

South Australia



INDUSTRIAL AND EMPLOYEE RELATIONS (MISCELLANEOUS PROVISIONS) AMENDMENT ACT 1995

No. 67 of 1995

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ELIZABETHAE II REGINAE

A.D. 1995

No. 67 of 1995

An Act to amend the Industrial and Employee Relations Act 1994

[Assented to 17 August 1995]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Industrial and Employee Relations (Miscellaneous Provisions) Amendment Act 1995*.

(2) The *Industrial and Employee Relations Act 1994* is referred to in this Act as "the principal Act".

Commencement

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

Amendment of s. 4—Interpretation

3. Section 4 of the principal Act is amended—

(a) by inserting at the end of the definition of "enterprise agreement" in subsection (1) "(and includes a provisional enterprise agreement)";

(b) by inserting in subsection (1) after the definition of "group of employees" the following definition:

"(indexed)"—*See subsection (4);;*

(c) by inserting after subsection (3) the following subsection:

(4) If a monetary sum is followed by the word "(indexed)", the amount is to be adjusted on 1 January of each year by multiplying the stated amount by a proportion obtained by dividing State average full-time adult total earnings (seasonally adjusted) as at 30 June in the previous year by State average full-time adult total earnings (seasonally adjusted) as at 30 June in the year in which the stated amount was fixed by Parliament.

Substitution of s. 75

4. Section 75 of the principal Act is repealed and the following section is substituted:

Who may make enterprise agreement

75. (1) An enterprise agreement may be made between—

- (a) an employer (or two or more employers who together carry on a single business); and
- (b) a group of employees.

(2) An association may enter into an enterprise agreement on behalf of a group of employees if the association is authorised, after notice has been given as required by regulation, by a majority of the employees constituting the group to negotiate the enterprise agreement on behalf of the group.

(3) A member of an association is taken to have given the association an authorisation for the purposes of subsection (2) for as long as the member remains a member of the association unless the member, by written notice given to the association, withdraws the authorisation.

(4) An authorisation given to an association by an employee who is not a member of the association—

- (a) cannot be given generally but must be specifically related to a particular proposal for an enterprise agreement; and
- (b) remains in force (subject to revocation by written notice given to the association) until the relevant enterprise agreement is rescinded or superseded.

(5) If—

- (a) an employer proposes to have an enterprise agreement with a group of employees who are yet to be employed by the employer; and
- (b) the employees—
 - (i) are of a class not currently, or formerly, employed by the employer or a related employer in South Australia; or
 - (ii) are to be engaged in operations of a kind that are not currently, and have not been formerly, carried on by the employer or a related employer in South Australia,

the employer may enter, on a provisional basis, into an enterprise agreement binding on the employees who become members of the group (a "provisional enterprise agreement") with the Employee Ombudsman or a registered association of employees (or both).

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(6) If the Employee Ombudsman intends to enter into negotiations for a provisional enterprise agreement and no registered association of employees is to be a party to the agreement, the Employee Ombudsman must give the United Trades and Labor Council at least 14 days written notice of the intention to enter into those negotiations.

(7) A notice under subsection (6) must include details of the group of employees to which the agreement is to apply.

(8) The Employee Ombudsman enters into a provisional enterprise agreement under this section only in a representative capacity and the agreement may not impose obligations on the Employee Ombudsman personally.

(9) A person who becomes, or ceases to be, a member of a group of employees defined in an enterprise agreement as the group bound by the agreement, becomes or ceases to be bound by the enterprise agreement (without further formality).

Amendment of s. 76—Negotiation of enterprise agreement

5. Section 76 of the principal Act is amended by inserting after subsection (5) the following subsection:

(6) This section does not prevent employees or an association of employees from initiating negotiations on a proposed enterprise agreement, but in that case, the employer must, before entering into the negotiations, give the notice and information required by this section to ensure that the interests of all employees who may be affected by the proposed agreement are properly protected.

(7) This section does not apply to negotiations on the terms of an enterprise agreement that is to be entered into on a provisional basis.

Amendment of s. 79—Approval of enterprise agreement

6. Section 79 of the principal Act is amended—

(a) by striking out from subsection (1) "Subject to subsection (6), the" and inserting "Except as otherwise provided, the";

(b) by striking out paragraph (c) of subsection (1) and substituting the following paragraph:

(c) if the agreement is entered into by an association as representative of the group of employees bound by the agreement— an appropriate officer of the association has lodged a statutory declaration with the Commission verifying that a majority of the employees currently constituting the group have authorised the association to act on their behalf and, if the Commission requires further evidence of the authorisation, the further evidence has been provided; and;

(c) by inserting after subsection (6) the following subsections:

(7) If an enterprise agreement is to be entered into on a provisional basis—

(a) the prescribed provisions do not apply to its approval under this section; but

- (b) the agreement may only be approved on condition that—
- (i) the agreement is to be renegotiated between the employer and the group of employees within a period (not exceeding 6 months) the Commission considers appropriate in the circumstances and fixes on approving it; and
 - (ii) if, in the course of the renegotiation, the employer and the group¹ reach agreement (either in the same or on different terms), the agreement is, on its approval under this Part, to take the place of the provisional agreement and, if agreement is not reached, the provisional agreement lapses at the end of the period fixed for its renegotiation.

¹ The group may, if the appropriate authorisation exists, be represented in the negotiations by an association or associations of employees—See section 75.

Explanatory note—

The prescribed provisions are subsection (1)(a), (b), (c) and subsections (4) and (5).

(8) If—

- (a) the Employee Ombudsman enters into a provisional enterprise agreement; and
- (b) no registered association is a party to the agreement,

the United Trades and Labor Council may (despite any other provision of this Act) intervene in proceedings before the Commission relating to the approval of the agreement if the Commission is satisfied that the United Trades and Labor Council has a proper interest in the matter.

(9) If the Commission is of the opinion that grounds may exist for withholding approval of an enterprise agreement but—

- (a) an undertaking is given to the Commission by one or more of the persons who are to be bound by the agreement (or by a duly authorised representative on their behalf) about how the agreement is to be interpreted or applied; and
- (b) the Commission is satisfied that the undertaking adequately deals with the aspects of the agreement that might otherwise lead the Commission to withhold its approval,

the Commission may incorporate the undertaking as part of the agreement, or amend the agreement to conform with the undertaking, and approve the agreement in its modified form.

(10) Before the Commission rejects an application for approval for an enterprise agreement on the ground that its provisions do not meet the criteria for approval, it should identify the aspects of the agreement that are of concern to the Commission and allow a reasonable opportunity for the renegotiation of those aspects of the agreement.

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Amendment of s. 84—Power of Commission to vary or rescind an enterprise agreement

7. Section 84 of the principal Act is amended by inserting after subsection (4) the following subsection:

(5) If the Commission is satisfied, after giving persons bound by an enterprise agreement an opportunity to be heard, that there has been a breach of an undertaking on the basis of which the agreement was approved, the Commission may—

- (a) vary the agreement so that it conforms with the undertaking; or
- (b) rescind the agreement.

Substitution of heading

8. The heading immediately preceding section 99 of the principal Act is repealed and the following heading is substituted:

DIVISION 2—REVIEW OF AWARDS

Amendment of s. 105—Unfair dismissal

9. Section 105 of the principal Act is amended by inserting after subsection (2)(a) the following paragraph:

- (ab) the employee's employment is not covered by an award, industrial agreement or enterprise agreement (under this Act or the Commonwealth Act), and the employee's remuneration immediately before the dismissal took effect was at the rate of \$60 000 (indexed) or more a year; or.

Amendment of s. 108—Remedies for unfair dismissal

10. Section 108 of the principal Act is amended by inserting after subsection (2) the following subsection:

(2A) The Commission cannot order the payment of compensation exceeding six months' remuneration at the rate applicable to the dismissed employee immediately before the dismissal took effect, or \$30 000 (indexed), whichever is the greater.

Amendment of s. 115—Freedom of association

11. Section 115 of the principal Act is amended by striking out subsection (3) and substituting the following subsections:

- (3) A person must not—
 - (a) require another to become, or remain, a member of an association; or
 - (b) prevent another from becoming or remaining a member of an association of which the other person is, in accordance with the rules of the association, entitled to be a member; or
 - (c) induce another to enter into a contract or undertaking not to become or remain a member of an association.

Penalty: Division 4 fine.

(4) A provision of a contract, or an undertaking, to become or remain, or not to become or remain, a member of an association is void.

Amendment of s. 148—Time and place of sitting

12. Section 148 of the principal Act is amended by striking out subsection (3) and substituting the following subsection:

(3) The Court will sit at the times and places directed by the Senior Judge and the Commission will sit at the times and places directed by the President.

Substitution of s. 151

13. Section 151 of the principal Act is repealed and the following section is substituted:

Representation

151. (1) A party or intervener may be represented in proceedings before the Court or the Commission by—

- (a) a legal practitioner or a registered agent; or
- (b) an officer or employee of an association of which the party or intervener is a member; or
- (c) a person who provides the representation gratuitously.

(2) However—

- (a) the right of representation is qualified by the provisions restricting representation at a conference under this Act; and
- (b) a party or intervener may not be represented in proceedings before the Court or the Commission by a person—
 - (i) whose name has been struck off the roll of legal practitioners; or
 - (ii) who, although a legal practitioner, is not entitled to practise the profession of the law because of disciplinary action taken against him or her; or
 - (iii) who is disqualified by regulation from registration as an agent.

Amendment of s. 198—Assignment of Commissioner to deal with dispute resolution

14. Section 198 of the principal Act is amended by striking out from subsection (2) "between the parties to" and substituting "arising under".

Amendment of Schedule 1—Repeal and Transitional Provisions

15. Schedule 1 to the principal Act is amended by inserting after section 7 the following section:

References to industrial agreements

7A. (1) A reference to an industrial agreement in an Act or statutory instrument extends to an enterprise agreement under this Act.

(2) However, this section does not apply to references to an industrial agreement in the *Long Service Leave Act 1987* or a statutory instrument under that Act.

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

BASIL S. HETZEL, Governor's Deputy