceased to exist and there is no clear successor of that agency—the agency of the Crown that the Court that will be dealing with the relevant proceedings declares to be the responsible agency.

Schedule 1—Related amendments, review and transitional provisions

Part 1—Related amendments of *South Australian Employment Tribunal Act 2014*

1—Amendment of section 6—Jurisdiction of Tribunal

Section 6—at the foot of the section insert:

Note—

The Tribunal will also have any jurisdiction conferred on it under a law of the Commonwealth (and in such a case the procedural provisions of this Act will apply in relation to the conferred jurisdiction except to the extent such provisions are excluded by, or are otherwise inconsistent with, the Commonwealth law).

2—Amendment of section 51—Representation

Section 51—after subsection (1) insert:

(1a) If jurisdiction is conferred on the Tribunal under the *Fair Work Act 2009* of the Commonwealth, a party to proceedings before the Tribunal under that Act is entitled (subject to that Act or any other relevant Commonwealth law), without leave, to be represented by—

(a) an officer or employee of an organisation registered under the *Fair Work (Registered Organisations) Act 2009* of the Commonwealth acting in the course of their office or employment with that organisation; or

(b) a registered agent under the *Fair Work Act 1994*.

Part 2—Review and transitional provisions

3—Review

The Minister must—

(a) cause a review of the effect of this Act to be undertaken after it has been in operation for a period of 3 years; and

(b) cause a report on the review to be laid before both Houses of Parliament (within 12 sitting days after the Minister receives the report).

4—Transitional provision

The amendments to the *Fair Work Act 1994* made by this Act only apply in relation to conduct occurring after the commencement of this Act.