



OCCUPATIONAL HEALTH, SAFETY AND WELFARE (ADMINISTRATION) AMENDMENT ACT 1994

No. 50 of 1994

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ELIZABETHAE II REGINAE

A.D. 1994

No. 50 of 1994

An Act to amend the Occupational Health, Safety and Welfare Act 1986.

[Assented to 16 June 1994]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Occupational Health, Safety and Welfare (Administration) Amendment Act 1994*.

(2) The *Occupational Health, Safety and Welfare Act 1986* is referred to in this Act as "the principal Act".

Commencement

2. (1) This Act will come into operation on a day to be fixed by proclamation.

(2) However—

(a) the day fixed for the commencement of this Act must be the same as the day fixed for the commencement of the *WorkCover Corporation Act 1994* and the *Workers Rehabilitation and Compensation (Administration) Amendment Act 1994*; and

(b) all provisions of this Act (except section 24(d)) must be brought into operation simultaneously; and

(c) section 24(d) will come into operation independently of proclamation on 1 July 1994.

Amendment of long title

3. The long title of the principal Act is amended by striking out "to establish the South Australian Occupational Health and Safety Commission;".

Amendment of s. 4—Interpretation**4. Section 4 of the principal Act is amended—**

(a) by inserting in subsection (1) after the definition of "accident" the following definition:

"Advisory Committee" means the Occupational Health, Safety and Welfare Advisory Committee established under Part II;

(b) by striking out from subsection (1) the definition of "the Commission";

(c) by inserting in subsection (1) after the definition of "contract of service" the following definition:

"Corporation" means the WorkCover Corporation of South Australia;

(d) by striking out paragraph (c) of the definition of "the designated person" in subsection (1) and substituting the following paragraph:

(c) in any other case—a public service employee authorised by the Minister to exercise the powers of the designated person under this Act;

(e) by striking out paragraph (b) of the definition of "Director" in subsection (1) (and the word "or" immediately preceding that paragraph);

(f) by striking out paragraph (d) of the definition of "inspector" in subsection (1) and substituting the following paragraph:

(d) in any other case—a public service employee authorised by the Minister to exercise the powers of an inspector under this Act;

(g) by striking out from subsection (1) the definition of "registered association" and substituting the following definition:

"registered association" means—

(a) an association registered under the *Industrial Relations Act (S.A.) 1972* or the *Industrial Relations Act 1988* of the Commonwealth;

or

(b) the United Trades and Labor Council.

Substitution of Part II

5. Part II of the principal Act (and the heading to that Part) are repealed and the following Part is substituted:

PART II
THE OCCUPATIONAL HEALTH, SAFETY AND WELFARE
ADVISORY COMMITTEE

The Advisory Committee

7. (1) The *Occupational Health, Safety and Welfare Advisory Committee* is established.

(2) The Advisory Committee consists of nine members appointed by the Governor of whom—

- (a) three will be appointed on the Minister's nomination after consulting with associations representing employers and with associations representing employees (including the UTLC); and
- (b) three will be appointed on the Minister's nomination after consulting with associations representing employers; and
- (c) three will be appointed on the Minister's nomination after consulting with associations representing employees (including the UTLC).

(3) One member¹ of the Committee must be appointed by the Governor² to preside at meetings of the Committee.

¹ *The member is referred to in this Act as the "presiding member" of the Committee.*

² *The appointment must be made from among the members appointed under subsection (2)(a).*

Functions of the Advisory Committee

8. (1) The functions of the Advisory Committee are—

- (a) to advise the Minister on the formulation and implementation of policies relating to occupational health, safety or welfare; and
- (b) to advise the Minister (on its own initiative or at the request of the Minister) on—
 - (i) proposals to make amendments to this Act, or to make regulations under this Act; and
 - (ii) other legislative proposals that may affect the operation of this Act; and
- (c) to recommend to the Minister regulations and codes of practice relating to occupational health, safety or welfare, to keep the regulations and codes of practice under review and, where appropriate, make recommendations for their revision; and

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- (d) to advise the Minister on occupational health, safety and welfare standards and to report to the Minister (on its own initiative or at the request of the Minister) on any other matter relating to occupational health, safety or welfare; and
 - (e) to keep the administration and enforcement of legislation relevant to occupational health, safety and welfare under review; and
 - (f) to keep the role of health and safety representatives under review; and
 - (g) to keep the provision of services relevant to occupational health, safety and welfare under review; and
 - (h) to consult and co-operate with relevant national, State and Territory authorities; and
 - (i) to keep the courses of training in occupational health, safety and welfare under review; and
 - (j) to carry out other functions assigned to the Advisory Committee by the Minister or by or under this or any other Act.

(2) The Advisory Committee may conduct public meetings and discussions and may, with the approval of the Minister, conduct inquiries, on questions arising before the Advisory Committee.

(3) The Advisory Committee may on its own initiative, and must at the direction of the Minister, consult and co-operate with the Corporation, other government authorities at a State or national level, representatives of registered associations and other persons or bodies.

(4) Before the Advisory Committee recommends the making of a regulation, code of practice or standard, the Advisory Committee should—

- (a) make the proposed regulation, code of practice or standard available for public comment; and
- (b) consider whether an industry impact statement should be prepared and advise the Minister accordingly; and
- (c) if the Minister or the Advisory Committee considers that the proposed regulation, code of practice or standard should be tested—ensure that an appropriate pre-approval trial has been conducted.

(5) The Advisory Committee may, with the approval of the Minister, establish subcommittees to assist the Committee.

(6) A subcommittee may, but need not, consist of, or include, members of the Advisory Committee.

Terms and conditions of office

9. (1) A member of the Advisory Committee will be appointed on conditions, and for a term (not exceeding 3 years), determined by the Governor and, on the expiration of a term of appointment, is eligible for re-appointment.

(2) The Governor may remove a member from office for—

- (a) breach of, or non-compliance with, a condition of appointment; or
- (b) mental or physical incapacity to carry out duties of office satisfactorily; or
- (c) neglect of duty; or
- (d) dishonourable conduct.

(3) The office of a member becomes vacant if the member—

- (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) resigns by written notice addressed to the Minister; or
- (d) is found guilty of an indictable offence; or
- (e) is found guilty of an offence against subsection (5) (Disclosure of interest); or
- (f) is removed from office by the Governor under subsection (2).

(4) On the office of a member of the Advisory Committee becoming vacant, a person must be appointed, in accordance with this Act, to the vacant office.

(5) A member who has a direct or indirect personal or pecuniary interest in a matter under consideration by the Advisory Committee—

- (a) must, as soon as practicable after becoming aware of the interest, disclose the nature and extent of the interest to the Committee; and
- (b) must not take part in a deliberation or decision of the Committee on the matter and must not be present at a meeting of the Committee when the matter is under consideration.

Penalty: Division 5 fine or imprisonment for two years.

(6) The court by which a person is convicted of an offence against subsection (5) may, on the application of an interested person, make an order avoiding a contract to which the non-disclosure relates and for restitution of property passing under the contract.

Allowances and expenses

10. (1) A member of the Advisory Committee is entitled to fees, allowances and expenses approved by the Governor.

(2) The fees, allowances and expenses are payable out of the Compensation Fund under the *Workers Rehabilitation and Compensation Act 1986*.

Proceedings, etc., of the Advisory Committee

11. (1) Meetings of the Advisory Committee must be held at times and places appointed by the Committee, but there must be at least six meetings per year.

(2) Six members of the Advisory Committee constitute a quorum of the Committee.

(3) The presiding member of the Advisory Committee will, if present at a meeting of the Committee, preside at the meeting and, in the absence of the presiding member, a member chosen by the members present will preside.

(4) A decision carried by a majority of the votes of the members present at a meeting of the Advisory Committee is a decision of the Committee.

(5) Each member present at a meeting of the Advisory Committee is entitled to one vote on a matter arising for decision by the Committee, and, if the votes are equal, the person presiding at the meeting has a second or casting vote.

(6) The Advisory Committee must ensure that accurate minutes are kept of its proceedings.

(7) The Advisory Committee may open its proceedings to the public unless the proceedings relate to commercially sensitive matters or to matters of a private confidential nature.

(8) Subject to this Act, the proceedings of the Advisory Committee will be conducted as the Committee determines.

Confidentiality

12. A member of the Advisory Committee who, as a member of the Committee, acquires information that—

- (a) the member knows to be of a commercially sensitive nature, or of a private confidential nature; or

(b) the Committee classifies as confidential information,

must not divulge the information without the approval of the Committee.

Penalty: Division 7 fine.

Immunity of members of Advisory Committee

13. (1) No personal liability attaches to a member of the Advisory Committee for an act or omission by the member or the Committee in good faith and in the exercise or purported exercise of powers or functions under this Act.

(2) A liability that would, but for subsection (1), lie against a member lies instead against the Crown.

Amendment of s. 21—Duties of workers

6. Section 21 of the principal Act is amended by striking out paragraph (e) of subsection (1) and substituting the following paragraph:

(e) comply with any policy that applies at the workplace published or approved by the Minister after seeking the advice of the Advisory Committee;

Amendment of s. 27—Health and safety representatives may represent groups

7. Section 27 of the principal Act is amended by striking out from subsection (6) "Commission" and substituting "Corporation after seeking the advice of the Advisory Committee".

Amendment of s. 28—Election of health and safety representatives

8. Section 28 of the principal Act is amended—

- (a) by striking out from subsection (3) "the Commission" twice occurring and substituting, in each case "the Corporation";
- (b) by striking out from subsection (5) "on the recommendation of the Commission" and substituting "after the Minister has consulted with the Advisory Committee";
- (c) by striking out from subsection (12) "the Commission" and substituting "the Corporation".

Amendment of s. 31—Health and safety committees

9. Section 31 of the principal Act is amended by inserting after subsection (1) the following subsection:

(1a) An employer must also establish one or more health and safety committees if required to do so by or under the regulations.

Amendment of s. 32—Functions of health and safety representatives

10. Section 32 of the principal Act is amended by striking out subparagraph (i) of subsection (3)(a) and substituting the following subparagraph:

- (i) the Minister after seeking the advice of the Advisory Committee or the Corporation;

Amendment of s. 34—Responsibilities of employers

11. Section 34 of the principal Act is amended—

- (a) by striking out from subsection (3) "the Commission" and substituting "the Minister after seeking the advice of the Advisory Committee";
- (b) by striking out from subsection (5) "The Commission may" and substituting "The Minister may, after seeking the advice of the Advisory Committee,".

Amendment of s. 38—Powers of entry and inspection

12. Section 38 of the principal Act is amended—

- (a) by striking out from subsection (1) "a member of the Commission, an inspector or a person authorised by the Commission or the Director" and substituting "an inspector or a person authorised by the Director or the Corporation";
- (b) by striking out from subsection (6) "authorized by the Commission or the Director" and substituting "authorised by the Director or the Corporation";
- (c) by striking out from subsection (8)(a) "a member of the Commission, inspector or other person authorised by the Commission or the Director" and substituting "an inspector or other authorised person";
- (d) by striking out from subsection (11) "and has obtained the Director's" and substituting "or to the Corporation and has obtained the Director's or the Corporation's".

Amendment of s. 47—Constitution of review committees

13. Section 47 of the principal Act is amended by inserting after subsection (5) the following subsection:

(6) Despite subsection (2), the President of the Industrial Court may, in a special case, constitute a review committee solely of a Judge of the Industrial Court or an Industrial Magistrate (and this Part will then apply with respect to the relevant proceedings with such modifications or variations as may be necessary or appropriate, or as may be prescribed).

Amendment of s. 51—Immunity of inspectors and officers

14. Section 51 of the principal Act is amended by striking out from subsection (1) "the Commission" and substituting "the Corporation".

Substitution of s. 53

15. Section 53 of the principal Act is repealed and the following section is substituted:

Delegation

53. (1) The Minister, the Director or the Corporation may, by instrument in writing, delegate a power or function under this Act.

(2) A delegation under this section—

(a) may be made subject to such conditions as the delegator thinks fit; and

(b) is revocable at will; and

(c) does not derogate from the power of the delegator to act in any matter.

Amendment of s. 54—Power to require information

16. Section 54 of the principal Act is amended—

(a) by striking out subsection (1) and substituting the following subsections:

(1) The Minister or the Corporation or a person authorised by the Minister or the Corporation may, by notice in writing, require a person to furnish information relating to occupational health, safety or welfare that is reasonably required for the administration, operation or enforcement of this Act.

(1a) The Advisory Committee may, by notice in writing, require the Department for Industrial Affairs or the Corporation to furnish information necessary for the performance of the Advisory Committee's functions.;

(b) by striking out from subsection (2) "to the Commission".

Amendment of s. 55—Confidentiality

17. Section 55 of the principal Act is amended—

(a) by striking out subsection (1) and substituting the following subsections:

(1) A person (including a health and safety representative, a member of a health and safety committee or a person acting as a consultant) must not disclose information (except as permitted by subsection (1a)) if—

(a) the person obtained the information in the course of carrying out functions in, or related to, the administration, operation or enforcement of this Act; and

(b) the information is—

(i) about commercial or trading operations; or

- (ii) about the physical or mental condition, or the personal circumstances or affairs, of an employee or other person; or
- (iii) information provided in a return or in response to a request for information under this Act.

Penalty: Division 6 fine.

(1a) The disclosure of information is permitted if it is—

- (a) a disclosure in the course of official duties; or
- (b) a disclosure of statistical information; or
- (c) a disclosure made with the consent of the person to whom the information relates, or who furnished the information; or
- (d) a disclosure required by a court or tribunal constituted by law; or
- (e) a disclosure to the Corporation, or to an administrative unit in the Public Service of the State, made under the authorisation of the Minister; or
- (f) a disclosure authorised by the regulations.

(1b) A regulation made for the purposes of subsection (1a)(f) cannot take effect unless it has been laid before both Houses of Parliament and—

- (a) no motion for disallowance is moved within the time for such a motion; or
- (b) every motion for disallowance of the regulation has been defeated or withdrawn, or has lapsed.

(1c) A person must, in making a disclosure under subsection (1a), insofar as is reasonably practicable, take steps to prevent or minimise any adverse commercial or industrial impact on the relevant employer.

Amendment of s. 60a—Expiation of offences

18. Section 60a of the principal Act is amended—

- (a) by inserting "to the person specified in the notice" after "by payment";
- (b) by striking out "28 days" and substituting "60 days".

Amendment of s. 63—Code of practice

19. Section 63 of the principal Act is amended—

- (a) by striking out from subsection (1) "the Commission" and substituting "the Advisory Committee";
- (b) by striking out subsection (3);
- (c) by striking out from subsection (4) "the Commission" and substituting "the Advisory Committee".

Amendment of s. 63a—Use of codes of practice in proceedings

20. Section 63a of the principal Act is amended by striking out "that section" and substituting "this Act".

Substitution of s. 65

21. Section 65 of the principal Act is repealed and the following section is substituted:

Annual Report

65. The Advisory Committee must, before 30 September in each year, prepare a report on the work of the Committee during the financial year that ended on the preceding 30 June and forward copies of the report to the Presiding Members of both Houses of Parliament to be laid before their respective Houses at the earliest opportunity.

Amendment of s. 66—Modification of regulations

22. Section 66 of the principal Act is amended by striking out from subsection (3) "the Commission" and substituting "the Minister".

Amendment of s. 67—Exemption from Act

23. Section 67 of the principal Act is amended—

- (a) by striking out from subsection (1)(a) "the Commission" and substituting "the Minister";
- (b) by striking out from subsection (1)(b) "the Commission" and substituting "the Minister";
- (c) by striking out from subsection (1) "the Commission may, by unanimous decision," and substituting "the Minister may,";
- (d) by striking out subsection (3) and substituting the following subsection:

(3) Before deciding on whether to grant an exemption under this section, the Minister must—

- (a) consult with the Advisory Committee; and
- (b) so far as is reasonably practicable, consult with—

-
- (i) any registered association representing employers that might have an interest in the matter; and
 - (ii) any registered association representing one or more employees who might be affected by the granting of the exemption.;
- (e) by striking out from subsection (4) "the Commission" and substituting "the Minister";
- (f) by striking out from subsection (5) "The Commission" and substituting "The Minister".

Amendment of s. 67a—Registration of employers

24. Section 67a of the principal Act is amended—

- (a) by striking out from subsection (3) "The Workers Rehabilitation and Compensation Corporation" and substituting "The Corporation";
- (b) by striking out from subsection (5) "the Workers Rehabilitation and Compensation Corporation" twice occurring and substituting, in each case "the Corporation";
- (c) by striking out from subsection (6)(c) "the Workers Rehabilitation and Compensation Corporation" and substituting "the Corporation";
- (d) by striking out subsections (7), (8) and (8a) and substituting the following subsections:

(7) A prescribed percentage of the prescribed amount for a particular financial year will be payable to the Department for Industrial Affairs in accordance with guidelines established by the Treasurer.

(8) The prescribed amount for the 1994/1995 financial year, and for each succeeding financial year, will be an amount fixed for that financial year by the regulations (but if any such regulation is not made before the commencement of the relevant financial year, or is disallowed or revoked, then the prescribed amount for that financial year will be the amount that applied under this section for the preceding financial year).;

- (e) by striking out from subsection (8c) "the Workers Rehabilitation and Compensation Corporation" and substituting "the Corporation";
- (f) by striking out from subsection (8d) "the Workers Rehabilitation and Compensation Corporation" and substituting "the Corporation";
- (g) by striking out subsection (8e);
- (h) by striking out subsection (9) and substituting the following subsection:

(9) The Department for Industrial Affairs is entitled to information provided to the Corporation for the purposes of this section.;

(i) by striking out subsection (11) and substituting the following subsection:

(11) The Governor may, by proclamation, fix a day on which this section expires.

Amendment of s. 68—Consultation on regulations

25. Section 68 of the principal Act is amended by striking out "the Commission" and substituting "the Advisory Committee".

Amendment of s. 69—Regulations

26. Section 69 of the principal Act is amended—

(a) by striking out from subsection (8a) "the Workers Rehabilitation and Compensation Corporation" and substituting "the Corporation";

(b) by striking out subsections (8b) and (8c) and substituting the following subsection:

(8b) The Department for Industrial Affairs is entitled to information relating to work-related injuries obtained by the Corporation under subsection (8a).;

(c) by striking out from subsection (9)(a) "the Commission" and substituting "the Advisory Committee".

Amendment of second schedule

27. The second schedule of the principal Act is amended by striking out clause 2.

Transitional provisions

28. The Governor may, by regulation, make such saving or transitional provisions as appear to the Governor to be necessary or expedient on account of the enactment of this Act.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor